

1                   You can have a seat, please.

2                   THE WITNESS: Thank you.

3                   THE COURT: You may proceed.

4                   MS. HARVEY: Thank you, Your Honor.

5                                   **JILL DUPRE,**

6                   having been first duly sworn, testified as follows:

7                                   **DIRECT EXAMINATION**

8                   **BY MS. HARVEY:**

9                   Q.    Would you tell the jury what your name is?

10                  A.    Yes. Good morning. My name is Jill Dupre.

11                  Q.    And Ms. Dupre, how are you employed?

12                  A.    I'm employed as a firearms examiner with the  
13 Harris County Institute of Forensic Sciences.

14                  Q.    How long have you been a firearms examiner with  
15 the Harris County Institute of Forensic Sciences?

16                  A.    I was originally with the sheriff's department,  
17 but since March of this year we are now -- it's the same  
18 job, essentially, but we are now with the institute.  
19 So, between the sheriff's department and the institute,  
20 I've been approximately 12 years.

21                  Q.    What is your educational background?

22                  A.    My formal education includes a bachelor's  
23 degree in microbiology. As part of my education with  
24 the -- as a firearms examiner, I was selected one of ten  
25 students to attend the Bureau of Alcohol, Tobacco,

1 Firearms, and Explosives National Firearms Examiner  
2 Academy. Essentially, it's a one-year intensive  
3 training with the HCI, specifically in the field of  
4 firearms.

5 Q. Do you keep up with any advances in firearms  
6 technology or changes in the science of firearms  
7 examination?

8 A. Yes. And there's not a whole lot of changes  
9 that go on in this particular discipline. It's very  
10 hands-on.

11 Q. Have you testified before in court as an expert  
12 in firearms?

13 A. Yes, I have.

14 Q. And is that on few or many occasions?

15 A. Many.

16 Q. Were you asked to do a firearms analysis of  
17 some evidence in the case where Ms. Dinanno is the  
18 defendant?

19 A. Yes.

20 Q. And when we talk about the evidence that was  
21 submitted -- actually, before we even go there, can you  
22 explain to the jury the basic functioning of a firearm?

23 A. Certainly. There are two main categories of  
24 firearms. There are long guns, which include shotguns  
25 and rifles, and handguns. Handguns include your

1 semiautomatic pistols, as well as your revolvers.

2           Specifically, with regard to revolvers,  
3 consider the old west cowboy type of firearm. You have  
4 a cylinder that rotates. The ammunition is placed into  
5 the cylinder. With each pull of the trigger, the  
6 cylinder position rotates. So, the next cylinder  
7 position that's in line with the chamber of the firearm,  
8 when you pull the trigger, the cartridge is expended.

9           Q. And when we talk about guns in general, can you  
10 explain to the jury the mechanics of a bullet?

11           A. Certainly. I brought something that will  
12 assist, some demonstrative pieces of evidence. This is  
13 a cartridge. A cartridge is essentially a complete unit  
14 of ammunition, which is composed of the housing or the  
15 cartridge case itself, the bullet or projectile, the  
16 primer, and then inside the cartridge case would be your  
17 gunpowder. So, if this is a cartridge, this is the  
18 bullet or projectile, and this is the cartridge case  
19 (indicating).

20           Q. In this particular case, were you asked to  
21 examine a revolver?

22           A. Yes, I was.

23           Q. If we can take a look here at what has  
24 previously been admitted as State's Exhibit 66. Is that  
25 the same revolver that you examined in conjunction with

1 this case (indicating)?

2 A. Yes, it is.

3 Q. And how do you know that?

4 A. Each piece of evidence that comes into the  
5 laboratory is assigned a unique laboratory number in  
6 addition to a unique identifier for that specific piece  
7 of evidence. And in this case, for reference, the  
8 firearms laboratory number associated with this piece of  
9 evidence is 11-0457. It is listed as Item 4. And my  
10 initials are on the barrel of this particular piece of  
11 evidence, which is also State's Exhibit No. 66.

12 Q. And is that what we see written there in kind  
13 of a silvery pen (indicating)?

14 A. That is correct.

15 Q. Were you also asked to examine a number of  
16 projectiles in this case?

17 A. I was asked to look at some other pieces of  
18 evidence, yes.

19 Q. And the other pieces of evidence, I'm showing  
20 you what has been marked as State's Exhibits 83, 78, 67,  
21 53, 56, 68, 82, 71, and then, also, State's Exhibits  
22 Nos. 111 and 112 (indicating).

23 A. And, yes, I do recognize them.

24 Q. And how do you recognize them?

25 A. Again, on each individual outer container --

1 and for reference, for this particular explanation,  
2 what is the container that has been marked State's  
3 Exhibit No. 71, again, the unique laboratory number  
4 assigned to this piece of evidence is 11-0457. This is  
5 listed as Item No. 5. And Item No. 5 corresponds to  
6 Item No. 5 on the evidence submission form.

7 Q. Now, with respect to the revolver itself, did  
8 you test the revolver for proper functioning?

9 A. Yes, I did.

10 Q. And did it function as expected when fired?

11 A. Yes, it did.

12 Q. Can you talk to us about how a -- about how a  
13 revolver fires? Is there more than one way to do it and  
14 what does the hammer have to do with firing a revolver?

15 A. Again, with a -- this is, again, a handgun,  
16 specifically a revolver. Again, think of your old  
17 cowboy firearms. This portion here where I'm pointing  
18 to now is called the cylinder. And in the cylinder, the  
19 back of it, you load the cartridges. So, in this  
20 particular case, this capacity of this cylinder is six.  
21 So, that means there will be six cylinder positions and  
22 you'll put one cartridge in each of those openings.  
23 Again, holding up the back of the firearm, you can see  
24 several of the holes there. And that's where the  
25 cartridges would be placed inside each of those cylinder

1 positions (indicating).

2           This particular firearm, you can cock the  
3 hammer and it's essentially you're pulling back this  
4 portion of the firearm. This is an actual firing  
5 mechanism, the firing pin. You can pull it back. When  
6 you pull the trigger, the hammer will fall forward.  
7 That's called single-action. Because one pull of the  
8 trigger causes one action. That's the -- the hammer  
9 itself firing forward and discharging a cartridge. The  
10 bullet would go down the muzzle of the barrel. In a  
11 revolver, the cartridges stay in the cylinder. So, the  
12 cartridges would remain in the cylinder in their various  
13 positions. This firearm also can fire double-action.  
14 And that's essentially the hammer is in a resting  
15 position, you pull the trigger, the hammer cocks, and  
16 fires forward. So, one pull of the trigger causes two  
17 actions to occur (indicating).

18           Again, the bullet would exit down the  
19 muzzle of the barrel and the fired cartridge would stay  
20 in the cylinder until which time the operator manually  
21 unloads the cartridges.

22           Q. And when we're talking about the difference  
23 between single-action and double-action, is there a  
24 difference in the way you pull the trigger?

25           A. When you pull the trigger in single-action, the

1 hammer is actually back more towards the rear of what's  
2 called the trigger guard here (indicating). In  
3 double-action, the trigger and the hammer are more in  
4 the most forward position.

5 Q. Do both single-action and double-action firing  
6 require the same force to pull the trigger?

7 A. No, they do not.

8 Q. And can you explain what the difference is?

9 A. Again, in a single-action, part of the work is  
10 done for you. The hammer is in a rearward or back  
11 position. It doesn't take as much pressure to pull the  
12 trigger to cause the hammer to fall forward. In  
13 double-action, it takes a lot more force to bring that  
14 hammer back and cock it and for it to fall forward.

15 Q. Now, was this specific firearm tested for  
16 trigger-pull force?

17 A. Yes.

18 Q. And what is the trigger pull on this firearm if  
19 it is fired in single-action, I guess with the hammer  
20 already being pulled back? What is the trigger-pull  
21 force required?

22 A. The force required for this particular firearm  
23 measuring it in the single-action was 4-and-a-quarter  
24 pounds.

25 Q. And what -- can you explain to the jury what

1 that means? What does it mean that it takes  
2 four-and-a-quarter -- did you say four-and-a-quarter?

3 A. Four-and-a-quarter, yes.

4 Q. Four-and-a-quarter.

5 -- four-and-a-quarter pounds worth of  
6 force to fire?

7 A. If you think of taking the old type of soda  
8 cans that have the little pop tab on it, you can take --  
9 where the tab stays on, so those old soda cans where you  
10 can take your finger and you can just pop open the top,  
11 that's about the force. So, just popping a soda, it  
12 runs anywhere between 5 and 6 pounds. So, your finger  
13 just pulling that soda can top open, is actually a  
14 little less than what it -- the amount of force that was  
15 required to pull this trigger, which was measured to be  
16 4-and-a-quarter pounds in the single-action.

17 Q. And what was the trigger-pull force required  
18 for a double-action firing?

19 A. Twelve pounds.

20 Q. And is there some analogy you can tell the jury  
21 in terms of what -- what a 12-pound force would require?

22 A. In a lot of soda cans, if you pop the top and  
23 take the rest of the top off, that -- we've done a  
24 couple of like very informal measurings around the  
25 lab -- and that's about 9, approximately 9 pounds. So,



1 it would be more.

2 Q. So, more force than to pull the new-style soda  
3 can pop top off the top?

4 A. Correct, approximately.

5 Q. In terms of the additional items that you  
6 tested, did you look at a number of bullets in this  
7 case?

8 A. I did.

9 Q. And specifically, how many bullets did you look  
10 at?

11 A. Six.

12 Q. And of the bullets that you looked at, how many  
13 of those -- when we say bullets, are we talking about  
14 fired bullets or are we talking about -- because  
15 cartridges would be different, yes?

16 A. Correct. We're talking about the actual  
17 projectile.

18 Q. After it has been fired?

19 A. Correct.

20 Q. Now, is there a way to take fired bullets and  
21 do a comparison when you have the weapon that fired them  
22 to see if, in fact, the weapon that you're holding is  
23 the same weapon that fired the bullet?

24 A. Yes.

25 Q. Did you attempt to do an analysis of that in

1 this case?

2 A. Yes, I did.

3 Q. And were you able to reach any conclusions in  
4 this case with respect to whether the fired bullets that  
5 were recovered and submitted to you were fired from the  
6 revolver that was also submitted to you?

7 A. Yes.

8 Q. And what conclusions did you reach?

9 A. My conclusions were of the evidence, the fired  
10 projectiles and fragments, State's Exhibit No. 71, which  
11 is my Exhibit No. 5; State's Exhibit No. 7, which is --  
12 I'm sorry -- my Exhibit No. 7, State's Exhibit No. 53;  
13 State's Exhibit No. 83, my Exhibit No. 9; State's  
14 Exhibit No. 82, my Exhibit No. 10, I was able to  
15 conclude that those are consistent with being 45-caliber  
16 class bullets. However, the condition of the bullets  
17 and the condition of the markings, I was not positively  
18 able to associate those as having been fired from  
19 State's Exhibit No. 66, which is the revolver, but I was  
20 also not able to exclude it as -- either include it or  
21 exclude it as being the source that fired those  
22 previously-mentioned State exhibits.

23 Q. So, you were able to determine, if I'm  
24 understanding correctly, that those items, it was  
25 possible that they were fired from that weapon; is that

1 correct?

2 A. It was possible, but I --

3 Q. But -- go ahead, finish.

4 A. It was possible, but it's also in the reverse.  
5 I couldn't make the positive association that it was or  
6 was not. I was inconclusive.

7 Q. With respect to State's -- or I'm sorry -- your  
8 Item Nos. 6 and 8, which are both lead core fragments  
9 that you examined -- and can you explain to the jury  
10 what a lead core fragment is?

11 A. Certainly. With reference to our projectile or  
12 a bullet, think of a bullet as, essentially, an M&M.  
13 The outside of the M&M is the jacket portion. The major  
14 portion of the bullet is the chocolate that's inside.  
15 Well, that's what I have. I have the chocolate. I  
16 don't have the jacket. So, the jacket is just kind of a  
17 coating. And what I have on what's been marked State's  
18 Exhibit No. 56, my Exhibit No. 6, is just a little piece  
19 of my M&M lead. I couldn't do anything to that.  
20 State's Exhibit No. 78 is like the coating of that M&M  
21 all melted, but I still have the chocolate inside.  
22 Again, I wasn't able to do anything with that.

23 Q. Were you also asked to examine cartridge cases  
24 that were removed from the gun at the time it was  
25 collected?

1           A.    Yes.

2           Q.    And what specifically -- what specifically was  
3 submitted to you in terms of the items that were removed  
4 from the gun?

5           A.    Those items are -- have been marked State's  
6 Exhibit No. 67.  Those are going to be our Exhibit  
7 No. 4-A, as in apple.  Those are four fired .45  
8 cartridge cases.  And what has been marked State's  
9 Exhibit No. 68, which is -- correlates to Exhibit  
10 No. 4-B are two unfired cartridge cases totaling six.  
11 And --

12          Q.    Go ahead.

13          A.    And the cylinder capacity is six.  And per the  
14 information that we were given, those were recovered at  
15 some point from State's Exhibit No. 66.

16          Q.    The two cartridges that were live that were  
17 recovered from the gun, can you tell us anything  
18 specifically about those two pieces of evidence?  What  
19 kind are they?

20          A.    They are marked Winchester and they are known  
21 as Winchester silver-tip .45 auto cartridges.

22          Q.    With respect to the four cartridge casings that  
23 were removed, what, if anything, can you tell us about  
24 those cartridge casings?

25          A.    Those also are marked Winchester .45 auto

1 cartridge cases. And those are fired.

2 Q. When you have a cartridge casing that is still  
3 in -- still inside the cylinder of the revolver, can you  
4 tell whether or not that cartridge casing was fired from  
5 that revolver?

6 A. Yes, you can. In cases in our laboratory  
7 procedure, if they were recovered from the cylinder,  
8 they're assumed to have been fired in that cylinder.  
9 So, we don't do a comparison.

10 Q. When there are cartridge casings or in the  
11 event that there were cartridge casings found outside of  
12 a gun, specifically a revolver where you have cartridge  
13 casings, is there any analysis you can do on cartridge  
14 casings outside of the gun to see if they were, in fact,  
15 fired in that specific gun?

16 A. Yes.

17 Q. And what is that analysis?

18 A. To back up, in order to do that analysis --  
19 it's called a microscopic comparison analysis. And  
20 essentially, if you have the firearm, you are going to  
21 take like ammunition and do a series of test-fires. And  
22 then that's essentially taking laboratory stock  
23 ammunition, using the submitted firearm, test-firing,  
24 and collecting the test-fired cartridge cases, as well  
25 as the test-fired bullets, which you'll be using later

1 for comparison purposes. You have your known, which is  
2 your firearm; your known exemplars, which are your known  
3 cartridge cases that you knew -- you know came from that  
4 firearm; and your known bullets. You are going to take  
5 your test-fires and you're going to look at the markings  
6 that are on the cartridge case area, and this area is  
7 called the head stamp area and the primer. We're going  
8 to look at the marks specifically in that area. Because  
9 those are the marks on a cartridge case that's being  
10 shot in a revolver that are going to leave marks from  
11 the firing process.

12           We will take our knowns, and, again, have a  
13 series of knowns, and we are going to inner compare --  
14 we're going to inner compare all of those markings from  
15 the firings that are on the primer to see if, one, do  
16 they reproduce, and how well they reproduce. Once we've  
17 established reproducibility, then we are going to take  
18 our knowns that we made from the submitted firearm and  
19 we're going to compare those using a microscope, a  
20 comparison microscope, and compare those markings.

21           And, essentially, a comparison microscope  
22 is two microscopes that are joined together. And so, we  
23 can put one piece of evidence under one microscope stage  
24 and another piece of evidence on another microscope  
25 stage and then we can look and superimpose the markings

1 to see do they reproduce, do they have the same spacial  
2 relationship. So, think of it like a barcode. You have  
3 two barcodes. Do your barcodes -- can you line those  
4 barcodes up? And that's essentially what we do.

5 Q. And how unique is that barcode to a specific  
6 firearm?

7 A. It is unique.

8 Q. So, do -- do any two guns have the same -- the  
9 barcode that you're referring to?

10 A. No, they do not. They may have similar -- they  
11 may have a few lines that mark up, but, again, you're  
12 looking for the consistent reproducibility of those  
13 markings. So, those are unique to that particular  
14 firearm.

15 Q. So, in the -- in the instant case, is it  
16 State's Exhibit 1 -- 111, is that the casings?

17 A. Yes.

18 Q. Okay. So, in State's Exhibit 111 -- can you  
19 tell the jury what is in State's Exhibit 111?

20 A. What has been marked State's Exhibit 111  
21 corresponds to Item No. 14-A. And in there, in 14-A are  
22 19 fired cartridge cases.

23 Q. And were you able to do an analysis of those  
24 fired cartridge cases to determine whether or not they  
25 were fired in the revolver that was submitted that is

1 State's Exhibit 66?

2 A. Yes.

3 Q. And what conclusions were you able to draw?

4 A. That the fired 19 cartridge cases that are  
5 inside what's been marked State's Exhibit 111  
6 corresponding to Item 14-A, those were -- at one time  
7 all have been fired from State's Exhibit No. 66, which  
8 is the submitted revolver.

9 Q. So, in a case where the revolver is found  
10 separate from the cartridge casings, that box of  
11 cartridge casings, if we know who owns the box of  
12 cartridge casings, do we know something about his  
13 relationship to the gun that was recovered?

14 A. That's -- I wouldn't have knowledge of that  
15 information.

16 Q. Okay. If I go to your house and recover a  
17 bunch of cartridge casings and I can tell that they  
18 previously have been in a gun, do we know that at some  
19 point those cartridge casings and that gun were  
20 together?

21 A. Yes. That's, again, assuming that I was  
22 able -- or whomever was able to make the comparison,  
23 yes.

24 Q. Yes. And that comparison was done in this  
25 case, correct?



1           A.    That is correct.

2           Q.    Were you also asked to examine -- have we  
3 covered everything that you examined in that -- with  
4 respect to that firearm?

5           A.    State's Exhibit No. 112 and M.E.-1 we have not  
6 spoken about.

7           Q.    Okay.  So, if we're talking about State's  
8 Exhibit 112, what is inside of State's Exhibit 112?

9           A.    State's Exhibit 112, the container is -- also  
10 corresponds to the unique Item Identifier No. 13, and  
11 that is four unfired cartridges.

12          Q.    Are those cartridges the same type that would  
13 go in the revolver that is State's Exhibit 66?

14          A.    They are the same caliber, yes.

15          Q.    Can you make any further analyses of State's  
16 Exhibit 1?

17          A.    12?

18          Q.    12.

19          A.    That is the same type or consistent with some  
20 of the evidence items that were submitted in this  
21 particular case.

22          Q.    With respect to Item M.E.-1, which was -- well,  
23 tell me, where does Item M.E.-1 come from?

24          A.    Item M.E.-1 was submitted -- was picked up from  
25 autopsy.

1 Q. And when you say "autopsy," the autopsy of  
2 Henry Breaux?

3 A. That is the name on this form, yes.

4 Q. Okay. So, the item that was picked up at --  
5 that was recovered during the autopsy, is -- are there  
6 any comparisons or conclusions you can make with respect  
7 to that item?

8 A. That particular evidence item, again, think of  
9 it -- again, going back to my analogy of the M&M, the  
10 coating is -- the hard coating is gone and most of the  
11 chocolate is gone. You just have a little chocolate  
12 fragment. That's essentially what M.E.-1 is equal to.

13 Q. Is there any comparison or any analyses that  
14 you can do with respect to that little chocolate  
15 fragment?

16 A. No, I was not able to do anything.

17 THE COURT: Okay. We are going to take our  
18 mid-morning break at this time.

19 So, ladies and gentlemen, we -- I'm going  
20 to give you a break now. If you're hungry, feel free to  
21 go to the second floor and get a snack or a drink. We  
22 are going to try going to lunch a little later today at  
23 1:00 because I understand from the bailiff there was a  
24 lot of congestion and trouble even just getting out of  
25 the building. So, we think it will be more efficient to

1 wait till a little bit later to take our lunch break.

2 So, I just wanted to give you that heads-up. So, if  
3 you're hungry, you might want to get a snack now. Okay?

4 So, we'll take about a 20-minute break.

5 You may go with the bailiff.

6 (Recess)

7 (Open court, defendant and jury present)

8 THE COURT: Thank you. You may be seated.

9 Ms. Harvey, you may proceed.

10 Q. (By Ms. Harvey) So, was there a second gun that  
11 you were asked to look at in this case?

12 A. Yes, there was.

13 Q. And as we look at it, I'm showing you what's  
14 been marked as State's Exhibit 14. Is that the same gun  
15 that you examined in conjunction with this case  
16 (indicating).

17 A. Yes, it is. Again, I recognize it by the  
18 unique laboratory number that's written on this part of  
19 the slide, which is, for reference, 11-0457. This is  
20 Item No. 15. And then my initials.

21 Q. State's Exhibit 16, again, it has already been  
22 admitted into evidence. Did you use that or look at  
23 that in conjunction with your analysis in this case  
24 (indicating)?

25 A. Yes, I did.

1 Q. Does it also have a unique identifier on it  
2 that indicates to you that that's the item that you  
3 looked at?

4 A. Yes, it does. And that unique identifier is  
5 the same laboratory number, 11-0457. This is listed as  
6 Item 15-B. Again, my initials are on the packaging as  
7 well as the items contained inside. And for reference,  
8 it's State's Exhibit No. 16.

9 Q. And then if we look at State's Exhibits 15 and  
10 17, were you also asked to examine those items  
11 (indicating)?

12 A. Yes, I was.

13 Q. And State's Exhibit 18 (indicating)?

14 A. And, yes, I was.

15 Q. Okay. So, if we talk about the firearm itself,  
16 what can you tell us about that firearm?

17 A. This particular firearm is what is known,  
18 again, as a handgun. And, again, it's supposed to be  
19 fired from the hand. And this is also what's called a  
20 semiautomatic pistol.

21 Q. And what makes it a semiautomatic pistol rather  
22 than a revolver?

23 A. By definition, a semiautomatic pistol is the  
24 operator does some of the operations and the firearm  
25 itself, as the way it's designed, does the rest of the

1 operation. So, the operator will load the magazine. In  
2 this case, it's State's Exhibit No. 16, which references  
3 to unique identifier No. 15-B. The cartridges are  
4 loaded under spring tension. Think of it like the Pez  
5 candy dispenser. You pop up the head and the candy pops  
6 up. Well, essentially, the candy is loaded. Consider  
7 this as the Pez dispenser. Then the magazine is loaded  
8 into the magazine well. That's a manual operation. The  
9 operator will pull the slide back, which will load a  
10 cartridge. Again, your Pez dispenser, but it will pop  
11 up, the slide will move out of the way, the candy will  
12 pop up. And that candy will be -- or in this case, a  
13 cartridge will be fed into the chamber. And then the  
14 operator will pull the trigger, which will initiate the  
15 sequence of firing. That's what the operator does.

16           Now, the semiautomatic part of the  
17 semiautomatic pistol is when you fire, the bullet exits  
18 down the muzzle of the firearm. The cartridge case that  
19 the bullet was fired from has an extractor group. And  
20 that's this little cut-out area. The firearm will pull  
21 the fired cartridge case clear of the firing chamber.  
22 It will be thrown clear of the firearm. And then the  
23 next cartridge that's loaded in the magazine under  
24 spring tension will move up in sequence, the slide will  
25 move forward hitting the back of the cartridge and load

1 another unfired cartridge into the chamber. So, the  
2 operator, again, pulls the trigger and starts the  
3 sequence over again.

4 Q. Did you -- was this firearm submitted with  
5 ammunition?

6 A. Yes, it was.

7 Q. And what was it submitted with?

8 A. This firearm had what's been marked the  
9 container, State's Exhibit No. 15, unique identifier for  
10 this item is 15-A. It's an unfired Federal brand .380  
11 auto cartridge. Also, with this item you -- State's  
12 Exhibit No. 17, this is going to be unique identifier  
13 15-C, further subdivided into 15-C-1 and 2. 15-C-1 is  
14 an unfired Winchester brand .380 auto cartridge. And  
15 15-C-2 is one unfired Federal brand .380 auto cartridge.

16 Also submitted with this particular firearm  
17 is State's Exhibit No. 18, Item Identifier No. 16.  
18 Contained within are 15 unfired Winchester brand .380  
19 auto cartridges.

20 Q. And the ammunition that was submitted along  
21 with that firearm, is that the ammunition that will work  
22 in that firearm?

23 A. That is correct, yes.

24 Q. Did you test that firearm for proper  
25 functioning?

1           A.    Yes, I did.

2           Q.    And did it function as expected?

3           A.    Yes, it did.

4           Q.    Did you have any problem with that item  
5 jamming?

6           A.    I did not.

7           Q.    I want to, if we can, go back just for a second  
8 to all of the various fired fragments and bullets and  
9 jackets that we talked about in conjunction with the  
10 revolver and that were part of that analysis. I know  
11 we've got lots of pieces there, but are the number of  
12 pieces you have consistent with four bullets?

13          A.    It is possible.

14          Q.    And did you do a trigger-pull analysis on the  
15 semiautomatic weapon?

16          A.    I did.

17          Q.    And what were the results of your trigger-pull  
18 analysis for that weapon?

19          A.    This particular firearm, which is State's  
20 Exhibit No. 14, fires in the single-action mode. And  
21 the trigger pull that was measured for this particular  
22 firearm ranged from 13 to 14 pounds.

23                   MS. HARVEY: Pass the witness.

24                   THE COURT: Mr. Varela.

25                   MR. VARELA: Yes, ma'am.

**CROSS-EXAMINATION**

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**BY MR. VARELA:**

Q. Let's talk about State's Exhibit No. 66, which is the big revolver. Right?

A. I believe that is correct.

Q. Okay. That fires a 45-caliber ACP cartridge, right?

A. That is correct.

Q. That's a very common cartridge in this country and in much of the rest of the world, right?

A. Yes, it is.

Q. In fact, the .45 ACP was the U.S. military standard cartridge for decades?

A. Yes, that is correct.

Q. It's, I guess, what you call a famous Colt .45 automatic pistol cartridge?

A. That's what ACP stands for, Automatic Colt Pistol.

Q. Correct. And you've got a revolver that's chambered for that particular round?

A. That is correct, also.

Q. That's a little bit more unusual than a revolver would be chambered for an automatic pistol cartridge, right?

A. When I first got this, yes, that's exactly what



1 I thought.

2 Q. But, obviously, it's possible that you could  
3 chamber an automatic -- excuse me -- a revolver for any  
4 automatic pistol round?

5 A. You -- there are some things you have to do and  
6 that is not always the case. It's really dependent on  
7 what the firearm is chambered for, any safe  
8 alternatives, but this -- of the revolver that we're  
9 speaking of, which is State's Exhibit No. 66, I believe,  
10 unique identifier No. 4. This is actually chambered for  
11 the .45 ACP.

12 Q. Ordinarily, you will find a cartridge chambered  
13 for a revolver round in a revolver, correct?

14 A. That is correct, what -- excuse me -- what you  
15 would traditionally think, yes.

16 Q. You find a cartridge designed for automatic  
17 pistols would be chambered in an automatic pistol,  
18 right?

19 A. That's what you would normally think, that is  
20 correct.

21 Q. And there are differences in the shape of that  
22 cartridge case, which have to do with the functioning  
23 and the design of both different types of handguns,  
24 right?

25 A. And that is also true, yes.

1 Q. In this case, though, it's a Smith & Wesson  
2 revolver, correct?

3 A. That is correct, yes.

4 Q. Chambered for a Colt automatic pistol  
5 cartridge?

6 A. It's chambered for a .45 ACP or .45 auto, yes.

7 Q. And that pistol was made in considerable  
8 numbers, right?

9 A. Of the research that I did, approximately --  
10 and I'll paraphrase the numbers that I researched --  
11 approximately 300,000 were manufactured.

12 Q. So, while that's a little bit of a unique  
13 combination or an unusual combination, there's nothing  
14 particularly extraordinary about State's Exhibit 66,  
15 right?

16 A. That it was U.S. military and it was designed  
17 to fire the .45 ACP or .45 auto cartridge, yes.

18 Q. My question is -- I guess let me narrow it  
19 down. Exhibit 66 is not a pistol of extreme rarity  
20 then?

21 A. Now that, I don't know if I can answer.

22 Q. Okay. Let's talk about the cartridge. The  
23 Winchester cartridges that were recovered from State's  
24 Exhibit 66, are you familiar with those?

25 A. Yes.

1 Q. That's a Winchester silver-tip hollow point  
2 semiautomatic pistol cartridge, right?

3 A. That is correct, yes.

4 Q. Those were widely sold in the United States?

5 A. Yes, they are and have been and are still.

6 Q. It's a common cartridge and bullet combination  
7 for, say, law enforcement or self-protection work,  
8 correct?

9 A. That -- it's commercially available. As to  
10 whether it's strictly law enforcement or not, I can't  
11 say.

12 Q. But it's not a target type round, right?

13 A. No, it is not.

14 Q. And you can tell that by the shape and the  
15 construction of the bullet?

16 A. But you can use it to target shoot, yes, but  
17 it's not designed -- it's designed to be shot.

18 Q. Okay. Now, let's talk about the -- let's talk  
19 about the .380 pistol, which is, I think, State Exhibit  
20 No. -- what?

21 A. 14.

22 Q. Okay. That, obviously, uses a different  
23 cartridge than the State Exhibit 66 revolver, correct?

24 A. Yes. It's a different caliber, correct. It  
25 would be the difference between, say, a quarter and a

1 nickel. The diameter itself is different, the bullet  
2 shape is different, and the bullet weight is different.

3 Q. So, a cartridge for a .380 ACP, which is what  
4 that .380 pistol shoots, correct?

5 A. .380 ACP or .380 auto, they're synonyms.

6 Q. Okay. So, would it be a .380 automatic Colt  
7 pistol, right?

8 A. That's what ACP stands for.

9 Q. Let's just -- for short, let's call them the  
10 .45 and the .380. Okay? You can't shoot a .380  
11 cartridge out of a .45 revolver like State Exhibit 66?

12 A. Weird things have happened that I've seen in my  
13 career, but I would not expect it to be a viable option.

14 Q. In fact, it might be a dangerous thing to try  
15 to do, correct?

16 A. The .380 is a little bit less power than the  
17 .45. It's highly not recommended that you shoot the  
18 incorrect ammunition in a particular firearm.

19 Q. And it would be impossible to shoot the .45  
20 ammo through the .380 automatic pistol, right?

21 A. That is correct, yes.

22 Q. The cartridge is simply too big to even chamber  
23 in the .380 pistol?

24 A. That is correct, yes.

25 Q. How many rounds did you fire during your test

1 of the .380?

2 A. I did four.

3 Q. Now, we talked about jamming. I suppose some  
4 individual designs of pistols are more reliable than  
5 others, correct?

6 A. Boy, I'm not sure how to answer that question.  
7 If it's -- if the firearm is used and the proper  
8 ammunition for it, then they all should be fairly  
9 reliable.

10 Q. Well -- okay. But given individual situations,  
11 you don't know how, for example, a firearm has been  
12 cared for, correct, over its life?

13 A. No. That is true.

14 Q. You don't know how many rounds have been  
15 previously fired, right?

16 A. That is correct.

17 Q. You don't know if there might have been some  
18 defect from the factory that's now come to light, right?

19 A. We actually do check the safety recalls as a  
20 regular basis of firearms before we test-fire them  
21 because safety is our first concern.

22 Q. That's not what I asked you. I asked you: You  
23 don't know that there might be a defect in the  
24 manufacture of a particular firearm that would come to  
25 light in the form of a malfunction after so many rounds

1 fired, correct?

2 A. Again, we do check the safety recalls that the  
3 manufacturers put out. And as part of our overall  
4 examination of the firearms, we do take some time to  
5 look at the -- you know, are the safeties operational,  
6 is there any crack in the barrel, is there a crack in  
7 the slide. So, we essentially are going to do some --  
8 spend some time looking at the firearm, an overall  
9 cursory examination to see, one, if it's safe to fire.  
10 And, again, we also check safety recalls that are put  
11 out by the manufacturers.

12 Q. But all of those factors I'm talking about  
13 would impact on the reliability of a particular firearm,  
14 correct?

15 A. That the particular manufacturer had put out?

16 Q. I'm just talking about the gun. Let's forget  
17 about safety recalls that the manufacturer may have put  
18 out or may not have. You have a pistol. Factors that  
19 impact the reliability are how it's been cared for,  
20 correct?

21 A. Again, yes.

22 Q. We call that maintenance, right?

23 A. Certainly, yes.

24 Q. How many rounds previously fired, right?

25 A. That would be something I wouldn't know.

1 Q. Well, if you fired a pistol 400 times, it's  
2 just getting broke into it, right?

3 A. Again, I -- I don't know. I've heard different  
4 things.

5 Q. And if you fire, say, 40,000 rounds through a  
6 pistol, you might say, you know, something might be  
7 wearing out in there?

8 A. There is a possibility in that case, yes.  
9 Again, that's why we spend some time prior to shooting  
10 to make sure that it is safe to fire.

11 Q. There may be a defect in the pistol that would  
12 impact its reliability, correct?

13 A. That is a possibility. Again, we spend some  
14 time looking at the safeties, examining the cursory  
15 examination of the firearm, is the firing pin working  
16 properly, is there any kind of bore obstruction. We  
17 spend some time looking at that prior to shooting, yes.

18 Q. Now, firing four rounds through a pistol is  
19 really not a fair test of its ultimate reliability, is  
20 it?

21 A. It's a fair test of its operability, yes.

22 Q. No, ma'am. I didn't ask you about operability.  
23 I asked you about reliability. Would you trust your  
24 life to a pistol you only test-fired four times?

25 MS. HARVEY: Objection to relevance, Judge.

1 Argumentative.

2 THE COURT: What is the relevance, Counsel?

3 MR. VARELA: Let me rephrase that question.

4 THE COURT: Sustained as to argumentative.

5 MR. VARELA: All right.

6 Q. (By Mr. Varela) You fired the .380 four times,  
7 correct?

8 A. Yes, that is correct.

9 Q. And you pulled the trigger four times, right?

10 A. That is also correct.

11 Q. And you got four bangs?

12 A. That is also correct.

13 Q. And four bullets going down range, right?

14 A. Yes.

15 Q. And four cartridge cases ejected?

16 A. That is correct, yes.

17 Q. You decided that the gun was operable based on  
18 firing it four times?

19 A. Yes, I did.

20 Q. Would you allow, though, that there may be a  
21 tendency of a given pistol to malfunction that wouldn't  
22 manifest itself in the firing of only four rounds?

23 A. That is always a possibility, but it could be  
24 10 rounds, it could be 5,000. That's something I don't  
25 know and I wouldn't know.



1 Q. So, if you test for some sort of practical  
2 reliability of a pistol, you might want to fire it more  
3 than just four pulls of the trigger, correct?

4 A. I had no problem firing the correct ammunition  
5 four times with this particular firearm. Had I  
6 suspected something, I would probably have fired it  
7 more. But, no, I didn't have any issues with this  
8 particular firearm.

9 MR. VARELA: Pass the witness.

10 MS. HARVEY: Nothing further, Judge.

11 THE COURT: May this witness be excused?

12 MS. HARVEY: Yes, Your Honor.

13 THE COURT: Thank you, ma'am. You may step  
14 down.

15 THE WITNESS: Thank you so much. Thank  
16 you.

17 THE COURT: Call your next witness.

18 MS. HARVEY: State calls Deputy Clayton.

19 THE BAILIFF: This witness has not been  
20 sworn, Judge.

21 THE COURT: Thank you, sir. If you will  
22 step forward, the clerk will administer the oath.

23 (Witness sworn)

24 THE COURT: You may proceed, Ms. Harvey.

25 MS. HARVEY: Thank you, Your Honor.