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

VOLUME 37 OF 53 VOLUMES

TRIAL COURT CAUSE NO. 380-80047-01

THE STATE OF TEXAS)	IN THE DISTRICT COURT
)	
VS.)	COLLIN COUNTY, TEXAS
)	
IVAN ABNER CANTU)	380TH JUDICIAL DISTRICT

JURY TRIAL

COPY

On the 11th day of October, 2001, the following proceedings came on to be heard in the above-entitled and -numbered cause before the Honorable Charles F. Sandoval, Judge Presiding, held in McKinney, Collin County, Texas:

Proceedings reported by Computerized Machine Shorthand.

IDENTIFIED BY TEXAS
[Handwritten Signature]

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1 APPEARANCES

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17 VOLUME 37

18 CHRONOLOGICAL INDEX

Table with columns: STATE'S WITNESSES, Direct, Cross, Redirect, Recross, Voir Dire. Includes names like CARLOS GONZALEZ, PHYLLIS STICHER, TONY MAXWELL, DR. WILLIAM ROHR, LANNIE EMANUEL, VICKI HALL, DR. TIMOTHY SLITER, PAULETTE SUTTON.

2 ALPHABETICAL INDEX

Table with columns: WITNESSES, Direct, Cross, Redirect, Recross, Voir Dire. Includes names like LANNIE EMANUEL, CARLOS GONZALEZ, VICKI HALL, TONY MAXWELL, DR. WILLIAM ROHR, DR. TIMOTHY SLITER, PHYLLIS STICHER, PAULETTE SUTTON.

9 EXHIBIT INDEX

Table with columns: STATE'S NO., DESCRIPTION, OFFERED, ADMITTED. Lists exhibit numbers 117-143 and descriptions like 'Test fires', 'Toll tag records', 'Map of toll facilities', 'Defendant's phone bill', 'James Mosqueda's autopsy photo', 'Amy Kitchen's autopsy photo'.

2 EXHIBIT INDEX (CONT'D)

Table with columns: STATE'S NO., DESCRIPTION, OFFERED, ADMITTED. Lists exhibit numbers 144-171 and descriptions like 'Amy Kitchen's autopsy photo', 'Bullet from wound No. 2', 'Gunpowder fragments', 'Envelope of gunpowder fragment', 'A casing', 'Bullet from Ms. Kitchen's head', 'Bullet from Ms. Kitchen's left back', 'Bullet from left breast implant', 'Bullet from autopsy cart', 'Dr. Rohr's affidavit attached to Amy Kitchen's autopsy report', 'Dr. Rohr's affidavit attached to James Mosqueda's autopsy report', 'Diagram of James Mosqueda', 'Diagram of Amy Kitchen', 'Report from Mr. Emanuel', 'Copy of Ms. Hall's report', 'Report of autopsy blood samples', 'Dr. Sliter's report', 'Four photos pasted together of crime scene by Ms. Sutton', 'Board of photos of crime scene', 'Photos of crime scene', 'Three photos on a board'.

21 EXHIBIT INDEX (CONT'D)

Table with columns: DEFENDANT'S NO., DESCRIPTION, OFFERED, ADMITTED. Includes entry 8: Serology testing report.

PROCEEDINGS:

(Open court, defendant present, no jury.)

09:15 3 THE COURT: All right. Both sides ready
09:15 4 to bring in the jury?
09:15 5 MR. GOELLER: Yes.
09:15 6 MR. SCHULTZ: Did the Court hear that?
09:16 7 Gail is going to take over for me after we pass this
09:16 8 witness.

THE COURT: For permanent?

09:16 9
09:16 10 MR. SCHULTZ: No. Well, I'm going to be
09:16 11 gone for a bit.

THE COURT: Okay. That's good.

09:16 12 (Open court, defendant and jury present.)

THE COURT: Please be seated.

09:17 14 Mr. Gonzalez, you are still under oath, sir.

THE WITNESS: Yes, sir.

THE COURT: Mr. Schultz?

MR. SCHULTZ: Thank you.

DIRECT EXAMINATION (CONT'D)

BY MR. SCHULTZ:

09:17 20
09:17 21 Q. Do you remember when we were talking about the
09:17 22 trip to Jamaica that several people took?
09:17 23 A. Uh-huh.
09:17 24 Q. I think we kind of led into that. As I recall,
09:17 25 I asked you some question regarding whether or not you

09:17 1 had ever seen any ecstasy before; is that right?
09:17 2 A. Yes, sir.
09:17 3 Q. And I guess that means you saw some in Jamaica
09:17 4 somewhere; is that right?
09:17 5 A. Yes, sir.
09:17 6 Q. Now, you indicated that the -- the defendant
09:17 7 was there in Jamaica?
09:17 8 A. Yes, sir.
09:17 9 Q. I understand he was with all of you. But did
09:17 10 he have a date of any kind with him?
09:17 11 A. Did I have a date with?
09:18 12 Q. Did he have a date?
09:18 13 A. Yeah. Yeah, yeah.
09:18 14 Q. Who was his date?
09:18 15 A. Tawny.
09:18 16 Q. Pardon me?
09:18 17 A. Tawny.
09:18 18 Q. And what's her last name?
09:18 19 A. I forget her last name.
09:18 20 Q. And about what point in time was this trip to
09:18 21 Jamaica?
09:18 22 A. I think in June.
09:18 23 Q. Would that be June of last year?
09:18 24 A. Last year.
09:18 25 Q. All right. So at that time the defendant

09:18 1 had -- Tawny was his girlfriend. And they have been
09:18 2 kind of an on-again, off-again relationship for many
09:18 3 years; is that true?
09:18 4 A. Correct.
09:18 5 Q. I've got her listed up there on our list of
09:18 6 fame. Is she a doper also?
09:18 7 A. Uh-huh.
09:18 8 Q. All right. Now, so that we use the proper
09:18 9 term, in addition to being a doper, do you know whether
09:18 10 or not she's also a dope dealer?
09:19 11 A. No, she is not.
09:19 12 Q. So she's just a regular?
09:19 13 A. Regular doper.
09:19 14 Q. Doper, okay. And I guess we ought to be a
09:19 15 little more specific and a little bit clearer because I
09:19 16 guess you can be a lot of kind of dopers depending on
09:19 17 what kind of dope you are doing. Right? What kind of
09:19 18 dope does she do that makes her a doper?
09:19 19 A. Marijuana.
09:19 20 Q. What else?
09:19 21 A. Maybe some ecstasy and some cocaine, maybe.
09:19 22 Q. Did you see her do any of that, for example, in
09:19 23 Jamaica?
09:19 24 A. Some marijuana. All of them.
09:19 25 Q. So she did marijuana, cocaine, and ecstasy?

09:19 1 A. Uh-huh.
09:19 2 Q. Is that right? So that's a fairly broad
09:19 3 spectrum of being a doper, wouldn't you say?
09:19 4 A. Yes, sir.
09:19 5 Q. How well do you know her?
09:19 6 A. I just know her through Ivan. Through -- it's
09:19 7 his girlfriend. His rebound girlfriend.
09:19 8 Q. What do you mean rebound girlfriend?
09:19 9 A. It just seems, as I got from him when he told
09:20 10 me, when he's between girls he goes out with Tawny.
09:20 11 Q. Did he have a -- did he have a term that he
09:20 12 used for her that would -- maybe some people might find
09:20 13 less than complementary?
09:20 14 A. Not really, not that I know of. I mean --
09:20 15 Q. Okay. Fair enough.
09:20 16 A. Yeah.
09:20 17 Q. So in between this trip to Jamaica, he had a
09:20 18 couple of wives, and then this has been an ongoing
09:20 19 relationship also with Tawny; is that right?
09:20 20 A. Right.
09:20 21 Q. Now, I would ask you the question about Amy
09:20 22 Boettcher and whether you perceived that she was in love
09:20 23 with the defendant. And I think your answer was you
09:20 24 didn't have enough time to make those observations?
09:20 25 A. Correct.

09:20 1 Q. Is that fair?
 09:20 2 A. Yes, sir.
 09:20 3 Q. What about Tawny with regard to that question?
 09:20 4 A. No.
 09:20 5 Q. Not in love with him?
 09:20 6 A. No. And he -- I asked him, I think I've asked
 09:20 7 him the question a couple of times, and he said, oh, no.
 09:20 8 Q. No, no. I understand his feelings. I'm asking
 09:20 9 about her feelings toward him?
 09:20 10 A. No, no.
 09:21 11 Q. You don't think it's that kind of relationship?
 09:21 12 A. I don't think so.
 09:21 13 MR. SCHULTZ: A moment, please, Judge?
 09:21 14 THE COURT: Yes.
 09:21 15 Q. (BY MR. SCHULTZ) Can you give me some idea
 09:21 16 what it costs per person for this trip to Jamaica, just
 09:21 17 kind of a ballpark idea?
 09:21 18 A. Just to get there or expenses during the trip?
 09:21 19 Just the total?
 09:21 20 Q. Just counting rental cars and eating and buying
 09:21 21 the dope and all that kind of stuff?
 09:21 22 A. Maybe 1500 per person to 1800 per person.
 09:21 23 Q. Okay. There are many people in our society
 09:21 24 that would consider that a luxury; is that right?
 09:21 25 A. Sure.

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09:21 1 Q. I mean, forget about the drugs, just the
 09:22 2 opportunity to be in a beautiful place and a nice hotel,
 09:22 3 and frolicking like people do in the islands. That's
 09:22 4 not something that most people would say was sad or
 09:22 5 unfortunate or disadvantaged or anything like that?
 09:22 6 A. Correct. Yes, sir.
 09:22 7 Q. Did the defendant appear to have a good time,
 09:22 8 as near as you could tell from your observation?
 09:22 9 A. Oh, yeah. We got it on video.
 09:22 10 Q. And did he seem happy enough when he was there?
 09:22 11 A. Oh, yeah.
 09:22 12 Q. As a matter of fact, I mean, when we look at
 09:22 13 his life and look at his personality and his lifestyle,
 09:22 14 he -- he didn't go around somber and sad and confused
 09:22 15 and lost, does he?
 09:22 16 A. No.
 09:22 17 Q. He's not somebody that goes around brooding
 09:22 18 over his miserable upbringing or his deficits as he was
 09:22 19 growing up. He's not that way at all?
 09:23 20 A. Huh-uh.
 09:23 21 Q. More importantly, when he's doing what he wants
 09:23 22 to do, you don't see any evidence that that's any kind
 09:23 23 of impediment to him at all?
 09:23 24 A. No, sir.
 09:23 25 Q. Now, there was a time -- you know the

09:23 1 defendant's father, don't you?
 09:23 2 A. The defendant's father?
 09:23 3 Q. Yeah.
 09:23 4 A. No. I just know him. I just don't -- you
 09:23 5 know, we don't socialize.
 09:23 6 Q. Are you pretty close to Sylvia Cantu, the
 09:23 7 defendant's mom?
 09:23 8 A. No. We know each other pretty good.
 09:23 9 Q. Did she ever -- do you recall a period of time
 09:23 10 when the defendant and Amy Boettcher were staying or
 09:24 11 living with her?
 09:24 12 A. Yes.
 09:24 13 Q. And a point of time, this was actually just
 09:24 14 before they moved into the apartment, I suppose, with a
 09:24 15 hotel stay in between, right?
 09:24 16 A. Correct.
 09:24 17 Q. And did you have an impression of about whether
 09:24 18 or not Mrs. Cantu was happy with that arrangement of
 09:24 19 those -- of both of them being there?
 09:24 20 A. She wasn't happy at all.
 09:24 21 Q. Okay. Now, I don't -- I'm not trying to elicit
 09:24 22 from you what she said.
 09:24 23 A. Okay.
 09:24 24 Q. But what I need to know --
 09:24 25 A. She didn't approve.

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09:24 1 Q. Well, I understand. I understand that. Was a
 09:24 2 plot hatched that would be sort of unconventional as a
 09:24 3 way to try to get them out of the house?
 09:24 4 A. Sure.
 09:24 5 Q. And were you somehow enlisted as part of this
 09:24 6 plot?
 09:24 7 A. Yes, sir.
 09:24 8 Q. Did it have something to do with some concocted
 09:24 9 story about Ivan's dad being in Mexico, being kidnapped?
 09:24 10 A. Yes, sir.
 09:24 11 Q. And then Ivan is supposed to be the only one
 09:25 12 that can go down there to get him out; is that right?
 09:25 13 A. Correct.
 09:25 14 Q. And then, I guess, since he'd have to go down
 09:25 15 there to get him out -- if he could make that work --
 09:25 16 then Amy would have to go, too, and they would both be
 09:25 17 gone. Is that how that works?
 09:25 18 A. No. I don't know if it was exactly kidnapping.
 09:25 19 I know it was something pertaining into Mexico. He had
 09:25 20 to go down and get his dad. I'm not crystal clear on
 09:25 21 exactly what it was. But the plot was to basically say
 09:25 22 he has to leave town, and those people -- and then Amy
 09:25 23 and them have to go back to Arkansas. It was just a
 09:25 24 plot to get them out of town to get them away from Ivan.
 09:25 25 Q. To get who away from Ivan? Amy?

09:25 1 A. Yeah. Amy and her brother.
 09:25 2 Q. So all that instead of just saying, "It's my
 09:25 3 house. Get out?"
 09:25 4 A. Right. Well, his mother had called me first.
 09:25 5 Q. To enlist your aid in this scheme?
 09:25 6 A. Yeah.
 09:25 7 Q. Okay. So, I mean, that really was a situation,
 09:26 8 but Amy Boettcher didn't even know about the scheme
 09:26 9 because she was the subject of the scheme or the con?
 09:26 10 A. Right.
 09:26 11 Q. And so what was being told to her was that Ivan
 09:26 12 had to go down to Mexico to somehow get his dad out or
 09:26 13 whatever his dad was going to do?
 09:26 14 A. He was going to be gone several weeks, and
 09:26 15 she's going to have to go home.
 09:26 16 MR. SCHULTZ: Pass the witness.
 09:26 17 THE COURT: All right. This is
 09:26 18 Mr. Goeller.
 09:26 19 MR. GOELLER: All right. Thank you, sir.
 09:26 20 CROSS-EXAMINATION
 09:26 21 BY MR. GOELLER:
 09:26 22 Q. Good morning, Mr. Gonzalez.
 09:26 23 A. Good morning.
 09:26 24 Q. Mr. Gonzalez, just kind of going back through
 09:26 25 the history of these relationships, you originally grew

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09:26 1 up in where?
 09:26 2 A. Pleasant Grove.
 09:26 3 Q. Pleasant Grove? And whereabouts is that
 09:26 4 exactly?
 09:26 5 A. It's close to Balch Springs on the border of
 09:26 6 Mesquite and Balch Springs.
 09:26 7 Q. Who were your circle of friends kind of growing
 09:27 8 up?
 09:27 9 A. Anthony Fonseca, James Mosqueda, Chris Head,
 09:27 10 and J. D. Several other ones that weren't mentioned.
 09:27 11 Q. Okay. Did you go to high school with those
 09:27 12 guys?
 09:27 13 A. Uh-huh.
 09:27 14 Q. And did you all -- I guess y'all kept pretty
 09:27 15 much in touch after high school?
 09:27 16 A. Oh, yes.
 09:27 17 Q. When did Ivan -- I guess you met Ivan through
 09:27 18 James?
 09:27 19 A. Correct.
 09:27 20 Q. James Mosqueda. When was that?
 09:27 21 A. I don't know. Late '80s, early '90s.
 09:27 22 Q. What year did you graduate from high school?
 09:27 23 A. I didn't graduate. I got my GED.
 09:27 24 Q. What year were you a senior?
 09:27 25 A. I'll say '91.

09:27 1 Q. So it was after high school when --
 09:27 2 A. Oh, yeah.
 09:27 3 Q. -- when Ivan came in the picture?
 09:27 4 A. Correct.
 09:27 5 Q. And that was through James?
 09:27 6 A. Uh-huh.
 09:28 7 Q. I know you testified that there was a time when
 09:28 8 I guess your circle of friends from Pleasant Grove were
 09:28 9 involved in the drug business?
 09:28 10 A. Sure.
 09:28 11 Q. In your opinion, was Ivan smart enough to be in
 09:28 12 the drug business?
 09:28 13 A. Not in my opinion, no. We just never involved
 09:28 14 him in it, so...
 09:28 15 Q. Was it kind of like Ivan -- was it your group
 09:28 16 of friends wanted to be like Ivan, or did Ivan want to
 09:28 17 be like y'all?
 09:28 18 A. Ivan wanted to be like us.
 09:28 19 Q. Why? Tell us how you --
 09:28 20 A. I think he was just intrigued about the drug
 09:28 21 business and, you know, making quick cash and, you know,
 09:28 22 driving nice vehicles and always having money and, you
 09:29 23 know, going to the best nightclubs and having a great
 09:29 24 time, wearing nice clothes and excessive jewelry and --
 09:29 25 Q. Did he kind of want to be like James? Who in

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09:29 1 the group did he want to emulate the most?
 09:29 2 A. I really can't say to be honest with you.
 09:29 3 Q. Were you all pretty much the same?
 09:29 4 A. Pretty equal.
 09:29 5 Q. Pretty equal?
 09:29 6 A. It seems like me and James were the more equal
 09:29 7 than most people.
 09:29 8 Q. During this period of time were -- were you and
 09:29 9 James more partners or more competitors, so to speak?
 09:29 10 A. More competitors.
 09:29 11 Q. How is that? Tell me.
 09:29 12 A. Me and James never bought drugs from each
 09:29 13 other. That would be a disgrace on me and his part. He
 09:29 14 had his people, and I had my people, and these -- all
 09:29 15 these guys would -- they would work me and James both to
 09:29 16 see who would have the best price.
 09:29 17 Q. When you say he wasn't really smart enough to
 09:30 18 be in that kind of business, tell me. Go in a little
 09:30 19 bit more detail.
 09:30 20 A. Just the mouth. Too much talking, too much
 09:30 21 running. I mean, in the business --
 09:30 22 Q. Boaster?
 09:30 23 A. In the business, you don't run your mouth. You
 09:30 24 make your money and you go. You don't brag about what
 09:30 25 you have. People already see what you have.

09:30 1 Q. James was much more intelligent on how to run a
 09:30 2 drug business than Ivan was?
 09:30 3 A. Correct.
 09:30 4 Q. James kept his mouth shut?
 09:30 5 A. Yeah. Constantly.
 09:30 6 Q. Only -- and in that business a big mouth --
 09:30 7 A. Could have got you killed.
 09:30 8 Q. Get you killed. Was James very particular
 09:30 9 about who he bought -- was James more of a supplier?
 09:30 10 I'm trying to figure out how this all works. Obviously,
 09:30 11 James, if he was dealing, he would have to purchase
 09:30 12 quantities, and then, I guess, you deal out in smaller
 09:31 13 quantities? Is that basically how it works?
 09:31 14 A. Uh-huh. To me -- to me -- what I didn't
 09:31 15 understand about James, it wasn't about the money. If
 09:31 16 you gave him the wrong tone of voice or you gave him the
 09:31 17 wrong hour or you showed up at the wrong time or --
 09:31 18 nothing. "Bye, see ya." Even if you had the money
 09:31 19 right then and there, you didn't get anything.
 09:31 20 Q. Because it wasn't according to plan?
 09:31 21 A. Right.
 09:31 22 Q. And you got to be careful?
 09:31 23 A. You have to go exactly by the rules and if not,
 09:31 24 history. You don't get anything.
 09:31 25 Q. That's how the best in that business operate.

09:31 1 You stick by a set of rules, and even if you got the
 09:31 2 cash, you are supposed to be there.
 09:31 3 A. Even he would call me and tell me not to give
 09:31 4 to this person because of that incident. And they would
 09:31 5 come directly to me, and I'd have to tell them no.
 09:32 6 Q. At one point in Ivan's life, was he doing
 09:32 7 extremely well legitimately?
 09:32 8 A. Extremely well.
 09:32 9 Q. Okay. Tell us about that.
 09:32 10 A. He had a quarter of a million dollar house.
 09:32 11 Q. The one in Frisco?
 09:32 12 A. The one in Frisco.
 09:32 13 Q. The one you actually ended up in for a while?
 09:32 14 A. Correct. Multiple vehicles, Corvettes, boats,
 09:32 15 Lexus, excessive Italian leather all through the house.
 09:32 16 Just state-of-the-art everything you could buy. What
 09:32 17 the best money could buy, he had it.
 09:32 18 Q. And was that money, the money he was earning
 09:32 19 then, was that a legitimate form of income?
 09:32 20 A. Yeah. He had a mortgage business called
 09:32 21 Concord.
 09:32 22 Q. And was he -- did he have a mentor or an older
 09:32 23 gentleman that had been in the business and taught him
 09:32 24 the ropes?
 09:32 25 A. Yes.

09:32 1 Q. Who was that?
 09:33 2 A. Lloyd Jones.
 09:33 3 Q. How old a man is he about?
 09:33 4 A. Maybe 50, 48.
 09:33 5 Q. Was that a good time in Ivan's life, do you
 09:33 6 think?
 09:33 7 A. I think it was a beautiful time in Ivan's life.
 09:33 8 Q. Do you know what started the downspin?
 09:33 9 A. Uh-huh.
 09:33 10 Q. What?
 09:33 11 A. One of his friends had sexual relations with
 09:33 12 his wife.
 09:33 13 Q. What did that do to him, Ivan?
 09:33 14 A. He hit rock bottom, lost his house, didn't pay
 09:33 15 his payments, lost his vehicles, lost his wife. Just
 09:33 16 lost everything he had. Totally went downhill. He
 09:33 17 couldn't function. It was just -- he lost it.
 09:33 18 Everything he had was gone. You know, and then he ran
 09:33 19 off to the Navy just to try to get out. Just to try to
 09:33 20 clear his mind.
 09:33 21 Q. Was there increasing drug use?
 09:33 22 A. I think -- I wasn't there with him day by day,
 09:34 23 but I think that had a lot to play with it.
 09:34 24 Q. Have you known -- you've known Sylvia, his mom,
 09:34 25 as long as you've known Ivan?

09:34 1 A. Pretty much. I mean, I don't interact with her
 09:34 2 all the time. I mean, I just know his mom from, heard
 09:34 3 him talking to her on the phone, you know?
 09:34 4 Q. Based on everything that you know about her
 09:34 5 and, for example, that plot she hatched to get Jeff
 09:34 6 Boettcher and Amy Boettcher out, is she a pretty strange
 09:34 7 individual?
 09:34 8 A. In my opinion?
 09:34 9 Q. Yeah.
 09:34 10 A. Extremely.
 09:34 11 Q. Extremely strange?
 09:34 12 A. Extremely. I mean, I've run into several
 09:34 13 different incidences that I didn't understand.
 09:34 14 Q. Does she have any mental illness, do you know?
 09:34 15 A. Not that I know of. I mean, just some of the
 09:35 16 incidents I've run in with Eric and Ivan. The way they
 09:35 17 speak to their mother was very strange.
 09:35 18 Q. Eric Cantu?
 09:35 19 A. Yeah.
 09:35 20 Q. Did you see much interaction between Ivan and
 09:35 21 his father?
 09:35 22 A. Never. Did I see interaction between Ivan and
 09:35 23 his father? Never.
 09:35 24 Q. What was the history of the relationship there
 09:35 25 vis-a-vis Sylvia Cantu?

09:35 1 A. What was the relationship between his mother
09:35 2 and him?
09:35 3 Q. Yeah.
09:35 4 A. She would do anything for her sons.
09:35 5 Q. Okay. Maybe almost to a fault?
09:35 6 A. Oh, 100 percent.
09:35 7 Q. Like -- like this, this plot, this bizarre plot
09:35 8 to -- to get him away from Amy and Jeff Boettcher? How
09:35 9 did that come down?
09:35 10 A. Well, she called me. Ivan had picked up this
09:36 11 girl at the mall, and his mother really didn't approve
09:36 12 of it. And they were living at Bobbitt's house. And
09:36 13 Bobbitt and them had a falling out, and he threw them
09:36 14 out, and so they didn't have anywhere else to go.
09:36 15 They were asking to stay at my house, and
09:36 16 my wife was like, no. And they just didn't have
09:36 17 anywhere else to go. So they ended up over at Sylvia's
09:36 18 house, her new house. And so she wasn't too happy with
09:36 19 the situation.
09:36 20 THE COURT: Say, let me ask you something.
09:36 21 Sometimes it's difficult with your hand on the jury's
09:36 22 side.
09:36 23 THE WITNESS: I apologize.
09:36 24 THE COURT: And you need to project enough
09:36 25 so that they can all hear you.

09:36 1 A. So any ways, Sylvia really didn't -- didn't
09:36 2 like that situation. She calls me on the phone and
09:36 3 asked me what I knew about these people. And I told
09:36 4 her, "I have no idea about these people. As far as I
09:36 5 know, they are from Arkansas."
09:36 6 Well, she leave to tell me that these
09:36 7 people were drifters. And they drift from town to town
09:37 8 to town, and they suck people for all their money, and
09:37 9 then they drift on to the next town. And I was -- I
09:37 10 thought that was real hard to believe, but she's a
09:37 11 strange lady in my eyes. So I was like, okay. I can
09:37 12 see it.
09:37 13 Q. (BY MR. GOELLER) She, meaning Sylvia?
09:37 14 A. Yes. So I'm like, well, what do you need me to
09:37 15 do to help Ivan? My concern is Ivan only. Not Amy or
09:37 16 her brother or Sylvia. My concern is Ivan. What do you
09:37 17 need me to do to help Ivan?
09:37 18 She goes, well, she's going to get
09:37 19 together with Ivan about some story, and he was going to
09:37 20 call me with it, and basically he's going to play like
09:37 21 he left town. And these people are going to have no
09:37 22 choice, and they can't stay at Sylvia's house. And that
09:37 23 would lead them to go home, back to Arkansas.
09:37 24 Q. That is -- that is beyond bizarre, isn't it?
09:37 25 A. It was pretty bizarre.

09:37 1 Q. What was Ivan like when things were good in his
09:38 2 life?
09:38 3 A. He was a great guy, a super guy.
09:38 4 Q. Do you have children?
09:38 5 A. Uh-huh.
09:38 6 Q. Was he ever around your children, things like
09:38 7 that?
09:38 8 A. Oh, yeah.
09:38 9 Q. Why? Why would you allow that?
09:38 10 A. He was over for every family event, Easter,
09:38 11 Christmas, you know. I might run to the store and tell
09:38 12 him to watch her while we were gone. He is an
09:38 13 outstanding guy, super guy. I loved him to death and I
09:38 14 still do.
09:38 15 Q. Was there a big difference when he was on dope?
09:38 16 A. Oh, yeah. Big difference.
09:38 17 Q. Did -- do you know if -- if the family, Sylvia
09:38 18 or any of his aunts or anybody in the extended family
09:38 19 ever recognize the problem, and was it ever addressed
09:38 20 within the family?
09:38 21 A. His mother used to talk to me about it quite a
09:39 22 bit.
09:39 23 Q. What did she say?
09:39 24 A. Just said that she knows he's on cocaine. And
09:39 25 if she -- basically help me talk to him and tell him not

09:39 1 to do it, you know. She would ask me that several
09:39 2 times, you know. Half the time I'd tell her no. I
09:39 3 don't know anything about it because I didn't want to
09:39 4 get involved between her and Ivan's deal.
09:39 5 Q. Was James and Ivan still transacting illegal
09:39 6 things last year?
09:39 7 A. Was Ivan and James doing illegal things last
09:39 8 year?
09:39 9 Q. Yeah.
09:39 10 A. Not to my knowledge.
09:39 11 Q. Okay.
09:40 12 MR. GOELLER: May I have just a second,
09:40 13 Judge?
09:40 14 THE COURT: Yes, sir.
09:41 15 Q. (BY MR. GOELLER) When Ivan -- you testified
09:41 16 that Ivan started to want to emulate and be around James
09:41 17 more. Do you know how that -- I mean, all through high
09:41 18 school growing up with the Pleasant Grove guys, James
09:41 19 and you and Anthony and Chris, how was he introduced to
09:41 20 that group? Do you know how that came about?
09:41 21 A. How was he introduced to that group?
09:41 22 Q. Yeah.
09:41 23 A. I don't even remember. It's been so long ago.
09:41 24 I couldn't tell you the exact date; we're talking about
09:41 25 years ago. He used to go come over and come over to

09:41 1 Gladys's house on the weekends and hang out with James
09:41 2 and ride their bikes and stuff like that.

09:41 3 Other than that, that was really about it.
09:41 4 Our relationship didn't really take place until more
09:41 5 teen-age years.

09:42 6 Q. When you say your relationship, you and the
09:42 7 Pleasant Grove guys?

09:42 8 A. No. Me and Ivan.

09:42 9 Q. Okay.

09:42 10 A. It was more like --

09:42 11 Q. Did he just come on the scene, or was it a
09:42 12 gradual thing?

09:42 13 A. No. I mean, I really known it the most is when
09:42 14 like the early '90s, like when the -- when the tanning
09:42 15 salons start -- wanted to start to expire -- you know,
09:42 16 starting to come around. I remember him wanting Ivan to
09:42 17 come work for the tanning salons because he was a good
09:42 18 talker, and Ivan had other things going on at the time.

09:42 19 Q. Do you remember the job that Ivan held?

09:42 20 A. Yeah. He was working for a production company,
09:42 21 where they go around from city to city, and they set up
09:42 22 production sites and stuff. And they had like these big
09:42 23 18-wheelers, and they would constantly go for different
09:42 24 cities.

09:42 25 Q. Like a marketing?

09:42 1 A. Some type of deal. I wasn't really too up on
09:42 2 it exactly. But I know he was in charge of the people
09:42 3 breaking down and putting all the, you know, tents and
09:42 4 lights and -- I don't know if it was for movies, doing
09:42 5 little movie deals or exactly what it was.

09:43 6 Q. How long did that last? Do you remember?

09:43 7 A. I'm going to say about two or three years that
09:43 8 I know of. Maybe a little longer.

09:43 9 Q. Was it your impression that he did well at
09:43 10 those jobs?

09:43 11 A. Yeah. To me he seemed real happy with it.

09:43 12 Q. As his -- as his teenage years went into his
09:43 13 late teens and early 20s, was he spending more and more
09:43 14 time with James and the Pleasant Grove guys?

09:43 15 A. Not the Pleasant Grove guys, just James. They
09:43 16 became roommates and that's when Ivan met his first
09:43 17 wife. And it was Amy and James and Michelle and Ivan
09:43 18 living in the same apartment.

09:43 19 Q. With James and Anthony and yourself and Chris
09:43 20 Head, was it -- you guys were never in business
09:43 21 together, were you, as far as --

09:44 22 A. Legit business?

09:44 23 Q. No.

09:44 24 A. Or drug business?

09:44 25 Q. Yeah.

09:44 1 A. Oh, me and James were never in business
09:44 2 together. It was --

09:44 3 Q. You guys were more competitors?

09:44 4 A. Yeah. You just -- you wouldn't hear of it.

09:44 5 Q. And the rest of the guys, Anthony and Chris,
09:44 6 were they all independent, so to speak?

09:44 7 A. No. They are pretty much independent. They
09:44 8 just never seemed to have the funds to come up. I'm
09:44 9 not -- I'm not a go-out guy. I mean, I sit at home.
09:44 10 You know, James sits at home. We're not club-type
09:44 11 people. We don't go out and blow every cent we have.

09:44 12 Q. Because that's a giveaway?

09:44 13 A. That's a giveaway. You are just asking for
09:44 14 trouble, and then you don't have any money. Me and
09:44 15 James were looking at the bigger picture. What can we
09:44 16 do to better ourselves after this? And that's when we
09:44 17 got into the tanning salon business.

09:45 18 Q. Tell me about James's tanning salon business.
09:45 19 How did that work?

09:45 20 A. It's like monkey see, monkey do. I did my
09:45 21 first one in a little town called Red Oak, Texas. And
09:45 22 he seen it and we talked about it. And then he told me
09:45 23 that he was looking at a building, and he'd like to do
09:45 24 the same thing.

09:45 25 And I told him I thought it would be good

09:45 1 for him. And he thought the same thing, and went and
09:45 2 looked at the building and he liked it. And he started
09:45 3 building, and it's all she wrote.

09:45 4 Q. When you look back on some of the illegal
09:45 5 business that you've done, what are your thoughts?
09:45 6 What's -- what's all of this kind of caused you to
09:45 7 reflect about? The drugs and the, you know, the
09:45 8 competition with James and that whole scene? What are
09:45 9 your thoughts when you look back now?

09:45 10 A. I just wish we -- we would have took a
09:45 11 different road. We try to get to where we was, you
09:46 12 know. But given what we had and no college experience
09:46 13 or anything, to me, I mean, it was, you might think it's
09:46 14 kind of twisted, but it was a learning process for me,
09:46 15 you know, about how to manage money, you know?

09:46 16 Q. What do you do now?

09:46 17 A. I'm in the retail business.

09:46 18 Q. Okay. That's right, the --

09:46 19 A. The kiosks and restaurants, too. We're doing a
09:46 20 new restaurant November 15th.

09:46 21 Q. Have kind of the Pleasant Grove crowd -- has
09:46 22 there been any, not meetings, but social occasions,
09:46 23 whatever, where y'all look back? And any big -- is that
09:46 24 pretty much the theme amongst all the guys now?

09:46 25 A. Yeah. We have parties or stuff like that or

09:46 1 big fight nights, you know, on the tube. We all kind of
 09:46 2 laugh about it, you know, and talk about -- we had some
 09:47 3 videos, and we were looking at hairdos and stuff like
 09:47 4 that.

09:47 5 And we were sitting there, and we can't
 09:47 6 believe we wore our hair like that, and these high
 09:47 7 waters and stuff we used to wear. Just stuff like that,
 09:47 8 really. Nothing really like -- I mean, there was a few
 09:47 9 guys that weren't really around, and they come around
 09:47 10 and talk about how well y'all did, you know? It was
 09:47 11 really not really that well.

09:47 12 Q. Yeah. After -- did you ever end up working for
 09:47 13 Lloyd with them?

09:47 14 A. Not ever worked for his company. I mean, I did
 09:47 15 work with him, and I bought one of his houses from him.
 09:47 16 He had built a couple spec homes, and he wanted me to
 09:47 17 buy it. And he told me I could flip it and make some
 09:48 18 money, so that's what we did.

09:48 19 Q. Was anybody using Ivan's license after -- after
 09:48 20 he went to jail?

09:48 21 A. Was anybody using his license after he went to
 09:48 22 jail? Like the jail like for the military?

09:48 23 Q. No. The jail for this case.

09:48 24 A. Oh, for this case. No, not that I know of.

09:48 25 Q. Okay. When did he leave Southwestern Mortgage,

09:48 1 do you remember?

09:48 2 A. I'm trying to think. I mean, I don't have a
 09:48 3 correct date, sir.

09:48 4 Q. That's okay. Do you keep in contact or see his
 09:48 5 younger brother, Eric, at all?

09:48 6 A. No.

09:48 7 Q. What's your impression of him?

09:48 8 A. Strange.

09:49 9 Q. Does that tie back into Sylvia?

09:49 10 A. I think so.

09:49 11 MR. GOELLER: Thank you, Mr. Gonzalez.

09:49 12 That's all I have.

09:49 13 REDIRECT EXAMINATION

09:49 14 BY MS. FALCO:

09:49 15 Q. Mr. Gonzalez, when you said you thought it was
 09:49 16 odd the way Eric and Ivan would speak to their mother,
 09:49 17 how did they speak to their mother?

09:49 18 A. A lot of profanity, cussing.

09:49 19 Q. Didn't really respect her much, did they?

09:49 20 A. Not at all.

09:49 21 Q. And with Ivan that kind of carried over to his
 09:49 22 wife, Michelle, and his wife, Jennifer?

09:49 23 A. Right.

09:49 24 Q. Not a lot of respect for women?

09:49 25 A. No.

09:49 1 Q. When Mr. Goeller asked you if James and Ivan
 09:49 2 were in illegal business together before James got
 09:50 3 murdered, would he even sell drugs to Ivan?

09:50 4 A. No.

09:50 5 Q. Did he tell you and Anthony not to sell drugs
 09:50 6 to Ivan?

09:50 7 A. Yes.

09:50 8 Q. Why?

09:50 9 A. He didn't tell me. He told Anthony.

09:50 10 Q. Why?

09:50 11 A. He just told him that he was too messed up
 09:50 12 already. Don't be doing it.

09:50 13 MS. FALCO: Your Honor, at this time,
 09:50 14 based on a prior ruling, we'd ask for a hearing held
 09:50 15 outside the presence of the jury.

09:50 16 THE COURT: All right. I'm going to ask
 09:50 17 you folks to step down for five or ten minutes, and then
 09:50 18 we'll continue.

09:50 19 THE BAILIFF: All rise.

09:51 20 (Open court, defendant present, no jury.)

09:51 21 THE COURT: Please be seated. All right.

09:51 22 The jury is out. Go ahead.

09:51 23 Q. (BY MS. FALCO) Carlos, when Mr. Goeller asked
 09:51 24 you how Ivan went from being wealthy and having
 09:51 25 everything that led to his demise, and you mentioned his

09:51 1 wife cheated on him.

09:51 2 A. Right.

09:51 3 Q. Prior to his wife cheating on him, how did he
 09:51 4 treat her?

09:51 5 A. I've never seen any of the physical, mental or
 09:51 6 physical abuse, but, I mean, I heard the stories from
 09:51 7 James and Amy.

09:51 8 Q. And did you see the results on Michelle of his
 09:51 9 physical abuse?

09:51 10 A. Of Michelle?

09:51 11 Q. Yes.

09:51 12 A. No.

09:51 13 Q. You had heard that he abused her?

09:51 14 A. Yes.

09:51 15 Q. And that abuse had been going on for two years
 09:52 16 before she finally left him?

09:52 17 MR. GOELLER: Number one, I'm going to
 09:52 18 object to the leading now, Your Honor.

09:52 19 THE COURT: Sustained.

09:52 20 MR. GOELLER: I'm going to object to any
 09:52 21 hearsay responses.

09:52 22 Q. (BY MS. FALCO) What was your understanding of
 09:52 23 how long the abuse occurred?

09:52 24 MR. GOELLER: Take the witness on voir
 09:52 25 dire, please, to test personal knowledge.

09:52 1 THE COURT: All right. Go ahead.
 09:52 2 VOIR DIRE EXAMINATION
 09:52 3 Q. (BY MR. GOELLER) Carlos, anything you know was
 09:52 4 either you heard from other sources, but you have no
 09:52 5 personal knowledge, correct?
 09:52 6 A. Correct.
 09:52 7 MR. GOELLER: That's all I have, Your
 09:52 8 Honor.
 09:52 9 REDIRECT EXAMINATION (CONT'D)
 09:52 10 BY MS. FALCO:
 09:52 11 Q. Mr. Gonzalez, in your opinion, was Ivan and
 09:52 12 Michelle's marriage a good one?
 09:52 13 A. I thought so.
 09:52 14 Q. Why did you think so?
 09:52 15 A. I mean, when I seen them together I thought so.
 09:52 16 I really didn't hear the stories until after they were
 09:52 17 really divorced or separated.
 09:53 18 Q. And after hearing the stories, what did you
 09:53 19 think of their marriage?
 09:53 20 A. I thought it was a little hard to believe at
 09:53 21 first, you know, until another incident.
 09:53 22 Q. What incident was that?
 09:53 23 A. Incident with his next wife.
 09:53 24 Q. Jennifer?
 09:53 25 A. Yes.

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09:53 1 Q. And then did you believe all the things you had
 09:53 2 heard about Michelle?
 09:53 3 A. Yes.
 09:53 4 Q. And after that what was your opinion of Ivan
 09:53 5 and Michelle's relationship?
 09:53 6 A. Abusive.
 09:53 7 Q. And when you said he ran off to the Navy, he
 09:53 8 wasn't in the Navy very long, was he?
 09:53 9 A. He went AWOL.
 09:53 10 Q. And do you know how long he was in the Navy
 09:53 11 before he went AWOL?
 09:53 12 A. I don't know the correct days that he was in
 09:53 13 there. It wasn't very long, a matter of weeks.
 09:53 14 Q. And was he arrested for that?
 09:53 15 A. Yes.
 09:53 16 MS. FALCO: Your Honor, that concludes our
 09:54 17 offer of proof.
 09:54 18 THE COURT: All right.
 09:54 19 MR. GOELLER: I'll just ask the -- well,
 09:54 20 I'd ask the Court to be allowed to ask the State if they
 09:54 21 intend on offering any of that.
 09:54 22 MS. FALCO: Your Honor, I think they
 09:54 23 opened the door when they asked him what led to the
 09:54 24 demise, and he said, "Well, his wife cheated on him."
 09:54 25 I think I can at least ask Mr. Gonzalez

09:54 1 now what his opinion of Ivan and Michelle's relationship
 09:54 2 was leading up to her leaving him and cheating on him.
 09:54 3 And he also made it sound like he had to run off to the
 09:54 4 Navy to get away from it all, and I think that opens the
 09:54 5 door as to what happened when he got to the Navy.
 09:54 6 MR. GOELLER: Judge, it's apparent
 09:54 7 anything the witness will testify to is being offered
 09:54 8 for the truth of the matter asserted. It's all hearsay.
 09:54 9 In fact, it's hearsay within hearsay. The witness
 09:54 10 testified he has no personal knowledge regarding the
 09:54 11 Navy.
 09:54 12 Mr. Schultz, in his questioning yesterday,
 09:54 13 elicited those facts and merely -- this is
 09:55 14 cross-examination. So I'd ask the Court to under 404(b)
 09:55 15 and 405 and 404, in general, not to allow this testimony
 09:55 16 at this stage of the trial.
 09:55 17 THE COURT: Well, I tell you what, I don't
 09:55 18 really need a 404 analysis. The Court will state not to
 09:55 19 go into any of the questions that were just asked.
 09:55 20 Let's bring the jury back in.
 09:55 21 (Open court, defendant and jury present.)
 09:58 22 THE COURT: Please be seated. Ms. Falco.
 09:58 23 REDIRECT EXAMINATION--(CONT'D)
 09:58 24 BY MS. FALCO:
 09:58 25 Q. Mr. Gonzalez, on cross Mr. Goeller asked you

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09:58 1 something about how Sylvia thought the defendant and Amy
 09:58 2 Boettcher met, and you said something about him picking
 09:58 3 her up in a mall?
 09:58 4 A. Uh-huh.
 09:58 5 Q. Did the defendant give you that story, too,
 09:58 6 that he met Amy Boettcher at a mall?
 09:58 7 A. Yes, ma'am.
 09:58 8 Q. Did you believe that story?
 09:58 9 A. The way he said it, I didn't at first.
 09:58 10 Q. Why not?
 09:58 11 A. It just seemed pretty farfetched.
 09:58 12 Q. What was his story about how he met Amy
 09:58 13 Boettcher?
 09:58 14 A. He was just sitting there in the mall, and he
 09:58 15 was at Neiman Marcus buying some shoes. At Neiman's or
 09:58 16 Lord & Taylor's -- I can't remember what store it was --
 09:58 17 buying some shoes, and this beautiful goddess walked by,
 09:58 18 and he just grabbed her. Basically said, you are going
 09:58 19 to be with me from now on.
 09:58 20 Q. Is that just typical of another one of the
 09:58 21 defendant's stories?
 09:58 22 A. That's what I thought.
 09:58 23 Q. And is that the story he gave his mom?
 09:59 24 A. I'm not sure that's the story he gave his mom.
 09:59 25 I think he told her he met her at the mall, but not the

09:59 1 full extent of how he picked her up.
 09:59 2 Q. Why couldn't he just tell you and his mom that
 09:59 3 he met her at Club Seven?
 09:59 4 A. I didn't know anything about Club Seven.
 09:59 5 Q. Did the defendant lie to you pretty often?
 09:59 6 A. Yes, ma'am.
 09:59 7 Q. Back when I asked you why James had cut the
 09:59 8 defendant off from selling drugs to -- and you told
 09:59 9 Anthony that, and you said because he was too messed up.
 09:59 10 What did you mean by that?
 09:59 11 A. When he does drugs, he doesn't show up to work,
 09:59 12 you know. He gets delusional. Starts making
 09:59 13 accusations that you wouldn't even or they are absurd,
 09:59 14 you know, or they are just so farfetched, you don't
 10:00 15 understand where they are coming from.
 10:00 16 Q. And James wanted to help him out by not selling
 10:00 17 him any drugs?
 10:00 18 A. Correct. He wanted him to get back to the
 10:00 19 office.
 10:00 20 Q. He wanted Ivan to get back on his feet and do
 10:00 21 legitimate business and work?
 10:00 22 A. And to work at James's office. Yeah, I mean,
 10:00 23 he used to work there.

~~10:00 24 Q. Would James have taken him back to work there?~~
 10:00 25 A. I'm sure. James has taken him back several

10:00 1 times.
 10:00 2 Q. And if he would have straightened up his act,
 10:00 3 James would have given Ivan a job?
 10:00 4 A. Yes.
 10:00 5 MS. FALCO: Thank you, Mr. Gonzalez. Pass
 10:00 6 the witness.
 10:00 7 RE CROSS EXAMINATION
 10:00 8 BY MR. GOELLER:
 10:00 9 Q. Mr. Gonzalez, in the year 2000 was James in or
 10:00 10 out of the drug trafficking business?
 10:00 11 A. He was out of it, as far as I knew. I mean, I
 10:00 12 never seen anything. That's what I'm telling you.
 10:01 13 MR. GOELLER: Thank you, sir. That's all
 10:01 14 I have.
 10:01 15 MS. FALCO: No further questions.
 10:01 16 THE COURT: All right. You may step down.
 10:01 17 (Witness excused.)
 10:01 18 THE COURT: Call your next witness.
 10:01 19 MS. FALCO: We ask that he be placed on at
 10:01 20 least a three-hour standby.
 10:01 21 THE COURT: All right.
 10:01 22 MS. LOWRY: Your Honor, the State calls
 10:01 23 Phyllis Sticher.
 10:02 24 THE COURT: Raise your right hand.
 10:02 25 PHYLLIS STICHER,

10:03 1 being first duly sworn, testified as follows:
 10:03 2 THE COURT: Please have a seat right here.
 10:03 3 Ms. Falco -- or excuse me, Ms. Lowry?
 10:03 4 DIRECT EXAMINATION
 10:03 5 BY MS. LOWRY:
 10:03 6 Q. Please introduce yourself to the jury.
 10:03 7 A. I'm Phyllis Sticher, the toll tag store manager
 10:03 8 for the North Texas Tollway Authority.
 10:03 9 Q. Ms. Sticher, how do you spell your last name?
 10:03 10 A. S, like Sam, T-I-C-H-E-R.
 10:03 11 Q. And you said you work for the toll tag
 10:03 12 authority?
 10:03 13 A. Yes, ma'am.
 10:03 14 Q. What is your specific job?
 10:03 15 A. I'm the toll tag store manager.
 10:03 16 Q. And are you a custodian of the business records
 10:03 17 for the toll tag authority?
 10:03 18 A. Yes, I am.
 10:03 19 MS. LOWRY: May I approach, Your Honor?
 10:03 20 THE COURT: Yes.
 10:03 21 Q. (BY MS. LOWRY) Ms. Sticher, I'm going to show
 10:03 22 you what's been marked as State's Exhibit No. 117 and
 10:03 23 ask you if you recognize that.
 10:03 24 A. Yes, I do.
 10:03 25 Q. And what is that?

10:03 1 A. It's the toll tag records for account 314264.
 10:03 2 Q. And are these records kept in the regular
 10:03 3 course of the business of the toll tag authority?
 10:03 4 A. Yes, ma'am, they are.
 10:03 5 Q. And as an employee of the toll tag authority,
 10:04 6 did you retrieve these records from your computer
 10:04 7 system?
 10:04 8 A. Yes, I did.
 10:04 9 Q. And are these records kept -- or I guess, are
 10:04 10 they made at a time that is close to the events that
 10:04 11 they depict?
 10:04 12 A. Yes, they are.
 10:04 13 Q. That being the toll tag transactions?
 10:04 14 A. Right.
 10:04 15 Q. Can you explain for the jury what a toll tag
 10:04 16 is.
 10:04 17 A. Okay. It's a transmitter. It's a transponder,
 10:04 18 that there's a transmitter inside of it. It's placed on
 10:04 19 the windshield. And when it goes through the lane at
 10:04 20 the toll booth, the reader up above the lane reads the
 10:04 21 tag number and then transmits the information to the
 10:04 22 toll tag store.
 10:04 23 Q. And the toll tag itself, say, when a person
 10:04 24 comes in to get a toll tag, how is it registered so that
 10:04 25 you can identify either the car using the toll tag or

10:04 1 who is using the toll tag?
 10:04 2 A. We have to have the name, address, and phone
 10:04 3 number and driver's license number of the owner of the
 10:04 4 account. And then all the vehicles that they are trying
 10:04 5 to get toll tags for have to have the license plate
 10:05 6 number, the year, make, and color of the vehicle.
 10:05 7 Q. And as you said, when a person or when these
 10:05 8 toll tags pass through a toll booth, how is that
 10:05 9 reported?
 10:05 10 A. It's electronically transmitted to our data
 10:05 11 base.
 10:05 12 Q. And is that at or near the time that they
 10:05 13 actually go through the toll booth?
 10:05 14 A. Within 24 hours of the time. It's buffered
 10:05 15 until it's actually posted.
 10:05 16 Q. And during that time -- or before it's actually
 10:05 17 posted, is it stored in the transmitter if it's going to
 10:05 18 be transmitted to your records?
 10:05 19 A. Yes.
 10:05 20 Q. And these records, State's Exhibit No. 117, are
 10:05 21 they exact duplicates of the information that's kept in
 10:05 22 that computer?
 10:05 23 A. Yes, ma'am.
 10:05 24 ~~MS. LOWRY: Your Honor, at this time the~~
 10:05 25 State would offer State's Exhibit No. 117.

10:06 1 MR. GOELLER: No objection, Your Honor.
 10:06 2 THE COURT: State's Exhibit No. 117 is
 10:06 3 admitted.
 10:06 4 (State's Exhibit No. 117 admitted.)
 10:06 5 Q. (BY MS. LOWRY) And Ms. Sticher, did you bring
 10:06 6 another copy of these records?
 10:06 7 A. Yes, ma'am, I did.
 10:06 8 Q. So that I can keep these at my desk?
 10:06 9 A. Uh-huh.
 10:06 10 Q. And are they exact duplicates of the State's
 10:06 11 Exhibit 117 that you can use to know what's in these
 10:06 12 records?
 10:06 13 A. Yes, ma'am.
 10:06 14 Q. Is there anything on your copy that is not on
 10:06 15 this copy that's been admitted as State's No. 117?
 10:06 16 A. Yes. I've written down the lane numbers from a
 10:06 17 lane numbering chart that's at our office.
 10:06 18 Q. Does that just help you -- well, I tell you
 10:06 19 what. Let's go through these records first. As far as
 10:06 20 what they contain, there's a page in here called, The
 10:06 21 Account View Screen?
 10:06 22 A. Uh-huh.
 10:06 23 Q. What does that information tell you.
 10:07 24 A. It gives us all the information regarding the
 10:07 25 account for the name, the address, phone numbers,

10:07 1 driver's license number, account balance, and any credit
 10:07 2 card that's on file, and all the vehicle information.
 10:07 3 Q. And these particular records, who is the
 10:07 4 person, I guess, that purchased these toll tags?
 10:07 5 A. It's James Mosqueda. I don't know how to say
 10:07 6 the name.
 10:07 7 Q. M-O-S-Q-U-E-D-A?
 10:07 8 A. Yes, ma'am.
 10:07 9 Q. And what is the address that was given?
 10:07 10 A. It was 18663 Gibbons Drive, Dallas 75287.
 10:07 11 Q. And what vehicles -- how many toll tags did he
 10:07 12 get?
 10:07 13 A. There are two.
 10:07 14 Q. And for what vehicles?
 10:07 15 A. One is a 2000 black Chevy Corvette, and the
 10:07 16 second is for a 1999 black Mercedes 430 CLK.
 10:07 17 Q. And do they each have a specific tag number so
 10:07 18 that you know which car it is that's passing through a
 10:07 19 specific toll booth?
 10:07 20 A. Yes, ma'am.
 10:08 21 Q. And there are also some entries on the monthly
 10:08 22 statement display screen?
 10:08 23 A. Uh-huh.
 10:08 24 Q. Referring to the dates November 3rd and
 10:08 25 November 4th of 2000?

10:08 1 A. Correct.
 10:08 2 Q. And from the information that is on that page,
 10:08 3 can you tell which toll tags are registered to which car
 10:08 4 and which toll booths they are going through?
 10:08 5 A. Yes, ma'am, because the monthly statement has
 10:08 6 the date, time, the tag number, and the location.
 10:08 7 Q. And when you say you wrote down the lane
 10:08 8 number, does it also have the lane number under the
 10:08 9 location?
 10:08 10 A. The lane number is on the location, and I have
 10:08 11 written down the actual direction.
 10:08 12 Q. And is that so that you can explain to the jury
 10:08 13 which way the cars would have been traveling?
 10:08 14 A. Yes, ma'am.
 10:09 15 Q. I'm also going to show you what's been marked
 10:09 16 as State's Exhibit No. 118, and can you tell us what
 10:09 17 that is.
 10:09 18 A. It's a map of our toll facilities.
 10:09 19 Q. And is this an accurate depiction of where the
 10:09 20 toll plazas are in relation to Dallas North Tollway and
 10:09 21 the George Bush Tollway?
 10:09 22 A. Yes, sir, it is.
 10:09 23 Q. And does it accurately reflect what it -- what
 10:09 24 it depicts?
 10:09 25 A. Yes.

10:09 1 Q. Does it show you where those toll booths are?

10:09 2 A. Where the toll booths are and what direction
10:09 3 they are going in.

10:09 4 MS. LOWRY: Your Honor, may I pull this
10:09 5 out so she can --

10:09 6 THE COURT: Yes. Are you offering that?

10:09 7 MS. LOWRY: Not at this time.

10:09 8 THE COURT: Not yet. I'm sorry.

10:09 9 MS. LOWRY: Where would be the best place
10:09 10 to put it?

10:09 11 THE COURT: Wherever you want.

10:09 12 MS. LOWRY: May I ask that she step down
10:09 13 so that we can --

10:10 14 THE COURT: Yes.

10:10 15 Q. (BY MS. LOWRY) Now, Ms. Sticher, according to
10:10 16 these records, so I can direct your attention
10:10 17 specifically to November 3rd of 2000, would it be
10:10 18 helpful if you wrote the lane numbers down and which way
10:10 19 those lanes were going?

10:10 20 A. Probably would be much easier that way.

10:10 21 Q. Let me give you this. If you could write in
10:10 22 the corner the lane numbers that we're going to be using
10:10 23 and the direction that they are traveling.

10:10 24 A. (Complying.)

10:11 25 Q. And what you have written for the record, what

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10:11 1 you have written up here is DNT, which stands for Dallas
10:11 2 North Tollway, lanes 1 through 6 SB.

10:11 3 A. Southbound.

10:11 4 Q. 7 through 12?

10:11 5 A. Northbound.

10:11 6 Q. PGBT?

10:11 7 A. President George Bush Tollway.

10:11 8 Q. Lanes 1 through 7?

10:11 9 A. Westbound.

10:11 10 Q. And 8 through 14?

10:11 11 A. Eastbound.

10:11 12 Q. Okay. And are all of those things indicated on
10:11 13 this diagram where they are located?

10:11 14 A. Yes, they are.

10:11 15 Q. Let's talk first about November 3rd, 2000,
10:11 16 around 10 p.m. Are there any entries around 10 p.m. for
10:12 17 11-3, 2000?

10:12 18 A. 1841. There's -- went southbound at NLP 2,
10:12 19 lane 5.

10:12 20 Q. And what time is that?

10:12 21 A. It says 1841.

10:12 22 Q. Let's get down to the 2218.

10:12 23 A. 2218, I'm sorry. I'm not that good with that
10:12 24 kind of time. They went through Main Lane Plaza One,
10:12 25 lane 10, which is northbound.

10:12 1 Q. Can you show us where Main Lane Plaza One is?

10:12 2 You can just put a red square around it. That way it's
10:12 3 easy to find. And that is Main Lane Plaza No. 1, and
10:12 4 they are traveling in what lane?

10:12 5 A. In lane 10, which is northbound.

10:12 6 Q. And this is at approximately 10:18 p.m. on
10:12 7 November 3rd, 2000?

10:12 8 A. Correct.

10:12 9 Q. And they are going northbound. What is the
10:12 10 next entry?

10:12 11 A. 2229 at Main Lane Plaza Two, lane 7, which is
10:12 12 still northbound.

10:12 13 Q. Put a red box around Main Lane Plaza No. 2.
10:13 14 Now, so they go through Main Lane Plaza No. 2 at about
10:13 15 10:29?

10:13 16 A. Correct.

10:13 17 Q. Can you tell which vehicle this is?

10:13 18 A. This -- the tag number 460809, which was on the
10:13 19 2000 black Corvette.

10:13 20 Q. Okay. Why don't we write here on the bottom
10:13 21 just the two different tag numbers that we're dealing
10:13 22 with and which cars they correspond to.

10:13 23 A. Okay. Should I just put Corvette or Chevy?

10:13 24 Q. Just Corvette is fine. For the record, 460809
10:13 25 is the Corvette; 460810 is the Mercedes?

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10:14 1 A. Correct.

10:14 2 Q. When we're talking about November 3rd at 10:30
10:14 3 or 10:18 and 10:29, we're talking about 460809, which
10:14 4 would have been the Corvette?

10:14 5 A. Yes.

10:14 6 Q. And at that time they were coming north on the
10:14 7 tollway. They go through Main Lane Plaza One and Two.

10:14 8 A. Right.

10:14 9 Q. Is there any entry as far as or close in
10:14 10 proximity to those, where they might have exited, or did
10:14 11 they go on further up the tollway?

10:14 12 A. For that -- those particular -- that other
10:14 13 vehicle.

10:14 14 Q. So the next entry then is for the other
10:14 15 vehicle?

10:14 16 A. For the other vehicle, yeah.

10:14 17 Q. After you hit Main Lane Plaza No. 2 -- and
10:14 18 there's a legend here that tells you where the toll
10:14 19 booths are. Are there exits after Main Lane Plaza Two
10:14 20 before Main Lane Plaza Three that they could have exited
10:14 21 without having to pay a toll?

10:14 22 A. Yes. They can exit at Keller Springs, at
10:14 23 Trinity Mills, or at Frankford.

10:14 24 Q. And any of those places they could have exited
10:15 25 and there would have been no --

10:15 1 A. There would have been no record.
 10:15 2 Q. What is the next activity on either one of
 10:15 3 these toll tags?
 10:15 4 A. The one for the Mercedes at --
 10:15 5 Q. Would that be 12:59?
 10:15 6 A. At 12:59.
 10:15 7 Q. And that's a.m.?
 10:15 8 A. A.m. was at Main Lane Plaza Seven, lane 14,
 10:15 9 which is eastbound.
 10:15 10 Q. Is that on George Bush?
 10:15 11 A. George Bush.
 10:15 12 Q. And is there an entrance ramp there onto George
 10:15 13 Bush Tollway that they could have gotten on without
 10:15 14 having to pay a toll before?
 10:15 15 A. Yes, ma'am. At Preston.
 10:15 16 Q. And that's in the Mercedes?
 10:15 17 A. Correct.
 10:15 18 Q. What is the next entry?
 10:15 19 A. It's for the Mercedes at 1:43, Main Lane Plaza
 10:15 20 Seven going westbound.
 10:15 21 Q. Let me back up just a minute. When you are
 10:15 22 talking about the first one, which is 12:59 a.m., they
 10:15 23 are going eastbound?
 10:15 24 A. Right.
 10:15 25 Q. Which is towards 75?

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10:15 1 A. Correct.
 10:15 2 Q. Is there an exit at 75 that they could have
 10:15 3 gotten off on at to 75 without having to pay a toll?
 10:16 4 A. Yes, ma'am, there is.
 10:16 5 Q. The next entry then is the 143. What direction
 10:16 6 were they traveling in at that time?
 10:16 7 A. They were traveling westbound, going the
 10:16 8 opposite direction.
 10:16 9 Q. Okay. And is there an exit right after Main
 10:16 10 Lane Plaza Seven that they could have exited on without
 10:16 11 having to pay a toll?
 10:16 12 A. Yes. At Preston.
 10:16 13 Q. What is the next entry, and which car does it
 10:16 14 correspond to?
 10:16 15 A. The next entry is at 3:06 a.m. for the Corvette
 10:16 16 at Main Lane Plaza Two, southbound.
 10:16 17 Q. Which is here and they are coming southbound
 10:16 18 again?
 10:16 19 A. Correct.
 10:16 20 Q. Could they have entered at Frankford, Trinity
 10:16 21 Mills, or Keller Springs without having to pay a toll to
 10:16 22 get on the toll road?
 10:16 23 A. Yes, ma'am.
 10:16 24 Q. And the first toll plaza that they come to is
 10:16 25 at Main Lane Plaza No. 2?

10:16 1 A. Correct.
 10:16 2 Q. What is the next toll that they have to pay?
 10:16 3 A. They went through Main Lane Plaza One,
 10:16 4 southbound.
 10:16 5 Q. And that's getting down here closer to downtown
 10:16 6 Dallas?
 10:16 7 A. Correct.
 10:16 8 Q. What is the next entry?
 10:16 9 A. The next one is at 6:15 at Main Lane Plaza One
 10:17 10 going northbound.
 10:17 11 Q. What vehicle are they in?
 10:17 12 A. That's in the Corvette.
 10:17 13 Q. Okay. So they are coming basically back the
 10:17 14 same way that they went?
 10:17 15 A. Correct.
 10:17 16 Q. What is the next entry?
 10:17 17 A. Is at Belt Line Road at 6:25 with the Corvette.
 10:17 18 Q. And here there is, as we talked about the
 10:17 19 legend and the exit, which shows that there is a toll
 10:17 20 booth there and they get off. What is the next one?
 10:17 21 A. The next one is at Main Lane Plaza Two,
 10:17 22 northbound at 6:28.
 10:17 23 ~~Q. So there's three minutes in between the time~~
 10:17 24 ~~that that vehicle exits here and gets back on and goes~~
 10:17 25 ~~through Main Lane Plaza Two?~~

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10:17 1 A. Right.
 10:17 2 Q. And this is still the Corvette?
 10:17 3 A. Yes.
 10:17 4 Q. And this is at 6:28 in the morning that they go
 10:17 5 through Main Lane Plaza Two?
 10:17 6 A. Right.
 10:17 7 Q. And that would have been on November 4, 2000?
 10:17 8 A. Yes.
 10:17 9 Q. What is the next entry?
 10:17 10 A. The next is at 11:15, the Corvette at Main Lane
 10:17 11 Plaza Two going northbound at one.
 10:17 12 Q. So they would have had to get on somewhere
 10:18 13 below south of Main Lane Plaza Two and go through it,
 10:18 14 and they could have exited?
 10:18 15 A. Correct.
 10:18 16 Q. Anywhere obviously before Main Lane Plaza
 10:18 17 Three, and they would have had to pay another toll?
 10:18 18 A. Correct.
 10:18 19 Q. The next entries, what are the dates of those?
 10:18 20 A. November 5th at 11:07, the Corvette was going
 10:18 21 southbound on -- on Dallas North Tollway Main Lane Plaza
 10:18 22 Two.
 10:18 23 Q. And the next one?
 10:18 24 A. The next one at 11:17 at Main Lane Plaza One
 10:18 25 southbound.

10:18 1 Q. That would have been just back into downtown?
 10:18 2 A. Downtown.
 10:18 3 Q. Do you know where the police station is located
 10:18 4 in Dallas?
 10:18 5 A. No, ma'am, I don't.
 10:18 6 Q. Thank you. You can sit down. Does this
 10:18 7 accurately depict the lanes and the directions that they
 10:18 8 travel as well as the toll tags? What cars they
 10:18 9 correspond to and the toll plazas they were using?
 10:18 10 A. Yes, ma'am, it does.
 10:18 11 MS. LOWRY: Your Honor, at this time we
 10:18 12 offer State's Exhibit 118.
 10:18 13 MR. GOELLER: No objection, Your Honor.
 10:18 14 THE COURT: State's Exhibit 118 is
 10:19 15 admitted.
 10:18 16 (State's Exhibit No. 118 admitted.)
 10:19 17 MS. LOWRY: Thank you, Ms. Sticher. Pass
 10:19 18 the witness.
 10:19 19 MR. GOELLER: Nothing.
 10:19 20 THE COURT: Is she finally excused by both
 10:19 21 sides?
 10:19 22 MS. LOWRY: Yes, Your Honor.
 10:19 23 MR. GOELLER: Yes, sir.
 10:19 24 THE COURT: You are finally excused.
 10:19 25 THE WITNESS: Thank you.

10:19 1 (Witness excused.)
 10:19 2 THE COURT: Call your next witness,
 10:19 3 please.
 10:19 4 MS. LOWRY: May I have just a moment, Your
 10:19 5 Honor?
 10:19 6 THE COURT: Yes.
 10:19 7 MS. LOWRY: Your Honor, the State calls
 10:19 8 Tony Maxwell.
 10:19 9 THE COURT: Can you give me any kind of an
 10:19 10 estimate of how long it will be before you pass the
 10:19 11 witness?
 10:20 12 MS. LOWRY: Very short, maybe five
 10:20 13 minutes.
 10:20 14 THE COURT: Let's do it and then we'll
 10:20 15 take a break. Tony Maxwell?
 10:20 16 MS. LOWRY: Yes, Your Honor.
 10:20 17 THE COURT: All right. Raise your right
 10:21 18 hand.
 10:21 19 TONY MAXWELL,
 10:21 20 being first duly sworn, testified as follows:
 10:21 21 THE COURT: Put your hand down. Please be
 10:21 22 seated right here. Ms. Lowry?
 10:21 23 MS. LOWRY: Yes, Your Honor. Thank you.
 10:21 24 DIRECT EXAMINATION
 10:21 25 BY MS. LOWRY:

10:21 1 Q. Please introduce yourself to the jury.
 10:21 2 A. I am Tony Maxwell with Southwestern Bell
 10:21 3 Corporate Security.
 10:21 4 Q. And how long have you been employed with
 10:21 5 Southwestern Bell Corporate Security?
 10:21 6 A. Four years.
 10:21 7 Q. Any connection with your job? Do you have
 10:21 8 custody of and access to certain information that's
 10:21 9 contained on your company's computer system?
 10:21 10 A. Yes.
 10:21 11 Q. And are the records that you have access to
 10:21 12 kept in the regular course of their business?
 10:21 13 A. Yes.
 10:21 14 Q. And what do those records pertain to?
 10:21 15 A. Phone records, phone bills, things of that
 10:22 16 nature.
 10:22 17 Q. So when a person calls in to get, say, a
 10:22 18 residence phone, are those the type records that are
 10:22 19 kept that you have access to?
 10:22 20 A. Yes.
 10:22 21 Q. And are you a custodian of those records?
 10:22 22 A. Yes.
 10:22 23 Q. Did you bring with you records pertaining to
 10:22 24 Ivan Cantu?
 10:22 25 A. Yes.

10:22 1 MS. LOWRY: May I approach, Your Honor?
 10:22 2 THE COURT: Yes.
 10:22 3 Q. (BY MS. LOWRY) I'm going to mark these State's
 10:22 4 Exhibit No. 119. And can you tell the jury what these
 10:22 5 records are? Do you need them back before?
 10:22 6 A. No. They are the phone bill for November and
 10:22 7 December of 2000 for Mr. Cantu.
 10:22 8 Q. Did it actually contain part of October, also?
 10:22 9 A. Yes.
 10:22 10 Q. And who is the person -- whose name is on that
 10:22 11 phone bill?
 10:22 12 A. It is Ivan -- let me get the middle initial
 10:23 13 here -- Ivan A. Cantu.
 10:23 14 Q. And what is the phone number?
 10:23 15 A. It is 972-380-1361.
 10:23 16 Q. And what is the address of that phone number?
 10:23 17 A. 4753 Old Bent Tree Lane, Apartment 1004,
 10:23 18 Dallas, Texas 75287.
 10:23 19 Q. And when was that phone established?
 10:23 20 A. It was established October 17th of 2000.
 10:23 21 Q. Are these records maintained on your computer
 10:23 22 and kept in the regular course of your business?
 10:23 23 A. Yes.
 10:23 24 Q. Do they accurately depict the phone
 10:23 25 transactions made from that particular phone number?

10:23 1 A. Yes.
 10:23 2 Q. And are these records made at or near the time
 10:23 3 that the calls are made?
 10:23 4 A. Yes.
 10:23 5 MS. LOWRY: Your Honor, at this time the
 10:23 6 State would offer State's Exhibit No. 119.
 10:24 7 MR. GOELLER: No objection.
 10:24 8 THE COURT: State's Exhibit 119 is
 10:24 9 admitted.
 10:24 10 (State's Exhibit 119 is admitted.)
 10:24 11 Q. (BY MS. LOWRY) Can you tell us when that phone
 10:24 12 service was established?
 10:24 13 A. October 17th, 2000.
 10:24 14 Q. And specifically on November 3rd of 2000, was
 10:24 15 there a call made between 11 p.m. and 12 p.m. -- or
 10:24 16 12 a.m.?
 10:24 17 A. Just one moment. Yes.
 10:24 18 Q. And where was that phone call going to?
 10:24 19 A. Franklin, Arkansas.
 10:24 20 Q. And at what time was that?
 10:24 21 A. 11:35 p.m.
 10:24 22 Q. And these phone records, they contain obviously
 10:25 23 the long distance phone calls?
 10:25 24 ~~A. Yes, the long distance.~~
 10:25 25 Q. What about the local calls?

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10:25 1 A. We do not keep records of local phone calls.
 10:25 2 Q. So we don't know from those records whether or
 10:25 3 not other phone calls were made to local numbers or not?
 10:25 4 A. Correct.
 10:25 5 Q. Do you-all have any records that would show
 10:25 6 whether or not local calls were made?
 10:25 7 A. No.
 10:25 8 MS. LOWRY: Pass the witness.
 10:25 9 MR. GOELLER: No questions, Your Honor.
 10:25 10 THE COURT: Is she excused by both sides?
 10:25 11 MS. LOWRY: Yes, Your Honor.
 10:25 12 MR. GOELLER: Yes, Your Honor.
 10:25 13 THE COURT: Ms. Maxwell, you are finally
 10:25 14 excused.
 10:25 15 THE WITNESS: Thank you.
 10:25 16 (Witness excused.)
 10:25 17 THE COURT: Ladies and gentlemen, this is
 10:25 18 a good time to take a break. Let's take 15 minutes.
 10:25 19 We'll be back in here just before 10:45.
 10:46 20 (Break.)
 10:46 21 THE COURT: All right. Let's bring the
 10:46 22 jury in. Please be seated. Call your next witness.
 10:46 23 (Open court, defendant and jury present.)
 10:48 24 MS. FALCO: Part of calling my next
 10:48 25 witness, I ask to publish one of the exhibits by way of

10:48 1 recitation of data to the jury.
 10:48 2 THE COURT: All right.
 10:48 3 MS. FALCO: With regard to State's Exhibit
 10:48 4 No. 6, the telephone retrieved at the victim's
 10:48 5 residence, and going through the caller ID and scrolling
 10:48 6 down to call 26, a call from Ivan Cantu, 11:13 p.m.,
 10:48 7 11-03 date, number 972-380-1361. And call 24 at
 10:49 8 9:59 p.m., date 11-03, Ivan Cantu 972-380-1361.
 10:49 9 At this time I'll call Dr. Rohr.
 10:49 10 THE COURT: All right.
 10:49 11 WILLIAM ROHR, M.D.,
 10:50 12 being first duly sworn, testified as follows:
 10:50 13 THE COURT: Please be seated. Ms. Falco?
 10:50 14 DIRECT EXAMINATION
 10:50 15 BY MS. FALCO:
 10:50 16 Q. Thank you, Doctor. Could you state your name
 10:50 17 for the record.
 10:50 18 A. My name is William Rohr. Last name is spelled
 10:50 19 R-O-H-R.
 10:50 20 Q. What is your occupation?
 10:50 21 A. I'm a physician. I'm the medical examiner for
 10:50 22 Collin County.
 10:50 23 Q. How long have you been a medical examiner?
 10:50 24 A. 15 years.
 10:50 25 Q. And how long have you been a doctor?

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10:50 1 A. Since 1979.
 10:50 2 Q. What is your educational background?
 10:50 3 A. My education includes a doctor of medicine
 10:50 4 degree from Louisiana State University Medical Center in
 10:50 5 New Orleans, Louisiana. And then beyond that my
 10:51 6 training includes a one-year rotating internship with
 10:51 7 Lafayette Charity Hospital in Lafayette, Louisiana.
 10:51 8 That was also part of the LSU system.
 10:51 9 Immediately after that I began a general
 10:51 10 pathology residency in anatomical and clinical pathology
 10:51 11 at the Charity Hospital of Louisiana in New Orleans.
 10:51 12 That was also part of the LSU system. At the end of
 10:51 13 that time I became board certified in anatomic and
 10:51 14 clinical pathology.
 10:51 15 Immediately after that I did a one-year
 10:51 16 fellowship in forensic pathology at the Institute of
 10:51 17 Forensic Sciences in Dallas, Texas, which is part of the
 10:51 18 Southwestern Medical School.
 10:51 19 At the end of that one-year fellowship I
 10:51 20 became board certified in the subspecialty of forensic
 10:51 21 pathology. My work experience includes approximately a
 10:51 22 year and a half as the State Medical Examiner for Iowa
 10:51 23 before coming to Collin County.
 10:51 24 Q. What are the duties of the medical examiner?
 10:51 25 A. The duties of the medical examiner are roughly

10:51 1 to uphold medical examiner law in the State of Texas.
 10:51 2 And that means that any case that is suppose -- any
 10:52 3 death that is supposed to be reported to the medical
 10:52 4 examiner under medical examiner law in the State of
 10:52 5 Texas be ascribed a competent and reasonable cause of
 10:52 6 death.

10:52 7 This may include anything from a phone --
 10:52 8 simply a couple of phone calls to establish the cause of
 10:52 9 death and letting the attending physician to sign the
 10:52 10 death certificate, all the way to performing a complete
 10:52 11 postmortem examination including autopsy in the medical
 10:52 12 examiner's office to establish cause or manner of death.

10:52 13 Q. And how many medical examiners are there in
 10:52 14 Collin County?

10:52 15 A. Just me.

10:52 16 Q. And so if somebody dies in Collin County and
 10:52 17 it's under the appropriate circumstances, you would be
 10:52 18 the one to perform the autopsy?

10:52 19 A. That would be correct.

10:52 20 Q. And now, is anybody who dies in Collin County
 10:52 21 subject to an autopsy?

10:52 22 A. No.

10:52 23 Q. What are the rules for when you do an autopsy?

10:52 24 A. ~~There are really no rules.~~ The only thing I
 10:52 25 can say is that the person that will most likely and

10:52 1 always get an autopsy is someone who is a homicide.

10:53 2 The least likely person to get an autopsy
 10:53 3 would be someone who has a medical history and is
 10:53 4 obviously a natural cause of death.

10:53 5 Q. With regard to conducting autopsies, first of
 10:53 6 all, with regard to crime scenes and doing them in a
 10:53 7 homicide case, do you frequently go out to the crime
 10:53 8 scene?

10:53 9 A. Yes. In homicides my policy is to go to the
 10:53 10 crime scene if the deceased individual is still at the
 10:53 11 crime scene and has not been transported to the
 10:53 12 hospital.

10:53 13 Q. And specifically, with regard to the case
 10:53 14 against Ivan Cantu, with the victims being James
 10:53 15 Mosqueda and Amy Kitchen, did you go to the crime scene?

10:53 16 A. Yes.

10:53 17 Q. Was that on November 4th of 2000?

10:53 18 A. Yes.

10:53 19 Q. What was your purpose for going to the crime
 10:53 20 scene?

10:53 21 A. Well, in homicide cases it's -- I find it
 10:53 22 helpful to go to the crime scene to help me better
 10:53 23 understand it and to give me a more intelligent approach
 10:53 24 to the autopsies and to help me understand the autopsy
 10:54 25 better.

10:54 1 Q. And once you went to the crime scene, do you
 10:54 2 then take custody of the bodies?

10:54 3 A. Yes.

10:54 4 Q. And how do you take custody of the bodies, and
 10:54 5 how do you transport them to your office?

10:54 6 A. Well, the medical examiner's office has a
 10:54 7 contract with a transport service, which is an ambulance
 10:54 8 company. We make sure that the body is placed under a
 10:54 9 white sheet and is transported in the ambulance directly
 10:54 10 to the medical examiner's office.

10:54 11 Q. Did you do that with James Mosqueda and Amy
 10:54 12 Kitchen?

10:54 13 A. Yes.

10:54 14 Q. And once you received them into your office,
 10:54 15 what is the procedure before you conduct the autopsies?

10:54 16 A. Well, the procedure is to read the field
 10:54 17 agent's report. The field agent is also at the scene.
 10:54 18 The field agent has made contact with law enforcement to
 10:54 19 see just who these people are, what are the
 10:54 20 circumstances of the death, and also makes contact with
 10:54 21 the physician of the deceased individual, if they have a
 10:55 22 physician, and to incorporate all of that information
 10:55 23 into a field agent report which I then read before
 10:55 24 undertaking the autopsy.

10:55 25 Q. And you made reference to a physician, if there

10:55 1 was an attending physician. In this case was there ever
 10:55 2 an attending physician?

10:55 3 A. For Mr. Mosqueda, no. For Ms. Kitchen, yes.
 10:55 4 There were two that were given to us.

10:55 5 Q. And who was that?

10:55 6 A. Dr. Kenneth Leggette and a Dr. Ferris.

10:55 7 Q. And would they have actually seen Ms. Kitchen
 10:55 8 at that time, or they just would have been doctors she
 10:55 9 would have seen at some point in time?

10:55 10 A. These were physicians that she had seen at some
 10:55 11 point in time while she was alive.

10:55 12 Q. With regard to you going out to the crime
 10:56 13 scene, was there any attending physician at the crime
 10:56 14 scene caring for the bodies?

10:56 15 A. No.

10:56 16 Q. And when you arrived at the crime scene, was it
 10:56 17 apparent that they were already deceased?

10:56 18 A. Yes.

10:56 19 Q. So there's no evidence of treatment or
 10:56 20 attendance by a physician at the crime scene?

10:56 21 A. That's correct.

10:56 22 Q. How do you identify the bodies?

10:56 23 A. Well, they are identified in various ways. In
 10:56 24 this case there was visual identification by family and
 10:56 25 neighbors of Ms. Kitchen. And for Mr. Mosqueda, it was

10:56 1 also a visual identification by family and neighbors.
 10:56 2 Q. And that's where someone from -- a family
 10:56 3 member or a close friend has to come and actually view
 10:56 4 the deceased body and say, yes, that is that person?
 10:56 5 A. Yes.
 10:56 6 Q. And in that case they did identify the bodies
 10:56 7 as James Mosqueda and Amy Kitchen?
 10:57 8 A. That's my understanding, yes.
 10:57 9 Q. When did you perform the autopsies on
 10:57 10 Mr. Mosqueda and Ms. Kitchen?
 10:57 11 A. That was done the next day beginning Sunday
 10:57 12 morning.
 10:57 13 Q. And who did you perform an autopsy on first?
 10:57 14 A. Mr. Mosqueda.
 10:57 15 Q. And what is -- is there anything to do in
 10:57 16 preparation for the autopsy before you begin conducting
 10:57 17 it?
 10:57 18 A. Well, again, the big thing is to review the
 10:57 19 field agent's report. And that would be the -- what I
 10:57 20 would have to do before I'd begun the autopsy.
 10:57 21 Q. When you began Mr. Mosqueda's autopsy, what is
 10:57 22 the procedure as you are conducting the autopsy?
 10:57 23 A. The procedure is to take photographs, to view
 10:57 24 the external body with the clothing on, and then to
 10:57 25 recover hand wipings or handwashings to eventually test

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10:57 1 for the absence or presence of gunshot residue on the
 10:57 2 hands. To retrieve nails from the hands, any evidence
 10:58 3 of a body that might be obvious, and to retrieve head
 10:58 4 hair standards to compare at a later date in case need
 10:58 5 be.
 10:58 6 Q. Do you also take blood samples from the bodies?
 10:58 7 A. Yes. Further along in the examination.
 10:58 8 Q. And did you take blood samples from both
 10:58 9 Mr. Mosqueda and Ms. Kitchen?
 10:58 10 A. Yes.
 10:58 11 Q. And when you take the blood samples, how do you
 10:58 12 take them and how do you contain them?
 10:58 13 A. They are withdrawn hopefully from the leg,
 10:58 14 usually from the leg. And blood samples are put in
 10:58 15 various colored tubes with various preservatives within
 10:58 16 those tubes. There are some that are put in gray-top
 10:58 17 tubes and red-top tubes for toxicological analysis.
 10:58 18 That is, there will eventually be an
 10:58 19 analysis of that blood to see what was in the blood at
 10:58 20 the time of death in terms of drugs or alcohol. And
 10:58 21 then there is also a collection of a purple-top and a
 10:58 22 yellow-top tube, which is usually used for DNA analysis.
 10:59 23 Q. And the ones that you use for DNA analysis, you
 10:59 24 said you put them in a purple top and a red top?
 10:59 25 A. A purple and a -- if I said red top, that's

10:59 1 wrong. It's a purple and a yellow.
 10:59 2 Q. I'm sorry, a purple and yellow top. What's the
 10:59 3 purpose -- and when you are talking about top, is that
 10:59 4 the little top that's on top of the test tube?
 10:59 5 A. Yes. There's a rubber stopper, and it has
 10:59 6 various different colors. The different colors indicate
 10:59 7 what kind of preservative is in the tube.
 10:59 8 Q. And what is significant about a purple top and
 10:59 9 a yellow top that you use those for DNA analysis?
 10:59 10 A. It's what the laboratory wants best. It
 10:59 11 usually prevents the blood from clotting and keeps the
 10:59 12 blood fresher. The purple top has a substance called
 10:59 13 EDTA, which is a preservative which inhibits bacterial
 10:59 14 growth. And the other, the yellow top, has citrate in
 10:59 15 it which the main purpose of that is to preserve the
 10:59 16 integrity of the blood cells.
 10:59 17 Q. And when you withdrew blood cells from
 10:59 18 Mr. Mosqueda and Ms. Kitchen for DNA purposes, did you
 11:00 19 put them in a purple top and a yellow top?
 11:00 20 A. Yes.
 11:00 21 Q. And once the blood samples are drawn, do you
 11:00 22 then seal the test tube?
 11:00 23 A. The test tube is never unsealed because it's
 11:00 24 done by the vacutainer method where there is -- the
 11:00 25 blood is withdrawn to a syringe, and then the top of the

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11:00 1 tube is punctured, so it is never unsealed.
 11:00 2 Q. What packaging do you put the test tube in?
 11:00 3 A. We don't usually put it in any specific
 11:00 4 packaging.
 11:00 5 Q. Do you label the test tubes?
 11:00 6 A. We definitely label them, yes.
 11:00 7 Q. In this case did you personally take the test
 11:00 8 tubes to the forensic lab, the Southwest Institute of
 11:00 9 Forensic Science?
 11:00 10 A. Yes.
 11:00 11 Q. And were they labeled?
 11:00 12 A. Yes.
 11:00 13 Q. Do you also -- at the time you are doing the
 11:00 14 hand wipings and the withdrawal of the blood, do you
 11:00 15 also fingerprint the bodies?
 11:00 16 A. A little further on in the examination, yes.
 11:00 17 MS. FALCO: Your Honor, may I approach?
 11:00 18 THE COURT: Yes.
 11:00 19 Q. (BY MS. FALCO) Doctor, I show you what's been
 11:01 20 marked as State's 91 and State's 90. Do you recognize
 11:01 21 those two sets of fingerprints?
 11:01 22 A. Yes, I do.
 11:01 23 Q. Whose fingerprints are those?
 11:01 24 A. Well, State's Exhibit 90 are fingerprints and
 11:01 25 palm prints that are taken -- that were taken by me of

11:01 1 James Mosqueda. And State's Exhibit No. 91 are a set of
 11:01 2 fingerprints and palm prints taken by me of Amy Kitchen.
 11:01 3 Q. And when you are taking photographs of the
 11:01 4 body, you said you initially take them with their
 11:01 5 clothes as they are dressed?
 11:01 6 A. Yes.
 11:01 7 Q. When they come to you?
 11:01 8 A. As the deceased individual came to us, yes.
 11:01 9 Q. And with regard to any blood they might have on
 11:01 10 them, how do you photograph that? Or do you photograph
 11:01 11 while the blood is still on them?
 11:01 12 A. I would take a picture of the deceased
 11:01 13 individual before the body is cleaned up.
 11:01 14 Q. After you take the photographs before the body
 11:02 15 is cleaned up, do you then clean the body up?
 11:02 16 A. At some point, yes.
 11:02 17 Q. What is the next step after you photograph the
 11:02 18 bodies as they are clothed?
 11:02 19 A. The next step would be, again, to look for any
 11:02 20 evidence that might be of value on the bodies, retrieve
 11:02 21 that, and then start removing the clothing so I can see
 11:02 22 what's underneath it.
 11:02 23 Q. When you say you are looking at the body for
 11:02 24 any evidence that might be on that, what type of things
 11:02 25 are you looking for?

11:02 1 A. Hairs, fibers, gunpowder fragments, if there's
 11:02 2 a gunshot wound.
 11:02 3 Q. And if you see such evidence, do you collect
 11:02 4 and gather that?
 11:02 5 A. Yes.
 11:02 6 Q. And with regard to gunpowder fragments, how do
 11:02 7 you collect a gunpowder fragment?
 11:02 8 A. Gunpowder, my technique is, what I was taught
 11:02 9 is, you would take a piece of Scotch tape. Let's say
 11:02 10 there's a fragment of gunpowder on the skin. You would
 11:03 11 take a piece of Scotch tape and put it up against the
 11:03 12 gunpowder fragment on the skin, and the adhesive from
 11:03 13 the tape would remove it. And then you would place the
 11:03 14 tape on a glass slide so that the gunpowder fragment
 11:03 15 will be trapped, secure, and it's also easy to see.
 11:03 16 Q. And after you examined the body for any
 11:03 17 physical evidence, what do you do next?
 11:03 18 A. Probably take more photographs. Do an external
 11:03 19 examination again to document the presence or absence of
 11:03 20 injury or any natural disease process. And if it were a
 11:03 21 homicide involving gunshot wounds, I would x-ray those
 11:03 22 areas that were involved, of the body that were involved
 11:03 23 by the gunshot wounds.
 11:03 24 Q. And what is the purpose of photographing the
 11:03 25 wounds?

11:03 1 A. To show what they look like.
 11:03 2 Q. And at some point in time do you then disrobe
 11:03 3 the bodies?
 11:04 4 A. Yes.
 11:04 5 Q. And do you also clean them up?
 11:04 6 A. At some point, yes.
 11:04 7 Q. And how do you clean up the bodies?
 11:04 8 A. Usually with water. It can be by various
 11:04 9 means. Sometimes water isn't necessary.
 11:04 10 Q. After you have the bodies cleaned and disrobed,
 11:04 11 do you then take more photographs --
 11:04 12 A. Yes.
 11:04 13 Q. -- of the injuries?
 11:04 14 A. Yes.
 11:04 15 Q. What is the next step in the autopsy?
 11:04 16 A. I would think -- I'm thinking about the ground
 11:04 17 we've covered so far, but I think the next step actually
 11:04 18 would be to do an internal examination.
 11:04 19 Q. And how do you conduct an internal examination?
 11:04 20 A. The internal examination, that would be the
 11:04 21 so-called autopsy part, where the deceased body is
 11:04 22 entered. There's a Y-shaped incision of the trunk --
 11:04 23 front of the trunk of the body. The organs are removed.
 11:05 24 They are weighed. They are dissected. They are
 11:05 25 examined for the presence or absence of natural disease

11:05 1 or injury. Sometimes there is evidence to be collected
 11:05 2 inside of the body such as a bullet that may be at the
 11:05 3 end of a bullet track.
 11:05 4 The neck is also entered from the Y-shape
 11:05 5 incision and examined. The head is also entered to
 11:05 6 examine the brain. There's an incision that's made in
 11:05 7 the back of the head. The scalp is reflected forward
 11:05 8 and backward. Again, the scalp is examined for the
 11:05 9 presence or absence of injury. And then the skull cap
 11:05 10 is removed with a saw. The brain is exposed. The brain
 11:05 11 is taken out, weighed and examined for the presence or
 11:05 12 absence of natural disease or injury. And all this is
 11:05 13 documented with photographs. Photographs are not only
 11:05 14 taken of the external body but also, on occasion, of the
 11:05 15 internal organs to show what the injury looks like.
 11:05 16 Q. And once you've conducted the internal
 11:06 17 examination of the body, what do you do?
 11:06 18 A. Organs are returned to the body. They are put
 11:06 19 in a plastic bag. The body is sewn up. I make sure all
 11:06 20 my notes are in order. Formulate, if I can, at that
 11:06 21 time a cause and manner of death.
 11:06 22 Q. And are you taking notes as you are performing
 11:06 23 the autopsy?
 11:06 24 A. For the most part, yes.
 11:06 25 Q. And after you have completed the physical

11:06 1 autopsy of the body, do you then prepare a report?
 11:06 2 A. At some point in time when all the necessary
 11:06 3 data is in, yes.
 11:06 4 MS. FALCO: Your Honor, may I approach the
 11:06 5 witness?
 11:06 6 THE COURT: Yes.
 11:06 7 Q. (BY MS. FALCO) Doctor, I show you what's been
 11:06 8 marked as State's Exhibit No. 157. Do you recognize
 11:06 9 that exhibit?
 11:06 10 A. This is -- yeah. State's Exhibit 157 is an
 11:06 11 affidavit signed by me attached to a copy of the autopsy
 11:07 12 report of Amy Kitchen.
 11:07 13 Q. And is that your report of your autopsy of Amy
 11:07 14 Kitchen?
 11:07 15 A. Correct.
 11:07 16 Q. I show you what's been marked as State's
 11:07 17 Exhibit 158. Do you recognize that exhibit?
 11:07 18 A. Yes. State's Exhibit 158 is, again, an
 11:07 19 affidavit attached to an autopsy report, but in this
 11:07 20 case the autopsy report is that of James Mosqueda. The
 11:07 21 affidavit is signed by me.
 11:07 22 Q. And is that your report of your autopsy of
 11:07 23 James Mosqueda?
 11:07 24 A. Yes.
 11:07 25 MS. FALCO: At this time we offer State's

11:07 1 Exhibit 157 and 158.
 11:07 2 MR. GOELLER: No objection, Your Honor.
 11:07 3 THE COURT: Number 157 and 158 for the
 11:07 4 State are admitted.
 11:07 5 (State's Exhibit Nos. 157 and 158
 11:07 6 admitted.)
 11:07 7 Q. (BY MS. FALCO) Doctor, you said you conducted
 11:07 8 the autopsy of James Mosqueda first; is that correct?
 11:07 9 A. Correct.
 11:07 10 Q. And in your autopsy report, do you document the
 11:07 11 injuries or the wounds as you see them?
 11:07 12 A. Yes.
 11:07 13 Q. And specifically, with regard to James
 11:08 14 Mosqueda, how many injuries or wounds did you note?
 11:08 15 A. There were two gunshot wounds.
 11:08 16 Q. And do you label them gunshot wound No. 1 and
 11:08 17 gunshot wound No. 2?
 11:08 18 A. Yes.
 11:08 19 Q. And do you have a copy of your report with you?
 11:08 20 A. Yes.
 11:08 21 Q. With regard to gunshot wound No. 1, could you
 11:08 22 indicate to the jury where that gunshot wound is
 11:08 23 located?
 11:08 24 A. Gunshot wound No. 1 has an entry site just
 11:08 25 above the right ear.

11:08 1 Q. And you are pointing to basically your temple
 11:08 2 area?
 11:08 3 A. Yes. It's just above the right ear right here.
 11:08 4 Q. And with regard to that wound, do you observe
 11:08 5 the track that it took as it entered the head?
 11:08 6 A. Yes.
 11:08 7 Q. And what was the track that it took?
 11:08 8 A. Well, the track that went through the head was
 11:08 9 through the left side of the -- through the right side
 11:08 10 of the outside of the right cerebral hemisphere. The
 11:08 11 bullet went downward into the cerebellum. Those are the
 11:08 12 two lobes that you usually see in a picture of the brain
 11:09 13 that are underneath the brain. The bullet went not
 11:09 14 directly into the skull, but through the skull for a
 11:09 15 bit, and it fragmented the bullet, and there were bullet
 11:09 16 fragments within the brain and the scalp scattered along
 11:09 17 the track.
 11:09 18 Q. Did you retrieve those bullet fragments?
 11:09 19 A. Yes.
 11:09 20 Q. And where were the bullet fragments located
 11:09 21 within the general area of the brain?
 11:09 22 A. Within the general -- they were along the
 11:09 23 general area of the wound track. Again, near the entry
 11:09 24 site. There was one fragment within the scalp,
 11:09 25 actually, near the entry site that didn't really make it

11:09 1 through into the skull. But the bulk of and the
 11:09 2 remainder of the fragments were along the wound track,
 11:09 3 again, in the right cerebral hemisphere in the right
 11:09 4 cerebellum.
 11:09 5 Q. And with in regard to this particular gunshot
 11:09 6 wound, is that a lethal injury?
 11:09 7 A. Potentially, yes.
 11:09 8 Q. When you say potentially, how could it cause
 11:09 9 death?
 11:09 10 A. By brain swelling, infection, or it may kill
 11:10 11 right away. It's difficult to say how someone would
 11:10 12 actually react to a gunshot wound of the head of this
 11:10 13 nature.
 11:10 14 Q. And when you say it may kill someone right
 11:10 15 away, how would it kill someone right away?
 11:10 16 A. Heart beat and respiration would stop right
 11:10 17 away, or the ability to control it would happen right
 11:10 18 away.
 11:10 19 Q. With regard to gunshot wound No. 1, you also
 11:10 20 indicate that there's no edema of the brain. What is
 11:10 21 edema?
 11:10 22 A. Edema is swelling, brain swelling.
 11:10 23 Q. When you indicate there's no edema of the brain
 11:10 24 in relationship to this gunshot wound, what does that
 11:10 25 indicate to you?

11:10 1 A. Well, edema, after injury to the brain, usually
11:10 2 takes at least a few minutes to develop. Some people
11:10 3 say as long as 20 minutes. Some people say an hour or
11:10 4 two. The point of the matter is, he died. Mr. Mosqueda
11:10 5 died before any brain edema or brain swelling could
11:11 6 develop.

11:11 7 Q. So would you say death was fairly
11:11 8 instantaneously?

11:11 9 A. Well, all I can say is that it happened before
11:11 10 brain edema or brain swelling began.

11:11 11 Q. How long would it take for the brain swelling
11:11 12 or the brain edema to begin?

11:11 13 A. Again, a few minutes.

11:11 14 Q. So at least minutes of the gunshot wound?

11:11 15 A. Yes.

11:11 16 Q. With regard to that first gunshot wound, did
11:11 17 you detect what's called stipple or stippling?

11:11 18 A. Yes.

11:11 19 Q. And what is stippling?

11:11 20 A. Stippling is when a bullet comes out of a
11:11 21 muzzle of a gun when it's fired out. There's other
11:11 22 things that come out, too. One of the things is gun
11:11 23 smoke, just the smoke from the burning gunpowder. And
11:11 24 then there are also partially burned or unburned
11:11 25 gunpowder fragments that just don't completely burn as a

11:11 1 result of the discharge of the round. These fragments
11:11 2 of gunpowder are hot. They project out for a short
11:11 3 distance from the muzzle further than the gun smoke, and
11:11 4 they can deposit on the target. In this case they
11:11 5 deposited on Mr. Mosqueda's skin. These hot gunpowder
11:12 6 fragments go into the skin for a very short distance and
11:12 7 they cause a small amount of hemorrhage or redness at
11:12 8 that point. So you have these little marks of what's
11:12 9 called stippling -- that's the term I use at least -- on
11:12 10 the skin surrounding a gunshot-wound entry if the muzzle
11:12 11 of the gun is close enough to the entry upon discharge,
11:12 12 and they are small red punctate hemorrhages. And if you
11:12 13 look hard enough, you can actually see the gunpowder
11:12 14 fragment embedded in the skin.

11:12 15 Q. When you say it has to be close enough to leave
11:12 16 this deposit on the skin, generally what range are we
11:12 17 talking about? How close does the gun have to be to the
11:12 18 skin to leave that kind of stippling?

11:12 19 A. That kind of stippling without the presence of
11:12 20 gun smoke, which I did not see, at least a few inches.
11:12 21 Or maybe it could be further than that. Again, to
11:12 22 absolutely say how far away the muzzle of the gun was,
11:12 23 you have to test fire the weapon that was used and the
11:13 24 ammunition that was used as well.

11:13 25 Q. But given just a general range, what would the

11:13 1 general range be? How far away would you have to be
11:13 2 before you did not see stippling at all?

11:13 3 A. Hard to say. It could be as close as two feet
11:13 4 or three feet.

11:13 5 Q. Would you expect to see stippling if you were
11:13 6 further away than three feet?

11:13 7 A. It's possible but it would be much less likely.

11:13 8 Q. And how would you describe the stippling around
11:13 9 that gun wound on James Mosqueda?

11:13 10 A. It was widely scattered. You could see it. It
11:13 11 was widely scattered. It was not intense or dense.

11:13 12 Q. And if you had to give an estimate of range,
11:13 13 how far away the gun was from the wound, what would the
11:13 14 range be?

11:13 15 A. That's really hard to say. I mean, it could be
11:13 16 anywhere from a few inches to a few feet. Again, the
11:13 17 weapon needs to be test fired.

11:13 18 Q. With regard to gunshot wound No. 2, where was
11:14 19 gunshot wound No. 2 located?

11:14 20 A. The entry was in the left neck.

11:14 21 Q. And specifically where on the neck?

11:14 22 A. About right here.

11:14 23 Q. And when you labeled these gunshot wound
11:14 24 No. 1 and gunshot wound No. 2, are you inserting your
11:14 25 own opinion of which injury you thought occurred first

11:14 1 or just how you examined them?

11:14 2 A. No. It has nothing to do with what injury I
11:14 3 think came first or second. Usually what I try to do
11:14 4 with these gunshot wounds is just kind of label them
11:14 5 from top to bottom.

11:14 6 Q. So gunshot wound No. 1 would have been closer
11:14 7 to the top of the head; and gunshot wound No. 2 is
11:14 8 further down in the neck?

11:14 9 A. Yes. Depending on the entry, yes.

11:14 10 Q. With regard to gunshot wound No. 2, what was
11:14 11 the wound direction for that one?

11:14 12 A. Well, the wound direction or the wound track
11:14 13 went through the neck, went through the base of the
11:14 14 tongue, went through soft tissues of the neck. It even
11:14 15 entered the hypopharynx, the lower part of the mouth,
11:15 16 and then kind of reentered the right side of the face
11:15 17 and then went up through the right neck to lodge right
11:15 18 underneath the right ear without exiting.

11:15 19 Q. And were you able to retrieve that bullet?

11:15 20 A. Yes.

11:15 21 Q. And with regard to that particular wound, did
11:15 22 you also notice stippling surrounding that wound?

11:15 23 A. Yes.

11:15 24 Q. And how would you describe that stippling?

11:15 25 A. Well, there was more of it, and it was denser

11:15 1 than the stippling on the right side of the face
11:15 2 associated with the first gunshot wound. This would
11:15 3 simply mean that the muzzle of the gun was closer.

11:15 4 Q. And when you say closer, could you give us a
11:15 5 range of how close the gun would be to the wound?

11:15 6 A. Well, it's hard to say. Again, I think you can
11:15 7 look at the two stippling patterns and, provided the
11:15 8 ammunition was the same, gunshot wound No. 2 was -- the
11:15 9 gun was discharged at a much closer range.

11:15 10 It's kind of hard to say exactly without
11:16 11 test firing the weapon, but it's just closer than No. 1.
11:16 12 Obviously closer than No. 1.

11:16 13 Q. Within a couple of inches to two or three feet?

11:16 14 A. Well, a couple of inches. Again, I'd like to
11:16 15 emphasize, in gunshot wound No. 2, at the entry there
11:16 16 was no gun smoke seen. So the muzzle might have been
11:16 17 close, but it could have been closer. So it was far
11:16 18 away. Not as far as to not leave any gun smoke on the
11:16 19 skin. So it could be anywhere from inches to feet.

11:16 20 Q. With regard to gunshot wound No. 2, is that
11:16 21 gunshot wound lethal?

11:16 22 A. Potentially, yes.

11:16 23 Q. How could it potentially be lethal?

11:16 24 A. Well, with the track I've described, it just
11:16 25 didn't just kind of pass through the face. It didn't

11:16 1 enter the cranial vault, but there's going to be lots of
11:16 2 hemorrhaging into the mouth as blood is going to be
11:16 3 readily aspirated and could cause problems and
11:17 4 immediately with breathing because of aspirated blood.

11:17 5 Q. Now, with regard to that, with -- if it goes
11:17 6 into the mouth, if somebody were still alive after that
11:17 7 gunshot wound, might you see that blood either in the
11:17 8 stomach or in the airways if that person was still
11:17 9 breathing or swallowing?

11:17 10 A. Yes, that's possible.

11:17 11 Q. And did you observe that in Mr. Mosqueda?

11:17 12 A. No, I did not.

11:17 13 Q. And the fact that, if there's blood in his
11:17 14 mouth with the wound track that it took and there's no
11:17 15 blood in his airways, there's no blood in his stomach,
11:17 16 does that indicate anything to you?

11:17 17 A. It means that he was not breathing sufficiently
11:18 18 to inhale any of that blood or did not bleed enough from
11:18 19 the injuries to actually produce enough blood from the
11:18 20 injuries so that he could inhale a significant amount
11:18 21 that I could see.

11:18 22 Q. And assuming there was sufficient blood, you
11:18 23 said he wasn't breathing sufficiently, but is it also
11:18 24 possible he immediately stopped breathing at that point?
11:18 25 A. That's possible, yes.

11:18 1 Q. Now, with regard to the examination of James
11:18 2 Mosqueda, after you examined him, did you form a
11:18 3 conclusion as to cause of death?

11:18 4 A. Yes.

11:18 5 Q. And what was your conclusion?

11:18 6 A. The cause of death was multiple gunshot wounds.

11:18 7 Q. Now, with regard to -- you said you also take
11:18 8 blood from the deceased for the purposes of toxicology;
11:18 9 is that correct?

11:18 10 A. That's correct.

11:18 11 Q. And did you do that with James Mosqueda?

11:18 12 A. Yes.

11:18 13 Q. And with regard to the results of the
11:19 14 toxicology, what did it show was in his bloodstream at
11:19 15 the time of death?

11:19 16 A. At the time of the death there was a very small
11:19 17 amount of alcohol. The equivalent of a half, probably a
11:19 18 half a beer or something like that, a very small amount.
11:19 19 There's also a drug called Doxylamine. It's an
11:19 20 antihistamine.

11:19 21 I think it can be sold over the counter
11:19 22 for sedative effects. Antihistamines tend to make one
11:19 23 drowsy, and it's used for that purpose. And the amount
11:19 24 there, that 0.3 milligrams per liter, is kind of what
11:19 25 you would expect if someone is taking it to help them go

11:19 1 to sleep.

11:19 2 Q. Now, with regard to Amy Kitchen, when did you
11:19 3 perform her autopsy?

11:19 4 A. That was on the same day. After Mr. Mosqueda
11:19 5 was completed.

11:19 6 Q. And did you follow the same procedures as you
11:19 7 did with Mr. Mosqueda?

11:19 8 A. Yes.

11:19 9 Q. And with regard to Ms. Kitchen, how many --
11:20 10 evidence of injury -- how many wounds did you observe on
11:20 11 her?

11:20 12 A. I think there was a total of -- well, there
11:20 13 were a total of four. One involved in reentry, an
11:20 14 entry, and exit of the left arm, and a reentry of the
11:20 15 left chest. I mean, that would technically be five.
11:20 16 But actually there were four bullets retrieved.

11:20 17 Q. And starting again with gunshot wound No. 1,
11:20 18 and again, do you call this gunshot wound No. 1 because
11:20 19 it starts at the top of the head?

11:20 20 A. Yes.

11:20 21 Q. And where was gunshot wound No. 1?

11:20 22 A. Well, the entry was right on the top of the
11:20 23 head, just a little bit to the left of the midline.

11:20 24 Q. And if you could point to your head to show the
11:20 25 jury where you are talking about.

11:20 1 A. Right here.
 11:20 2 Q. That would be definitely within her hair?
 11:20 3 A. Yes. Definitely within her scalp.
 11:20 4 Q. What was the direction of that bullet?
 11:20 5 A. It was downward. If someone -- I say downward.
 11:21 6 If someone is standing in the anatomic position, just
 11:21 7 standing up with palms forward, then the direction of
 11:21 8 the bullet is downward.
 11:21 9 Q. And where did that bullet, what direction did
 11:21 10 it take once it went downward into the frame?
 11:21 11 A. It went through the skull. It went through the
 11:21 12 left cerebral hemisphere, and then it coursed a little
 11:21 13 bit to the right and went through the right cerebellum
 11:21 14 and impacted against the bottom of the skull, and it was
 11:21 15 retrieved in that area.
 11:21 16 Q. And you did retrieve that bullet?
 11:21 17 A. Yes.
 11:21 18 Q. With regard to gunshot wound No. 1, you
 11:21 19 indicated there's little hemorrhage throughout the wound
 11:21 20 track?
 11:21 21 A. Yes.
 11:21 22 Q. What does that indicate?
 11:21 23 A. I don't think her heart was beating very
 11:21 24 efficiently or probably not at all when she suffered
 11:21 25 that wound. It was striking when you look at it.

11:21 1 There's just really no hemorrhage that you can see.
 11:21 2 Q. When you say her heart probably stopped
 11:21 3 beating, that would have been a gunshot wound after she
 11:22 4 was already dead?
 11:22 5 A. Yes.
 11:22 6 Q. With regard to gunshot wound No. 2, where did
 11:22 7 you observe that wound?
 11:22 8 A. There was an entry site for gunshot wound
 11:22 9 No. 2 in the left shoulder blade area.
 11:22 10 Q. And approximately how far? If you would turn
 11:22 11 around to the jury and kind of illustrate where you are
 11:22 12 talking.
 11:22 13 A. In this area.
 11:22 14 Q. And where was the direction of travel for that
 11:22 15 bullet?
 11:22 16 A. Again, describing this in the anatomic
 11:22 17 position, with someone standing straight up, the bullet
 11:22 18 was going downward through the left lung, and it lodged
 11:22 19 again in the back.
 11:22 20 Q. And based on the wound track and your
 11:22 21 examination of the body, do you have an opinion of how
 11:22 22 Ms. Kitchen might have been positioned when she received
 11:22 23 that gunshot wound?
 11:22 24 A. She might have been positioned in an arched-
 11:22 25 over position because the bullet takes a strange track.

11:22 1 As I said, it enters in the left back, and yet the
 11:23 2 entry -- yet the bullet was recovered lower in the left
 11:23 3 back. But then, again, the bullet goes to the left
 11:23 4 lung. So this could be a combination of somebody being
 11:23 5 arched with the lung expanded.

11:23 6 The lung expansion may have been such or
 11:23 7 the position of the lung within the space of the left
 11:23 8 chest may have been such to give this impression only
 11:23 9 that somebody was arched, or it could be that the bullet
 11:23 10 did strike some ribs, and the bullet could have been
 11:23 11 deflected in some kind of way.

11:23 12 Q. And when you say she was in an arched position,
 11:23 13 could you demonstrate that to the jury.

11:23 14 A. Well, just arched over this way as if there was
 11:23 15 some curvature to the trunk such that the bullet took
 11:23 16 that course. Again, all of this could be due to
 11:23 17 deflection of the bullet because of a rib or striking a
 11:23 18 bone, too.

11:23 19 Q. And were you able to retrieve that bullet?

11:23 20 A. Yes.

11:23 21 Q. And when you said it went through the lung, how
 11:23 22 would you describe Ms. Kitchen's lungs when you examined
 11:24 23 her in the autopsy?

11:24 24 A. Well, the bullet went -- there are two lung
 11:24 25 lobes, an upper and a lower lobe, and this bullet went

11:24 1 through both lobes.

11:24 2 Q. And is that gunshot wound potentially lethal?

11:24 3 A. Yes.

11:24 4 Q. Why is that?

11:24 5 A. Well, there are two things that are going to
 11:24 6 happen here. Again, as I said, the lung is in an empty
 11:24 7 space, a vacuum, if you will, in the left chest. And
 11:24 8 the bullet goes through that area, and the vacuum is
 11:24 9 broken and air gets in, and then the lung can't expand.

11:24 10 The other thing is that the space around
 11:24 11 the lung starts to fill up with blood, and there's blood
 11:24 12 loss. And also it's difficult for the lung to expand
 11:24 13 against that blood.

11:24 14 Q. And with regard to Ms. Kitchen's lungs, did she
 11:24 15 have a large amount of blood in her lungs?

11:24 16 A. There was a large amount of blood in the space
 11:24 17 surrounding her left lung.

11:24 18 Q. And getting back to gunshot wound No. 1 -- I
 11:25 19 don't know if I asked -- though you believe that gunshot
 11:25 20 wound was after she was already dead -- if she were
 11:25 21 alive, would that gunshot wound have been potentially
 11:25 22 lethal?

11:25 23 A. Yes.

11:25 24 Q. Why do you say that?

11:25 25 A. It passed through a lot of important structures

11:25 1 of the brain.
 11:25 2 Q. That would cause the body functions to cease?
 11:25 3 A. Yes.
 11:25 4 Q. With regard to gunshot wound No. 3, where was
 11:25 5 gunshot wound No. 3?
 11:25 6 A. No. 3 entry is in the back, lower. As we said,
 11:25 7 gunshot wound No. 2 was up here at the shoulder blade
 11:25 8 area. No. 3 is lower, right about here.
 11:25 9 Q. And on a woman would that be around the area of
 11:25 10 a bra strap, to give a reference?
 11:25 11 A. Yeah, roughly speaking.
 11:25 12 Q. And what direction of travel did that bullet
 11:25 13 take?
 11:25 14 A. Well, that bullet went from, of course, from
 11:25 15 the back to the front of the body. It went from left to
 11:25 16 right, and it went sort of across the right chest.
 11:25 17 Q. And did that bullet exit the body?
 11:25 18 A. Yes.
 11:25 19 Q. Where did it exit the body?
 11:25 20 A. In the area of the right upper breast.
 11:25 21 Q. And were you able to retrieve that bullet?
 11:25 22 A. Yes.
 11:25 23 Q. Where was that bullet?
 11:25 24 A. That was found on the autopsy cart. That
 11:25 25 bullet was apparently trapped by the clothing after it

11:26 1 exited the right chest, and it was found on the autopsy
 11:26 2 cart.
 11:26 3 Q. And did you observe a defect in her shirt where
 11:26 4 it indicated that it had come through the shirt as it
 11:26 5 exited?
 11:26 6 A. Yes.
 11:26 7 Q. With regard to gunshot wound No. 3, is that
 11:26 8 potentially lethal?
 11:26 9 A. Yes, it is lethal.
 11:26 10 Q. Why is that?
 11:26 11 A. It went through a lot of important structures
 11:26 12 of the chest. It went -- it also went through the left
 11:26 13 lung. There's a -- as the windpipe or the trachea comes
 11:26 14 down the neck, it has two main divisions: one to the
 11:26 15 left lung and one to the right lung.
 11:26 16 Well, the bullet went through that main
 11:26 17 division that sends air to the left lung. And then it
 11:26 18 grazed the left side of the heart, and then the bullet
 11:26 19 went through the aorta and then the pulmonary artery.
 11:27 20 Now, the aorta is that big vessel that
 11:27 21 comes directly out of the heart and distributes blood to
 11:27 22 the rest of the body. It went right through the base of
 11:27 23 that, through and through. And then it went through and
 11:27 24 through the pulmonary artery.
 11:27 25 The pulmonary artery is that big vessel

11:27 1 that directs blood from the heart to the lungs where
 11:27 2 it's oxygenated. The bullet also went through that
 11:27 3 vessel, as well. The bullet also went through the right
 11:27 4 lung and before exiting the right chest through the
 11:27 5 breast.
 11:27 6 Q. With regard to gunshot wound No. 4, and is this
 11:27 7 the one you talked about that was an entry and exit and
 11:27 8 a reentry?
 11:27 9 A. Correct.
 11:27 10 Q. And could you describe that for the jury?
 11:27 11 A. Again, in the anatomic position, with someone
 11:27 12 standing straight up and with arms to the front, the
 11:27 13 bullet entered the back of the left arm here, just about
 11:28 14 right here, and then exited the left arm here, about
 11:28 15 here. And then what I think happened is that it
 11:28 16 reentered the chest here, going into the left breast.
 11:28 17 The bullet went into the left breast.
 11:28 18 And Ms. Kitchen had a saline implant in
 11:28 19 both of her breasts, but it went into the saline
 11:28 20 implant. The saline implant is a -- saline being water.
 11:28 21 The implant being a plastic bag, a clear plastic bag
 11:28 22 like, if you will. And the bullet went into that
 11:28 23 plastic bag. The water drained out of the breast
 11:28 24 implant, and the bullet was found inside the plastic
 11:28 25 bag, which was the implant.

11:28 1 Q. And why do you think that is what happened to
 11:28 2 the bullet, that it went in and out of her arm and into
 11:28 3 her breast?
 11:28 4 A. I think it's all one gunshot wound. Obviously,
 11:29 5 the entry in the skin here and in the clothing. The
 11:29 6 bullet went through her T-shirt and her brassiere, but
 11:29 7 what was left on the skin and what you can see on the
 11:29 8 clothing is that this all seems to be an atypical-type
 11:29 9 entry. What you would expect if a bullet is entering a
 11:29 10 target.
 11:29 11 The entry site is fairly round and
 11:29 12 discrete. But these were sort of jagged and irregular
 11:29 13 in appearance, which made me think that the bullet had
 11:29 14 already gone through another target and had been
 11:29 15 somewhat deformed. That other target being the left
 11:29 16 arm.
 11:29 17 Q. And the way the wound track went with this
 11:29 18 particular gunshot, is it consistent with someone who
 11:29 19 may have had their arm up as in to protect their body,
 11:29 20 going in the back of the arm, coming out of the arm, and
 11:29 21 lodging into the breast?
 11:29 22 A. Well, someone could have been in that position
 11:29 23 that you indicate.
 11:29 24 Q. And if we assume that that was the first
 11:29 25 gunshot wound or one in which she was still sufficiently

11:29 1 breathing and alive, is this consistent with her holding
11:30 2 up her arm to protect herself?

11:30 3 A. It would be, but I would also like to point out
11:30 4 that there was relatively little hemorrhage in this
11:30 5 wound, as well. Just like in the gunshot wound to the
11:30 6 head, there was a little hemorrhage in this. There was
11:30 7 also not a whole lot of hemorrhage either.

11:30 8 Q. What does that indicate to you?

11:30 9 A. She may very well have suffered this wound
11:30 10 while her heart was not pumping sufficient enough blood
11:30 11 to get hemorrhage into the wound track.

11:30 12 Q. So this may have been another gunshot wound
11:30 13 after she was already dead, just to shoot her?

11:30 14 A. It could have been, yes.

11:30 15 Q. And you said you retrieved that bullet out of
11:30 16 the implant?

11:30 17 A. Correct.

11:30 18 Q. Also during the course of your autopsy of
11:30 19 Ms. Kitchen, did you also retrieve a cartridge case?

11:30 20 A. Yes.

11:30 21 Q. Where did you retrieve that?

11:30 22 A. That was found on the autopsy cart, too, on the
11:30 23 white sheet that she came on, I believe.

11:30 24 Q. With regard to Ms. Kitchen's cause of death,
11:31 25 did you form an opinion?

11:31 1 A. Yes.

11:31 2 Q. What was your opinion of her cause of death?

11:31 3 A. The cause of death in her case is multiple
11:31 4 gunshot wounds.

11:31 5 Q. With regard to the toxicology, did you also
11:31 6 draw blood from Ms. Kitchen for purposes of toxicology?

11:31 7 A. Yes.

11:31 8 Q. What were the results of her toxicology?

11:31 9 A. What was in the blood was all negative
11:31 10 including the alcohols. Now, there was a very small
11:31 11 amount of alcohol in the urine and the fluid of the eye.
11:31 12 But again, there was no alcohol in the blood.

11:31 13 Q. When you say there's very little alcohol in the
11:31 14 urine and the eye, what does that indicate to you?

11:31 15 A. She has probably drank a small amount of
11:31 16 alcohol. More importantly, any alcohol that would have
11:31 17 been in the blood had been metabolized away at the time
11:31 18 she died, and there were only traces remaining in the
11:31 19 eye and the urine.

11:32 20 Q. When you say the eye, you are talking about the
11:32 21 vitreous, the fluid of the eye?

11:32 22 A. Yes.

11:32 23 Q. And as far as the drug screen, that came back
11:32 24 negative; is that correct?

11:32 25 A. Correct.

11:32 1 Q. Dr. Rohr, also in addition to conducting your
11:32 2 reports, doing your reports, do you also make diagrams
11:32 3 of the bodies?

11:32 4 A. Only if requested.

11:32 5 MS. FALCO: Your Honor, may I approach the
11:32 6 witness?

11:32 7 THE COURT: Yes.

11:32 8 Q. (BY MS. FALCO) Did I request you to do so?

11:32 9 A. Yes.

11:32 10 Q. And did you make a diagram of Mr. Mosqueda?

11:32 11 A. Yes.

11:32 12 Q. And with regard to Mr. Mosqueda, is this the
11:32 13 diagram that you made indicating entry, wound No. 1 and
11:32 14 entry wound No. 2?

11:32 15 A. Yes.

11:32 16 Q. And this is on an anatomically correct, I
11:32 17 guess, male where you indicated in pencil where the
11:32 18 wound entries were?

11:32 19 A. Yes.

11:32 20 Q. I mark that as State's Exhibit No. 159. Did
11:32 21 you also make one for Ms. Amy Kitchen?

11:32 22 A. Yes.

11:32 23 Q. And, again, it's a picture of an anatomic
11:33 24 woman, front and back. And you, in pencil, indicated
11:33 25 the wound entries. And in gunshot wound No. 4, the

11:33 1 entry and the reentry?

11:33 2 A. Correct.

11:33 3 Q. And I mark that as State's Exhibit 160.

11:33 4 MS. FALCO: Your Honor, at this time we
11:33 5 offer State's Exhibit 159 and 160.

11:33 6 MR. GOELLER: No objection, Your Honor.

11:33 7 THE COURT: State's Exhibit 159 and 160
11:33 8 are admitted.

11:33 9 (State's Exhibit Nos. 159 and 160
11:33 10 admitted.)

11:33 11 Q. (BY MS. FALCO) Dr. Rohr, when you say you take
11:33 12 these photographs of the autopsy, you do them both
11:33 13 before they are cleaned up and after they are cleaned
11:33 14 up; is that correct?

11:33 15 A. Well, I try to, yes.

11:33 16 MS. FALCO: Your Honor, may I approach?

11:33 17 THE COURT: Yes.

11:33 18 Q. (BY MS. FALCO) I show you what's been marked
11:33 19 as State's Exhibits 120, 121, 122, 123, 124, 125, 126,
11:34 20 127, 128, 129, 130, and 131. Do you recognize those
11:34 21 photographs?

11:34 22 A. Yes.

11:34 23 Q. What are those photographs of?

11:34 24 A. Those are photographs taken by myself of
11:34 25 significant findings on and within the body of

11:34 1 Mr. Mosqueda at the time I examined him.
 11:34 2 Q. And are each one of those pictures a fair and
 11:34 3 accurate representation of the wound or the item you
 11:34 4 were taking a picture of back on November 5th, I guess,
 11:34 5 of 2000?

11:34 6 A. Yes.

11:34 7 MS. FALCO: Your Honor, at this time we
 11:34 8 offer State's Exhibits 125 --

11:34 9 THE COURT: 120 through 131.

11:34 10 MS. FALCO: Yes, sir, I'm sorry. 120
 11:34 11 through 131.

11:34 12 THE COURT: All right.

11:36 13 MR. GOELLER: Judge, may I request a sub
 11:36 14 rosa hearing?

11:36 15 THE COURT: Ladies and gentlemen, I'll ask
 11:36 16 you to step down for a few minutes, and then we'll bring
 11:36 17 you right back in.

11:36 18 THE BAILIFF: All rise.

11:36 19 (Open court, defendant present, no jury.)

11:36 20 THE COURT: Please be seated. All right.
 11:36 21 The jury is out.

11:36 22 MR. GOELLER: Yes, Your Honor. Judge, at
 11:37 23 this time I would object to the introduction of State's
 11:37 24 Exhibits 120 through 131. These are pictures, as
 11:37 25 Dr. Rohr has explained, of his pictures of body parts

11:39 1 around this -- above the ears showing entry.

11:39 2 My objection of these, Your Honor, all
 11:39 3 these photographs, is that Dr. Rohr has given this jury
 11:39 4 testimony about cause of death. He's described in great
 11:39 5 detail six gunshot wounds between these two victims.
 11:39 6 Four on Ms. Amy Kitchen, and two on the Mosqueda
 11:39 7 individual. He has testified about the wounds
 11:39 8 themselves. He has testified about stippling. He's
 11:39 9 testified about track and travel of gunshot wounds.
 11:39 10 He's testified about internal examinations of the body,
 11:39 11 his removal of body organs.

11:40 12 I would submit to the Court that this jury
 11:40 13 is all too aware that, number one, these people are
 11:40 14 dead. Number two, they died of multiple gunshot wounds.
 11:40 15 The introduction of these exhibits, and I would submit,
 11:40 16 is purely to inflame this jury. What good does it show?
 11:40 17 I mean, they've heard Dr. Rohr. He's obviously amply
 11:40 18 qualified to give these opinions. What good does it do
 11:40 19 to show the jury a picture such as this? 131, a tongue
 11:40 20 and neck cut out of the body. I mean, he's testified to
 11:40 21 that, Your Honor.

11:40 22 So I object that any probative value taken
 11:40 23 in conjunction with his testimony is prejudicial effect
 11:40 24 of the introduction of these photographs, outweighs any
 11:41 25 potential probative value.

11:37 1 that have been actually cut out of the bodies. There's
 11:37 2 a picture of the brain. A picture of, Doctor, what's
 11:37 3 that?

11:37 4 THE WITNESS: That would be tongue and
 11:37 5 neck structures internally.

11:37 6 MR. GOELLER: Tongue and neck structures
 11:37 7 internally.

11:37 8 THE WITNESS: That's a bloody T-shirt that
 11:37 9 Ms. Mosqueda was wearing.

11:37 10 MR. GOELLER: A bloody T-shirt that you'd
 11:37 11 almost have to be a medical examiner to know what that
 11:37 12 was. It's just, as the Court can see, it's just a red
 11:38 13 mass in that photograph.

11:38 14 Exhibit No. 127 is a picture of the neck
 11:38 15 with a bullet hole and stippling. 126 is really the
 11:38 16 same thing. Maybe just a slightly, slightly different
 11:38 17 angle. So I'll object that 126 and 127 are really
 11:38 18 cumulative, Judge.

11:38 19 125 is a picture of the face, but still
 11:38 20 obviously the -- the intent of this photograph is to
 11:38 21 show the wound on the neck with its entire head shot
 11:38 22 of -- of the state.

11:38 23 124 is a photograph of the left side of
 11:38 24 the face and neck prior to the body being cleaned. 123
 11:39 25 is a photograph of a bullet wound with the shaved area

11:41 1 I suppose if we didn't have a medical
 11:41 2 examiner, and we didn't have Dr. Rohr's reports, which
 11:41 3 are also in evidence, Your Honor, and Dr. Rohr's
 11:41 4 sketches of the bodies and both his complete reports on
 11:41 5 these two individuals, that's all this jury needs.

11:41 6 To put these in and the only effect can be
 11:41 7 to prejudice my client based on the grotesqueness. And
 11:41 8 I'm from a layman's point of view, just the
 11:41 9 grotesqueness of these photographs.

11:41 10 THE COURT: Can I see the affidavits for a
 11:41 11 moment?

11:41 12 MR. GOELLER: Yes, Your Honor.

11:41 13 THE COURT: Yeah, go ahead.

11:41 14 MR. GOELLER: These photographs are really
 11:41 15 just cumulative of Dr. Rohr's testimony. Normally, I
 11:42 16 suppose, photographs are admissible, Your Honor, based
 11:42 17 on what the witness testifies. But in this case we're
 11:42 18 talking about several of these body parts that have
 11:42 19 actually been cut out.

11:42 20 These photographs are -- that photograph
 11:42 21 there of the internal neck cut out and the brain
 11:42 22 removed, they are horrific, Your Honor. Even if they
 11:42 23 had some probative value, what could the jury take away
 11:42 24 from these two photographs that they haven't taken away
 11:42 25 from his reports and Dr. Rohr's testimony? What

11:42 1 possible value do we have of these?
 11:42 2 Is it to, in case Dr. Rohr is lying?
 11:42 3 That's certainly not our position, and I'm not going to
 11:42 4 cross-examine him on that. Could it be the bullets
 11:42 5 didn't go through the brain and the neck? Well, gee, we
 11:42 6 must need these to bolster his testimony. Absolutely
 11:42 7 not. The only intent for these photographs is just to
 11:43 8 horrify this jury on postmortem photographs.

11:43 9 So that's my objection, Your Honor. They
 11:43 10 are cumulative. Their prejudicial value substantially
 11:43 11 outweighs any probative value in light of the evidence
 11:43 12 produced before these photographs. His report, Your
 11:43 13 Honor, is in evidence as well as his testimony.

11:43 14 THE COURT: All right. Thank you,
 11:43 15 Mr. Goeller. Ms. Falco?

11:43 16 MS. FALCO: Your Honor, obviously because
 11:43 17 this is a murder trial, we have to prove cause of death.
 11:43 18 And when the doctor is describing things such as
 11:43 19 potentially lethal, we've got to prove how they could be
 11:43 20 potentially lethal.

11:43 21 When he's talking about stipple, the jury
 11:43 22 hadn't seen what stipple is. They don't know what that
 11:43 23 means. That's important because it shows closeness of
 11:43 24 the firearm to the head which indicates intentional.
 11:43 25 We've got to show he intentionally caused their death.

11:43 1 And what better way than that gun is aimed at the head,
 11:43 2 and we have to show that.

11:43 3 And based on the elements we have to show,
 11:43 4 as far as Dr. Rohr also made a comment about the fact
 11:44 5 that there's no blood in Ms. Mosqueda's lungs or
 11:44 6 stomach, but that could be an insufficient amount of
 11:44 7 blood.

11:44 8 Well, these pictures will demonstrate that
 11:44 9 there's not an insufficient amount of blood. That the
 11:44 10 probably-more-than-likely result is he was no longer
 11:44 11 breathing at that point, which would indicate immediate
 11:44 12 death, which goes to show that the defendant caused the
 11:44 13 death by a matter of fact of where he shot them, how
 11:44 14 many times he shot them. That goes to intentional. It
 11:44 15 goes to cause of death. We've got to prove it was
 11:44 16 shooting. These pictures, pictures of bullet holes and
 11:44 17 entry holes will show it's shooting, which we have to
 11:44 18 do.

11:44 19 Through the pictures, Dr. Rohr can better
 11:44 20 explain the one gunshot wound on Ms. Kitchen that is an
 11:44 21 entry and exit and a reentry. And he can, by way of
 11:44 22 picture, can show what he means by "it is an unusual
 11:44 23 entry." All of these things are things we have to prove
 11:44 24 to prove capital murder. And that's what these pictures
 11:44 25 are for, Your Honor.

11:44 1 MR. GOELLER: The problem is, they've
 11:44 2 already established that. Dr. Rohr has already
 11:44 3 testified in his opinion the cause of death was multiple
 11:44 4 gunshot wounds. He's testified in great detail about
 11:44 5 all six bullets -- bullet wounds he's described.

11:45 6 They've already proven it. They've
 11:45 7 already got the other evidence before the jury. I'll
 11:45 8 stipulate -- I'll stipulate to his findings. I'll give
 11:45 9 this Court my word. I'll stipulate. I won't
 11:45 10 cross-examine him. I'll stand up in front of this jury
 11:45 11 and say, Dr. Rohr is exactly right, and we have no
 11:45 12 questions for him.

11:45 13 Based on that, what good are those
 11:45 14 photographs? They don't have to bolster his testimony.
 11:45 15 For God's sake, if this was a body that was decomposed
 11:45 16 and found months later, Judge, and there's some
 11:45 17 question, yeah, maybe to show it wasn't a natural cause
 11:45 18 of death or maybe it was the cause of a result of a
 11:45 19 homicide.

11:45 20 But in the case at hand, what good do
 11:45 21 those photographs do? Could the -- would the jury say,
 11:45 22 you know, we think Dr. Rohr must be lying so we'll have
 11:45 23 to go to those photographs to figure it out. That's
 11:45 24 preposterous.

11:45 25 She's proved cause of death. There's no

11:45 1 reason to have those photographs before this jury. They
 11:46 2 are horrific, Judge. They have got -- and, Judge, you
 11:46 3 already have pictures before this jury of the crime
 11:46 4 scene, of the bodies as they lay there. They show
 11:46 5 bullet wounds, I believe.

11:46 6 There's already been testimony about
 11:46 7 bullet wounds. This is not an issue before this jury,
 11:46 8 whether or not these people died as a result of multiple
 11:46 9 gunshot wounds. It's not a contested issue, Your Honor.
 11:46 10 And it will not be a contested issue by the defense.

11:46 11 If the Court would like, if it would hold
 11:46 12 off -- if I'm not true to my word, then put them in.
 11:46 13 Let the Court hold off it's ruling. Let her pass
 11:46 14 Dr. Rohr to me. I'll be true to my word.

11:46 15 THE COURT: Oh, I don't have any doubt
 11:46 16 that you would.

11:46 17 MR. GOELLER: It's just based on all the
 11:46 18 evidence before this jury, Judge. There's no need.
 11:46 19 They've got to prove what through this witness? They
 11:46 20 are dead, manner of death, cause of death. He's done.
 11:47 21 Bang, bang, bang.

11:47 22 THE COURT: All right.

11:47 23 MR. GOELLER: No pun intended. And the
 11:47 24 reports are in.

11:47 25 THE COURT: All right. Ms. Falco, 126 and

11:47 1 127. Does one show anything that the other one doesn't,
11:47 2 as far as you are concerned?

11:47 3 MS. FALCO: It's just zooming in a little
11:47 4 bit closer, Your Honor. It's to show the intenseness of
11:47 5 the stippling. One has his tongue, illustrating it went
11:47 6 through his tongue. And the other one is a little more
11:47 7 close up.

11:47 8 THE COURT: Okay. I'll overrule the
11:47 9 objections, and find that the probative value outweighs
11:47 10 the prejudicial effect, and admit State's Exhibits 120
11:47 11 through 131.

11:48 12 MR. GOELLER: Can I reserve our -- or make
11:48 13 my objection in front of the jury, Judge?

11:48 14 THE COURT: Yes.

11:48 15 MS. FALCO: Your Honor, before we bring
11:48 16 the jury back in, I've got another set of pictures on
11:48 17 Amy Kitchen, which I'm sure we're going to go through
11:48 18 the same thing. Should we just go ahead and do that
11:48 19 now?

11:48 20 THE COURT: Yeah, could I take a look at
11:48 21 them?

11:48 22 MS. FALCO: Yes.

11:48 23 THE COURT: Based on the assumption,
11:48 24 foundation will be laid. He would testify with regard
11:48 25 to those. Take a look. Say, I suppose that's 132

11:48 1 through something.

11:48 2 MS. FALCO: Actually, Your Honor, we
11:48 3 skipped 132. It's 133 through 147.

11:49 4 THE COURT: For the record these are -- as
11:49 5 the prosecutor said, these are pictures taken by, as I
11:49 6 understand it, Dr. Rohr of Amy Kitchen. And they
11:49 7 include pictures of which she's clothed and a few
11:49 8 close-ups of the entry and exit wounds and also some
11:49 9 other pictures that I'm sure Mr. Goeller will describe
11:49 10 for us, or maybe we should let Dr. Rohr.

11:49 11 MR. GOELLER: Judge, on these exhibits --
11:49 12 Gail, what are the numbers? 133 through --

11:49 13 MS. FALCO: 147.

11:49 14 MR. GOELLER: -- 147. I would urge my
11:49 15 same objections I dictated into the record -- or for the
11:49 16 Court, not the record, for the Court -- that I lodged
11:49 17 against the previous set of photographs of the deceased,
11:49 18 Mosqueda.

11:49 19 THE COURT: All right. I'll make the same
11:49 20 ruling. I'll find that they are probative, and that the
11:50 21 probative value outweighs the prejudicial effect.

11:50 22 MR. GOELLER: Yes, sir. And I guess my
11:50 23 next request is going to be a 403 balancing test, but
11:50 24 the Court apparently has done that already.

11:50 25 THE COURT: Yes.

11:50 1 MR. GOELLER: Yes, sir. All right.

11:50 2 THE COURT: All right. Then let's bring
11:50 3 the jury back in.

11:50 4 THE BAILIFF: Yes, Your Honor.

11:50 5 MS. FALCO: Are we going to show these
11:50 6 photos before or after lunch?

11:50 7 MR. GOELLER: I would really like, if the
11:50 8 Court really insists on the jury seeing these
11:50 9 photographs, I prefer it be done after they -- they
11:50 10 would put matter in their gastrointestinal tract.
11:50 11 Right, Doc?

11:50 12 THE COURT: What's your preference?

11:50 13 MS. FALCO: Probably after. I guess
11:50 14 after. I'll go ahead and offer them and get them into
11:51 15 evidence, and then that would give us a chance, if we
11:51 16 broke for lunch, to set up our PowerPoint. So when they
11:51 17 come back, we'll be ready.

11:51 18 THE COURT: You could offer them at three
11:51 19 o'clock this afternoon, or you can publish them at three
11:51 20 o'clock this afternoon if you want to.

11:51 21 MR. FALCO: I don't want to keep Dr. Rohr.

11:51 22 THE COURT: But, I mean, in order to
11:51 23 publish them, you wouldn't have to. If they are
11:51 24 admitted for all purposes.

11:51 25 MS. FALCO: I will publish them by

11:51 1 PowerPoint so Dr. Rohr can explain.

11:51 2 THE COURT: So he can testify.

11:51 3 MR. GOELLER: Judge, along those lines,
11:51 4 and I'm glad the State mentioned it now, I'm going to
11:51 5 object to those photographs. There's no reason that
11:51 6 they got to be blown up bigger than Dallas in this
11:51 7 courtroom. We're not talking about that many
11:51 8 photographs.

11:51 9 Dr. Rohr can sit there, and he can stand
11:51 10 in front of the jury. They are going to be published
11:51 11 anyhow, and I'm sure that all the jury is going to
11:51 12 handle them. I'd object to the State enlarging --
11:51 13 enlarging those photographs at a PowerPoint presentation
11:51 14 to, you know -- I saw them earlier, starting to put them
11:52 15 up there.

11:52 16 THE COURT: Yeah. Ms. Falco.

11:52 17 MR. GOELLER: Five, ten times bigger than
11:52 18 they really are. And I think -- I think the prejudicial
11:52 19 affect is ten times brought before it when we post them
11:52 20 that way, Your Honor, so I make my same objections.

11:52 21 THE COURT: Tell me why you expect to
11:52 22 enhance your --

11:52 23 MS. FALCO: They are not going to be blown
11:52 24 up larger than life, Your Honor. They are scanned onto
11:52 25 a disc, and the disc is put on the PowerPoint. So they

11:52 1 are not overly large. But that way, by using a laser
11:52 2 pointer, Dr. Rohr can point things out to the jury. And
11:52 3 all of the jury members can view the same item at the
11:52 4 same time.

11:52 5 The photographs I'm offering into evidence
11:52 6 are only 4 by 6 photographs. And some of the wounds are
11:52 7 so small; I don't know that all 14 jurors could observe
11:52 8 it at the same time if Dr. Rohr were talking about it
11:52 9 when standing in front. That way, by way of PowerPoint,
11:52 10 they are looking at the same thing at the same time, and
11:52 11 he can use a laser pointer to point out what he is
11:52 12 talking about.

11:52 13 THE COURT: All right. And I find that it
11:53 14 would aid the jury -- that it would be of assistance for
11:53 15 the jury to see these at the PowerPoint presentation.

11:53 16 MR. GOELLER: Note my objection.

11:53 17 THE COURT: Can we bring the jury back in?

11:53 18 MR. GOELLER: Yes, sir.

11:53 19 THE COURT: All right. I took the liberty
11:53 20 to staple 157 and 158.

11:54 21 (Open court, defendant and jury present.)

11:54 22 THE COURT: I believe the State had
11:54 23 offered State's Exhibit 120 through 131.

11:54 24 MR. GOELLER: Yes, Your Honor. May I
11:54 25 respond?

11:54 1 THE COURT: Yes.

11:54 2 MR. GOELLER: Judge, we'd object to the
11:54 3 introduction of those photographs. We feel any
11:54 4 probative value is seriously outweighed by the
11:54 5 prejudicial effect. Cause of death is not -- not
11:55 6 contested in this matter.

11:55 7 We feel the offer is to simply inflame the
11:55 8 jury. So we object; relevance, cumulative. His autopsy
11:55 9 reports are already in evidence. There's no need for
11:55 10 these type of photographs.

11:55 11 THE COURT: All right. I'll overrule the
11:55 12 objection and admit State's Exhibits 120 through 131.

11:55 13 (State's Exhibit Nos. 120 through 131
11:55 14 admitted.)

11:55 15 MS. FALCO: Your Honor, may I approach the
11:55 16 witness?

11:55 17 THE COURT: Yeah.

11:55 18 Q. (BY MS. FALCO) Dr. Rohr, did you also take
11:55 19 photographs of Ms. Amy Kitchen?

11:55 20 A. Yes.

11:55 21 Q. And I show you what's been marked as State's
11:55 22 Exhibits 133 through 147. Can you identify those
11:55 23 photographs?

11:55 24 A. Yes.

11:55 25 Q. What are those photographs of?

11:55 1 A. These are photographs taken by myself of
11:55 2 Ms. Kitchen in the medical examiner's office.

11:55 3 Q. Are they a fair and accurate depiction of what
11:55 4 you were photographing back on November 5th of 2000?

11:55 5 A. Yes.

11:55 6 MS. FALCO: We offer State's Exhibit 133
11:56 7 through 147.

11:56 8 MR. GOELLER: Judge, we'd make our same
11:56 9 objections under Rule 403. These matters aren't
11:56 10 contested as to cause of death. I believe that these
11:56 11 types of postmortem photographs, the prejudicial effect
11:56 12 is seriously outweighed by any probative values. The
11:56 13 report is already in. He has already testified. We
11:56 14 submit they are being offered to inflame the jury.

11:56 15 THE COURT: All right. The objection is
11:56 16 overruled. And the Court will admit State's Exhibits
11:56 17 133 through 147.

11:56 18 (State's Exhibit Nos. 133 through 147
11:56 19 admitted.)

11:56 20 MS. FALCO: Your Honor, at this time we
11:56 21 ask for a brief recess in order to set up our PowerPoint
11:56 22 to publish these pictures to the jury.

11:56 23 THE COURT: Let me tell you what, I want
11:56 24 to have the attorneys at sidebar for a moment.

11:56 25 (Bench conference.)

11:58 1 THE COURT: All right. Ladies and
11:58 2 gentlemen, we're going to take two hours for lunch, and
11:58 3 I want to instruct you that it's your duty not to
11:58 4 converse among yourselves or with anyone else on any
11:58 5 subject connected with the trial or to form or express
11:58 6 any opinion thereon until the cause is finally submitted
11:59 7 to you. And we'll see you folks at two o'clock.

11:59 8 THE BAILIFF: All rise.

11:59 9 (Lunch recess.)

14:02 10 THE COURT: If both sides are ready, we'll
14:02 11 bring the jury in.

14:02 12 (Open court, defendant and jury present.)

14:04 13 THE COURT: Please be seated. Ms. Falco?

14:04 14 MS. FALCO: Your Honor, at this time I ask
14:04 15 for permission to publish State's Exhibits 120 through
14:04 16 147.

14:04 17 THE COURT: All right.

14:04 18 Q. (BY MS. FALCO) Dr. Rohr, I'm looking at
14:04 19 State's Exhibit 120. What is this a picture of?

14:04 20 A. This is a picture of Mr. Mosqueda, the right
14:04 21 side of his face. And this picture was taken by me to
14:04 22 show the gunshot wound, entry No. 1, before he was
14:04 23 cleaned up.

14:04 24 Q. And if you could use the laser pointer and
14:04 25 point exactly to the gunshot-wound entrance.

14:04 1 A. Right there.
 14:04 2 Q. Thank you. State's Exhibit 121, what is this a
 14:04 3 picture of?
 14:04 4 A. Same thing, but he's been cleaned up, and the
 14:05 5 hair has been shaved away from the entry site so you can
 14:05 6 see it better. And the entry site of course is right
 14:05 7 there. There is also the scattered stip -- widely
 14:05 8 scattered stippling here that you can see about the
 14:05 9 face.
 14:05 10 Q. And basically that stippling is caused, it's
 14:05 11 like a gunpowder burn. It's red marks, is that --
 14:05 12 A. Yes, that's correct.
 14:05 13 Q. State's Exhibit 122, what is that a picture of?
 14:05 14 A. This is a picture, again, of Mr. Mosqueda's
 14:05 15 right face. Here's a gunshot wound of entry. Also, as
 14:05 16 the bullet is coming down this way, there's -- as I said
 14:05 17 earlier in my testimony, there is -- the bullet goes
 14:05 18 through the -- it doesn't go straight -- punch straight
 14:05 19 through the skull but kind of traverses through the flat
 14:05 20 end of the bone.
 14:05 21 The flat bone here, and what happens is
 14:05 22 underneath it there is a lifting up of the skin, and
 14:05 23 there's abrasion here. And there is also abrasion on
 14:06 24 the back of the ear because of that lifting up of the
 14:06 25 skin impacting against the inside of the ear.

14:06 1 Q. And this is the bullet that actually fragmented
 14:06 2 as it went into his skull; is that correct?
 14:06 3 A. Correct.
 14:06 4 Q. State's Exhibit 123, what is this a picture of?
 14:06 5 A. Another view of the right side of the head.
 14:06 6 Same gunshot wound No. 1, just a little closer. Here's
 14:06 7 the entry site, of course, and here's some of the
 14:06 8 stippling up in here.
 14:06 9 Q. And with regard to the entry wound, is that
 14:06 10 commonly known? How can you look at that and know that
 14:06 11 that's an entry wound?
 14:06 12 A. Well, for one -- well, we traced out a wound
 14:06 13 track here, remember? And I know it's an entry wound
 14:06 14 because there's stippling here. I mean, you wouldn't
 14:06 15 expect that in an exit. There's also some abrasion
 14:06 16 here. You would also not expect that on an exit,
 14:06 17 either.
 14:06 18 Q. State's Exhibit 124, what is this a photograph
 14:06 19 of?
 14:06 20 A. You can't see it very well, but this is a
 14:06 21 photograph of a -- left neck on Mr. Mosqueda. Mouth is
 14:07 22 up here. Entry site for gunshot wound No. 2 is right
 14:07 23 here on the left neck, and he's not been cleaned up
 14:07 24 obviously.
 14:07 25 Q. State's Exhibit 125, what is that a photograph

14:07 1 of?
 14:07 2 A. Mr. Mosqueda, left side of face and neck,
 14:07 3 cleaned up. Here's the entry site, and here's
 14:07 4 stippling. As you can see, the stippling of the
 14:07 5 fragments of gunpowder as they have been embedded in the
 14:07 6 skin and caused a little bit of hemorrhage at each spot
 14:07 7 is more intense than on the other gunshot wound.
 14:07 8 Q. Indicating this gunshot wound, which is gunshot
 14:07 9 wound No. 2, in your report?
 14:07 10 A. Correct.
 14:07 11 Q. Indicating that this gunshot wound was closer
 14:07 12 than gunshot wound No. 1?
 14:07 13 A. Yes.
 14:07 14 Q. State's Exhibit 126. What is this a picture
 14:07 15 of?
 14:07 16 A. Same thing except closer. Here's the entry
 14:07 17 site of the left neck for gunshot wound No. 2. And
 14:07 18 here's the stippling. You can see it better.
 14:08 19 Q. And I guess using this picture, if you could
 14:08 20 show us what the track of the bullet was as it went in
 14:08 21 the entry.
 14:08 22 A. It was kind of coming this way, and it goes
 14:08 23 across the left. It goes across the neck and comes up
 14:08 24 and impacts on the right side of the head.
 14:08 25 Q. State's Exhibit 127, what is this a photograph

14:08 1 of?
 14:08 2 A. Same thing.
 14:08 3 Q. Is it a closer shot?
 14:08 4 A. It's a closer shot, gunshot wound No. 2. And
 14:08 5 here's the stippling, the entry site here.
 14:08 6 Q. State's Exhibit 128, what is that a photograph
 14:08 7 of?
 14:08 8 A. It's a small red contusion here. Left shoulder
 14:08 9 of Mr. Mosqueda, and this is just a small bit of
 14:08 10 hemorrhage underneath the skin here, contusion, a
 14:08 11 bruise.
 14:08 12 Q. And where on his body did you observe this on?
 14:08 13 A. Left shoulder area.
 14:08 14 Q. Is that on the front or the back of the
 14:08 15 shoulder?
 14:08 16 A. Back.
 14:08 17 Q. And is that the only other wound or injury that
 14:09 18 you saw other than the two gunshot wounds?
 14:09 19 A. Correct.
 14:09 20 Q. State's Exhibit 129, what is this a photograph
 14:09 21 of?
 14:09 22 A. I can't see it very well, but it is a bloody
 14:09 23 T-shirt that Mr. Mosqueda was wearing. I took this
 14:09 24 because you got a defect right here. You got another
 14:09 25 defect right here. It's approximately in the area of

14:09 1 that red contusion that I just showed you that is his
14:09 2 left shoulder area.
14:09 3 I'm unable to make a link between the two.
14:09 4 I thought this may have been of some significance
14:09 5 because it suspiciously looks like a gunshot defect
14:09 6 here, but only because it's round, and there's other
14:09 7 gunshot wounds lurking around. But this could be simply
14:09 8 a tear or could have gotten caught on something, I don't
14:09 9 know. But anyway, I did take the picture.

14:09 10 Q. And was that in the area of -- what area of the
14:09 11 T-shirt on a person's body are those two holes?

14:09 12 A. Again, the back of the left shoulder.

14:10 13 Q. On State's Exhibit 130, what is that a picture
14:10 14 of?

14:10 15 A. It's his brain. This is the back of the brain.
14:10 16 This is the front of the brain. This is the right side.
14:10 17 The bullet from the head to gunshot wound No. 1 is
14:10 18 coming down this way. It goes through some parts here
14:10 19 of the left -- excuse me, of the right temporal lobe to
14:10 20 the right cerebella or hemisphere right here. I kind of
14:10 21 pulled the cerebellum back a little bit so you could see
14:10 22 all his injury and bleeding up in here.

14:10 23 Q. Where did you find the bullet in this -- in the
14:10 24 gunshot wound No. 1?

14:10 25 A. Well, the fragments scattered all about in this

14:10 1 area.

14:10 2 Q. State's Exhibit No. 131, what is that a
14:10 3 photograph of?

14:10 4 A. This is showing injury from gunshot wound No. 2
14:10 5 which entered the left neck and passed through the neck.
14:10 6 This is hard to get oriented on, but this is his tongue
14:10 7 right here. This is his esophagus, and the bullet, as
14:10 8 it's coming through the left or, I should say, is coming
14:10 9 through the left neck, is entering about right here.

14:11 10 Here's a bit of hemorrhage here, and this
14:11 11 would be where food would come down this way and then go
14:11 12 down the esophagus that way. And there's an empty space
14:11 13 up in here, and the bullet did pass through that on its
14:11 14 way to the right side of the head.

14:11 15 Q. State's Exhibit 133, what is that a photograph
14:11 16 of?

14:11 17 A. This is Ms. Kitchen as she came to us.

14:11 18 Q. And why are her hands bagged in that
14:11 19 photograph?

14:11 20 A. That's normal procedure. There's bags on the
14:11 21 hands here and these are paper bags. They are secured
14:11 22 but usually taped. It's there in a homicide to keep any
14:11 23 evidence from falling off the hands, to preserve any
14:11 24 gunshot residue that may be on the hands that could be
14:11 25 detected. There could be other things that bags could

14:11 1 trap, as well.

14:11 2 Q. State's Exhibit 134, what is this a photograph
14:11 3 of?

14:11 4 A. Again, it's Ms. Kitchen. The routine
14:12 5 photograph of the upper half of her body.

14:12 6 Q. And looking at this photograph, approximately
14:12 7 where was gunshot wound No. 1 to Ms. Kitchen?

14:12 8 A. Right at the top of her head here.

14:12 9 Q. And with regard to Ms. Kitchen, is this the
14:12 10 best photograph we're going to have of the gunshot wound
14:12 11 to her head?

14:12 12 A. Yes.

14:12 13 Q. State's Exhibit 135, what is that a photograph
14:12 14 of?

14:12 15 A. This is an entry defect for gunshot wound
14:12 16 No. 2. As you recall, gunshot wound No. 2 entered the
14:12 17 back of the left shoulder or, I should say, the left
14:12 18 shoulder blade area, the left scapula area.

14:12 19 It went downward through the left lung and
14:12 20 lodged lower down on another place in the left back.
14:12 21 But this would be the entry defect in the clothing for
14:12 22 gunshot wound No. 2.

14:12 23 Q. And I guess over to the left side of the
14:12 24 photograph we kind of see a seam. Is that where the
14:12 25 sleeve meets the body of the T-shirt?

14:12 1 A. Yes.

14:12 2 Q. State's Exhibit 136, what is this a photograph
14:12 3 of?

14:13 4 A. This is the entry site and what I would call
14:13 5 the back of the arm anatomically for gunshot wound
14:13 6 No. 4, right here.

14:13 7 Q. And State's Exhibit 137, what is that a
14:13 8 photograph of?

14:13 9 A. This is the front of the left upper arm. This
14:13 10 would be the exit of gunshot wound No. 4 as it's exiting
14:13 11 the arm.

14:13 12 Q. And State's Exhibit 138, what is this a
14:13 13 photograph of?

14:13 14 A. This right here is a defect in the T-shirt.
14:13 15 This is the front of the T-shirt here. This is sort of
14:13 16 on the left side in the chest area. This is an
14:13 17 irregular defect.

14:13 18 As you notice, it's not as round as the
14:13 19 other defects in the clothing. It's a reentry site, I
14:13 20 think, from gunshot wound No. 4. That is, the bullet is
14:13 21 already passed through the left arm, and then has been
14:13 22 deformed and is going into the left breast area here
14:14 23 through this defect.

14:14 24 Q. Okay. State's Exhibit 139, what is this a
14:14 25 photograph of?

14:14 1 A. This would be the defect of the brassiere for
14:14 2 gunshot wound No. 4. In other words, this is the part
14:14 3 of the brassiere that was right underneath the previous
14:14 4 defect that we just saw.

14:14 5 Q. State's Exhibit 140, what is this a photograph
14:14 6 of?

14:14 7 A. This is an actual, the actual reentry of
14:14 8 gunshot wound No. 4, in the left breast here. As you
14:14 9 can see it's not as distinctly round as a typical entry
14:14 10 would be. It's triangular shaped. It's got some
14:14 11 irregular abrasion here. And this would be what would
14:14 12 be called an atypical entry usually because it's -- the
14:14 13 bullet has passed through another object before
14:14 14 reentering.

14:14 15 Q. State's Exhibit 141, what is this a photograph
14:14 16 of?

14:14 17 A. Well, it's a double exposure. It may be even
14:14 18 triple exposure, but this is what happened with the
14:14 19 camera. The film was not advancing. This is a breast
14:15 20 implant. In here somewhere is a bullet.

14:15 21 I think the bullet is right there, and
14:15 22 here's another exposure of it right here. And I think
14:15 23 there's another exposure of tissue back here, which I
14:15 24 think might be -- I'm not quite sure what it is. But
14:15 25 this is the saline implant. Water has been drained out

14:15 1 of it. There's a defect here somewhere. I can't see
14:15 2 it, but the bullet should be about right there inside
14:15 3 the -- right inside the breast implant.

14:15 4 Q. And this is the implant that you found, the
14:15 5 bullet gunshot wound No. 4?

14:15 6 A. Yes. It's associated with gunshot wound No. 4.

14:15 7 Q. State's Exhibit 142, what is that a photograph
14:15 8 of?

14:15 9 A. Now, this is the entry defect on the back of
14:15 10 the T-shirt for gunshot wound No. 3 here. It's roughly
14:15 11 round. It's passed through this decal that's on the
14:15 12 shirt here. As you recall, the entry for gunshot wound
14:15 13 No. 3 was on the left mid back.

14:16 14 Q. Okay. State's Exhibit 143, what is this a
14:16 15 photograph of?

14:16 16 A. Now, this is an exit. This is the exit defect
14:16 17 for gunshot wound No. 3. As you recall, gunshot wound
14:16 18 No. 3 went through the left chest wall, left lung, left
14:16 19 main stem bronchus. It grazed the left side of the
14:16 20 heart, went through the aorta, went through the
14:16 21 pulmonary artery at their base, went through the right
14:16 22 lung, and then came out of the right chest wall, right
14:16 23 here, just above the right breast.

14:16 24 Q. State's Exhibit 144, what is this a photograph
14:16 25 of?

14:16 1 A. This is the heart. This is the aorta, and this
14:16 2 is a defect here, defect here. And this is where the
14:16 3 bullet has gone through the aorta here, gunshot wound
14:16 4 No. 3.

14:16 5 Q. The same one that was the entry into the back
14:16 6 and exit out the breast?

14:16 7 A. Correct.

14:16 8 Q. And State's Exhibit No. 145, what is this a
14:16 9 picture of?

14:17 10 A. It's lung. I think it's left lung. I'm not
14:17 11 quite sure, but there's a gunshot defect right here and
14:17 12 right here. A bullet has gone through the left lung
14:17 13 here.

14:17 14 Q. State's Exhibit 146, what is this a photograph
14:17 15 of?

14:17 16 A. Well, it's the end of the roll of film, and my
14:17 17 camera wasn't telling me -- letting me know that, and
14:17 18 here's a defect. This is lung tissue here, and here's
14:17 19 another gunshot wound defect.

14:17 20 Q. And is this a separate gunshot wound from the
14:17 21 previous photograph we just looked at, 145?

14:17 22 A. It looks to be, yes.

14:17 23 Q. And was Ms. Kitchen -- did she have two defects
14:17 24 to her lungs, two separate wound track defects to her
14:17 25 lungs?

14:17 1 A. Through the left lung, yes.

14:17 2 Q. State's Exhibit 147, what is this a photograph
14:17 3 of?

14:17 4 A. Oh, it's just a picture I took. This is the
14:17 5 umbilicus or the naval area on the front of the abdomen.
14:17 6 This is some gauze and some tape. Didn't know what it
14:18 7 was at the time. So I took a picture of it. Actually
14:18 8 what it was -- it turned out to be was, once that was
14:18 9 all removed, there was obviously a little incision with
14:18 10 four sutures there. And we later got the history that
14:18 11 there had been a mole removed in that area, and that's
14:18 12 all that represented.

14:18 13 Q. And this would have been in her naval area?

14:18 14 A. Correct.

14:19 15 MS. FALCO: Your Honor, may I approach?

14:19 16 THE COURT: Yes.

14:19 17 Q. (BY MS. FALCO) Doctor, as you removed the
14:19 18 bullets and the bullet fragments from each of the
14:19 19 bodies, did you then seal them and label them?

14:19 20 A. Yes.

14:19 21 Q. And I'll start with State's Exhibits 148, 149,
14:19 22 150, and 151. Do you recognize those exhibits?

14:19 23 A. Yes, I do.

14:19 24 Q. And what are each of those?

14:19 25 A. These are -- this is evidence that was gathered

14:19 1 from Mr. Mosqueda at the time of the autopsy. The
 14:19 2 evidence was then placed in one of these envelopes. The
 14:19 3 first envelope is a gunpowder fragment that was taken
 14:19 4 from around the entry of the left neck or the entry to
 14:19 5 gunshot wound No. 2.

14:19 6 Q. And how is that labeled on the back? State's
 14:19 7 Exhibit?

14:19 8 A. Oh, 151, yes.

14:19 9 Q. And once you put -- is this, again, did you
 14:19 10 take the gunpowder segment or sample, as you described
 14:19 11 previously, with the tape putting it on a slide?

14:20 12 A. Yes.

14:20 13 Q. And once you put it in that envelope, did you
 14:20 14 seal it?

14:20 15 A. Yes.

14:20 16 Q. And is your seal still on the envelope?

14:20 17 A. Yes.

14:20 18 Q. With your signature or your initials?

14:20 19 A. Yes.

14:20 20 Q. What is the next?

14:20 21 A. The next one is State's Exhibit 150. And these
 14:20 22 are the gunshot -- these are the bullet fragments
 14:20 23 associated with gunshot wound No. 1 that were retrieved
 14:20 24 from the scalp and brain of the right side of the head.

14:20 25 Q. And this is James Mosqueda?

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14:20 1 A. Mr. Mosqueda, yes.

14:20 2 Q. And did you then put them in that envelope and
 14:20 3 seal it?

14:20 4 A. Yes.

14:20 5 Q. And is your seal still on the envelope?

14:20 6 A. Yes.

14:20 7 Q. And with your initials?

14:20 8 A. Yes.

14:20 9 Q. And what is the next exhibit?

14:20 10 A. The next exhibit is State's Exhibit 149. It's
 14:20 11 from Mr. Mosqueda. It is gunpowder fragments from
 14:20 12 around the entry to gunshot wound No. 1 on the right
 14:20 13 side of the head.

14:20 14 Q. And, again, did you take that sample by placing
 14:20 15 a piece of tape on the gunpowder fragments and placing
 14:20 16 it on a slide?

14:21 17 A. Yes.

14:21 18 Q. And did you seal and label that exhibit, as
 14:21 19 well?

14:21 20 A. Yes.

14:21 21 Q. And your initials are on the seal?

14:21 22 A. Yes.

14:21 23 Q. And what is the last exhibit?

14:21 24 A. And the last one is State's Exhibit 148. It is
 14:21 25 the bullet associated with gunshot wound No. 2 that was

14:21 1 retrieved, that had an entry on the left side of the
 14:21 2 neck but was retrieved from the left side of the head.

14:21 3 Q. And once you retrieved that bullet, did you
 14:21 4 then put it in the envelope and seal it?

14:21 5 A. Yes.

14:21 6 Q. And does it still have your seal with your
 14:21 7 initials?

14:21 8 A. Yes.

14:21 9 MS. FALCO: Your Honor, at this time we
 14:21 10 offer State's Exhibits 148 through 151.

14:21 11 MR. GOELLER: No objection, Your Honor.

14:22 12 THE COURT: State's Exhibits 148 through
 14:22 13 151 are admitted.

14:22 14 (State's Exhibit Nos. 148 through 151
 14:22 15 admitted.)

14:22 16 Q. (BY MS. FALCO) Doctor, I show you what's been
 14:22 17 marked as 152 through 156. Do you recognize those
 14:22 18 exhibits?

14:22 19 A. Yes. These are evidence envelopes containing
 14:22 20 evidence that I gathered during the examination of
 14:22 21 Ms. Kitchen.

14:22 22 Q. And starting with the first one?

14:22 23 A. The first one is State's Exhibit 152.

14:22 24 Q. And what is State's Exhibit 152?

14:22 25 A. This is the casing that was retrieved from the

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14:22 1 transport cot that Ms. Kitchen came on that was
 14:22 2 previously described. And it's sealed on the back, and
 14:22 3 my initials are on it.

14:22 4 Q. And what was the next exhibit?

14:22 5 A. State's Exhibit 153. This is a bullet that was
 14:22 6 removed from the head of Ms. Kitchen, and it is
 14:22 7 associated with the first gunshot wound which had an
 14:22 8 entry on the top of the head.

14:22 9 Q. And did you take that bullet and put it in the
 14:23 10 envelope and seal it, put your initials on there?

14:23 11 A. Yes.

14:23 12 Q. What is the next exhibit?

14:23 13 A. The next is State's Exhibit 154. It is a
 14:23 14 bullet that is retrieved from the left side of the back
 14:23 15 from Ms. Kitchen. It's associated with gunshot wound
 14:23 16 No. 2. And it's sealed on the back, and my initials are
 14:23 17 on it.

14:23 18 Q. And what is the next exhibit?

14:23 19 A. State's Exhibit 155, it's a gunshot wound.
 14:23 20 No -- excuse me, it is a bullet retrieved from the left
 14:23 21 breast implant, and it's associated with gunshot wound
 14:23 22 No. 4. The envelope is sealed with my initials.

14:23 23 Q. And the next exhibit?

14:23 24 A. State's Exhibit 156 is a bullet that was
 14:23 25 removed from the autopsy cart which was associated with

14:23 1 gunshot wound No. 3. I have on here, it says "hit cart
14:23 2 while disrobing body." And the back of the envelope is
14:23 3 sealed with my initials.

14:24 4 MS. FALCO: Your Honor, at this time we
14:24 5 offer State's Exhibits 152 through 156.

14:24 6 MR. GOELLER: No objection, Your Honor.

14:24 7 THE COURT: All right. 152 through 156
14:24 8 for the State are admitted.

14:24 9 (State's Exhibit Nos. 152 through 156
14:24 10 admitted.)

14:24 11 Q. (BY MS. FALCO) Doctor, with regard to State's
14:24 12 Exhibits 148 through 156, once they are placed in the
14:24 13 envelope and sealed, at some point in time did you then
14:24 14 take them down to the Southwest Institute of Forensic
14:24 15 Science?

14:24 16 A. Yes.

14:24 17 Q. You personally took them down there?

14:24 18 A. Yes.

14:24 19 Q. And logged them into evidence or handed them to
14:24 20 the custodian --

14:24 21 A. Yes.

14:25 22 Q. -- at SWIFS? And is that common procedure when
14:25 23 gathering and collecting evidence in a homicide case?

14:25 24 A. Yes.

14:25 25 MS. FALCO: That's all the questions I

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14:25 1 have. Thank you, Dr. Rohr.

14:25 2 THE COURT: All right.

14:25 3 MR. GOELLER: No questions, Your Honor.

14:25 4 THE COURT: Is Dr. Rohr excused by both
14:25 5 sides?

14:25 6 MS. FALCO: Yes, sir.

14:25 7 MR. GOELLER: By the defense, yes.

14:25 8 THE COURT: You are finally excused.

14:25 9 Thank you.

14:25 10 THE WITNESS: Thank you.

14:25 11 (Witness excused.)

14:25 12 THE COURT: Call your next witness,
14:25 13 please.

14:25 14 MS. FALCO: Lannie Emanuel.

14:25 15 THE COURT: Raise your right hand.

14:25 16 LANNIE EMANUEL,
14:25 17 being first duly sworn, testified as follows:

14:25 18 THE COURT: Put your hand down and have a
14:25 19 seat right here, please. Ms. Falco?

14:25 20 DIRECT EXAMINATION

14:25 21 BY MS. FALCO:

14:25 22 Q. Will you state your name for the jury.

14:25 23 A. My name is Lannie G. Emanuel.

14:25 24 Q. And spell your last name, please.

14:25 25 A. E-M-A-N-U-E-L.

14:26 1 Q. What is your occupation?

14:26 2 A. I'm a firearm and tool mark examiner.

14:26 3 Q. And what is a firearm and tool mark examiner?

14:27 4 A. Some of my duties would include the examination
14:27 5 of firearms, examination of ammunition, ammunition
14:27 6 components, microscopic comparison question, bullets,
14:27 7 cartridge cases, and tool marks. I'm also responsible
14:27 8 for the restoration of serial numbers, distance
14:27 9 determination, fracture matches, and examination of
14:27 10 security devices.

14:27 11 Q. And who do you work for?

14:27 12 A. I'm employed by the Southwestern Institute of
14:27 13 Forensic Sciences. That's sometimes referred to as
14:27 14 SWIFS or the Dallas County Crime Laboratory.

14:27 15 Q. And obviously that's down in Dallas County?

14:27 16 A. Yes, it is.

14:27 17 Q. Where are you-all located in Dallas County?

14:27 18 A. Adjacent to the Parkland emergency room
14:27 19 entrance.

14:27 20 Q. And do you commonly examine evidence that is
14:27 21 obtained in homicide cases in Dallas and Collin County?

14:27 22 A. Yes, I do.

14:27 23 Q. What is your educational background and
14:27 24 training?

14:27 25 A. My formal training in firearm and tool mark

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14:27 1 identification came while I was on active duty with the
14:27 2 United States Army. This was a two-year resident course
14:28 3 of instruction given at the U.S. Army Crime Laboratory,
14:28 4 and the course began in 1979.

14:28 5 After successful completion of the course,
14:28 6 I was assigned to several laboratories within that crime
14:28 7 laboratory system. The first being at Ft. Gordon,
14:28 8 Georgia. Was then transferred to Ft. Gillam, Georgia,
14:28 9 which is the lab located just outside of Atlanta.

14:28 10 Had a tour of duty in the European
14:28 11 laboratory, which is located in Frankfurt, Germany, and
14:28 12 I returned to the Ft. Gillam laboratory about a year
14:28 13 prior to my decision to retire and come to work for
14:28 14 Dallas County.

14:28 15 Q. And how long have you been with SWIFS?

14:28 16 A. Since July of 1990.

14:28 17 Q. With regard to evidence that is taken to SWIFS,
14:28 18 what is the procedure for evidence getting logged in and
14:28 19 then assigned and then eventually assigned to an
14:28 20 examiner?

14:28 21 A. A submitter will bring evidence into the
14:28 22 laboratory and will go to our evidence registrar. They
14:28 23 will process the evidence administratively. They will
14:29 24 assign a case number, an item number. Make sure
14:29 25 everything is there that is supposed to be there.

14:29 1 We then get a copy of that paperwork in
 14:29 2 our section, and either on a first-come, first-served
 14:29 3 basis or a rush-status basis. The case will be picked
 14:29 4 up -- the paperwork will be picked up by the examiner.
 14:29 5 Then take the paperwork down to the evidence registrar
 14:29 6 and sign for the evidence.
 14:29 7 Q. And with regard to you being an examiner, is
 14:29 8 there more than one firearm and tool mark examiner at
 14:29 9 SWIFS?
 14:29 10 A. Yes.
 14:29 11 Q. And how many are there?
 14:29 12 A. We have five right now.
 14:29 13 Q. And how are cases assigned to each examiner?
 14:29 14 A. Again, it's -- we have them in a case log. And
 14:29 15 if we need a case, we'll go to the case log and pull the
 14:29 16 next one available. Or, if it's a rush case, we'll pick
 14:29 17 it up.
 14:29 18 Q. And if you are an examiner on one particular
 14:29 19 case with one particular number, do you examine all the
 14:29 20 evidence associated with that case if it comes in at
 14:30 21 later dates?
 14:30 22 A. Yes.
 14:30 23 Q. And with regard to your presence here, did you
 14:30 24 examine evidence in a case State of Texas versus Ivan
 14:30 25 Cantu, with James Mosqueda and Amy Kitchen being the

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14:30 1 complainants?
 14:30 2 A. Yes.
 14:30 3 MS. FALCO: Your Honor, may I approach the
 14:30 4 witness?
 14:30 5 THE COURT: Yes.
 14:30 6 Q. (BY MS. FALCO) In particular, did you examine
 14:30 7 a gun that was brought to you by the Dallas Police
 14:30 8 Department?
 14:30 9 A. Yes, I did.
 14:30 10 Q. I show you what's been entered as State's
 14:30 11 Exhibit 76B. Do you recognize that gun?
 14:31 12 A. Yes, I do.
 14:31 13 Q. And is that the case you examined in regard to
 14:31 14 State of Texas versus Ivan Cantu, with the complainants
 14:31 15 being James Mosqueda and Amy Kitchen?
 14:31 16 A. Yes, it is.
 14:31 17 Q. When you received that gun into your
 14:31 18 laboratory, was it assigned a particular lab number?
 14:31 19 A. Yes.
 14:31 20 Q. And once you received it into your possession,
 14:31 21 did you then mark the gun indicating you knew that that
 14:31 22 was the gun that you worked on?
 14:31 23 A. Yes, I did.
 14:31 24 Q. And how did you mark the gun?
 14:31 25 A. I marked it with the case number, the item

14:31 1 number, and my initials. It can be seen on the slide
 14:32 2 and frame areas where I'm pointing.
 14:32 3 Q. And with regard to the gun, it has a safety
 14:32 4 cuff on it; is that correct?
 14:32 5 A. Excuse me?
 14:32 6 Q. It has a safety cuff on the gun currently?
 14:32 7 A. Oh, that plastic insert? Yes.
 14:32 8 Q. And that's so it can't be fired or shot while
 14:32 9 we're in the courtroom?
 14:32 10 A. Yes, that's correct.
 14:32 11 Q. Also in that bag do you recognize the magazine?
 14:32 12 A. Yes, I do.
 14:32 13 Q. And is that the same magazine that you examined
 14:32 14 along with the gun, State's Exhibit 76B?
 14:32 15 A. Yes, it is.
 14:32 16 Q. When you first received the gun, when I asked
 14:32 17 you how you examined it, for what purpose did you
 14:32 18 examine the gun?
 14:32 19 A. Normally the examination that is requested of a
 14:32 20 weapon is to determine its functionality, determine if
 14:32 21 it's functioning properly and the safety features are
 14:32 22 functioning properly. And then if there are any
 14:32 23 question cartridge cases or bullets, we're usually asked
 14:33 24 to try to identify if that particular weapon actually
 14:33 25 fired the bullet or the cartridge case.

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14:33 1 Q. And were you asked to do those two examinations
 14:33 2 upon this gun?
 14:33 3 A. Yes.
 14:33 4 Q. And with regard to examining the gun, how do
 14:33 5 you go about examining the gun to see if it's working
 14:33 6 properly or if it's functioning properly?
 14:33 7 A. The first thing that I would do in a weapons
 14:33 8 examination would be to record administrative data
 14:33 9 pertaining to the weapon itself, and we have a form that
 14:33 10 we use.
 14:33 11 I'll go down through the form recording
 14:33 12 the serial number, certain class characteristics of the
 14:33 13 weapon, which would include things like the caliber, the
 14:33 14 direction of lands and grooves, or the number of lands
 14:33 15 and grooves and direction of twist, and checking the
 14:33 16 safeties to make sure that they are functioning
 14:33 17 properly.
 14:33 18 Q. First of all, with regard to this gun, what
 14:33 19 kind of gun is it?
 14:33 20 A. This is a semi-automatic pistol, .380 caliber.
 14:33 21 Q. And what does semi-automatic mean?
 14:34 22 A. Semi-automatic means that as the weapon is
 14:34 23 fired, it will function in such a way that will reload
 14:34 24 the weapon and cause it to be in a position to where it
 14:34 25 can be fired again if the trigger is pulled.

14:34 1 Q. And how is that different from a fully
14:34 2 automatic gun?

14:34 3 A. Well, the fully automatic weapon would be one
14:34 4 that, as you pull the trigger, it would continue to fire
14:34 5 until you released the trigger or the magazine was
14:34 6 empty.

14:34 7 Q. So with a semi-automatic you just have to
14:34 8 continue to pull the trigger, and it will shoot a
14:34 9 bullet?

14:34 10 A. Yes. As long as a magazine has ammunition in
14:34 11 it.

14:34 12 Q. And when you say pistol, what does a pistol
14:34 13 mean?

14:34 14 A. Pistol is -- designates this particular weapon.
14:34 15 The other term that you may be familiar with would be
14:34 16 revolver. It's -- they are both handguns, but the
14:34 17 revolver has a cylinder. This particular weapon being a
14:35 18 pistol has a magazine that feeds the ammunition into it.

14:35 19 Q. And so it's just a difference in the way it's
14:35 20 loaded?

14:35 21 A. Yes.

14:35 22 Q. And when you say a .380, what do you mean by
14:35 23 that term .380?

14:35 24 A. There are pistols that are designed for
14:35 25 different calibers. This particular pistol is designed

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14:35 1 to fire a .380 auto cartridge case.

14:35 2 Q. And is .380 a measurement?

14:35 3 A. Yes. It's a designator for the cartridge.

14:35 4 Q. And it designates the size of the cartridge?

14:35 5 A. It's -- .380 auto designates the cartridge.
14:35 6 The .380 is an indicator of the actual diameter of the
14:35 7 bullet.

14:35 8 Q. And when you talk about, you examine class
14:35 9 characteristics, what are class characteristics?

14:35 10 A. Class characteristics would be characteristics
14:35 11 that are placed on the weapon during the manufacturing
14:35 12 process. These are by design by the manufacturer. The
14:35 13 manufacturer controls that.

14:35 14 In this particular case, the weapon would
14:35 15 have six lands and grooves with a left twist and also
14:35 16 would be designated as a .380 caliber pistol.

14:35 17 Q. When you say six lands and grooves with a left
14:35 18 twist, what does that mean?

14:35 19 A. When the barrel is made, it -- you start out
14:35 20 with nothing more than a piece of round-barrel steel.
14:35 21 It's then drilled and processed. And part of that
14:35 22 processing, a portion of the barrel is removed, and it
14:35 23 forms a pattern of highs and lows within the barrel.

14:35 24 And it has a direction of twist to impart
14:35 25 spin on the bullet as it's fired down the barrel. It's

14:36 1 done for accuracy in the manufacturing process. It's
14:36 2 good for firearms examiners because it also leaves marks
14:36 3 on the bullet to allow us to make a determination if a
14:36 4 particular weapon actually fired the bullet.

14:36 5 Q. And when you say it's a class characteristic,
14:36 6 what class are we talking about?

14:37 7 A. In this particular gun it would be six left.
14:37 8 That's six lands and grooves with a left twist. That
14:37 9 means there's six -- a pattern of six highs and lows
14:37 10 within the barrel, and the twist is to the left.

14:37 11 Q. So if you see a bullet or a cartridge or
14:37 12 whatever it is you are examining and it has six lands
14:37 13 and grooves with a left twist, what kind of gun do you
14:37 14 know that you are looking for?

14:37 15 A. Well, when we talk about class characteristics
14:37 16 of six lands and grooves with a left twist, we're
14:37 17 talking about the barrel of the weapon. So that would
14:37 18 be the part that would mark the bullet, and that puts it
14:37 19 in the class of weapons that are six left.

14:37 20 It could be, for instance, this one, but
14:37 21 it could be actually hundreds of other weapons with the
14:37 22 same class characteristics. The manufacturer would not
14:37 23 make one individual weapon with the same, just that
14:37 24 class characteristics. They'll make hundreds or perhaps
14:37 25 thousands of weapons with the same class

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14:38 1 characteristics. There may even be other weapons by
14:38 2 other manufacturers that have the same class of
14:38 3 characteristics.

14:38 4 Q. And so, in addition, do you also look for
14:38 5 what's called individual characteristics?

14:38 6 A. Yes.

14:38 7 Q. What are individual characteristics?

14:38 8 A. Individual characteristics are characteristics
14:38 9 that could be described as accidental. The manufacturer
14:38 10 does not have control over the individual
14:38 11 characteristics that are imparted when the manufacturing
14:38 12 is done.

14:38 13 As the barrel is rifled, the metal can
14:38 14 either be cut away or displaced. And during this
14:38 15 process of the cutter or the button broach, the device
14:38 16 that's used to do this displacement of metal reacts with
14:38 17 the barrel steel, and imparts individual characteristics
14:38 18 to it.

14:38 19 Q. And with regard to your examination, when you
14:38 20 look at either a bullet or a cartridge case, whatever
14:38 21 you are examining, are you looking for these particular
14:38 22 tool marks to look for class characteristics and
14:38 23 individual characteristics?

14:39 24 A. Yes.

14:39 25 Q. And when you are examining an item and you are

14:39 1 looking at its class characteristics and individual
 14:39 2 characteristics, in its uniqueness, is it similar to a
 14:39 3 fingerprint?
 14:39 4 A. Yes. You could describe it that way.
 14:39 5 Q. Would the individual characteristics identified
 14:39 6 by tool marks on a bullet or a cartridge case enable you
 14:39 7 to focus specifically on one particular gun?
 14:39 8 A. Did you say class or individual?
 14:39 9 Q. Individual.
 14:39 10 A. Individual?
 14:39 11 Q. Yes.
 14:39 12 A. The first thing that I would look for would be
 14:39 13 class because, if I have a gun that has six left and I
 14:39 14 have bullets that are, say, five left, I can eliminate
 14:39 15 that gun immediately.
 14:39 16 The class characteristics narrow the focus
 14:39 17 of what you would want to look for. The individual
 14:39 18 characteristics are within that class and allow you to
 14:39 19 identify a specific weapon that would -- that would have
 14:40 20 fired the bullet.
 14:40 21 Q. And with regard to this particular gun, when
 14:40 22 you first received it, describe the process you went
 14:40 23 through to examine the gun to see if it was functioning
 14:40 24 properly.
 14:40 25 A. I recorded the administrative data, as I

14:40 1 described earlier, checked the safeties to make sure
 14:40 2 that it was functioning properly, and then I actually
 14:40 3 test fired the weapon to obtain bullets and cartridge
 14:40 4 cases that I know came from this weapon for later use in
 14:40 5 comparison purposes.
 14:40 6 Q. And what do you fire that weapon into, and how
 14:40 7 do you fire it?
 14:40 8 A. The weapon would be fired in this particular
 14:40 9 case into a large tank of water. We call it our water
 14:40 10 recovery tank. There's a port at one end. We fire into
 14:40 11 it. The water will actually stop the bullet. Gravity
 14:40 12 will cause it to fall to the bottom of the tank. And
 14:40 13 then we can go in and retrieve the bullet, and it will
 14:40 14 not have any additional marks on it because the water,
 14:41 15 of course, will not mark the bullet. It will just have
 14:41 16 the class and individual characteristics or tool marks
 14:41 17 left on the bullet by the barrel of the gun.
 14:41 18 Q. And do you then use those test-fired bullets
 14:41 19 for comparison on any other bullets or cartridge cases
 14:41 20 that might be brought to you from police departments?
 14:41 21 A. Yes.
 14:41 22 MS. FALCO: Your Honor, may I approach?
 14:41 23 THE COURT: Yes.
 14:41 24 Q. (BY MS. FALCO) With regard to State's Exhibit
 14:41 25 76B, did you also determine whether or not it was

14:41 1 functioning properly?
 14:41 2 A. Yes, I did.
 14:41 3 Q. And was it functioning properly?
 14:41 4 A. Yes, it did.
 14:41 5 Q. I show you what's been marked as 76E. Do you
 14:41 6 recognize 76E?
 14:41 7 A. Yes, I do.
 14:41 8 Q. What is 76E?
 14:41 9 A. This is the envelope that I had placed the
 14:41 10 test-fired bullets and cartridges in for return.
 14:41 11 Q. And are those the actual bullets that were shot
 14:41 12 through 76B?
 14:41 13 A. Yes. The bullets and cartridge cases that I
 14:42 14 fired in this weapon.
 14:42 15 Q. And I show you what's been marked as 76C. Do
 14:42 16 you recognize that box?
 14:42 17 A. Yes, I do.
 14:42 18 Q. And what is that box, 76C?
 14:42 19 A. This is a box of ammunition that was submitted
 14:42 20 with the weapon when it was submitted to the laboratory.
 14:42 21 Q. And with regard to the test fires -- would you
 14:42 22 hand those back to me? With regard to the test fires,
 14:42 23 State's Exhibit 76E, where did you get those two
 14:42 24 cartridges to use in that gun?
 14:42 25 A. The two test fires were removed from the box.

14:42 1 There were four in here. My item Nos. 29 through 32,
 14:42 2 and I used 31 and 32 to test fire the weapon.
 14:42 3 Q. So when you originally received the box, there
 14:43 4 was four cartridges in it?
 14:43 5 A. That is correct.
 14:43 6 Q. And you removed two to use as test fires,
 14:43 7 leaving two in the box; is that correct?
 14:43 8 A. Yes.
 14:43 9 MS. FALCO: Your Honor, at this time we
 14:43 10 offer State's Exhibit 76E.
 14:43 11 MR. GOELLER: No objection, Your Honor.
 14:43 12 THE COURT: State's Exhibit 76E is
 14:43 13 admitted.
 14:43 14 (State's Exhibit No. 76E admitted.)
 14:43 15 Q. (BY MS. FALCO) With regard to that gun,
 14:43 16 Mr. Emanuel -- first of all, how do you load? How would
 14:43 17 you go about loading that gun?
 14:43 18 A. The first thing that you would do to load and
 14:43 19 fire this particular weapon would be to load the
 14:43 20 magazine. The magazine is nothing more than a metal
 14:43 21 container. It has a spring in it and a piece at the
 14:43 22 open end that's called a follower.
 14:43 23 To load it you would take a cartridge and
 14:43 24 place against the follower, press down against the
 14:43 25 spring pressure and slip it in. There are lips on

14:44 1 either side of the magazine to allow it to hold the
 14:44 2 cartridge in place, to where it can only be removed by
 14:44 3 slipping it out forward. You would continue to put
 14:44 4 cartridges into this until its maximum capacity. This
 14:44 5 particular magazine will hold six.

14:44 6 Once that is done, the magazine would be
 14:44 7 placed in the grip portion of the weapon, which is this
 14:44 8 area. It's called a magazine well, and it would fit in
 14:44 9 like this. That would cause the ammunition that's in
 14:44 10 the magazine to be put into position up in line with the
 14:44 11 top, this area, which is the barrel and the slide.

14:44 12 Then to fire the weapon you would have to
 14:44 13 get one of the cartridges out of the magazine into the
 14:44 14 chamber. To do that the weapon would be held. The
 14:44 15 slide would be pulled back, and it would go forward.
 14:44 16 Pulling it back would cock the hammer.

14:44 17 And as it goes forward, it would strip a
 14:45 18 cartridge out of the magazine up into the chamber, and
 14:45 19 the slide would go forward into a ready-to-fire
 14:45 20 position. As long as the safety were off and the
 14:45 21 trigger were pulled, the weapon would fire.

14:45 22 And of course it would, as we talked about
 14:45 23 it being a semi-automatic weapon, the recoil of the
 14:45 24 weapon causes the slide to be forced back, extracting
 14:45 25 the cartridge case that has been fired out of the

14:45 1 chamber. And there is an ejector on the other side that
 14:45 2 would strike it causing it to flip out of the port,
 14:45 3 ejection port of the weapon right here.

14:45 4 While the slide is back, the magazine
 14:45 5 spring would cause another cartridge face to come up in
 14:45 6 line. As the slide goes forward, it would again take it
 14:45 7 out of the magazine, chamber it into the weapon and
 14:45 8 again having cocked it.

14:45 9 As long as the trigger is released and
 14:45 10 then pulled again, it would continue to fire as long as
 14:45 11 there's no malfunction and there's ammunition in the
 14:46 12 magazine.

14:46 13 Q. And how much ammunition will that gun pull at
 14:46 14 one time to be fully loaded?

14:46 15 A. If you were to put six in the magazine and
 14:46 16 actually insert it and cycle the slide loading one end
 14:46 17 of the chamber, remove the magazine and replace that
 14:46 18 one, you would have a total of seven -- six in the
 14:46 19 magazine and one in the chamber.

14:46 20 Q. And when you talk about the cartridge, the
 14:46 21 cartridge is actually the unfired ammunition; is that
 14:46 22 correct?

14:46 23 A. That is correct.

14:46 24 Q. And as the cartridge goes through the gun, does
 14:46 25 the cartridge separate?

14:46 1 A. The -- in the firing process, the cartridge --
 14:46 2 first of all, the cartridge is the complete unit. It is
 14:46 3 the cartridge case and the projectile or bullet. When
 14:46 4 it's fired, of course the bullet goes down the barrel
 14:46 5 and out toward the target.

14:46 6 The pressures that are generated to do
 14:46 7 that react to the weapon, and I talked about recoil.
 14:47 8 That pressure causes the slide to come back, which is
 14:47 9 the action I talked about, causing the cartridge case to
 14:47 10 be ejected and then cycling again.

14:47 11 Q. And as the bullet or the projectile portion
 14:47 12 travels through the gun, is that when it picks up these
 14:47 13 tool marks?

14:47 14 A. Yes.

14:47 15 Q. And that would be both the class
 14:47 16 characteristics, as well as the individual
 14:47 17 characteristics?

14:47 18 A. That is correct.

14:47 19 Q. And do cartridge cases become marked
 14:47 20 identifiers, as well?

14:47 21 A. Yes. They receive tool marks from the weapon.
 14:47 22 In various positions of the weapon the metal pieces will
 14:47 23 mark the cartridge case in somewhat the same way that
 14:47 24 the bullet is marked.

14:47 25 Q. What happens as the bullet travels through the

14:47 1 barrel of the gun? How does it go through the barrel of
 14:47 2 the gun? And supposing it hits a body, what happens to
 14:47 3 the bullet as it hits a body? And specifically let's
 14:47 4 talk about these type of bullets, that box in front of
 14:47 5 you. First of all, what type of bullets are those?

14:48 6 A. This particular box of ammunition is marked as
 14:48 7 Federal .380 auto, 90-grained hydroshock, jacketed
 14:48 8 hollow point.

14:48 9 Q. And first of all, what does hydroshock mean?

14:48 10 A. Well, the hydroshock is a designator that
 14:48 11 Federal has given this particular bullet and it's
 14:48 12 particular design. It has a hollow point, but it's
 14:48 13 distinguished from other hollow points in that it has a
 14:48 14 lead post in the center.

14:48 15 If you were to take the bullet and to make
 14:48 16 the hollow point, it is either -- the lead is displaced
 14:48 17 inside. But inside this cavity, there is a post inside
 14:48 18 that sticks up in the center. And it is very
 14:48 19 distinctive in that that is the only manufacturer that
 14:48 20 has that.

14:48 21 Q. And what happens to that bullet as it is fired
 14:48 22 through the gun, through the barrel of the gun and
 14:48 23 enters a body. What is it designed to do?

14:49 24 A. Well, as it strikes the body, this particular
 14:49 25 bullet is designed to expand. If you have a bullet, for

14:49 1 instance, that is a full metal jacket, that it doesn't
 14:49 2 have a hollow point, that it is completely covered with
 14:49 3 the jacketing material across the nose, it will be less
 14:49 4 likely to expand and displace the energy within the
 14:49 5 target.

14:49 6 The hollow point is designed to actually
 14:49 7 strike the target and start to expand so it will
 14:49 8 increase in size and displace energy into the target.

14:49 9 Q. And what's the purpose of having the bullet
 14:49 10 expand when it hits its target?

14:49 11 A. It will cause more damage.

14:49 12 Q. With regard to the test fires that you used,
 14:49 13 State's Exhibit No. 76E, did you have the opportunity to
 14:50 14 compare those to bullets and fragments and cartridge
 14:50 15 cases that you received from Dr. Rohr's office?

14:50 16 A. Yes, I did.

14:50 17 Q. And specifically with regard to State's Exhibit
 14:50 18 150, do you recognize that exhibit?

14:50 19 A. Yes, I do.

14:50 20 Q. And what is State's Exhibit 150?

14:50 21 A. This is the envelope that a -- a bullet and
 14:50 22 fragments of a bullet were submitted to the laboratory
 14:50 23 in.

14:50 24 Q. And by Dr. Rohr's designation, these would be
 14:50 25 the bullet from the right side of the head of James

14:52 1 one larger than the other, and four lead fragments.

14:52 2 Q. And were you able to use any of those for
 14:52 3 comparison?

14:52 4 A. Yes.

14:52 5 Q. And how many of those were you able to use for
 14:52 6 comparison?

14:52 7 A. One. The larger portion.

14:52 8 Q. And how did you designate that as your lab
 14:52 9 number?

14:52 10 A. That was 36-1.

14:52 11 Q. And when you compared it to your test fire
 14:52 12 State's Exhibit 76E, what was the result of your
 14:52 13 comparison?

14:52 14 A. Based on the microscopic examination, I was
 14:52 15 able to determine that State's Exhibit 150, my item
 14:52 16 No. 36-1, the jacketing, had been fired through State's
 14:52 17 Exhibit 76B, the Colt .380 pistol.

14:52 18 Q. And can you say that that is the result of your
 14:52 19 comparison to the exclusion of all other guns?

14:52 20 A. That is correct.

14:52 21 Q. That it had sufficient individual
 14:52 22 characteristics on the fragment you compared that it
 14:53 23 would eliminate all other guns?

14:53 24 A. Yes. That it would -- it is identified as
 14:53 25 firing through this gun and no other.

14:50 1 Mosqueda; is that correct?

14:50 2 A. That is correct.

14:50 3 Q. And when you received this envelope, was it
 14:50 4 sealed?

14:50 5 A. Yes, it was.

14:50 6 Q. And did it have the same seal that it currently
 14:50 7 has with Dr. Rohr's initials?

14:50 8 A. Yes, it does.

14:50 9 Q. When you got the envelope, did you open the
 14:50 10 other end?

14:51 11 A. Yes, I did.

14:51 12 Q. And on the other end was it resealed by
 14:51 13 yourself?

14:51 14 A. Yes.

14:51 15 Q. And your initials?

14:51 16 A. That is correct.

14:51 17 Q. Did you make a comparison of the bullet
 14:51 18 fragments to the test fires, State's Exhibit 76E?

14:51 19 A. Yes, I did.

14:51 20 Q. Were you able to compare all the fragments or
 14:51 21 just certain ones?

14:51 22 A. In this particular case there were actually six
 14:51 23 items listed at -- and that is my item No. 36, 1 through
 14:51 24 6. Let me verify that. That actually was two fragments
 14:51 25 from the jacketing. The outer portion of the bullet,

14:53 1 Q. And I show you what's been marked as State's
 14:53 2 Exhibit 148. Do you recognize State's Exhibit 148?

14:53 3 A. Yes. This is the envelope that contained my
 14:53 4 item No. 38, which was a fired bullet.

14:53 5 Q. And with regard to Dr. Rohr's markings, this
 14:53 6 being the bullet retrieved from James Mosqueda's right
 14:53 7 neck?

14:53 8 A. Yes. That's what's designated there.

14:53 9 Q. And when you received this envelope, was it
 14:53 10 sealed with Dr. Rohr's initials?

14:53 11 A. Yes.

14:53 12 Q. And did you open it on the opposite end?

14:53 13 A. Yes.

14:53 14 Q. And resealed it with your initials?

14:53 15 A. That's correct.

14:53 16 Q. And did you compare State's Exhibit 148 with
 14:53 17 your test fire State's Exhibit 76E?

14:53 18 A. Yes, I did.

14:53 19 Q. And what was the result of your comparison?

14:53 20 A. The result was the same as the first bullet we
 14:54 21 just discussed. I was able to determine that that
 14:54 22 bullet had also been fired through the barrel of State's
 14:54 23 Exhibit 76B.

14:54 24 Q. And I show you what's been marked as State's
 14:54 25 Exhibit 156, designated by Dr. Rohr as the bullet

14:54 1 retrieved from Amy Kitchen on the autopsy cart. Did you
 14:54 2 make a comparison of that? Do you recognize that?
 14:54 3 A. Yes, I do.
 14:54 4 Q. And when that bullet came to you, was it sealed
 14:54 5 in the envelope by Dr. Rohr?
 14:54 6 A. Yes.
 14:54 7 Q. And when you opened it, did you open the
 14:54 8 opposing end and reseal it with your signature?
 14:54 9 A. Yes, I did.
 14:55 10 Q. And what were the results of your comparison of
 14:55 11 that bullet to the test fire set, State's Exhibit 76E?
 14:55 12 A. Based on the microscopic examination, I was
 14:55 13 able to determine that this bullet, State's Exhibit 156,
 14:55 14 my item No. 4, had been fired in the .380 auto Colt
 14:55 15 pistol.
 14:55 16 Q. State's Exhibit 76B?
 14:55 17 A. B, yes.
 14:55 18 Q. With regard to State's Exhibit 155, designated
 14:55 19 by Dr. Rohr as being the bullet from Amy Kitchen's -- I
 14:55 20 believe it says "left breast implant." Do you recognize
 14:55 21 that?
 14:55 22 A. Yes, I do.
 14:55 23 Q. And when that bullet came to you, was it sealed
 14:55 24 in an envelope by Dr. Rohr?
 14:55 25 A. Yes, it was.

14:55 1 Q. And did you open the opposing end and reseal it
 14:55 2 with your signature?
 14:56 3 A. Yes, I did.
 14:56 4 Q. And did you make a comparison of that exhibit
 14:56 5 to the test fires, State's Exhibit 76E?
 14:56 6 A. Yes, I did.
 14:56 7 Q. And what was the result of your comparison?
 14:56 8 A. The result was the same as with the other
 14:56 9 bullets. Was able to determine from microscopic
 14:56 10 examination, State's Exhibit 155, my item No. 5 had been
 14:56 11 fired through the barrel of State's Exhibit 76B, which
 14:56 12 is my item 21 in the report.
 14:56 13 Q. And with regard to State's Exhibit 154,
 14:56 14 designated by Dr. Rohr as the bullet retrieved from Amy
 14:56 15 Kitchen's back, do you recognize that bullet?
 14:56 16 A. This is the envelope that my item No. 6 was
 14:56 17 submitted in, yes.
 14:56 18 Q. And did it come to you sealed by Dr. Rohr?
 14:56 19 A. Yes, that is correct.
 14:56 20 Q. And did you unseal it on the opposing end and
 14:56 21 reseal it with your signature?
 14:56 22 A. Yes, I did.
 14:56 23 Q. And did you make a comparison of that exhibit
 14:56 24 to State's Exhibit 76E?
 14:57 25 A. Yes, I did.

14:57 1 Q. And what were the results of your comparison?
 14:57 2 A. Again, the results were the same. The bullet
 14:57 3 that was submitted as item 6, State's Exhibit 154, had
 14:57 4 been fired through the State's Exhibit 76B pistol.
 14:57 5 Q. And with regard to State's Exhibit 153, the
 14:57 6 bullet retrieved from Amy Kitchen's head, do you
 14:57 7 recognize that envelope?
 14:57 8 A. Yes, I do.
 14:57 9 Q. And did it come to you sealed from Dr. Rohr?
 14:57 10 A. Yes, it did.
 14:57 11 Q. And did you make a comparison of that exhibit
 14:57 12 to State's Exhibit 76E, your test fires?
 14:57 13 A. Yes, I did.
 14:57 14 Q. And what was the result of your comparison?
 14:57 15 A. Based on a microscopic examination of my item
 14:57 16 71, which is -- this was two pieces in this particular
 14:58 17 envelope. One was a lead core, the damaged bullet
 14:58 18 jacket, was able to determine that it had been fired
 14:58 19 from the barrel of State's Exhibit 76B, the .380 auto
 14:58 20 pistol that was submitted.
 14:58 21 Q. And State's Exhibit 152, designated by Dr. Rohr
 14:58 22 as being retrieved from Amy Kitchen, a casing on the
 14:58 23 transport cart, do you recognize that envelope?
 14:58 24 A. Yes, I do.
 14:58 25 Q. And did you make a comparison of that casing to

14:58 1 your test fires in 76E?
 14:58 2 A. Yes, I did.
 14:58 3 Q. And what was the result of your comparison?
 14:58 4 A. Based on my microscopic examination, I was able
 14:58 5 to determine that my item No. 11, a .380 auto cartridge
 14:58 6 case, had been fired in State's Exhibit 76B, my item 21.
 14:59 7 Q. Mr. Emanuel, I show you what's been introduced
 14:59 8 as State's Exhibit 57C, identified as the cartridge
 14:59 9 cases retrieved from the crime scene at 18663 Gibbons.
 14:59 10 Do you recognize that envelope?
 14:59 11 A. Yes, I do.
 14:59 12 Q. And did that envelope come to you sealed?
 14:59 13 A. Yes, it did.
 14:59 14 Q. And did you open the opposing end?
 14:59 15 A. Yes, I did.
 14:59 16 Q. And did you make a comparison of those items
 14:59 17 contained in 57C to your test fires, 76E?
 14:59 18 A. Yes, I did.
 14:59 19 Q. And what was the result of your comparison?
 14:59 20 A. I was able to determine through microscopic
 14:59 21 examination that the cartridge cases, my items 1 through
 14:59 22 3, State's Exhibit 57C, had been fired in the State's
 14:59 23 Exhibit 76B pistol.
 14:59 24 Q. And I show you what's been marked as State's
 15:00 25 Exhibit 57B, previously identified as the projectile

15:00 1 retrieved from the victim's home on 18663 Gibbons. Do
 15:00 2 you recognize that exhibit?
 15:00 3 A. Yes, I do.
 15:00 4 Q. And did that exhibit come to you sealed?
 15:00 5 A. Yes, it did.
 15:00 6 Q. And did you break the seal and make a
 15:00 7 comparison?
 15:00 8 A. Yes, I did.
 15:00 9 Q. And did you compare that to your test fires in
 15:00 10 76E?
 15:00 11 A. Yes, I did.
 15:00 12 Q. What was the result of your comparison?
 15:00 13 A. Based on a microscopic examination, was able to
 15:00 14 determine that this bullet, my Exhibit No. 4, State's
 15:00 15 Exhibit 56B, had been fired through the barrel of
 15:00 16 State's Exhibit 76B, the Colt pistol.
 15:01 17 Q. Finally, I show you State's Exhibit 111A,
 15:01 18 previously identified as a bullet removed from the
 15:01 19 defendant's apartment on Old Bent Tree Lane. Do you
 15:01 20 recognize State's Exhibit 111A?
 15:01 21 A. Yes, I do.
 15:01 22 Q. And when that item came to you, was it sealed?
 15:01 23 A. Yes.
 15:01 24 Q. Did you break the seal and make a comparison?
 15:01 25 A. Yes, I did.

15:01 1 Q. Did you compare it to your test fires in
 15:01 2 State's Exhibit 76E?
 15:01 3 A. I did.
 15:01 4 Q. And what was the result of your comparison?
 15:01 5 A. Based on a microscopic examination, was able to
 15:01 6 determine that State's Exhibit -- is this 11 or --
 15:01 7 Q. 111.
 15:01 8 A. -- 111A had been fired through the barrel of
 15:01 9 State's Exhibit 76B.
 15:02 10 Q. Did you also make indications that it appeared
 15:02 11 it had a white substance on it as though it had
 15:02 12 traveled -- white plaster-like substance as though it
 15:02 13 had traveled through a wall?
 15:02 14 A. Yes.
 15:02 15 Q. And all of the projectiles and all of the
 15:02 16 casings we've just discussed, every single one of them
 15:02 17 was fired through State's Exhibit 76B, the gun?
 15:02 18 A. That is correct.
 15:02 19 Q. To the exclusion of all other guns?
 15:02 20 A. That is correct.
 15:02 21 Q. When you first received that gun, do you do any
 15:02 22 kind of testing to see if there might be any blood on
 15:02 23 the gun?
 15:02 24 A. Yes.
 15:02 25 Q. What do you do?

15:02 1 A. We do a presumptive test. Consists of taking a
 15:02 2 sample of -- from the surface of inside the barrel, on
 15:02 3 the barrel. And in this particular case on the side of
 15:03 4 the site, and that's what I did.
 15:03 5 Q. And what did your presumptive test indicate?
 15:03 6 A. The presumptive test indicated there was
 15:03 7 presence of blood.
 15:03 8 Q. What do you do when you come up with a presence
 15:03 9 of blood?
 15:03 10 A. In this particular case I took the weapon to
 15:03 11 our forensic biology section so they could collect the
 15:03 12 evidence.
 15:03 13 Q. And is that common procedure?
 15:03 14 A. Yes.
 15:03 15 Q. And why do you have them collect the evidence
 15:03 16 before you perform your examination?
 15:03 17 A. Because during the process of the examination,
 15:03 18 the firing the weapon, the evidence could actually be
 15:03 19 removed from the barrel.
 15:03 20 Q. Once the -- once it was examined for the
 15:03 21 presence of blood, did you receive the gun back to do
 15:03 22 your examination?
 15:03 23 A. Yes, I did.
 15:04 24 MS. FALCO: Thank you, Mr. Emanuel. We
 15:04 25 pass the witness.

15:04 1 THE COURT: Mr. Goeller?
 15:04 2 MR. GOELLER: Thank you, Your Honor.
 15:04 3 CROSS-EXAMINATION
 15:04 4 BY MR. GOELLER:
 15:04 5 Q. Mr. Emanuel, those Federal .380 auto
 15:04 6 cartridges, I think they are -- is there a box, a couple
 15:04 7 of them?
 15:04 8 A. Yes.
 15:04 9 Q. Right up there? Are those legal?
 15:04 10 A. Legal?
 15:04 11 Q. Yeah.
 15:04 12 A. Yes.
 15:04 13 Q. Okay. I mean, it's a pretty common round,
 15:04 14 correct?
 15:04 15 A. It's -- it's one of the line that's made by
 15:04 16 Federal.
 15:04 17 Q. You can buy it at any Wal-Mart?
 15:04 18 A. I would say yes.
 15:04 19 Q. If --
 15:04 20 A. I don't know particularly that Wal-Mart carries
 15:04 21 that, but it's common ammunition. You can get it at gun
 15:04 22 shops or --
 15:04 23 Q. It's common all over the country?
 15:04 24 A. It is available. They manufacture it for sale.
 15:05 25 Q. Okay. If your intent was to purchase

15:05 1 ammunition to penetrate armor, body armor, the last
 15:05 2 thing you would want is a projectile that expands,
 15:05 3 correct?
 15:05 4 A. I would say that would be a correct statement,
 15:05 5 yes.
 15:05 6 Q. Okay.
 15:05 7 MR. GOELLER: Thank you, sir. That's all
 15:05 8 I have, Your Honor.
 15:05 9 THE COURT: Anything else?
 15:05 10 MS. FALCO: Briefly, Your Honor.
 15:05 11 THE COURT: All right.
 15:05 12 REDIRECT EXAMINATION
 15:05 13 BY MS. FALCO:
 15:05 14 Q. Mr. Emanuel, did you prepare reports of your
 15:05 15 comparisons?
 15:05 16 A. Yes, I did.
 15:05 17 Q. And I show you what's been marked as State's
 15:05 18 Exhibit 161, 162 and 163. Do you recognize those three
 15:05 19 exhibits?
 15:06 20 A. Yes, I do.
 15:06 21 Q. And what are those three exhibits?
 15:06 22 A. These are copies of the reports that I issued
 15:06 23 in these particular cases.
 15:06 24 MS. FALCO: Your Honor, at this time we
 15:06 25 offer State's Exhibits 161, 162 and 163.

15:06 1 MR. GOELLER: Just a second, Judge.
 15:06 2 THE COURT: All right.
 15:07 3 MR. GOELLER: No objection, Your Honor.
 15:07 4 THE COURT: Could you tell me those
 15:07 5 numbers again, please.
 15:07 6 MS. FALCO: 161, 162 and 163.
 15:07 7 THE COURT: All right. 161 through 163
 15:07 8 are admitted.
 15:06 9 (State's Exhibit Nos. 161, 162 and 163
 15:06 10 admitted.)
 15:07 11 MS. FALCO: We have no further questions,
 15:07 12 Your Honor.
 15:07 13 THE COURT: Anything else, Mr. Goeller?
 15:07 14 MR. GOELLER: No, Your Honor.
 15:07 15 THE COURT: All right. You may step down.
 15:07 16 MS. FALCO: We ask that this witness be
 15:07 17 released, Your Honor.
 15:07 18 THE COURT: Is he finally excused?
 15:07 19 MR. GOELLER: Yes, sir.
 15:07 20 THE COURT: All right. You are finally
 15:07 21 excused.
 15:08 22 THE WITNESS: Thank you, sir.
 15:08 23 (Witness excused.)
 15:07 24 THE COURT: Call your next witness,
 15:07 25 please.

15:07 1 MS. FALCO: Vicki Hall.
 15:08 2 THE COURT: Raise your right hand, please.
 15:08 3 VICKI HALL,
 15:08 4 being first duly sworn, testified as follows:
 15:08 5 THE COURT: Put your hand down and have a
 15:09 6 seat right here, please.
 15:09 7 THE COURT: All right. Ms. Falco?
 15:09 8 MS. FALCO: Thank you.
 15:09 9 DIRECT EXAMINATION
 15:09 10 BY MS. FALCO:
 15:09 11 Q. Would you state your name for the jury.
 15:09 12 A. Vicki Hall.
 15:09 13 Q. What is your occupation?
 15:09 14 A. I'm a trace evidence analyst at the
 15:09 15 Southwestern Institute of Forensic Sciences in Dallas.
 15:09 16 Q. What does a trace analyst do?
 15:09 17 A. I process evidence that is submitted by either
 15:09 18 the Dallas County Medical Examiner's Office, or in this
 15:09 19 case, the Collin County Medical Examiner's Office.
 15:09 20 I also work evidence that's submitted by
 15:09 21 local and State police agencies. I specifically deal
 15:09 22 with evidence that pertains to gunshot residue on
 15:09 23 clothing and hand wipings, and I also analyze fire
 15:09 24 debris for ignitable liquids.
 15:09 25 Q. And what is trace evidence?

15:09 1 A. Trace evidence is a unit of forensic science
 15:09 2 that usually involves the specialties of hair, fiber,
 15:09 3 gunshot residue, glass, paint, and a variety of other
 15:09 4 specialties.
 15:09 5 Q. What is your educational background and
 15:10 6 training?
 15:10 7 A. I have a bachelor of science degree in
 15:10 8 chemistry, as well as a master's degree in analytical
 15:10 9 chemistry. I attended numerous workshops and training
 15:10 10 seminars in forensic sciences, including training
 15:10 11 courses at the FBI academy.
 15:10 12 I'm a member of the Southwestern
 15:10 13 Association of Forensic Sciences. And I've been
 15:10 14 accepted in as expert witness in seven states, Puerto
 15:10 15 Rico, the Virgin Islands, and U.S. court-martials.
 15:10 16 Q. And who is your employer?
 15:10 17 A. Dallas County.
 15:10 18 Q. And, specifically, do you work for the
 15:10 19 Southwest Institute of Forensic Science?
 15:10 20 A. Yes, ma'am. That is the entity that I do work
 15:10 21 for.
 15:10 22 Q. And how long have you been working for them?
 15:10 23 A. Right at 11 years.
 15:10 24 Q. And with regard to being a trace evidence
 15:10 25 analyst, did you do any comparison in State of Texas

15:10 1 versus Ivan Cantu with a complainant, James Mosqueda?
 15:10 2 A. Yes, ma'am, I did.
 15:10 3 Q. And, specifically, when evidence is received
 15:10 4 into your lab, how is it assigned and how do you get it
 15:11 5 as a trace evidence analyst?
 15:11 6 A. When evidence is submitted, it goes originally
 15:11 7 through our evidence registrars. And they assign it a
 15:11 8 unique laboratory number or FL number that corresponds
 15:11 9 to that complainant. In this case the number was given
 15:11 10 OOP2209.
 15:11 11 Once the items have been inventoried, they
 15:11 12 are given individual item numbers. And then individual
 15:11 13 laboratories are notified that evidence has been
 15:11 14 submitted and is awaiting the analysis by that unit.
 15:11 15 At the time that I analyze the evidence, I
 15:11 16 go to the registration area, checkout the evidence, sign
 15:11 17 for it, bring it back to the laboratory, analyze it, and
 15:11 18 then return it back to the registration area.
 15:11 19 Q. And specifically with regard to this case, did
 15:11 20 you personally receive evidence from Dr. Rohr?
 15:11 21 A. Dr. Rohr did submit evidence into the
 15:11 22 laboratory through the registration area.
 15:12 23 MS. FALCO: Your Honor, may I approach?
 15:12 24 THE COURT: Yes.
 15:12 25 Q. (BY MS. FALCO) Specifically, I want to show

15:12 1 you State's Exhibit 151 and State's Exhibit 149. Do you
 15:12 2 recognize those two envelopes?
 15:12 3 A. State's Exhibit 151 is an envelope that I did
 15:12 4 examine the contents, and State's Exhibit 149 I examined
 15:12 5 those contents, as well.
 15:12 6 Q. And with regard to State's Exhibit 151, did it
 15:12 7 come to you sealed by Dr. Rohr?
 15:12 8 A. Yes. It was an envelope that came sealed with
 15:12 9 Dr. Rohr's initials.
 15:12 10 Q. And when you opened it, did you unseal -- open
 15:12 11 it from the other end?
 15:12 12 A. Yes. I did open an unsealed end and then, at
 15:12 13 the completion of my analysis, I resealed it.
 15:12 14 Q. And what is contained in State's Exhibit 151?
 15:12 15 A. In State's Exhibit 151 there is a microscope
 15:13 16 slide, a glass slide with a piece of tape on it that
 15:13 17 contained two gunpowder particles.
 15:13 18 Q. And once you received it for examination, how
 15:13 19 do you go about making your examination?
 15:13 20 A. The first thing I do after making notes is to
 15:13 21 examine the microscope slide and specifically the piece
 15:13 22 of tape, looking at the underside of the tape for any
 15:13 23 particles that are present. And I usually do this first
 15:13 24 visually, and then I check underneath the microscope.
 15:13 25 Q. And did you do that in this case?

15:13 1 A. Yes, ma'am.
 15:13 2 Q. And what was the result of your examination?
 15:13 3 A. I did find two flake gunpowder particles
 15:13 4 adhering to the piece of tape.
 15:13 5 Q. And that would be Dr. Rohr's notation of around
 15:13 6 the left neck entry?
 15:13 7 A. Yes, that's correct.
 15:13 8 Q. And with regard to State's Exhibit 149, did you
 15:13 9 also receive that in a sealed envelope from Dr. Rohr?
 15:13 10 A. Yes. State's Exhibit 149 is an envelope that
 15:13 11 was received sealed by Dr. Rohr, and I performed an
 15:14 12 analysis on the contents.
 15:14 13 Q. And, again, what is contained in State's
 15:14 14 Exhibit 149?
 15:14 15 A. It contains a microscope slide, once again,
 15:14 16 with a piece of tape, and I examined the contents of
 15:14 17 that slide and tape.
 15:14 18 Q. What was the result of your examination?
 15:14 19 A. I, on that slide, as well, found two flake
 15:14 20 gunpowder particles adhering to the tape.
 15:14 21 Q. Let me show you what's been marked as State's
 15:14 22 Exhibit No. 164. Do you recognize that exhibit?
 15:14 23 A. Yes, ma'am, I do. State's Exhibit 164 is a
 15:14 24 copy of my report on the analysis of these -- the
 15:14 25 contents of these two envelopes, specifically the

15:14 1 identification of the gunpowder.
 15:14 2 MS. FALCO: We offer State's Exhibit 164.
 15:14 3 MR. GOELLER: No objection, Your Honor.
 15:14 4 THE COURT: State's Exhibit 164 is
 15:14 5 admitted.
 15:14 6 (State's Exhibit No. 164 is admitted.)
 15:14 7 Q. (BY MS. FALCO) Ms. Hall, with regard to
 15:15 8 gunpowder fragments, and that's what you found was
 15:15 9 gunpowder fragments on those two slides; is that
 15:15 10 correct?
 15:15 11 A. That's correct.
 15:15 12 Q. In the scientific community, what is the
 15:15 13 standard for how far or how close you have to be before
 15:15 14 there's no longer any gunpowder residue or any gunpowder
 15:15 15 fragments left on a specific item?
 15:15 16 A. Well, with most handguns, gunpowder will
 15:15 17 deposit on a target up to a range of approximately three
 15:15 18 to four feet. So if you find gunpowder around a defect
 15:15 19 or an entrance wound, then you can usually say that it's
 15:15 20 within that distance of three to four feet.
 15:15 21 Q. So if you are more than three or four feet away
 15:15 22 from the target or from what you are shooting at, you
 15:15 23 are probably not going to see gunpowder fragments?
 15:15 24 A. That is usually the case. There are those
 15:15 25 exceptions, but that's usually the case. If you are

15:15 1 beyond three to four feet, there will not be gunpowder
15:16 2 that is still adhering to the area surrounding the hole
15:16 3 or the wound.

15:16 4 Q. And with regard to those two exhibits, when
15:16 5 they came to you from Dr. Rohr sealed, you opened the
15:16 6 other end, the bottom end; is that correct?

15:16 7 A. That's correct.

15:18 8 Q. And once you conducted your analysis, you put
15:18 9 them back in the envelope and resealed the bottom end?

15:16 10 A. That's correct.

15:16 11 MS. FALCO: Thank you, Ms. Hall. We pass
15:16 12 the witness.

15:16 13 MR. GOELLER: No questions, Your Honor.

15:16 14 THE COURT: Is she excused by both sides?

15:16 15 MR. GOELLER: Yes.

15:16 16 MS. FALCO: Yes, sir.

15:16 17 THE COURT: You are finally excused.

15:16 18 Thank you.

15:16 19 (Witness excused.)

15:16 20 THE COURT: Call your next witness,
15:16 21 please.

15:16 22 MS. FALCO: Dr. Sliter.

15:17 23 THE COURT: Raise your right hand, please.

15:17 24 DR. TIMOTHY SLITER,

15:17 25 being first duly sworn, testified as follows:

15:17 1 THE COURT: Put your hand down and have a
15:17 2 seat right here. All right. Ms. Falco?

15:17 3 MS. FALCO: Thank you.

15:17 4 DIRECT EXAMINATION

15:17 5 BY MS. FALCO:

15:17 6 Q. Could you state your name for the jury.

15:17 7 A. My name is Timothy Sliter, S-L-I-T-E-R.

15:17 8 Q. What is your occupation?

15:17 9 A. I am employed at the Southwestern Institute of
15:18 10 Forensic Sciences in Dallas as the supervisor of the
15:18 11 forensic biology laboratory.

15:18 12 Q. And what are your duties as the supervisor of
15:18 13 the forensic lab?

15:18 14 A. I oversee all of the testing activities that
15:18 15 are done by the laboratory. That includes the basic
15:18 16 serology and evidence examination testing that's done,
15:18 17 also the DNA testing that's done. In addition, I
15:18 18 personally perform analysis of evidence items in the
15:18 19 area of DNA testing.

15:18 20 Q. And what is your educational background and
15:18 21 training?

15:18 22 A. I have my doctorate degree in genetics from the
15:18 23 University of California at Irvine. I have a number of
15:18 24 years of post-graduate training and research experience
15:18 25 in the areas of physiology, genetics, and molecular

15:18 1 biology.

15:18 2 In order to perform DNA testing at the
15:18 3 institute, I had to complete training in that -- in the
15:19 4 specific testing procedures that we use, and I had to
15:19 5 complete a competency test in the specific test
15:19 6 procedures that we use. And in order to continue doing
15:19 7 it, I have to successfully complete at least two
15:19 8 external proficiency tests a year.

15:19 9 Q. And how long have you been doing DNA analysis?

15:19 10 A. I have been doing DNA analysis for the last 15
15:19 11 years, forensic DNA analysis at the institute for the
15:19 12 last three and a half years.

15:19 13 Q. And where were you working prior to working at
15:19 14 Southwest Institute of Forensic Science?

15:19 15 A. I was on the faculty of Southern Methodist
15:19 16 University.

15:19 17 Q. And what were you teaching there?

15:19 18 A. Primarily human physiology.

15:19 19 Q. With regard to DNA what does that stand for?

15:19 20 A. DNA is an abbreviation for a chemical material
15:19 21 that is located in all the cells of our body. It is a
15:19 22 fairly complicated chemical material, but basically it's
15:19 23 the genetic material. It's the chemical that's located
15:20 24 in the chromosomes that are passed from parents to
15:20 25 children in the egg and the sperm. And it carries all

15:20 1 of the information that is required for making us human.

15:20 2 It includes both the information that is
15:20 3 responsible for what we refer to as our common traits,
15:20 4 the fact that we all have two eyes and two ears, and
15:20 5 they are in the right location, but it also includes
15:20 6 information for what we refer to as our individual
15:20 7 traits, our individual eye color, our individual hair
15:20 8 and skin color, also our individual biochemical
15:20 9 characteristics. Some of those individual
15:20 10 characteristics are responsible for genetic diseases,
15:20 11 such as sickle-cell anemia and other sorts of diseases.

15:20 12 About 99.9 percent of the DNA that we all
15:20 13 have is exactly the same as everybody else has. It's
15:20 14 only about one-tenth of 1 percent that's different. And
15:20 15 it's the one-tenth of 1 percent that gives us our
15:20 16 individual characteristics.

15:21 17 Q. With regard to that one-tenth of 1 percent,
15:21 18 does that vary from person to person?

15:21 19 A. Yes.

15:21 20 Q. And can you identify that variance or that
15:21 21 difference?

15:21 22 A. Yes. It is possible chemically to describe DNA
15:21 23 and to describe the differences in DNA between
15:21 24 individuals. And that really is the basis for this
15:21 25 whole thing that is called the human genome project.

15:21 1 And the techniques for doing that are well established
15:21 2 and have been used for the last 20 years.

15:21 3 Q. And how do you go about doing a DNA analysis?

15:21 4 A. In the sorts of analyses we are doing, we
15:21 5 perform basically a chemical analysis. We take an
15:21 6 evidence material that's submitted to the laboratory.
15:21 7 It might be blood, it might be semen, or some other
15:21 8 material, and we chemically process it so that we
15:21 9 recover the DNA in a highly pure form. And then we
15:22 10 carry out a chemical analysis that allows us to look at
15:22 11 the chemical structure of that DNA.

15:22 12 In certain regions, not all of them, just
15:22 13 certain regions, in most cases we look at ten different
15:22 14 regions, ten different areas of the chromosome that have
15:22 15 the property that there's a high degree of chemical
15:22 16 variation between humans in those nine areas.

15:22 17 Q. Is it possible to do DNA analysis on a dried
15:22 18 stain of a body fluid?

15:22 19 A. Yes.

15:22 20 Q. And how do you go about doing that? What is
15:22 21 the chemical process you use to conduct the analysis on
15:22 22 a dried stain?

15:22 23 A. In a -- in a very simple way, what we do is we
15:22 24 take that dried material, and we put it into a test tube
15:22 25 with a solution that dissolves the stain and digests the

15:22 1 proteins in it. And then we take that extract through a
15:22 2 series of chemical steps which cleans it up.

15:22 3 It removes the proteins and the fats and
15:22 4 the other chemical parts of it and separates those from
15:23 5 the DNA. And after we isolate the DNA from those
15:23 6 extracts, we perform a series of chemical steps which
15:23 7 allow us to run the sample on a machine, and it tells us
15:23 8 the structure of the DNA in these certain diagnostic
15:23 9 regions.

15:23 10 Q. And as you are conducting this analysis, are
15:23 11 there checks and balances or controls to know that
15:23 12 everything is working properly?

15:23 13 A. Yes. Every batch of samples that we process
15:23 14 includes a number of what we refer to as controls.
15:23 15 Those would be in some cases samples that don't have any
15:23 16 DNA in them. And we would expect not to get a DNA
15:23 17 profile from those if everything is working properly and
15:23 18 all of our solutions are free from contamination. And
15:23 19 we also include a number of what we refer to as positive
15:23 20 controls.

15:23 21 Those are samples that have DNA from a
15:23 22 known individual or from a known cell line, and we know
15:23 23 exactly what the DNA profile is that we should get from
15:24 24 those, and we expect to get that if everything is
15:24 25 working properly.

15:24 1 Q. These technologies that you've been talking
15:24 2 about regarding DNA, are they new to the scientific
15:24 3 field, or have they been around a while?

15:24 4 A. The basic procedures have been around for a
15:24 5 long while. Some of the specific techniques have been
15:24 6 around for 50 years, and some of them have been around
15:24 7 less. But the basic procedures in DNA analysis have all
15:24 8 been -- being used in the research field for at least 20
15:24 9 years. In the forensic field, specific techniques we
15:24 10 use now were beginning to be used about ten years ago.

15:24 11 Q. And is this DNA analysis, specifically in
15:24 12 forensic as well as other areas, is that supported by
15:24 13 scientific literature?

15:24 14 A. Yes, it is.

15:24 15 Q. And backed by research?

15:24 16 A. Yes, it is.

15:24 17 Q. And when we're talking about taking dried
15:24 18 stains and analyzing, we're talking about forensic DNA.
15:25 19 Is that fair to say?

15:25 20 A. It is all forensic in the sense that it is done
15:25 21 for the purpose of assisting in some court deliberation.

15:25 22 Q. Is DNA also used in other fields outside of
15:25 23 forensics?

15:25 24 A. Yes, it is.

15:25 25 Q. What other fields is that?

15:25 1 A. Well, there's a variety of research into DNA
15:25 2 from the point of view of diagnosis of diseases. The
15:25 3 sorts of testing we do, which is really human identity
15:25 4 testing, is used in basic research in the areas of
15:25 5 anthropology, but it's also used in the identification
15:25 6 of victims of mass disasters.

15:25 7 Q. With regard to DNA are you able to take an
15:25 8 unknown sample of an unknown source, a stain, a bodily
15:25 9 fluid, and compare that to a known sample and do a
15:25 10 comparison and see if it's one and the same person?

15:25 11 A. Yes. Typically the way we would do our
15:25 12 analysis, is we would receive from an investigator
15:26 13 certain evidence items from a crime scene or collected
15:26 14 in association with a criminal investigation. And then
15:26 15 we would also receive a number of what we refer to as
15:26 16 standards.

15:26 17 These are known biological materials from
15:26 18 a known individual. It might be a bloodstain. It might
15:26 19 be what we refer to as a buckle swab, which is a
15:26 20 scraping from inside the cheek. But it would represent
15:26 21 a biological material that is collected from a known
15:26 22 individual. And since the DNA profile of any tissue
15:26 23 from the same individual will be the same, we can
15:26 24 compare different -- the profiles we get from different
15:26 25 tissues or different body fluids.

15:26 1 Q. And with regard to receiving evidence in this
15:26 2 specific case of State of Texas versus Ivan Cantu, did
15:26 3 you receive evidence regarding complainants Amy Kitchen
15:26 4 and James Mosqueda?

15:26 5 A. Yes, we did.

15:26 6 Q. And did you receive that evidence both from the
15:27 7 Dallas Police Department as well as Dr. Rohr?

15:27 8 A. Yes.

15:27 9 Q. When evidence is received into your lab for the
15:27 10 purpose of DNA analysis, explain to the jury what the
15:27 11 procedure is and how it gets to you?

15:27 12 A. Initially the evidence items will be screened
15:27 13 for the presence of biological fluids. Depending upon
15:27 14 what type of case it is, we might be looking either for
15:27 15 blood or perhaps for seminal fluid.

15:27 16 In this case we were looking for blood.
15:27 17 So all of the evidence items that were submitted by the
15:27 18 Dallas Police Department were initially screened for
15:27 19 blood.

15:27 20 And the screening process is really a
15:27 21 two-step process. We first do a visual inspection of
15:27 22 it, and then we utilize what's referred to as a
15:27 23 presumptive test.

15:27 24 This is a simple chemical test which, in
15:27 25 the presence of blood of any species of animal, will

15:27 1 give us a positive reaction. And so if we see a stain
15:28 2 and it gives a positive result with this presumptive
15:28 3 chemical test, then we will carry on and do what is
15:28 4 called a definitive test which will show whether that
15:28 5 stain which tested positive was human blood.

15:28 6 Once a stain is identified as human blood,
15:28 7 it's then cut out of a garment if it's a garment that
15:28 8 we're screening. Or it's collected, the stain is
15:28 9 collected on a damp swab, and it's dried, and it's
15:28 10 frozen for later DNA analysis if that's requested.

15:28 11 MS. FALCO: Your Honor, may I approach?

15:28 12 THE COURT: Yes.

15:28 13 Q. (BY MS. FALCO) And, Doctor, I show you what's
15:28 14 been admitted as State's Exhibit 71A. And do you
15:28 15 recognize the initials SAR and MS on that bag, as well
15:28 16 as the lab number?

15:28 17 A. Yes. This laboratory No. 00P2209 is our
15:29 18 laboratory number which was given to this case. The
15:29 19 item No. 14 is our item number which was assigned to
15:29 20 this item when it was submitted. SAR is the initials of
15:29 21 Sylvia Reyes, our evidence technician, who receives the
15:29 22 evidence into the lab. The initials of MS, here, is
15:29 23 Melissa Sweetland who performed the examination of the
15:29 24 items for the presence of blood.

15:29 25 Q. And with regard -- you called it your item

15:29 1 No. 14, our State's Exhibit 71A. Is that the pair of
15:29 2 blue jeans you received from the Dallas Police
15:29 3 Department?

15:29 4 A. Yes.

15:29 5 Q. And specifically inside the blue jeans, do you
15:29 6 see the same identifying numbers from the lab as well as
15:29 7 Melissa Sweetland's initials?

15:29 8 A. Yes. She has both initialed it and dated it.

15:29 9 Q. And with regard to State's Exhibit 71B and 71C,
15:30 10 again on the outside envelopes, do you observe
15:30 11 identifying marks from your lab?

15:30 12 A. Yes.

15:30 13 Q. And both of those were received into your lab
15:30 14 and each one containing one white sock that was sent
15:30 15 through your lab?

15:30 16 A. Yes, that's correct.

15:30 17 Q. And then I show you State's Exhibit 76B. Do
15:30 18 you recognize State's Exhibit 76B?

15:31 19 A. This has our laboratory number etched into it,
15:31 20 which would have been done by the firearms examiner who
15:31 21 looked at this.

15:31 22 Q. And with regard to the gun, State's Exhibit
15:31 23 76B, would that have gone to the firearms examiner
15:31 24 before it came to your lab?

15:31 25 A. It -- it -- it may have. I'm not quite sure in

15:31 1 this particular circumstance whether it came to us first
15:31 2 or whether it went to the firearms examiner. Typically,
15:31 3 what would happen is if it went to the firearms examiner
15:31 4 and he made an observation of blood-like material on it,
15:31 5 he would make contact with someone in the staff of the
15:31 6 biology unit in order to come over and do the
15:31 7 presumptive testing and the sampling of that material.

15:32 8 Q. Now, I'll start with the blue jeans. With
15:32 9 regard to the blue jeans, did Melissa Sweetland, in your
15:32 10 office, conduct a presumptive test to determine if there
15:32 11 was human blood on those jeans?

15:32 12 A. Yes, she did.

15:32 13 Q. And what was the result of her examination?

15:32 14 A. There were a number of areas of blood-like
15:32 15 staining on the item which tested positive in a
15:32 16 presumptive test for blood. And then one of those areas
15:32 17 was tested with our confirmatory test, and it was shown
15:32 18 to be human blood.

15:32 19 And three areas of that garment were cut
15:32 20 out and stored for later DNA testing. Those areas were
15:32 21 designated by us as T1, T2, and T3 for test area one,
15:32 22 test area two, and test area three.

15:32 23 Q. And if you could just describe for the jury
15:32 24 where those three areas on the blue jeans would be.

15:32 25 A. All three of those areas were generally on the

15:33 1 back. One was on the back -- or two areas were on the
15:33 2 back of the right leg. One sort of in the middle of the
15:33 3 thigh, and the other at the -- at the bottom of the leg.
15:33 4 A third area was collected from basically the side of
15:33 5 the thigh on the left leg.

15:33 6 Q. And you just referred to her as Lisa. Is
15:33 7 Melissa Sweetland also Lisa?

15:33 8 A. Yes, she is.

15:33 9 Q. Would she have been the one to actually cut the
15:33 10 stains out of the blue jeans?

15:33 11 A. Yes.

15:33 12 Q. Once she cut those stains out of the blue
15:33 13 jeans, does she then send them to you?

15:33 14 A. No. What she does is she packages them in a
15:33 15 heat-sealed envelope, a plastic envelope, and places
15:33 16 them in our storage freezers for long-term storage.

15:33 17 Q. And are they labeled and identified so you know
15:33 18 what it is you are examining?

15:33 19 A. Yes. They are labeled with our laboratory
15:33 20 number, the item number, and the specific test area
15:34 21 number.

15:34 22 Q. And at some point in time did you retrieve
15:34 23 those from the freezer and conduct an analysis?

15:34 24 A. Yes, I did.

15:34 25 Q. With regard to the two socks, the two white

15:34 1 socks, did Melissa Sweetland also do a presumptive test
15:34 2 for human blood on the socks?

15:34 3 A. Yes. She did both a presumptive and a
15:34 4 confirmatory test on stains that were present on both of
15:34 5 those socks.

15:34 6 Q. And what were the result of her tests?

15:34 7 A. Stains were identified which tested positive
15:34 8 with a presumptive test. And then additionally, one
15:34 9 stain from each sock was tested with the confirmatory
15:34 10 test and was shown to be human blood.

15:34 11 Q. And did she cut certain stains out of those
15:34 12 socks for you to later analyze?

15:34 13 A. Yes. She cut two stains out of one sock, which
15:34 14 was our item No. 15, and then one stain out of our item
15:35 15 No. 16.

15:35 16 Q. And what did she do with those cut-out stains?

15:35 17 A. She placed them in heat-sealed envelopes,
15:35 18 labeled them, and stored them in our freezers.

15:35 19 Q. And with regard to the gun, our State's Exhibit
15:35 20 76B, your item No. 21, did she conduct a presumptive
15:35 21 test on the gun?

15:35 22 A. Yes, she did.

15:35 23 Q. And where did she observe evidence that she
15:35 24 tested for blood?

15:35 25 A. There were several visible stains which tested

15:35 1 positive in the presumptive test for blood. One was
15:35 2 located on the trigger guard. The most intense stains
15:35 3 were located at the end of the barrel -- at the end of
15:35 4 the barrel. And she took a sample from inside the
15:35 5 barrel which tested positive in the presumptive test and
15:36 6 then was subsequently shown in the confirmatory test to
15:36 7 be human blood.

15:36 8 Q. With regard to her collecting a sample from
15:36 9 inside the barrel, how much blood was inside the barrel?
15:36 10 Can you determine or give an estimate?

15:36 11 A. Well, it would have to be a significant amount
15:36 12 in order to be testable with a confirmatory test. If we
15:36 13 see a very small stain, generally we will not consume
15:36 14 that whole stain in order to do a confirmatory test
15:36 15 because we want to retain enough to do DNA testing. So
15:36 16 we would only do the human test, the test for human
15:36 17 blood, if it's a fairly significant stain.

15:36 18 Q. And with regard to the other stains that were
15:36 19 presumptive for blood on the -- on the trigger and other
15:36 20 areas of the gun, was there further testing done on
15:36 21 those?

15:36 22 A. No. There was just a presumptive test done.

15:36 23 Q. And why was there not further testing done of
15:36 24 those?

15:37 25 A. Because the majority of the stain was present

15:37 1 at the tip of the barrel. There was a smaller amount in
15:37 2 these other areas.

15:37 3 Q. And once she had attained the sample of blood
15:37 4 out of the barrel of the gun, what was done with that
15:37 5 sample?

15:37 6 A. In this case she would have -- she collected
15:37 7 that with a damp swab. She would have let the damp swab
15:37 8 dry and then packaged it in a heat-seal envelope and
15:37 9 labeled it and stored it in our freezers.

15:37 10 Q. And for purposes of your analysis, did you also
15:37 11 receive from Dr. Rohr known blood samples?

15:37 12 A. Yes. There were two known blood samples
15:37 13 submitted to the laboratory by Dr. Rohr.

15:37 14 Q. And how were they packaged?

15:37 15 A. What we received were blood tubes. These would
15:38 16 be actually tubes of blood that were collected at the
15:38 17 autopsy, and they were submitted to us packaged in
15:38 18 specimen bags.

15:38 19 Q. And were they labeled?

15:38 20 A. Yes, they were labeled.

15:38 21 Q. And did they appear to have been tampered with
15:38 22 in any way?

15:38 23 A. No. There's no indication from the paperwork
15:38 24 that they were received in an unsealed condition or that
15:38 25 the seal had been tampered with.

15:38 1 Q. And did you use those known blood samples to
 15:38 2 conduct your analysis?
 15:38 3 A. I performed DNA typing of those items, those
 15:38 4 known standards, and then compared those to DNA profiles
 15:38 5 I generated from the samples that Melissa Sweetland had
 15:38 6 collected.
 15:38 7 Q. And with regard to the blue jeans, I believe
 15:38 8 you had three samples from the blue jeans?
 15:38 9 A. Yes, I did.
 15:38 10 Q. And with regard -- and you call those T1, T2
 15:39 11 and T3?
 15:39 12 A. Yes.
 15:39 13 Q. With regard to those three samples from the
 15:39 14 blue jeans, did you make a comparison to the known blood
 15:39 15 samples of James Mosqueda and Amy Kitchen?
 15:39 16 A. Yes, I did.
 15:39 17 Q. And what was the result of your comparison on
 15:39 18 the blue jeans?
 15:39 19 A. Each of the three tested samples from the blue
 15:39 20 jeans gave a DNA profile that matched the DNA profile of
 15:39 21 James Mosqueda.
 15:39 22 Q. And with regard to the socks, I believe you
 15:39 23 have one sock that has two stains and one sock that had
 15:39 24 one stain. Did you conduct an analysis of those three
 15:39 25 stains to the known blood samples of James Mosqueda and

15:39 1 Amy Kitchen?
 15:39 2 A. Yes, I did.
 15:39 3 Q. And what was the result of your comparison?
 15:39 4 A. The stain that was collected from our item
 15:39 5 No. 16, that was the sock from which one stain was
 15:39 6 collected. That stain's DNA profile matched the DNA of
 15:40 7 James Mosqueda.
 15:40 8 The other sock, our No. 15, there were two
 15:40 9 areas that were tested from that. One of those stains,
 15:40 10 the T1 stain, gave a DNA profile which indicated it was
 15:40 11 a mixture of DNA from two individuals. Most of the DNA
 15:40 12 came from a female individual, and the DNA profile of
 15:40 13 that DNA matched the DNA profile of Amy Kitchen.
 15:40 14 There was, however, a smaller amount of
 15:40 15 DNA from a male individual, and I did not get a full DNA
 15:40 16 profile of that male individual. But all of the genetic
 15:40 17 markers that we saw in that, that could be attributed to
 15:40 18 that minor male contributor, corresponded to genetic
 15:40 19 markers that were present in James Mosqueda's DNA
 15:40 20 profile.
 15:41 21 There was a second stain, T2, that was
 15:41 22 examined from the sock, our No. 15. That, again,
 15:41 23 appeared to be a mixture of DNA from a major contributor
 15:41 24 who was female and a minor contributor. The major
 15:41 25 contributor, the major female contributor, the DNA

15:41 1 profile matched Amy Kitchen's DNA profile.
 15:41 2 The minor contributor there was -- there
 15:41 3 was a very small DNA that could be attributed to the
 15:41 4 minor contributor. It was basically just one genetic
 15:41 5 marker. It happened to correspond to a genetic marker
 15:41 6 in James Mosqueda's DNA profile, but there was very,
 15:41 7 very little DNA from that minor contributor. There
 15:41 8 wasn't enough to say whether it was male or female.
 15:41 9 Q. And with regard to the stain from the gun
 15:41 10 barrel, did you conduct a comparison with that blood to
 15:41 11 Amy Kitchen and James Mosqueda's known blood sample?
 15:42 12 A. Yes, I did.
 15:42 13 Q. And what was the result of that comparison?
 15:42 14 A. The DNA from the stain on the gun barrel
 15:42 15 matched the DNA profile of James Mosqueda.
 15:42 16 Q. And with regard to the gun, the barrel of the
 15:42 17 gun having blood in it, are you familiar with what might
 15:42 18 cause or what it's called when blood is in the barrel of
 15:42 19 a gun like that?
 15:42 20 A. Well, there's -- there's -- there's a number of
 15:42 21 ways that blood can get into a barrel.
 15:42 22 Q. And how are they?
 15:42 23 A. Well, one way is if -- if there is what's
 15:42 24 referred to as back spatter. If a -- when a bullet
 15:42 25 strikes -- strikes a person, there will be blood which

15:42 1 is spattered back in towards the direction that the
 15:42 2 bullet came. And if -- generally, blood is back
 15:42 3 spattered from a site of entry no more than about four
 15:43 4 feet.
 15:43 5 Another way that blood can be pulled back
 15:43 6 into the barrel of a gun is a phenomena called, really,
 15:43 7 pullback. Because the expanding gases from -- that are
 15:43 8 in the barrel of the gun as they cool, there will be air
 15:43 9 pulled back into the barrel of the gun.
 15:43 10 Q. And can you tell anything, based on the
 15:43 11 presence of a lot of what you quantify as a strong
 15:43 12 presence of blood in the barrel of the gun, does that
 15:43 13 indicate anything to you about how it might have got
 15:43 14 there whether it was back spatter or drawback?
 15:43 15 A. I couldn't say that. I did not observe the
 15:43 16 blood that was present on this gun at the time it was
 15:43 17 collected. So I'm really not in a position to be able
 15:43 18 to make a comment about that.
 15:44 19 Q. With regard to your analysis, do you quantify
 15:44 20 it in a numerical sense or in a statistical sense?
 15:44 21 A. Whenever we find a match, a correspondence
 15:44 22 between the DNA profile of an evidence item collected at
 15:44 23 a scene and the DNA profile of a known individual, we
 15:44 24 will calculate a statistic which estimates the frequency
 15:44 25 that that particular profile would be seen in the human

15:44 1 population.
 15:44 2 Q. And based on that, when you say that the blood
 15:44 3 on the jeans and a result of your comparison is that
 15:44 4 that was James Mosqueda's blood, statistically or
 15:44 5 numerically, what are you talking about?

15:44 6 A. Well, when we do this analysis, the statistical
 15:44 7 analysis, we take the DNA profile from the evidence
 15:44 8 item, and we determine how often that would be expected
 15:45 9 to be found in representative human populations.

15:45 10 And the populations that we're concerned
 15:45 11 about are Texas Caucasians, Texas African-Americans and
 15:45 12 Texas Hispanics, the three major population groups in
 15:45 13 Texas.

15:45 14 And to do this calculation, we have to
 15:45 15 utilize data, a data base of information that's been
 15:45 16 collected by the Texas Department of Public Safety
 15:45 17 regarding the DNA markers that we're looking at in these
 15:45 18 populations.

15:45 19 In the case of those samples that matched
 15:45 20 James Mosqueda's DNA profile, in the Texas Caucasian
 15:45 21 population they would be expected to be -- you would
 15:45 22 expect to see that profile in 1 in every 222 billion
 15:45 23 Caucasians.

15:45 24 In the African-American population, 1 in
 15:45 25 2.15 trillion. And in the Hispanic population, 1 in

15:46 1 88.7 billion. And the most conservative number there is
 15:46 2 the number that's seen in the Hispanic population, which
 15:46 3 is 1 in 88.7 billion.

15:46 4 And to put that in context, what that
 15:46 5 means is that because the population of the earth is
 15:46 6 approximately 6 billion, if I had a population of people
 15:46 7 equal to about 14 times the population of the earth, I
 15:46 8 would expect that there would be one person in that
 15:46 9 population who would have this exact same DNA profile.

15:46 10 Q. And with regard to Amy Kitchen, when you stated
 15:46 11 that blood on the sock was the same as the known blood
 15:46 12 sample of Amy Kitchen, statistically what are you
 15:46 13 talking about?

15:46 14 A. That profile in the Texas Caucasian population
 15:46 15 would be seen a 1 in 28.3 billion. In the
 15:46 16 African-American population it would be 1 in 14.8
 15:47 17 billion. And in the Hispanic population it would be 1
 15:47 18 in 98 billion.

15:47 19 And again, the conservative number there
 15:47 20 is 1 in 14.8 billion. And that would represent a
 15:47 21 population of individuals approximately six and a half
 15:47 22 times the population of the earth. If I had that number
 15:47 23 of people, I would expect one person in that population
 15:47 24 to have this particular DNA profile.

15:47 25 Q. Dr. Sliter, did you put your results in a

15:47 1 report?

15:47 2 A. Yes, I did.

15:47 3 MS. FALCO: Your Honor, may I approach?

15:47 4 THE COURT: Yes.

15:47 5 Q. (BY MS. FALCO) I show you what's been marked
 15:47 6 as State's Exhibit No. 167. Do you recognize that
 15:47 7 report?

15:47 8 A. Yes. This is a copy of the report that I
 15:47 9 prepared.

15:47 10 MS. FALCO: Your Honor, we offer State's
 15:48 11 Exhibit No. 167.

15:48 12 MR. GOELLER: Thank you. No objection,
 15:48 13 Your Honor.

15:48 14 THE COURT: No. 167 is admitted.
 15:48 15 (State's Exhibit No. 167 admitted.)

15:48 16 Q. (BY MS. FALCO) I also show you what's been
 15:48 17 marked as State's Exhibit 165 and 166. Did you prepare
 15:48 18 those reports, as well?

15:48 19 A. Yes, I did.

15:48 20 Q. And what are those reports of?

15:48 21 A. They describe our receipt and storage of the
 15:48 22 autopsy blood samples from Amy Kitchen and from James
 15:48 23 Mosqueda which were submitted by Dr. Rohr.

15:48 24 Q. And that is what you use to make your
 15:48 25 comparison of the jeans, the socks, and the gun?

15:49 1 A. Yes.

15:49 2 MS. FALCO: At this time we offer State's
 15:49 3 Exhibits 165 and 166.

15:49 4 MR. GOELLER: No objection.

15:49 5 THE COURT: 165 and 166 are admitted.
 15:49 6 (State's Exhibit Nos. 165 and 166
 15:49 7 admitted.)

15:49 8 MS. FALCO: May I have a moment, Your
 15:49 9 Honor?

15:49 10 THE COURT: Yes.

15:49 11 MS. FALCO: Thank you, Dr. Sliter. I pass
 15:50 12 the witness.

15:50 13 THE COURT: All right.

15:50 14 MR. GOELLER: Thank you, Judge. May I
 15:50 15 approach the witness --

15:50 16 THE COURT: Yes.

15:50 17 MR. GOELLER: -- to look at those
 15:50 18 exhibits?

CROSS-EXAMINATION

15:50 19 BY MR. GOELLER:

15:50 20 Q. Pronounce your last name, sir.

15:50 21 A. Sliter.

15:50 22 Q. Sliter, okay. Dr. Sliter, right?

15:50 23 A. Yes.

15:50 24 Q. These reports are generated in November 2000,
 15:50 25

15:50 1 December of 2000, last year. So September 6th of this
 15:50 2 year?
 15:50 3 A. September 6.
 15:50 4 Q. Or have I got that wrong?
 15:50 5 A. I'm not sure which.
 15:51 6 Q. I thought I saw something.
 15:51 7 A. That is a report produced by Vicki Hall.
 15:51 8 Q. Is she with SWIFS?
 15:51 9 A. Yes, she is.
 15:51 10 Q. Okay. You recognize your letterhead, right?
 15:51 11 A. Yes.
 15:52 12 Q. Dr. Sliter, did you do a report just a couple
 15:52 13 weeks ago?
 15:52 14 A. Yes, I did.
 15:52 15 Q. Was that one of the ones that was just
 15:52 16 admitted?
 15:52 17 A. No.
 15:52 18 Q. Is this -- let me show you Defendant's Exhibit
 15:52 19 8. Is that it?
 15:53 20 A. This is a separate serology report. But this
 15:53 21 is a copy of -- yes, this is a copy of the DNA report
 15:53 22 that I issued on September 20th that describes some
 15:53 23 additional analyses that were done.
 15:53 24 Q. Okay. Do you recognize that document or
 15:53 25 recognize the person who authored it or signed it or

15:53 1 anything?
 15:53 2 A. Yes. This is a report of Melissa Sweetland's
 15:53 3 that describes additional serology testing that was done
 15:53 4 on, well, two items that were submitted: a fitted sheet
 15:53 5 and a mattress cover.
 15:54 6 Q. Okay. And when was that done?
 15:54 7 A. This analysis, this report was issued on
 15:54 8 September 12th of this year.
 15:54 9 Q. A couple weeks ago?
 15:54 10 A. About a month ago.
 15:54 11 Q. Okay. Okay. Do you recognize that as a
 15:54 12 genuine document from your lab?
 15:54 13 A. Yes; and I have the original.
 15:54 14 Q. You got the original?
 15:54 15 A. In my package, and that is a correct copy.
 15:54 16 Q. Okay.
 15:54 17 MR. GOELLER: We'd offer defendant's
 15:54 18 Exhibit 8, Your Honor.
 15:54 19 MS. FALCO: No objection.
 15:54 20 THE COURT: Defendant's Exhibit No. 8 is
 15:54 21 admitted.
 15:54 22 (Defendant's Exhibit No. 8 admitted.)
 15:54 23 Q. (BY MR. GOELLER) Do you have -- just so I'm
 15:54 24 clear, do you have a pretty big stack of documents
 15:54 25 there, that whole pile in front of you there? What is

15:54 1 all that?
 15:54 2 A. These are the reports and the supporting
 15:54 3 documentation that were produced by the biology
 15:54 4 laboratory on items that were submitted.
 15:55 5 Q. Let me take a look at one of them like that one
 15:55 6 there. Okay. This is the actual science kind of stuff,
 15:55 7 this kind of stuff?
 15:55 8 A. Yes. That's the actual science, the
 15:55 9 instrumental printouts that we produce as a part of our
 15:55 10 analysis.
 15:55 11 Q. Okay. As far as you know, on any of the items
 15:55 12 that were submitted or tested, was there any blood or
 15:55 13 body fluid that did not come back to either the Mosqueda
 15:55 14 or the Kitchen individuals?
 15:55 15 A. No. All of the DNA profiles I got, all of the
 15:55 16 genetic markers, even the partial profiles, could be
 15:55 17 attributed to either James Mosqueda or Amy Kitchen.
 15:55 18 There were no genetic markers.
 15:55 19 Q. There's nothing to point to anybody else's
 15:55 20 blood on that stuff?
 15:56 21 A. No, no.
 15:56 22 Q. That's --
 15:56 23 A. No. Not just anyone's blood, but anyone's DNA.
 15:56 24 Q. Anyone's DNA. Even more definitive?
 15:56 25 A. Well, I mean, we can't tell, when we do a DNA

15:56 1 profile, what tissue, what body fluid it comes from.
 15:56 2 Q. Just from the person?
 15:56 3 A. So when I see a DNA profile, I just know that
 15:56 4 it's human DNA.
 15:56 5 Q. Gotcha.
 15:56 6 A. I don't know whether it's blood or skin cells
 15:56 7 or whatever else.
 15:56 8 MR. GOELLER: Okay. Super. That's all I
 15:56 9 have.
 15:56 10 MS. FALCO: No further questions.
 15:56 11 THE COURT: Is this witness excused by
 15:56 12 both sides?
 15:56 13 MS. FALCO: Yes, sir.
 15:56 14 MR. GOELLER: Yes, sir.
 15:56 15 THE COURT: Thank you, Dr. Sliter. You
 15:56 16 are finally excused.
 15:56 17 (Witness excused.)
 15:56 18 THE COURT: Call your next witness.
 15:56 19 MS. FALCO: Your Honor, at this time may
 15:56 20 we have a brief recess before we call the next witness.
 15:56 21 THE COURT: Yes. In fact, let's take a
 15:56 22 15-minute recess.
 15:57 23 (Break.)
 16:21 24 THE COURT: All right. Let's bring the
 16:21 25 jury back in. Please be seated.

16:22 1 (Open court, defendant and jury present.)
 16:22 2 THE COURT: Ms. Falco?
 16:22 3 MS. FALCO: Paulette Sutton.
 16:22 4 THE COURT: Stand and raise your right
 16:23 5 hand, please.

16:23 6 PAULETTE SUTTON,
 16:23 7 being first duly sworn, testified as follows:
 16:23 8 THE COURT: Please be seated. All right.
 16:23 9 Ms. Falco?

DIRECT EXAMINATION

16:23 10 BY MS. FALCO:

16:23 11 Q. Could you state your name for the jury.

16:23 12 A. Paulette Sutton. The last name is spelled
 16:23 13 S-U-T-T-O-N.

16:23 14 Q. What is your occupation?

16:23 15 A. I'm a forensic scientist at the University of
 16:23 16 Tennessee in Memphis.

16:23 17 Q. And what are your duties as a forensic
 16:23 18 scientist?

16:23 19 A. I do crime scene investigations for the medical
 16:23 20 examiner, what is called forensic serology, which is the
 16:23 21 identification of the body fluids and their
 16:23 22 characterization or linking them to the individual from
 16:23 23 which they originated. And I also do bloodstain pattern
 16:23 24 interpretation.
 16:23 25

16:23 1 Q. And what is your educational training and
 16:23 2 background?

16:23 3 A. My undergraduate degree is from the University
 16:23 4 of Tennessee, and my graduate degree is from the
 16:23 5 University of Arkansas. I've been working in the
 16:24 6 forensic lab since 1977. I've been to the FBI academy,
 16:24 7 numerous other training sessions that specialized in
 16:24 8 forensics.

16:24 9 Q. And who is your current employer?

16:24 10 A. I'm actually employed by the University of
 16:24 11 Tennessee, but it's through a contract situation from
 16:24 12 the City of Memphis in Shelby County.

16:24 13 Q. And how long have you been working for the
 16:24 14 University of Tennessee?

16:24 15 A. 25 years.

16:24 16 Q. And when you say it's on a contract basis, what
 16:24 17 do you mean by that?

16:24 18 A. Well, the County, Shelby County and the City of
 16:24 19 Memphis actually supply the funding because the medical
 16:24 20 examiner's office is an arm of the county government.
 16:24 21 So they supply the funding, but we're actually -- the
 16:24 22 whole professional staff is actually employed through
 16:24 23 the university.

16:24 24 Q. And have you also given various lectures and
 16:24 25 taught on various subjects?

16:24 1 A. Yes, ma'am, I have. I'm distinguished faculty
 16:25 2 with the National College of District Attorneys, and I'm
 16:25 3 a certified law enforcement instructor.

16:25 4 Q. And when you speak on various topics, what
 16:25 5 topics do you usually speak about?

16:25 6 A. Usually it's bloodstain pattern interpretation.
 16:25 7 That's my real specialty.

16:25 8 Q. Do you also teach classes?

16:25 9 A. Yes, ma'am, I do.

16:25 10 Q. What type of classes do you teach?

16:25 11 A. Bloodstain pattern interpretation and also
 16:25 12 evidence documentation, crime scene documentation, and
 16:25 13 evidence collection.

16:25 14 Q. And when we talk about bloodstain pattern
 16:25 15 interpretation, what is that?

16:25 16 A. Basically what we're doing in pattern
 16:25 17 interpretation is looking at the physical pattern of a
 16:25 18 bloodstain, either on clothing or at a crime scene. And
 16:25 19 by looking at the observable characteristics, we
 16:25 20 extrapolate back, using math and physics, to determine
 16:25 21 things like what type of impact created this particular
 16:25 22 pattern, where the pattern originated from. And by
 16:25 23 that, being able to put people back into various
 16:26 24 positions. There's really an infinite number then of
 16:26 25 transfer patterns, of void patterns, things like that.

16:26 1 Q. And do you both go to crime scenes to
 16:26 2 investigate and observe as well as just be able to take
 16:26 3 photographs, put them together and determine what might
 16:26 4 have happened?

16:26 5 A. Yes, ma'am. Usually the crime scenes that I'm
 16:26 6 able to attend are actually inside of Shelby County or
 16:26 7 Memphis. Occasionally I do go outside of the
 16:26 8 jurisdiction to actually look at scenes. And then from
 16:26 9 outside of the immediate county, it's usually
 16:26 10 photographic reconstruction that I do.

16:26 11 Q. And with regard to photographic reconstruction,
 16:26 12 what type of things do you need to make an analysis or
 16:26 13 to determine what happened or what the bloodstain
 16:26 14 pattern indicates to you?

16:26 15 A. Well, we're looking at the physical
 16:26 16 characteristics of the bloodstains. So I need real good
 16:26 17 photographic documentation of the stains. And then of
 16:27 18 course I need information as to the types of injuries,
 16:27 19 and I usually ask for the primary investigator's report,
 16:27 20 or perhaps the crime scene investigator's report.
 16:27 21 Somebody that was actually at the crime scene.

16:27 22 And generally they do a narrative report
 16:27 23 that sort of gives me more of a real perspective of a
 16:27 24 crime scene. A lot of times in a photograph, it's hard
 16:27 25 to tell how large an area is or how small an area is.

16:27 1 And that's what I'm looking for from their narrative
 16:27 2 report is to get more of a feel for the scene.
 16:27 3 Q. And how long has bloodstain interpretation,
 16:27 4 that science, how long has that science been around?
 16:27 5 A. Well, we've actually traced it back to the late
 16:27 6 1800s, as far as, pardon me, any scientist practicing
 16:27 7 bloodstain pattern interpretation. That was in Europe.
 16:27 8 It came to the United States in about 1955 and was
 16:28 9 actually used in the Dr. Sam Shepherd case in Ohio.
 16:28 10 Modern day, since about 1977.
 16:28 11 Professor Herbert McDonald got a federal
 16:28 12 grant and did a lot of further studies on bloodstain
 16:28 13 pattern interpretation and a lot more scientific
 16:28 14 documentation and began actively to teach the field, and
 16:28 15 I am trained by Professor McDonald.
 16:28 16 Q. And is bloodstain pattern interpretation
 16:28 17 supported by scientific research and literature?
 16:28 18 A. Yes, ma'am, it is.
 16:28 19 Q. And when you are doing a photographic
 16:28 20 reconstruction of a crime scene, what types of things
 16:28 21 are you looking for when you are examining the
 16:28 22 photographs?
 16:28 23 A. Well, I'm looking for pattern characteristics.
 16:28 24 Things such as the size of the stains. Basically, the
 16:28 25 first principle is the type of impact or the velocity of

16:28 1 the impact that a source of blood receives will break
 16:29 2 the blood up from a pool into what we call a blood
 16:29 3 spatter or into smaller droplets.
 16:29 4 Very low velocity impact, something that's
 16:29 5 moving at about five feet per second, will break the
 16:29 6 stains up into where the majority of the spatters are
 16:29 7 about 3 millimeters or an eighth of an inch in diameter,
 16:29 8 simply because it's a very low velocity impact that is
 16:29 9 hitting the pool.
 16:29 10 So there's very little energy transfer
 16:29 11 from the impact to the pool to break it up into smaller
 16:29 12 droplets. That's characteristic of blood just dripping
 16:29 13 into blood or perhaps somebody walking through a pool of
 16:29 14 blood. There's about as fast as a low velocity impact
 16:29 15 is going.
 16:29 16 The second thing is a medium velocity
 16:29 17 impact. And that's a force -- an impacting force moving
 16:29 18 at a velocity of about 25 feet per second. And
 16:29 19 scientifically we've proven that that's things like a
 16:30 20 beating or a stabbing. That's that type of impact with
 16:30 21 a pool of blood or a source of blood or a victim, if you
 16:30 22 will. And then going up to a high velocity impact,
 16:30 23 that's things like gunshots, explosions, an impacting
 16:30 24 force at about 100 feet per second. And the majority of
 16:30 25 the stains are about a millimeter in diameter.

16:30 1 That's one of the things that we'll look
 16:30 2 at on photographic reconstruction, is the size. Then we
 16:30 3 look at the overall distribution of the pattern, and we
 16:30 4 look at the direction that the pattern is traveling.
 16:30 5 Q. And when you are initially looking for the size
 16:30 6 of the stain, why is that important?
 16:30 7 A. In order to determine the type of impact that
 16:30 8 created this blood spatter.
 16:30 9 Q. And why do you look at distribution and
 16:30 10 direction of travel?
 16:30 11 A. Well, direction of travel, the direction of
 16:30 12 blood spatter is traveling tells us inversely where the
 16:30 13 victim was or where the source of the blood was.
 16:31 14 Because if the bloodstain is traveling to your left,
 16:31 15 then the victim necessarily must be to the other side or
 16:31 16 to your right. And that's what we're looking for on
 16:31 17 direction of travel, is to locate people back at the
 16:31 18 time the impact was received to the source of the blood
 16:31 19 or the victim itself.
 16:31 20 Distribution has to do with telling us
 16:31 21 what things might be interrupting this pattern, or we
 16:31 22 also know that if, say, a blow, a blunt trauma type of
 16:31 23 situation. The blood spatter radiates away. It's just
 16:31 24 like pool balls breaking. And so we're looking for that
 16:31 25 type of distribution to align where things are

16:31 1 happening.
 16:31 2 Q. And specifically, with regard to the State of
 16:31 3 Texas versus Ivan Cantu, did I ask you to do some
 16:31 4 photographic reconstruction?
 16:31 5 A. Yes, ma'am.
 16:31 6 Q. And what items did you need to look at before
 16:32 7 you could make an analysis of the crime scene?
 16:32 8 A. Basically the same things I just listed. The
 16:32 9 crime scene photographs. I don't believe I got a crime
 16:32 10 scene diagram, but I did get sort of a narrative of how
 16:32 11 the layout was, the investigator's report, and the
 16:32 12 autopsy reports for both victims.
 16:32 13 Q. And based on that were you able to make some
 16:32 14 determinations from your reconstruction?
 16:32 15 A. Yes, ma'am.
 16:32 16 Q. And did you prepare some exhibits for us?
 16:32 17 A. Yes, ma'am.
 16:32 18 MS. FALCO: Your Honor, may I approach?
 16:32 19 THE COURT: Yes.
 16:32 20 Q. (BY MS. FALCO) The first exhibit I show you is
 16:32 21 State's Exhibit 168. Do you recognize that exhibit?
 16:32 22 A. Yes, ma'am.
 16:32 23 Q. And what is that exhibit?
 16:32 24 A. That's several photographs, four of which I've
 16:32 25 actually pasted together, overlapped, to give more of a

16:32 1 panoramic view. Now, they are not shot at a panoramic
16:33 2 setting. So they are off a little bit, but it gives you
16:33 3 a wider perspective than just a single photograph.

16:33 4 Q. And with regard to the writing that's on your
16:33 5 exhibit, what does that refer to?

16:33 6 A. In the top right-hand corner is a schematic
16:33 7 that I prepared to show low velocity, medium velocity,
16:33 8 and high velocity impacts and the type of spatter that
16:33 9 we expect to be created.

16:33 10 Q. And the photographs you've put on here have
16:33 11 been told to you as being fair and accurate depictions
16:33 12 of the crime scene?

16:33 13 A. Yes, ma'am, that was how they were sent to me.

16:33 14 MS. FALCO: Your Honor, at this time we
16:33 15 offer State's Exhibit 168.

16:34 16 THE COURT: Any objection?

16:34 17 MR. GOELLER: Oh, I guess they've already
16:34 18 been admitted. No objection. I think these are
16:34 19 photographs already in evidence. I guess they are.

16:34 20 THE COURT: All right. State's Exhibit
16:34 21 168 is admitted.

16:34 22 (State's Exhibit No. 168 admitted.)

16:34 23 MS. FALCO: Your Honor, may I have the
16:34 24 witness step down?

16:34 25 THE COURT: Yes.

16:34 1 Q. (BY MS. FALCO) Ms. Sutton, with regard to
16:34 2 State's Exhibit 168, can you explain to the jury what
16:34 3 you've done here?

16:34 4 A. This is two photographs, first of part of the
16:34 5 bed and the wall behind the headboard of the bed, and
16:34 6 then the ceiling being in the second photograph. I've
16:35 7 just overlapped the two to try to give an overall
16:35 8 perspective of that area.

16:35 9 This photograph is one that was taken
16:35 10 underneath the bed. So what is actually depicted is the
16:35 11 area directly behind the headboard of the bed and the
16:35 12 bloodstains that were present there.

16:35 13 The single photograph is a part of the
16:35 14 left side of the bed and then the area immediately
16:35 15 adjacent to that. It shows one panel of the two panels
16:35 16 of the bathroom doorway. And then, again, overlapping
16:35 17 two photographs here, this is the second panel of that
16:35 18 bathroom door over on the left and two photographs to
16:35 19 show the wall that would be perpendicular to the wall
16:35 20 that the bed is aligned on.

16:35 21 Q. And did you use these photographs to do your
16:35 22 rapid reconstruction?

16:35 23 A. Yes, ma'am. That was a portion of what I used.

16:35 24 Q. And with regard to your scale at the top of the
16:35 25 diagram, could you explain that to the jury.

16:36 1 A. Yes. This is a depiction that we use to show
16:36 2 when we're training individuals how we back-determine
16:36 3 the type of impact that created a certain size spatter.

16:36 4 At a crime scene basically you are left
16:36 5 with a residue or what's finished after all the activity
16:36 6 has taken place. So we need a characteristic that we
16:36 7 can use to determine the type of activity that occurred.
16:36 8 What we use is the size of the majority of the spatters.

16:36 9 A low velocity impact, again, things like
16:36 10 stepping into blood or blood just dripping creates a
16:36 11 pretty large stain in excess of an eighth of an inch or
16:36 12 3 millimeters in diameter. 3 millimeters or an eighth
16:36 13 of an inch in diameter, we back up and say that was
16:36 14 created by a medium velocity impact, beating or stabbing
16:37 15 type of activity.

16:37 16 And then if the majority of spatters are a
16:37 17 millimeter or less in diameter, very tiny number on or
16:37 18 mark on the backside of the ruler that we don't use too
16:37 19 much in the United States, that's created by a high
16:37 20 velocity impact. Gunshot, explosion, a lot of
16:37 21 mechanical accidents can actually impact a person at
16:37 22 that velocity.

16:37 23 Now, this is the velocity of the impacting
16:37 24 force. It's not the velocity that the spatters are
16:37 25 traveling at. The reason it's important is, the more

16:37 1 energy that is delivered to an individual, the smaller
16:37 2 the spatters are that are being created. And that's why
16:37 3 we can use these sizes to tell us the types of
16:37 4 activities that created.

16:37 5 Q. And in looking at these diagrams, what
16:37 6 particularly were you looking at, or what were you
16:37 7 trying to determine from these particular photographs?

16:37 8 A. This area of spattering on the wall, directly
16:37 9 behind the headboard and on the ceiling going down to
16:38 10 the floor and then pretty much arcing over to the
16:38 11 left-hand side of the bed or to the perpendicular wall.

16:38 12 Q. And what can you tell in looking at the
16:38 13 bloodstain pattern in these photographs? What
16:38 14 observations do you make?

16:38 15 A. These are -- now, I'm going to qualify this by
16:38 16 saying that there's no scale ever provided in these
16:38 17 photographs. So I have to tell you by my best
16:38 18 guesstimate of the size. But they are in the range of
16:38 19 being medium velocity impact spatters. Again, beating
16:38 20 or stabbing type of activity or an impacting force
16:38 21 moving at about 25 feet per second.

16:38 22 They are not in the range of a high
16:38 23 velocity or the type of spatters that are created by
16:38 24 gunshots because neither -- or none of the shots that
16:38 25 were fired actually exit, except for one and that was

16:38 1 trapped by clothing. So there's no exit spattering.
 16:39 2 There's only the entrance.
 16:39 3 And that's -- that is characteristic by
 16:39 4 the -- or characterized by the high velocity misting.
 16:39 5 So they are not -- these spatters are not created by the
 16:39 6 gunshots. They are created by a medium-velocity type
 16:39 7 force.

16:39 8 Q. And so what you are telling this jury is that
 16:39 9 the blood on the ceiling, the blood on the walls, the
 16:39 10 blood on the perpendicular walls was not created when
 16:39 11 the defendant shot the victims?

16:39 12 A. They were not created by a gunshot. None of
 16:39 13 the shots that were involved in this setting.

16:39 14 Q. And were you able to look at these photographs,
 16:39 15 as well as others, to determine what type of force had
 16:39 16 to have been used to create this kind of bloodstain
 16:39 17 pattern?

16:39 18 A. Yes, ma'am.

16:39 19 Q. And what type of force had to have been used?

16:39 20 A. It's a medium-velocity impact. It's a beating
 16:39 21 type of impact since there are no chart-force trauma.
 16:39 22 It's blunt force or a beating or a blow.

16:39 23 Q. Did you make other exhibits, as well?

16:39 24 A. Yes, ma'am.

16:40 25 Q. I show you what's been marked as State's

16:41 1 towards the middle. All of these are in the category of
 16:41 2 medium-velocity, impact-type stains.

16:41 3 Q. And in examining those two exhibits, first of
 16:41 4 all, did you form a conclusion as to where the point of
 16:41 5 conversion or the source of origin was?

16:41 6 A. Not for the ones on the bed. I didn't have
 16:41 7 enough documentation to really be able to tell that. I
 16:41 8 can give you general direction of travel, but not a
 16:41 9 specific area of location. Now, the spatters on the
 16:42 10 wall, I can give you a better idea of their origin.

16:42 11 Q. And in looking at the blood spatter on the
 16:42 12 wall, in your opinion, where is the source of origin?

16:42 13 A. The source of origin is going to be roughly in
 16:42 14 this area here, just above the headboard where you can
 16:42 15 see very large stains coming off to the left side. You
 16:42 16 can see a small pocket of real high spattering right in
 16:42 17 here. And then directionally, they are traveling up
 16:42 18 towards the ceiling. And that's what gets the bouncing
 16:42 19 off over here to the side wall or to the perpendicular
 16:42 20 wall.

16:42 21 So basically, it's just to the right of
 16:42 22 the center of the bed, if you use that post. And in
 16:42 23 what I felt would roughly be like an individual kneeling
 16:42 24 position, maybe 36 inches off the bed itself.

16:43 25 Q. When we talk about source of origin, we're

16:40 1 Exhibit No. 170. Do you recognize that exhibit?

16:40 2 A. Yes, ma'am. I also prepared this.

16:40 3 Q. And these photographs were given to you
 16:40 4 representing the crime scene?

16:40 5 A. Yes, ma'am.

16:40 6 MS. FALCO: We offer State's Exhibit
 16:40 7 No. 170.

16:40 8 MR. GOELLER: No objection.

16:40 9 THE COURT: No. 170 is admitted.

16:40 10 (State's Exhibit No. 170 admitted.)

16:40 11 Q. (BY MS. FALCO) And looking at State's Exhibit
 16:40 12 170, why did you select these particular photographs for
 16:40 13 this exhibit?

16:40 14 A. Well, as regards to the medium-velocity type of
 16:40 15 pattern that's on the wall behind the headboard of the
 16:40 16 bed, similar staining can be seen basically at all four
 16:40 17 angles of this bed. On the left side right in here,
 16:41 18 more on the left side of the bed.

16:41 19 Now, I'm saying left as oriented with an
 16:41 20 individual lying in the bed on their back. Medium
 16:41 21 velocity here at the foot of the bed. I'm going to hold
 16:41 22 this up perhaps a little closer. We can see these small
 16:41 23 stains right here. That's a medium velocity type of
 16:41 24 impact. And then I'll turn it this way. The stains off
 16:41 25 to the right-hand side of the bed. You can see some

16:43 1 talking about the victim?

16:43 2 A. Yes. With bloodstains, we can tell you where
 16:43 3 the source of those stains came from. So, yes, we're
 16:43 4 talking about a victim.

16:43 5 Q. And where in relationship to the victim, based
 16:43 6 on the bloodstain pattern, would the defendant be
 16:43 7 standing?

16:43 8 A. Well, the impacting blow could come either from
 16:43 9 further down on the bed or towards the foot of the bed,
 16:43 10 or it could actually come conceivably from the left side
 16:43 11 of the bed.

16:43 12 Q. And, again, when you are saying that this is
 16:43 13 some kind of a force like a hit or a strike, did you
 16:43 14 form some conclusions as what type of specific force
 16:43 15 might have been used in this case?

16:43 16 A. Yes, ma'am.

16:43 17 Q. And what are those conclusions?

16:43 18 A. I believe it's very consistent -- or nothing
 16:43 19 has shown me to be inconsistent with being a kick.

16:43 20 Q. And why do you believe that there was a kick
 16:44 21 used to create this blood spatter?

16:44 22 A. That's a very significant amount of medium-
 16:44 23 velocity, impact-type spattering. It's very pronounced.
 16:44 24 I can think of one instance where I've seen more, and
 16:44 25 that was from an individual that was hit in the face

16:44 1 with about a 26-pound chunk of concrete. And spatter
 16:44 2 radiating away from them was probably more pronounced
 16:44 3 and traveled further, but that's about the only instance
 16:44 4 that I've ever seen that was actually more. And there
 16:44 5 is also some physical evidence that makes me lean
 16:44 6 towards that conclusion.

16:44 7 Q. What physical evidence would that be?

16:44 8 A. The defendant's socks.

16:44 9 Q. And why is that important?

16:44 10 A. There are bloodstains on the socks themselves.
 16:44 11 And there is also a clump of hair on one of the socks
 16:44 12 that appears to be head hair, consistent with head hair.

16:44 13 Q. And with regard to kicking, is there anything
 16:44 14 about the bloodstain pattern that indicated that might
 16:45 15 have come from someone's mouth?

16:45 16 A. Yes, ma'am. In this area right here, more
 16:45 17 towards the left side of the bed, these very large
 16:45 18 stains here, and I believe the -- there's another
 16:45 19 photograph that will show them in a little better
 16:45 20 detail, but they are very large stains.

16:45 21 And the type of pattern that they have is
 16:45 22 what we actually call a projected type of pattern. A
 16:45 23 projected pattern, I think the easiest way to describe
 16:45 24 it is if you had a grape underneath your foot and you
 16:45 25 stepped on it, it's going to squirt out because it's the

16:45 1 only way it has to go.

16:45 2 And that's the type of activity that's
 16:45 3 happening here. Very large gaps of blood, and then they
 16:45 4 squirt away. They have to be very large to make that
 16:45 5 amount or that size of an independent stain on the wall
 16:45 6 itself. And I've seen two instances of a very similar
 16:46 7 pattern both in size, shape, and distribution. And they
 16:46 8 were from what we call expired blood or blood being
 16:46 9 blown out of an individual's mouth.

16:46 10 Q. And did you prepare an exhibit illustrating
 16:46 11 that?

16:46 12 A. Yes, ma'am.

16:46 13 Q. I show you what's been marked as State's
 16:46 14 Exhibit 169. Do you recognize this exhibit?

16:46 15 A. Yes, ma'am. Those are photographs that I put
 16:46 16 on that board.

16:46 17 Q. With regard to the photographs, the two
 16:46 18 photographs from the crime scene in this case; is that
 16:46 19 correct?

16:46 20 A. Yes, ma'am. The two larger, pretty close to 8
 16:46 21 by 10, I think they are a little bigger. The 8 by 10s
 16:46 22 are from this case.

16:46 23 Q. And then there are three additional
 16:46 24 photographs. What are those photographs of?

16:46 25 A. The three smaller photographs on the right-hand

16:46 1 side of that board are photographs from the crime scenes
 16:46 2 that I personally went to where I know that the patterns
 16:46 3 were created by blood being blown from a victim's mouth.

16:46 4 The top two were from homicidal gunshots
 16:46 5 where the victim sustained several gunshots, but he had
 16:47 6 a large mouthful of blood. And the lines were drawn to
 16:47 7 show his relative position or bringing back to a point
 16:47 8 of convergence.

16:47 9 And the bottom photograph is actually from
 16:47 10 a suicidal gunshot where the victim, when he hit the
 16:47 11 floor, he shot himself in an upright position, and when
 16:47 12 he hit the floor, he blows the blood out of his mouth
 16:47 13 and hit the door.

16:47 14 Q. And did you put those photographs on this
 16:47 15 exhibit for purposes of comparison?

16:47 16 A. Yes, ma'am.

16:47 17 MS. FALCO: Your Honor, at this time we'd
 16:47 18 offer State's Exhibit No. 169.

16:47 19 MR. GOELLER: Judge, I don't really have
 16:47 20 an objection. If we could just make some mark on
 16:47 21 State's Exhibit --

16:48 22 MS. FALCO: 169.

16:48 23 MR. GOELLER: -- 169, that the record
 16:48 24 would indicate are not photographs from this crime scene
 16:48 25 because it's on the record.

16:48 1 THE COURT: Why don't we just say, how
 16:48 2 many photographs are there on the right-hand side?

16:48 3 MR. GOELLER: Three. About four by --
 16:48 4 there's a total of five photographs. Two 8 by 10s, I'll
 16:48 5 call it, and then three 4 by 6s along the right side.

16:48 6 THE COURT: So the three photographs on
 16:48 7 the right-hand side of exhibit 169 are not from this
 16:48 8 case?

16:48 9 MR. GOELLER: Yes, Your Honor.

16:48 10 THE COURT: And the record now, I suppose,
 16:48 11 is clear.

16:48 12 MR. GOELLER: I think it is clear.

16:48 13 THE COURT: And there's no objection?

16:48 14 MR. GOELLER: No, sir.

16:48 15 THE COURT: No. 169 for the State is
 16:48 16 admitted.

16:47 17 (State's Exhibit No. 169 admitted.)

16:48 18 Q. (BY MS. FALCO) Looking at State's Exhibit 169,
 16:48 19 if you could explain to the jury how you used your
 16:48 20 photographs from the crime scenes you actually were
 16:48 21 present at and compared them to the photographs from the
 16:48 22 crime scene in this case.

16:48 23 A. These large areas here, even though the overall
 16:48 24 pattern of stuff going on up the wall is in the range of
 16:49 25 a medium-velocity impact or being created by a medium-

16:49 1 velocity impact. The larger stains are not. They are
16:49 2 much bigger, and they are very diluted in their
16:49 3 appearance.

16:49 4 And that is one of the characteristics
16:49 5 that we look for when we're looking for what we call
16:49 6 expired blood. Blood that's brought down into the
16:49 7 mouth or into the nose of an individual is necessarily
16:49 8 diluted by the fluids that are already there, either by
16:49 9 saliva or our nasal secretions, or they can even be
16:49 10 internally brought into the lungs.

16:49 11 And as a factor of respiration, they are
16:49 12 blown back out of the lungs themselves. And these are
16:49 13 diluted in their appearance. And that is one of the
16:49 14 characteristics that we're going to look for on
16:49 15 expiratory blood.

16:49 16 The middle photograph of the 4 by 6s, now,
16:50 17 again, these are -- these are from scenes that I
16:50 18 actually attended. They are not from this case. You
16:50 19 can see in the middle, on the close-up photograph, how
16:50 20 the blood is not as dark as you normally expect it to
16:50 21 be, and that's because it's diluted.

16:50 22 It also shows you another characteristic
16:50 23 that we look for, and that's the bubbles that are
16:50 24 present. And that's one thing that tells us it's been
16:50 25 mixed with air. It's blood being blown out.

16:50 1 The overall distribution of the size of
16:50 2 this and then of these large gouges in the bottom
16:50 3 photograph from the suicidal case are of about the same
16:50 4 size, shape, and distribution as the photographs on the
16:50 5 large stains behind the headboard in this particular
16:50 6 case.

16:50 7 Q. Now, you explained to the jury that you believe
16:50 8 the person that was kicked was probably kneeling on the
16:50 9 bed?

16:50 10 A. Well, that's -- that's the height, as I see it.
16:51 11 The point of origin is about right in here. And that to
16:51 12 me equates to about a kneeling individual.

16:51 13 Q. And how close to the headboard does it appear
16:51 14 that that person was when they were kicked?

16:51 15 A. Because of the photograph taken underneath the
16:51 16 bed that's on -- I believe this is 168; is that correct?

16:51 17 Q. Yes.

16:51 18 A. On exhibit No. 168, there's a photograph that
16:51 19 was made underneath the bed itself. And you can see a
16:51 20 lot of bloodstains coming along, hitting the baseboard
16:51 21 and going on down the wall.

16:51 22 Physically, an individual would have to be
16:51 23 very near to the headboard in order for those
16:51 24 bloodstains to get down behind the headboard. Now,
16:51 25 there is a pretty good gap shown on 170. There's a

16:51 1 fairly decent gap between the headboard and the
16:52 2 mattress.

16:52 3 So a person is still going to have to
16:52 4 be -- the source of the blood is going to have to be
16:52 5 pretty close to the headboard. But they would not have
16:52 6 to necessarily be up and over it because of this gap.
16:52 7 But they are going to have to be up in there for the
16:52 8 spatters to physically get down in that space.

16:52 9 Q. Now, with regard to this crime scene, are you
16:52 10 able to say with a certainty whether it was James
16:52 11 Mosqueda or Amy Kitchen that was kicked?

16:52 12 A. Not within an absolute certainty, no.

16:52 13 Q. What would you have needed to be able to state
16:52 14 with an absolute certainty?

16:52 15 A. Physical sampling of those bloodstains from the
16:52 16 wall and analysis done such as DNA.

16:52 17 Q. Now, with regard to State's Exhibit 170, does
16:52 18 it also appear that some of the items in this picture
16:52 19 may have been moved after the gunshots occurred or after
16:52 20 the kicking occurred?

16:52 21 A. Yes, ma'am. It's actually after the kicking or
16:52 22 the medium velocity type of event, kicking, hitting,
16:53 23 whatever. The pillow on the left side of the bed has
16:53 24 been physically moved or has been moved. You can see
16:53 25 the area of spattering goes up to the top of the

16:53 1 mattress, but then there's a significant area of
16:53 2 clearing down here, and we call that voiding. And it's
16:53 3 because an object was actually lying on top or blocking
16:53 4 that area at the time the blood was spattered. And
16:53 5 that's probably -- this pillow is the type of
16:53 6 configuration you would expect from a pillow.

16:53 7 So the pillow has been moved away from
16:53 8 that area. And also, looking at the pillow itself,
16:53 9 there's not a lot of blood spattering on the surface
16:53 10 that is up when the photographs are taken, not in
16:53 11 comparison to the spattering that was occurring all
16:53 12 around that pillow.

16:53 13 So it's probably been turned over or
16:53 14 another pillow has been moved or another object has been
16:53 15 moved. But this was not in this configuration at the
16:54 16 time the blood was spattered.

16:54 17 On the other side of the bed, this pillow,
16:54 18 same situation. A lot of spattering underneath it and
16:54 19 around it, but not on top of it, not as it's shown in
16:54 20 the photograph.

16:54 21 It's been moved, and it's also been turned
16:54 22 over because there were some directional spatters on the
16:54 23 edge that are coming out as if they originated from the
16:54 24 mattress and popped out. And of course that's not
16:54 25 possible. It's simply been turned over to give a

16:54 1 reversed direction to the bloodstains that are on the
16:54 2 bottom side of it as it was photographed.

16:54 3 Q. And with regard specifically to State's Exhibit
16:54 4 170 and looking at the photograph of James Mosqueda with
16:54 5 the blood on his person, did you form an opinion as to
16:54 6 where that blood source might have been?

16:54 7 A. Well, these are what we call a transfer stain.
16:54 8 Blood is on some object, and it strikes another object
16:55 9 and leaves a trail of blood. We look at characteristics
16:55 10 such as feathering. When stains -- you see here on his
16:55 11 arm -- you see the streaking coming out from it? It's
16:55 12 what they call feathering.

16:55 13 I'm going to tell you a better analogy
16:55 14 because I painted a wall this weekend. When you take a
16:55 15 paint brush and you are painting along, and when you
16:55 16 start running out of paint, it leaves a little streak.
16:55 17 That's feathering. We just give it a fancy name. But
16:55 18 that tells you the direction that it's traveling.

16:55 19 That's the feathering, that going across
16:55 20 and down his arm. A similar situation here on his side.
16:55 21 It's a bloody object being moved in this direction,
16:55 22 across him and down, if you will, and you see a little
16:55 23 bit more of it there on his leg.

16:55 24 Q. And did you form an opinion as to what the
16:55 25 bloody object might have been that was drug across him?

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16:55 1 A. Well, I know that the photograph that was taken
16:55 2 of the female victim lying there on the floor, that's
16:55 3 not the original position that she laid in and bled. So
16:56 4 in order for her to get to this side of the floor, it's
16:56 5 very likely that her body was actually pulled across
16:56 6 his.

16:56 7 Q. And how can you look at that photograph and
16:56 8 know that she has been moved, that she was not in that
16:56 9 position?

16:56 10 A. Well, you look for things like consistency. A
16:56 11 large amount of bloodstaining on her left shoulder here,
16:56 12 but not a corresponding amount there on the floor. So
16:56 13 it's impossible to bleed that much and not get it on the
16:56 14 floor.

16:56 15 Also a large amount here in her left hand,
16:56 16 in the palm of her left hand, and no corresponding
16:56 17 amount there in the floor. So it's more consistent with
16:56 18 somebody being moved into this position after a lot of
16:56 19 the bleeding has actually occurred and is starting to
16:56 20 cease.

16:56 21 Q. And the blood smears that are on James
16:56 22 Mosqueda's body, is that consistent with Amy Kitchen's
16:56 23 bloody body being dragged across and put on the floor?

16:57 24 A. Yes. It's consistent with that.

16:57 25 Q. And though you can't say with a certainty which

16:57 1 one of these two victims was kicked, you can say with a
16:57 2 certainty there was a force such as a kick or a hit that
16:57 3 created this blood spatter?

16:57 4 A. Yes, ma'am. It is a medium-velocity type
16:57 5 spatter of a kick or a hit.

16:57 6 Q. Did you make one final exhibit?

16:57 7 A. Yes, ma'am.

16:57 8 Q. I show you what's been marked as State's
16:57 9 Exhibit 171. Do you recognize that exhibit?

16:57 10 A. Yes, ma'am. These are three photographs that
16:57 11 I've placed on the board for you.

16:57 12 Q. And what are these photographs of?

16:57 13 A. They were described to me as being the
16:57 14 defendant's socks and also the bottom cuffs of the blue
16:57 15 jeans.

MS. FALCO: We offer State's Exhibit 171.

MR. GOELLER: No objection.

THE COURT: 171 is admitted.

(State's Exhibit No. 171 admitted.)

16:57 16 Q. (BY MS. FALCO) And you said earlier that in
16:57 17 making your determination or analysis of this crime
16:57 18 scene, you also took into account the physical evidence;
16:57 19 is that correct?

16:57 20 A. Yes, ma'am.

16:57 21 Q. And that would have included these two socks

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16:57 1 and his pair of blue jeans?

16:57 2 A. Yes, ma'am.

16:57 3 Q. And explain the significance of each one of
16:57 4 these pictures?

16:58 5 A. Well, there's a good bit of bloodstaining on
16:58 6 the bottoms of the socks, and that's very typical in a
16:58 7 beating type of situation that you'll see bloodstaining
16:58 8 on the offending object.

16:58 9 Now, you don't necessarily have to because
16:58 10 it depends on the direction that the blood is projected
16:58 11 away. In other words, if I -- if I hit a baseball and
16:58 12 it goes away from me. And the same thing is going to
16:58 13 happen with bloodstaining. But these are
16:58 14 characteristic-type patterns, and they were identified
16:58 15 as being the victim's blood.

16:58 16 And this is the bottom photograph, shows
16:58 17 ~~the clump of hair on the sock. That made me suspicious~~
16:58 18 ~~of a kick type of activity because it, again, it's a~~
16:58 19 very significant type of blow. It's not what I
16:58 20 typically see. It's much more exaggerated than what I
16:58 21 usually see at beatings.

16:58 22 Q. And let me stop you right there. With regard
16:59 23 to this particular sock and a clump of hair, does that
16:59 24 seem to be more consistent with Amy Kitchen's hair as
16:59 25 opposed to James Mosqueda's hair?

16:59 1 A. It appears blond, so it would be consistent
 16:59 2 with being her hair.
 16:59 3 Q. And if you would go ahead and explain the
 16:59 4 significance of the blue jeans.
 16:59 5 A. The bottoms of the -- both legs of the blue
 16:59 6 jeans, again blood spattering. That's in the size range
 16:59 7 of medium velocity type of spattering.
 16:59 8 Q. And were the crime scene, and would you
 16:59 9 characterize this crime scene as a bloody crime scene?
 16:59 10 A. Well, fairly, yeah.
 16:59 11 Q. And with regard to this crime scene and with
 16:59 12 regard to the force you are talking about to create the
 16:59 13 medium velocity, whether that's a hit or kick, would you
 16:59 14 necessarily expect to see a lot more blood on the blue
 16:59 15 jeans and the socks?
 16:59 16 A. Oh, no. To me, this is not a particularly
 16:59 17 bloody crime scene because the blood is fairly contained
 16:59 18 to the bed area. And I guess I've seen too many really
 17:00 19 bloody crime scenes.
 17:00 20 The stains on the wall and on the ceiling
 17:00 21 are a lot more than I've ever seen, ever seen at all.
 17:00 22 So in that regards, I guess you could say it was
 17:00 23 particularly bloody, maybe to semi-correct my earlier
 17:00 24 answer.
 17:00 25 Now, to get to the real question of:

17:00 1 Would I expect to see more blood on an assailant that
 17:00 2 did that? Not particularly. Because, again, if you hit
 17:00 3 a baseball that goes away from you, and the same type of
 17:00 4 thing is happening with blood spattering.
 17:00 5 It's being driven away in the direction of
 17:00 6 the impacting force. So you may get some coming back on
 17:00 7 an assailant, but you don't necessarily have to get what
 17:00 8 people think must go along or must correlate to a -- to
 17:00 9 a crime scene.
 17:00 10 Q. And with regard to the -- the photograph of Amy
 17:01 11 Kitchen -- and you observed other photographs as well of
 17:01 12 this of Amy Kitchen; is that correct?
 17:01 13 A. Yes.
 17:01 14 Q. And there appears to be absolutely no blood on
 17:01 15 the back of her legs or on her socks; is that correct?
 17:01 16 A. None that I could see from the photographs.
 17:01 17 And we use magnification, but still it's about ten times
 17:01 18 magnification. Not a scanning electron microscope, but
 17:01 19 I couldn't see any.
 17:01 20 Q. And would the lack of blood on the back of her
 17:01 21 legs and her socks be consistent with her kneeling on
 17:01 22 the bed, being the one getting kicked?
 17:01 23 A. Sure. Because if she were kneeling, the back
 17:01 24 of her legs would actually be covered up. And if the
 17:01 25 blood is being driven away from her, it wouldn't even

17:01 1 have to hit the bottoms of her socks. The tops of her
 17:01 2 socks would be either covered by being pointed down
 17:01 3 towards the bed or lying down on the bed. So that's --
 17:01 4 that's perfectly consistent, sure.
 17:02 5 Q. Thank you, Ms. Sutton.
 17:02 6 A. Yes, ma'am.
 17:02 7 Q. Return to your seat. So, with regard to this
 17:02 8 crime scene, Ms. Sutton, you can't say with a certainty
 17:02 9 which one was kicked?
 17:02 10 A. No, ma'am. It would require the sampling to
 17:02 11 have been done and actually identify the body fluid or
 17:02 12 identify the individual of origin, I should say.
 17:02 13 Q. With a certainty you can say that blood spatter
 17:02 14 on the walls and the ceiling is not a result of them
 17:02 15 being shot?
 17:02 16 A. Oh, it's absolutely not a result of these
 17:02 17 gunshots, no, ma'am.
 17:02 18 Q. But is a result of one of those two people
 17:02 19 being hit or kicked?
 17:02 20 A. That's -- yes, that is correct.
 17:02 21 Q. And somewhere near the -- with that person
 17:02 22 being somewhere near the headboard consistent with them
 17:03 23 kneeling?
 17:03 24 A. Yes, ma'am.
 17:03 25 Q. And also you can -- your final conclusion based

17:03 1 on this crime scene, you can determine that Amy
 17:03 2 Kitchen's body was moved?
 17:03 3 A. Yes, ma'am.
 17:03 4 Q. As well as some of the pillows and the bedding
 17:03 5 on the bed?
 17:03 6 A. Yes, ma'am.
 17:03 7 MS. FALCO: Thank you, Ms. Sutton. Pass
 17:03 8 the witness.
 17:03 9 THE COURT: Mr. Goeller?
 17:03 10 MR. GOELLER: Thank you.
 17:03 11 CROSS-EXAMINATION
 17:03 12 BY MR. GOELLER:
 17:03 13 Q. Hit or kicked, which one?
 17:03 14 A. No way of telling the difference.
 17:03 15 Q. Okay. They asked you if the kneeling was
 17:03 16 consistent. As a scientist and a professional, what
 17:03 17 other positions of the bodies are as consistent?
 17:03 18 A. Anything that would put the -- the source of
 17:03 19 the blood at that relative height. Let me see if I can
 17:04 20 describe what I'm thinking about. If -- if I were --
 17:04 21 Q. That's all right. Let me just ask another
 17:04 22 question.
 17:04 23 A. Okay.
 17:04 24 Q. You can't say with any certainty, kneeling?
 17:04 25 A. Oh, no, sir. No, sir. In that relative

17:04 1 height --
 17:04 2 Q. I understand. I just want to make sure. You
 17:04 3 cannot say with any certainty as a scientist whatsoever
 17:04 4 it was kneeling?
 17:04 5 A. Not in this instance, no, sir.
 17:04 6 Q. Okay. Neither can you say with any certainty
 17:04 7 that one body was dragged across another in this
 17:04 8 instance?
 17:04 9 A. No, sir. No, sir. Those are only the
 17:04 10 characteristics that I saw.
 17:04 11 Q. Okay. And not with any certainty that it was a
 17:04 12 hitting or a kicking?
 17:04 13 A. As opposed to a kicking? It is in the range of
 17:04 14 a hitting or a kicking. But to tell you that it
 17:04 15 absolutely is a hit or absolutely is a kick, no, I
 17:04 16 cannot tell you.
 17:05 17 Q. I think you testified, whatever it was,
 17:05 18 whatever caused that was -- was some blow?
 17:05 19 A. Yes, sir.
 17:05 20 Q. I mean, I think you said you've only seen that
 17:05 21 one time in your entire career, one worse than that?
 17:05 22 A. Yes, sir.
 17:05 23 Q. Okay. Okay. Okay. Okay.
 17:05 24 MR. GOELLER: Thank you. That's all I
 17:05 25 have, Judge.

17:06 1 duty not to converse among yourselves or with anyone
 17:06 2 else on any subject connected with the trial or to form
 17:06 3 or express any opinion thereon until the cause is
 17:06 4 finally submitted to you.
 17:06 5 And we'll see you at nine o'clock in the
 17:06 6 morning.
 17:06 7 (Court adjourned.)
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17:05 1 MS. FALCO: No further questions.
 17:05 2 THE COURT: Is she excused by both sides
 17:05 3 finally?
 17:05 4 MS. FALCO: Yes, sir.
 17:05 5 MR. GOELLER: Three-hour rule, Judge, is
 17:05 6 fine.
 17:05 7 MS. FALCO: Well, Your Honor, this witness
 17:05 8 resides obviously in Tennessee.
 17:05 9 THE COURT: Memphis or Nashville?
 17:05 10 THE WITNESS: Memphis. So we better have
 17:05 11 about a --
 17:05 12 MR. GOELLER: Day.
 17:06 13 THE COURT: -- ten-hour rule on this one.
 17:06 14 I tell you what, it's conceivable that you'll be called
 17:06 15 back. And I tell you what we'll do; we'll just simply
 17:06 16 give you a one day's notice. Can we do it that way?
 17:06 17 MR. GOELLER: Yes, sir.
 17:06 18 THE COURT: And until that time, you are
 17:06 19 finally excused. Thank you.
 17:06 20 THE WITNESS: Thank you.
 17:06 21 (Witness excused.)
 17:06 22 THE COURT: All right. And I tell you
 17:06 23 what, it's a little bit after five o'clock. And I think
 17:06 24 it's time to stop for the day.
 17:06 25 I want to instruct you that it is your

1 REPORTER'S CERTIFICATE
 2 THE STATE OF TEXAS
 3 COUNTY OF COLLIN
 4 I, Barbara L. Tokuz, CSR, RMR, CRR, Deputy Official
 5 Court Reporter in and for the 380th Judicial District
 6 Court of Collin County, State of Texas, do hereby
 7 certify that the above and foregoing contains a true and
 8 correct transcription of all portions of evidence and
 9 other proceedings requested in writing by counsel for
 10 the parties to be included in this volume of the
 11 Reporter's Record, in the above-styled and -numbered
 12 cause, all of which occurred in open court or in
 13 chambers and were reported by me.
 14 I further certify that this Reporter's Record of the
 15 proceedings truly and correctly reflects the exhibits,
 16 if any, offered by the respective parties.
 17 WITNESS MY OFFICIAL HAND this the 11th day of
 18 February, 2002.
 19 *Barbara L. Tokuz*
 20 Barbara L. Tokuz, CSR #4615, RMR, CRR
 21 Deputy Official Court Reporter
 22 Expiration Date: 12/31/2002
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