

1 MR. NEWMAN: Yes, Your Honor.

2 THE COURT: Thank you, sir. You are free
3 to go. Please do not discuss your testimony with any of
4 the other witnesses.

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Call your next witness.

7 MR. LESLIE: State calls Jill Dupre.

8 THE COURT: Right up here, please, ma'am.

9 (Witness sworn)

10 THE COURT: And please state and spell
11 your name for my court reporter.

12 THE WITNESS: Yes. My name is Jill, last
13 name, Dupre, D-u-p-r-e.

14 THE COURT: And you may proceed.

15 MR. LESLIE: Thank you Judge.

16 **JILL DUPRE,**

17 having been first duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 Q (BY MR. LESLIE) Ms. Dupre, where do you work?

20 A I work for Harris County at the Institute of
21 Forensic Sciences in the firearms laboratory.

22 Q And how long have you worked there?

23 A I have been employed with Harris County for
24 approximately since 2002.

25 Q What are your duties at the Harris County

1 Institute of Forensic Sciences?

2 A My duties include the analysis and processing
3 of recovered firearms and firearm evidence.

4 Q What sort of education does it take to have
5 that position?

6 A I hold a bachelor's degree in microbiology.

7 Q Do you have any kind of specific training
8 beyond that to hold that position?

9 A I do.

10 Q What sort of training do you have?

11 A I trained approximately one year with the
12 Bureau of Alcohol, Tobacco and Firearms at the National
13 Laboratory, and it was a one-year training program with
14 ATF, specifically in firearms and toolmark
15 identification.

16 Q Have you ever testified as an expert before?

17 A Yes, I have.

18 Q And is that an expert in firearms
19 identification?

20 A It is.

21 Q How often would you say that you have
22 testified as an expert?

23 A Oh, my goodness, I don't really keep track, so
24 approximately 60 plus.

25 Q And were those primarily in Harris County?

1 A Primarily, yes.

2 Q Just real briefly explain to us firearms and
3 toolmark examination.

4 A Certainly. Firearms identification involves
5 examining firearms and firearm evidence. What we look
6 for is during the process of a firearm being
7 manufactured, there's different manufacturing processes
8 that go on. Different manufacturers use slightly
9 different techniques and finishing processes, and so
10 it's those resultant marks during the firing process,
11 and essentially the firearm is a tool and the tool is
12 going to leave toolmarks and the toolmarks are going to
13 be the resultant marks of firing that are left on the
14 ammunition components, and essentially that's what we're
15 looking at, we're looking at the marks that are left on
16 the fired ammunition components to see if we can relate
17 them back to a specific firearm or in the case where a
18 firearm isn't recovered, if we can make an association
19 of those fired evidence components that are recovered
20 and give the investigators a potential list of firearms
21 that may have caused those marks.

22 Q What are the procedures that you go through
23 when you're making an examination of a firearm or the
24 associated image?

25 A Essentially we evaluate the firearm. We do a

1 cursory examination of the firearm: Is it a functioning
2 firearm, are safeties present on the firearm, are the
3 safeties operational. We make notation of make, model,
4 caliber, serial number, et cetera. In the case where we
5 have a firearm, as part of the examination process we'll
6 do what's called test-firing, and that's essentially for
7 a couple of purposes. One, to see if in fact the
8 firearm that is submitted, is it a functioning firearm,
9 can you pull the trigger and it goes bang. The other
10 purpose of doing test fires is to make some known
11 exemplars or test-fired specimens from that particular
12 firearm. So if you have fired evidence to compare to,
13 you have made your known exemplars or your specimens
14 which you use to compare back to the submitted evidence.

15 Q So is it possible to determine whether a
16 bullet fired was fired from a particular gun?

17 A Yes, it is.

18 Q And have you done that before?

19 A I do that on a daily basis, yes.

20 Q So when you say you have done that, on few or
21 many occasions?

22 A Very many.

23 Q Just to go back through, what are class
24 characteristics?

25 A Class characteristics are those general

1 features that are designed by the manufacturer. For a
2 firearm, it would be caliber. It would also be when a
3 barrel is rifled, the manufacturer determines is the
4 bullet going to exit the muzzle in a clockwise motion or
5 is the bullet going to exit from a counterclockwise
6 motion. The rifling, is it going to be a rifling
7 pattern where you'll have five land and groove areas
8 with a right-hand twist or five land and groove areas
9 with a left-hand twist. The manufacturer will also
10 determine the thickness of the various land of the
11 rifling. So those are the general class
12 characteristics. Those are the general overall features
13 that a manufacturer determines.

14 Q What are lands and grooves?

15 A Lands and grooves are what you see if you look
16 down the bore of a barrel. The land in a firearm is
17 going to be the raised portion. The groove is going to
18 be the area inside the barrel of a firearm. It's like a
19 channel. So I brought something for demonstrative
20 purposes that may assist.

21 MR. LESLIE: Permission for the witness
22 to show the demonstrative aid to the jury, Judge.

23 THE COURT: You may.

24 Q (BY MR. LESLIE) Go ahead.

25 A Very good. This is essentially the cutaway of

1 a barrel. I'm going to turn it on its side so you can
2 see. So the raised area are the lands of the barrel and
3 then the depressed area in between is called the groove.
4 Now, how that relates to a bullet is the area -- I don't
5 know if you can see -- the area where it's raised and
6 the barrel corresponds to the depressed area, the
7 bullet. So the rifling is both the lands and the groove
8 area, the raised portion and the depressed portion.

9 MR. LESLIE: Permission to approach the
10 witness, Your Honor.

11 THE COURT: You may.

12 Q (BY MR. LESLIE) I'm showing you now what has
13 been previously admitted as State's Exhibit No. 146. Do
14 you recognize this?

15 A I do.

16 Q And what is this?

17 A What has been marked State's Exhibit No. 146
18 is a manila envelope.

19 Q And where and when did you first see it?

20 A I first saw this manila envelope, referring to
21 my notes, this came into my possession on 1-9 of 2013.

22 Q And where did it come from?

23 A This was received from the evidence submission
24 area in the Institute of Forensic sciences on the third
25 floor.

1 Q And did you put any kind of individuating
2 markings on it to show that you have handled this?

3 A Yes, I did.

4 Q And what sort of markings did you put on it?

5 A Each case that comes into the laboratory is
6 assigned a unique firearms laboratory number, and in
7 this case that number is 12-1777, and each individual
8 item gets an individual unique identifier, and what's
9 referenced to what's contained in Exhibit 146 is
10 entitled item ME1, and my initials and date are on the
11 envelope as well.

12 Q Now, showing you what has previously been
13 marked as State's Exhibit 141, do you recognize this?

14 A Yes, I do.

15 Q And what is this?

16 A What is marked State's Exhibit 141 is a
17 laboratory bag that also has the unique laboratory
18 number 12-1777, item ME1, my initials and date, and
19 that's written on the outside of the envelope as well as
20 the laboratory number, item number and my initials on
21 the evidence itself.

22 Q And other than the addition of the exhibit
23 sticker, has this been altered or tampered with in any
24 way?

25 A No, it has not. It is still in a sealed

1 condition.

2 Q And are you the individual who placed it in
3 this sealed bag?

4 A Yes, I am.

5 Q And after you placed this in the sealed bag,
6 what did you do with it?

7 A After I'm done with my analysis, I put it in
8 the laboratory bag. I will put it back in the original
9 envelope that I received it from and I will seal it up
10 and, again, my initials and date are on the evidence
11 seal.

12 MR. LESLIE: At this time State would
13 offer State's Exhibit 141 after tendering to opposing
14 counsel.

15 MR. NEWMAN: I have no objection, Your
16 Honor.

17 THE COURT: 141 will be admitted.

18 Q (BY MR. LESLIE) Now, showing you State's
19 Exhibits 142, 143, 144, 145 and 148, do you recognize
20 these?

21 A Again, I do, yes.

22 Q And how do you recognize them?

23 A Again, on each outer container is the unique
24 laboratory number, again 12-1777, the unique item
25 identifier that is assigned to the contents of the

1 individual bags as well as my initials and date and also
2 on the seal on the back are my initials and date.

3 Q And what are these?

4 A These are little sealed manila envelopes.

5 Q And what is in those envelopes?

6 A What is contained within the items beginning
7 with State's Exhibit No. 142 corresponds to item three.
8 Item three is a fired CCI Blazer brand auto cartridge
9 case. What is marked State's Exhibit No. 143, said to
10 contain inside there is item number four. Item number
11 four is also a CCI Blazer brand 45 auto cartridge case.
12 State's Exhibit No. 145 corresponds to item number one,
13 which is said to contain one fired CCI Blazer brand 45
14 auto cartridge case. State's Exhibit No. 144
15 corresponds to item number two. Item number two said to
16 contain one fired CCI Blazer brand 45 auto cartridge
17 case. And, lastly, State's Exhibit No. 148, which
18 corresponds to item number five, said to contain one
19 fired copper jacketed bullet.

20 Q And just to refresh all our memories, what is
21 State's Exhibit No. 141?

22 A State's Exhibit No. 141 corresponds to item
23 number ME1, and that is also a fired jacketed bullet.

24 Q Now I'm showing you State's Exhibit No. 139.
25 Do you recognize this?

1 A Yes, I do.

2 Q And how do you recognize it?

3 A On the slide area of the firearm, again, is
4 the unique firearms identifier associated with the case,
5 which is 12-1777. It has item number 18A, as in alpha,
6 and my initials.

7 Q So you're the individual who made those
8 markings on this gun; is that correct?

9 A That's correct.

10 Q Did you also mark anywhere the serial number
11 of the gun that you saw?

12 A Yes, I did.

13 Q And what was the serial number that you
14 annotated?

15 A The serial number that I observed was EA47267.

16 Q And does that match the serial number on
17 State's Exhibit No. 139?

18 A Yes, it does. It's on the first part of the
19 panel that's on the side of the receiver.

20 Q Did you conduct any kind of examination of
21 these exhibits?

22 A Yes, I did.

23 Q And what was the purpose of that examination?

24 A The purpose of that examination was a couple
25 of things. First of all, is State's Exhibit No. 139 a

1 functioning firearm. The second purpose was to
2 determine State's Exhibit Nos. 141, 142, 143, 145, 144
3 and 148, were those at one time have been fired in or
4 from State's Exhibit No. 139.

5 Q Could you detail for the jury the exact
6 procedures that you followed in conducting your
7 examination?

8 A Certainly. I had previously alluded to the
9 examination of a firearm. Again, we do a cursory
10 examination: Is it a functioning firearm, make notation
11 of the make, model, serial number. We proceed to
12 test-fire the firearm to determine a couple of things:
13 Is it a functioning firearm, and, two, make known
14 exemplars or specimens, which we will then intercompare
15 to see if those marks that were made using the submitted
16 firearm, are those marks consistent in reproducing, and
17 if they are, then we can proceed to make a comparison to
18 the other exhibits that are submitted in the case to
19 make a determination, were those fired in or from this
20 firearm. And when we do that part, looking at the
21 individual fired evidence items, they are independently
22 examined and any and all observations are recorded and
23 notated in my case notes. And then I will proceed to
24 determine, once the class characteristics are
25 consistent, and they were consistent with the class

1 characteristics observed from the test fires that I made
2 from this firearm, then I will compare them using a
3 comparison microscope to determine were these in fact
4 fired from this particular firearm.

5 Q So you did test-fire that firearm?

6 A Yes, I did.

7 Q And does it test-fire correctly under
8 laboratory conditions?

9 A Yes, it does.

10 Q So in your opinion is that a functioning
11 firearm?

12 A Yes, it is.

13 Q And in your opinion is a firearm a deadly
14 weapon?

15 A It can be, yes.

16 Q And after conducting your examination on the
17 firearm and the other exhibits, did you reach an opinion
18 as to whether those exhibits were fired from that
19 firearm?

20 A Yes, I did.

21 Q And what is your opinion?

22 A That the State's Exhibit Nos. 145, 144, 142
23 and 143, and those correspond to items numbers one, two,
24 three and four, those fired 45 auto cartridge cases were
25 fired from the firearm, which is Exhibit 139. State's

1 Exhibit Nos. 141 and 148, the two fired bullets were
2 fired from the submitted firearm, which is State's
3 Exhibit No. 139.

4 MR. LESLIE: Pass the witness, Judge.

5 THE COURT: Mr. Newman.

6 **CROSS-EXAMINATION**

7 Q (BY MR. NEWMAN) How are you doing, Ms. Dupre?

8 A I'm doing well. Thanks for asking.

9 Q Nice to see you.

10 A Nice to see you again.

11 Q Just a couple of preliminary questions.

12 Bottom line, the gun matched the shells, the gun matched
13 the fired projectiles that were recovered, correct?

14 A That is correct.

15 Q Was any live ammunition provided to you that
16 had also been recovered at the same time as the firearm?

17 A No.

18 Q That occurs sometimes; is that correct?

19 A That is correct, yes.

20 Q If a deputy or a police officer recovers a
21 firearm and it's still loaded, they will send those
22 bullets as well to the firearms laboratory, correct?

23 A That is true, yes.

24 Q And in this case no live rounds were found?

25 A That is correct.

1 Q How many shell casings were there again?

2 A Four.

3 Q And how many fired projectiles?

4 A Two.

5 Q And what was the clip capacity for that
6 firearm?

7 A The magazine capacity for this firearm is
8 eight.

9 Q I liked it so much better when I could just
10 call it the Medical Examiner's Office.

11 A It is a little more complicated.

12 Q It's a little more wordy now, isn't it? I'm
13 going to call it the Medical Examiner's Office. When a
14 firearm is submitted to the ME's office, it's not just a
15 firearms lab that you all have available there. There
16 is a plethora of testing that can be done, correct?

17 A Yes, there are different forensic disciplines
18 available at the Institute.

19 Q And sometimes, whether it be a firearm or any
20 other type of tangible evidence, one may go to different
21 laboratories within the ME's office, correct?

22 A That is often the case, yes.

23 Q For instance, you may have something that goes
24 to the firearms lab but it also goes to the fingerprint
25 lab as well, correct?

1 A Correct.

2 Q Is there a DNA lab there as well?

3 A Yes, there is.

4 Q And in this case were you made aware of
5 whether or not there was any attempt to do any
6 fingerprint testing on either the firearm, possibly the
7 shell casings or the fired projectiles?

8 A According to the notes that I made during my
9 examination, the fired -- the four fired cartridge cases
10 did have latent fingerprint powder on them, and I do not
11 have a note stating for Exhibit No. 5, which is State's
12 Exhibit No. 148.

13 Q You don't have a note on those?

14 A No.

15 Q What about the firearm itself?

16 A Regarding the firearm, it also -- I had
17 cleaned off latent fingerprint powder, yes.

18 Q Were you also made aware that the firearm had
19 been submitted for DNA testing as well?

20 A No, I was not.

21 Q And is that something that does occur
22 occasionally on firearms?

23 A Yes.

24 Q And the idea being perhaps the person who had
25 handled the firearm had left their DNA on it as they

1 were firing it, correct?

2 A Correct.

3 Q So although you were able to link the shell
4 casings and the projectiles and the firearm all
5 together, there's nothing in what you have done that is
6 linked to any particular person?

7 A That is correct.

8 Q Thank you, Ms. Dupre.

9 THE COURT: Mr. Leslie?

10 MR. LESLIE: No further questions, Judge.

11 THE COURT: May this witness be excused?

12 MR. LESLIE: Yes.

13 MR. NEWMAN: Yes, Your Honor.

14 THE COURT: Thank you. You are free to
15 go. Please do not discuss your testimony with any other
16 witnesses. The rule has been invoked.

17 THE WITNESS: Okay. Thank you.

18 THE COURT: Call your next witness,
19 please.

20 MR. LESLIE: Judge, at this time the
21 State would offer State's Exhibit No. 138, the recording
22 of the 911 call, the business records affidavit for
23 which has been on file for more than 14 days and notice,
24 which has been given to defense counsel.

25 THE COURT: Any objections?

1 MR. NEWMAN: May we approach, Your Honor?

2 THE COURT: Sure.

3 (Discussion up at bench:)

4 MR. NEWMAN: It's more prejudicial than
5 probative. I assume --

6 THE COURT: Are you going to play all of
7 it?

8 MR. LESLIE: No.

9 MR. NEWMAN: So you're not playing the
10 unanimous guy who knows a lot?

11 MR. LESLIE: I think that would be
12 hearsay.

13 MR. NEWMAN: Well, I am so torn on that.
14 May I have just a moment to consult with co-counsel?
15 The fifth one is this guy that calls in and says "I know
16 something but I don't want to leave my name" and gets
17 into basically an argument with the dispatcher who
18 thinks if you're not going to leave your name, we're not
19 going to talk to you.

20 THE COURT: Well, you can offer that at
21 some point if you want. He is only offering the 911 of
22 Ms. Dirden.

23 MR. NEWMAN: If you're just offering for
24 Ms. Dirden, no objection to that.

25 (In the hearing of the jury)

1 THE COURT: 138 will be admitted.

2 MR. LESLIE: Permission to publish to the
3 jury.

4 THE COURT: You may.

5 (Playing State's Exhibit No. 138)

6 MR. LESLIE: State would rest, Your
7 Honor.

8 THE COURT: Ladies and gentlemen, why
9 don't we go ahead and take our morning break at this
10 time. We will be in recess until 10 till 11:00, please.

11 (Recess taken; outside presence of the
12 jury)

13 MR. NEWMAN: First the defense would move
14 for directed verdict at this point. We don't believe
15 that all the elements of the case have been proven or
16 that Mr. Caldwell has been identified as the person
17 involved in this.

18 THE COURT: That motion will be denied.

19 MR. NEWMAN: May we have a few moments to
20 discuss with him his options?

21 THE COURT: I just want to make sure we
22 are dealing with the charge issue.

23 MR. NEWMAN: We are, Your Honor. We're
24 looking at it. We do have that case available that
25 basically --