

R E P O R T E R ' S R E C O R D

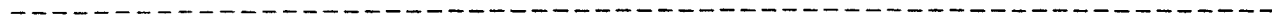
VOLUME 32 OF 53

Trial Court Cause No. 380-80047-01

THE STATE OF TEXAS \* IN THE 380TH DISTRICT COURT

V. \*

IVAN ABNER CANTU \* OF COLLIN COUNTY, TEXAS



REPORTER'S RECORD

VOLUME 32 - GUILT/INNOCENCE

CAPITAL MURDER JURY TRIAL

COPY

On the 4th day of October, 2001, from 9:15 a.m. to 5:00 p.m. the Capital Murder - Trial on the Merits proceedings came on to be heard in the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the Honorable Charles F. Sandoval, Judge Presiding, held in McKinney, Collin County, Texas:

Proceedings reported by Computerized Stenotype Machine; Reporter's Record produced by Computer-Assisted Transcription.

LISA M. RENFRO, Texas CSR #4534

Official Court Reporter - 380th Judicial District Court

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Handwritten notes and stamps at the bottom right of the page, including a date stamp that appears to be 10-15-01.

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1 CHRONOLOGICAL EXHIBITS INDEX  
 2

| 3 EXHIBITS | Description                 | Offered/Admitted | V. |
|------------|-----------------------------|------------------|----|
| 4 SX-8-A   | Set of Keys                 | 30/30            |    |
| SX-58      | Box of evidence             | 18/18            |    |
| 5 SX-58-A  | Pillow with "love"          | 18/18            |    |
| SX-58-B    | Black hand towel            | 18/18            |    |
| 6 SX-58-C  | Paisley round pillow        | 18/18            |    |
| SX-58-D    | Green-striped pillow        | 18/18            |    |
| 7 SX-59    | Box of evidence             | 18/18            |    |
| SX-59-A    | One sheet/mattress cover    | 18/18            |    |
| 8 SX-60    | Photo                       | 22/23            |    |
| SX-61      | Photo                       | 26/27            |    |
| 9 SX-62    | Photo                       | 26/27            |    |
| SX-63      | Photo of sock               | 26/27            |    |
| 10 SX-64   | Photo                       | 26/27            |    |
| SX-65      | Photo                       | 26/27            |    |
| 11 SX-66   | Photo                       | 26/27            |    |
| SX-67      | Photo                       | 26/27            |    |
| 12 SX-68   | Set of Keys                 | 30/30            |    |
| SX-69      | Key fob                     | 30/30            |    |
| 13 SX-70   | Box of cartridges           | 30/30            |    |
| SX-71      | Box of items from apartment | 33/35            |    |
| 14 SX-71-A | Pair of blue jeans          | 33/35            |    |
| SX-71-B    | White sock                  | 33/35            |    |
| 15 SX-71-C | White sock                  | 33/35            |    |
| SX-72      | Photo                       | 35/36            |    |
| 16 SX-73   | Photo                       | 35/36            |    |
| SX-74      | Photo                       | 113/113          |    |
| 17 SX-75   | Photo                       | 113/113          |    |
| SX-76      | Envelope w/ contents        | 125/126          |    |
| 18 SX-76-A | Bag                         | 125/126          |    |
| SX-76-B    | Pistol (Colt .38)           | 125/126          |    |
| 19 SX-76-C | Box of cartridges           | 125/126          |    |
| SX-76-D    | Cartridges in magazine      | 125/126          |    |
| 20 SX-76-E | Test fires from SWIFS       | 125/NA           |    |
| SX-77      | Photo                       | 128/128          |    |
| 21 SX-78   | Photo                       | 128/128          |    |
| SX-79      | Photo                       | 128/128          |    |
| 22 SX-80   | Photo                       | 128/128          |    |
| SX-81      | Photo                       | 128/128          |    |
| 23 SX-82   | Photo                       | 128/128          |    |
| SX-83      | Photo                       | 128/128          |    |
| 24 SX-84   | Photo                       | 128/NA           |    |
|            |                             | 129/NA           |    |
| 25         |                             |                  |    |

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| 5 SX-87    | Fingerprint card  | 137/181          |    |
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| DX-1-A     | Fingerprint card  | 198/199          |    |
| 11 DX-1-B  | Fingerprint card  | 198/199          |    |
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## PROCEEDINGS

1  
2 THE BAILIFF: All rise.  
3 (The jury enters the courtroom at 9:15 a.m.)  
4 THE COURT: Please be seated. Good morning,  
5 Ladies and Gentlemen. I understand that we have some more  
6 witnesses that need to be sworn in; is that correct?  
7 MS. LOWRY: Yes, Your Honor.  
8 THE COURT: If you folks would come forward,  
9 I'll swear you in. Raise your right hands, please.  
10 (Witnesses sworn by the Court.)  
11 THE COURT: Put your hands down. What is your  
12 name, sir?  
13 PROSPECTIVE WITNESS: Frank Della.  
14 PROSPECTIVE WITNESS: William Pepsis,  
15 P-E-P-S-I-S.  
16 PROSPECTIVE WITNESS: Forrest Smith.  
17 PROSPECTIVE WITNESS: James R. Smith.  
18 THE COURT: All right. I want to advise you  
19 men that the Rule has been invoked. That means you must  
20 remain outside during the trial of this case. You cannot  
21 discuss your testimony among yourselves or with anybody else,  
22 except the attorneys on both sides. Everybody understand it?  
23 (All indicate affirmatively.)  
24 THE COURT: Let me ask you fellows to go  
25 wherever they ask you to go, and we'll call you when the time

1 comes. Thank you.  
2 Mr. Whitsitt, do you want to come up and take the  
3 witness stand?  
4 (Witness complies.)  
5 THE COURT: Mr. Whitsitt, I want to remind you  
6 that you're still under oath.  
7 MS. LOWRY: Your Honor, may I approach?  
8 THE COURT: Yes.  
9 DIRECT EXAMINATION CONTINUED  
10 BY MS. LOWRY:  
11 Q. I'm going to hand you back what has been marked as  
12 State's Exhibit 57, and that's the one we ended with  
13 yesterday. If you could take the inner packages out again. I  
14 just want to talk to you briefly about the markings that are  
15 on the package. I know we went over them a little bit  
16 yesterday, but just to kind of show the jury how you package  
17 them, and how you know who's been, I guess, inside the  
18 packages after you, and who has not. Does that make sense?  
19 A. Yes, ma'am.  
20 Q. What is the typical procedure for after you find  
21 evidence, you log it into your evidence and then send it off  
22 to be tested. Do you actually send it off, or how is that  
23 procedure -- how does that take place?  
24 A. We put it into a lockbox in our office, and it's all  
25 taken by one detective. And as I explained yesterday, we have

1 a change of custody form. That's signed by me, and the next  
2 person who takes it into evidence is a SWIFS, Southwest  
3 Institute Forensic Science, individual that signs the chain of  
4 custody. Everybody that handles the evidence, except for the  
5 individual that just takes it out there, physically takes it,  
6 and he signs a master sheet that gives all the numbers and so  
7 on. But anybody that handles the evidence is recorded on the  
8 chain of custody.  
9 Q. And is that just to ensure that no one else, I mean,  
10 tampers with it, does anything to it, other than the police,  
11 obviously who found it, and the persons testing it?  
12 A. Yes, ma'am.  
13 Q. Can you tell by looking at those packages that those  
14 procedures were followed?  
15 A. Yes, ma'am, they were.  
16 Q. Now, as far as the casings, I know you found casings  
17 and a projectile. Can you explain for the jury just what the  
18 difference is between those?  
19 A. On firearms evidence you have a cartridge which is  
20 the casing itself, and then a projectile of some type. In  
21 this cases (sic), I found the three cartridge cases, which  
22 means they were expended. There's no projectile on them, and  
23 then the one projectile that I found was one that was expended  
24 from the cartridge and that made up the four pieces of firearm  
25 evidence that I recovered.

1 Q. Now, back to the projectile, where exactly was the  
2 projectile found?  
3 A. The projectile was found in one corner of the master  
4 bedroom by the potted plant. I think that there's at least  
5 four pictures that show this.  
6 Q. I'm showing you State's Exhibit 16. Does that  
7 reflect where the projectile is?  
8 A. Yes, ma'am. This is one, what we'd call, a  
9 mid-range photo of the pot. The little item near the bottom  
10 of the pot is the projectile, and this is a dresser.  
11 MS. LOWRY: Request to publish 16 to the jury.  
12 THE COURT: All right.  
13 Q. BY MS. LOWRY: The first casing, where was the first  
14 casing that you found?  
15 A. I found so many -- and let's see.  
16 Q. And just to let the jury know, you make a report  
17 soon after you find all these things, and as you're going  
18 through, take notes as to where you find things --  
19 A. Correct.  
20 Q. -- so that you can remember and record. And is that  
21 what you're using to refresh your memory?  
22 A. Yes, ma'am. It's my supplement number 2. All of  
23 these items that I record is, like, item number one correspond  
24 with the items that I explained yesterday, which I recorded on  
25 my evidence tag. It says item number one, the cartridge case

1 was recovered from the floor carpet on the right side of the  
2 bed in the master bedroom as viewed when one enters the  
3 bedroom from the living room.

4 Q. Does State's Exhibit 35 reflect where you found that  
5 casing?

6 A. Yes, ma'am.

7 Q. And as you said earlier, the casing is what is  
8 actually ejected out of a gun --

9 A. Yes, ma'am.

10 Q. -- after it's been fired?

11 A. Out of a semi-automatic weapon, or automatic weapon,  
12 that's correct.

13 Q. And for the jury's purposes, you can see just in the  
14 edge of the picture where the bed is, and that door goes into  
15 the bathroom on the right side of the bed; is that correct?

16 A. Yes, ma'am.

17 MS. LOWRY: Request to publish 35 to the jury.

18 THE COURT: All right.

19 Q. BY MS. LOWRY: And where was the next casing found?

20 A. Next cartridge case marked item number 2 was  
21 recovered between the top of the mattress in the master bed  
22 near the head of the complainant -- that's the male  
23 complainant -- between the mattress and the wooden headboard  
24 of the bed.

25 Q. Now, I don't know if -- can you see it in that photo

1 go-through: is that --

2 A. Exactly.

3 Q. Now, after you found these projectile -- or the  
4 projectile and these three casings, what did you do next?

5 A. I recovered the projectile. Item number 5 is a  
6 small, cloth white maroon pillow, and it had an inscription  
7 "love" across the white cloth. It had several areas of  
8 reddish-brown stain, which we believed to be blood trace  
9 evidence so we collected that.

10 Q. Where exactly was that found?

11 A. That was recovered on the back side of the female  
12 complainant's legs.

13 Q. First, I'm going to hand you just this whole box,  
14 and ask if you can identify this, or just tell us what that  
15 is. Tell us why it's packaged that way.

16 A. This is a routine way we package evidence in our  
17 division. There again, as I explained yesterday, since most  
18 of this is -- we believe contains blood trace evidence you use  
19 paper, not plastic. This box has some of my markings, some  
20 theirs. This is our property tag, has a property tag number,  
21 my name, badge number, element number, and the items that  
22 contains. And included with this and the items inside would  
23 also be one of the tracking forms that I mentioned, chain of  
24 custody.

25 Q. And that's to show who-all's hands it goes through

1 that's marked 31?

2 A. Normally there -- the item is centered right in the  
3 center of the picture, and you can see it, but this is a  
4 medium-range photo so it's a little obscured because it was  
5 wedged down between the mattress and the headboard, but right  
6 in the center of the picture you'll see a shiny object. So if  
7 you look right in the center, that was it.

8 MS. LOWRY: Request to publish 31 to the jury.

9 THE COURT: Yes.

10 Q. BY MS. LOWRY: And the third casing, where was the  
11 third casing found?

12 A. Item number 3 cartridge case was recovered under the  
13 complainant's head after he had been picked up by the Collin  
14 County ME's ambulance crew from the bed in the master bedroom.

15 Q. Did you take a picture of that?

16 A. I believe there was one photo taken of it by itself,  
17 so there would be no body in the photograph.

18 Q. And when they see the photos, they'll be able to  
19 see the one. It's just the one of the mattress without the  
20 victim laying there?

21 A. Correct, and it's item number 3.

22 Q. That was found -- did you actually have to -- did  
23 you find that after he was removed?

24 A. Yes, ma'am.

25 Q. That's not something you found on your first

1 and where it goes --

2 A. Yes, ma'am.

3 Q. -- when you send it for the testing

4 Do you individually package each piece of evidence  
5 that is put into that box?

6 A. Yes, ma'am.

7 Q. Can you -- let me see.

8 For record purposes, I'm going to mark the whole box  
9 as State's Exhibit 58, and that's the box that you were  
10 talking about previously?

11 A. Yes, ma'am.

12 Q. I'm going to hand you 58-A. Can you identify 58-A?

13 A. State's Exhibit 58-A is the small white and maro  
14 pillow with the inscription "love." reddish-brown stain  
15 present. This is in my writing. This is my seal and my  
16 identification there, and the date is on this when I close  
17 up.

18 Q. If you'd remove that pillow from the package. And  
19 is that the pillow that you found laying on the back side of  
20 the victim -- Amy Kitchen's body whenever you --

21 A. Yes, ma'am --

22 Q. -- found her at the crime scene?

23 A. -- it was.

24 Q. And it was laying with the maroon side up?

25 A. As I recall, yes, ma'am.

- 1 Q. And do you recall where on her body it was laying?
- 2 A. **On the back of her legs.**
- 3 Q. Okay. You can put that back in there.
- 4 And what is the next item that you found?
- 5 A. **This would be item number 6. This was recovered.**
- 6 **Laying across the upper back of the female complainant was a**
- 7 **black cloth hand towel, and it was made in Brazil, and I**
- 8 **recovered it because there was hair trace evidence on the**
- 9 **towel.**
- 10 Q. When you say it was "laying across her," was it just
- 11 kind of thrown on her, was it -- how was it laying?
- 12 A. **Almost like it had been placed on her. I thought it**
- 13 **was peculiar in that it -- if she had fallen or was pushed**
- 14 **there or whatever, it didn't appear to be very disheveled.**
- 15 Q. Can you identify the towel that's in the bag that's
- 16 marked 57-B and -- 58-B as the towel that you took off her
- 17 body that night?
- 18 A. **Yes, ma'am. This is the towel that I recovered. My**
- 19 **initials and badge number are on the tag.**
- 20 Q. What is the next item that you found?
- 21 A. **The next item is marked number 7 -- item number 7,**
- 22 **recovered from the bed near the body of the complainant. That**
- 23 **would be the male. It was a green and maroon-colored paisley**
- 24 **print, small round pillow recovered as there were red-brown**
- 25 **stains on it, which we presume to be blood trace evidence.**

- 1 Q. I'm handing you 58-C.
- 2 A. **58-C is in a bag, which I marked the same way as the**
- 3 **others; evidence, a description of what it contains, the tape**
- 4 **bearing my initials, badge number and date that it was sealed.**
- 5 **And this is the paisley small pillow, and there's some of the**
- 6 **stains.**
- 7 Q. Is that the pillow that you found on the master bed
- 8 on the night of November 4th, 2000 at the crime scene?
- 9 A. **Yes, ma'am.**
- 10 Q. What is the next item that you found?
- 11 A. **Next item is a cloth standard size pillow covered by**
- 12 **green stripes, and it also had reddish-brown stains on it.**
- 13 **And the reason we recovered this item -- or the uniqueness of**
- 14 **this item is that I have an indication this pillow appears to**
- 15 **have come from a different room in the house, did not match**
- 16 **the other items on the bed, and in that room was a standard**
- 17 **bed and a tanning bed.**
- 18 Q. I'm handing you 58-D.
- 19 A. **State's Exhibit 58-D is the recovered item, minus**
- 20 **the pillow casing.**
- 21 Q. Was the pillow case not in that same bag?
- 22 A. **It's here.**
- 23 Q. And that is the pillowcase that appears to have come
- 24 from a different bedroom than the master bedroom?
- 25 A. **Yes, ma'am.**

- 1 Q. And it -- can you tell if it came off that pillow
- 2 that's laying in front of it?
- 3 A. **I know that this is the covering for it. I**
- 4 **couldn't say necessarily that was the -- just have to make**
- 5 **that assumption.**
- 6 Q. Do the blood stains match up to the blood stains on
- 7 the pillow?
- 8 A. **Yes, ma'am, they do.**
- 9 Q. Is that the pillow you found and logged in as --
- 10 what number did you log it in as, your item number?
- 11 A. **That was logged in as item number 8.**
- 12 Q. And you packaged that -- at the time that you
- 13 packaged it to send it to SWIFS, which is the Southwest
- 14 Institute of Forensic Science, to have it tested it was all
- 15 together. The pillowcase was on the pillow?
- 16 A. **Yes, ma'am.**
- 17 Q. Can you tell from that bag whether it's been in
- 18 anyone else's possession, other than yours and SWIFS?
- 19 A. **No, ma'am.**
- 20 Q. Does it appear to have -- you can't tell from that
- 21 bag?
- 22 A. **It hasn't been in anyone else's possession. There's**
- 23 **only two sets of -- the white tape and red biohazard tags are**
- 24 **ours. This biohazard sticker is theirs. The hieroglyphics on**
- 25 **the items are all SWIFS markings.**

- 1 Q. And once SWIFS is done, as far as any testing that
- 2 they're going to do, they then package it back up and return
- 3 it back to the police department?
- 4 A. **Yes, ma'am.**
- 5 Q. I'm now handing you what has been marked as State's
- 6 Exhibit 59.
- 7 A. **State's Exhibit 59 is a box of evidence that I had**
- 8 **packaged up and sent to SWIFS. They have removed the tracking**
- 9 **tags on it, but there's my initials, badge number, date that**
- 10 **it was packaged, 11-5-2000, and this is my handwriting, this**
- 11 **item -- it contained items 9 and 10.**
- 12 Q. And what is packaged inside that box?
- 13 A. **My record indicates that this is going to be four**
- 14 **pillowcases removed from four pillows on the master bed. Two**
- 15 **of these pillowcases were cloth, white in color, covered with**
- 16 **red-brown stain, and two were red paisley print pillows**
- 17 **covered with -- that were laying on the top of the bed, and**
- 18 **they also had red-brown stain on them, and that's items (sic)**
- 19 **number 9.**
- 20 Q. Is the mattress cover part of -- what's packaged in
- 21 that box?
- 22 A. **Yes, ma'am. Item number 9 and 10 are contained in**
- 23 **here.**
- 24 Q. What is 59-A?
- 25 A. **Item 59-A will be item number 10 on my**

1 investigative supplement, which is the white covers; one sheet  
2 and one mattress cover, and it had a lot of blood trace  
3 evidence on it and was removed from the bed after the ME had  
4 removed the bodies, and it has a projectile hole near the area  
5 where the front headboard would have been.

6 Q. And is that the mattress cover and sheet that you  
7 took off the bed in the master bedroom?

8 A. That I removed?

9 Q. Yes.

10 A. Yes, ma'am.

11 Q. And you packaged it in that package to send off to  
12 SWIFS once again to have it tested through the same  
13 procedures, once again, as the others?

14 A. Yes, ma'am.

15 THE COURT: Ms. Lowry, I'm curious. 59-A is  
16 the mattress cover and the sheet?

17 MS. LOWRY: Yes.

18 THE COURT: All right. Thank you.

19 MS. LOWRY: They're all in the same bag.

20 Your Honor, at this time the State would offer  
21 State's Exhibits 58, 58-A, 58-B, 58-C and 58-D, as well as  
22 State's Exhibits 59 and 59-A.

23 MR. HIGH: No objection.

24 THE COURT: All right. State's Exhibits 58,  
25 58-A, B, C and D, and 59 and 59-A are admitted.

1 Q. BY MS. LOWRY: What is your next step in processing  
2 the crime scene?

3 A. After removing the evidence from the house, I took  
4 it back to the office, and normally I -- I'll place the items  
5 in a paper bag and -- or the plastic bags in the case of the  
6 firearms evidence, take it back to the office. Wearing gloves  
7 place the firearm evidence in individual packs that are  
8 marked; that is, have my initials, badge number, date, a  
9 further description which matches my description on my  
10 investigative supplement as to where they were recovered, and  
11 with the blood trace evidence, or what we believe to be, that  
12 was placed in a drying cabinet because there was so much of it  
13 and so on SWIFS -- it biodegrades, as I mentioned yesterday in  
14 plastic, but also would in -- if it's wet in paper, so we  
15 place it in a drying cabinet and dry it out to where it's  
16 pretty much all dried if we can. And then I packaged it up  
17 the next day and put it in these boxes, seal it with the tape,  
18 initial it, put it in a locked storage unit in our office, and  
19 then one individual is responsible for its transfer.

20 And we -- I, on the investigative supplement,  
21 state what we want done by the Southwest Institute of  
22 Forensic Science with the evidence.

23 Q. Okay. And is that all the processing that you did  
24 at the crime scene?

25 A. Yes, ma'am.

1 Q. Okay. What is the next involvement that you had in  
2 this case?

3 A. Okay. That would have been Detective Winn notified  
4 me, I guess on 11-6 of 2000, to go out to our auto pound  
5 located at 1955 Vilbig. They had recovered the complainant's  
6 Corvette. Detective Winn asked me to fingerprint the Corvette  
7 and see if I could discover any latent fingerprints.

8 Q. Explain to the jury what you mean by "latent  
9 fingerprints"?

10 A. A latent fingerprint is what is left when an  
11 individual touches an item. Your fingerprint is made out of  
12 about 95 percent water. The rest of it sebaceous acids, items  
13 that -- salts, that leave an impression of a particular  
14 individual's finger. There's about three basic types of  
15 fingerprint, and then subtypes of those, and then each  
16 fingerprint -- for fingerprint classification an individual  
17 looks for a core, primarily, which helps greatly in the  
18 identification of what kind of fingerprint it is. And then  
19 look for items like primarily bifurcation, they call it.  
20 That's where a ridge on your finger splits. It looks like a  
21 "Y" shape or a ridge -- ridges -- long and short ridges,  
22 actual dots, what they call inclusions. We have two people  
23 that are here that are a lot better at fingerprinting than I  
24 am, but it's a science.

25 And in this case I developed two prints off of

1 this. One was a partial palm print, which you can read just  
2 like a finger, and then a set of fingerprints from, I believe,  
3 it was the left, rear quarter panel of the Corvette.

4 Q. Describe the condition of this Corvette as far as --  
5 I mean, what was your first impression of the condition of  
6 this Corvette?

7 A. It's -- it was immaculate, just as the house was. I  
8 think it had rained, as I recall, during the proximate time  
9 and commission of this offense, so there was water spots on  
10 the Vette. But it was virtually immaculate, very clean.

11 Q. As far as, like, the steering wheel, the gear shift,  
12 did you look for prints on those?

13 A. Yes, ma'am. But these items were of leatherette,  
14 and theory is that you can develop a fingerprint off of them,  
15 but with what we had available and time constraints and use of  
16 black powder, you can't.

17 Q. Describe for the jury, as far as when you go to look  
18 for fingerprints, what is your procedure? How do you find  
19 them?

20 A. First, you kind of eyeball the object. This thing  
21 was in our PES shed which has incandescent lighting, much like  
22 this, so the use of a small flashlight is your best shine  
23 opaquely. You can visually eyeball where fingerprints are,  
24 and then you apply a black powder, which is mostly black ash,  
25 like graphite-like substance, and it just fills in the ridge

1 detail of the fingerprint. And then you use a standard 3-M  
2 tape, which is similar to what you wrap a Christmas package  
3 with, the kind of opaqueic -- not shiny but opaqueic-looking  
4 tape which pricks -- picks up the image of the print.

5 Q. And from those prints are you able to match those  
6 with maybe known prints that you have of another person?

7 A. Yes, ma'am.

8 Q. And you said that you got a partial palm print and  
9 another print at the back of the car?

10 A. Yes, ma'am.

11 Q. Did you do any other processing of the Corvette at  
12 that time?

13 A. At that time I did not, other than photographs.

14 Q. Can you identify State's Exhibit 60?

15 A. State's Exhibit 60 is one of the photographs that I  
16 took of the Corvette, and this will be the front passenger  
17 side floorboard and passenger seat area.

18 Q. And does that -- does that photo have the receipt  
19 book in the floorboard?

20 A. Yes, ma'am, it does.

21 Q. Does it accurately reflect the car and the receipt  
22 book as it was the day you took the picture?

23 A. Yes, ma'am, it does.

24 MS. LOWRY: State would offer State's  
25 Exhibit 60.

1 placed in an envelope at our office, and these envelopes  
2 are approximately the same size as these items, and they  
3 are placed in a tray for identification by the AFIS unit.

4 Q. And did you follow those procedures after you --

5 A. Yes, ma'am, I did.

6 Q. What is the next involvement that you had in this  
7 case?

8 A. Next involvement was supplement Number 06. It's  
9 dated 11-7 of 2000 at approximately 3:50 p.m. I went with  
10 Detective Winn to an address, 4753 Old Bent Tree, Apartment  
11 1004. That's Beat 615 in Dallas.

12 Q. Did you know whose apartment this was?

13 A. No, ma'am, I did not.

14 Q. Did you know why you were going over there?

15 A. Yes, ma'am, follow-up investigation on a warrant  
16 obtained by Detective Winn.

17 Q. When you got there, what was your -- what were your  
18 duties when you got there?

19 A. My duties on this entailed the same as our usual  
20 duties; first to photograph the location and any items that we  
21 observed. And then to seize those items that Detective Winn  
22 directed that he wanted seized.

23 Q. And did you take photographs in the same procedure  
24 that you did at the crime scene?

25 A. Yes, ma'am, I --

1 THE COURT: Say, Officer, when they review  
2 that, I'll tell you, I believe that what you're doing is  
3 proper. But I just want you to know that you should not show  
4 the jury anything that hasn't been put in evidence.

5 THE WITNESS: Yes, sir.

6 THE COURT: That hasn't been admitted, I should  
7 say, to be technical myself.

8 MR. GOELLER: No objection, Your Honor.

9 THE COURT: Number 60 for the State is  
10 admitted.

11 Q. BY MS. LOWRY: Did you collect the receipt book out  
12 of the Corvette at that time?

13 A. No, ma'am, I don't believe I did.

14 Q. Do you know if it was ever taken out of the  
15 Corvette?

16 A. No, ma'am. I know there was subsequent people that  
17 went out there and did various things, but I don't know  
18 personally.

19 Q. After you lift fingerprints from any object, what do  
20 you do with them?

21 A. We have a standard, approximately, 2-by-4 inch card.  
22 It's a fingerprint card. You take the tape and place it on  
23 that card and fill in the pertinent information, the date, the  
24 offense, the complainant's name and information as to where  
25 you developed the fingerprint on the card. They're then

1 MR. GOELLER: Your Honor, I'm sorry. At this  
2 point I'm going to object and renew my Motion to Suppress that  
3 the Court has previously taken up, renew my objection to an  
4 illegal search and seizure of this residence under Texas  
5 Constitution Article 1, Section 9, Section 10; Article 38.23  
6 of the Code of Criminal Procedure; Sixth Amendment, Fourth  
7 Amendment of the United States Constitution and the Fourteenth  
8 Amendment due process clause. And would ask that any  
9 testimony regarding entry into someone's habitation would,  
10 first, be proved by either affidavit, search warrant  
11 affidavit, the warrant itself, probably any testimony  
12 regarding the search.

13 THE COURT: All right. The motion is denied.

14 Q. BY MS. LOWRY: Detective, I'm handing you what has  
15 been marked as State's Exhibits 61, 62, 63, 64, 65, 66 and  
16 67. Can you identify those?

17 A. All except for State's Exhibit Number 63 are  
18 photographs that I took in the apartment on Bent Tree.

19 Q. Do you know what State's Exhibit 63 reflects? Can  
20 you identify what that is?

21 A. Yes, ma'am, I can.

22 Q. Okay. What is that?

23 A. State's Exhibit Number 63 is a white, terry cloth  
24 sock that I recovered from the trash can in the kitchen, which  
25 I had noted on my report that I had observed what looked to me

1 like blondish-brown hair inside which appeared, having been  
2 out at the initial crime scene, to have matched the hair of  
3 the female complainant.

4 Q. And the other pictures, the photos that you took,  
5 are those the photos that were taken when the search warrant  
6 was executed at the Old Bent Tree address?

7 A. Yes, ma'am, they are.

8 Q. And do they accurately reflect that address or that  
9 apartment and the things that you found on that date, November  
10 6th, 2000?

11 A. Yes, ma'am, they do.

12 Q. And were those items seized as evidence?

13 A. Yes, ma'am, they were.

14 MS. LOWRY: Your Honor, the State would offer  
15 State's Exhibits 61 through 67.

16 (Brief pause in proceedings.)

17 MR. GOELLER: May I address the Court, Your  
18 Honor?

19 THE COURT: Yes.

20 MR. GOELLER: The State's exhibits that have  
21 been offered into evidence, again we would object, Your Honor.  
22 These are photographs of the interior of my client's  
23 residence. It's very apparent that law enforcement entered.  
24 There's been no search warrant. There's no probable cause  
25 affidavit put before this jury. We therefore object under

1 Texas Constitution Article 1, Section 9 and Section 19 (sic);  
2 Code of Criminal Procedure, Article 1.04, Article 1.06,  
3 Article 38.23. Of the United States Constitution, we object  
4 under the Fourth Amendment, the Sixth Amendment and the  
5 Fourteenth Amendment, and we'd object to the introduction of  
6 these photographs. We'd object to any and all evidence,  
7 either in the form of testimony from law enforcement officials  
8 who entered that habitation or any physical evidence on the  
9 grounds I just delineated for the Court.

10 THE COURT: All right. The objection is  
11 overruled, and State's Exhibits 61 through 67 are admitted.

12 MR. GOELLER: Yes, Your Honor. May I further  
13 address the Court?

14 THE COURT: Yes.

15 MR. GOELLER: Your Honor, I would ask the Court  
16 for a running objection for the exact specific grounds I've  
17 just spoke into the record for any and all evidence,  
18 testimonial or physical evidence or photographs, as to any  
19 evidence or testimony in connection with evidence regarding  
20 the address 4753 Old Bent Tree, Number 1004, which is my  
21 client's residence.

22 THE COURT: All right. The Court will  
23 acknowledge your running objection and overrule the same. All  
24 right.

25 MR. GOELLER: Your Honor, I'm sorry. Just for

1 clarification, do I have a running objection?

2 THE COURT: Yes. I will acknowledge and agree  
3 that you do have one.

4 MR. GOELLER: Thank you, sir.

5 THE COURT: Is there anything else? That's  
6 all?

7 MR. GOELLER: Yes, sir.

8 THE COURT: Okay. Go ahead, Ms. Lowry.

9 MS. LOWRY: Thank you, Your Honor.

10 Q. BY MS. LOWRY: Let me direct your attention to, I  
11 believe it's State's Exhibit 67. Can you tell us what is in  
12 that photo?

13 A. Yes, ma'am. State's Exhibit Number 67 was a  
14 photograph that I took of items that were collected by  
15 Detective Winn from the back bedroom closet of the address on  
16 Old Bent Tree.

17 Q. I'm handing you what was previously marked State's  
18 Exhibit 8, but changed to State's Exhibit 8-A because we  
19 already had a State's Exhibit 8. Can you identify those?

20 A. Yes, ma'am.

21 Q. And what are those?

22 A. State's Exhibit 8-A is one of the several sets of  
23 keys of that are recorded in my photograph on State's Exhibit  
24 67.

25 Q. And those were found at the Defendant's apartment?

1 A. Yes, ma'am.

2 Q. State's Exhibit 68, can you identify those?

3 A. State's Exhibit 68 is another set of the keys  
4 recovered from 4753 Old Bent Tree, Apartment 1004 and shown in  
5 State's Exhibit Number 67.

6 Q. Okay. And State's Exhibit 69?

7 A. State's Exhibit Number 69 is a key fob (phonetic)  
8 that was also recovered by Detective Winn at the same address  
9 shown in State's Exhibit 67, a photograph I took.

10 Q. Were you present when those items were found and  
11 recovered?

12 A. Yes, ma'am, I was.

13 Q. Where were they are found?

14 A. They were found in the walk-in closet of the rear  
15 master bedroom, the only bedroom in -- at that location, 4653  
16 Old Bent Tree, Apartment Number 1004.

17 Q. And is that closet reflected in some of the  
18 pictures, also?

19 A. Yes, ma'am, it is.

20 Q. State's Exhibit 70, do you recognize those?

21 A. Yes, ma'am, I do.

22 Q. What are those?

23 A. State's Exhibit 70 is a box of Winchester WinClean  
24 type .38 automatic cartridges.

25 Q. And where did those come from?



1 A. They came from a shelf in the same closet as the  
2 previous items.

3 Q. Okay. And did you -- were you present when those  
4 were found and recovered?

5 A. Yes, ma'am, I was.

6 MS. LOWRY: Your Honor, at this time the State  
7 would offer State's Exhibits 68, 69, 70 and 8-A.

8 MR. GOELLER: Judge, I would renew my objection  
9 for the specific ground based on my running objection, again  
10 to all this evidence.

11 THE COURT: All right. The objection is  
12 overruled, and 8-A, 68, 69 and 70 are admitted.

13 Q. BY MS. LOWRY: After taking pictures, what is the  
14 first item that you actually recovered?

15 A. First items that I recovered were from the trash can  
16 we found under the kitchen sink, and item number one that I  
17 have listed on my supplement, which is recorded supplement  
18 number 6 on this offense, is one pair of blue jeans recovered  
19 from the trash. These blue --

20 MR. GOELLER: I'm sorry. Excuse me, sir.  
21 Judge, I'm going to object at this point. I believe the  
22 witness is reading from a document that's not in evidence.

23 THE COURT: Sustained.

24 Q. BY MS. LOWRY: If you need to refresh your memory,  
25 it's fine to read it, and then just testify from your

1 refreshed memory, if you need to do that.

2 Let me hand you State's Exhibit 71. Do you  
3 recognize that?

4 A. Yes, ma'am.

5 Q. And what is that?

6 A. State's Exhibit 71 is a box containing items taken  
7 from the apartment at Bent Tree that I packaged up and sent to  
8 SWIFS for processing.

9 Q. The first item that you said was found were the blue  
10 jeans; is that correct?

11 A. Yes, ma'am.

12 Q. Can you identify State's Exhibit 71-A?

13 A. State's Exhibit 71-A was the blue jeans I recovered  
14 from the trash. It's one pair of blue jeans with blood trace  
15 evidence in my handwriting, and I believe there's -- some type  
16 of Arizona jeans.

17 Q. Can you take them out and identify them as the ones  
18 you found at Old Bent Tree on November 6th, 2000?

19 A. Yes, ma'am. These were the items that I recovered.

20 Q. How do you know that those were the items?

21 A. On the Arizona Jean Company tag are my initials,  
22 DAW, and my badge number, 4064. I circled these items that  
23 are shown on the jean pants legs with arrows as areas to be  
24 processed by SWIFS.

25 Q. And after finding those jeans, did you process them

1 in the same way as far as preserving them, making sure that no  
2 one else tampered with them, all that until they were sent to  
3 SWIFS?

4 A. Yes, ma'am, I did.

5 Q. I'm handing you 71-B and C. If you could identify  
6 those.

7 A. State's Exhibit 71-B is one white sock with blood  
8 trace evidence, and the sock also has my initials on it.

9 Q. And can you identify those as one of the socks that  
10 you recovered from the Defendant's apartment on November 6th,  
11 2000?

12 A. Yes, ma'am, it was.

13 Q. And did you also process those in the same way, send  
14 them to the SWIFS to have the blood stains tested?

15 A. Yes, ma'am, I did.

16 Q. Can you open 71-C?

17 A. 71-C I recorded as also a white sock with the  
18 red-brown stains, and I have an additional notation that hair  
19 was recovered in this sock.

20 Q. And that's what's reflected in the photo that you  
21 were talking about earlier, State's Exhibit 63?

22 A. Yes, ma'am.

23 Q. You can see the hair.

24 A. And this is the sock that I recovered from that  
25 trash can, also. It has my initials on the upper part of it.

1 Q. And it was also processed in the same way that all  
2 the other evidence has been that you processed?

3 A. Yes, ma'am, it was.

4 Q. Sent to SWIFS to be tested and then back to Dallas  
5 Police Department?

6 A. Yes, ma'am.

7 MS. LOWRY: Your Honor, at this time the State  
8 would offer State's Exhibits 71, 71-A, 71-B and 71-C.

9 THE COURT: Ms. Lowry, before they examine  
10 that, let me ask you, the box is 71, the jeans are 71-A, 71-B  
11 is a sock and 71-C is a sock?

12 MS. LOWRY: Yes, Your Honor.

13 (Brief pause in proceedings.)

14 MR. GOELLER: Judge, may I ask the witness a  
15 question?

16 THE COURT: Yes.

17 VOIR DIRE EXAMINATION

18 BY MR. GOELLER:

19 Q. Sir, on the three exhibits, I guess the -- I guess  
20 that's 71-A, 71-B and 71-C, I may not -- I may not be noticing  
21 it. Is there anywhere on these packages that say the address  
22 from which they were seized?

23 A. No, sir.

24 Q. Okay. Sir, on --

25 THE COURT: Say, Mr. Goeller, just so we're

1 clear, you're going to have ample time to cross-examine. Does  
2 this have to do with -- this has to do with potential  
3 objections?

4 MR. GOELLER: Yes, sir.

5 THE COURT: Go ahead.

6 MR. GOELLER: Just one or two more questions,  
7 Your Honor.

8 THE COURT: All right.

9 Q. BY MR. GOELLER: Sir, this box has been marked as  
10 State's Exhibit Number 71, and on the outside there's a  
11 property tag.

12 A. Yes, sir.

13 Q. Okay. And it lists the things that were contained  
14 in the box, and then there's a line for owner, and it says,  
15 UNK. Is that an abbreviation for "unknown"?

16 A. Yes, sir.

17 Q. Does that mean the owner of those exhibits was  
18 unknown to you?

19 A. Yes, sir.

20 Q. Okay. And the complaint, or the complainant -- it  
21 says "complaint." It says Mosqueda, James. Does that really  
22 mean complainant or just complaint, or is that just --

23 A. Complainant.

24 Q. Okay, okay. All right.

25 MR. GOELLER: Judge, I renew all my

1 MR. GOELLER: Were they offered?

2 MS. LOWRY: Yes.

3 MR. GOELLER: May I address the court?

4 THE COURT: Yes.

5 MR. GOELLER: Judge, my objection with these  
6 photographs, they are photographs taken, I believe, from  
7 common areas. So, although they don't involve an intrusion --  
8 an illegal intrusion into this habitation, I would object to  
9 them because of their connection to the previous evidence, and  
10 I'd object to them on those grounds based on the specifics of  
11 my running objection I previously dictated into the record for  
12 the Court.

13 THE COURT: All right. The objection is  
14 overruled, and Numbers 72 and 73 for the State are admitted.

15 MR. GOELLER: Yes, Your Honor.

16 Q. BY MS. LOWRY: Now, Detective Whitsitt, after  
17 finding all of these items you found, like you said the jeans  
18 and the socks in the trash can; is that where those were?

19 A. Yes, ma'am.

20 Q. Okay. Did you locate any other men's clothing in  
21 the apartment?

22 A. Yes, ma'am.

23 Q. And what kind of men's clothing?

24 A. **There was all kinds of slacks and shirts and so on,**  
25 **as I recall, in the closet in which we found the keys and the**

1 objections; lack of search warrant, lack of any probable cause  
2 affidavit and all the specific objections I had under the U.S.  
3 Constitution, the Texas Constitution, the Code of Criminal  
4 Procedure that were previously granted in my running objection  
5 to these exhibits.

6 THE COURT: I understand. Based on the  
7 pretrial hearing that we held and the evidence introduced at  
8 that hearing, the objections are overruled.

9 MR. GOELLER: Yes, Your Honor.

10 THE COURT: And Exhibit Number 71, 71-A, 71-B,  
11 and 71-C are admitted.

12 Q. BY MS. LOWRY: 71-A, B and C were all taken out of  
13 the apartment that you executed, or helped execute the search  
14 warrant on at Old Bent Tree, Number 1004; is that correct?

15 A. Yes, ma'am.

16 Q. I'm showing you State's Exhibits 72 and 73. Can  
17 you identify those?

18 A. **Yes, ma'am. State's Exhibit 71 -- 72 and 73 are**  
19 **photographs that I took from the -- of the exterior of that**  
20 **apartment, and that would be Apartment 1004.**

21 Q. And that is at 4753 Old Bent Tree Lane, and as you  
22 said Apartment Number 1004?

23 A. Yes, ma'am.

24 MS. LOWRY: State would offer State's Exhibits  
25 72 and 73.

1 **ammunition.**

2 Q. Were there other pairs of blue jeans in that closet?

3 A. **As I recall, yes, ma'am.**

4 Q. Were these looked at in comparison to the blue jeans  
5 that were found in the trash can?

6 A. **I believe Detective Winn and his -- the other**  
7 **detective from homicide did, yes, ma'am.**

8 Q. Were you there when that was done?

9 A. Yes, ma'am.

10 Q. Do you have any knowledge as to how similar, or  
11 maybe how unsimilar the jeans in the trash can were to the  
12 ones found in the closet?

13 A. **No, ma'am.**

14 Q. Did you find any -- well, other than the items  
15 we've entered into evidence, what other processing of the  
16 crime scene did you do, I guess, to leave, if any?

17 A. **The photographs and other than the items we seized**  
18 **from the trash can, there was a spot of a reddish-brown stain**  
19 **on top of a washing machine, which we believe might be blood**  
20 **trace evidence, so I took a sample of that.**

21 Q. And was that sent to SWIFS to be tested?

22 A. Yes, ma'am, it was.

23 Q. And did the testing come back that it wasn't blood?

24 A. Yes, ma'am.

25 Q. Did you have any other involvement after the search

1 of this apartment?

2 **A. No, ma'am.**

3 MS. LOWRY: Pass the witness.

4 THE COURT: All right. Ladies and Gentlemen,  
5 we're going to take a 15-minute recess. And before we go, are  
6 you going to be asking for any documents?

7 MR. GOELLER: Yes, Your Honor.

8 THE COURT: All right. Why don't we go ahead  
9 and exchange those now and take a 15-minute recess, and we'll  
10 come back in 15 minutes to continue the trial of this case.

11 THE BAILIFF: All rise.

12 (Jury exits the courtroom.)

13 (Recess taken.)

14 THE COURT: Back on the record in Cantu, and  
15 Mr. Powell, if you would, please bring the jury in.

16 THE BAILIFF: Yes, Your Honor. All rise.

17 (The jury enters the courtroom at 11:00 a.m.)

18 THE COURT: Please be seated.

19 All right, Mr. Goeller -- is there anything else  
20 from the State before we pass the witness?

21 MS. LOWRY: No, Your Honor.

22 THE COURT: All right. Mr. Goeller.

23 MR. GOELLER: Thank you, Your Honor.

24 (No omissions.)

25

1 Q. Okay.

2 **A. And supplement 06, consisting of two pages.**

3 Q. Two pages, okay.

4 You had mentioned a phrase. I think you said in the  
5 Gibbons Drive residence there was a -- did you say a tanning  
6 bed?

7 **A. Yes, sir.**

8 Q. Would you describe that? I think it's what I think  
9 it is. Is it an electronic device to suntan, I guess?

10 **A. Yes, sir.**

11 Q. Okay. Was that fingerprinted -- fingerprinted or  
12 anything?

13 **A. No, sir.**

14 Q. Okay. The photographs that have been introduced --  
15 either identified and/or introduced, are those all the  
16 photographs that you took in connection with this case?

17 **A. As far as I know, sir.**

18 Q. Okay. Do you have any photographs -- or did you  
19 take any photographs that you haven't seen in this courtroom?

20 **A. Oh, there were some photographs that I took inside  
21 the physical evidence building --**

22 Q. Okay.

23 **A. -- at the auto pound, which have not all been  
24 introduced, of the exterior of the car, of the Corvette.**

25 Q. Do you know where those are, those photographs are?

1 CROSS-EXAMINATION

2 BY MR. GOELLER:

3 Q. Sir, I was provided a -- a written -- what's called  
4 a Dallas Police Department -- it's got a service number, a  
5 supplement 2 -- supplement 2, page 1, 2, 3, and then  
6 underneath that is a supplement 1, page 1; then a supplement  
7 4, page 1; then a supplement 6, page 1, page 2; supplement 7;  
8 supplement 8, which consists of two pages; supplement 9, which  
9 is one page; a supplement 10, which is one page -- two pages;  
10 and a supplement 12, which consists of one page. Have you  
11 seen these documents, Detective?

12 **A. I have some of them with me. Some of them I made.**

13 Q. Okay. Did you make any reports, other than those  
14 that -- supplements that I just talked to you about?

15 **A. No, sir.**

16 Q. Okay.

17 **A. You should have three supplements which I made.**

18 Q. Okay.

19 **A. 02 consists --**

20 Q. The 02 is the three page?

21 **A. Yes, sir.**

22 Q. Okay.

23 **A. Supplement 04 --**

24 Q. Okay.

25 **A. -- consisting of one page.**

1 **A. No, sir. I mean, we have the negatives at our  
2 office if you would like copies.**

3 Q. But were they developed?

4 **A. Yes, sir.**

5 Q. And did you turn those over to somebody?

6 **A. Yes, sir, should be to Detective Winn.**

7 Q. All right.

8 MR. GOELLER: Your Honor, at this time if the  
9 State is in possession of those photographs, I'd ask that they  
10 be turned over for review.

11 THE COURT: Let me ask you, can you continue as  
12 they look for those?

13 MR. GOELLER: Yes, sir.

14 THE COURT: All right.

15 MR. GOELLER: May I approach the witness?

16 THE COURT: Yes.

17 Q. BY MR. GOELLER: Detective Whitsitt, in this  
18 photograph here, State's Exhibit Number 60, is that a picture  
19 of the Chevrolet Corvette?

20 **A. Yes, sir, it is.**

21 Q. Okay. I guess the shadowing and the lighting down  
22 in this area, I just want to make sure, this is -- the door is  
23 obviously opened, the passenger door, correct?

24 **A. Yes, sir.**

25 Q. There's only one door on each side of a Corvette,

1 right?

2 **A. Correct.**

3 Q. This down here, that's the floor of the PES

4 facility?

5 **A. Yes, sir, it is.**

6 Q. This black strip right here, what is -- is that part

7 of --

8 **A. That's shadowing.**

9 Q. And then we have this, what I'll call, the next

10 strip parallel to that. What is that right there

11 (indicating)?

12 **A. That appears to be residue left from rain after it's**

13 **dried. Dirt.**

14 Q. Okay. Was this car processed for drugs, trace

15 amounts of cocaine, marijuana, or maybe more than trace? I

16 don't know. But was it processed for contraband?

17 **A. I did not process it for that. Several people went**

18 **out there. I don't know what they did, but I did not process**

19 **it for narcotics evidence.**

20 Q. Okay. The prints -- the fingerprints or palm prints

21 or partials or anything involving prints that were lifted from

22 this car, did you make the comparisons?

23 **A. No, sir. The detective which made the comparison is**

24 **here today, Detective JR Smith.**

25 Q. Okay, all right. This photograph here, Detective,

1 this black object in the middle, is that a -- kind of a

2 high-tech key for a Mercedes Benz?

3 **A. Yes, sir, I believe so.**

4 Q. I guess the new Mercedes don't have a key. It's

5 this electronic, digital device goes in, and the car

6 recognizes it and unlocks it and decodes it and debunks it,

7 and then I guess it turns on, right?

8 **A. I believe that's the way it operates.**

9 Q. This fob, does that go with that Mercedes Benz key?

10 **A. I don't know, sir.**

11 Q. Okay. This set of keys here, would it appear to be

12 those keys are not motor vehicle keys, based on your training

13 and experience?

14 **A. Some definitely are not.**

15 Q. Okay. Are there any in there that definitely are

16 motor vehicle keys?

17 **A. Not that I can see.**

18 Q. Okay, okay. And these keys here would not appear to

19 be motor vehicle keys, correct?

20 **A. No, sir.**

21 Q. Okay, okay. Detective, do you recall what year that

22 black Corvette was?

23 **A. I believe it was a 2000.**

24 Q. Okay. Are you familiar with Corvette keys, ever

25 seen them?

1 **A. Yes, sir.**

2 Q. Okay. Can you tell the jury what a Corvette key

3 looks like, at least a late model 2000 or 2001?

4 **A. As I recall, pretty much like a standard GM key,**

5 **except I think some of them have the extended handle at the**

6 **top, and it says "Corvette." It's got the little black chip**

7 **that allows the arming and disarming of the automatic security**

8 **system and shut-down systems for the ignition.**

9 Q. There's definitely no Corvette key in that picture

10 from what you can tell, correct?

11 **A. No, sir.**

12 Q. Okay. This may be just having to do with how

13 you've got to take pictures. I notice these two pictures, the

14 box of ammunition looks different. Are you manipulating that

15 to photograph the identification on the end of the box?

16 **A. Yes, sir.**

17 Q. The box of ammunition, Winchester .38 auto, right?

18 **A. Yes, sir.**

19 Q. And it's a full box?

20 **A. Yes, sir, it is.**

21 Q. And these are all what -- I don't know -- what I

22 used to call -- we used to call, like "ball rounds," "brass."

23 They're all -- the casing is brass. Do you know what I'm

24 saying? I think in evidence yesterday were three spent

25 cartridges that appeared to be what I call target ammo, or

1 cheap ammo. You know, the casing is not brass. It's -- I

2 don't know if it's aluminum or what it is. Do you know what

3 I'm talking about?

4 **A. Yes, sir. Some are the blazer ammunition --**

5 Q. Yeah.

6 **A. -- that's made by Winchester is aluminum.**

7 Q. Right.

8 **A. The casings yesterday, even though they're a**

9 **different color, I believe they were coated with nickel.**

10 **All the casings tend to be brass. Those should be brass.**

11 Q. Okay. In this photograph here, is that one -- what

12 are these white material things here?

13 **A. That's actually both socks side by side --**

14 Q. Okay.

15 **A. -- that were recovered and submitted as State's**

16 **evidence.**

17 Q. That's not one sock, one other long tube sock?

18 **A. No, sir.**

19 Q. Okay. Up here, that appears to be kind of like a

20 rubber glove like you had on earlier?

21 **A. Yes, sir.**

22 Q. Is that what that is?

23 **A. Yes, sir.**

24 Q. A rubber glove?

25 Okay. That cup, did you find any plastic cups like

1 that in that apartment, other than that one?

2 **A. Not to my recollection, no, sir.**

3 Q. Okay. That plastic -- or rubber -- plastic or  
4 rubber, I'm not sure exactly what the material is. I'm sure  
5 it's some kind of rubber, synthetic rubber. Was that removed  
6 and processed?

7 **A. No, sir.**

8 Q. Okay. Did you find it -- was this trash gone  
9 through all the way through to the bottom?

10 **A. We didn't pull it all out of the can, but when I put  
11 the gloves on to retrieve the upper items, we, of course,  
12 pulled from the bottom up, kind of circulated it in the can.**

13 Q. Was there any -- apparently there was nothing on  
14 that rubber glove to pique your interest as far as trace  
15 evidence goes, correct?

16 **A. No, sir.**

17 Q. How about that cup? Was that cup collected and  
18 processed --

19 **A. No, sir.**

20 Q. -- for prints?

21 Okay. This photograph here, this looks like a  
22 packing box except it's white, and then looks like there's  
23 boxes in it. Were those looked into, or -- you probably can't  
24 pull a print off those, but were there any identifying marks  
25 on them or anything of that nature that you can recall?

1 **A. Not to my recollection.**

2 Q. Okay. When -- did you ever find a set of -- a pair  
3 anywhere in that apartment of a Dallas 2 -- instead of a  
4 pair -- two Dallas Cowboy home-game tickets for the game that  
5 would have been either that Sunday or the Sunday after, the  
6 first part of November? Ever see any Dallas Cowboy tickets  
7 around?

8 **A. I don't recall, sir.**

9 Q. Was there anything that was removed from the front  
10 of this refrigerator that was either removed by law  
11 enforcement or photographed by law enforcement that you can  
12 recall?

13 **A. Nothing that I removed, no, sir.**

14 Q. Okay. This -- on the photograph this -- I guess I'd  
15 call that the freezer, the upper freezer, this -- is that like  
16 an identifying mark of the make, or is that a magnet? Do you  
17 know?

18 **A. I'm not sure, no, sir.**

19 Q. Okay. You don't have any photographs of where  
20 you're standing more by the dishwasher shooting on the front  
21 of that fridge, do you?

22 **A. No, sir. It's a very narrow space.**

23 Q. Kitchenette almost?

24 **A. Right.**

25 Q. Okay. Were the jeans -- was this photograph here,

1 State's Exhibit 62, taken before anybody had touched it?

2 **A. Yes, sir.**

3 Q. Now, you went into this apartment on what day?

4 **A. Can I take a look?**

5 Q. Yes. Yes, sir.

6 **A. I believe it was the 6th, 11-6. 11-7 of 2000 at  
7 approximately 3:50.**

8 Q. Okay. Do you know, prior to your entrance that day,  
9 that -- whether or not other law enforcement personnel had  
10 been in that apartment previous to you going in and processing  
11 the apartment?

12 **A. No, sir.**

13 Q. Okay. Did -- you went in with Detective Winn,  
14 right?

15 **A. Yes, sir.**

16 Q. Anybody else?

17 **A. He had a partner with him.**

18 Q. Was that Carillo?

19 **A. No. I believe it was Julia -- Detective Julia  
20 Trefallo, who is now Carney.**

21 Q. Okay. Did they tell you that -- or at any point in  
22 time did you find out that you were not the first folks in  
23 that apartment?

24 **A. Yes, sir, later I did.**

25 Q. And what information was given to you?

1 **A. I believe that it -- the call was by the  
2 complainant's mother who could not locate him, was worried  
3 after the homicide and called officers to make a safety check  
4 on --**

5 THE COURT: Do you mind if I interrupt? I  
6 really hate to, but you said the complainant's mother. Who is  
7 the complainant's --

8 THE WITNESS: I mean the suspect's mother.  
9 Excuse me.

10 THE COURT: Who is the suspect?

11 THE WITNESS: Ivan Cantu.

12 THE COURT: All right, sorry. It wasn't real  
13 clear to me. So, Ivan Cantu's mother called?

14 THE WITNESS: Yes, ma'am (sic), she called --  
15 sir. She called to have us make a safety check on him,  
16 essentially, because she couldn't locate him.

17 THE COURT: All right. Sorry. Sorry about  
18 that.

19 Q. BY MR. GOELLER: Was -- do you know how many  
20 officers had entered the apartment -- the total number of  
21 officers that had been in that apartment prior to you and  
22 Detective Winn going into the apartment?

23 **A. I only know of one, sir.**

24 Q. And who is that?

25 **A. Jergensen (sic).**

1 Q. Okay. An Officer Jergensen?

2 A. I believe that's -- uh-huh. I believe that's his  
3 name.

4 Q. Is he a detective or --

5 A. No.

6 Q. -- a patrol type?

7 A. He's a patrol officer.

8 Q. Okay, okay. When you're processing a scene, or  
9 you're called out, Detective, to take photographs and process  
10 a scene, do you know if any persons who are not law  
11 enforcement had been in that apartment from the time of the  
12 reporting of the homicides to your entry with Detective  
13 Winn?

14 MS. LOWRY: Your Honor, I'm going to object  
15 just -- unless he has personal knowledge of anybody that went  
16 over there. Anything that he may have gotten from other  
17 officers is going to be hearsay.

18 THE COURT: Overruled. Ask the question again,  
19 please.

20 MR. GOELLER: I'm sorry.

21 Q. BY MR. GOELLER: Do you know if any people, other  
22 than law enforcement had been in that apartment since the time  
23 of the call out to the Gibbons Drive crime scene to when you  
24 entered the apartment with Detective Winn a few days later?

25 A. No, sir, I do not.

1 Q. Okay. Would that be information that you would seek  
2 out or would certainly want to know as you're processing the  
3 scene, who had access to it, who would have been in there,  
4 that kind of thing?

5 A. On this particular occasion, it was more to gather  
6 physical evidence than it was to process for fingerprints  
7 because it wouldn't have been unusual to find the suspect's  
8 fingerprints in his own apartment.

9 Q. Right.

10 A. So --

11 Q. And I guess that's -- in a roundabout way, that's  
12 kind of why I'm asking you. Outside of -- I mean, it's  
13 obvious that my fingerprints are going to be found in my home  
14 everywhere, but I'm wondering if it would have been prudent to  
15 have knowledge of other folks that may have been in that  
16 apartment between the time of the homicide and the time you  
17 and Detective Winn were in there?

18 A. That would have been up to Detective Winn.

19 Q. Okay.

20 A. Because technically Detective Winn is the overseer  
21 on this case, and essentially whatever he asks for, I do.

22 Q. Were you asked to photograph any narcotics,  
23 contraband at the Gibbons Drive address?

24 A. I don't recall any narcotics. The only thing that  
25 was there was an excessive number of plastic bags, as I

1 recall, in one cabinet near the carport.

2 Q. Could you tell us a little bit more about those  
3 plastic bags, Detective?

4 A. What I recall is that there were at least a dozen or  
5 more boxes of the freezer bags, which having been in the vice  
6 and so on with DPD, it's common that people that traffic in  
7 narcotics put, particularly in those size bags, amounts of  
8 marijuana.

9 Q. So there were boxes of these bags?

10 A. Yes.

11 Q. Okay. How many bags you reckon, ballpark, total?

12 A. Over a gross, 144.

13 Q. Wow. Were they -- were you asked to photograph  
14 those?

15 A. I don't think I was asked to. I don't recall, but I  
16 may have.

17 Q. This -- these -- just so the record is clear, I'm  
18 not getting -- I'm not being real precise with my question,  
19 and I've got to -- the location where the proximate gross of  
20 these bags that you described, that's at the residence of  
21 James Mosqueda on Gibbons Drive in the City of Dallas, Collin  
22 County?

23 A. That's correct.

24 Q. Okay. Anything else that was peculiar to you -- and  
25 that was peculiar to you because, besides your present

1 assignment to PES, you've done -- you've done vice?

2 A. Yes, sir.

3 Q. You've done narcotics?

4 A. Yes, sir.

5 Q. Okay. How many years did you do narcotics --

6 A. I was in vice --

7 Q. -- or vice?

8 A. -- six years, and, of course, my patrol experience,  
9 which was a total of 14 years on the street, three different  
10 substations in Dallas.

11 Q. Okay. Do you still participate in, either because  
12 of your normal course of duties or for any other reason, with  
13 DPD narcotics intelligence, either briefings or memos or  
14 anything like that?

15 A. No, sir. We process a lot of their dope, though.

16 Q. Busy enough in what you've got to do?

17 A. Exactly.

18 Q. Okay. Any -- anything else, either by way of  
19 contraband or, although plastic bags in and of themselves  
20 aren't per se contraband, but anything else along those lines  
21 in that Gibbons Drive/Mosqueda residence that caught your  
22 attention or seemed peculiar to you?

23 A. The main thing that seemed peculiar to me was the  
24 immaculate, mostly clean -- I think there's one photograph I  
25 took because it's peculiar. There's some pants and a shirt

1 hanging off a barstool near the range island, and it was  
2 peculiar in the fact that it was done when all the suits in  
3 the closets are all neatly arranged, all clean and so on. It  
4 was almost like anal-retentives lived there.

5 Q. At any point in time did any officers or other  
6 detectives or crime scene personnel say, Detective, could you  
7 come in here and photograph this drawer in the kitchen? I  
8 mean, did anybody specifically say we need you in here to get  
9 a photograph of something here in the kitchen in a drawer?

10 A. As I recall, I took a couple of general photos  
11 around that island, but I can't remember what I took --

12 Q. That's okay.

13 A. -- other than the clothing.

14 Q. Okay. Did you get the call out to process -- give  
15 me just a second here -- 7780 McCallum Boulevard, Number 2322?

16 A. No, sir. That's not familiar to me. I believe  
17 that's going to be Detective Smith.

18 Q. Forest, Forest Smith?

19 A. Yes, sir.

20 Q. Can you tell me which supplement?

21 A. Yeah, 9 -- supplement 9, page 1. Let me see if I  
22 have it. Supplement Number 9, yes, sir, Forrest Smith.

23 Q. Okay. Outside of the Old Bent Tree, Number 1004,  
24 and the Gibbons Drive, the home of Mosqueda, did you -- were  
25 you called out or processed or took part in any other

1 Q. And as far as plastic bags in the pantry, you  
2 didn't find just massive amounts of drugs throughout the crime  
3 scene in the closets or anything like that; is that right?

4 A. I can't recall narcotics evidence at all. I recall  
5 the baggies, which was suspicious, but other than that I can't  
6 recall anything else.

7 Q. Any kind of narcotics, contraband, anything like  
8 that anywhere around the victims, where they were laying, any  
9 money, anything like that?

10 A. I didn't find any such evidence.

11 MS. LOWRY: Pass the witness.

12 THE COURT: Anything else?

13 MR. GOELLER: No, Your Honor.

14 THE COURT: All right. You may step down.  
15 Call your next witness, please.

16 MS. FALCO: Officer Frank Della.

17 MS. LOWRY: Your Honor, I'd ask that Detective  
18 Whitsitt be released on three-hour recall.

19 THE COURT: All right. That's fine with the  
20 Defense?

21 MR. GOELLER: Yes, sir.

22 THE COURT: Would you tell him that he's  
23 released, just subject to recall.

24 THE BAILIFF: Yes, Your Honor.

25 THE COURT: We need to be able to get ahold of

1 locations regarding this case?

2 A. The physical evidence section building --

3 Q. Right, the Vette.

4 A. -- in which the Vette was stored and that's it.

5 Q. Okay.

6 MR. GOELLER: Thank you, Detective, for your  
7 time. Pass the witness, Your Honor.

8 REDIRECT QUESTIONS

9 BY MS. LOWRY:

10 Q. Now, Detective, when you're talking about if an  
11 officer had been to the Old Bent Tree address prior to y'all  
12 coming on the search warrant, all of that is just information  
13 you received from other officers as to who the officer was  
14 that had been over there and whether or not he had a partner,  
15 things of that nature?

16 A. Yes, ma'am.

17 Q. So the person that actually went over there, or the  
18 officer that dispatched them over there would have the better  
19 information on that as far as what the officer's name was and  
20 whether or not he had a partner with him or who went with him?

21 A. Correct.

22 Q. At that time -- because at that time when this is  
23 going on, they're going over to that apartment while you're  
24 still at the murder scene; is that your understanding?

25 A. Yes, ma'am.

1 him.

2 Officer Della, you were sworn in this morning; is  
3 that correct?

4 THE WITNESS: Yes, sir.

5 THE COURT: All right. Have a seat, and --  
6 please be seated. Ms. Falco.

7 MS. FALCO: Thank you, Your Honor.

8 Whereby,

9 FRANK DELLA,

10 a witness called by the State, sworn to testify to the truth,  
11 testified under oath as follows:

12 DIRECT EXAMINATION

13 BY MS. FALCO:

14 Q. Officer, could you state your name for the jury?

15 A. Frank Della, D-E-L-L-A.

16 Q. What is your occupation?

17 A. I'm a police officer with the City of Dallas.

18 Q. How long have you been a police officer?

19 A. Just over seven years now.

20 Q. What is your position with the Dallas Police  
21 Department?

22 A. I'm a senior corporal on patrol at Southwest Patrol  
23 Division.

24 Q. What are your duties as a senior corporal patrol  
25 officer?

- 1 **A. I answer calls for emergency service, respond to**  
 2 **motor vehicle accidents, enforce traffic laws.**  
 3 Q. I want to direct your attention back to November 4th  
 4 of 2000. Which shift were you working at that time?  
 5 **A. Third watch.**  
 6 Q. And what time is that?  
 7 **A. It was 3 'til 11, or 4 to midnight. I'm not sure**  
 8 **what element I was on at the time.**  
 9 Q. When you say 3 or 4, you're talking about p.m.?  
 10 **A. Yes.**  
 11 Q. In what area were you patrolling?  
 12 **A. North Central Patrol up in the 10 sector.**  
 13 Q. And what major roads does that include?  
 14 **A. Frankford Road, the Tollway, Preston Road, that**  
 15 **whole area north of Frankford, basically.**  
 16 Q. Did you get a call to go to an address on Gibbons  
 17 Drive that afternoon?  
 18 **A. Yes, ma'am.**  
 19 Q. Approximately what time did you get that call; do  
 20 you recall?  
 21 **A. I don't remember exactly.**  
 22 Q. Did you go out to that scene?  
 23 **A. Yes, ma'am.**  
 24 Q. And do you remember the specific address you went  
 25 to?

- 1 **A. Not without looking at it.**  
 2 Q. Does 18663 Gibbons sound correct?  
 3 **A. Sounds correct.**  
 4 Q. When you arrived at that house, who all was there?  
 5 **A. Firemen. Firemen had made entry into the house, and**  
 6 **also a lady that claimed that her daughter stayed at that**  
 7 **location, who was outside waiting out by the front walkway.**  
 8 Q. And would that have been Ms. Bernadine Kitchen?  
 9 **A. Yes, ma'am.**  
 10 Q. Do you remember Officer Maxwell being at the scene?  
 11 **A. Yes. He arrived just moments after I did.**  
 12 Q. So you were the second-arriving officer on the  
 13 scene?  
 14 **A. No. I was the first arriving officer.**  
 15 Q. Oh, I'm sorry. You got there, okay.  
 16 When you first arrived on the scene, was Ms. Kitchen  
 17 the first person that you saw?  
 18 **A. Yes.**  
 19 Q. Did you speak with her at that time?  
 20 **A. Yes, I did.**  
 21 Q. And after you spoke with Ms. Kitchen, where did you  
 22 go?  
 23 **A. I went to the back entrance, the patio entrance of**  
 24 **the home where she told me that the firemen were at. They had**  
 25 **broken a window close to the rear patio door to make entry**

- 1 into the house because it was locked up. Ms. Kitchen didn't  
 2 have a key to get in, and when I walked through the door I saw  
 3 two firemen or paramedic unit guys, officers -- anyway, they  
 4 were standing in the bedroom -- the master bedroom, and there  
 5 were two bodies. One was a male laying on the center of the  
 6 bed with his head propped up on some pillows, and a female  
 7 body laying face down on the floor by the right foot -- side  
 8 of the bed.  
 9 Q. And did you go in the back door?  
 10 **A. Yes, ma'am.**  
 11 Q. Where were the firemen personnel standing when you  
 12 went inside the house?  
 13 **A. They were right in the open area at the foot of the**  
 14 **bed, master bedroom.**  
 15 Q. Were they attending to the victims at all?  
 16 **A. No, they weren't touching them. They were looking**  
 17 **at them.**  
 18 Q. Did you have an opportunity to go through the rest  
 19 of the house, other than just the back master bedroom?  
 20 **A. Yes, ma'am.**  
 21 Q. In looking at the rest of the home, did it appear to  
 22 be undisturbed?  
 23 **A. It appeared to be undisturbed, correct.**  
 24 Q. Did you observe the house, the windows, the doors to  
 25 see if there was any forced entry?

- 1 **A. Yes, and there wasn't that I could see.**  
 2 Q. None that you could see?  
 3 **A. No. I also observed that the window blinds were all**  
 4 **closed, and there was no unlocked doors. I also remember**  
 5 **going through the kitchen, seeing a dog that was in a metal**  
 6 **kennel, and in the garage was one Mercedes with the headlight**  
 7 **on -- or actually it was a parking light, I believe.**  
 8 Q. Both the parking lights were on?  
 9 **A. I think it was just one light. It was kind of odd,**  
 10 **but it was either one headlight or one parking light. I think**  
 11 **on the Mercedes they switched on and off from side to side.**  
 12 Q. And was there just one vehicle in the garage?  
 13 **A. Yes.**  
 14 Q. With regard to the house and the actual crime scene,  
 15 did there appear to have been any struggle?  
 16 **A. No.**  
 17 Q. And with regard to the victims, you identified one  
 18 male laying on the bed and one female laying next to the bed.  
 19 How would you describe the clothing they were wearing?  
 20 **A. The male was dressed in boxer shorts. The female**  
 21 **was wearing a long T-shirt. I'd describe that as their**  
 22 **pajamas, their nighttime attire ready to go to sleep. I**  
 23 **noticed that, besides all the blinds being closed, a**  
 24 **lamp in the master bedroom was on. That was the only light on**  
 25 **in the house that I can remember being on.**



1 Q. And being a patrol officer, have you responded to  
2 crime scenes before?

3 A. Yes, ma'am.

4 Q. And seeing the scene, as far as the way the victims  
5 were dressed, the way the dog was locked up, the house was  
6 locked up, the shades were drawn, did you form any opinions  
7 regarding those -- regarding that evidence?

8 A. Yeah. I formed the opinion immediately that whoever  
9 had killed them, they knew -- they were comfortable enough to  
10 be dressed in their bed -- their pajamas, and that there was  
11 no sign of forced entry; that somebody had broken into the  
12 house to kill them. Also, I didn't see any sign of a struggle  
13 that they were trying to get away, that they might have been  
14 in fear and trying to get away from somebody that was going to  
15 shoot at them or was shooting at them. So, I figured it was  
16 somebody that they knew.

17 Q. Did you look throughout the house for a murder  
18 weapon?

19 A. Yes.

20 Q. Did you find one?

21 A. I did not.

22 Q. Were you able to look close enough at the bodies to  
23 determine what the murder weapon might be?

24 A. I determined it was a pistol. I found -- well, I  
25 saw bullet casings on the -- one of them, I can recall sitting

1 on the carpet right against the floorboard, and I noticed he  
2 what looked like bullet holes to the face -- to the head area.  
3 And her -- the female had blood running out the side of her  
4 body as if she had been punctured and shot and the bullet  
5 (sic) would flow out.

6 Q. Did you disturb or move the bodies in any way?

7 A. No, I did not.

8 Q. What was your job as being the first responding  
9 officer to the scene?

10 A. To basically find if there was any survivors, any  
11 other victims, and then secure the crime scene, make sure that  
12 nothing would be tampered with.

13 Q. And other than the two deceased bodies and the two  
14 fire department personnel, was anyone else inside the house  
15 when you first walked in?

16 A. No, ma'am.

17 Q. You said shortly after you arrived Officer Maxwell  
18 arrived as well?

19 A. Correct.

20 Q. What were his duties regarding being the second  
21 arriving officer on the scene?

22 A. It would -- the same thing. We were in the house to  
23 make sure that nobody could enter; that we got an initial view  
24 of what was laid out before us; that nothing would be tampered  
25 with; that we know what things had been touched were evident

1 that had been used that evening. It was just to secure a  
2 crime scene. That's what we're both doing. Notifying the  
3 supervisors and the physical evidence people and detective.

4 Q. While you were at the scene did you speak with any  
5 people that were outside?

6 A. Yes. I spoke with Ms. Kitchen. I also spoke with  
7 her son, Mr. Kitchen.

8 Q. And in speaking with them, did you learn that the  
9 victims were engaged to each other?

10 MR. GOELLER: Objection --

11 A. Yes.

12 MR. GOELLER: -- Your Honor. That calls for  
13 hearsay. It's inferential, back-door hearsay.

14 THE COURT: Overruled.

15 A. I was told by Ms. Kitchen that her daughter was  
16 engaged to the deceased male we found in the bedroom.

17 Q. BY MS. FALCO: Based on that information, did you do  
18 any examination upon the female victim looking for any  
19 evidence of that?

20 A. I didn't do an initial examination, but I had  
21 reported that to the other officer. And he went and looked at  
22 her hand and noticed that she didn't have any engagement ring  
23 on, also noticing that she had another ring on her right hand.  
24 I also looked, too, after he made mention of it, and I did not  
25 see an engagement ring.

1 Q. So there was not an engagement (sic) on her left  
2 finger, but there was a ring on right hand?

3 A. Yes.

4 Q. So it did not appear she had taken all her jewelry  
5 off and set it somewhere else?

6 A. No.

7 Q. With regard to the crime scene, were you -- was it  
8 your job to keep all -- I guess what we call civilians out of  
9 the crime scene until the detectives were done doing what they  
10 needed to do?

11 A. Yes, ma'am.

12 Q. And other than anyone that was involved with the  
13 police or the Medical Examiner's Office or the fire  
14 department, did anyone else go inside that house before the  
15 detectives were done?

16 A. No.

17 Q. Did you mainly remain inside the house or outside  
18 the house?

19 A. Initial part of the investigation, I was inside the  
20 house. After the detectives, PES people had gotten there, I  
21 was outside the house making sure nobody would come close  
22 enough to break in the house because there was other family  
23 members that were arriving, and they were very emotional. We  
24 were just trying to comfort them and also keep the crime scene  
25 secured.

1 Q. And were there lots of people starting to show up at  
2 the house?

3 A. Yes, ma'am.

4 Q. And did they have to wait outside the house until  
5 the police allowed them to go in?

6 A. Yes, ma'am.

7 Q. Were any of the civilians or any of the family  
8 members allowed to see the bodies, or were they just taken out  
9 of the house and removed from the scene?

10 A. They were not allowed to see the bodies. The bodies  
11 were recovered and brought out by the Medical Examiner's  
12 people, put into the wagon, and they left. So much time after  
13 that -- several hours after that, they were allowed to take  
14 custody of the house.

15 Q. And that was after the detectives and police and  
16 medical examiners were done doing what they needed to do?

17 A. Correct.

18 Q. Officer, did you make any police report or any  
19 supplement --

20 A. No, ma'am.

21 Q. -- with regard to this case?

22 A. No, ma'am.

23 MS. FALCO: Thank you, Officer. Pass the  
24 witness.

25 THE COURT: All right.

1 MR. GOELLER: Thank you, sir.

2 CROSS-EXAMINATION

3 BY MR. GOELLER:

4 Q. Officer, did you review any reports or adopt any  
5 reports as your own in preparation for your testimony here  
6 today?

7 A. I reviewed the initial reports.

8 Q. Okay.

9 MR. GOELLER: I'd ask for production of those  
10 documents.

11 MS. FALCO: Your Honor, may I approach the  
12 witness to see what all he observed -- or looked over to  
13 refresh his memory?

14 THE COURT: Yes.

15 MS. FALCO: Officer Della, if you'll just go  
16 through and let me know which ones you used to refresh your  
17 memory?

18 THE WITNESS: Actually, I don't recall seeing  
19 any of these ones. I hope this isn't it, because I don't  
20 remember seeing any of these.

21 MS. FALCO: Officer Della, do you recall who  
22 you got the report from that you reviewed?

23 THE WITNESS: After seeing these, I'm almost  
24 thinking I didn't review any report. Last time I had even --  
25 I had mention of this case was back two months ago, I believe,

1 in our meeting.

2 MS. FALCO: (Nods head.)

3 THE WITNESS: I don't remember seeing any of  
4 these reports going off what I can remember about that day.

5 MS. FALCO: And from the time that we had a  
6 meeting until today, do you recall looking over any reports?

7 THE WITNESS: No, I haven't looked at anything  
8 since then.

9 MS. FALCO: Do you know whether or not you  
10 looked at any reports prior to meeting with us?

11 THE WITNESS: No.

12 THE COURT: Do you have any questions,  
13 Mr. Goeller, with regard to this -- any more questions with  
14 regard to any reports?

15 MR. GOELLER: Well, maybe I misunderstood,  
16 Judge.

17 Q. BY MR. GOELLER: I thought you told me you reviewed  
18 some reports?

19 A. Well, probably didn't then. I don't remember now.

20 Q. Officer, trust me, I'm not -- you're a witness for  
21 the State. You're under oath. You told the jury you reviewed  
22 reports. Tell me about them. Where are they? Whose are  
23 they? Who gave them to you? Where did you get this --

24 THE COURT: Let's do this, let's just ask one  
25 question at a time.

1 Q. BY MR. GOELLER: Okay.

2 A. Well, I would have to say with all the different  
3 cases I've gone on, maybe I just thought I looked at the  
4 report.

5 Q. Okay.

6 A. Because I've looked at other reports in different  
7 cases, so maybe in this case I didn't. I was mistaken.

8 Q. Did you -- okay. But you don't think I was asking  
9 you about reports you've reviewed for some other cases, do  
10 you?

11 A. No, absolutely not.

12 Q. Okay. You were there with -- at that Gibbons Drive  
13 address with Officer Maxwell?

14 A. Yes.

15 Q. How long a period of time would you say you were  
16 actually inside the residence?

17 A. Well, I would guess about an hour and a half, maybe  
18 two hours.

19 Q. Okay. And what were you doing during that one and a  
20 half to two hours inside the residence?

21 A. A lot of standing around.

22 Q. Were you searching the residence?

23 A. I was looking through the residence. Searching it  
24 as in opening cabinets and drawers, no. As in looking through  
25 different rooms in the home, yes.

1 Q. Okay. And the purpose of looking through those  
2 rooms would have been for what?  
3 A. Any evidence.  
4 Q. Okay. Did you find any?  
5 A. No.  
6 Q. Okay. Outside the bodies in the bedroom, that was  
7 the only thing that -- only thing that you found unusual?  
8 A. **There was a pillow casing that was removed from one**  
9 **of the pillows in -- in one of the spare bedrooms that was**  
10 **laying in the master bedroom. That was unusual.**  
11 Q. How do you know that was removed from the pillow?  
12 A. **Because it wasn't on the pillow, and the bed was**  
13 **slightly unmade because it had to be taken off -- the pillow**  
14 **had to be taken off from the sheets.**  
15 Q. I guess I'm trying to figure out how you know that  
16 to be a fact. Maybe it was never on there in the first place?  
17 A. **Call it an assumption, sir.**  
18 Q. Okay. Let me know when you're making assumptions,  
19 just so I know, okay? For example, how well did you know the  
20 deceased female?  
21 A. **How well did I know her? I didn't know her at all.**  
22 Q. So you knew nothing about her personal habits  
23 regarding jewelry and all that kind of thing, right?  
24 A. No.  
25 Q. So those are some more assumptions you made

1 regarding the jewelry?  
2 A. Correct.  
3 Q. Okay. Not fact, though?  
4 A. No. **It was an assumption.**  
5 Q. Okay, all right. Did you talk with Officer Maxwell  
6 during the one and a half to two hours you spent in the  
7 residence?  
8 A. Yes.  
9 Q. Do you believe that -- did y'all discuss anything  
10 that was unusual, other than the pillow case you've spoken  
11 about and the bodies in the bedroom?  
12 A. **That her ring was not there. If she had one, we**  
13 **didn't know.**  
14 Q. Okay. Anything else?  
15 A. **Wouldn't you think that -- this is what we're saying**  
16 **to each other. Wouldn't you think that somebody who is**  
17 **engaged would be having -- wearing their ring, displaying it,**  
18 **and happiness and be joyful. We thought that was abnormal, so**  
19 **we assumed that she would have one. We assumed that --**  
20 Q. Of course, you assumed they were happiness (sic) and  
21 joyfulness (sic), right?  
22 A. **Yes. We're assuming a lot of things, sir.**  
23 Q. Yeah, I -- oh, there's no doubt.  
24 Anything other than that, that you and Officer  
25 Maxwell talked about that was unusual in the home, besides the

1 things you've mentioned?  
2 A. **I don't recall anything.**  
3 Q. Okay.  
4 A. **Oh, I'm sorry. The -- unusual about all the blinds**  
5 **being closed, and the doors not being broken into or tampered**  
6 **with.**  
7 Q. Right. You've testified to that. I'm talking about  
8 things you haven't testified about yet. Anything else?  
9 A. No.  
10 Q. So you and Officer Maxwell never discussed what  
11 your gut feeling was about why these killings took place?  
12 A. **Yes, we did.**  
13 Q. And what was the central theme of that?  
14 MS. FALCO: Your Honor, I'm going to object if  
15 it calls for hearsay, what other officers might be saying.  
16 MR. GOELLER: Pass the witness.  
17 THE COURT: Anything redirect?  
18 MS. FALCO: No further questions.  
19 THE COURT: All right. You may step down.  
20 MS. FALCO: Call Officer Junger.  
21 (Discussion off the record.)  
22 THE COURT: Sir, you were sworn in this  
23 morning; is that correct?  
24 THE WITNESS: Yes, sir.  
25 THE COURT: Please be seated.

1 Ms. Falco.  
2 MS. FALCO: Thank you.  
3 Whereby,  
4 STEVEN JUNGER,  
5 a witness called by the State, sworn to testify to the truth,  
6 testified under oath as follows:  
7 DIRECT EXAMINATION  
8 BY MS. FALCO:  
9 Q. Could you state your name for the jury?  
10 A. **Steven Junger.**  
11 Q. What is your occupation?  
12 A. **I work for the Dallas Police Department. I'm a**  
13 **senior corporal.**  
14 Q. What are your duties as a senior corporal?  
15 A. **I'm a patrol officer for the North Central Patrol**  
16 **Division between the hours of 3 p.m. to 11 p.m.**  
17 Q. How long have you been a police officer?  
18 A. **Approximately 11 and a half years.**  
19 Q. Let's go back to November 4th of 2000. Were you  
20 working in the same capacity at that time?  
21 A. **Yes, ma'am.**  
22 Q. And what shift were you working?  
23 A. **Evening, evening shift.**  
24 Q. What time frame is that?  
25 A. **3 to 11.**

- 1 Q. 3 p.m. to 11 p.m.?  
 2 A. Yes, ma'am.  
 3 Q. And what area were you patrolling?  
 4 A. **The North Central Patrol Division, North Dallas**  
 5 **area.**  
 6 Q. Now, I want to take your attention specifically to  
 7 the evening of November 4th, 2000. Were you called out to a  
 8 crime scene at 18663 Gibbons?  
 9 A. Yes, ma'am.  
 10 Q. And first of all, that address and that location is  
 11 that in Collin County, Texas?  
 12 A. Yes, ma'am.  
 13 Q. For what purpose were you called out to that crime  
 14 scene?  
 15 A. **To assist the initial responding officers in**  
 16 **securing the crime scene.**  
 17 Q. Do you recall what time it was when you arrived out  
 18 there?  
 19 A. **I'd say approximately 6:30, a little later after**  
 20 **they arrived.**  
 21 Q. And when you say "they," you're talking about the  
 22 responding --  
 23 A. **Initial officers, yes, ma'am.**  
 24 Q. When you arrived on the crime scene, who was there?  
 25 A. **Frank Della, Officer Della, Officer Maxwell,**

- 1 **Sergeant Nonamoker, and, I believe, myself and Officer Iliff,**  
 2 **we responded.**  
 3 Q. Was the fire department still there when you  
 4 arrived?  
 5 A. **I believe they still were.**  
 6 Q. Had the Medical Examiners arrived when you were  
 7 there?  
 8 A. **No, no.**  
 9 Q. How about Detective Winn or any of the homicide  
 10 detectives, had they arrived?  
 11 A. **No. No physical evidence people, either.**  
 12 Q. So you were there before them?  
 13 A. **Yes, ma'am.**  
 14 Q. What was your function once you arrived on the crime  
 15 scene?  
 16 A. **Just to assist in securing the crime scene.**  
 17 Q. And what did you do -- after you got there and  
 18 talked to the responding officers, what did you do?  
 19 A. **Insured no one went in or out of the house, other**  
 20 **than detectives or physical evidence people, Medical**  
 21 **Examiner.**  
 22 Q. At some point was your attention taken to a woman  
 23 named Sylvia Cantu?  
 24 A. **Yes, ma'am.**  
 25 Q. Who is Sylvia Cantu?

- 1 A. **Ivan's mother.**  
 2 Q. And when you say "Ivan," are you talking about the  
 3 Defendant?  
 4 A. **Yes, ma'am.**  
 5 Q. Why did you start paying attention to Ms. Cantu?  
 6 A. **I was informed by my sergeant to go with Ms. Cantu**  
 7 **back to Ivan's apartment to check to see if he was okay. She**  
 8 **informed us that she had been trying to get ahold**  
 9 **of him all evening and was unable to get ahold of him, and she**  
 10 **feared something may have happened to him, so she asked us to**  
 11 **go check to see if he was there.**  
 12 Q. And was she asking for police assistance to go with  
 13 her?  
 14 A. **Yes.**  
 15 Q. Did you go with Ms. Cantu to Ivan Cantu's apartment?  
 16 A. **Yes. Myself and Officer Iliff followed her there.**  
 17 **She took us there.**  
 18 Q. Was anyone in her car?  
 19 A. **No, just herself.**  
 20 Q. And then just you and Officer Iliff following her?  
 21 A. **Correct.**  
 22 Q. Where did you go when you left the crime scene at  
 23 18663 Gibbons?  
 24 A. **Over to Old Bent Tree. I believe it's 4753,**  
 25 **Apartment 1004, Old Bent Tree.**

- 1 Q. And how far away is that from the address on  
 2 Gibbons?  
 3 A. **Roughly a mile.**  
 4 Q. And how long did it take for you to go from the  
 5 crime scene to the Defendant's apartment?  
 6 A. **Not very long. Roughly, say, five minutes, given**  
 7 **traffic, red lights. Not even five minutes.**  
 8 Q. And did Ms. Cantu direct you to a specific  
 9 apartment?  
 10 A. **Yes, ma'am.**  
 11 Q. And what apartment number was that?  
 12 A. **1004.**  
 13 MS. FALCO: Your Honor, may I approach?  
 14 THE COURT: Yes.  
 15 Q. BY MS. FALCO: Did she indicate that that's where  
 16 her son lived?  
 17 A. **Yes.**  
 18 Q. I show you what's been introduced as State's Exhibit  
 19 Number 73 and State's Exhibit 72. Does that -- do (sic) the  
 20 apartment reflected in those pictures look familiar?  
 21 A. **Yes, ma'am.**  
 22 Q. Is that where Ms. Cantu directed you to?  
 23 A. **Yes.**  
 24 Q. And specifically in State's Exhibit Number 73, the  
 25 door marked 1004, is that the apartment she went to?

1 A. Correct.

2 Q. Once you arrived at that apartment, what was the  
3 nature of -- what was the reason for you going to that  
4 apartment?

5 A. For an emergency search to check to ensure that  
6 nobody was inside injured or -- injured in any way needing any  
7 type of medical or police assistance.

8 Q. Did Ms. Cantu indicate how long she had been trying  
9 to get ahold of her son, Ivan?

10 A. I believe -- I want to say it was all that day and  
11 the day prior. I don't recall exactly.

12 Q. When you got to the apartment, did she or yourself  
13 have a key to get into that apartment?

14 A. No.

15 Q. How did you get into the apartment?

16 A. Security for the apartment walked up. We had  
17 them -- while we were talking to them, we were trying to get  
18 ahold of a manager. The manager pulled up, and she did get us  
19 a key.

20 Q. And was the apartment manager the one that actually  
21 unlocked the door?

22 A. No. I believe Officer Iliff or myself did. I think  
23 it was -- Officer Iliff did. She gave --

24 MR. GOELLER: Your Honor, I'm going to object,  
25 and I need to take the witness on voir dire for one question

1 affidavit, a search warrant is produced for our inspection.  
2 Further, for those grounds I object to any further testimony.  
3 Let me further object under the Texas Constitution, Article 1,  
4 Section 9, Section 19; Code of Criminal Procedure, Article  
5 1.04, 1.06 and 38.23; United States Constitution, Fourth,  
6 Sixth, Fourteenth Amendment.

7 THE COURT: All right. Based upon the pretrial  
8 hearing that was held and the evidence that was adduced at  
9 that time, the Court will overrule the objection.

10 MR. GOELLER: And, Your Honor, may it please  
11 the Court, I would respectfully request a running objection  
12 from the Court regarding all testimony regarding any facts and  
13 circumstances related to the entry of Number 1004 at 4753 Old  
14 Bent Tree Lane per my specific objections I just dictated into  
15 the record for my objection.

16 MS. FALCO: And, Your Honor, we'd ask that he  
17 be required to object each time and not have the running  
18 objection.

19 MR. GOELLER: I hate to do that. I'll  
20 certainly do it if I have to.

21 THE COURT: I tell you what, I'll acknowledge  
22 and allow you to have a running objection, but you can also  
23 make an objection if you wish --

24 MR. GOELLER: Yes, sir.

25 THE COURT: -- anytime you want to, but I'll

1 and one question only.

2 THE COURT: All right.

3 VOIR DIRE EXAMINATION

4 BY MR. GOELLER:

5 Q. Officer Junger, prior to entering --

6 MR. GOELLER: Actually maybe two questions,  
7 Judge.

8 THE COURT: All right.

9 Q. BY MR. GOELLER: Did you have anybody in your  
10 presence that claimed to be a lawful owner or occupant or  
11 lessee of that apartment?

12 A. Other than the manager?

13 Q. The manager lived there?

14 A. No. But she had control of the complex.

15 Q. I'm talking about the apartment proper. Did you  
16 have, with you, anybody that claimed to be a lawful owner of  
17 that apartment complex?

18 A. No, sir.

19 Q. And did you have any type of search warrant, arrest  
20 warrant, probable cause affidavit connected with that to enter  
21 that apartment?

22 A. No, sir.

23 MR. GOELLER: Your Honor, at this time I'm  
24 going to object to any further testimony regarding the entry  
25 of this apartment unless and until we develop a probable cause

1 let you have the running objection with regard to -- and with  
2 regard to what matters are you objecting, just so it's clear  
3 since you've got a running objection?

4 MR. GOELLER: Regarding what matters my  
5 objection would go to?

6 THE COURT: Yeah, any testimony that he gives?

7 MR. GOELLER: Any testimony that he gives in  
8 relation to the entry into 1004, 4753 Old Bent Tree Lane, any  
9 observations made, any testimony in connection with his entry  
10 into that apartment, Your Honor.

11 THE COURT: All right. Yeah. You may have a  
12 running objection.

13 MR. GOELLER: Thank you.

14 THE COURT: And the objection is overruled.

15 MR. GOELLER: Yes, sir.

16 THE COURT: All right. Go ahead.

17 Q. BY MS. FALCO: Officer Junger, this was Saturday,  
18 November 4th; is that correct?

19 A. Correct.

20 Q. Approximately what time was it when you got to  
21 Defendant's apartment?

22 A. I'd say a little after 8:00 when we got there, 8 to  
23 8:10, 8:15, somewhere in there.

24 Q. And prior to making entry into the apartment, did  
25 yourself or Ms. Cantu do anything regarding the apartment,

- 1 either knock on the door or --
- 2 **A. Yes, ma'am, we knocked on the door. I believe we**
- 3 **even tried calling from our squad car.**
- 4 Q. And how did you know what phone number to call?
- 5 **A. She provided it.**
- 6 Q. And she told you that was for the phone that was
- 7 inside that apartment?
- 8 **A. Correct.**
- 9 Q. And she was familiar with the number?
- 10 **A. Correct.**
- 11 Q. And was there any response to your knocking on the
- 12 door or your phone calls?
- 13 **A. No, none at all.**
- 14 Q. Approximately how long were you there before the
- 15 manager arrived with the key?
- 16 **A. I don't recall exact times. We probably entered**
- 17 **around 8:25. We finally got a key probably around -- let's**
- 18 **say, 8:25 is when we probably made entry, somewhere in that**
- 19 **ballpark time. Probably took a good 15, 20 minutes or -- I'm**
- 20 **sorry, maybe 10, 15 minutes.**
- 21 Q. And with regard to this type of entry into a home,
- 22 what's the nature -- do you call this a safety check?
- 23 **A. Emergency search for any type of victims who may**
- 24 **need police assistance or medical assistance.**
- 25 Q. And is that standard protocol for the police? If

- 1 someone were to come to you and say, "I think there's
- 2 something wrong. Can you please make entry into this home and
- 3 see if they're dead or alive"?
- 4 **A. Correct.**
- 5 Q. And as far as your purpose for going into the
- 6 apartment, what specifically were you going to be looking for?
- 7 **A. Any type of victims who needed assistance that were**
- 8 **unable to help themselves, i.e. call for the police, or things**
- 9 **of that nature.**
- 10 Q. And had Ms. Cantu not come to you would you have
- 11 ever gone into that apartment?
- 12 **A. No, not at all.**
- 13 Q. And it was only at her insistence that you made
- 14 entry into this apartment?
- 15 **A. Correct.**
- 16 Q. Once either yourself and Officer Iliff used the key
- 17 to open the apartment, who went -- who initially went inside
- 18 the apartment?
- 19 **A. Just myself or Officer Iliff.**
- 20 Q. What did you look for?
- 21 **A. Any victims, I would say bodies -- any type of**
- 22 **victims, like I said, needing assistance.**
- 23 Q. And was it just a sweep of the apartment looking for
- 24 a place where a body might be, or did you --
- 25 **A. Correct.**

- 1 Q. -- open drawers and cabinets?
- 2 **A. No. Anywhere that, say, a person could fit, you**
- 3 **know, under beds, closets, tubs.**
- 4 Q. But you didn't open cabinets or drawers or anything
- 5 like that?
- 6 **A. No.**
- 7 Q. After you made the sweep through the apartment,
- 8 first of all, did you find anything, any bodies?
- 9 **A. No. No, we did not.**
- 10 Q. After you made that sweep, did anyone else go into
- 11 that apartment?
- 12 **A. Yes. After the apartment -- everything was cleared,**
- 13 **Ms. Cantu came in and so did a security guard.**
- 14 Q. And what did Ms. Cantu do when she came into the
- 15 apartment?
- 16 **A. Well, she began looking around. She checked the**
- 17 **Caller ID on the telephone, and then she checked -- there was**
- 18 **a bottle of beer, and she felt it and said it's warm. She was**
- 19 **going to see if it was cold or not, and she also made a phone**
- 20 **call from that apartment.**
- 21 Q. Do you know who she called?
- 22 **A. No.**
- 23 Q. You actually saw her making a phone call at
- 24 approximately 8:30 that night?
- 25 **A. At that time, yes, ma'am.**

- 1 Q. Did she get through and actually talk to someone on
- 2 the other end?
- 3 **A. No.**
- 4 Q. Did you see her searching through the kitchen at any
- 5 point in time?
- 6 **A. Really, it was a quick -- she was looking for like,**
- 7 **say, phone numbers or signs that her son had been there, you**
- 8 **know, relatively recently, trying to see where he was or see**
- 9 **if there was any messages. I don't know if she checked the**
- 10 **machine or not, but I know she did check, like, Caller ID.**
- 11 Q. Did you ever see her going through the kitchen
- 12 trash?
- 13 **A. No.**
- 14 Q. Did you see her near there, where the kitchen trash
- 15 was?
- 16 **A. She was standing in the kitchen.**
- 17 Q. But you didn't notice her going through the trash?
- 18 **A. I don't recall if she did or not. I don't believe**
- 19 **she did at all.**
- 20 Q. Did she remove anything from the apartment?
- 21 **A. No.**
- 22 Q. When you were leaving -- how long do you think
- 23 Ms. Cantu was in that apartment?
- 24 **A. Say, five minutes, roughly five minutes.**
- 25 Q. And the security guard, what was he doing in the

1 apartment?

2 **A. He was just standing by the door, watching what was**

3 **going on.**

4 Q. And you didn't see him searching?

5 **A. No, no. He just stood there.**

6 Q. As everyone was leaving, did you have them exit the

7 apartment first, Ms. Cantu and then the security --

8 **A. Yes, yes. I wanted to be the one -- myself or**

9 **Officer Iliff, I wanted to make sure we secured the apartment.**

10 Q. And be the last ones out?

11 **A. Correct.**

12 Q. And were you the last ones out?

13 **A. Yes, yes.**

14 Q. On your way out the door, did you notice something

15 as you were walking out of the door of the apartment?

16 **A. Yes, I did.**

17 MR. GOELLER: Judge, I'm going to object to

18 the repetitive, leading nature of the questions, and ask that

19 they be formed in proper direct examination.

20 THE COURT: Well, she can't lead, but I haven't

21 heard any. So, if there's an objection to a leading question,

22 give it to me at the time it's made --

23 MR. GOELLER: Yes, sir.

24 THE COURT: -- but I haven't heard any so far.

25 All right. You may answer the question. Did you see anything

1 unusual as you walked out?

2 THE WITNESS: Yes, Your Honor. Yes, I did.

3 THE COURT: All right. Go ahead.

4 Q. BY MS. FALCO: What did you observe?

5 **A. I observed what appeared to be a bullet hole. It**

6 **was basically right by the door frame as I was exiting.**

7 Q. Approximately how close to the door?

8 **A. Maybe a foot. Maybe six inches to a foot. I'm not**

9 **very good at estimating.**

10 Q. And about how -- how high off the ground?

11 **A. About eye level. It was very noticeable as you were**

12 **exiting the apartment.**

13 Q. And what made you think it was a bullet hole?

14 **A. My past experience dealing with crime scenes.**

15 **That's what made me believe it was a bullet hole.**

16 Q. You didn't -- did you physically examine it or touch

17 it or anything?

18 **A. No. I remember saying something to Ms. Cantu,**

19 **"does your son" -- what caught my attention -- I saw it, and I**

20 **said, "does your son have a gun?" And she said, "no." And**

21 **then I asked her -- I said, "well, that looks like a bullet**

22 **hole. Do you know how that got there?" I remember saying**

23 **something to that effect to his mother as we were all walking**

24 **out.**

25 Q. When you left that apartment, did you secure it?

1 **A. Yes.**

2 Q. And did you return -- what did you do with the key?

3 **A. Returned it to the manager or security. I believe**

4 **the manager was still waiting outside.**

5 Q. And where was Ms. Cantu?

6 **A. She was outside the apartment with us.**

7 Q. Did Ms. Cantu also have a cell phone with her?

8 **A. Yes.**

9 Q. What did you see her doing with her cell phone?

10 **A. She was -- she had been calling, using the cell**

11 **phone throughout the whole time we were at -- on Gibbons and**

12 **on Bent Tree -- Old Bent Tree just trying to make phone calls.**

13 **I don't know who she was trying to call.**

14 Q. Did you ever hear her make contact with anyone?

15 **A. I don't recall.**

16 Q. After you exited the apartment, what did you do?

17 **A. We -- I do recall walking -- looking for a Honda**

18 **that supposedly Ivan owned. We wanted to see if his car was**

19 **there, also, you know, maybe to see if we could locate him.**

20 **We did not locate that car. I remember she gave me the**

21 **license plate to the Honda, and I remember running that on my**

22 **computer, checking it on my computer.**

23 Q. And what name did it come back to?

24 **A. His -- Ms. Sylvia Cantu.**

25 Q. Did you see the Honda there?

1 **A. No.**

2 Q. Did you then leave the Defendant's apartment at that

3 time?

4 **A. Yes, we left.**

5 Q. Did you return to the crime scene?

6 **A. No, we did not.**

7 Q. Regarding the information about the bullet hole in

8 the wall, what did you do with that information?

9 **A. I had contacted Sergeant Nonamoker, my sergeant,**

10 **that night and a sergeant contacted me the next morning, and**

11 **he had asked me if I had seen a Corvette parked in that**

12 **parking lot. And I said, no, I didn't notice it that night.**

13 **And he had also -- that's when I informed him of what I**

14 **thought to be a bullet hole was in that apartment.**

15 Q. Were you looking for a Corvette when you were over

16 there?

17 **A. No. I had no reason to believe that -- any**

18 **Corvettes would be there, the car in question.**

19 Q. And you relayed the information about the bullet

20 hole to the detective you were talking to?

21 **A. Yeah. It was a sergeant, yes, ma'am.**

22 Q. Okay. What does Detective Iliff look like, or

23 Officer Iliff? I'm sorry.

24 **A. She's a -- she's shorter than I. She probably**

25 **weighs about 125 pounds. She's a white female with brown**

1 hair, and she either wears it in a pony tail, or she wears her  
2 hair kind of in a bun, like yourself. She doesn't wear  
3 glasses. She doesn't wear very heavy makeup.

4 Q. With regard to her hair color, when you say "brown,"  
5 what do you mean by brown?

6 A. The color of your assistant's hair.

7 Q. So it's dark brown?

8 A. Yes.

9 Q. Would not be confused with being a blond?

10 A. No.

11 MS. FALCO: Thank you, Officer Junger. We  
12 pass the witness.

13 THE COURT: Mr. Goeller, do you want to just  
14 establish whatever you need to seek whatever documents are  
15 needed, and then we'll take a break for lunch.

16 MR. GOELLER: Yes, sir.

17 THE COURT: Are you going to ask him what he's  
18 reviewed?

19 MR. GOELLER: Should I do that now?

20 THE COURT: Yeah. Why don't you just do that  
21 now, trade documents, and then we'll go to lunch.

22 CROSS-EXAMINATION

23 BY MR. GOELLER:

24 Q. Officer Junger --

25 A. Yes, sir.

1 to remind you once again not to discuss the case among  
2 yourselves or with anybody else, and I'll see you at 1:30.

3 THE BAILIFF: All rise.

4 (The jury exits the courtroom at 12:15 p.m.)

5 (Lunch recess.)

6 THE COURT: We're back on the record in the  
7 Cantu case. The jury is not present.

8 MR. GOELLER: Your Honor, may I speak to the  
9 Court?

10 THE COURT: Yes, sure.

11 MR. GOELLER: I think Mr. Schultz is going to  
12 put some things on the record. It may take a little bit of  
13 time in the response by us, but I'd ask they be done outside  
14 the presence of the State's witness.

15 MR. SCHULTZ: That's fine.

16 THE COURT: Let me ask you to step down for a  
17 minute, and we'll call you back in a minute.

18 THE WITNESS: Yes, sir.

19 THE COURT: All right. The witness and the  
20 jurors are not present. All right.

21 MR. SCHULTZ: Yes, sir. May it please the  
22 Court, Mr. Goeller. The State at this time would request the  
23 opportunity to have the Defendant examined by its psychiatric  
24 expert, Dr. Lisa Clayton. We're not requesting that of the  
25 Court. Actually, we're just requesting it of the Defense, but

1 Q. -- hello.

2 A. Hello, sir, how are you?

3 Q. Good. How are you?

4 A. Very good.

5 Q. Review any documents prior to your testimony here  
6 today?

7 A. Just my MIR, my generated report.

8 Q. Okay. Do you have that on you, or does the State  
9 have a copy?

10 A. The State should have a copy.

11 MS. FALCO: Your Honor, if I could just  
12 approach him to make sure this is what he reviewed.

13 THE COURT: All right.

14 THE WITNESS: Yes, sir.

15 Q. BY MR. GOELLER: Did you review any other documents  
16 or review -- speak with officers who were reviewing other  
17 documents, other than these, prior to testifying here today?

18 A. In regard to this --

19 Q. This case.

20 A. No. I looked over -- one of the PES guys had a  
21 sheet of paper. I was curious about the bullet hole.

22 Q. Okay, okay. Thank you, sir.

23 THE COURT: All right. Ladies and Gentlemen,  
24 let's take a -- it's almost 12:15. Let's come back at 1:30.

25 That will give us an hour and 15 minutes for lunch, and I want

1 we wanted to make a record of it.

2 MR. GOELLER: May I respond, Your Honor?

3 THE COURT: Yes.

4 MR. GOELLER: May I have just a moment, Judge?

5 THE COURT: Yes.

6 (Brief pause in proceedings.)

7 MR. GOELLER: Your Honor, at this point I'm not  
8 in a position to rebut or answer Mr. Schultz's request until  
9 we have some indication, or the court has some indication as  
10 to why Mr. Schultz seeks to have the State's expert interview  
11 my client.

12 THE COURT: Yeah. Do give me an idea of what  
13 you're pursuing.

14 MR. SCHULTZ: So we can better understand him  
15 and his mental state.

16 THE COURT: Well, let me ask you, Mr. Goeller.  
17 I would assume since you haven't done anything, you have  
18 absolutely no reason to question his competency; is that  
19 correct? Or is it not -- I'll just ask you, do you have any  
20 question about his competency?

21 MR. GOELLER: Give me another second, Judge.

22 THE COURT: Sure.

23 MR. GOELLER: Your Honor, in response to the  
24 Court's questions, I don't feel I can answer that question.

25 It may involve issues regarding my client's Sixth Amendment



1 Right and Fifth Amendment Right. However, I will tell the  
2 Court this, at this point in time we have done nothing to  
3 indicate to anybody that my client is either incompetent or  
4 insane. Therefore, there's nothing for the State to rebut at  
5 this time.

6 I would tell the Court that should those issues  
7 arise, I would certainly give the Court plenty of advance  
8 notice should such an occasion arise, or the need for such  
9 relief requested from the Court, or theoretically the State's  
10 rebuttal to that. But just for the State to say, we want to  
11 know his mind better, we want to know him better and get into  
12 his mental state, my client has no obligation to help the  
13 State prove an element of the indictment. And so, therefore,  
14 on his Fifth Amendment Right not to testify, I'd ask the Court  
15 to -- at this point decline the State's request.

16 MR. SCHULTZ: Maybe I didn't make myself  
17 clear. I'm not actually requesting Court involvement in this.  
18 I just wanted to make a record in a handy form. I don't want  
19 to later on be burdened with you haven't met my client, you  
20 don't know what he's like when we put on our experts, if it  
21 has to be in a hypothetical form. I want it real clear that  
22 we made the effort to meet the client and to understand the  
23 client and that they declined.

24 Now, if they don't want to make an issue out of it  
25 that's fine, later on. But I don't want to feast on that

1 roast of why didn't you talk to the client to form your  
2 opinions, when they wouldn't let us do it. That's all I'm  
3 saying. If they don't want to do it, we can deal with it in a  
4 different fashion depending upon how and what's offered later  
5 on.

6 I just simply wanted to make a record of the fact  
7 that we're asking for the opportunity to examine the  
8 Defendant, and they've declined.

9 THE COURT: You're making an offer --

10 MR. SCHULTZ: I'm sorry, Judge?

11 THE COURT: You're making an offer to meet with  
12 him?

13 MR. SCHULTZ: Yes, sir. It just seemed like a  
14 handy place to put it in the record so there's no question,  
15 and then if someone -- there's a disagreement, we can  
16 certainly find it, and we'll know where to find it.

17 MR. GOELLER: Yeah. We'd make an offer for a  
18 life sentence and to have this indictment dismissed and  
19 quashed, too. I'll make that offer to Mr. Schultz.

20 THE COURT: Any -- do you decline?

21 MR. SCHULTZ: He's not worthy of that. We have  
22 to decline.

23 THE COURT: Well, I'm glad we got these matters  
24 out of the way. Let's call the jury in. Is there anything  
25 else before we -- oh, was there anything else to put on the

1 record before we bring the jury in?

2 MR. SCHULTZ: No, sir, that covers it.

3 THE COURT: Well, if anything comes up, y'all  
4 just stop me, and we'll put the next thing on. All right.  
5 Let's bring the jury in.

6 THE BAILIFF: Yes, sir.

7 THE COURT: I guess we've got to get the  
8 witness back in here before we bring the jury back in and  
9 start asking questions.

10 THE WITNESS: Yes, sir.

11 THE BAILIFF: All rise.

12 (The jury enters the courtroom at 1:50 p.m.)

13 THE COURT: Please be seated. All right.  
14 Mr. Goeller, are you ready?

15 MR. GOELLER: Yes, Your Honor.

16 CROSS-EXAMINATION CONTINUED  
17 BY MR. GOELLER:

18 Q. Sir, for the record, you're Steven J. Junger, 6388.  
19 You've been previously sworn and given testimony, right?

20 A. Yes, sir.

21 Q. Officer Junger, you testified that on -- excuse  
22 me -- on November 4th, at approximately 20:37, that's what,  
23 about 8:30 p.m.?

24 A. 8:37.

25 Q. Okay. Is that when you made entry into the

1 apartment, 4753 Old Bent Tree, Number 1004?

2 A. No, sir. At approximately 8:25. The 8:37,  
3 according to my report, was the time I generated that -- we  
4 call them service numbers, report number for that  
5 miscellaneous incident report.

6 Q. Okay. Where -- where was -- this report that's  
7 generated is actually a report that's made by personnel on the  
8 computer as you call in, correct?

9 A. No, sir. Well, I typed it in. But, yeah, it's from  
10 the computer in our vehicles, our squad cars.

11 Q. Okay. And you're sending the information to this  
12 dispatch or communications, and then a report is generated off  
13 that?

14 A. (Shakes head.)

15 Q. No?

16 A. To speculate, what I do, I think it goes, like, say,  
17 a main frame and it generates -- it spits out a number for me  
18 for my report.

19 Q. You actually never see this piece of paper while  
20 you're --

21 A. Correct.

22 Q. And at 20:37 is the time you are calling it in,  
23 typing it in?

24 A. I assume, I'm not -- I can speculate how it works,  
25 but I didn't program the program. But I assume the way it

1 works, the minute I hit the transmit button, like the enter  
2 button or return button, it kicks out a -- it's called a  
3 service number -- the report number at the very top up there.

4 Q. What time were you dispatched to the Gibbons  
5 address?

6 A. Ballpark time, say, between 6:30, 7:00. I don't  
7 recall exactly what time, but it was before physical evidence,  
8 the ME, and all those people arrived. But it was after my  
9 sergeant and the initial two officers who received the call  
10 arrived at the scene.

11 Q. Did you spend any time in the residence on Gibbons  
12 Drive?

13 A. Yes, I did. You know, there was a back door,  
14 apparently, that the fire department -- there was a back door  
15 that the fire department made entry. I wanted to make sure no  
16 one was around, like, in there, make sure the whole area was  
17 secure, see if there was anywhere that I was needed.

18 Q. Is that the door that the FD broke a window out  
19 to gain entry?

20 A. I forgot if it was a window or door, but where they  
21 made entry, yes, sir.

22 Q. Was there another officer whose primary  
23 responsibility was to post himself (sic) at that --

24 A. Several. Well, it was Officer Della, Officer  
25 Maxwell, myself, Officer Iliff. That's what our initial job

1 thorough -- that was not my function.

2 Q. Okay. And once the -- once the -- did you leave the  
3 Gibbons scene before or after the investigators and PES  
4 arrived?

5 A. They arrived and I left.

6 Q. How soon after their arrival did you leave?

7 A. I'm not very good. I don't recall exactly. I  
8 didn't take detailed notes as to what time I arrived, what  
9 time that, you know, I had left the scene. You know, I really  
10 don't recall, sir.

11 Q. Okay. Once you got to the Old Bent Tree, Apartment  
12 1004, have you previously given testimony that you spent  
13 approximately 10 minutes inside the residence prior to Sylvia  
14 Cantu entering the residence?

15 A. Yes, sir. I believe it was something to the effect  
16 of five to ten minutes, approximate. Once again, that's a  
17 ballpark guess.

18 Q. Okay. And I think we established that this  
19 apartment was approximately 400 square feet, give or take?

20 A. I don't recall establishing. I know it was a  
21 one-bedroom apartment. I don't recall exactly how many feet,  
22 but Jill Stole, the manager that I listed in the report, she  
23 probably would be able to tell you exactly how big the  
24 apartments were.

25 Q. One bedroom, a kitchenette?

1 was, to ensure that no one made entry into the house, and  
2 secure the crime scene for all the involved investigators.

3 Q. How long would you say you were on the scene until  
4 the investigators and PES folks came out?

5 A. I don't really recall the exact amount of time, how  
6 long it took. I knew they had to come from the Baylor  
7 Hospital area, the downtown area, so...

8 Q. What did you do during that time, between the time  
9 you first arrived and the time the crime scene/investigators  
10 showed?

11 A. Basically stood around and made sure that no one  
12 made entry, once again, into the residence. As family members  
13 were showing up make-sure, nobody came inside the residence.

14 Q. Did you look around the inside of the residence or  
15 search it in any way?

16 A. Well, I did a cursory search. I didn't do a very  
17 thorough search or take notes on any search. That was up to  
18 the investigators.

19 Q. Did you find anything unusual?

20 A. Two deceased people in the bedroom.

21 Q. Anything else?

22 A. I mean, for example?

23 Q. Anything peculiar, out of the ordinary, contraband,  
24 anything of that nature?

25 A. No. I just stood -- once again, I didn't do a very

1 A. I mean, I have -- my one bedroom is approximately  
2 700 square feet.

3 MR. GOELLER: May I approach?

4 THE COURT: Yes.

5 Q. BY MR. GOELLER: There is evidence that's in -- this  
6 has been identified by the Dallas Police Department as the  
7 kitchen -- kitchen area of that apartment. Does that look  
8 familiar?

9 A. Yes, sir.

10 Q. Pretty small, correct?

11 A. Fairly small kitchen, yes, sir.

12 Q. You could probably -- if you reached out like this,  
13 you could probably touch counter to counter I would assume,  
14 right?

15 A. Yes, sir.

16 Q. So we have this kitchen area, and then we have a  
17 bedroom, and then was there, like, a living room?

18 A. Yes, sir.

19 Q. And was there anything peculiar about the apartment  
20 such as, oh, any large amounts of debris or boxes or things  
21 that impeded your travel throughout the apartment?

22 A. I mean, you had your normal couch, bed, you know,  
23 some clothes on the floor.

24 Q. Okay.

25 A. But --

1 Q. And I think you've given testimony earlier that that  
2 entire apartment would fit within this courtroom, wouldn't it?

3 A. **If I were to ballpark, it may be a little bigger.**  
4 **You know, I'd say pretty much, yes, you know.**

5 Q. Okay. And you -- if there's three rooms, I assume  
6 you went into all three rooms?

7 A. Yes.

8 Q. Okay. And the -- well, do you recall what room you  
9 went into first?

10 A. **Well, where we entered in, that would be the kitchen**  
11 **and living room.**

12 Q. Okay.

13 A. **Because basically as you walk in the door, you can**  
14 **either go in the kitchen or living room.**

15 Q. Are they kind of open to each other?

16 A. **Yeah. I guess they would be considered open.**

17 Q. How long did it take you to ascertain that there was  
18 no one in the kitchen and the living room?

19 A. **I mean, the whole thing probably took, like I said,**  
20 **between five and ten minutes. Understand that my -- as a**  
21 **police officer, I'm very cautious. I'd rather err on the side**  
22 **of safety and take time, you know, not rush inside of an**  
23 **apartment or house, or any time I get an open building, or**  
24 **what have you, you know, my job is not to rush in.**

25 Q. Oh, I understand. And so once you're actually

1 **took in each particular room. But once again, the whole time**  
2 **took between five and ten minutes.**

3 Q. Okay. The kitchen, if you're standing -- if you're  
4 standing, oh, somewhere out here looking into the kitchen,  
5 that would take you about -- I suppose about two seconds to  
6 figure out there's nobody in there, right?

7 A. **My question is, like what's over here? See, where**  
8 **the garbage can is? You know, what I want to do is make sure**  
9 **that there's nobody that can be crouched down. If it's a**  
10 **pantry in that little area where you can put a, say, a garbage**  
11 **can, someone could fit in that type of area. So once again,**  
12 **I'm not going to just say, oh, okay, take a quick look, and,**  
13 **you know -- my job is make sure that -- to ensure that there**  
14 **is nobody in there.**

15 Q. I understand. I'm not arguing with you.

16 A. Okay.

17 Q. How long do you think it took you to walk from here  
18 to here and check?

19 A. **Once again, I don't know if I did or Officer Iliff**  
20 **did, but it wouldn't take very long, sir.**

21 Q. And in the bedroom, there was a bed and a closet,  
22 correct?

23 A. Correct.

24 Q. And do you recall -- well, does that look familiar,  
25 the closet?

1 inside the apartment, can you actually view that kitchen right  
2 there?

3 A. **I don't recall if the lights were on or not, but I**  
4 **mean, if I were to use my flashlight to illuminate it or find**  
5 **a light switch, yes.**

6 Q. Do you recall what you did? Did you turn the lights  
7 on?

8 A. **I'm pretty sure I used my flashlight to use -- to**  
9 **find the light switch.**

10 Q. And then you turned the light switch on?

11 A. Yes.

12 Q. Okay. How many feet would you say separate the  
13 living room from the kitchenette there?

14 A. **I'm not very good at -- I mean, Jill Stole, the**  
15 **manager, probably knows better.**

16 Q. What's your best guess?

17 A. **Say, 15, 10 feet.**

18 Q. Maybe from me to you is about, I don't know, 6, 12?

19 A. **Half that distance.**

20 Q. Half that distance, okay?

21 A. Yeah.

22 Q. And once you were in position in the living room,  
23 how long did it take you to figure out there was no live  
24 person or dead person in the living room?

25 A. **I mean once again, I don't know exactly how long it**

1 A. **Looks like a closet.**

2 Q. Do you recall the closet being your typical  
3 one-bedroom apartment closet?

4 A. **Correct, yes, sir.**

5 Q. Okay. And there was one bed in the bedroom?

6 A. Yes.

7 Q. Did you look under the bed?

8 A. Yes.

9 Q. Okay. How long do you think it took you once you  
10 got in the bedroom to look under the bed and look in that  
11 closet?

12 A. **I mean, not very long.**

13 Q. Okay.

14 A. **Long enough to ascertain that there was nobody under**  
15 **there.**

16 Q. Okay. The bathroom, would you say it was your  
17 typical --

18 A. **Typical small.**

19 Q. -- small, one-bedroom apartment --

20 A. -- just a tub.

21 Q. -- tub and a toilet and probably a sink?

22 A. Yes, sir.

23 Q. Once you actually got in the bathroom, how long do  
24 you think it took you to figure out there was nobody in there  
25 alive or dead?

1 **A. Long enough to make sure no one was under the -- in**  
 2 **the bathtub. No one was behind the door. Just a cursory --**  
 3 Q. Would you say that -- you know, this bathroom, I  
 4 walk in, tub, sink, toilet, three seconds?  
 5 **A. Understand, sir, I'm not going to rush through**  
 6 **anything.**  
 7 Q. Well, if you're not rushing, five seconds?  
 8 **A. If, for example -- let's say, for example, I did**  
 9 **miss a victim inside the apartment, it would look worse -- I'd**  
 10 **rather err on the side of safety and do -- you know, make sure**  
 11 **I did my job correctly.**  
 12 Q. I know. I'm not -- trust me when I tell you I'm not  
 13 saying you're derelict in your duty in searching.  
 14 **A. Thank you.**  
 15 Q. But as an officer, you've got to be able to tell  
 16 this jury some time estimate of once you get inside that  
 17 bathroom how long it took you to figure out there's nobody in  
 18 there?  
 19 **A. I mean, not very long.**  
 20 Q. Like, less than five seconds?  
 21 **A. No. I'd say longer than that, sir.**  
 22 Q. Okay. So you're in the bathroom. You look in the  
 23 tub. Got to assume there's nobody on the toilet, and nobody  
 24 is brushing their teeth. We just start counting 1 one  
 25 thousand, 2 one thousand, 3 one thousand, 4 one thousand, 5

1 one thousand, 6 one thousand, you know, tell us about how long  
 2 you were in the bathroom?  
 3 **A. Maybe 5 to 7 seconds. Understand, all these times**  
 4 **are approximate.**  
 5 Q. I know.  
 6 **A. That's why when you ask me, how long I was in the**  
 7 **apartment, that's why I'd ballpark between five and ten**  
 8 **minutes.**  
 9 Q. I know. I understand. I'm not trying to  
 10 insinuate -- or I have no right to pin you down to the second.  
 11 I'm not trying to do that, but I'm trying to get an idea of  
 12 how long you would, say, spend in the bathroom, spend in that  
 13 kitchen, spend in the one bedroom. Okay?  
 14 You were at -- give me your best -- I'm sorry. Let  
 15 me think about that. The investigators had arrived on the  
 16 scene and the PES folks were on the scene before you left,  
 17 correct?  
 18 **A. Correct. ME was also there.**  
 19 Q. Outside of Officers (sic) Maxwell and Officer, was  
 20 it, Della?  
 21 **A. Yes, sir.**  
 22 Q. You would have been there the longest?  
 23 **A. Officer Iliff, Sergeant Nonamoker would have**  
 24 **been there longer than I.**  
 25 Q. You got there after Nonamoker?

1 **A. Sergeant Nonamoker.**  
 2 Q. Sergeant Nonamoker?  
 3 **A. Yes, sir.**  
 4 Q. And you were there for, again, I know I'm not trying  
 5 to pin you down to an exact time, but you were on the scene at  
 6 the Gibbons crime scene for about how long?  
 7 **A. About an hour to hour and a half, maybe.**  
 8 MR. GOELLER: May I approach?  
 9 THE COURT: Certainly.  
 10 Q. BY MR. GOELLER: Let me show you something. This  
 11 photograph here, Officer -- these photographs, these have been  
 12 admitted as the apartment in question. Does that look  
 13 familiar?  
 14 **A. Yes, sir.**  
 15 Q. Okay. How does that fit in? Is this door -- well,  
 16 let's see here. There's a porch and pillar probably right  
 17 here. That looks like a little patio area of somebody's  
 18 apartment, right, maybe?  
 19 **A. Yes, sir. I'm not sure if this one wasn't that**  
 20 **way -- this way, but if the parking lot is here, you're facing**  
 21 **the doors. Once again, I'm not sure.**  
 22 Q. Okay. And that's exactly what I was going to ask  
 23 you. When you pull up, a car would pull up kind of over  
 24 here?  
 25 **A. I think a car parks -- like if the door was -- it**

1 **would be perpendicular.**  
 2 Q. Okay. But the parking area is within --  
 3 **A. Very close.**  
 4 Q. Very close?  
 5 **A. Relatively.**  
 6 Q. Somewhere right around here?  
 7 **A. Yes, sir.**  
 8 Q. Do you recall anything about the trash receptacle in  
 9 the kitchen when you went in?  
 10 **A. No, sir.**  
 11 Q. Okay. Did you look in it?  
 12 **A. No.**  
 13 Q. Okay. Do you know if Officer Iliff looked in it?  
 14 **A. She didn't walk in and look in the trash, to my**  
 15 **knowledge.**  
 16 Q. Okay, okay. Did you notice anything on the  
 17 refrigerator door?  
 18 **A. No, sir, not that I can recall.**  
 19 Q. Okay. In case I haven't asked you, and I think I  
 20 have. You had -- prior to entering that apartment, you had no  
 21 authorization from a judge by way of a search warrant or any  
 22 type of warrant based upon on a probable cause affidavit to  
 23 make entry, correct?  
 24 **A. Correct.**  
 25 Q. Okay. Who did you talk to as far as investigators

1 go at the Gibbons Drive scene?

2 A. See, I don't know their names. I don't -- I only  
3 know they're some homicide detectives and PES, Physical  
4 Evidence came out.

5 Q. How many homicide detectives did you talk to prior  
6 to leaving the Gibbons Drive address?

7 A. See, I'm not sure if at the Gibbons address, if they  
8 came up and had me and Susie, or if my sergeant -- or if they  
9 came up to my sergeant, and he had me and Susie go over to the  
10 apartment, but I --

11 Q. Okay.

12 A. There were -- I believe there were two detectives  
13 out there. I'm not quite exactly sure how many were out  
14 there.

15 Q. Did you talk with anybody that identified themselves  
16 as family members of the deceased?

17 A. They would come up. I mean, I didn't get a -- if I  
18 did, I referred them or anyone to a homicide detective.

19 Q. Okay. Were they relaying any information to you  
20 that you thought was pertinent to pass on to homicide  
21 detectives or PES personnel?

22 A. Once again, if anyone relayed any type of  
23 information, I would basically say, hang on, you need to speak  
24 with a detective.

25 Q. Okay. Did you end up doing that, saying, hang on.

1 let me get you in touch with --

2 A. I think I did with one guy.

3 Q. Okay. Was -- I've got so many names. Who's your  
4 PES guy that's been up here? Detective Whitsitt. Did you  
5 speak with Detective Whitsitt out at the Gibbons Drive scene  
6 that day?

7 A. If I did, I mean, it would be what's your badge  
8 number, Officer? You know, I wouldn't have had a thorough,  
9 hi, how are you doing? This is what we've got. Like I said,  
10 the initial officers, I believe, gave our homicide unit kind  
11 of what they got and what they saw.

12 Q. Okay. Did you talk to any officers at any time  
13 after this regarding what your theory of this case was?

14 A. I didn't -- I don't have enough -- I did not have  
15 enough knowledge to, you know, formulate a theory.

16 Q. Okay.

17 A. But like, for example, I have a twin brother on the  
18 department. You know, I talked to him. He'd say, hey, how  
19 was your day? We pretty much talk quite a bit. Hey, how was  
20 your day? Pretty good. You know, this happened or that  
21 happened.

22 Q. Did you make any assumptions or gut calls as to  
23 what this crime scene is about?

24 A. Once again, I don't have enough -- I don't have  
25 enough -- I don't have any of the training.

1 Q. Okay.

2 THE COURT: Is your brother identical?

3 THE WITNESS: Yes, sir.

4 THE COURT: Is he?

5 THE WITNESS: Yes, sir.

6 Q. BY MR. GOELLER: That might be a real good thing.  
7 Wasn't me.

8 (Laughter.)

9 Q. All right. Thank you, sir.

10 MR. GOELLER: I'll pass the witness, Your  
11 Honor.

12 THE COURT: Ms. Falco.

13 MS. FALCO: Just briefly. Your Honor, may I  
14 approach the witness?

15 THE COURT: Yes.

16 REDIRECT EXAMINATION

17 BY MS. FALCO:

18 Q. Officer Junger, I show you what's been previously  
19 marked as State's Exhibits 3 and 4, currently marked as  
20 State's Exhibits 74 and 75. Do you recognize these two  
21 photographs?

22 A. Yes, I do.

23 Q. And what is contained in these two photographs?

24 A. A hole in the wall that I believe to be a bullet  
25 hole.

1 Q. And is this the bullet hole and pictures of the  
2 bullet hole, or what appeared to be the bullet hole at the  
3 Defendant's apartment on November 4th, 2000?

4 A. Correct.

5 Q. Is it a fair and accurate depiction of what the  
6 wall looked like when you saw it on the night of September  
7 4th, 2000?

8 A. Yes, ma'am.

9 MS. FALCO: We offer State's Exhibits 73 -- I'm  
10 sorry, 74 and 75.

11 MR. GOELLER: Judge, I'd renew my objections  
12 that I was granted under my running objection to any evidence.

13 THE COURT: All right. The objection is  
14 overruled. Is there any other objection?

15 MR. GOELLER: Just those specifics on my  
16 running objection.

17 THE COURT: All right. The objection is  
18 overruled and 74 and 75 for the State are admitted.

19 Q. BY MS. FALCO: And just to explain something, on  
20 State's Exhibit 75 there appears to be a little bit of red  
21 ink, and on the back of State's Exhibit 74 appears to be a  
22 smeared word. Does it appear that they just were laying on  
23 top of each other?

24 A. Correct.

25 Q. The red ink is not part of the actual photograph?

1 **A. It isn't.**  
 2 MS. FALCO: Pass the witness.  
 3 THE COURT: Anything else, Mr. Goeller?  
 4 MR. GOELLER: No, Your Honor.  
 5 THE COURT: You may step down. I suppose this  
 6 witness is kind of on call?  
 7 MS. FALCO: Three-hour call, yes, sir.  
 8 THE COURT: Thank you, sir.  
 9 Call your next witness, please.  
 10 MS. FALCO: This will be Ms. Lowry, Your Honor.  
 11 THE COURT: Oh, okay.  
 12 MS. LOWRY: The State would call Detective  
 13 Forrest Smith.  
 14 THE COURT: I want to remind you that you were  
 15 previously placed under oath.  
 16 THE WITNESS: Yes, sir.  
 17 THE COURT: Please have a seat. Ms. Lowry.  
 18 Whereby,  
 19 **FORREST SMITH,**  
 20 a witness called by the State, sworn to testify to the truth,  
 21 testified under oath as follows:  
 22 **DIRECT EXAMINATION**  
 23 **BY MS. LOWRY:**  
 24 Q. Please introduce yourself to the jury.  
 25 **A. I'm Detective Forrest Smith, Dallas Police**

1 **Department.**  
 2 Q. Detective Smith, other than being a detective, what  
 3 is your current job assignment?  
 4 **A. Well, it's crime scene detective, which includes**  
 5 **collecting evidence, photography, fingerprinting, collect any**  
 6 **evidence, you know...**  
 7 Q. How long have you been employed by Dallas Police  
 8 Department?  
 9 **A. Eleven and a half years.**  
 10 Q. Are you a certified peace officer?  
 11 **A. Yes.**  
 12 Q. How long have you been a certified peace officer?  
 13 **A. Eleven and a half, 11 years.**  
 14 Q. How long have you been assigned to Physical Evidence  
 15 Section?  
 16 **A. Two and a half.**  
 17 Q. I want to direct your attention to November 4th of  
 18 2000. Were you in the Physical Evidence Section at that time?  
 19 **A. Yes.**  
 20 Q. And your job assignment at that time was the same as  
 21 it is now?  
 22 **A. That's correct.**  
 23 Q. On November 4th, 2000, did you receive a call to  
 24 respond to a location on Gibbons Drive?  
 25 **A. Yes.**

1 Q. And do you recall what that call was for?  
 2 **A. For a shooting.**  
 3 Q. And did you respond to that location?  
 4 **A. Yes.**  
 5 Q. Once you got to the location on Gibbons Drive, kind  
 6 of describe the scene for us. Who all was there?  
 7 **A. Basically just the patrol -- patrol had been there.**  
 8 **They arrived first and secured the scene, so the patrol**  
 9 **officers. I guess the ambulance had come, and both the**  
 10 **complainants were in the back bedroom and, you know, a few**  
 11 **other people.**  
 12 Q. Was there another physical evidence unit on the  
 13 scene already?  
 14 **A. Yes.**  
 15 Q. Is that Detective Whitsitt?  
 16 **A. Correct.**  
 17 Q. That call, would that have been his call, and you  
 18 were responding to back him up?  
 19 **A. Right. He was the primary detective.**  
 20 Q. When you're, I guess, in that capacity, when you're  
 21 not the primary detective, what are your responsibilities?  
 22 **A. Basically just depends on what the lead detective**  
 23 **wants. In this case, Whitsitt was dealing with the**  
 24 **photography and the main evidence collection. And after he**  
 25 **got done with that, I was doing the fingerprinting.**

1 Q. When you -- when you're doing the fingerprinting,  
 2 what all areas do you check?  
 3 **A. Well, in this particular instance it's anywhere that**  
 4 **you think a suspect or person that is involved may have**  
 5 **touched, which in this case was most of the house, in the**  
 6 **garage, and the car in the garage.**  
 7 Q. Did you check, like, the doorknobs, the door locks,  
 8 the windows, things like that?  
 9 **A. Right. Inside/outside doors, the door facings, the**  
 10 **frames, the -- you know, the bathroom, bathroom counters,**  
 11 **counters -- you know, pretty much everything possibly you**  
 12 **could touch in this case.**  
 13 Q. Describe the process, as far as when you first walk  
 14 into a place that you know is a crime scene, where do you  
 15 begin?  
 16 **A. At the front.**  
 17 Q. Okay.  
 18 **A. Because -- you know, you start from the front**  
 19 **because you don't want to contaminate anything more than has**  
 20 **to be. So if there's any evidence, you know, you start at the**  
 21 **very first point that you enter and go from there to make sure**  
 22 **you don't destroy any evidence.**  
 23 Q. Did you find any fingerprints in the house?  
 24 **A. Yes.**  
 25 Q. Do you remember where?

- 1 A. **Inside the house, not including the car. I think I**  
 2 **found some on a metal trash can lid.**  
 3 Q. Did you make a report in this case?  
 4 A. **Yeah. It's on the supplement. I got some on a**  
 5 **metal trash can lid, and besides the car, I think one other**  
 6 **place. The other Detective Smith has the latents, which**  
 7 **should be on there, so I think maybe one more.**  
 8 Q. When you collect those prints do you -- the process  
 9 that's been described to us, you put them then on a file card?  
 10 A. **Correct.**  
 11 Q. -- with all the information on them? Does that  
 12 help?  
 13 A. **Correct.**  
 14 Q. Did you do all that in this case?  
 15 A. **Yes.**  
 16 Q. Tell us what happened as far as with the car in the  
 17 garage.  
 18 A. **There was a Mercedes parked in the garage, and I**  
 19 **think someone had told Detective Whitsitt this is -- that**  
 20 **there was supposed to be another car there, and there wasn't.**  
 21 **There was just one, the Mercedes, so I went ahead and**  
 22 **processed the Mercedes.**  
 23 Q. Do you recall whether a parking light was on or not?  
 24 A. **Do what?**  
 25 Q. A parking light?

- 1 A. **Yeah. The -- it was kind of like -- I basically**  
 2 **remember, it was, like, the driver's side parking light. They**  
 3 **were, like -- I think the front and the back were on.**  
 4 THE COURT: Say, Officer, I'm going to  
 5 interrupt you for a second. Sometimes you have a big lunch,  
 6 and it gets to you. So I'm going to ask anybody on the jury  
 7 who needs to rise and kind of make sure that you're not  
 8 getting at all sleepy, if you would go ahead and do so at this  
 9 time, if it would help. Anybody in the courtroom, in fact.  
 10 (Brief break in proceedings.)  
 11 THE COURT: Sorry about the interruption.  
 12 MS. LOWRY: That's okay.  
 13 Q. BY MS. LOWRY: Okay. You were telling us about the  
 14 lights.  
 15 A. **Yeah. I remember one side being left on when I was**  
 16 **there. I think it was the driver's side, but I'm not sure.**  
 17 Q. In processing the Mercedes, what is your procedure  
 18 to do that?  
 19 A. **Same thing as anything else. We just process the**  
 20 **outside first, and when I get done with that, I'll go on the**  
 21 **inside and process whatever is feasible to process on the**  
 22 **inside.**  
 23 Q. What was the condition of the Mercedes, as far as --  
 24 was it clean, was it dirty?  
 25 A. **It was very clean.**

- 1 Q. Were you able to recover any latent prints?  
 2 A. **Yes. I collected one on the outside -- outside**  
 3 **driver's window and the inside of the driver's window.**  
 4 Q. And did you preserve those and then put them into  
 5 evidence the way you do?  
 6 A. **Yes.**  
 7 Q. What did you do after that?  
 8 A. **After -- with the house or those particular latents?**  
 9 Q. After you got those prints.  
 10 A. **Okay. That was basically my role in the deal, is --**  
 11 **you know, Whitsitt did the collection -- Detective Whitsitt**  
 12 **did the collection in the bedroom and the photographing of all**  
 13 **that, and I just mainly did the fingerprints. As far as that**  
 14 **day or --**  
 15 Q. Yes.  
 16 A. **Okay, yeah.**  
 17 MS. LOWRY: May I approach?  
 18 THE COURT: Yes.  
 19 Q. BY MS. LOWRY: I'm showing you State's Exhibit 2.  
 20 Do you recognize that?  
 21 A. **Yes.**  
 22 Q. What is that?  
 23 A. **That's the Mercedes Benz in the garage.**  
 24 Q. Is that the same Mercedes that you collected the  
 25 latent print from the driver's door window?

- 1 A. **Yes.**  
 2 Q. After collecting these prints, you processed those.  
 3 Did you then send them to have them compared?  
 4 A. **Correct.**  
 5 Q. And on those particular prints, were they -- who  
 6 were they compared by?  
 7 A. **J.R. Smith and Detective Genevice.**  
 8 Q. What is your next involvement regarding this case?  
 9 A. **I think my next one was when they sent me out to the**  
 10 **auto pound, I collected a floor mat from the driver's side of**  
 11 **the Corvette.**  
 12 Q. What are you looking for when you collect that?  
 13 A. **That particular case, I think we were looking for**  
 14 **blood.**  
 15 Q. Do you know if there was any blood found on that  
 16 floor mat?  
 17 A. **No. I didn't get the results back myself.**  
 18 Q. I want to direct your attention now to November 9th  
 19 of 2001. Did you respond to a location at 7780 McCallum,  
 20 Apartment Number 26322?  
 21 A. **Yes.**  
 22 Q. What was the purpose in responding to that location?  
 23 A. **It was a follow-up call by Detective Brady and**  
 24 **Detective Winn. I think it was the suspect's ex-girlfriend's**  
 25 **apartment, is what I was told. And I don't know if they had**

1 received a consent, or how they did that, but we were there to  
2 process that.

3 Q. What was your role in processing that apartment?

4 A. Basically we were looking for the weapon used in the  
5 offense particularly. And I wound up collecting a weapon,  
6 and some bullets, and some prescription drugs.

7 Q. I'm handing you now what's been marked as State's  
8 Exhibit 76. Do you recognize that?

9 A. Do you want me to take the pistol out?

10 Q. Yes. For safety purposes, the weapon was  
11 actually --

12 A. This is the bag that I sealed and the ammo.

13 Q. When you say bag that you sealed, take that bag out  
14 and let me see that bag. I'm going to mark that as 76-A.  
15 What is this bag?

16 A. Basically an evidence bag we use. It's been sealed  
17 by me and initialed and dated.

18 Q. And what was in that bag?

19 A. The -- the pistol and the -- it would have been the  
20 cartridges, the box of bullets.

21 Q. Is that the bag that you sealed those in to have  
22 those sent to SWIFS for testing?

23 A. Yes.

24 Q. I'm also showing you 76-B. Do you recognize that?

25 A. Yeah. It's the pistol I collected, also.

1 Q. And this pistol was originally in the bag that you  
2 were originally talking about marked 76-A?

3 A. That's correct.

4 Q. After you collect a weapon or any type of -- or  
5 weapon and any ammunition, what is the normal testing that you  
6 send off to have done on it?

7 A. The weapon itself, primarily to ensure that it's in  
8 good working order and that it functions properly, and to  
9 compare with any projectiles recovered or any particular shell  
10 casings that are recovered.

11 Q. And at the time that you recovered the gun, you also  
12 recovered a box of ammunition; is that correct?

13 A. That's correct.

14 Q. I'm also handing you what's been marked as 76-C.  
15 Can you identify that?

16 A. Yes.

17 Q. How can you identify that?

18 A. It's my initials on the box.

19 Q. And is that the same box of cartridges that you  
20 retrieved from the ex-girlfriend's apartment?

21 A. Yes, it is.

22 Q. This is 76-D.

23 A. Those would have been cartridges in the magazine in  
24 the pistol.

25 Q. How many were in the pistol whenever you found it?

1 A. Six live in the magazine and one live in the  
2 chamber.

3 Q. How many total will a gun like that hold; do you  
4 know?

5 A. I didn't check it for capacity.

6 Q. When you say "one in the chamber," what does that  
7 mean?

8 A. That's one lined up with the barrel ready to be  
9 fired.

10 Q. 76-E, do you know what that is?

11 A. Looks like the test fires that SWIFS used to check  
12 the weapon.

13 Q. When you found that box of ammunition, how many  
14 bullets were in it?

15 A. Four live .38 -- FC .38 auto cartridges.

16 Q. And those were actually in the box when you found  
17 it?

18 A. Right.

19 Q. And that would be plus the seven that you actually  
20 took out of the weapon?

21 A. Out of the weapon, yes.

22 Q. Where did you find the pistol whenever you got  
23 there?

24 A. It was on the -- in the apartment they had a little  
25 wet bar with a -- it was sort of like a wet bar, but maybe not

1 a wet bar, like a hutch thing, where they had the mirror, and  
2 then underneath they had a cabinet with shelves --  
3 multiple-level shelves under the cabinet. It was on the top  
4 level shelf under the cabinet.

5 Q. Did you have to search to find this weapon, or how  
6 were you shown where it was?

7 A. A detective showed me where it was. I think it was  
8 Detective Brady.

9 Q. I'm handing you what's been marked as State's  
10 Exhibits 77 through 84. Do you recognize those?

11 A. Yes.

12 Q. Let me go back to 76-B a minute. That is the weapon  
13 that you found?

14 A. Right.

15 Q. This is the gun that you retrieved from the  
16 apartment on McCallum; is that correct?

17 A. Correct.

18 Q. And did you then take this weapon and process it for  
19 prints?

20 A. Yes, I did?

21 MS. LOWRY: Your Honor, at this time the State  
22 would offer State's Exhibits 76, 76-A, 76-B, 76-C and 76-D,  
23 and 76-E.

24 THE COURT: All right. Mr. Goeller -- or  
25 Mr. High, would you like to come up and take a look at it?



1 MR. HIGH: May I take the witness on voir  
2 dire?  
3 THE COURT: Yes.  
4 VOIR DIRE EXAMINATION  
5 BY MR. HIGH:  
6 Q. With respect to 76-E, the test fires, is this your  
7 writing on the front?  
8 A. No.  
9 Q. Okay. And with respect to what happened with these  
10 two bullets, the two -- is it cart cases? Can you read that?  
11 A. **Cartridge cases.**  
12 Q. Cartridge cases?  
13 A. **Yes. Two cartridge cases. Two bullets, two**  
14 **cartridge cases.**  
15 Q. Somebody else made that writing, and they know what  
16 happened with what -- what's contained inside; is that  
17 correct?  
18 A. **That's correct.**  
19 Q. And somebody else sealed this up?  
20 A. **That's correct.**  
21 Q. And you haven't had an opportunity to look inside to  
22 see what's inside after you sent it off to SWIFS; is that  
23 correct?  
24 A. **That's correct.**  
25 MR. HIGH: Your Honor, we don't have any

1 Q. And what are those?  
2 A. **Those are pictures I took of the apartment.**  
3 Q. And do they accurately reflect the apartment where  
4 the gun was found and -- just accurately reflect the apartment  
5 and the way it was wherever you took those pictures --  
6 A. **Yes.**  
7 Q. -- on November 9th?  
8 A. **Yes.**  
9 MS. LOWRY: Your Honor, the State would offer  
10 State's Exhibits 77 through 84.  
11 MR. HIGH: We have no objections to items 77  
12 through 83 at this time, and I think we're going to hold off  
13 on 84 for time being.  
14 THE COURT: All right. Then 77 through 83 are  
15 admitted.  
16 Q. BY MS. LOWRY: I'm also handing you what's been  
17 marked as State's Exhibit 85. Can you identify that?  
18 A. **Yeah. It's Diazepam tablets I collected.**  
19 Q. Where did you collect those?  
20 A. **From the kitchen, kind of countertop, above the sink**  
21 **level.**  
22 Q. Why did you collect those?  
23 A. **Sometimes -- being a prescription drug, I -- I'm**  
24 **not a expert on this, but I think Diazepam is somewhere along**  
25 **the Valium line, which sometimes can have a bearing on it if**

1 objection to items 76, 76-A, 76-B, 76-C, or 76-D; however, we  
2 do object to item 76-E since this witness has no personal  
3 knowledge of the items contained therein. In addition, the  
4 writing on the outside, he does not know whose writing that  
5 is, and I believe the State will properly authenticate that  
6 with the appropriate witness, but at this point it's not  
7 properly authenticated, so we would object to its introduction  
8 at this time.  
9 THE COURT: All right. With regard to 76-E,  
10 the objection is sustained. 76, 76-A, B, C and D are  
11 admitted.  
12 Q. BY MS. LOWRY: Just with regard to 76-C, how many  
13 cartridges are left in that?  
14 A. **Two.**  
15 Q. And you said that there were four found in there  
16 wherever you recovered it initially?  
17 A. **Correct.**  
18 Q. And how many test fires are in 76-E?  
19 A. **Two.**  
20 Q. 76-C (sic) are the seven bullets that you recovered  
21 actually from the weapon which is 76-B; is that correct?  
22 A. **That's correct.**  
23 Q. Going back to the photographs that I handed you  
24 earlier, do you recognize those?  
25 A. **Yes.**

1 **people are going to claim depression-type certain things, so I**  
2 **go ahead and collect them just to be on the safe side in case**  
3 **it's relevant later.**  
4 Q. Was it your impression -- did you know who those  
5 belonged to?  
6 A. **No.**  
7 MS. LOWRY: Your Honor, at this time the State  
8 would offer, again, 84 and 85.  
9 MR. HIGH: Your Honor, may I take the witness  
10 on voir dire briefly?  
11 THE COURT: Yes, sir.  
12 VOIR DIRE EXAMINATION  
13 BY MR. HIGH:  
14 Q. Officer Smith, just so the record is clear, we're in  
15 a female's apartment. Do you recall her name?  
16 A. **No.**  
17 Q. Would it have been Tawny, first name?  
18 A. **I think that's what they had said.**  
19 Q. And this isn't -- this isn't the Defendant's  
20 apartment, Ivan Cantu's, as far as you know?  
21 A. **As far as I know.**  
22 Q. And this wasn't the crime scene, as far as you know?  
23 A. **Correct.**  
24 Q. And you just testified you didn't know whose this  
25 is. You don't know whose this is?

1 **A. That's correct.**

2 Q. And for the record, State's Exhibit 85 is allegedly  
3 a drug called Diazepam. Again, we haven't tested it, but  
4 that's what it says, and State's Exhibit 84 is a picture  
5 depicting the same, Diazepam; is that correct?

6 **A. Yes.**

7 MR. HIGH: Your Honor, at this time we object.  
8 I don't believe there's been any relevance established between  
9 this evidence and my client. Also, with respect -- not  
10 knowing whose it is, there's no way to link it to him. I  
11 don't believe there's been any allegation of possession of a  
12 controlled substance, and certainly there's nothing to  
13 authenticate that it was his or had anything to do with this  
14 offense. So, we'd object at this time.

15 THE COURT: Ms. Lowry?

16 MS. LOWRY: I'll offer more testimony.

17 THE COURT: Say, could I see 84 and 85 there?

18 MS. LOWRY: Yes, Your Honor.

19 Q. BY MS. LOWRY: Detective Smith, when y'all responded  
20 to the apartment on McCallum, did you search the whole  
21 apartment just to see what all was there, or why is it that  
22 you only recovered the gun, the ammunition and the Diazepam?

23 **A. Well, we looked through the whole apartment, but  
24 then you determine what may be of relevance to the crime, and  
25 that may or may not have been so we go ahead and collect it as**

1 **opposed to, like, a box of bullets. May or may not have been,  
2 but we go ahead and collect it.**

3 Q. And were those items that had basically been pointed  
4 out by Ms. Svihovec, the renter of the apartment?

5 **A. Yes.**

6 Q. As not being hers?

7 **A. Right.**

8 MS. LOWRY: Your Honor, we would just reoffer  
9 84 and 85.

10 MR. HIGH: Same objection, Your Honor.

11 THE COURT: Let me ask you because perhaps I  
12 missed it. What apartment were these found in?

13 MS. LOWRY: 7780 McCallum, Number 26322, the  
14 apartment of the ex-girlfriend of the Defendant.

15 THE COURT: Tell me the relevance.

16 MS. LOWRY: Just that they were items that are  
17 allegedly left there. They were left there with the gun.  
18 They were just -- it was something else that was found with  
19 the gun.

20 And, Your Honor, we will reoffer that at another  
21 time with another witness, if you feel it's more appropriate.

22 THE COURT: All right. We'll hold off on 84  
23 and 85.

24 MR. HIGH: So for the record, 84 and 85 are  
25 not admitted at this time?

1 THE COURT: The objection is sustained for 84  
2 and 85.

3 MR. HIGH: Thank you.

4 Q. BY MS. LOWRY: Let's talk about these photos.  
5 State's exhibit 77, what exactly is that?

6 **A. It's a love seat when you come in the front door.**

7 Q. Why did you photograph that?

8 **A. Best I remember, I was -- I take general photographs  
9 of usually anything -- anything I enter or allowed to collect  
10 stuff from.**

11 Q. Was Detective Winn, the lead detective for the whole  
12 homicide, was he with you this day?

13 **A. Yes.**

14 Q. And was he kind of overseeing what was collected and  
15 what photographs were taken and things of that nature?

16 **A. That's correct. And if the detective wants a  
17 certain picture taken, I'll take a picture of what they  
18 request for investigation.**

19 Q. State's Exhibit 78, what is that?

20 **A. That's that sort of a wet bar hutch -- hutch thing,  
21 cabinet.**

22 Q. State's Exhibit 79, is that the same hutch with the  
23 door open?

24 **A. Same hutch, underneath, yes.**

25 Q. State's Exhibit Number 83, what is that?

1 **A. Close-up of the weapon and the magazine and the  
2 rounds.**

3 Q. In that photograph, there's nothing written on the  
4 magazine. On the gun that we have in evidence, there's  
5 actually a "six" on there. Do you know how that got there?

6 **A. A six?**

7 Q. Uh-huh.

8 **A. No. I put my initials on the gun, and that's all I  
9 put.**

10 Q. Did you see your initials on the gun when you were  
11 looking at it earlier?

12 **A. Yes.**

13 Q. And what is State's Exhibit 82?

14 **A. It's just the opposite side of the weapon and the  
15 box of cartridges.**

16 Q. And State's Exhibit 80 and 81 are?

17 **A. The pistol and the box of cartridges as they lie  
18 when I found them.**

19 Q. And at the time that you found the gun and collected  
20 it, did you take down the serial number of that weapon?

21 **A. Yes.**

22 Q. And is that the same weapon that you processed for  
23 latent prints?

24 **A. Yes.**

25 Q. Can you tell me what the serial number was and if it

1 matches this weapon that has been identified as State's  
 2 Exhibit 76-B?  
 3 **A. Do you want me to just look and match them?**  
 4 Q. Please.  
 5 **A. Yes. It's the same, MS-21397. It's the same as in**  
 6 **my supplement.**  
 7 Q. When you find this weapon, as far as securing it and  
 8 making sure that it doesn't leave your presence, what do you  
 9 do with it while you're searching the apartment?  
 10 **A. Can you better explain?**  
 11 Q. Does that make sense? I guess, how do you ensure  
 12 that no one else has possession of it or tampers with it after  
 13 you have found it?  
 14 **A. Well, after I found, the -- you know, like, when it**  
 15 **says three -- the apartment is secure, so no one can come in**  
 16 **or out. So I take care of whatever I need to do, and then**  
 17 **when I'm done, I'll collect the evidence and put it in a**  
 18 **secure location.**  
 19 Q. What is your procedure for when you leave the  
 20 apartment, how do you --  
 21 MS. LOWRY: Your Honor, may we have just a  
 22 moment?  
 23 THE COURT: Yeah, sure.  
 24 (Brief pause in proceedings.)  
 25 MS. LOWRY: Okay.

1 Q. BY MS. LOWRY: When I brought the envelope up to you  
 2 earlier, you said this is not -- or whenever I showed you the  
 3 bag, you said this is the bag that the gun was originally in.  
 4 Explain that to us, as far as what do you do with the gun  
 5 whenever you get it back to the police station, or where do  
 6 you go with it?  
 7 **A. What happens is, I'll collect the evidence,**  
 8 **transport it back to my office. Pretty much I'll unload it**  
 9 **and note -- excuse me -- kind of denote where I found what**  
 10 **cartridge casings, you know, if there were any spent or any**  
 11 **live cartridges. And then I will usually fingerprint it right**  
 12 **away before anyone has time to mess with the fingerprints.**  
 13 **And then we package it and package the cartridges and weapon**  
 14 **and send it to SWIFS in a Zip-lock bag like that that's**  
 15 **sealed.**  
 16 Q. And from the time that you seal it in the bag until  
 17 it goes to SWIFS, does anyone have access to it?  
 18 **A. No. It's in a locked facility, and every person**  
 19 **that's authorized to come in contact with it, we have a chain**  
 20 **of custody where they sign off to ensure chain of custody.**  
 21 Q. So from the time that you took it from the apartment  
 22 until you fingerprinted it, was it in anyone else's possession  
 23 other than yours?  
 24 **A. No.**  
 25 Q. Were you able to recover any latent fingerprints

1 from that weapon?  
 2 **A. Yes.**  
 3 Q. And where were they?  
 4 **A. On the side of the magazine.**  
 5 Q. Did you properly ensure those fingerprints were  
 6 preserved and then compared?  
 7 **A. Yes, I did.**  
 8 Q. Did you find any other weapons -- any other  
 9 fingerprints on the weapon, other than on the magazine?  
 10 **A. No.**  
 11 Q. In sending it to SWIFS, what kinds of tests did you  
 12 ask them to perform?  
 13 **A. That it was in good working order, the pistol. I**  
 14 **asked them to compare the pistol to any projectiles recovered,**  
 15 **either -- sometimes they'll find stuff later, and I'm not**  
 16 **involved. Sometimes they'll find them from the complainants.**  
 17 Q. Did you have any more involvement in this  
 18 investigation after that?  
 19 **A. No.**  
 20 MS. LOWRY: Pass the witness.  
 21 THE COURT: All right, sir. I tell you what,  
 22 this is probably a good time to take a recess, and so let's be  
 23 in recess for 15 minutes.  
 24 Is there plenty of hot coffee, Billy, back there?  
 25 THE BAILIFF: Yes, sir. All rise.

1 (Jury exits the courtroom at 3:10 p.m.)  
 2 (Recess taken.)  
 3 THE BAILIFF: All rise.  
 4 (Jury enters the courtroom at 3:30 p.m.)  
 5 THE COURT: Please be seated. All right.  
 6 Ms. Lowry.  
 7 MS. LOWRY: Thank you.  
 8 Q. BY MS. LOWRY: Detective Smith, I'm also handing  
 9 you what has been marked as State's Exhibits 86, 87 and 88,  
 10 and do you recognize those?  
 11 **A. Yes.**  
 12 Q. What are they?  
 13 **A. They're latent fingerprints I lifted from the**  
 14 **Mercedes and from the pistol magazine.**  
 15 Q. How do you identify those?  
 16 **A. They have my initials and my badge number on them.**  
 17 Q. And are those the prints that, as they were lifted,  
 18 you put them on those cards and that's how you preserved them?  
 19 **A. Yes.**  
 20 Q. And are they in the same condition that they were  
 21 when you preserved them on that card --  
 22 **A. Yes.**  
 23 Q. -- and sent them off to be compared?  
 24 **A. Yes.**  
 25 MS. LOWRY: Your Honor, the State would offer

1 State's Exhibits 86, 87 and 88.  
2 MR. HIGH: Take the witness on voir dire, Your  
3 Honor?

4 THE COURT: Yes.

5 VOIR DIRE EXAMINATION

6 BY MR. HIGH:

7 Q. I notice there's some writing on the front part of  
8 the print card.

9 A. Uh-huh.

10 Q. And it indicates some initials, JRS. Whose initials  
11 are those?

12 A. **Detective J.R. Smith in the back.**

13 Q. And it also indicates a name, Ivan Cantu, and a  
14 number below it, 746052. Who wrote those letters?

15 A. **Probably Detective Smith.**

16 Q. But you don't know for sure. You didn't write those  
17 letters?

18 A. **No. Usually the person that identifies the print  
19 would write those.**

20 MR. HIGH: May I approach just a minute, Your  
21 Honor?

22 THE COURT: Yes.

23 Q. BY MR. HIGH: With respect to 86, this writing is  
24 not yours; is that correct?

25 A. **That's correct.**

1 Q. And with respect to 87, that writing is not yours.  
2 And what about this right here in the center, is that yours?

3 A. **No.**

4 Q. And with respect to State's 88, this writing at the  
5 top, that's not your writing, is it?

6 A. **No.**

7 Q. Okay. What about this add-on right here?

8 A. **No.**

9 Q. Okay. That thing that says "A1," it looks like it's  
10 a little sticky that's stuck to the front of it, that's not  
11 your writing?

12 A. **Correct.**

13 Q. And back to 87, there's another sticky note on  
14 here, "A2," that's not your writing, either?

15 A. **No.**

16 MR. HIGH: Okay. Your Honor, at this time  
17 until that writing can be authenticated and subject to  
18 cross-examination, we would object that it contains hearsay,  
19 and it's not properly authenticated at this point.

20 THE COURT: All right. The objection is  
21 sustained.

22 Q. BY MS. LOWRY: With regards to these items marked as  
23 86, 87, and 88, the actual part that contains the fingerprint  
24 that was listed, are they in the same condition that they were  
25 whenever you placed them on that card?

1 A. **Yes.**

2 Q. And that's the same condition -- I mean, when you  
3 placed them on that card, that was right after you had lifted  
4 them from the surfaces that you got them from?

5 A. **Correct.**

6 Q. Can you identify, just so that the record is clear,  
7 exactly which writing is yours on State's Exhibit 86?

8 A. **The whole front of the card with the complainant  
9 location, service number, date, offense, lifted by badge  
10 number and the description is mine.**

11 Q. And the front of the card, on State's Exhibit 86,  
12 when you say the front of the card, that's the card -- that's  
13 the side that is opposite where the exhibit sticker is?

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

15 Q. And on the side where the State's Exhibit sticker is  
16 on Number 86 is the print itself, and then there's some other  
17 writing that is not yours; is that correct?

18 A. **That's correct. The writing is not mine.**

19 Q. Okay.

20 A. **And on State's Exhibit 88, on the front side of the  
21 card opposite the sticker, it has my initials and my badge  
22 number and my description of the latent and where it was  
23 lifted.**

24 Q. And on the back side, the side with the sticker on  
25 it, it contains the print that you lifted and placed onto that

1 card?

2 A. **That's correct.**

3 Q. State's Exhibit 87?

4 A. **87, front of the card would be -- my handwriting  
5 would be lifted by and badge number, as well as the  
6 description where I found the latent print.**

7 Q. And on the back side again -- the side with the  
8 sticker on it, has the actual prints that you lifted and  
9 placed onto that card?

10 A. **That's correct.**

11 Q. On any of those three exhibits, did you do any of  
12 the writing on the sides with the prints on them?

13 A. **No.**

14 MS. LOWRY: Pass the witness.

15 THE COURT: All right.

16 CROSS-EXAMINATION

17 BY MR. HIGH:

18 Q. Detective Forrest Smith?

19 A. **Yes.**

20 Q. Okay. And there's a Detective J.R. Smith --

21 A. **Correct.**

22 Q. -- involved in this case?

23 My name is Don High. I don't believe we've had a  
24 chance to meet yet. Good afternoon.

25 I have a few questions for you. Let's go back to

- 1 the point in time when you were called out to the Gibbons  
 2 Drive address. What time did you receive your call that day?  
 3 **A. I believe it was about 6:15. 6:15 p.m.**  
 4 Q. Okay. I notice you're wearing a uniform today.  
 5 Are you a detective?  
 6 **A. Yes.**  
 7 Q. Do you normally wear a uniform, or do you wear  
 8 civilian clothes?  
 9 **A. We have a fatigue uniform.**  
 10 Q. Explain to me what that is.  
 11 **A. It's basically a wash and wear uniform since you do**  
 12 **a lot of getting dirty in my particular job, so it's easy to**  
 13 **wash and keep clean. But it's a regular blue uniform, and**  
 14 **just not marked as much.**  
 15 Q. Okay. So you drove out there, I take it, in a van  
 16 that's equipped to do physical evidence?  
 17 **A. That's correct.**  
 18 Q. And you -- how long have you been doing physical  
 19 evidence, Detective Smith?  
 20 **A. Two and a half years.**  
 21 Q. Okay. So at the time you were doing this, you had  
 22 been doing it about a year and a half?  
 23 **A. Right.**  
 24 Q. Okay. And when were you -- I guess you had to work  
 25 with somebody or apprentice with somebody when you started

- 1 out?  
 2 **A. Correct.**  
 3 Q. And how long did you apprentice with somebody? Who  
 4 did you apprentice with?  
 5 **A. Generally about everyone in the office, and it's**  
 6 **basically a couple of months of riding out, training with**  
 7 **different people, and then just going to the many schools we**  
 8 **go to.**  
 9 Q. So how long had you been on your own, I guess, or  
 10 flying solo, so to speak?  
 11 **A. Generally training with someone else lasts about two**  
 12 **months.**  
 13 Q. Okay. So you had been on your own about 16 months,  
 14 year and a half?  
 15 **A. Approximately.**  
 16 Q. And do you have any special certifications, anything  
 17 like that to be a physical evidence expert, or any kind of  
 18 certifications available?  
 19 **A. Well, different certifications are available but**  
 20 **they -- you'll, like, go to different classes to be, like, a**  
 21 **latent print examiner, an eight-hour school, and you have 40**  
 22 **hours of pattern interpretation. Then you might have, you**  
 23 **know, palm print school, stuff like that.**  
 24 Q. Have you pulled any of those certifications?  
 25 **A. Yeah. I've been to all those schools.**

- 1 Q. And you hold all of those certifications?  
 2 **A. If you want to call it a certification. I don't**  
 3 **know if that's -- because there's an IAI that goes into that,**  
 4 **International Association of Identification. So I -- I don't**  
 5 **know if you'd consider it a certification as being qualified,**  
 6 **yes.**  
 7 Q. Okay. Do you do comparisons -- fingerprint  
 8 comparisons, or just the lifting part?  
 9 **A. Both.**  
 10 Q. Okay. So you do do that?  
 11 **A. Yes.**  
 12 Q. When you were dispatched out to this crime scene,  
 13 had you worked other homicides before?  
 14 **A. Yes.**  
 15 Q. Can you give me an idea, any idea how many you had  
 16 worked before you worked this one?  
 17 **A. Not really. Probably guess an average of 15 to 25,**  
 18 **maybe.**  
 19 Q. Okay. Is that per year, per month, or is that the  
 20 total you had worked?  
 21 **A. Probably about total. You know, you may get zero to**  
 22 **three a month --**  
 23 Q. Okay.  
 24 **A. -- in Dallas.**  
 25 Q. Fair enough. So when you went to the house there

- 1 on Gibbons Drive, the way I understood your testimony is you  
 2 were working backup to Detective Whitsitt?  
 3 **A. That's correct.**  
 4 Q. So he was really the lead, physical evidence  
 5 detective?  
 6 **A. That's correct.**  
 7 Q. And I kind of picked up Whitsitt has been doing this  
 8 quite a while, has he not?  
 9 **A. He's been doing it probably a couple of years longer**  
 10 **than me.**  
 11 Q. Okay. And he was the lead detective on the case?  
 12 **A. Correct, physical evidence detective.**  
 13 Q. Okay. And you checked with him, and he said, here,  
 14 this is what I need for you to do, check for fingerprints?  
 15 **A. That's correct.**  
 16 Q. Okay. And you indicated that you began by working  
 17 the front and working your way in; is that correct?  
 18 **A. Usually, yes.**  
 19 Q. Okay. Is that what you did in this case?  
 20 **A. Yes.**  
 21 Q. And when you worked, did you find any latent prints  
 22 on the front door of that house on Gibbons Drive?  
 23 **A. I did find some on the front door above the dead**  
 24 **bolt?**  
 25 Q. Okay. Were those prints lifted?

- 1 A. Yes.
- 2 Q. And what was done with those prints?
- 3 A. Submitted to our AFIS computer, which is the
- 4 Automated Fingerprint Identification computer.
- 5 Q. Okay. And did you save those prints?
- 6 A. Yes.
- 7 Q. Were they put into evidence?
- 8 A. Right now?
- 9 Q. Right.
- 10 A. No.
- 11 Q. But you do have those prints?
- 12 A. Yes.
- 13 Q. Okay. And was a print comparison done of those
- 14 prints?
- 15 A. Yes.
- 16 Q. Okay. And were any results obtained as a result of
- 17 lifting those prints from the front door?
- 18 A. Just came back, out of the comparisons we do, it was
- 19 negative, which basically means we didn't identify them to
- 20 anyone.
- 21 Q. Couldn't be identified, couldn't link them to
- 22 anybody?
- 23 A. Yeah, at this point, correct.
- 24 Q. With respect to entering into the house and going in
- 25 and working your way in, did you find any other prints? I

- 1 want to talk about it in sequence if we can do that. In your
- 2 mind, can you think of the next set of prints that you came
- 3 to?
- 4 A. Yeah. Well, you know, out of all the stuff we
- 5 printed, which, like I said in this case, the scenario is
- 6 pretty much most everything I thought that could be touched in
- 7 the house. I think the other print was lifted off the trash
- 8 can lid -- it's kind of a metal surface -- in the kitchen.
- 9 And then the --
- 10 Q. Let's talk about that right there. The trash can
- 11 lid is metal?
- 12 A. Right.
- 13 Q. And give me an idea what we're talking about? Is it
- 14 like an aluminum trash can, kind of decorative trash can?
- 15 A. I haven't seen a picture of it recently, but what I
- 16 remember is, like, one of the old style metal trash cans. It
- 17 had a metal top that was suitable for lifting prints.
- 18 Q. And for the jury, you need a surface that's smooth
- 19 that will receive a print and leave a print; is that correct?
- 20 A. Generally speaking.
- 21 Q. Okay. Because generally you can't get it off a
- 22 peace of leather or peace of paper or something like that?
- 23 A. Well, you can. It just depends on the techniques
- 24 you have available. But generally, most of the time -- and
- 25 those can be rare cases. Most of the time you're going to

- 1 require a flat smooth surface, something like metal or
- 2 plastic.
- 3 Q. Okay. So in this instance you had a trash can
- 4 that's available in the kitchen. You checked it, you dusted
- 5 it, you found a print on the top of the trash can?
- 6 A. Right.
- 7 Q. Did you lift that print?
- 8 A. Yes.
- 9 Q. Was there any comparison done with that print?
- 10 A. Yes.
- 11 Q. Okay. And what was the result of that comparison?
- 12 A. It didn't come back -- we weren't able to identify
- 13 it to any one person at this time.
- 14 Q. Okay. And I take it you saved that print?
- 15 A. Yes.
- 16 Q. But that print hasn't been offered into evidence
- 17 today?
- 18 A. Correct.
- 19 Q. Okay. And incidentally, when you make comparisons,
- 20 do you know who you compared the prints to? Did you do the
- 21 comparisons, or did somebody else do them?
- 22 A. I didn't do them, but if you're asking how we do
- 23 them -- is that what you're asking?
- 24 Q. That's fair enough.
- 25 A. I didn't do it in this case, but normally you have a

- 1 known person that you want to compare a latent print to, and
- 2 you compare the print to that person.
- 3 Q. Do you know whether or not those prints, like on the
- 4 front door and on the trash can, were compared to the deceased
- 5 in this case, Amy Kitchen or James Mosqueda?
- 6 A. I don't -- I'm not sure if they were or not as far
- 7 as the complainants.
- 8 Q. Do you know whether or not it was compared to any of
- 9 their close acquaintances, any other suspects in the case?
- 10 A. No. I have not -- I don't know.
- 11 Q. Okay. They may have; you just don't know?
- 12 A. Yes. Because we're all allowed to compare anything
- 13 we have knowledge about, so as far as I'm -- as far as my
- 14 knowledge, they weren't.
- 15 Q. Okay. Let's keep working. We've talked about the
- 16 trash can. Where else in the house did you lift prints?
- 17 A. Then we go back to the car, the Mercedes.
- 18 Q. All right. So that would be a natural thing to do,
- 19 because you've worked your way through the kitchen, and then
- 20 you'd make a loop into the garage basically?
- 21 A. Well, I did that. And I probably did the interior
- 22 before I went back to the garage. So, I did the back room,
- 23 the bathroom, and then went out to the garage.
- 24 Q. Did you find any other prints in the back room?
- 25 A. No.

- 1 Q. No other latent prints that you could lift?  
 2 A. No.  
 3 Q. Okay. What about in the other bedrooms and formal  
 4 dining room, anything like that?  
 5 A. **Those are the only two prints inside that we lifted.**  
 6 Q. Okay. But you did check for other prints?  
 7 A. **Oh, yes.**  
 8 Q. Okay. Then it was time to go to the garage?  
 9 A. **Right.**  
 10 Q. And there was only one car in the garage?  
 11 A. **Correct.**  
 12 Q. And do you know -- at that point, do you know  
 13 whether or not that car had been moved or not?  
 14 A. **No. Just the parking light being on was suspicious,**  
 15 **like something had -- someone had been doing something to it.**  
 16 Q. Did you check with any of the officers to see if  
 17 that car had been moved at any time before your arrival?  
 18 A. **Not that I recall.**  
 19 Q. I seem to recall in the press (sic) that the car was  
 20 in a diagonal position in the garage. It wasn't in that  
 21 straight position in the garage. Do you have any knowledge of  
 22 that?  
 23 A. **No. When I was there, it was in a straight**  
 24 **position --**  
 25 Q. Okay.

- 1 A. **-- for one slot.**  
 2 Q. You're not aware of it being crossways or diagonal  
 3 in the garage?  
 4 A. **Not when I was there, it wasn't.**  
 5 Q. Okay. With respect to checking the car, tell me the  
 6 process how you check a car for prints. How's the best way to  
 7 do that?  
 8 A. **I just start at the driver's door and work myself**  
 9 **around. When I complete the outside, then I'll do the inside.**  
 10 Q. All right. And I suppose if you're looking for a  
 11 smooth surface, a door handle would be perfect, right?  
 12 A. **The door handle, the body, windows, the outside is**  
 13 **real good for prints.**  
 14 Q. Okay. Did you find any prints on the door handle?  
 15 A. **No.**  
 16 Q. Did you find any prints on the -- on any of the  
 17 quarter panels, the right, front quarter panel, the right rear  
 18 quarter panel?  
 19 A. **The only -- the -- I lifted the two, that I'm sure**  
 20 **you're aware about, on the inside window, driver's side, and**  
 21 **the outside window, driver's side. And the only other print I**  
 22 **found on the car was on the hood.**  
 23 Q. Okay. So let me be specific. You didn't find any  
 24 prints on the left or right -- the left, front quarter panel  
 25 or right, rear quarter panel, you didn't find any prints on

- 1 those quarter panels?  
 2 A. **That's correct.**  
 3 Q. You didn't find any prints on the right, front  
 4 quarter panel or the right, rear quarter panel?  
 5 A. **Correct.**  
 6 Q. You didn't find any on the trunk -- the hood where  
 7 the trunk comes down?  
 8 A. **No.**  
 9 Q. But you did find a print on the trunk hood?  
 10 A. **Correct.**  
 11 Q. Tell us about that print. Was that print lifted?  
 12 A. **Yes.**  
 13 Q. Was it preserved as evidence?  
 14 A. **Yes.**  
 15 Q. Was it compared with other prints, I guess?  
 16 A. **Yes.**  
 17 Q. And what was the result of that comparison?  
 18 A. **It wasn't identified to any person.**  
 19 Q. Now, you guys have a database that you can use. If  
 20 you have an unknown print, you can run it through a database  
 21 and maybe you will have a match come up?  
 22 A. **That was the AFIS computer I was talking about**  
 23 **earlier.**  
 24 Q. Was that done?  
 25 A. **Yes.**

- 1 Q. And no match?  
 2 A. **No match.**  
 3 Q. Okay. And by this time, you've worked the outside  
 4 of the car, and I assume you're checking the chrome, too?  
 5 A. **Sure.**  
 6 Q. And you didn't find any prints on the chrome?  
 7 A. **No.**  
 8 Q. With respect to doing inside the car, on the door  
 9 handles -- there's no prints on the door handle, do you not go  
 10 into the car?  
 11 A. **Correct.**  
 12 Q. And tell us the process for how you check the  
 13 interior of the car?  
 14 A. **Basically I start with the door windows. If they**  
 15 **have a metal handle, do the handle, seat belt buckles, the**  
 16 **latch for the seat belt, rearview mirror, maybe inside of the**  
 17 **windshield, maybe a stereo with a plastic face. There's not a**  
 18 **whole lot to process due to textured items. The dash is**  
 19 **generally textured, the doors are textured, the emergency**  
 20 **brake is textured, and those are very hard to get prints off**  
 21 **of, so basically those surfaces there -- or anything inside**  
 22 **the car that can be processed, like a water bottle. So you**  
 23 **just process those things.**  
 24 MR. HIGH: Approach the witness, Your Honor?  
 25 THE COURT: Yes.

1 Q. BY MR. HIGH: Looking at State's Exhibit Number 2,  
2 you might want to take a look at that. We're talking about a  
3 two-door Mercedes, are we not?

4 A. Correct.

5 Q. And do you recall whether it was -- it had manual  
6 transmission or, you know, automatic transmission?

7 A. I don't remember.

8 Q. And you certainly can't tell from looking at that  
9 photo?

10 A. No.

11 Q. And I take it a Mercedes like that, that's just a  
12 two-door, it's not generally set up for four passengers.  
13 You're not going to have to check as many door handles.  
14 You're not going to have to check the back as extensively as  
15 you would a four-door?

16 A. Correct.

17 Q. So with respect to checking that, you -- you look  
18 around, you look for surfaces where there may be prints, and I  
19 take it by your testimony you didn't see any other, other than  
20 the windows, is that right, and maybe the possibility of the  
21 windshield?

22 A. As far as prints?

23 Q. Right.

24 A. And the one on the hood.

25 Q. Okay. And you found a print, you say on the

1 driver's side inside window?

2 A. Yeah.

3 Q. And you lifted that print?

4 A. And --

5 MR. HIGH: May I approach the witness, Your  
6 Honor?

7 THE COURT: Yes.

8 Q. BY MR. HIGH: That's going to be Number 87, State's  
9 Exhibit Number 87; is that right?

10 A. That's correct.

11 Q. And you also lifted the print on the outside, left  
12 driver window of the Mercedes, which is State's Exhibit Number  
13 88; is that correct?

14 A. That's correct.

15 Q. Okay. And so when those prints are lifted, they're  
16 saved to a card, and at that point you're going to have to  
17 wait until you get back to the office to do all this other  
18 processing, right, do the print comparison, run it through the  
19 computer, that sort of thing?

20 A. Right.

21 Q. So at that point you had several print examples,  
22 more than just these two. You had the one from the front  
23 door. You had the one from the trash can. You had the one  
24 from the hood, and you had these two from the windows. That's  
25 a total of five; is that correct?

1 A. Correct.

2 Q. Okay. Was there any other prints discovered by any  
3 other physical evidence detective at the crime scene?

4 A. Not -- I think Whitsitt lifted his prints later, but  
5 I don't think they were at the crime scene. You'd have to  
6 check with him on that if he got any from there, but I don't  
7 think so.

8 Q. Okay. I believe you testified that you sent  
9 these prints, the ones we've talked about, to J.R. Smith  
10 and Genevive to perform the print comparison?

11 A. Correct.

12 Q. So you didn't actually do the comparison?

13 A. That's correct.

14 Q. Now, I didn't quite get it, but your next  
15 involvement in the case is when you went out to the auto pound  
16 in South Dallas on Vilbig Street?

17 A. Uh-huh.

18 Q. What day was that; do you recall?

19 A. I think it was the 8th? The 8th.

20 Q. November the 8th of 2000?

21 A. Right.

22 Q. So that would have been approximately two days  
23 later?

24 A. That's correct.

25 Q. There's an awful lot of vehicles at the auto pound;

1 isn't that right?

2 A. Yes.

3 Q. Did you have a pretty good idea where it was located  
4 when you got out there?

5 A. Yeah. The auto pound, it's logged into our computer  
6 system with the row number.

7 Q. Okay. Do you recall how this vehicle got to the  
8 pound, any knowledge of that?

9 A. No. I remember them talking about it -- a Corvette  
10 being somewhere, but I don't have any -- I was never given any  
11 information on exactly where it was found or how it got there.

12 Q. So you don't know if anybody drove it there, or if  
13 it was towed or --

14 A. I have no idea.

15 Q. -- piggybacked there?

16 A. I have no idea.

17 Q. Okay. And once you found the Corvette, all you did  
18 was retrieve the driver's side floor mat; is that right?

19 A. That's correct.

20 Q. Did you do any fingerprinting of the Corvette?

21 A. No.

22 Q. Did you have any orders to do fingerprinting of the  
23 Corvette?

24 A. No.

25 Q. You had one mission, and that was to get the



1 driver's side floor mat, and that's what you did?  
 2 **A. Yeah. That's what I was sent out there for.**  
 3 Q. Did you look around inside the Corvette at all?  
 4 **A. I'm sure I did. I just -- I don't remember anything**  
 5 **in there.**  
 6 Q. You don't recall its condition, what was inside it?  
 7 **A. Not really. Like I said, this isn't my main case so**  
 8 **they sent me to get the mat. Yeah, I'll look in there, and**  
 9 **that will give me an idea of what, hey, you're processing**  
 10 **or you're looking for this. I see so many cars, I'm not**  
 11 **going -- I don't really remember.**  
 12 MR. HIGH: Approach the witness, Your Honor?  
 13 THE COURT: Yes.  
 14 Q. BY MR. HIGH: Let me show you State's Exhibit Number  
 15 60. Does that look familiar to you at all?  
 16 **A. I don't remember it.**  
 17 Q. You don't remember it?  
 18 **A. Huh-uh.**  
 19 Q. Okay. So you don't know -- you don't recall what  
 20 the inside of the Corvette looked like?  
 21 **A. Not generally, no.**  
 22 Q. And you don't know what was in there? You don't  
 23 know whether there was anything in there? You can't tell this  
 24 jury there was stuff in there, or there wasn't stuff in there;  
 25 is that right?

1 **A. I have no idea. I don't remember.**  
 2 Q. Okay. Did you do any testing for any other kind of  
 3 substance, like drugs, marijuana, anything like that?  
 4 **A. As far as the floor mat?**  
 5 Q. As far as -- as far as the Corvette?  
 6 **A. No. All I did was collect the mat and send it to**  
 7 **SWIFS for blood.**  
 8 Q. Okay. What did you do with that floor mat once you  
 9 got it?  
 10 **A. I secure it in a paper bag, and I leave it in the**  
 11 **bag and transport it to the office where I put it in a box and**  
 12 **send it to SWIFS.**  
 13 Q. Did you have any more contact with it from that  
 14 point forward?  
 15 **A. No.**  
 16 Q. Then you had further involvement with the case on  
 17 November the 9th, and that's when we're talking about the  
 18 McCallum apartment?  
 19 **A. That's correct.**  
 20 Q. And you met Detectives Brady and Winn over there?  
 21 **A. Right.**  
 22 Q. And this was the suspect's -- Ivan Cantu's  
 23 ex-girlfriend, do you recall her name? Did you know her name?  
 24 **A. What you said earlier.**  
 25 Q. Tawny?

1 **A. Tawny something or the other.**  
 2 Q. And did you arrive there at the same time as the  
 3 other guys, or what was the situation when you got there?  
 4 **A. They arrived first, and they called me after they**  
 5 **were there.**  
 6 Q. Where were you? Where were you in Dallas? Where  
 7 were you located?  
 8 **A. In my office, 718 Cantrell, downtown.**  
 9 Q. So you had to drive from downtown out to the  
 10 McCallum property?  
 11 **A. That's correct.**  
 12 Q. So they waited there for you 30 minutes or so?  
 13 **A. However long.**  
 14 Q. Okay. And do you know whether or not this gun, or  
 15 any of this other evidence that you retrieved was moved in  
 16 that period of time?  
 17 **A. As far as I'm aware of, it wasn't.**  
 18 Q. Okay. But you don't know for sure?  
 19 **A. That's just what they told me. They didn't move**  
 20 **anything.**  
 21 Q. Okay. And at that point when you got to the  
 22 apartment, what happened then?  
 23 **A. Basically what happens is if detectives get a**  
 24 **consent or something to search a place, they'll go check it**  
 25 **out. If they don't find anything, they'll go on their way.**

1 **If they find something, they'll call us out to come, collect**  
 2 **and photograph and search thoroughly. So I'll get out there,**  
 3 **and they kind of showed me what they had found, and so I took**  
 4 **pictures. Once that happens, I move everyone out, take**  
 5 **pictures of the whole apartment, take pictures of the**  
 6 **evidence, and then I'll collect that evidence and look**  
 7 **further.**  
 8 Q. That's what you did?  
 9 **A. Right.**  
 10 Q. Okay. And I take it when you walked in, that gun  
 11 was in that cabinet in that picture as we saw?  
 12 **A. Correct.**  
 13 Q. And I take it the first thing you did was take a  
 14 picture of it?  
 15 **A. Right.**  
 16 Q. Okay. And then you took multiple pictures getting  
 17 closer, et cetera?  
 18 **A. Right.**  
 19 MR. HIGH: May I approach the witness, Your  
 20 Honor?  
 21 THE COURT: Yes.  
 22 Q. BY MR. HIGH: State's Exhibits 79 and 80 is a shot  
 23 of a cabinet, and there's a gun in the center. And 80 is  
 24 a -- more of a close-up shot; is that fair to say?  
 25 **A. That's correct.**

- 1 Q. Okay. And then we have a shot, 82 -- State's  
2 Exhibit 82, where the gun is on the floor?  
3 **A. Right.**  
4 Q. And can you tell the jury how the gun got from the  
5 position on the shelf to the floor?  
6 **A. I put it there.**  
7 Q. Okay. How did you do that?  
8 **A. Picked it up with my gloves and put it right on the  
9 ground.**  
10 Q. You picked it up with your hand?  
11 **A. Yes.**  
12 Q. Okay. Where did you grab it?  
13 **A. On the pistol grips.**  
14 Q. So that would be on this ridge surface on either  
15 side?  
16 **A. That's correct.**  
17 Q. Would you have put your hand completely around it  
18 and grabbed it?  
19 **A. No.**  
20 Q. Can I see the gun?  
21 Just so we're all clear, show the jury -- show the  
22 jury how you picked it up?  
23 **A. Just like that (indicating).**  
24 Q. Okay.  
25 **A. And then you lay it down, and whenever you pick it**

- 1 **up to take more pictures, I'll lay it down just like that.**  
2 Q. Just so the record is clear, you picked the gun up  
3 from the bottom of the handle with two fingers on either side  
4 of the handle like this; is that correct?  
5 **A. Correct.**  
6 Q. Okay. And was the magazine in it at the time?  
7 **A. Yes, I believe it was.**  
8 Q. And at least with respect to the shot in State's  
9 Exhibit 82, it appears like it's in place?  
10 **A. Yes, it's there.**  
11 Q. Okay. And in 82 you've also got the box of  
12 cartridges; is that right?  
13 **A. That's correct.**  
14 Q. Okay. And so you take a shot of the cartridges and  
15 the gun together?  
16 **A. Right.**  
17 Q. And, of course, you've already given us a shot of  
18 the cartridges down on the floor of the first shelf level?  
19 **A. Right.**  
20 Q. With respect to 83, we've got the magazine and a  
21 shell -- a cartridge, along with the gun, altogether; is that  
22 correct?  
23 **A. That's correct.**  
24 Q. At the time you retrieved the gun, it had six, live  
25 FC .38 auto cartridges in the magazine, and one, live FC .38

- 1 auto cartridge in the chamber, which is a total of seven; is  
2 that correct?  
3 **A. Correct.**  
4 Q. And this pistol was recovered from the top cabinet  
5 shelf of the small bar area; is that correct?  
6 **A. Correct.**  
7 Q. And it says "clear NCIC." Tell me what you mean by  
8 that when you say that in your report.  
9 **A. Not reported stolen on NCIC system.**  
10 Q. Okay. Also in your report you talk about one box of  
11 Federal .38 automatic ammo containing four live FC .38 auto  
12 cartridges. This box was recovered from the bottom cabinet  
13 shelf of the small bar area. And that's the box we're talking  
14 about right there?  
15 **A. That's correct.**  
16 Q. And this box today has only two rounds in it. Do  
17 you have any idea where the other two rounds went?  
18 **A. It's a good chance they're those test fire  
19 cartridges because --**  
20 Q. But you don't know --  
21 **A. -- routinely SWIFS will take -- if I ask for them to  
22 check if the gun is functioning properly, SWIFS routinely  
23 takes the live rounds you submit with the evidence to test  
24 fire them. Then they'll put them in those packets marked  
25 "test fire." But you'd have to consult with SWIFS to be sure**

- 1 **those were the same two bullets.**  
2 Q. But at least when you got it, there were four  
3 rounds?  
4 **A. That's correct.**  
5 Q. Okay. Did you notice anything distinctive about  
6 the gun -- I mean, I take it at that point after you  
7 photographed it and have gotten all these items together and  
8 took them into your possession and took them back downtown,  
9 did you study any of these items any further?  
10 **A. As far as?**  
11 Q. Did you notice any distinctive markings on the gun?  
12 **A. No, just -- usually the serial number and stuff like  
13 that, unless there's something real outstanding about  
14 something.**  
15 Q. Like somebody has got their initials on there?  
16 **A. Yeah, like nicks and scrapes, I'm not going to  
17 bother with. But anything real distinctive that's obvious,  
18 I'll take note.**  
19 Q. Okay. Well, I was looking at the gun earlier,  
20 and I'm curious about these markings that are placed on the  
21 left-hand side of the gun; one at the very front and one at  
22 the bottom of the barrel. Any idea what those markings are?  
23 **A. I don't remember them, but it's some sort of  
24 engraving marking, which isn't uncommon, but it's not  
25 necessarily common, either. I don't know what they are.**

- 1 Q. It's pretty clear that somebody scripted that?
- 2 A. **Yeah, looks like engraving or something.**
- 3 Q. Okay. Like, if they want to protect it, or
- 4 identify it as being their gun?
- 5 A. **Yeah.**
- 6 Q. I don't see those markings detected in State's
- 7 Exhibit Number 83. Could you compare that photograph?
- 8 A. **You know, I was looking at those earlier, and I**
- 9 **didn't remember them earlier, either. I mean, that might be**
- 10 **something else you need to ask SWIFS. I'm not entirely**
- 11 **familiar with all their procedures. It could be theirs,**
- 12 **because when I was looking at the gun earlier, I didn't**
- 13 **remember it, and according to the picture, they're not there,**
- 14 **either. It does look like something engraved, some sort of**
- 15 **identification number on it or something.**
- 16 Q. Okay. With respect to the magazine, you lifted a
- 17 print from the magazine?
- 18 A. **Correct.**
- 19 Q. Okay. You got the magazine in front of you?
- 20 A. **Yeah.**
- 21 Q. Do you recall which side the print was on? Was it
- 22 on the right side of the gun as you're in firing position or
- 23 the left side?
- 24 A. **I don't really remember. I didn't note it. Usually**
- 25 **on these things we just note the side of the magazine.**

- 1 Q. Okay. Could have been on either one?
- 2 A. **Yeah.**
- 3 Q. Okay. Do you recall anything about that
- 4 fingerprint? Do you recall whether it was an index finger,
- 5 whether it was a thumb, whether it was a little finger,
- 6 anything like that?
- 7 A. **You really can't necessarily tell unless you're the**
- 8 **one making the comparison on a finger.**
- 9 Q. Okay.
- 10 A. **So I remember the card. You can't tell what print**
- 11 **it is just by looking.**
- 12 Q. Okay. And I think -- you have the card in your
- 13 hand?
- 14 A. **Yeah.**
- 15 Q. Tell me which state's exhibit that is just for --
- 16 A. **86.**
- 17 Q. Okay. And does the card reflect anything more about
- 18 the print?
- 19 A. **What do you mean?**
- 20 Q. Like what type of finger it was, or which side of
- 21 the magazine it was on?
- 22 A. **From the print card, it's probably going to be on**
- 23 **the side with the six on it, which if it's in the gun facing**
- 24 **away from me, it would probably be the left side of the**
- 25 **magazine.**

- 1 Q. Okay.
- 2 A. **That would be consistent with the latent print.**
- 3 Q. Let me see that. I see what you're doing. It makes
- 4 sense.
- 5 A. **Yeah, just a match.**
- 6 Q. Yeah. In other words, just for the jury's benefit,
- 7 we've got holes here and you've got holes on your print card,
- 8 so they match up in terms of the sequence of the whole --
- 9 A. **You can see the lines where the tape would have got**
- 10 **the top, and there's the little width of the bottom little**
- 11 **rung right there.**
- 12 Q. Okay, thanks.
- 13 Magazines were often interchangeable in a .38
- 14 automatic, wouldn't you say?
- 15 A. **Probably, depending on what model. I'm not a gun**
- 16 **expert, but I'm sure there's some you can interchange.**
- 17 Q. For instance, you --
- 18 A. **Or you can buy the same one and interchange it.**
- 19 Q. Exactly. Buy the same model, in this case it's a
- 20 Colt .38. Bought another Colt .38 and bought another
- 21 magazine, you could slide a magazine out of that and slip it
- 22 into this Colt and vice-versa?
- 23 A. **Very -- yeah.**
- 24 Q. Like if you're at the range and you're firing, you
- 25 say, look, I'm out. You've got another full magazine. Your

- 1 buddy may loan you one and slip it in --
- 2 A. **It's very common for magazines to be interchangeable**
- 3 **with the same model and same type of weapon, but I'm not real**
- 4 **familiar with Colt, but I'm probably sure they're about the**
- 5 **same.**
- 6 Q. Okay. Are you the one that's -- that gave the
- 7 instructions to SWIFS to do what they had to do with this
- 8 particular evidence?
- 9 A. **Yes.**
- 10 Q. Okay. And your instructions were to determine if
- 11 item number one is in good working order. We're talking about
- 12 the pistol?
- 13 A. **Right.**
- 14 Q. And also to compare item number one to any
- 15 projectiles recovered from this offense or from the
- 16 complainant?
- 17 A. **That's correct.**
- 18 Q. And I take it you didn't give any further
- 19 instructions with respect to the pistol, the magazine or the
- 20 cartridges?
- 21 A. **No. That's generally it, for just a pistol by**
- 22 **itself.**
- 23 Q. Okay.
- 24 A. **That's standard.**
- 25 MR. HIGH: Pass the witness, Your Honor.

1 THE COURT: All right.

2 REDIRECT EXAMINATION

3 BY MS. LOWRY:

4 Q. Detective Smith, just briefly. You said earlier  
5 when you got to the McCallum address apartment, you were asked  
6 if the gun had been moved, and your response was they said  
7 they didn't move anything. Were you referring to Detective  
8 Winn and Detective Brady?

9 A. Yes.

10 Q. You also talked about AFIS, the Automated  
11 Fingerprint Identification System?

12 A. Uh-huh.

13 Q. Whose prints are in AFIS?

14 A. Generally, it could be anyone from being handled by  
15 the criminal justice system to police officer applicants, City  
16 of Dallas applicants and other state employees and stuff.

17 Q. But in order to be, I guess, in the AFIS system,  
18 someone's fingerprints have to be submitted to that system.  
19 Not just everybody's fingerprints in the world are in the AFIS  
20 system?

21 A. That's correct.

22 Q. So when you said that some of the prints that you  
23 retrieved from the residence were not linked to anyone, as far  
24 as you know were there any known prints of either one of the  
25 complainants?

1 A. Right.

2 MS. LOWRY: Pass the witness.

3 MR. HIGH: Just have a couple of more  
4 questions.

5 RE-CROSS-EXAMINATION

6 BY MR. HIGH:

7 Q. Detective Smith, what about the ammo? Can you  
8 sometimes find prints on ammo?

9 A. Very seldom. It is possible and people have done  
10 it, but it's very seldom that you find fingerprints on ammo.

11 Q. And you didn't in this case?

12 A. No.

13 MR. HIGH: That's all. Pass the witness.

14 MS. LOWRY: Nothing further from this witness.

15 THE COURT: All right. You may step down.

16 MS. LOWRY: Your Honor, may he be released for  
17 a three-hour call back?

18 THE COURT: Okay. Stay in touch.

19 Call your next witness, please.

20 MS. LOWRY: The State would call Detective  
21 James R. Smith.

22 THE COURT: James R. Smith.

23 (Witness enters the courtroom.)

24 THE COURT: Mr. Smith, I recall that you were  
25 sworn in this morning?

1 A. No.

2 Q. So you don't know if those were tested or not tested  
3 or compared, I guess?

4 A. Right. I have no idea.

5 Q. So simply by saying that they just weren't linked to  
6 anyone, that doesn't mean they didn't belong to the  
7 complainants or even someone that they knew?

8 A. That's correct.

9 Q. It just means that their prints weren't in the AFIS  
10 system for whatever reason? That being the case, maybe that  
11 didn't --

12 A. Well, it basically means it just didn't hit on them.  
13 Sometimes with a latent fingerprint, it depends on how it's  
14 oriented. It depends on how much you've got. You've got to  
15 use what you know about the latent print to, what we call,  
16 orientate it properly, and sometimes if you don't the computer  
17 won't hit it. It doesn't mean they're not in there or they're  
18 in there, so it can be either/or instead of just not being in  
19 there.

20 Q. And the print that you found on the hood of the  
21 Mercedes, where exactly on the hood was it; do you recall?

22 A. My notes say by the emblem, so up close to the front  
23 of the hood.

24 Q. Where you might open and close the -- where you  
25 might actually open and close the hood?

1 THE WITNESS: Yes, I was.

2 THE COURT: Please be seated.

3 MS. LOWRY: If I may get the gun and take it  
4 back to Billy?

5 THE COURT: Yes.

6 Whereby,

7 JAMES R. SMITH,

8 a witness called by the State, sworn to testify to the truth,  
9 testified under oath as follows:

10 DIRECT EXAMINATION

11 BY MS. LOWRY:

12 Q. Could you introduce yourself to the jury, please?

13 A. Yes. I'm James R. Smith. I'm a detective in the  
14 physical evidence section of the Dallas Police Department.  
15 I've been on the police department for 27 years. I've been in  
16 physical evidence for the last 17 and a half years.

17 I do crime scene searches. I also do latent  
18 fingerprint comparisons. That's taking an unknown latent  
19 lifted from a crime scene and identifying it to a known  
20 suspect.

21 Q. How long have you been employed as -- in that  
22 capacity?

23 A. For the last 17 and a half years.

24 Q. What's the specific training and background that you  
25 have that qualifies you to do fingerprint comparison?

1 A. Been to the Department of Public Safety  
2 Identification Officer's School, preservation and collection  
3 of physical evidence with the Department of Public Safety,  
4 Collection and Preservation of physical evidence with the FBI,  
5 advanced latent fingerprints with the FBI. I've testified  
6 hundreds of times on latent fingerprints. I was runner-up for  
7 the Officer of the Year in the City in Dallas for my work in  
8 identifying latent fingerprints.

9 Q. And this is not a trick question, and does that --  
10 all of that training qualify you as an expert in fingerprint  
11 identification?

12 A. Yes, it does.

13 Q. What exactly is a fingerprint?

14 A. A fingerprint is usually the unintentional leaving  
15 of your ridge -- the moisture left on your ridges on your  
16 fingers on a surface. That's what a fingerprint is.

17 Q. Have you ever found two people that have the same  
18 fingerprints?

19 A. No. The science of fingerprinting, in the history  
20 of the world, no two fingerprints have been found to be the  
21 same. Even identical twins do not have the same fingerprints.

22 Q. What is a latent print?

23 A. A latent fingerprint is -- like I say, it's the  
24 unintentional leaving of a fingerprint. It's usually not  
25 visible by the naked eye. You usually have to add light or a

1 A. Yes. That's what latent fingerprint comparisons  
2 are.

3 Q. I think they're laying right in front of you,  
4 State's Exhibits 86, 87 and 88?

5 A. Yes.

6 Q. Have you seen those before?

7 A. Yes, I have.

8 Q. And are those what you're talking about as far as  
9 latent prints that have been developed and preserved?

10 A. Yes. These are latent fingerprints from a crime  
11 scene.

12 Q. When and where did you first see those?

13 A. The first time -- several weeks ago was the first  
14 time I saw one of the fingerprints. It was several weeks ago.

15 Q. And have you had an opportunity to fingerprint this  
16 Defendant?

17 A. Yes.

18 Q. And when did you have that opportunity?

19 A. This morning -- at 9:05 this morning, I took  
20 Mr. Ivan Cantu's fingerprints.

21 Q. And do you have that fingerprint card with you?

22 A. Yes, I do.

23 Q. I'm going to mark it as State's Exhibit Number 89,  
24 and those are -- when you talk about inked prints, those are  
25 the inked prints that you took from him this morning?

1 powder or something to enhance the fingerprint where it  
2 becomes physical, and you can see it.

3 Q. How exactly is it enhanced, or how are they  
4 developed?

5 A. Most of the time they use a black fingerprint  
6 powder, which is a fine charcoal powder that you dust over the  
7 surface. It adheres to the moisture left by the salts, the  
8 oils, and the water left on the surface, and that brings  
9 the -- makes the print visible, and you can lift it with a  
10 clear tape, and put it on a contrasting background, and it  
11 will stay that way forever.

12 Q. What is an inked print?

13 A. An ink fingerprint is a fingerprint that I would  
14 take -- if it was me, I would roll my finger in some black  
15 fingerprint ink from fingernail to fingernail, place it on a  
16 white card, and take the impression of the fingerprint to use  
17 it to get as many of the characteristics in that fingerprint  
18 so I can use it to identify a latent fingerprint.

19 Q. That's, I guess, kind of what most of us would see  
20 on TV, rolling across the black thing and onto the paper. Is  
21 that what you're telling me?

22 A. Yes.

23 Q. Is it possible to take a latent print you've lifted  
24 from some surface and match it with a known inked print to  
25 make a positive identification?

1 A. Yes, they are.

2 Q. And the person that you took those fingerprints from  
3 this morning, is he sitting in the courtroom today?

4 A. Yes. He's the third person from the right.

5 Q. And can you identify him by an article of clothing?

6 A. Yeah. He's got the sweater with the white collar.

7 MS. LOWRY: May the record reflect the witness  
8 identified the Defendant?

9 THE COURT: All right. It will so reflect.

10 Q. BY MS. LOWRY: Did you make a comparison of the  
11 prints on State's Exhibits Number 86, 87 and 88 with the known  
12 prints of the Defendant, State's Exhibit Number 90?

13 A. Yes, I did.

14 MR. HIGH: Excuse me, Your Honor. I don't  
15 believe those exhibits are in evidence just yet, and I don't  
16 believe it's appropriate for him to testify from a document  
17 that's not in evidence.

18 THE COURT: (Nods head.)

19 Q. BY MS. LOWRY: On State's Exhibit 86, 87 and 88,  
20 there's some additional handwriting that was not the  
21 handwriting of Forrest Smith?

22 A. Yes, there is.

23 Q. Do you recognize any of that handwriting?

24 A. Yes, I do.

25 Q. And going one by one, can you tell me which

1 handwriting is yours, and which ones you recognize?  
 2 A. Yes. I've got LT and my initials by two things on  
 3 the front of number 87.  
 4 Q. Okay.  
 5 A. I also recognize the writing -- handwriting of  
 6 another detective in our office --  
 7 Q. And who is he?  
 8 A. -- on the back, also. His name is Pat Genevice.  
 9 Q. And how long have you worked with him?  
 10 A. For the last ten years.  
 11 Q. Do y'all often do comparisons of fingerprints where  
 12 you interact? I guess, do you see his writing enough to know  
 13 his handwriting and what he wrote there?  
 14 A. Yes, I do. And a fingerprint comparison in our  
 15 office is that we can -- we do a fingerprint comparison and a  
 16 comparison has to be verified by another qualified latent  
 17 examiner in our office before it will be considered a good  
 18 comparison.  
 19 Q. So I guess that basically usually once you compare  
 20 something, and you maybe would go to him --  
 21 A. Yes.  
 22 Q. -- Genevice?  
 23 A. Yes. This one went to him first, and then I  
 24 received it later.  
 25 THE COURT: When you say "this one," what

1 exhibit is that?  
 2 A. Number 87 was identified by Detective Genevice, and  
 3 I received it later and made the identification.  
 4 Number 86 is a fingerprint, and the only writing on  
 5 the back is a number six with the name of Ivan Cantu, and a  
 6 number and my initials. That's my writing, and the A-1 is put  
 7 on by another detective. I don't know who put the A-1 on the  
 8 back of it.  
 9 Q. Do you know what the A-1 --  
 10 A. Yes. That's when -- we have an automatic  
 11 fingerprint identification system, which is a fingerprint  
 12 system that you put the fingerprint into a computer. The  
 13 computer will give you a mathematical probability on maybe  
 14 some possible suspects. And that's what they use to say --  
 15 tell me that it's been run through the Automatic Fingerprint  
 16 Identification System.  
 17 Q. And the next exhibit that's in your hand, what  
 18 number is that?  
 19 A. Number 88, and it's got the number "8," my initials,  
 20 and Mr. Cantu's name and number, and it's also got "A," and  
 21 it's got a case number on the bottom. I don't know who did  
 22 that, either.  
 23 Q. The case number on the bottom is the only thing you  
 24 don't recognize?  
 25 A. No, I do not.

1 Q. But everything else on that card is your writing?  
 2 A. Yes.  
 3 MS. LOWRY: Your Honor, at this time the State  
 4 would reoffer State's Exhibits 86, 87 and 88.  
 5 MR. HIGH: Take the witness on voir dire?  
 6 THE COURT: All right. Are you offering 89,  
 7 also, or do you want to wait on that?  
 8 MS. LOWRY: I'll wait on that.  
 9 THE COURT: Go ahead, sorry.  
 10 VOIR DIRE EXAMINATION  
 11 BY MR. HIGH:  
 12 Q. With respect to 88, what is it that you can't  
 13 identify on there?  
 14 A. 88 is the -- A-1 and A-2 with the case number.  
 15 Q. And you don't know who put that on there?  
 16 A. No. It's whoever ran it through our Automatic  
 17 Identification System.  
 18 Q. And that's on a raised sticky item, looks like?  
 19 A. Yes, it is.  
 20 Q. And same being true with State's Exhibit 87, you  
 21 can't identify that sticky note that's placed on top?  
 22 A. This sticky note?  
 23 Q. No, excuse me --  
 24 A. Oh, this sticky note? No, just the writing here is  
 25 Officer Genevice's.

1 Q. But the white sticky note, you have no idea --  
 2 A. No, I don't know who did that.  
 3 Q. On 86 you can identify everything on that?  
 4 A. Yes, except for the A-1. I don't know who put the  
 5 A-1 on the top here.  
 6 Q. All right.  
 7 A. Right there.  
 8 MR. HIGH: Judge, it contains writing that  
 9 cannot be authenticated. It's hearsay to us. It's improperly  
 10 authenticated. Those are our objections to all three  
 11 exhibits, 86, 87 and 88.  
 12 MS. LOWRY: The State would offer to redact any  
 13 writings on there that have not been authenticated at this  
 14 point.  
 15 THE COURT: All right. Then before you pass  
 16 them to the jury, make sure they're redacted.  
 17 MS. LOWRY: Yes, Your Honor.  
 18 THE COURT: The objection is overruled. 86, 87  
 19 and 88 are admitted. Say, let me see those, would you?  
 20 Thank you.  
 21 Q. BY MS. LOWRY: And I think I called the other one  
 22 earlier the wrong number. State's Exhibit 89 are the known  
 23 prints that we've already talked about that you took from the  
 24 Defendant this morning?  
 25 A. Yes.

1 Q. Correct.

2 MS. LOWRY: Your Honor, at this time the State

3 would offer State's Exhibit 89.

4 MR. HIGH: Approach the witness, Your Honor,

5 and take him on voir dire?

6 THE COURT: Yes.

7 MR. HIGH: No questions. Pass the witness.

8 THE COURT: I suppose no objection?

9 MR. HIGH: No objection.

10 THE COURT: All right. Then Number 89 for the

11 State is admitted.

12 Q. BY MS. LOWRY: Now, did you make a comparison

13 between State's Exhibits 86, 87 and 88 with the known prints

14 of the Defendant, which are State's Exhibit 89?

15 A. Yes, I did.

16 Q. And based upon that comparison, do you have an

17 opinion as to whether or not State's Exhibits Number 86, 87

18 and 88 are the Defendant's fingerprints?

19 A. Yes. **The State's Exhibit Number 86 is the left**

20 **thumbprint of Ivan Cantu, State's Exhibit Number 88 is the**

21 **left, middle finger of Ivan Cantu, and State's Exhibit Number**

22 **87 are two lifts of the same finger, which is theft thumb of**

23 **Ivan Cantu.**

24 Q. On State's Exhibit 86, can you say again which

25 finger that was?

1 A. Yes. **It's the theft thumb.**

2 Q. And what is -- on State's Exhibit Number 86, where

3 was that print found?

4 A. **The writing on the front of the card says it's on**

5 **the side of a pistol magazine, a Colt .38 auto, serial number**

6 **M-521397.**

7 Q. And State's Exhibit Number 87, the left thumb

8 print, where was that found?

9 A. **There's two identifications of a left thumb print.**

10 **On the front of the card it says, the "inside left driver's**

11 **door window of a Mercedes."**

12 Q. And State's Exhibit Number 88?

13 A. **It's the left, middle finger, and it's from the**

14 **outside left driver window of the Mercedes.**

15 MS. LOWRY: Pass the witness.

16 THE COURT: All right. Mr. High.

17 CROSS-EXAMINATION

18 BY MR. HIGH:

19 Q. Mr. Smith, have you reviewed any reports prior to

20 testifying here today?

21 A. **Just my report.**

22 Q. Okay.

23 MR. HIGH: May I be provided a copy of it, Your

24 Honor, and an opportunity to review it?

25 THE COURT: All right.

1 MS. LOWRY: Your Honor, just for clarification.

2 Was there only one report, Detective Smith?

3 THE WITNESS: Yes, that I made. Yes.

4 MS. LOWRY: And that's supplement 13?

5 THE WITNESS: Yes, it is.

6 THE COURT: Have you had that, Mr. High?

7 MR. HIGH: I believe I have supplement 13, page

8 1.1.

9 Q. BY MR. HIGH: Is it just one page, Mr. Smith?

10 A. Yes, it is.

11 MR. HIGH: Just a moment, Your Honor.

12 (Brief pause in proceedings.)

13 Q. BY MR. HIGH: Okay. Detective Smith, just to make

14 sure we're all on the same page, I didn't get that exactly,

15 but I want to go through it again, if you don't mind.

16 State's Exhibit 86 is the left thumbprint of Ivan

17 Cantu, and it's on the pistol magazine; is that correct?

18 A. Yes, it is.

19 MR. HIGH: And looking at the -- may I approach

20 the witness, Your Honor?

21 THE COURT: Yes.

22 Q. BY MR. HIGH: The pistol magazine is in evidence --

23 was --

24 MR. HIGH: Do you have it?

25 Q. BY MR. HIGH: State's Exhibit 76-B, which is the gun

1 and the pistol magazine. And the -- this is the magazine --

2 excuse me. This is the magazine here, and it goes into the

3 pistol this way, correct?

4 A. Yes.

5 Q. Okay. And it doesn't go in this way. It goes in

6 this way. I've got that right, don't I?

7 A. Yes.

8 Q. Locks in position. So what you're talking about is

9 you've got the left thumbprint. Do you know which side it

10 would be on the magazine?

11 A. **I have no idea. I didn't lift the print. I just**

12 **identified the print.**

13 Q. Well, we've got a hole pattern on the magazine.

14 Might give you a clue, the hole pattern here --

15 A. Yes.

16 Q. -- and the hole pattern here, and apparently the

17 lift was done on this side, which would be -- would you agree

18 with that?

19 A. Yes, it was.

20 Q. Okay. So the hole pattern would be lifted from --

21 if we were pointing the gun downstream -- or down range, I

22 guess, it would be on the left side of the magazine; is that

23 correct?

24 A. Yes, it would.

25 Q. So you lifted a left thumbprint on the left side of

1 the magazine?

2 **A. No. I didn't lift anything.**

3 Q. I'm sorry. I've misstated that.

4 Somebody else lifted it?

5 **A. Yes.**

6 Q. But this is what you discovered, a left thumbprint

7 on a left magazine matched up with State's Exhibit 86 with a

8 known fingerprint?

9 **A. Yes, I did.**

10 Q. Did I say that right?

11 **A. Yes.**

12 Q. Amazing. Okay, all right.

13 If one were loading the gun and making a print like

14 that, you would be loading the gun this way and locking it

15 into position, something like that?

16 **A. Yes, it would be.**

17 Q. Okay. You're familiar with magazines sometimes

18 being traded out on pistols, aren't you?

19 **A. Yes.**

20 Q. In fact, you've been at the gun range and maybe your

21 magazine was out. Somebody else had a loaded magazine, and

22 you went ahead and used their magazine until you could get off

23 range and you could load up your magazine. Have you ever

24 done that before?

25 **A. No, I've never done that, but it can be done, yes.**

1 Q. Okay. And with respect to the -- this gun was found

2 at the apartment on November the 9th of 2000; is that correct?

3 **A. I don't know. All I know is on the front of the**

4 **card is 11-9 of 2000 is when it, apparently, was**

5 **fingerprinted.**

6 Q. Okay. But you reviewed this report today before you

7 testified, correct?

8 **A. Yes. I reviewed that Forrest Smith lifted the**

9 **print, yes.**

10 Q. And Forrest Smith found the gun on November the 9th

11 of 2000. You don't have any reason to dispute that?

12 **A. No, I don't. I don't have any reason to.**

13 Q. But you did not do -- you did your first comparison

14 with this gun on July 24th of this year; is that correct?

15 **A. Yes.**

16 Q. I mean, you did a comparison three months ago or

17 four months ago before you did the comparison today; is that

18 correct?

19 **A. Yes, I did.**

20 Q. And you generated this supplement on July the 24th

21 of this year; is that correct?

22 **A. Yes.**

23 Q. And up until July the 24th of this year, there had

24 been no comparison between the known fingerprints of Ivan

25 Cantu and the magazine on State's Exhibit 86?

1 **A. As far as I know, no, there hadn't been, except for**

2 **it had been run through our Automated Fingerprint System.**

3 Q. Is it fair to say that this gun, which had been in

4 the possession of the Dallas Police Department, although there

5 had been a known print lifted, there had been no comparison

6 made up until July the 24th of this year?

7 **A. No. Like I say, the print itself had been run**

8 **through our latent fingerprint system, so there had been a**

9 **comparison done.**

10 Q. Okay. But there's no indication in your report that

11 you made a comparison?

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

13 Q. Okay. And any idea why you chose to make a

14 comparison on July the 24th of this year?

15 **A. Yes. I was requested to look at it by Forrest**

16 **Smith who was requested to look at the print, per the DA's**

17 **office.**

18 Q. Okay. Prior to July the 24th of 2001, do you know

19 whether or not you could link those lifted prints with the

20 prints of Ivan Cantu?

21 **A. If we would have tried his prints before, yes, I'm**

22 **sure they could have been done by any qualified examiner, yes.**

23 Q. But you hadn't done that?

24 **A. I hadn't been requested to, no.**

25 Q. Okay. So here's my question, and I don't know if I

1 can state this intelligently enough, or you can answer it.

2 But the -- there had been no comparison between the magazine

3 on the gun with Ivan Abner Cantu, and with respect to noting

4 it on your reports, connecting with the gun, that hadn't been

5 done until July the 24th of this year?

6 **A. That's true.**

7 Q. Amazed at that, too.

8 MS. LOWRY: Your Honor, I'm going to object to

9 the sidebar and his comment on --

10 MR. HIGH: Withdraw it.

11 THE COURT: The objection is sustained.

12 Q. BY MR. HIGH: Let's go to the next piece of

13 evidence, State's Exhibit 87. And my notes reflect you found

14 a left thumbprint, which is identifiable on that exhibit.

15 **A. Two left thumbprints, yes.**

16 Q. Two left thumbprints. I don't quite understand

17 that. It's just a print one and print two?

18 **A. Yes. There's one on the top of the card, and one on**

19 **the bottom of the card.**

20 MR. HIGH: May I approach the witness, Your

21 Honor?

22 THE COURT: Yes, sir.

23 Q. BY MR. HIGH: What we're talking about here is two

24 left thumbprints on the inside left, driver door window of the

25 Mercedes; is that right?



- 1 A. Yes, it is.
- 2 Q. Okay. And did you do any prior comparison before
- 3 today?
- 4 A. Yes, I did.
- 5 Q. When did you do your other comparison?
- 6 A. I would say it was approximately three weeks ago.
- 7 Q. So that would have been early September?
- 8 A. Yes.
- 9 Q. Any other comparison before early September 2001?
- 10 A. That I did myself, no.
- 11 Q. Okay. Anybody else in the department that had done
- 12 a comparison before September 2001?
- 13 A. Yes. Apparently, Pat Genevise had done one.
- 14 Q. But you don't know exactly when?
- 15 A. No.
- 16 Q. And with respect to State's Exhibit Number 89, which
- 17 is the known prints that you took today, the left thumb is the
- 18 first entry on this exhibit in the lower left corner; is that
- 19 correct?
- 20 A. It says left thumb. It also has the number six, I
- 21 believe, in the box.
- 22 Q. You're exactly right. And when you do a fingerprint
- 23 comparison, you're looking for ridges, swirls, places where
- 24 there's points of comparison; is that fair to say?
- 25 A. We're looking for what we call minutia, or ridges

- 1 that divide into two ridges, which are called bifurcations. A
- 2 ridge starts in one area; stops in another area where the
- 3 ending ridge is another identification point. Little islands
- 4 or dots, where it's just a short ridge, you can use that as a
- 5 point of identification in a fingerprint.
- 6 Q. With respect to State's Exhibit 87, the first -- the
- 7 top fingerprint is very small?
- 8 A. Yes.
- 9 Q. Is there enough points of comparison to compare the
- 10 top fingerprint with the known print on State's Exhibit
- 11 Number 89?
- 12 A. Yes. The top fingerprint is the left thumbprint of
- 13 Mr. Cantu.
- 14 Q. No question about it?
- 15 A. No question about it.
- 16 Q. Same with the bottom fingerprint?
- 17 A. The bottom fingerprint has more points of identity
- 18 in it, but it is the left thumbprint of Ivan Cantu, also.
- 19 Q. No question about?
- 20 A. No question at all.
- 21 Q. Of course, to the layperson like me when they don't
- 22 look alike, you can sure tell that they do look alike?
- 23 A. Right. It's disoriented because of the way the item
- 24 is touched and which part of the finger is touched on the
- 25 surface.

- 1 Q. So if I take a look at it, or if the jury would take
- 2 a look at it, and they don't look alike, we have to rely on
- 3 you to tell us they are the same?
- 4 A. Well, they can see the points themselves if they
- 5 look close enough. If you look close enough, you can see the
- 6 points.
- 7 Q. Let's go to State's Exhibit Number 88, and that has
- 8 to do with the left -- tell us again what you found on the
- 9 outside left, driver window.
- 10 A. It's the left middle finger of Ivan Cantu.
- 11 Q. And do you know when the first comparison was done?
- 12 A. No, I do not. It's -- it was run through our AFIS
- 13 system, also, but I don't know when it was done.
- 14 Q. And do you know when the other detective did a
- 15 comparison, any idea?
- 16 A. Well, maybe I can help you out here, if I still have
- 17 it with me. No, I don't.
- 18 Q. When did you first make a comparison?
- 19 A. On this one?
- 20 Q. Yeah.
- 21 A. This one was done approximately the same time as the
- 22 last one, about three weeks ago.
- 23 Q. Okay. And then you made a comparison again today?
- 24 A. Yes, I did.
- 25 Q. What is this I'm looking at, 87 -- 88?

- 1 A. The left middle finger.
- 2 Q. Well, your known fingerprint in State's Exhibit 89
- 3 is very good, but it appears as though the lifted prints are
- 4 smeared on both sides; is that fair to say?
- 5 A. Yes. There is a smeared part of the fingerprint,
- 6 but there's enough identifiable points in the print that's not
- 7 smeared to identify it as Ivan Cantu.
- 8 Q. I mean, the smear is very significant. I mean, it's
- 9 smeared right down the center in both known prints, are they
- 10 not, lifted prints?
- 11 A. It's smeared in the one that I identified, yes.
- 12 Q. I'm sure that doesn't disturb your comparison?
- 13 A. No, it doesn't.
- 14 Q. Were you asked to compare any other prints taken
- 15 from the crime scene on Gibbons Street?
- 16 A. Yes, I was.
- 17 Q. And what prints did you look at? What other prints
- 18 did you look at?
- 19 A. It was a fingerprint, or a couple of light
- 20 fingerprints and a palm print from a Corvette.
- 21 Q. Okay. And what about -- what about the actual
- 22 house, the house located at 18663 Gibbons Drive?
- 23 A. All the fingerprints that were lifted from this
- 24 offense I did look at, yes.
- 25 Q. What about from the doorway?

1 A. If there were prints lifted from the doorway, I  
2 looked at them. If you can show me the green envelope that  
3 these cards came out of, I can tell you the cards I looked at.

4 Q. Okay.

5 MR. HIGH: May I approach the witness, Your  
6 Honor?

7 THE COURT: Yes.

8 A. Yes. This -- these are the ones from the Corvette.  
9 The only one from the magazine was already identified. Two of  
10 the ones from the Mercedes were identified, and I looked at  
11 one off a metal trash can lid, the outside front door just  
12 above the dead lock, and the outside hood by the emblem of  
13 the Mercedes. That's the only ones I looked at.

14 Q. Those are the ones I want to talk about that you've  
15 got in your hand, and I appreciate you going through them.

16 The first one is what?

17 A. (Indicating.)

18 Q. Yeah.

19 A. These are --

20 Q. Let's do that again, but do it slower, if you don't  
21 mind.

22 A. The outside hood by the emblem of the Mercedes.

23 Q. Okay. What did you find out about that one?

24 A. The print there is not Mr. Cantu's. It's not  
25 identified. The metal trash can lid is a latent print that

1 was not identified to Mr. Cantu. The outside front door,  
2 just above the dead bolt, is a palm print that's not  
3 Mr. Cantu.

4 Q. With respect to those three prints, did you check  
5 those prints with any other known people involved in this  
6 case?

7 A. I did not, no.

8 Q. So you only checked them with respect to Mr. Cantu?

9 A. Yes.

10 Q. You couldn't testify if it could be anybody else?

11 A. No, I can't.

12 Q. All right. Let's do the next one. What you got  
13 there?

14 A. This is empty. This is the one that the magazine  
15 print was in. It's already been identified.

16 Q. Okay.

17 A. This is a lift from the left, side-rear deck of a  
18 Corvette, and the second one is a lift from the lower, rear  
19 driver's door frame of a Corvette. One is a palm print. The  
20 other is a fingerprint.

21 Q. And were those linked to anyone?

22 A. Not that I know of. They are not Mr. Cantu's.

23 Q. Did you check that with any of the other known  
24 involved persons in this case?

25 A. I did not, no.

1 Q. Okay. I'm getting -- I guess I'm getting from you  
2 that you checked with respect to Mr. Cantu. You didn't check  
3 out anybody else?

4 A. I don't remember checking out anyone else.

5 Q. Okay. When do you-all decide to, you know, check  
6 other suspects? When's that decision made?

7 A. Well, what we do is we bring the -- our detectives  
8 bring the cards back to the office. They're put in a lockbox  
9 at our office. If the detective comes up with a suspect, he  
10 will order us, or ask us to do a comparison between a known  
11 suspect. But the first thing that's done is they're run -- if  
12 they're good enough fingerprints, they're run through our  
13 Automatic Fingerprint Identification System to see if we can  
14 develop a known person without having someone tell us who the  
15 known person might be.

16 Q. When you -- when you did your comparison, there was  
17 already a suspect in the case, is that fair to say, Ivan  
18 Cantu?

19 A. Yes.

20 Q. And so when the prints matched, it was not necessary  
21 to go and look for other suspects; is that fair to say?

22 A. Yes.

23 Q. And so you didn't look -- you didn't check out any  
24 other suspects with regard to these other lifted prints?

25 A. No. This is the only person I was asked to check on

1 these prints.

2 Q. Who asked you to do that?

3 A. Well, on the magazine itself was Forrest Smith, who  
4 was asked to do it by the DA's office.

5 Q. Okay. And the DA's office asked Forrest Smith, who  
6 then asked you?

7 A. Right.

8 Q. And what about the other -- from off the Mercedes?  
9 The DA's office asked Forrest Smith, who then asked you?

10 A. Well, they asked someone -- like, Genevive  
11 identified one of the prints. Instead of bringing him down  
12 here to testify on one of the prints, they asked me to look at  
13 it and see if I could make the print. I saw it. We wouldn't  
14 have to have two or three different detectives testify, so  
15 that's when I identified these prints.

16 Q. Fair enough.

17 I want to make sure I get it in my notes, the  
18 Corvette, you had a palm print?

19 A. Yes, a finger and a palm print.

20 Q. From which hand. No idea?

21 A. Probably the left hand on the fingers, and I don't  
22 know about the palm. It's a small palm print.

23 Q. And that was from a rear quarter panel?

24 MS. LOWRY: Your Honor, I'm going to object to  
25 the testimony coming off the cards that haven't even been

1 marked or identified or entered. We certainly won't object if  
2 they want to enter them just so the -- for record purposes.

3 They're in the record and --

4 THE COURT: Sustained.

5 MR. HIGH: Your Honor, this is  
6 cross-examination. I have wide latitude with respect to  
7 cross-examination, what the extent of his knowledge is and  
8 what involvement he has.

9 THE COURT: Well, that's great, but he's  
10 testifying from a document not in evidence, right? The  
11 objection is sustained.

12 Q. BY MR. HIGH: Okay. I'm going to show you what's  
13 marked as Defendant's Exhibit Number 1, which is a green  
14 envelope, and it's got two fingerprint cards contained within  
15 it. Evidently you're familiar with it; is that right?

16 A. Yes, I am.

17 Q. You've examined those, and you used those items  
18 routinely in your work as a Dallas police officer?

19 A. I've compared them, yes.

20 MR. HIGH: I'd offer Defendant's Exhibit  
21 Number 1.

22 MS. LOWRY: Your Honor, if we could just have  
23 the actual cards marked individually, also, so that we can  
24 refer to them and keep the record clear.

25 MR. HIGH: Good idea.

1 THE COURT: All right. Do you want to make  
2 them card 1-A --

3 MR. HIGH: 1-A and 1-B; is that fair enough?

4 THE COURT: Oh, there's two cards?

5 MR. HIGH: Yes, sir. For the record, I've  
6 marked them as Defendant's 1, Defendant's 1-A and  
7 Defendant's 1-B.

8 MS. LOWRY: No objection.

9 THE COURT: All right. Defendant's Exhibits 1,  
10 1-A and 1-B are admitted.

11 Q. BY MR. HIGH: Sorry about the delay, Detective.  
12 1-A from the left, side rear trunk lid is what kind  
13 of print?

14 A. Fingerprint.

15 Q. Any idea where; right, left finger, middle finger,  
16 index finger?

17 A. Not officially. I couldn't say if it's left or  
18 right.

19 Q. With respect to 1-B, the lower, rear driver's door  
20 frame, you say that's a palm print?

21 A. Yes, it is.

22 Q. And you don't know whether it's right or left?

23 A. It appears to be right, but I would have to see the  
24 whole palm to make sure.

25 Q. I think we're done with that.

1 Did you review any other lifted prints from the  
2 Corvette in question?

3 A. These are -- as far as I know, these are the only  
4 prints lifted.

5 Q. Okay. Did you review any other lifted prints from  
6 the pistol or the magazine in question?

7 A. As far as I know, the -- only one print was lifted.

8 Q. And did you review any other lifted prints from the  
9 crime scene, other than the prints that we've talked about?

10 A. No.

11 MS. LOWRY: Your Honor, just for record  
12 purposes, other than the ones they talked about, they did talk  
13 about some of the others that were lifted that have not been  
14 marked and entered. And I guess I'm asking for clarification,  
15 are those the ones he's referring to?

16 THE COURT: Well, you'll have the witness back.

17 And I tell you what, Ladies and Gentlemen, this is  
18 probably a good time to break for the evening. So, I'm going  
19 to instruct you that it is your duty not to converse among  
20 yourselves or with anyone else on any subject connected with  
21 the trial, or to form or express any opinion thereon until the  
22 cause is finally submitted to you. And we'll see you at 9:00  
23 tomorrow morning.

24 THE BAILIFF: All rise.

25 (Jury exits the courtroom at 5:00 p.m.)

1 THE COURT: Please be seated, and I tell you  
2 what, you've got, I don't remember how many green cards, but  
3 if y'all will stick around to figure out what you need, and  
4 then give them back to them. And tomorrow morning if you're  
5 going to offer any other green cards, give them back. But if  
6 you would, figure it out tonight so when we get started in the  
7 morning it's done.

8 MS. FALCO: Your Honor, we do have one witness  
9 back there that I would like to be sworn in. It's a very  
10 short witness. I thought we could get to him today.

11 (Witness enters the courtroom.)

12 THE COURT: Please come up to the bench, and  
13 I'll swear you in. Would you raise your right hand, please?

14 (Witness sworn by the Court.)

15 THE COURT: Put your hand down. What is your  
16 name?

17 PROSPECTIVE WITNESS: Armando Hernandez.

18 THE COURT: The Rule has been invoked in this  
19 case, and that means you cannot discuss your testimony or  
20 anything about this case with anybody, except the attorneys on  
21 both sides. Do you understand?

22 PROSPECTIVE WITNESS: Yes.

23 THE COURT: All right, sir. Then we'll see you  
24 tomorrow morning at 9:00.

25 All right. Anything else from either side?

1 (No response.)  
 2 THE BAILIFF: All rise.  
 3 (End of Volume 32.)  
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1 REPORTER'S CERTIFICATE  
 2 THE STATE OF TEXAS \*  
 3 COUNTY OF COLLIN \*  
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 6 for the 380th District Court of Collin County, State of Texas,  
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 15 proceedings truly and correctly reflects the exhibits, if any,  
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 18 I further certify that the total cost for the  
 19 preparation of this Reporter's Record is contained in  
 20 Volume 53 and was paid by Collin County.  
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 22 WITNESS MY OFFICIAL HAND this the 14<sup>th</sup> day of  
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