

1 members, cousins, brothers?

2 A. No, I don't believe so.

3 MR. ORTIZ: Pass the witness, Judge.

4 MS. JOHNSON: I have no further questions.

5 THE COURT: You may stand down.

6 Call your next, please.

7 MS. MERIWETHER: Judge, I'm going to do
8 some work today. I'd like to call Kim Downs.

9 THE COURT: Okay.

10 MS. MERIWETHER: Judge, may he be excused
11 subject to recall?

12 THE COURT: Any objection?

13 MR. ORTIZ: No, Your Honor.

14 THE COURT: You may be excused.

15 THE BAILIFF: Your Honor, this witness has
16 not been sworn in yet.

17 (Witness sworn.)

18 THE COURT: Have a seat, please.

19 Proceed, please.

20 MS. MERIWETHER: Thank you, Your Honor.

21 **KIM DOWNS,**

22 having been first duly sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 BY MS. MERIWETHER:

25 Q. Can you please introduce yourself to our jury?

1 A. My name is Kim Downs.

2 Q. And how are you employed?

3 A. I'm a firearms examiner with the Houston
4 Forensic Science Center.

5 Q. And how long have you been with the Houston
6 Forensic Science Center?

7 A. We transitioned from the Houston Crime Lab
8 about a year and a half ago, April of 2014. I've been a
9 firearms examiner for 18 years.

10 Q. And the Houston Forensic Science Center is part
11 of the Houston Police Department?

12 A. No.

13 Q. No, not at all?

14 A. No, it is not.

15 Q. Tell me about that?

16 A. The Houston Crime Lab was under the Houston
17 Police Department. The Houston Forensic Science Center
18 is a separate entity under the City of Houston.

19 Q. And y'all process evidence that is part of the
20 Houston Police Department and cases that they work?

21 A. Yes.

22 Q. Did you have an opportunity to go to any
23 special classes or training to be a firearms examiner?

24 A. To start the job off, you have to have a degree
25 in science. I have a Bachelor's of Science degree in

1 chemistry and a Master's in chemistry. From there I was
2 trained by a qualified firearms examiner for a period of
3 approximately two years. After that I continued my
4 education as a firearms examiner through taking several
5 courses given by the FBI, the Texas Department of Public
6 Safety and other courses. I am certified by the
7 Association of Firearms and Tool Mark Examiners, and I
8 am also a member of that organization.

9 Q. And have you, I assume, that the field of
10 firearms is like any other field, it's always changing.
11 So, do you continue to update and go to additional
12 classes in the firearms field?

13 A. Yes.

14 Q. Were you involved in the analysis of firearms
15 evidence from a case that occurred back on December 31st
16 of 2010, documented under HPD Case No. 181795510?

17 A. Yes.

18 Q. And did you render a report as to your work in
19 that case?

20 A. Yes, I did.

21 Q. And do you have it in front of you to help
22 refresh your memory?

23 A. I do.

24 Q. And I imagine that it's been sometime since
25 these firearm examinations took place?

1 A. Yes.

2 Q. Okay. In particular were you given a weapon to
3 do a comparison?

4 A. I was.

5 Q. And what kind of weapon was that?

6 A. I was given a .44 Special Charter Arms Model
7 Target 4 revolver, Serial No. 402578.

8 Q. And was that item logged under a different case
9 number?

10 A. Yes, it was.

11 Q. Were you also given any other types of firearms
12 evidence to do the comparison to?

13 A. Yes, I was.

14 Q. And what was that?

15 A. I was given a fired bullet under Incident No.
16 181795510.

17 Q. And did that item bear a particular medical
18 legal number?

19 A. Yes, it did.

20 Q. And what's that medical legal number?

21 A. 11, dash, 0001.

22 Q. And I'm going to show you what we've already
23 offered into evidence as State's Exhibit 115. Does this
24 appear to be that item that you looked at, and I've got
25 the bag that goes with it that might also help?

1 A. Yes, it does.

2 Q. So, this item that you're looking at, can you
3 tell us what that is, 115?

4 A. State's Exhibit 115 is a fired, jacketed
5 hollow-point bullet.

6 Q. And how do you know that?

7 A. How do I know it's a fired, jacketed bullet?

8 Q. Yes.

9 A. One, because it exhibits rifling, which is
10 consistent with having been fired through the door of a
11 firearm. And, two, because it is expanded. So, it
12 appears to have hit something and expanded, and because
13 I analyzed it to determine that it was indeed a fired
14 bullet.

15 Q. And what steps of analysis did you do?

16 A. On a case where I had only one bullet, I looked
17 at it under a comparison microscope. A comparison
18 microscope is actually two compound microscopes that are
19 bridged together and allow me to look at two different
20 pieces of evidence. If I'm making a comparison, it
21 allows me to look at two different pieces of evidence at
22 the exact same time and determine if markings from one
23 are repeating onto another.

24 In this case, what I did was compared this
25 to another item, which was a test fire from a gun, and I

1 also looked at it and compared and measured it using a
2 set of calibers to different what rifling
3 characteristics were present on the bullet so I could
4 get an idea of what kind of gun might have fired it.

5 Q. In particular, you talked about a .44 Special
6 Charter Revolver that you did the comparison with. Did
7 you do a test fire from that gun?

8 A. Yes, I did.

9 Q. And is that what you used to compare to the
10 jacketed bullet that you're looking at there?

11 A. Yes, it is.

12 Q. And the same process with the microscopes next
13 to each other?

14 A. I can do that. However, considering the fact
15 that this was determined to be a 38-caliber bullet and
16 the .44 Special is a larger firearm, and the bullet
17 doesn't exhibit any sort of evidence stating that --
18 saying that it could have been fired in a bore that was
19 larger than 38-caliber, it was not fired in a .44
20 Special.

21 Q. Okay. So, you didn't even need to do a test
22 fire to rule out that .44 gun, .44 Special, because you
23 knew that this was fired from a smaller weapon?

24 A. I knew that it was fired from a smaller weapon.
25 I also knew that the bore of that firearm was consistent

1 with a .44.

2 Q. So, now that we've eliminated that weapon,
3 let's talk about what you were able to determine about
4 State's Exhibit 115. Were you able to tell us what type
5 of family of weapons it would have been fired from?

6 A. I could tell what type of caliber family it
7 could have been fired from, yes.

8 Q. And explain that process to us?

9 A. I took a set of calipers, and I measured the
10 diameter of this bullet. It came out to approximately
11 38-caliber family, which would lead it to be in the
12 38-caliber family, which is consistent with .38 Special,
13 357-Magnum and the like.

14 Q. What does the 38-caliber family include in
15 terms of weapons?

16 A. 38-caliber family includes anything from .380
17 auto, 9-millimeter Makarov, 9-millimeter Luger .38
18 Special, .38 Long Colt, .38 Smith & Wesson, .38 Smith &
19 Wesson Long, 357-Magnum, 357-Sig, that's an entire
20 family. And simply what it means is that the diameter
21 of those bullets is consistent with being approximately
22 somewhere between .357 inches to .38 inches.

23 Q. Now, there's a number of weapons that have been
24 submitted in this case for testing. Did another
25 firearms examiner also take part in testing of weapons?

1 A. Yes.

2 Q. I don't want to talk about any of her work, but
3 I do want to talk to you generally about weapons.
4 What's the difference between a semiautomatic and a
5 revolver?

6 A. The basic difference between a semiautomatic
7 weapon and a revolver is that the revolver has a
8 cylinder, and that is a rotating cylinder that allows
9 the cartridges to move into position for firing. Every
10 time you cock the hammer, the cylinder will rotate and
11 place another cartridge in line with the door of the
12 firearm. A semiautomatic has a detachable magazine.
13 You take that magazine, you press cartridges down into
14 it, the spring gets compressed and there's an upward
15 push on that cartridge. You place that cartridge into
16 the butt slate of a semiautomatic weapon, and you rack
17 the slide. When you drop that slide, that cartridge is
18 pushed up and into the chamber. You then continue to
19 fire, and those cartridges will load up into the
20 firearm.

21 The cartridge case, upon firing, the bullet
22 will come out the bore of the firearm. The cartridge
23 case will get slammed up against the breech face. The
24 slide will come back. The cartridge case will be
25 expelled and ejected from the firearm. The slide will

1 come back, and it will load another cartridge into the
2 firearm. The cartridge cases are typically found at the
3 scene if they're not picked up. However, if they're
4 picked up, then you won't find them. Cartridge cases
5 from a revolver will be inside the cylinder of the
6 firearm until manually ejected.

7 Q. So, the main difference is whether there's
8 going to be a casing left behind or not; is that a fair
9 statement?

10 A. It's one of the differences, yes.

11 Q. Also, what other main differences would you
12 see; is that pretty much it?

13 A. What I would look at is the appearance of an
14 extractor and ejector mark on a cartridge case.

15 Q. And are you able to tell much about what you
16 have in State's Exhibit 115 as to whether it was from a
17 revolver or semiautomatic?

18 A. I did not note that there were any markings
19 present upon it that were consistent with being in a
20 revolver or a semiautomatic weapon. It is consistent
21 with an El Dorado Starfire type bullet. It is
22 consistent with a 38-caliber family. And its markings
23 are consistent with having been fired in a .38 Special,
24 357-Magnum type firearm.

25 Q. Thank you.

1 MS. MERIWETHER: I'll pass the witness,
2 Your Honor.

3 MR. CORTEZ: May it please the Court?

4 **CROSS-EXAMINATION**

5 BY MR. CORTEZ:

6 Q. Ms. Downs, you said that where you work is no
7 longer a part of HPD?

8 A. Yes, sir.

9 Q. Where is the lab located where you work?

10 A. It is located at 1200 Travis at this time.

11 Q. And what is also at 1200 Travis?

12 A. The police department.

13 Q. HPD headquarters?

14 A. Yes, sir, they do not have access to our
15 laboratory.

16 Q. Did you used to work for the old crime lab?

17 A. I did.

18 Q. Now, this two years of you say working with the
19 firearms expert, what do you get at the end of those
20 two years? A degree? A certification? Or what?

21 A. There's no certification. We are then given --
22 we are then observed by the qualified firearms examiner
23 for another period of several months as we do casework
24 to determine whether or not we can apply the principles
25 that we have learned. And then we're cleared to do

1 casework.

2 Q. Is there a standardized number of hours or
3 curriculum that you have to follow?

4 A. We follow the Association of Firearm Tool Mark
5 Examiner Manuel. As far as whether it's a number of
6 hours, I don't know what the hours are.

7 Q. So, you could be certified; or you could be
8 declared a firearms examiner after a few hours of work?

9 A. No, sir.

10 Q. A few days?

11 A. No, sir, about two years.

12 Q. You cannot use the terms reasonable scientific
13 certainty when you're talking about your work, can you?

14 A. It has been used. I do not use it.

15 Q. You're not legally authorized to use it, are
16 you?

17 A. I don't know if that's even been argued, sir.

18 Q. Well, you studied for two years?

19 A. Yes, sir.

20 Q. You have a Master's. You testified in numerous
21 cases. I presume you've gone over a tremendous amount
22 of articles and studies on this type of work, correct?

23 A. Yes, sir.

24 Q. And you've never come across any case law that
25 says that you're not allowed to use that terminology?

1 MS. MERIWETHER: Objection, relevance.

2 MR. CORTEZ: She's being offered as an
3 expert.

4 THE COURT: Could y'all approach, please?
5 (Bench conference.)

6 THE COURT: Did I not just hear this
7 witness testify to nothing that would hurt the Defense?

8 MR. CORTEZ: Right.

9 THE COURT: You're good to go. What are
10 you doing?

11 MR. CORTEZ: I'm getting to that.

12 THE COURT: You want it to hurt the
13 Defense?

14 MR. CORTEZ: No, I'm getting to what you're
15 talking about. If I may be allowed to continue to
16 question the witness.

17 THE COURT: You're going to impeach her.
18 Go ahead.

19 (End of bench conference.)

20 MR. CORTEZ: May I approach, Your Honor?

21 THE COURT: You may.

22 Q. (BY MR. CORTEZ) This is the bullet you
23 received?

24 A. Yes, sir, it is.

25 Q. And this was the bullet that came out of the

1 deceased?

2 A. That is the bullet I received.

3 Q. Do you know where the bullet came from?

4 A. It is consistent with having come from the
5 morgue considering that it has a medical legal number,
6 but I did not bring it from the morgue.

7 Q. Right, right. But I'm asking you, this isn't
8 just some random bullet that was fired in your lab. Is
9 this the bullet that came out of the deceased?

10 A. I didn't remove it from the deceased, sir.

11 Q. Do you know if it came out of the deceased?

12 A. That should have been established in chain of
13 custody, sir. I examined the bullet that came into the
14 laboratory.

15 Q. All right. Is this a .38, or is this a
16 9-millimeter?

17 A. It's a 38-caliber family bullet.

18 Q. Okay. Can you tell me if it came out of a .38
19 or if it came out of a 9-millimeter?

20 A. It is consistent with having come out of a
21 357-Magnum or a .38 Special. It could also have come
22 out of a 9-millimeter Luger. I don't have that firearm.

23 Q. Okay. Can you tell us if it came out of this
24 gun?

25 A. Nope.

1 MS. MERIWETHER: Your Honor, I'm going to
2 object. It exceeds the scope of this witness' testimony
3 and her firearms testing. The examiner that tested
4 those items is available to testify shortly.

5 THE COURT: That's my understanding.

6 MR. CORTEZ: Then I'll pass the witness,
7 Judge.

8 MS. MERIWETHER: No further questions, Your
9 Honor.

10 THE COURT: You may stand down. Call your
11 next.

12 MS. MERIWETHER: Your Honor, the State
13 would call Tammy Lyons Reed.

14 THE BAILIFF: Your Honor, this witness has
15 not been sworn in yet.

16 (Witness sworn.)

17 THE COURT: Proceed, please.

18 MS. MERIWETHER: Yes, Your Honor, thank
19 you.

20 **TAMMY LYONS**

21 having been first duly sworn, testified as follows:

22 **DIRECT EXAMINATION**

23 BY MS. MERIWETHER:

24 Q. Could you please introduce yourself to our
25 jury?