

1 MR. DUARTE: I pass this witness, Judge.

2 THE COURT: Redirect?

3 MS. WATERS: No, Your Honor.

4 THE COURT: All right. Thank you, sir.

5 You may step down. Call your next witness.

6 MS. WATERS: May this witness be excused?

7 MR. DUARTE: Yes, Judge, he can be excused.

8 THE COURT: Yes. Okay. I'm sorry, I
9 didn't hear what you said. You said he can be
10 excused?

11 MS. WATERS: Yes, sir.

12 THE COURT: You are excused.

13 THE WITNESS: Thank you.

14 MS. WATERS: At this time, the State would
15 call Deputy Carpenter. Come forward, sir.

16 THE BAILIFF: The witness needs to be
17 sworn, Judge.

18 THE COURT: Step up.

19 (Whereupon the witness is sworn by the
20 Court.)

21 THE COURT: Ms. Waters, your witness?

22 MS. WATERS: Yes, sir.

23 THE COURT: You may proceed.

24 **DEPUTY MAURICE CARPENTER,**

25 having been first duly sworn, testified as follows:

DIRECT EXAMINATION

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BY MS. WATERS:

Q. Deputy, would you state your name for the jury, please?

A. Deputy Maurice Carpenter.

Q. And where are you employed?

A. Harris County Sheriff's Office.

Q. How long have you been working for the Sheriff's Office?

A. For 22 years.

Q. And what do you do for the Sheriff's Office?

A. I'm a crime scene investigator.

Q. How long have you been doing that?

A. For seven and a half years.

Q. What did you do before you became a crime scene unit officer with the Sheriff's Department?

A. I worked in detentions in the jail.

Q. And what kind of -- do you have special -- are you a certified police officer in the State of Texas?

A. Yes.

Q. Do you have special training to be a crime scene unit officer?

A. Yes, I do.

Q. Do y'all actually go by crime scene unit investigators?

1 A. Crime scene investigators.

2 Q. CSI. Is it just like TV?

3 A. I'd like to say yes, but no, it's a lot
4 dirtier.

5 Q. And is it as quick?

6 A. No.

7 Q. Did you respond to a scene at 1960 and
8 Humble-Westfield Road in Harris County, Texas on
9 September 2, 2011?

10 A. Yes, I did.

11 Q. And do you remember the exact address?

12 A. If I can refer to my notes. The initial
13 location I responded to was the Shell Station at 2233 FM
14 1960 Road.

15 Q. Is that in Houston, Harris County, Texas?

16 A. Yes.

17 Q. When you got to that scene, what did you see?

18 A. 1960 was closed down, patrol cars blocking the
19 road off, several patrol cars in the parking lot of the
20 Shell Station, Deputy Whitlock's patrol car parked in the
21 parking lot, and a deputy working scene security and
22 investigating the scene.

23 Q. Did you talk to Deputy Whitlock at that time?

24 A. I did talk to Deputy Whitlock.

25 Q. How did he appear?

1 A. Well, he was -- he had some injuries on him.
2 He was awake and alert. He spoke and --

3 Q. Did you get the vest from him?

4 A. Yes -- well, the vest was already taken off of
5 him. It was laying on his patrol car. I collected the
6 vest.

7 Q. And are you the one who took the pictures of
8 the vest on his car that have already been offered into
9 evidence?

10 A. The pictures of his car, I believe, Deputy Sams
11 took those pictures in particular.

12 Q. Now, after you got to the scene, did you see --
13 did you -- how did you start documenting the scene?

14 A. First on initial arrival at the scene, the
15 standard procedure is I will meet with one of the patrol
16 deputies that was are the scene, or supervisor there at
17 the scene. I'll get a brief synopsis of the events. They
18 will take us through the scene, show us where possible
19 items of evidence is located, just events that happened to
20 help us know what to do, what to look for, what to
21 investigate. From then, the crime scenes are photographed
22 using a digital camera on case-by-case, or videotape where
23 you document the scene by notes, by doing a scene sketch.

24 This particular scene, it was several locations. I
25 proceeded to the location where the shooting occurred.

1 CSI Sams stayed at the Shell Station and did an
2 investigation there.

3 Q. So, you went to the location where the shooting
4 occurred. Are you talking about the place on Millwood?

5 A. That's Millstone.

6 Q. Millstone?

7 A. Yes.

8 Q. And when you went to that location, what did
9 you see?

10 A. Down on Millstone there was an area on the
11 pavement of some fluid, like fluid spilled from a vehicle
12 on the pavement, and there were four fired casings from a
13 223 rifle round in the roadway.

14 Q. And did you take pictures of those four fired
15 casings?

16 A. Yes.

17 Q. And what did you notice about those four fired
18 casings in the roadway? How were they spaced apart?

19 A. They were spaced kind of a distance apart.
20 They were -- they weren't in a group. They were a little
21 bit space apart.

22 MS. WATERS: May I approach, Your Honor?

23 THE COURT: Yes, ma'am.

24 Q. (By Ms. Waters) And did you also -- Deputy,
25 I'll show you State's Exhibits 33 through 40. Can you

1 tell me if these pictures accurately reflect the road
2 Millstone; is that right, Millstone?

3 A. Yes.

4 Q. That you saw the bullet casings on and the
5 fluid from the vehicle on at the time. Do those pictures
6 reflect what you saw?

7 A. Yes, they do.

8 Q. Now, on some of these photos, do you have a
9 spotlight on the scene?

10 A. Yes.

11 Q. And some of the photographs do not have a
12 spotlight on the scene?

13 A. Correct.

14 Q. I'm going to show you 39 and 30. Does that
15 show you the difference between not having a spotlight and
16 having a spotlight?

17 A. Yes. This would be with the flash from the
18 camera on No. 40.

19 Q. So, 39 would have been without any spotlight
20 and any flash?

21 A. Yes.

22 Q. And did you also draw a diagram of that scene?

23 A. Yes, I did.

24 Q. I'm going to show you -- Deputy, I'm going to
25 show you State's Exhibit 69 -- 69 and 69-A. Is this a

1 diagram you did of the scene in the 2200 block of
2 Millstone?

3 A. Yes, it is.

4 Q. One is small and one is blown up?

5 A. Yes.

6 Q. Does it fairly and accurately represent what
7 you saw when you went to that location?

8 A. Yes, if does.

9 MS. WATERS: At this time, I would offer
10 into evidence 69 and 69-A and 33 through 40.

11 THE COURT: 33 through 40?

12 MS. WATERS: Yes, sir.

13 MR. DUARTE: No objection to 33 through 40,
14 Judge, or 69 and 69-A, Judge.

15 THE COURT: All right. They are admitted.

16 (Whereupon State's Exhibit Nos. 33-40,
17 69 and 69-A are admitted into
18 evidence.)

19 Q. (By Ms. Waters) What I'm going to do, Deputy,
20 we're going to try to use the big diagram 69-A and the
21 board at the same time to keep the jury from looking back
22 and forth.

23 THE COURT: Mr. Duarte, you can position
24 yourself wherever you need to go where you can
25 observe.

1 Q. (By Ms. Waters) I'm going to show you 33,
2 Deputy. Could you tell the jury what this is a photograph
3 of?

4 A. That is a photograph of Millstone Drive from
5 1960. 1960 would be behind -- the photograph behind me
6 where I was able to photograph from.

7 Q. So, that's from 1960 looking out onto
8 Millstone?

9 A. Toward north, yes.

10 Q. Now, how far did you drive down Millstone
11 before you see the vehicle fluid and the shell casings?

12 A. It's a bit of a distance. I would say maybe a
13 quarter of a mile.

14 Q. It's a little ways from that location right
15 there?

16 A. Yes.

17 Q. And, then, as you drive down Millstone, what
18 did you -- what was the first thing you saw that got your
19 attention?

20 A. As far as evidentiary items?

21 Q. Yes.

22 A. The first location I came to was the fluid
23 stain on the roadway.

24 Q. I am going to show you State's Exhibit No. 40.
25 Can you tell me what this is a picture of?

1 A. That's the fluid stain on Millstone Drive.

2 That's past where the casings were at.

3 Q. That's where the car is being turned around?

4 A. Yes.

5 Q. Okay. All right. So, that's toward the end
6 where the deputy turns around and goes back?

7 A. Yes.

8 Q. I'm going to show you State's Exhibit 34. What
9 is that a photograph of?

10 A. That's one of the four fired casings that was
11 in the roadway.

12 Q. Is it right there in front of the one?

13 A. Yes.

14 Q. And is that depicted in your diagram there?

15 A. Yes, it is.

16 Q. When you look at your diagram, is it the one
17 closest to the part where it says "utility pole" on your
18 diagram? Do you see that?

19 A. Yes, it is.

20 Q. And, so, you see one casing. And then what did
21 you see past that casing?

22 A. There were three other casings. The first
23 three were pretty much evenly spaced. The last one, the
24 fourth was a little bit further down the road.

25 Q. How far apart from each other were they?

1 A. Let me check my notes and see if I have that.
2 The first and second one were approximately 15 feet; the
3 second and third one were approximately -- maybe 25,
4 30 feet apart; and the fourth one was about 55, maybe
5 60 feet apart from the third one.

6 Q. So, from the first one to the second one is
7 about 15 feet?

8 A. Approximately, yes.

9 Q. And the second one to the third one is about
10 how many feet, 25 to 30 feet?

11 A. Approximately, yes.

12 Q. And then from the third one to the fourth one
13 is about 55 feet?

14 A. Yes.

15 Q. If we add them all up together, you're going to
16 have 15 plus 25, right? That would be 40, approximately,
17 plus another 30, plus another 50?

18 A. They were a good distance apart. The
19 measurements I took were from the utility pole and the
20 fire hydrant, which is up in the top left part of the
21 roadway there. I measured from those to the location of
22 the casings. I'm extrapolating from those locations to
23 approximately the distances apart from there.

24 Q. And there was a steady progression forward of
25 the four casings?

1 A. Yes.

2 Q. I'm going to show you State's Exhibit No. 36.
3 Is this the third shell casing --

4 A. Yes, it is.

5 Q. That's referred to in the diagram?

6 A. Yes.

7 Q. And then State's Exhibit No. 4 is the last
8 shell casing?

9 A. Yes.

10 Q. And then you also see that trail of fluid
11 there?

12 A. Yes.

13 Q. Did that appear to be recent?

14 A. Yes, it did.

15 Q. And that's what you see later, where it looks
16 like a vehicle turned around, and you see the fluid past
17 four where it looks like the vehicle was draining fluid
18 kind of in a u-turn, or a turn to go backwards?

19 A. Well, this is -- this is back where the casing
20 is at. It's not where the vehicle turned. The vehicle
21 furnished farther down, farther down north.

22 Q. But you can see the fluid going past the -- the
23 fluid stain going past it?

24 A. Yes.

25 Q. I'm going to show you State's Exhibit 39. Does

1 it depict the fluid stain we're talking about?

2 A. That's the initial stain. Well, it's -- the
3 initial stain is farther back on that photograph. There's
4 a trail of fluid on the roadway going past -- like right
5 down here.

6 Q. That's the trail?

7 A. Going past No. 4 to the north.

8 Q. And then it keeps going past?

9 A. Yes.

10 Q. And did you also process the deputy's car,
11 Deputy Whitlock's car?

12 A. Yes, I did.

13 Q. Did you find any damage to the car?

14 A. Yes.

15 Q. What did you find damage to the car?

16 A. The windshield, there was a hole in the
17 windshield on the left, or driver side of the windshield
18 toward the bottom of the Perry windshield. The glass was
19 cracked and shattered around the hole. There was some
20 damage to the dashboard just inside the windshield, some
21 marks on there, like a strike there from some fragments,
22 possibly, or some glass fragments on the front of the
23 vehicle, the lower left side. The driver side, there was
24 a hole through the front bumper covering, and the hole
25 continued on through into the radiator underneath the

1 vehicle.

2 Q. Is that where the fluid comes from?

3 A. Yes.

4 Q. The hole in the radiator?

5 A. Yes.

6 Q. I'm going to show you State's Exhibit No. --

7 are these pictures of the deputy's vehicle you took,

8 State's Exhibit 49 -- 49 through 56?

9 A. Yes, they are.

10 Q. And, so, how many times was the vehicle struck?

11 A. Those two holes, and there was another defect
12 in the bumper to the lower part that could possibly have
13 been another bullet strike. So, two, possibly three
14 times.

15 Q. The third one, you couldn't tell for sure?

16 A. Yes.

17 Q. But the first one -- you know one went through
18 the windshield, and you know one went into the radiator?

19 A. Yes.

20 Q. And State's Exhibit No. 49 --

21 MS. WATERS: Your Honor, at this time, I
22 would offer into evidence 49 through 56.

23 THE COURT: Okay.

24 MR. DUARTE: There's no objection to 49
25 through 56, Judge.

1 THE COURT: They are admitted.

2 (Whereupon State's Exhibit Nos. 49-56
3 are admitted into evidence.)

4 Q. (By Ms. Waters) Deputy, I'm going to show you
5 State's Exhibit 49. Is this the front of the vehicle?

6 A. Yes, it is.

7 Q. Can you see where the vehicle was struck in
8 that picture, what you believe to be a strike?

9 A. It's kind of hard to tell on this picture here.
10 That's an overall picture. If I could see the actual
11 photograph.

12 Q. I think we already offered it. Let me find the
13 pictures of the overall car. I'll let you look at these.

14 A. This area here is one strike, and then right
15 here is the possible strike right here.

16 Q. Which is the one that went through the
17 radiator?

18 A. This one right here.

19 Q. Okay. So, that was a bullet trike strike that
20 went into the radiator of the vehicle?

21 A. Yes.

22 Q. The other one closest to the license plate is
23 the one you thought could have been a bullet strike?

24 A. It's a defect in the bumper. I couldn't
25 determine for sure what caused it.

1 Q. Okay. And then on State's Exhibit No. 19, does
2 that show the bullet to the windshield?

3 A. Yes, it does.

4 Q. So, you know for sure the car was hit twice,
5 and it might have been hit a third time?

6 A. Yes.

7 Q. And you took measurements from the initial
8 fluid stain that we talked about to the first shell
9 casing; is that correct?

10 A. Yes.

11 Q. And what was the distance?

12 A. 52 feet.

13 Q. So, that initial -- and you marked your initial
14 vehicle stain on that diagram; is that right?

15 A. Yes.

16 Q. So, it's 52 feet from there to the first
17 bullet?

18 A. Yes.

19 Q. And would that be about two car lengths -- a
20 little bit less than two car lengths?

21 A. Approximately.

22 Q. Now, did you also get the vest from Deputy
23 Whitlock?

24 A. Yes.

25 Q. And when you recovered that vest, what

1 condition was it in?

2 A. The vest had damage to the front of it. It had
3 holes in the carrier, it had holes in the -- the vest has
4 a front panel, and on that front panel is a center,
5 another panel, a hard plate panel and a soft panel. It
6 had damage to the hard plate and the soft center panels
7 and holes in the carrier of the vest.

8 Q. And when you saw -- when you took the vest
9 apart, what did you find?

10 A. Bullet fragments embedded in the panels.

11 Q. And when we're talking about the vest, I'm
12 going to show you what's already been offered into
13 evidence as State's Exhibit 32 and its contents. The vest
14 has back panels in it; is that correct?

15 A. Yes.

16 Q. And a hard panel and a soft panel?

17 A. Yes.

18 Q. So, when you took the vest apart -- what is
19 this part right here?

20 A. This is the hard plate, and this was
21 actually -- this is a pouch for this hard plate. The
22 pouch plate goes inside the pouch here.

23 Q. Okay. And then what is this part?

24 A. This is the soft panel. This panel is similar
25 to the front main ballistic panel. It just provides extra

1 protection in the center portion.

2 Q. Between you and your skin?

3 A. Yes.

4 Q. It goes next to the skin?

5 A. Yes.

6 Q. And then you have the hard plate and then you
7 have the vest?

8 A. Correct.

9 Q. And when you took the vest apart and were
10 looking at the hard plate, what did you find in the hard
11 plate?

12 A. The bullet fragment.

13 Q. Embedded in this hole right here?

14 A. Yes. I had to actually separate the hard plate
15 open to remove the fragment.

16 Q. We are referring to this white portion that was
17 in the pouch?

18 A. Yes.

19 Q. And what could you tell about the bullet that
20 you recovered from that hard plate, anything?

21 A. No.

22 Q. Was it in pieces?

23 A. It was a deformed fragment.

24 Q. One big fragment?

25 A. I believe it was one big fragment, yes.

1 Q. I'm going to show you State's Exhibits 59 --
2 58, 59, 60, 61, 62 and 63. Do you recognize these
3 photographs?

4 A. Yes, I do.

5 Q. And does that depict the vest as you took it
6 apart and the condition it was in?

7 A. Yes.

8 Q. And in State's Exhibit No. 58, can you see part
9 of the fragment -- part of the bullet?

10 A. Yes, on the very top of this one.

11 Q. And then you take a closer picture of it in 59?

12 A. Yes.

13 MS. WATERS: I'm going to offer into
14 evidence 58 through 63.

15 MR. DUARTE: No objection to 58 through 63,
16 Judge.

17 THE COURT: All right. They are admitted.

18 (Whereupon State's Exhibit Nos. 58-63
19 are admitted into evidence.)

20 Q. (By Ms. Waters) I'm going to show you 58, and
21 if you would circle for the jury where you found the
22 bullet. Let me zoom in a little.

23 A. This is where the fragment was, here.

24 Q. And you found a bullet -- that was a piece of a
25 bullet?

1 A. Yes.

2 Q. And you found more of the bullet embedded in
3 the white part?

4 A. Yes. The hard plate, yes.

5 Q. Deputy, I'm going to show you what's been
6 marked as State's Exhibit No. 92. Do you recognize the
7 contents of State's Exhibit No. 92?

8 A. Yes, I do.

9 Q. What's contained within there?

10 A. It's the fragments recovered from the vest.

11 Q. I'm going to open that. How many pieces of
12 fragments are there?

13 A. There are three packages. Some of these are
14 very small pieces of fragments. It's hard to give you
15 exact, but it's three main fragments there.

16 Q. Is there one piece that's a little bit larger
17 than the rest?

18 A. Yes.

19 Q. Which one is that?

20 A. These two fragments are -- appear to be from
21 the jacketing of the bullet, which was a copper jacketing
22 surrounding the lead part of the bullet, and this appears
23 to be the lead from the inside from the jacket.

24 Q. From inside the bullet?

25 A. Yes.

1 MS. WATERS: At this time, I would offer
2 into evidence, Your Honor, State's Exhibit No. 92 and
3 its contents.

4 MR. DUARTE: No objection, Judge, to 92.

5 THE COURT: It's admitted.

6 (Whereupon State's Exhibit No. 92 is
7 admitted into evidence.)

8 Q. (By Ms. Waters) And did you also, Deputy,
9 recover the casings that you found in the street on
10 Millstone?

11 A. Yes, I did.

12 Q. The next time I approach, I'll show you those.
13 Also, did you -- after you diagram that scene and
14 recovered those casings from that scene, what was the next
15 thing you did on this case?

16 A. After I completed that scene, I proceeded to
17 the second location, and there was a residence -- well,
18 sorry. There was information at the Shell Station where I
19 originally was at. There were several suspects possibly
20 involved in this case. Also, there was a house, a
21 residence that needed to be searched for any weapons, and
22 also possible suspects at that location. I instructed
23 Deputy Sams to go to the Shell station and conduct an
24 investigation there while I proceeded to the residence in
25 the investigation of that location.

1 Q. What was the address of the residence?

2 A. 1911 Cobble Creek Drive.

3 Q. Do you know whose residence it was?

4 A. Um --

5 Q. If you know.

6 A. I don't know the owner exactly.

7 Q. And when you got there, were there people
8 present at the time being taken out of the house?

9 A. There were people there. Patrol deputies were
10 on the scene, and there were people already outside of the
11 house being detained.

12 Q. Was there a car there that you were
13 particularly interested in?

14 A. Yes.

15 Q. And what car was there?

16 A. It was a Cadillac.

17 Q. And do you have a license plate of that
18 Cadillac?

19 A. Yes. It was a white Cadillac Deville. License
20 tag Texas, CT4N334.

21 Q. And did you process that white Cadillac?

22 A. At a later time, yes.

23 Q. Was that Cadillac towed to a lot to be
24 processed?

25 A. Yes, it was towed to our vehicle processing

1 facility at 601 Lockwood.

2 Q. And did you talk to anyone who was at that
3 house, or did you see any people at that house at the time
4 you got there?

5 A. Yes, there were four females being detained
6 there at the house by patrol deputies.

7 Q. Did you interview them?

8 A. No.

9 Q. Now, when you processed the white Cadillac, did
10 you -- what kind of evidence did you recover from it?

11 A. I have a list of evidence.

12 Q. Were you looking for weapons?

13 A. Yes, there was a primary search for weapons.

14 Q. Did you find any weapons?

15 A. No.

16 Q. Did you find any bullets?

17 A. No.

18 Q. So, what other kind of evidence did you get out
19 of the vehicle?

20 A. I recovered some CD cases, some water bottles,
21 cell phone, cigarette butts, baseball caps, some clothing,
22 those type of items.

23 Q. What was the purpose of seizing water bottles,
24 and clothing, and those types of items?

25 A. To process them for fingerprints and DNA to

1 place -- identify any individuals that may have been in
2 the vehicle.

3 Q. Now, if someone is in the vehicle, will they
4 always leave DNA?

5 A. No.

6 Q. So, it's just an attempt to make sure you
7 recover all the evidence possible?

8 A. Yes.

9 Q. For later analysis?

10 A. Yes.

11 MS. WATERS: May I approach?

12 THE COURT: Yes, ma'am.

13 Q. (By Ms. Waters) Deputy, I'm going to show you
14 State's Exhibits 41 through -- 41, 42, 43, 44 and 57. Are
15 those pictures of the Cadillac?

16 A. Yes, they are.

17 Q. And are those pictures of the items, also the
18 bottles and stuff that you recovered out of the car?

19 A. Yes.

20 Q. And just for the record, I'm going to show you
21 the casings that you recovered from the Millstone address
22 marked State's Exhibits 87, 88, 89 and 90. Are these the
23 four casings that you picked up from the roadway?

24 A. Yes, they are.

25 MS. WATERS: At this time, I would offer

1 into evidence 88 through 89.

2 THE COURT: I thought you said 90, as well,
3 right?

4 MS. WATERS: 88 through 90; 87, 88, 89 and
5 90.

6 THE COURT: Okay.

7 MR. DUARTE: No objection, Judge.

8 THE COURT: They are admitted.

9 (Whereupon State's Exhibit Nos. 88-90
10 are admitted into evidence.)

11 MS. FLADER: And photographs 41 through 47,
12 I would offer into evidence also.

13 MR. DUARTE: No objection, Judge.

14 THE COURT: Admitted.

15 (Whereupon State's Exhibit Nos. 41-47
16 are admitted into evidence.)

17 Q. (By Ms. Waters) Now, Deputy, you also came in
18 contact with four women that were in the residence; is
19 that right?

20 A. That were being detained by the patrol deputy,
21 yes.

22 Q. Did they sign a consent to allow you to search
23 their home?

24 A. Yes.

25 Q. Did you search the house at Cobblestone?

1 A. Yes.

2 Q. Did you find a weapon?

3 A. No.

4 Q. And did also Juan Ybarra -- did you come into
5 contact with Juan Ybarra?

6 A. No.

7 Q. But you talked -- do you remember the name of
8 the person who signed the consent for you to search the
9 house?

10 A. I have it on the document; I can refer to it.

11 Q. And the people that were in the house -- the
12 four women that were present, did they cooperate and go
13 down to the station and give statements, or cooperate with
14 you at the time?

15 A. They met with me at the time, yes.

16 Q. Did you also go to any other scenes in this
17 case?

18 A. No.

19 Q. Now, when you --

20 MS. WATERS: May I approach?

21 THE COURT: Yes, ma'am.

22 Q. (By Ms. Waters) I'm going to show you the
23 contents of 94. Do you recognize what's in here?

24 A. Yes, I do.

25 Q. What are those items?

1 A. These are the bottles, water bottles that I
2 collected from the Cadillac.

3 Q. And you seized those for the purpose to do DNA
4 analysis on them?

5 A. Fingerprint, DNA analysis.

6 Q. So, it's just regular water bottles?

7 A. Yes.

8 Q. Five water bottles, a Coke bottle, a Sprite
9 bottle, a Gatorade bottle, and two more water bottles.
10 Seven water bottles?

11 A. Yes.

12 Q. And all these items came out of the white
13 Cadillac?

14 A. Yes, they did.

15 Q. What else did you recover out of the Cadillac?

16 A. I recovered ten CDs, three cigarette packages.

17 Q. Did you recover a cigarette butt?

18 A. Yes, one cigarette butt.

19 Q. And what did you do with the cigarette butt?

20 A. It was submitted for DNA analysis.

21 Q. I'm going to hand you what's in evidence that's
22 been marked as 95, 96, 97, 98, 99, 100, 101 and 102. Do
23 you recognize these envelopes?

24 A. Yes.

25 Q. What are they?

1 A. These are DNA swabs taken from the Cadillac
2 itself and from items of evidence collected from the
3 Cadillac.

4 Q. And where all did you swab in the Cadillac,
5 take swabs from?

6 A. Doorhandles, armrests. I can go through the
7 list.

8 Q. Steering wheel?

9 A. The steering wheel, the exterior and interior
10 doorhandles, the gear shift knob, turn signal lever,
11 climate control knobs, headrests, seat belt buckle.

12 Q. Any place that you thought it would be likely
13 someone would touch?

14 A. Yes.

15 Q. And are these the swabs contained within those
16 envelopes I just handed you?

17 A. Yes.

18 Q. On your label, do you indicate where the swab
19 came from on here, "swab, left rear headrest," that type
20 of thing?

21 A. Yes.

22 Q. Is that on each of the envelopes --

23 A. Yes.

24 Q. -- where you did the swab so you would know
25 where each of these swabs came from?

1 A. Correct.

2 MS. WATERS: At this time, I would offer
3 into evidence, Judge, State's Exhibits 95 through
4 102.

5 MR. DUARTE: There's no objection, Judge.

6 THE COURT: No objection?

7 MR. DUARTE: To 95 through 102, Judge.

8 THE COURT: Okay, they are admitted.

9 MS. WATERS: Thank you, Your Honor.

10 (Whereupon State's Exhibit Nos. 95-102
11 is admitted into evidence.)

12 Q. (By Ms. Waters) Now, Deputy, this is what I was
13 looking for earlier. I'm going to show you State's
14 Exhibit Nos. 72, 73, and 75, 77 and 79. What are these
15 documents?

16 A. 72 is a Consent to Search the residence at 1911
17 Cobble Creek Drive, detached garage and vehicles present
18 there.

19 Q. Who was that consent signed by?

20 A. Sherri White. The other four items are consent
21 to give specimens and saliva for DNA analysis.

22 Q. A buccal swab?

23 A. Buccal swab, yes.

24 Q. Those were from the four women that were in the
25 home?

1 A. Yes.

2 Q. What were their names?

3 A. Nicole Hernandez, Sarah-Kathryn Bafford,
4 Carolyn Bocanegra and Sherri White.

5 Q. And those are people that were in the residence
6 where you found the white Cadillac?

7 A. That were being detained by the patrol officer,
8 yes.

9 Q. And I think you said when you searched the
10 house, you didn't find any weapons?

11 A. Correct.

12 Q. On the consents of the women, are these the
13 corresponding buccal swabs that they consented to that you
14 took from them after they signed the consent, State's
15 Exhibits 76, 77, 74 and 80?

16 A. Yes, they are.

17 Q. And did you also swab the casings that you
18 recovered out on Millstone Road? Did you also swab them
19 for DNA?

20 A. Yes.

21 Q. I'm going to show 91. Is that your envelope
22 where you swabbed the casings that were recovered on
23 Millstone?

24 A. Yes, it is.

25 Q. And I'm also going to show you State's Exhibit

1 No. 93. Is this the cigarette butt that you recovered
2 from the vehicle that you submitted for DNA analysis --

3 A. Yes, it is.

4 Q. -- from the white Cadillac?

5 A. Yes, it is.

6 MS. WATERS: At this time, I would offer
7 into evidence 93, 91, 80, 74, 78 and 76.

8 THE COURT: 93, 91. What were the others?

9 MS. WATERS: 93, 91, 80.

10 THE COURT: 80.

11 MS. WATERS: 74.

12 THE COURT: 74.

13 MS. WATERS: 78.

14 THE COURT: 78.

15 MS. WATERS: 76.

16 THE COURT: 76?

17 MS. WATERS: Yes, sir.

18 MR. DUARTE: There's no objection, Judge,
19 to 93, 91, 80, 74, 78 or 76.

20 THE COURT: Okay, they are admitted. Thank
21 you.

22 MS. WATERS: Thank you, Your Honor.

23 (Whereupon State's Exhibit Nos. 74,
24 76, 78, 80, 91 and 93 are admitted into
25 evidence.)

1 Q. (By Ms. Waters) Deputy, earlier I asked you
2 about Millstone, and I'm going to show you photographs 70
3 and 71. And are these aerial photos of that area that we
4 were talking about earlier, the location on Millstone?

5 A. Yes, they are.

6 Q. And is one kind of a close-up and one further
7 away?

8 A. Yes.

9 Q. Do they fairly and accurately represent the
10 scene, particularly where you found the four shell
11 casings?

12 A. Yes.

13 Q. They were taken at night, but they show the
14 layout?

15 A. Correct.

16 MS. WATERS: At this time, I would offer
17 into evidence 70 and 71.

18 MR. DUARTE: There's no objection, Judge,
19 to 70 or 71.

20 THE COURT: 70 and 71?

21 MS. WATERS: I also have 70-A and 71-A,
22 which are blow-ups.

23 THE COURT: I see. Any objection to the
24 blow-ups?

25 MR. DUARTE: No, Judge, no objection to the

1 blow-up of 71-A and 70-A.

2 THE COURT: They are admitted.

3 (Whereupon State's Exhibit Nos. 70,
4 70-A, 71 and 71-A are admitted into
5 evidence.)

6 Q. (By Ms. Waters) I'm going to show you State's
7 Exhibit 71-A.

8 THE COURT: Let's make sure the record is
9 clear. They are all admitted.

10 Q. (By Ms. Waters) 71-A is this aerial photo of
11 the scene we talked about earlier?

12 A. Yes, it is.

13 Q. And does this show -- if you want --

14 MS. WATERS: Could he step down, Your
15 Honor?

16 THE COURT: Yes, of course.

17 Q. (By Ms. Waters) Can you show where 1960 is on
18 this photograph?

19 A. 1960 runs at the bottom of the photograph here.

20 Q. And I think that one photo you had was taken
21 from this location looking down Millstone; is that right?

22 A. Yes, it was.

23 Q. And you estimate it was about a quarter of a
24 mile down Millstone that you saw the shell casings?

25 A. I didn't measure, but approximately.

1 Q. That's depicted in this photograph with a
2 circle at the location of the shooting?

3 A. Yes.

4 Q. And, so, you can see how the road takes kind of
5 a curve to the left?

6 A. Yes.

7 Q. And then I'm going to show you State's Exhibit
8 No. 70. Is that a close-up of that area of where you
9 found the shell casings?

10 A. Yes, it is.

11 Q. And could you show the jury approximately where
12 you found the casings and where you first saw that fluid
13 stain?

14 A. The fluid stain -- initial fluid stain was
15 right in this location here next to the curve. The cases
16 were in this area right in here (indicating).

17 Q. Along the curve?

18 A. Along the curve and just into the straightaway
19 a little bit.

20 Q. And then we talked about you saw some leakage
21 from the radiator, right?

22 A. Yes, there was a trail of fluid on the pavement
23 going from in location down the roadway and right in this
24 area here is where the fluid made a turn and where the
25 deputy said that he had turned around -- turned his car

1 around right in this area right next to Old Woods Lane.

2 Q. That's kind of a T, it sort of dead-ends.

3 There's only one way to go in that direction?

4 A. Correct.

5 Q. So, you can see where he turned around from the
6 fluid stain of the vehicle?

7 A. Yes.

8 Q. And his vehicle is the one you found at the
9 Shell Station --

10 A. Yes.

11 Q. -- that had a bullet hole in the radiator?

12 A. Yes.

13 Q. Before you searched the white Cadillac, did you
14 have a Consent to Search that vehicle?

15 A. Yes. It was in -- before I searched, yes.

16 Q. Did you talk to the owner of that vehicle?

17 A. No.

18 Q. So, you weren't present when he signed the
19 Consent to Search?

20 A. No.

21 Q. But you needed it before you were allowed to
22 search?

23 A. Yes.

24 Q. Okay. All right. So, you didn't see anyone
25 sign this; you just knew that it had been done before you

1 went in the car?

2 A. Correct.

3 Q. Did you also, Deputy Carpenter, take GSR --
4 conduct GSR tests on the women that you found in the
5 house?

6 A. Yes, I did.

7 Q. And would that have been the same process that
8 Deputy Sams already testified to; like you do it the same
9 way every time?

10 A. We generally -- it is a set procedure of how we
11 collect it. So, generally, we do the same thing.

12 Q. And did all four of those women consent to
13 having their hands swabbed for GSR?

14 A. They -- well, they consented to the buccal
15 swab. Consent for GSR is not usually necessary. It's not
16 an invasive procedure.

17 Q. So, did they cooperate with you?

18 A. Yes, they did.

19 Q. And did you do a GSR on all four of those women
20 also?

21 A. Yes, I did.

22 Q. Did they in any way not cooperate with your
23 investigation?

24 A. No, they cooperated with the collections.

25 MS. WATERS: Pass the witness.

1 THE COURT: Cross?

2 MR. DUARTE: Judge, may I approach?

3 THE COURT: Yes, sir.

4 (Whereupon counsel approached the
5 bench out of the hearing of the jury.)

6 MR. DUARTE: I was going to raise my hand
7 for a break.

8 (Whereupon the following proceeding is
9 held in the hearing of the jury.)

10 THE COURT: Let's take a break.

11 (Whereupon the Court stood in a brief
12 recess.)

13 MR. DUARTE: May I proceed?

14 THE COURT: You may proceed.

15 **CROSS-EXAMINATION**

16 BY MR. DUARTE:

17 Q. Good afternoon, Deputy Carpenter?

18 A. Good afternoon.

19 Q. I'm going to review a couple of things that you
20 talked with Ms. Waters about. So, I appreciate your
21 patience. It may be a little bit repetitive, but I will
22 try not to be.

23 So, on September 2, 2011, you get a call to go out to
24 the Shell Station out at FM 1960 and Westfield Road,
25 correct?

1 A. Yes.

2 Q. So, you arrive there, and there you speak maybe
3 to Sergeant Gardner, maybe, and Deputy Whitlock --

4 A. Yes.

5 Q. -- the deputy that was injured, and maybe some
6 other deputies. And at that point, you gather that there
7 are at least, I'm going to call them, three crime scenes.
8 Would that be safe to say?

9 A. Yes.

10 Q. One was the 2200 block of Millstone where the
11 actual shooting occurred?

12 A. By the time I arrived at the Shell Station at
13 Millstone, later on I found out about the residence that
14 was involved.

15 Q. So, you found out about the Millstone location,
16 the 2200 block of Millstone. The Shell Station was
17 another crime scene. I'm going to call it investigation
18 scene.

19 A. Yes.

20 Q. And then the 1911 Cobble Creek, correct?

21 A. Yes.

22 Q. So, then, your assistant, or fellow deputy, CSU
23 Deputy Sams, stays at the Shell Station, and he does some
24 investigation there and some evidence collection, correct?

25 A. We initially go to the Millstone and then

1 return to the Shell Station. After we went to the
2 Millstone, he goes to the Shell Station and does an
3 investigation there while I go to the residence.

4 Q. So, both you and Sams go out to the Millstone
5 where the shooting supposedly occurred, correct?

6 A. Yes.

7 Q. So, y'all collect the shell casings there,
8 photograph, go back to the Shell Station. And then at
9 that point I think Deputy Sams does some evidence
10 collection there. Then you're advised of the scene at
11 1911 Cobble Creek, correct?

12 A. Yes.

13 Q. So, during the time that y'all are -- I'm going
14 to call it the staging center over at the Shell Station.
15 I guess maybe you get some information about that.
16 There's been a shooting involving Deputy Whitlock,
17 correct, and that he was following a particular type of
18 vehicle; is that correct? Did you find that out?

19 A. Yes.

20 Q. That he was following a white Cadillac. You
21 already knew that much, correct?

22 A. That was part of the information I was given.

23 Q. Then you get over to Cobble Creek where the
24 Cadillac is located. So, the Cadillac is actually part of
25 a crime scene, correct?

1 A. Yes.

2 Q. It was involved in the shooting. And
3 evidentiary elements of it are important to be able to
4 prove cases in court, correct?

5 A. Correct.

6 Q. Potentially. So, that's why you took pictures
7 of the Cadillac, which were labeled as State's Exhibit
8 Nos. 41, 42, 57 and 44, which -- and 43 of the white
9 Cadillac, correct?

10 A. Yes.

11 Q. You took those photographs, correct?

12 A. Yes.

13 Q. So, at the time that you took those
14 photographs, you already knew the importance of the
15 Cadillac in relation to the shooting involving Deputy
16 Whitlock, correct?

17 A. Yes.

18 Q. And, in fact --

19 MR. DUARTE: May I approach the witness,
20 Judge?

21 THE COURT: Yes, sir.

22 MR. DUARTE: Thank you.

23 Q. (By Mr. Duarte) I'm handing you State's Exhibit
24 No. 41. That would be a picture of the driver's side
25 door, correct, opened?

1 A. Yes.

2 Q. And the steering wheel, correct? And then
3 No. 42 would depict the left passenger side door opened,
4 correct?

5 A. Yes.

6 Q. So, at that point, you already had some
7 information regarding the importance of the left side of
8 the vehicle, correct?

9 A. I believe I photographed both sides of the
10 vehicle.

11 Q. Both sides of the vehicle. What we have here
12 in evidence are -- I mean --

13 A. I photographed the exterior of the vehicle, all
14 inside the vehicle, the trunk.

15 Q. All right. Fair enough. Again, the ones that
16 are in evidence would be the left side rear passenger
17 side, correct?

18 A. That's what those photographs depict.

19 Q. And then, of course, the left side, the driver
20 side, correct?

21 A. Those two photographs.

22 Q. 41 and 42. So, there was an importance to be
23 able to document that side of the -- of that Cadillac.
24 So, you did that along with photographing other sides?

25 A. It was important to document the vehicle, all

1 areas of the vehicle.

2 Q. And you mentioned that regarding -- there were
3 some ladies there that were, I guess, the owners of the
4 residence of the Cobble Creek residence, and that it was
5 important to get maybe GSR samples from them, correct?

6 A. Yes.

7 Q. And you did the GSR collection at that Cobble
8 Creek residence, correct?

9 A. Yes, I did.

10 Q. So -- oh, regarding GSR, can you get GSR
11 readings off of people's clothing?

12 A. Yes, you can.

13 Q. You can. And regarding these individuals, did
14 you get GSR readings off of their clothing?

15 A. I did perform collection on their hands.

16 Q. Just on their hands?

17 A. Yes.

18 Q. But it's not uncommon to collect, or attempt to
19 collect GSR from people's clothing; is that right?

20 A. It is a procedure that can be done.

21 Q. You've done it before, in fact, haven't you?

22 A. Yes.

23 Q. And I'm sure Deputy Sams has done it before
24 also.

25 A. I couldn't say.

1 Q. So, I was kind of unclear in your part of the
2 supplement because the summary says September 2, 2001
3 [sic] you arrived at the Shell Station basically at 2:45.
4 And then there's, I think, Supplement No. 23, which you
5 labeled, I think, "Vehicle processing," 7 of 11 -- page 7
6 of 11.

7 A. Yes.

8 Q. And it says, "Vehicle processing: 12:45 a.m.
9 Saturday, September 3, 2011." So, that was not till the
10 next midnight that you processed the vehicle?

11 A. Yes.

12 Q. It would be --

13 A. Yes, during my next shift.

14 Q. That was a bit confusing for me. I didn't know
15 if that was a typo. That you would have done it at 12
16 noon that same morning, or it was not till your next shift
17 beginning basically Saturday, the 3rd already.

18 A. The event occurred -- my shift is from
19 10:00 p.m. to 6:00 a.m. The event occurred after
20 midnight. The Thursday night shift happened on Friday
21 morning, and then my next shift was Friday night. That
22 was the night I processed the vehicle.

23 Q. But it seemed like that was the case. I wasn't
24 quite sure. So, the vehicles that were processed, again,
25 were the patrol car and the white Cadillac, correct?

1 A. Yes.

2 Q. So, you knew when you were processing the
3 vehicles that there may be evidentiary -- there would be
4 evidence that could be useful in presenting this case to a
5 jury in the future, correct?

6 A. Yes.

7 Q. Maybe to be able to protect -- prosecute a case
8 successful in court, correct?

9 A. Correct.

10 Q. You explained to the Court and to the jury
11 regarding the processing of the Cadillac. Did you attempt
12 to take DNA swabs from the Cadillac?

13 A. Yes, I did.

14 Q. And that was done already at the vehicle barn
15 on Lockwood, correct?

16 A. Yes.

17 Q. The processing barn. So, on page 23 -- on page
18 9, Supplement 23, you swabbed the left front door handle,
19 correct?

20 A. Yes.

21 Q. You swabbed the left rear door handle, correct?

22 A. Yes.

23 Q. You swabbed the right front door handle,
24 correct?

25 A. Yes.

1 Q. You swabbed the right rear door handle,
2 correct?

3 A. Yes.

4 Q. You also swabbed the left front door handle and
5 armrest, correct?

6 A. Yes.

7 Q. You swabbed the interior left rear door handle,
8 correct?

9 A. Yes.

10 Q. You also swabbed the interior right front door
11 handle and armrest, correct?

12 A. Yes.

13 Q. You swabbed the interior right rear door handle
14 and armrest, correct?

15 A. Yes.

16 Q. You swabbed the interior steering wheel gear
17 shift and turn signal, correct?

18 A. Yes.

19 Q. You swabbed the interior front climate control
20 knobs, correct?

21 A. Yes.

22 Q. You swabbed the interior front center console
23 armrest, correct?

24 A. Yes.

25 Q. You swabbed the interior left front seat belt

1 buckle, correct?

2 A. Yes.

3 Q. You swabbed the interior right front seat belt
4 buckle, correct?

5 A. Yes.

6 Q. You swabbed the interior left front headrest;
7 is that correct?

8 A. Yes.

9 Q. You swabbed the interior right front headrest,
10 correct?

11 A. Yes.

12 Q. You swabbed the interior left rear headrest,
13 correct?

14 A. Yes.

15 Q. And you swabbed the interior center rear
16 headrest, correct?

17 A. Yes.

18 Q. And the interior right rear headrest, correct?

19 A. Yes.

20 Q. So, then, you described to the jury what the
21 swabbing is. After you do the swab, you put it in a
22 little -- in a little envelope, you seal it, and then you
23 would deposit that where?

24 A. I would submit it to the Harris County
25 Institute of Forensic Sciences' DNA lab.

1 Q. That's what you did in this case, correct?

2 A. Yes.

3 Q. You didn't have anything to do with the actual
4 analysis or interpretation of any results from any testing
5 on those swabs?

6 A. No.

7 Q. Or comparison to any of the buccal swabs from a
8 person compared to the DNA swabs that you collected; you
9 had nothing to do with that?

10 A. Correct.

11 Q. Just collected it. Now, from a further
12 processing of that Cadillac, you took fingerprints from
13 that Cadillac, correct?

14 A. I processed the fingertips.

15 Q. Could you tell the ladies and gentlemen of the
16 jury what a latent fingerprint is and the process for
17 collecting a latent fingerprint in that capacity?

18 A. A latent fingerprint is basically a fingerprint
19 that's unseen. Latent means it's unseen and processing
20 needs to be done to make it visible. If you were to put
21 your finger down on a surface like this hard surface here,
22 I can't see a fingerprint on there, but it might be there.
23 So, what we do is take some black fingerprint powder, and
24 it's grounded fine volcanic ash, and powder that area.
25 The powder will stick to the fluids and secretions from

1 your finger, and the fingerprint will show up on the
2 surface; when it does, we take fingerprint lifting tape,
3 which is clear tape, and a white contrasting card. We'll
4 lift that fingerprint onto the tape and place it onto the
5 card.

6 Q. All right. And in this instance, as far as
7 processing the white Cadillac for latent fingerprints, you
8 did that on this vehicle, correct?

9 A. Yes, I did.

10 Q. And I'm going to direct you to, I think,
11 Supplement 27. It's page 1 of 2 of your supplement.
12 Could you tell the ladies and gentlemen of the jury the
13 areas of the white Cadillac that you did process for
14 latent fingerprints?

15 A. I processed the entire exterior and interior
16 areas of the vehicle, numerous areas.

17 Q. Were you able to find any latent fingerprints
18 on any parts of the vehicle?

19 A. Yes.

20 Q. And could you tell the ladies and gentlemen of
21 the jury the areas of the car that you were able to lift
22 latent fingerprints from?

23 A. Yes. Latent fingerprints that I lifted were
24 all on the exterior of the vehicle. There were nine lifts
25 performed, from one through nine: It's left rear quarter

1 panel, left rear door, both windows, left front door, left
2 front fender, front left hood and quarter panel, left
3 front corner of hood, front of hood, right front window,
4 and right rear window.

5 Q. So, after you have a latent fingerprint, how
6 can you try to match it with a known fingerprint of a
7 person? How do you do that?

8 A. We take the latent lift card that I described
9 earlier; it has the latent fingerprint on it. And if we
10 have a suspect that's known, a person that's known, and if
11 we have their fingerprints on file, we print that card out
12 to the known fingerprints and do a side-by-side
13 comparison; use a magnifier and maybe an enlarger to
14 compare them and just compare the two fingerprints
15 together.

16 Q. In this case, with the latent fingerprints that
17 you were able to collect and develop on September 3, 2011,
18 did you at a later time compare those to some known
19 fingerprints on October 14, 2011?

20 A. Yes, I did.

21 Q. And did you compare the known fingerprints --
22 who did you compare the known fingerprints with to the
23 latent fingerprints? Did I say that in reverse? Yes, I
24 think I did. The latent fingerprints, to whose known
25 prints did you compare them?

1 A. I compared them to Juan Frank Ybarra, Kendell
2 Davis, Frederick Johnson, Alonzo Cruz, Richard Rodriguez,
3 Elizabeth Pineda, Brianna Garza, Sherri White, and Lucia
4 Furtado.

5 Q. After you did that comparison with the known
6 fingerprints of Juan Ybarra, Kendell Davis, and Richard
7 Rodriguez, in particular, did you come to any
8 identification regarding the latent prints that you were
9 able to develop off of the Cadillac on September 3, 2011?

10 A. Yes.

11 Q. What were your conclusions then?

12 A. The latent lifts were labeled L1 through L9.
13 The latent labeled L1 was identified as being the same as
14 the left palm of Richard Rodriguez; latent L2 was
15 identified as being the same as the number nine finger on
16 the left ring finger of Richard Rodriguez; latent No. L4
17 was identified as being the same as the right palm of
18 Richard Rodriguez; latent L6 was identified as being the
19 same as the left palm of Juan Ybarra; latent L7 was
20 identified as being the same as the left palm of Juan
21 Ybarra.

22 Q. So, in your comparison with the known
23 fingerprints of Kendell Davis, they did not match up with
24 any of the latent prints that you were able to develop on
25 September 3, 2011; is that correct?

1 A. Correct.

2 Q. All right. Now, regarding the prints that you
3 found, I guess, for Richard Rodriguez, that would have
4 been from a latent print that was taken off of the left
5 rear quarter panel of the Cadillac, correct?

6 A. There were two identified for Richard
7 Rodriguez; L1 was taken from the left rear quarter panel;
8 L2 was taken from the left rear door above the window.

9 Q. The left passenger side door, correct?
10 Backseat passenger of behind the driver seat, correct?

11 A. Left side, yes.

12 Q. And, again, you did not find any fingerprints
13 of the person you used as Kendell Davis anywhere there on
14 the left rear side of the Cadillac; is that correct?

15 A. None of the fingerprint -- latent fingerprints
16 that I lifted were identified to Kendell Davis.

17 Q. Let me ask you. Can technology or evidentiary
18 collection process, GSR process -- can you process a car
19 for GSR?

20 A. It can be done.

21 Q. Now, I know that the Cadillac, we swabbed the
22 interior because it may be important, the areas that we
23 swabbed. We know we attempted to collect some
24 fingerprints and found some latent prints on some area of
25 the car. Was there an attempt to GSR -- collect GSR from

1 that Cadillac?

2 A. No.

3 Q. But at that point you knew -- I guess, in the
4 investigation, you had enough information to know that
5 there this had been a gun that was discharged by someone
6 from inside the Cadillac, and you knew maybe the
7 positioning of the person that was supposedly shooting
8 inside the Cadillac?

9 A. What I had was that it was fired from the
10 vehicle, left side of the vehicle.

11 Q. Okay. But, again -- and the lead investigators
12 never asked you-all to process the vehicle, the Cadillac,
13 for any GSR, correct?

14 A. Correct.

15 Q. Could it still have been processed even after
16 you collected the buccal -- the swabs for DNA from inside
17 the Cadillac, and even after obtaining or processing for
18 latent prints, it still could have been processed for GSR?

19 A. Well, an area that's processed for DNA would --
20 to the best of my knowledge, would have wiped away any GSR
21 residue that would be left if you process the same area.

22 Q. But, again, you didn't mop down the whole
23 interior of the car --

24 A. Correct.

25 Q. -- with a big mop to process it? It's a small

1 Q-tip?

2 A. Yes, sir.

3 Q. So, there were areas of the car. And it's a
4 closed compartment car, correct? It's a Cadillac. It's
5 enclosed. It's a sedan?

6 A. Correct.

7 Q. So, it could have been processed for GSR, but
8 no one gave you that order from higher up, correct?

9 A. I was not instructed to, no.

10 MR. DUARTE: Okay, I pass this witness,
11 Judge.

12 **REDIRECT EXAMINATION**

13 BY MS. WATERS:

14 Q. Now, Deputy, you -- Mr. Duarte asked you about
15 the DNA you lifted from the car, and those are items that
16 we already -- these swabbed that we already admitted into
17 evidence and discussed; is that correct?

18 A. Yes.

19 Q. And he went through them line-by-line over what
20 areas you had swabbed of the car.

21 A. Yes.

22 Q. And those are the swabs we already talked
23 about?

24 A. Yes, they are.

25 Q. And you also -- when you lifted the latent

1 prints, you swabbed the bottles. And you also tried to
2 get latent prints from the bottles that we talked about,
3 the seven bottles, the Sprite, the Gatorade, and the Coke?

4 A. Yes.

5 Q. Did you attempt to print those bottles?

6 A. Yes, I did.

7 Q. Were you able to get any latent prints off
8 those bottle?

9 A. No.

10 Q. Does that mean no one handled those bottles?

11 A. No, it does not.

12 Q. Does it mean every time you hold a bottle are
13 you going to leave DNA or a print on there?

14 A. No, you don't.

15 Q. Every time you're in a car are you going to
16 leave DNA or a print in the car?

17 A. No.

18 Q. Now, you're also -- if someone's prints aren't
19 in the car, does that mean they were never in the car?

20 A. No.

21 Q. When you lift these prints, the prints you were
22 able to identify as belonging to Juan and to Richard, you
23 don't know when those prints would have been left on the
24 car?

25 A. Correct.

1 Q. They could -- a print could sit for a while on
2 a car and be recoverable at any time; you have no idea how
3 long it's been there?

4 A. That's correct.

5 Q. And if someone owns the car, you have no idea
6 when they would have left that print on the car that they
7 own?

8 A. Correct.

9 Q. Or if they rode in the car more often than
10 other people, and they left a print, and you would have no
11 idea when that print would have been left?

12 A. Correct.

13 Q. So, the print only tells you that the person
14 was there. It doesn't tell you when they were there, or
15 anything about when the timing of that was?

16 A. Correct.

17 Q. And, also, just because it's not there doesn't
18 mean that somebody was not in the car?

19 A. Correct.

20 Q. So, it only helps to tell you who was in the
21 car, but it won't help to tell you who was not in the car?

22 A. Correct.

23 Q. And is it common to leave -- I know you are
24 CSI. In the real world, do you find prints like they do
25 on TV?

1 A. No. Finding a good, usable latent fingerprint
2 is more the exception than the rule. Usually, you can
3 find partial prints, or smudges, a lot of smudges. When
4 you handle something, your hands may be moving and you
5 might smudge the print. A lot of factors contribute to
6 whether or not you will leave a print. If your hands are
7 very dry, you may not leave a print because the
8 fingerprint is left by transferring of the fluids, the
9 sweat, and any kind of wet -- if I rub my hand on my
10 forehead, and I get some oily substance on my fingers,
11 then I will more than likely leave a good fingerprint. If
12 my finger is dry, I just washed my hands, or it's a dry
13 day, then I may not leave a fingerprint. There's no
14 substance to transfer to another item.

15 Q. So, is it more uncommon to find a print than
16 common?

17 A. Yes.

18 Q. And does it matter like what kind of contact --
19 do some things leave better prints than others?

20 A. Yes. Some surfaces are more apt to have a
21 latent print on it. This hard, smooth surface would be a
22 good surface. Textured surfaces, cloth, things like that
23 are not good surfaces to have a latent fingerprint on.

24 Q. So, it kind of depends on what type of material
25 the hand touches, or the fingers touch?

1 A. Yes.

2 Q. Can you get a print from a smudge or a smear?

3 A. You can -- yes, you can. It depends on how
4 smudged or smeared it is. You can get partials from that.
5 Most of the time, though, if it's smudged or smeared, it's
6 not enough quality area that you can use for comparison.

7 Q. And, also, if you know that a gun was fired in
8 the vehicle, then the gunshot residue test really would
9 have no value at that point?

10 A. Correct.

11 Q. So, you only use that to determine whether
12 someone was in the vicinity of a gun, and it's not always
13 something you're going to usually know where the gun was
14 fired from?

15 A. Yes.

16 Q. So, you did the swab, but you didn't do any
17 analysis on the DNA, is that right?

18 A. Correct.

19 Q. But you were able to determine what prints you
20 had, and you were able to find nine prints that you
21 thought were liftable, and four of those were able to come
22 back to -- two came to Richard and two went back to Juan;
23 is that right?

24 A. Yes.

25 Q. And the others didn't match anybody?

1 A. I'm sorry. Three came back to Richard.

2 Q. Three came to Richard and two went to Juan?

3 A. Yes.

4 Q. And the other one -- one, two, three and four
5 didn't match anyone?

6 A. Correct.

7 Q. In that list of people you compared it to?

8 A. Yes.

9 Q. And they were -- the prints you lifted were all
10 on the exterior of the vehicle?

11 A. Yes, they were.

12 Q. They could have been left by anybody walking by
13 touching the car, hanging out with a friend touching the
14 car, anything like that?

15 A. Yes.

16 MS. WATERS: Pass the witness.

17 THE COURT: Recross?

18 MR. DUARTE: Yes, sir.

19 **REXCROSS-EXAMINATION**

20 BY MR. DUARTE:

21 Q. Deputy Carpenter, you-all collected four Shell
22 casings out on Millstone, correct?

23 A. Yes.

24 Q. And you also processed those four shell
25 casings for -- attempting to get latent prints off of

1 them, correct?

2 A. Yes.

3 Q. And you used a different process for trying to
4 get latent prints off of that, or the same process?

5 A. Well, in the lab, our crime lab, we'll use a
6 little different process. We use Super Glue fuming. What
7 we do is we have a tank, and we'll place the item in the
8 tank. And when you heat up Super Glue, the fumes of it
9 will fill the tank and it will adhere to the same
10 substances that you have on your fingers, and from that
11 substance, transfer to the item, and that will set the
12 print. And then we can take the powder, black powder, and
13 powder it, and it would adhere to the Super Glue on the
14 vehicle. We can't do that because you can't put the
15 vehicle in a Super Glue tank.

16 Q. Regarding the four shell casings that y'all
17 collected into evidence. On Millstone, you processed them
18 for latent fingerprints using a Super Glue technique, we
19 call it, and what were your results? Were you able to
20 find any latent prints on those shell casings?

21 A. No, I was not.

22 Q. Now, did -- reviewing your supplements, I
23 didn't see whether you had noted the mechanics; if the
24 doors were in proper working order, the windows were in
25 proper working order. Did you happen to see if the

1 windows or doors were in proper working order?

2 A. No.

3 Q. Did you test to see if the windows went all the
4 way down or didn't go all the way down?

5 A. I didn't test them, no.

6 Q. On either the front or the back, you just
7 didn't test to see if the windows were in proper working
8 function, correct?

9 A. No.

10 Q. What about the doorhandles; did you see if the
11 doorhandles were in proper working order from the
12 interior?

13 A. No, I didn't.

14 Q. And through the outside, the doorhandles on the
15 outside of the Cadillac, were they in proper working
16 order?

17 A. Yes.

18 Q. And, again, from the investigation and what you
19 had learned from talking to the people over at the Shell
20 Station area, and then the course of the investigation,
21 you realize that it was important to document particularly
22 the left side of the vehicle because the report from
23 Deputy Whitlock was that there -- someone had fired on him
24 from the Cadillac from the left side of the vehicle,
25 correct?

1 A. I knew that was the side of the vehicle he
2 reported that the shots came from. I processed all areas
3 equally, though.

4 MR. DUARTE: I pass this witness, Judge.

5 THE COURT: All right. Sir, you may step
6 down. Next witness, please.

7 MS. FLADER: Call Juan --

8 THE COURT: Is this witness excused?

9 MS. WATERS: Yes.

10 MR. DUARTE: He's excused, Judge.

11 THE COURT: You're excused, sir.

12 MS. FLADER: Call Juan Ybarra.

13 THE COURT: All right.

14 MS. FLADER: Judge, may we approach
15 quickly?

16 THE COURT: Yes.

17 (Whereupon counsel approached the
18 bench out of the hearing of the jury.)

19 MS. FLADER: There are a couple of issues.
20 This witness went before the grand jury and was
21 no-billed on this case, on the capital murder of a
22 police officer.

23 THE COURT: Do we need to have the jury
24 step out real quickly?

25 MS. FLADER: Yeah, real quickly.

1 (Whereupon the following proceeding is
2 held in the hearing of the jury.)

3 THE COURT: We're going to have the jury
4 step out. I've got something I've got to resolve
5 before we go forward.

6 (Whereupon the following proceeding is
7 held outside the presence of the
8 jury.)

9 THE COURT: Okay, his name again?

10 MS. FLADER: Juan Ybarra.

11 THE COURT: Juan Ybarra, come forward, sir,
12 right to the witness stand. Raise your right hand.

13 (Whereupon the witness is sworn by the
14 Court.)

15 THE COURT: All right. You may take the
16 stand.

17 MS. FLADER: So, Judge, this witness was
18 originally charged with attempted capital murder.

19 THE COURT: Okay.

20 MS. FLADER: The case was taken into the
21 grand jury.

22 THE COURT: Right.

23 MS. FLADER: The grand jury no-billed that
24 case, but indicted him for evading in a motor vehicle
25 instead.

1 THE COURT: All right.

2 MS. FLADER: After he was indicted for that
3 case, he went to you without an agreed
4 recommendation, and you placed him on deferred
5 adjudication for that offense. And he successfully
6 completed that probation yesterday.

7 THE COURT: Okay.

8 MS. FLADER: So, I guess we need some
9 guidance as to what is admissible and what is not
10 admissible.

11 THE COURT: He doesn't have a felony.

12 MS. FLADER: Yes, he doesn't have a felony
13 conviction.

14 MS. WATERS: And there were no deals made.
15 When we took him in to the grand jury, they no-billed
16 him with no -- there were no promises or any
17 exchanges of deals made from us.

18 THE COURT: Okay. So, Mr. Duarte, what is
19 it that you wanted to --

20 MR. DUARTE: I would propose to ask him,
21 Judge, if he was absolutely the driver of the vehicle
22 from which Deputy Whitlock was shot at.

23 THE COURT: Right.

24 MR. DUARTE: And that he was the first
25 suspect that was arrested on this case, and he was

1 the first person that was charged with, I think,
2 attempted capital murder of Deputy Whitlock; and then
3 that he testified on November 29th, 2011; and
4 then --

5 THE COURT: Where was that testimony?

6 MR. DUARTE: The grand jury, November 29,
7 2011.

8 THE COURT: All right.

9 MR. DUARTE: And then, after that
10 testimony, that his case was dismissed.

11 THE COURT: Okay.

12 MS. FLADER: It was not dismissed; the
13 grand jury no-billed.

14 THE COURT: No-billed.

15 MR. DUARTE: No-billed. And then that he
16 got a deferred adjudication; and --

17 THE COURT: On a different charge.

18 MR. DUARTE: That he was --

19 THE COURT: On evading.

20 MR. DUARTE: Evading arrest that was still
21 encompassing and a party to the shooting at Deputy
22 Whitlock. And that he has very much a motive to be
23 able -- to want to come and say whatever the State
24 wants him to say regarding who was the trigger
25 person, who shot or who didn't shoot on that

1 occasion, Judge.

2 I think there's an absolute bias that has
3 been created around this witness and a motivation
4 with this witness for him to come and say what I
5 expect he's going to say in trial. I should be able
6 to ask him about him being charged originally as a
7 suspect in the capital -- attempted capital murder of
8 Deputy Whitlock, and that he got a deferred
9 adjudication on the charge of being the driver of the
10 vehicle from which Deputy Whitlock was shot at.

11 THE COURT: Well, if that deferred wasn't a
12 product of any kind of an agreement with the State,
13 then I don't know how -- if he has no -- you are
14 certainly entitled to go into any kind of deal that
15 he might have had with the government. But what I'm
16 hearing is that there was no deal. That he went to
17 the grand jury. He was no-billed.

18 I don't have a problem -- now, this is what
19 I will say. He's going to testify. He can be
20 impeached with prior statements, you know, statements
21 that he made at the grand jury. But the fact that he
22 went to the grand jury and talked to the grand jury
23 is irrelevant.

24 MR. DUARTE: How would --

25 THE COURT: But you can impeach him just by

1 the fact that he gave a statement under oath.

2 MR. DUARTE: I will do that by using his
3 prior inconsistent statement if he testifies
4 differently than --

5 THE COURT: I don't think that -- I think
6 it's -- one second. You know, the fact is that he
7 was charged with capital, and that he was a suspect,
8 original suspect, and charged and essentially cleared
9 by the grand jury.

10 MR. DUARTE: And --

11 THE COURT: That's the end of it.

12 MR. DUARTE: I've had cases, and I'm pretty
13 sure -- I'm sure I've had cases, Ms. Waters has
14 presented cases, Ms. Flader has presented cases, and
15 His Honor, maybe when you were practicing --

16 THE COURT: Sure.

17 MR. DUARTE: -- that there were cases
18 presented to the grand jury basically by the
19 prosecution that, we are not really going to try to
20 get this case indicted as long as you go ahead and
21 testify as to what I need you to testify to.

22 THE COURT: Do you have any evidence of
23 that?

24 MR. DUARTE: I do not have evidence of
25 that. And I know Jane. I don't think that there is

1 anything that says that, we have a deal -- we had a
2 deal with him to that effect. And I'm --

3 MS. FLADER: Judge, in response to that, I
4 can proffer to you that in --

5 THE COURT: Well, hang on. Do you want to
6 ask him whether or not he had any kind of deal going
7 into the grand jury? That's fair. If you want to
8 ask him if he had any kind of deal with the
9 government going to the grand jury, that if he
10 testified the way they wanted him to, that they would
11 note that -- they would, like, request a no bill, or
12 something like that, or whatever. I mean, now is the
13 time. I will let you you ask him.

14 MR. DUARTE: Mr. Ybarra, on August 13,
15 2013, you are about to testify in this trial. When
16 you testified before the grand jury on November 29,
17 2011, what were -- were there any assurances given to
18 you by the State of Texas that if you testify a
19 particular way at the grand jury regarding as to whom
20 was the shooter in this case, as to where the parties
21 were seated inside your Cadillac on the night of this
22 shooting, and that if you testify as to a certain way
23 regarding those issues, that your case would be
24 no-billed, and that you would receive a deferred
25 adjudication on a lesser charge of evading arrest in

1 a motor vehicle, involving the shooting regarding
2 Deputy Whitlock?

3 THE WITNESS: No, sir.

4 MR. DUARTE: So, what can I ask him?

5 THE COURT: So, there you go. So, there
6 was no -- no agreement, no collusion, nothing dirty
7 or unjust from what I could tell about his statement.

8 Now, the facts are that he was the driver,
9 that he -- and you will be able to cross-examine him
10 on his testimony. The fact that he was -- I mean,
11 I'm sure the State is probably going to ask him, were
12 you --

13 MR. DUARTE: No doubt.

14 THE COURT: -- originally charged,
15 whatever, that kind of stuff, too, because that's
16 what happened. But I don't know what to tell you,
17 Mr. Duarte, other than you just have to wait and hear
18 what he says on direct. And if there's anything to
19 impeach him with from his grand jury testimony --
20 well, you have that before you, and there's a way to
21 -- there's a way to impeach if it exist.

22 He doesn't have -- he doesn't have a
23 felony. He doesn't have a deal. I don't know. You
24 can't impeach him on the criminal history, and you
25 can't impeach him on some kind of deal unless somehow

1 it presents itself somewhere.

2 MR. DUARTE: I can ask him that he received
3 a deferred adjudication for his involvement in the
4 shooting regarding --

5 THE COURT: No, he didn't get a deferred
6 for his involvement in the shooting.

7 MR. DUARTE: He was absolutely the driver
8 of that vehicle when the shooting occurred, Judge.
9 He was the driver of that vehicle from --

10 THE COURT: He got a deferred for evading
11 in a motor vehicle.

12 MS. WATERS: Evading is completely
13 different than being involved in the shooting.

14 THE COURT: He got it for evading in a
15 motor vehicle, not for -- he was no-billed as a party
16 to the capital murder, or attempted capital murder.
17 Excuse me.

18 So, that's where -- that's a problem for
19 you. But I will permit you -- you or the State to
20 say or ask him whether or not he was placed on
21 community supervision for the offense of evading in a
22 motor vehicle. And that's the extent of it as far as
23 any kind of details about the probation and all that
24 kind of stuff.

25 MR. DUARTE: Yes, sir.

1 THE COURT: But under no circumstance will
2 that probation -- will you be able to infer that that
3 probation was a result of some kind of a deal that he
4 made with the State unless there's some evidence of
5 that.

6 MR. DUARTE: I'm allowed to ask him that he
7 was placed on -- received a community supervision for
8 events that transpired the night of this incident?

9 THE COURT: Yes, for that evading in a
10 motor vehicle.

11 MS. WATERS: We're going to establish that
12 he was evading in a motor vehicle. I'm not going to
13 leave these events --

14 THE COURT: But it's not going to be -- the
15 jury is not going to have this inference that he got
16 a deferred for, again, being a co-defendant in that
17 attempted capital murder because he was no-billed on
18 it. That's what happened. So, that's what happened.

19 We've got about an hour to go. So, we will
20 see if we can -- how far we can go with this witness.
21 It may be that we can finish today; if not, we will
22 have to bring him back tomorrow morning, but we are
23 going to finish up at 5:00.

24 (Whereupon the following proceeding is
25 held in the presence of the jury.)