

1 (Open court, defendant and jury present)

2 THE COURT: Good morning and welcome back.

3 Good to see you.

4 JURORS: Good morning (in unison).

5 THE COURT: Thank you.

6 May we have order, please, in the

7 courtroom?

8 Who will be the next witness for the State?

9 MS. BRUCHMILLER: The State calls Jill

10 Dupre.

11 (Witness sworn)

12 THE COURT: Thank you. Please have a seat.

13 You may proceed.

14 MS. BRUCHMILLER: Thank you, Your Honor.

15 **JILL DUPRE,**

16 having been first duly sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 **BY MS. BRUCHMILLER:**

19 Q. Good morning.

20 A. Good morning.

21 Q. Will you please state your full name for the  
22 jury?

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

24 Q. And will you spell your last name for the court  
25 reporter?

1           A.    Yes.  It's spelled D, as in David, u-p-r-e, one  
2 E.

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

4           A.    I'm employed as a firearms examiner with the  
5 Harris County Sheriff's Office.

6           Q.    How long have you been employed as a firearms  
7 examiner?

8           A.    I have been an examiner since 1998, of which  
9 since 2002 with the Harris County Sheriff's Office.

10          Q.    Who were you with prior to joining the  
11 sheriff's office?

12          A.    Prior to my employment with the sheriff's  
13 office, I was with the City of Houston.

14          Q.    And how did you become a firearms examiner?

15          A.    I sort of fell into the forensic field.  It was  
16 not my first choice of employment.  I had coached  
17 swimming for a number of years.  And one day on the pool  
18 deck, one of my student's parents came up to me and said  
19 that I'm looking for somebody to help me out in my  
20 private forensic laboratory in the Dallas Fort Worth  
21 area.  And I was working just part-time as a swimming  
22 coach.  And I said sure.  And so, I kind of just stuck  
23 with it after that.

24          Q.    And do you need to have any sort of specific  
25 educational background to go into being a firearms

1 examiner?

2 A. Yes. You need to have some sort of a science  
3 degree?

4 Q. Do you hold a science degree?

5 A. I do.

6 Q. And what kind of training have you received in  
7 order to do your position?

8 A. Besides my formal education, which is a  
9 bachelor's degree in microbiology, I had extensive  
10 on-the-job training. As part of my training with the  
11 sheriff's office, I was selected a number of years ago  
12 to a new program that was sponsored by the Bureau of  
13 Alcohol, Tobacco, Firearms, and Explosives. And they  
14 selected ten students from across the country to train  
15 with them exclusively in the field of firearms for one  
16 year.

17 Q. What did you do during that year?

18 A. During that time, it was divided into different  
19 segments. The first segment, you were at your home  
20 agency where you were assigned reading assignments, you  
21 were given -- you had to do written reports, you had to  
22 turn in the reports, your reports were graded. Then the  
23 second segment, which was approximately not quite five  
24 months, you were back up with the national laboratory  
25 with the Bureau of Alcohol, Tobacco, Firearms, and

1 Explosives. During that time, they had experts in the  
2 field come in and give you the hands-on training,  
3 lectures, which were ammunition manufacturers. We  
4 toured firearm manufacturers, a lot of hands-on type of  
5 training.

6           The third segment of your training program,  
7 you're back to your laboratory and you were assigned  
8 five cases to work, as well as do an independent  
9 research project. At the final phrase of that year-long  
10 training program, you went back up to the ATF  
11 laboratory. And then you did a segment where you had to  
12 present your independent research to a panel of experts  
13 in the field, sort of like an oral defense. And then we  
14 also did a segment on a mock trial where you had to  
15 defend your -- one of your cases, or actually we  
16 defended four cases that we were assigned from ATF.

17           Q. You said that training had occurred twelve  
18 years ago; is that correct?

19           A. That is correct, yes.

20           Q. Have you received additional training during  
21 that time?

22           A. Yes. As apart of being employed with the  
23 sheriff's office, you have to have a minimum of 20 years  
24 hours in your field.

25           Q. Have you met that minimum every year?

1           A.    Yes, I have.

2           Q.    Tell me a little bit about your lab and how  
3 it's set up.  How many examiners are there?

4           A.    There's approximately six examiners in our  
5 laboratory currently.

6           Q.    And are there different divisions within your  
7 laboratory or does each examiner work on the same areas?

8           A.    The six examiners in our laboratory, we're all  
9 assigned off to do independent casework.  And,  
10 essentially, that means that you -- when evidence comes  
11 into the laboratory, you are assigned a case to work.  A  
12 case can consist of a firearm, a case can consist of  
13 a -- can also consist of just fired evidence, or a case  
14 can consist of either and/or both firearm and fired  
15 ammunition components to compare.

16          Q.    How many tests do you perform on firearms,  
17 let's say, in a period of a month?

18          A.    Being one of the more senior examiners, I  
19 handle more of the complicated case.  So, if I do eight  
20 to ten cases a month, that's pretty good.

21                   MS. BRUCHMILLER:  Your Honor, may I  
22 approach the witness?

23                   THE COURT:  Granted.

24          Q.    (By Ms. Bruchmiller) I'm handing you what's  
25 been pre-marked as State's Exhibits 33 and 34.  Will you

1 review these exhibits and let me know if you're familiar  
2 with what is contained in each?

3 A. Yes.

4 Q. And are these exact copies of an original  
5 report that you compiled?

6 A. Yes, they are.

7 Q. And were these reports made at or near the time  
8 of your testing?

9 A. Yes, it was.

10 Q. And the information contained in State's  
11 Exhibit No. 33 and 34, was it documented by yourself?

12 A. Yes, it was.

13 Q. And have these been altered in any way?

14 A. No, they have not.

15 Q. Are these kept in the regular course of  
16 business?

17 A. Yes, they are.

18 MS. BRUCHMILLER: At this time, I offer  
19 State's Exhibits 33 and 34 and tender to opposing  
20 counsel for any objection.

21 **(State's Exhibit No. 33 and 34 Offered)**

22 MR. OWMBY: No objection, Your Honor.

23 THE COURT: Admitted.

24 **(State's Exhibit No. 33 and 34 Admitted)**

25 Q. (By Ms. Bruchmiller) Now, Ms. Dupre, did you do

1 testing on a Smith & Wesson 9-millimeter Luger pistol?

2 A. Yes, I did.

3 Q. Okay.

4 MS. BRUCHMILLER: May I approach the  
5 witness?

6 THE COURT: Have the bailiff check it this  
7 morning.

8 THE BAILIFF: Was it checked yesterday?

9 MS. BRUCHMILLER: Last Friday. We received  
10 it from the bailiff this morning.

11 THE COURT: I always feel better if you let  
12 them look at it.

13 MS. BRUCHMILLER: Absolutely, Your Honor.

14 THE BAILIFF: It's cleared, Your Honor.

15 THE COURT: Okay. Thank you.

16 Q. (By Ms. Bruchmiller) I'm handing you what's  
17 been admitted as State's Exhibit 16. Are you familiar  
18 with this (indicating)?

19 A. Yes, I am.

20 Q. Okay. Now, have you done testing on this  
21 specific item?

22 A. Yes, I have.

23 Q. How do you know that you have done testing on  
24 that item?

25 A. In my handwriting the slide -- on the left-hand

1 side of the slide is a unique laboratory number that the  
2 laboratory has assigned to this particular piece of  
3 evidence associated with this case. And for reference,  
4 that is Laboratory No. 11-30449. The individual item  
5 number is number four and it has my initials on the  
6 slide.

7 Q. Now, do you write down or document the  
8 individual lab number on each firearm that you conduct  
9 testing on?

10 A. Yes.

11 MS. BRUCHMILLER: Your Honor, if I may  
12 publish State's Exhibits 33 and 34?

13 THE COURT: Granted.

14 MS. BRUCHMILLER: For the record, I'm  
15 displaying State's Exhibit 34.

16 Q. (By Ms. Bruchmiller) Ms. Dupre, you just read  
17 us the lab number. Is that the same lab number on the  
18 firearm that you have with you at the witness stand and  
19 the same lab number that is on State's Exhibit 34?

20 A. Yes, it is.

21 Q. And is the gun pictured in State's Exhibit 34  
22 the same one that you have with you?

23 A. It is.

24 Q. In fact, is this the lab number in the picture  
25 on the right-hand side?



1           A.    Yes, it is.   Left-hand side.

2           Q.    Can you tell us a little bit about that  
3 specific firearm?

4           A.    This specific firearm is made by the  
5 manufacturer Smith & Wesson.   It has a model No. SW9VE.  
6 And it is chambered for a 9-millimeter Luger.   It's a  
7 semiautomatic pistol.

8           Q.    What does it mean to be a semiautomatic pistol?

9           A.    A semiautomatic pistol essentially means one  
10 pull of the trigger causes one cartridge to discharge.  
11 Part of that process of the firing sequence, the  
12 expanded gases will cycle the firearm itself to include  
13 the extraction and ejection of a fired cartridge case as  
14 well as the chambering of the next round into the  
15 chamber.   And, again, you can pull the trigger and start  
16 the firing sequence again.

17          Q.    And let me stop you.   When you say a cartridge  
18 casing, is that a bullet or is that different from what  
19 we know to be a bullet?

20          A.    I brought some evidence items that will help  
21 for demonstrative purposes.   What's depicted here is a  
22 cartridge.   It's a complete unit of ammunition, which is  
23 composed of a bullet, a cartridge case, and then  
24 interior would be the gunpowder.   And a cartridge is the  
25 housing or the casing that would hold the bullet.

1           Q.    So, after a cartridge is fired, is it accurate  
2 to say a casing would be left?

3           A.    A bullet would go down range from the muzzle  
4 and the cartridge case is essentially ejected out from a  
5 semiautomatic pistol.

6           Q.    Now, specifically for this Smith & Wesson  
7 9-millimeter that we have here, is it manually loaded or  
8 does it require a magazine or clip full of cartridges in  
9 order to fire?

10          A.    You actually can load either way.  A magazine  
11 is essentially a component that you can put cartridges.  
12 And assume -- let's pretend this is a cartridge as well.  
13 You load them one on top of the other.  The magazine is  
14 then inserted into the base or the grip or the magazine  
15 well area.  From there, you can pull the slide back.  As  
16 you pull the slide back, the cartridge is loaded in the  
17 magazine under spring tension.  As the slide moves  
18 rearward, it's going pick up the back of the cartridge  
19 out of the magazine and feed it into the chamber.  So,  
20 you can load it that way.

21                         Another way to load the firearm is to lock  
22 the slide back or hold it back and manually insert a  
23 cartridge into the chamber, pull the slide back, and the  
24 slide will go forward as in the picture on the screen.

25          Q.    So, Ms. Dupre, if a -- this specific gun does

1 not have a magazine in it, can it still fire a  
2 cartridge?

3 A. As long as there is a cartridge in the chamber,  
4 yes, it can.

5 Q. How do you know that?

6 A. I've actually done some tests on this firearm  
7 where I test-fired it using both a laboratory reference  
8 magazine as well as independently manually loading  
9 cartridges into the chamber to fire the firearm.

10 Q. Let's talk about how you do testings on  
11 firearms in your laboratory. Can you explain how --  
12 specifically how you test-fired this weapon?

13 A. Certainly. Essentially, before we do anything,  
14 we want to make sure that it is in a safe and  
15 operational condition. We examine it for any trace  
16 evidence. We'll measure the trigger pull. We'll check  
17 to see if the number and any other information required  
18 by law is present on the firearm. We'll visually  
19 examine it. We'll check the chamber, any components and  
20 safeties that are present on the firearm. And then  
21 we'll go to our laboratory reference collection and  
22 we'll select several cartridges that are of similar  
23 manufacturer as to any evidence cartridges that are  
24 submitted to the laboratory.

25 And then we'll go into our shooting room

1 and we have a water tank. And it is essentially a large  
2 stainless steel box full of water. And we actually  
3 shoot into the water tank where we'll have the known  
4 firearm, laboratory stock ammunition, and we'll collect  
5 the fired bullets and the fired cartridge cases because  
6 if there is any fired evidence that's submitted in the  
7 case, these are going to be our knowns that we're going  
8 to use for comparison.

9 Q. And, specifically, in this case was there fired  
10 evidence that was submitted to you?

11 A. Yes.

12 MS. BRUCHMILLER: Your Honor, may I  
13 approach?

14 THE COURT: Yes, ma'am.

15 Q. (By Ms. Bruchmiller) I'll hand you what has  
16 been admitted as State's Exhibit 17. Are you familiar  
17 with this item (indicating)?

18 A. Yes, I am.

19 Q. And how are you familiar with it? When have  
20 you seen it last?

21 A. I last saw it when I released it for -- to go  
22 back to the Harris County property room.

23 Q. Did you conduct any testing specifically on  
24 State's Exhibit 17?

25 A. I did indeed.

1 Q. How do you know that is the same piece of  
2 evidence that you did testing on?

3 A. Again, the laboratory number for reference,  
4 11-0449, the individual item identifier, which is 4-A,  
5 my initials and date that's on the bag, which is  
6 marked -- excuse me -- State's Exhibit No. 17. And that  
7 same information is actually physically written on the  
8 contents of State's Exhibit No. 17.

9 Q. Now, do you write those numbered items or does  
10 someone else?

11 A. I do.

12 Q. Ms. Dupre, is State's Exhibit 17 the same  
13 casing as we see pictured on State's Exhibit 34?

14 A. Yes, that is correct.

15 Q. And the numbers we see in this picture, are  
16 these the same laboratory numbers that you wrote on the  
17 casing?

18 A. Yes, they are.

19 Q. We see different marks in the pictures. Would  
20 you tell us what we're looking at there?

21 A. The markings that are in black, of course, are  
22 the numbers -- the unique lab number and item identifier  
23 and my initials are on there. There appears to be some  
24 kind of reddish or orange coating on there.

25 Q. Now, that coating, did you do any kind of

1 testing on that coating?

2 A. Any testing? No. Did I make any notation that  
3 I observed it, yes.

4 Q. And what kind of notation did you make?

5 A. The notations that I made, besides the  
6 pictures, is that it did have a reddish, orange kind of  
7 coating on part of the cartridge case itself.

8 Q. Is this coating rust?

9 A. No. It appears not to be any rust.

10 Q. What is does it appear to be?

11 A. Some kind of uniformed orange coating.

12 Q. Does it appear to be paint?

13 A. It could possibly.

14 Q. Now, what could you determine in your  
15 evaluation of this casing?

16 A. What did I determine --

17 Q. Yes.

18 A. -- in my evaluation?

19 That this cartridge at one time was  
20 fired -- the contents of what's inside State's Exhibit  
21 No. 17, the fired cartridge case, was at one time fired  
22 in State's Exhibit No. 16.

23 Q. And you are able to tell that through your  
24 testing done in the laboratory?

25 A. That is correct, yes.

1 Q. Are you able to determine the -- are you able  
2 to determine when that specific casing was fired?

3 A. No.

4 Q. Are you able to determine through any kind of  
5 testing the last time that specific weapon was fired?

6 A. No.

7 Q. And why not?

8 A. The only time that I know when it was fired is  
9 when it was submitted to me and was in our laboratory  
10 care and custody and control. Other than that, I have  
11 no idea.

12 Q. Are you ever able to tell when a weapon was  
13 last fired?

14 A. No.

15 Q. And why is that?

16 A. It's just not possible.

17 Q. Do weapons ever have any kind of recording  
18 device on them that would be able to tell the last time  
19 it was fired?

20 A. No.

21 Q. When you examined this weapon, did you notice  
22 that it also had a red orange substance on the weapon  
23 itself?

24 A. Yes.

25 Q. And where was that substance on the weapon?

1           A.    That is on the left side of the frame itself.  
2 There is some orange on the right side of the frame.  
3 There is some orange on the underside of the barrel. I  
4 don't know if you can -- I don't want to point it at  
5 anybody -- if can you see it. And there is some on the  
6 trigger area and the trigger guard as well as on the  
7 side of the frame and the grip area.

8           Q.    Is there any red dye in the area where a  
9 magazine would be put into the magazine chamber?

10          A.    There appears to be a slight orange-ish coating  
11 at the base of the magazine well.

12          Q.    Now, based on your experience with firearms,  
13 does this specific gun require a specific kind of  
14 magazine or are there several different kinds of  
15 magazines that could be placed into it and used?

16          A.    When you purchase this firearm, Smith & Wesson  
17 does provide you with a magazine that is designed to fit  
18 this particular firearm. However, there are all kinds  
19 of after-market magazines that are also available that  
20 can fit this firearm.

21          Q.    And do different magazines fit the same gun  
22 differently or do they all fit in exactly the same?

23          A.    They're designed to fit into the area of the  
24 magazine well. You can see it's kind of flared at one  
25 side and it's tapered down towards the muzzle. So, the



1 design has to fit that configuration.

2 Q. Does it fit airtight or is it possible that  
3 there is space around the magazine?

4 A. It has to fit in such a way that it will stay  
5 in the magazine well.

6 Q. Is it an airtight-fit or could air be around  
7 the magazine?

8 A. I have not done any testings, so I'm not really  
9 sure how to answer that question.

10 Q. You weren't given a magazine along with this  
11 gun, correct?

12 A. I was not, that is correct.

13 Q. But you were given the casing to do the  
14 examination on it?

15 A. That is also correct, yes.

16 Q. Okay. I'm showing you State's Exhibit 33.  
17 Could you tell us what we're looking at here  
18 (indicating)?

19 A. State's Exhibit No. 33 is a representation of  
20 my report of the examination.

21 Q. And on it it reflects the same laboratory  
22 report number as we saw on the weapon itself; is that  
23 correct?

24 A. If you pull it down just a little bit.

25 Q. The same 11-0449 (indicating)?

1           A.    Pull it down just a little more.  There you go.  
2  Yes.

3           Q.    So, that corresponds with what's written on the  
4  weapon itself and the casing?

5           A.    That is correct, yes.

6           Q.    Now, is this a typical report that you compile  
7  after conducting your examination of a firearm?

8           A.    Yes.

9           Q.    Does it contain the requesting officer's name?

10          A.    Yes, it does.

11          Q.    We see that is R. Schobey, Harris County  
12  Sheriff's Office.  Correct?

13          A.    Correct.

14          Q.    The materials submitted to you and it lists  
15  those as Item 4 and Item 4-A, correct?

16          A.    That is correct.

17          Q.    And that is the weapon you have before you as  
18  4-A; is that right?

19          A.    That is correct, yes.

20          Q.    I'm sorry.  AS 4.  And 4-A as a fired cartridge  
21  case?

22          A.    Yes, that is correct.

23          Q.    At the bottom, your report states:  Results of  
24  examination.  Would you tell us what is contained in  
25  that area of your report?

1           A.   Essentially, that is a summation of all the  
2 observations and testings that I conducted with regard  
3 to the evidence items submitted on this case.

4           Q.   And it says test-fires from Item 4, which would  
5 be the gun, will be imaged into the Integrated  
6 Ballistics Identification System.  What is that?

7           A.   The --

8                   MR. OWMBY:  I'll object to the relevancy of  
9 that, Your Honor.

10                   THE COURT:  Overruled.

11           Q.   (By Ms. Bruchmiller) Briefly, what does that  
12 mean?

13           A.   It's essentially an imaging database where when  
14 we conduct any test-firing, the fired cartridge cases  
15 are put into an imaging database.  And it's essentially  
16 a database that's shared in the local community to see  
17 if by chance this firearm had been used in another  
18 location, say Montgomery County or Fort Bend County or  
19 something that the City of Houston had picked up.  So,  
20 it's essentially an imaging database where we can link  
21 cold cases together and give that information to  
22 investigators to share information.

23           Q.   And is that a step in your procedure that you  
24 do for all firearms that are examined?

25           A.   Yes.

1 Q. Now, as part of your results of the  
2 examination, it states: Item 4 was found to function  
3 when test-fired under laboratory conditions. Is that  
4 correct?

5 A. That is correct, yes.

6 Q. So, this firearm that we have before us is a  
7 fully-functional firearm?

8 A. That is correct, yes.

9 MS. BRUCHMILLER: Pass the witness.

10 THE COURT: Thank you.

11 I'm going to ask that the jury retire for  
12 just a moment, please.

13 All rise.

14 (Open court, defendant present, no jury)

15 THE COURT: Thank you.

16 Please be seated.

17 May I see the gentleman in the plaid shirt?

18 Come up and tell me why it is you keep  
19 walking around and trying to -- waving at the bailiffs  
20 and trying to get their attention. Come on up here.

21 Do you speak English?

22 UNIDENTIFIED PERSON: Yes, ma'am. I was  
23 trying to see where my attorney was.

24 THE COURT: I don't know where your lawyer  
25 is. You should go call him. Do you have an appointed