

1 **KATHRYN HADEN-PINNERI, M.D.,**
2 having been first duly sworn, testified as follows:

3 **DIRECT EXAMINATION**

4 **BY MR. REED:**

5 Q. Good morning, Dr. Haden-Pinneri. Could you
6 please introduce yourself to the jury?

7 A. Sure. I'm Dr. Kathryn Haden-Pinneri.

8 Q. What is your profession?

9 A. I am an assistant medical examiner for the
10 Harris County Medical Examiner's Office.

11 Q. How long have you been doing that?

12 A. I've been with this office since June of
13 2005. And prior to that, I worked for two years for
14 an office in Virginia.

15 Q. Okay. So roughly around -- what is that?
16 About seven years you've been an ME? Eight years?

17 A. I finished my fellowship training in 2003,
18 so I'm going on ten years.

19 Q. What kind of education background do you
20 have?

21 A. Well, I went to college at Louisiana Tech
22 University. Then I went to medical school at the
23 University of Texas Southwestern Medical School in
24 Dallas. After that, I went into five years pathology
25 medicine in the University of Tennessee Medical

1 Center at Knoxville. After that, I did a one-year
2 fellowship training at the Dallas County Medical
3 Examiner's Office and then started working in
4 northern Virginia.

5 Q. And then after northern Virginia, here to
6 Texas?

7 A. That's correct.

8 Q. And what are your duties? What are your
9 responsibilities as an ME currently?

10 A. As a medical examiner for Harris County, we
11 are notified of anyone who dies in an unusual,
12 unnatural or suspicious death. And then we determine
13 whether it falls into our jurisdiction and whether or
14 not we need to perform an autopsy on that individual.

15 Q. You mention autopsy. What exactly is that?

16 A. Well, an autopsy is an examination of the
17 body and I typically describe it as having four
18 parts. There's what's called external examination
19 where you look at the outside of the body. We
20 document things like scars, tattoos, eye color, hair
21 color, length, weight, things like that. We also are
22 looking for any sort of trauma we may see on the
23 outside of the body.

24 Once we've completed that --

25 *THE COURT:* You're still going to need

1 to slow down a little bit more for all of us to
2 follow you and for her to get it down.

3 A. Once we have completed the external
4 examination and documented everything with pictures,
5 we do what's called an internal examination where we
6 make an incision in the skin and we look at all the
7 internal organs. We document any sort of trauma we
8 see in there, as well as any natural disease
9 processes, the heart disease, liver problems, we
10 document that as well.

11 While we're doing that, we're drawing
12 blood and fluids and tissues for toxicology purposes,
13 which is the third part of the examination. And then
14 we're also taking small pieces of tissue from some of
15 the organs to look at, if we need to, under the
16 microscope.

17 That's essentially what an autopsy is.

18 Q. (BY MR. REED) Did you have to go through any
19 specialized training to be able to perform autopsies
20 or was that part of your education?

21 A. That was part of my education with my
22 pathology residency and forensic pathology
23 fellowship.

24 Q. And are you board certified?

25 A. Yes. I'm board certified in anatomic and

1 forensic pathology.

2 Q. Are you licensed in the state of Texas?

3 A. Yes, I am.

4 Q. Now, did you perform an autopsy around
5 September of 2010 on a Joan Ogunleye?

6 A. Yes, I did.

7 Q. Okay. Do you typically create a report
8 when you perform an autopsy?

9 A. Yes.

10 Q. What does that report contain? The typical
11 report? I'm sorry.

12 A. The autopsy report contains all the
13 findings from my external and internal examinations
14 with documentation of trauma. It contains my cause
15 and manner of death determination and any diagrams
16 that I created at the time of the autopsy.

17 MR. REED: Your Honor, may I approach?

18 THE COURT: You may.

19 Q. (BY MR. REED) Doctor Haden-Pinneri, did you
20 have an opportunity to create a report for the
21 autopsy for Ms. Joan Ogunleye?

22 A. Yes, I did.

23 Q. I'm showing you what's been previously
24 marked State's Exhibit 99. Do you recognize this?

25 A. Yes. State's Exhibit 99 represents the

1 autopsy report I created on Joan Ogunleye.

2 Q. And at the medical examiner's office or the
3 Harris County Institute of Forensic Sciences, are you
4 considered to be a custodian of business records?

5 A. Yes.

6 Q. Is this, in fact, a business record?

7 A. Yes, it is.

8 Q. That's kept in the normal course of
9 business?

10 A. That's correct.

11 Q. Is that your signature on the front of this
12 document?

13 A. Yes, it is.

14 MR. REED: Judge, State offers State's
15 Exhibit 99 and tenders to defense for inspection.

16 MR. ROBERT LOPER: I have no
17 objection, Your Honor.

18 THE COURT: It's admitted.

19 Q. (BY MR. REED) Dr. Haden-Pinneri, do you
20 typically -- or I'm sorry.

21 Are pictures typically taken of the
22 autopsies that you perform?

23 A. Yes.

24 Q. Okay. Were there a large number of
25 pictures taken for this specific autopsy?

1 A. Yes.

2 Q. Now, did you and I have the opportunity to
3 sit down and go through those photos and decide on
4 particular photos that will be important for the jury
5 to see?

6 A. Yes, we did.

7 MR. REED: Your Honor, may I approach?

8 THE COURT: You may.

9 Q. (BY MR. REED) I'm showing you what's been
10 previously marked State's Exhibit 96 and then State's
11 Exhibits 100 through 119. Can you take a minute to
12 look through these photos?

13 A. (Complies.) These State's Exhibits
14 represent the photographs that were taken at the time
15 of the autopsy.

16 Q. And you were present when these photographs
17 were taken?

18 A. Yes.

19 MR. REED: Your Honor, State offers
20 State's Exhibit 96 and then State's Exhibit 100
21 through 119 into evidence and tenders to defense
22 counsel for inspection.

23 MR. ROBERT LOPER: May we approach,
24 Judge?

25 THE COURT: Yes.

1 **(At the bench, on the record.)**

2 MR. ROBERT LOPER: Judge, I would
3 object to State's Exhibit 104 and 105. They are
4 substantially the exact same photo, so it would be
5 duplicitous.

6 MR. REED: Judge, if I may, the reason
7 why we picked these two photos is only to show that
8 this is the actual ear right here. It's kind of hard
9 to tell. But because this actually covers up the ear
10 and so that you recognize that this is black soot
11 from the gun.

12 THE COURT: I'm going to let both of
13 them in. I don't know what the meaningful thing is,
14 but this appears to be very different. And those two
15 photos, for purpose of the record, I'm talking about
16 the second bullet wound from the top bullet hole
17 above the ear.

18 MR. ROBERT LOPER: Also, while we're
19 still talking about 104, it's also unusually bloody.
20 And I think it would serve to prejudice this jury and
21 the prejudicial effect would outweigh any probative
22 value. I'm talking about 104.

23 THE COURT: I understand that. At
24 this point it appears that it displays three bullet
25 holes and I don't know if it's blood. I don't know

1 what that is. It is not pretty but certainly
2 probative value outweighs the prejudice.

3 *MR. ROBERT LOPER:* I also have an
4 objection to 107. I don't even see the purpose for
5 this, but it's obviously the skull refracted. It is
6 unusual, so unusually bloody. It's going to serve to
7 prejudice and inflame this jury and I think the
8 prejudicial effect is outweighing any probative
9 value.

10 *MR. REED:* Judge, this photo actually
11 shows the third gunshot wound, which is here. And it
12 is the only photo that shows the gunshot wound. What
13 happened was during the autopsy, Dr. Haden-Pinneri
14 began to cut the scalp off the victim's head, which
15 is typical procedure. Typically they take pictures
16 of the gunshot wound before they do this. She was
17 not aware that there were three gunshot wounds until
18 after she cut. And there's only two of the gunshot
19 wounds depicted into the ear. She's going to discuss
20 during her autopsy that she did not realize that
21 there was a third bullet. Here's a close-up of the
22 third bullet. And she has instructed me that when I
23 show this, don't -- it's just to show briefly that
24 this is her head and she had to take her scalp back.
25 And then go immediately to this photo.

1 MR. ROBERT LOPER: I can't account for
2 why they made a mistake here, but that's not excuse
3 to show a refracted skull just to show the location
4 of the third bullet hole.

5 THE COURT: I have to say it would be
6 prejudicial. If you want to cut it so the bottom
7 half is there because all of that I find prejudicial.

8 That's much, much, much better. For
9 purpose of the record, I have ordered the State to
10 have half of the photograph, half that was removed
11 was bare -- I don't know what it was.

12 MR. ROBERT LOPER: State's Exhibit
13 109. I think -- the doctor might need to correct me,
14 but I think that's a photo of the skull refracted
15 with a bullet hole. I don't see the purpose of that.
16 The State already has a photo of the bullet wound
17 that you can prove for it to be shown to the jury.
18 So I object to that.

19 MR. REED: Judge, what this is
20 actually depicting is the single shot to the back of
21 the head. And what it's showing is all of the soot
22 actually is on the inside of the wound as opposed to
23 on the wound that we saw in State's Exhibit 104 where
24 the soot was on the ear. This shows that it was a
25 contact shot right up against her head and it's

1 needed for her testimony.

2 *THE COURT:* Where is that on the head?

3 *MR. REED:* It's that same gunshot that
4 we just looked at.

5 *THE COURT:* Point to your head where
6 that is.

7 *MR. REED:* It's in the back. I'm
8 sorry. It's right here.

9 *THE COURT:* That's the bottom.

10 *MR. REED:* This is inside of the
11 skull.

12 *THE COURT:* The neck is down here?

13 *MR. REED:* Yes, Judge. This would be
14 the neck down here.

15 *THE COURT:* Again, I do think that is
16 relevant. This other part is not meaningful at all,
17 I ask on that one that you cut it in half or --
18 that's what you need, yes.

19 *MR. ROBERT LOPER:* Judge, for the
20 record, that was 109. I understand now you've told
21 the State that they can alter it somewhat to
22 conceal --

23 *THE COURT:* Cut it in half.

24 *MR. ROBERT LOPER:* Cut it in half.

25 But I still have the objection that its prejudicial

1 value outweighs the probative value for the record.

2 THE COURT: I'm making a finding that
3 it is probative. It is something the State said they
4 were going to prove in opening that the gun path went
5 through the wound.

6 MR. ROBERT LOPER: Since you've
7 allowed State's 109, I would object to State's 110
8 because it's the exact same photo but just a
9 close-up.

10 THE COURT: State, I'm going to ask
11 you to pick one.

12 MR. REED: Judge, then I'd rather keep
13 State's Exhibit 110.

14 THE COURT: That's what you're
15 holding?

16 MR. REED: Yes, Judge.

17 MR. ROBERT LOPER: So nine is out.

18 THE COURT: Nine is out.

19 MR. REED: Here's the new 107 I'm
20 showing to defense counsel.

21 MR. ROBERT LOPER: I don't have any
22 other objections.

23 THE COURT: 109 is out and which one's
24 in half?

25 MS. BARNETT: I'm sorry?

1 THE COURT: Which one's in half?

2 MR. REED: 107 is in half.

3 THE COURT: The remainder is admitted.

4 **(End of Bench Discussion.)**

5 Q. (BY MR. REED) You have a copy of the report
6 up there with you as well?

7 A. That's correct.

8 Q. Is it the same copy as State's Exhibit 99?

9 A. Yes.

10 Q. Just kind of briefly, can you give the jury
11 a brief explanation of the types of photos or what
12 we'll see in these photos?

13 A. Yes. The photos are going to show
14 Ms. Ogunleye, her injuries, which are gunshot wounds.
15 They're going to show what the wounds looked like.
16 It's also going to show some of the skull, what it
17 looked like around one of the wounds and just the
18 overall appearance of her when I first saw her.

19 Q. And these photos are pretty much in line
20 with your report?

21 A. That's correct.

22 MR. REED: Judge, may I publish to the
23 jury?

24 THE COURT: Actually, on most of the
25 photos, if you would -- are you talking about the

1 autopsy report or photos yet? I don't want the
2 autopsy photos on the big screen.

3 MR. REED: Okay.

4 THE COURT: You can have the doctor
5 stand in front of the jury, but I don't want them on
6 the big screen.

7 MR. REED: On the big screen?

8 THE COURT: Yes.

9 MR. REED: Judge, what if they were
10 only on the screen?

11 THE COURT: I think with an autopsy
12 photo that she can stand up in front of the jury or
13 you can walk it in front of the jury and point to
14 whatever it is.

15 MR. REED: Okay. Thank you, Judge.

16 THE COURT: Are you saying you can
17 make only that one go on?

18 MR. REED: Yes.

19 THE COURT: And you can turn that one
20 off?

21 MR. REED: Yes. I can turn both of
22 these off.

23 THE COURT: If you can do that, that's
24 fine.

25 MR. REED: Thank you, Judge.

1 Q. (BY MR. REED) So we're paying attention to
2 this monitor. Is this the way that Ms. Ogunleye
3 looked when she first came in?

4 A. No. This is actually a shot of her face
5 after we cleaned up any blood that may have been on
6 her. This is what we use for an identification
7 photo, if necessary. So it's after we've cleaned her
8 up a little bit.

9 Q. Okay. So when she first comes in, you
10 clean her up. Does that involve taking off her
11 clothes?

12 A. Yes, it does.

13 Q. And I'm showing you State's Exhibit 100.

14 A. State's Exhibit 100 shows the items of
15 clothing that we removed from her and subsequently
16 submitted as evidence to the investigating agency.

17 Q. Okay. What's included in this, just from
18 you looking over it?

19 A. We have a jean jacket, another scrub type
20 or medical uniform type jacket, a strapless dress, a
21 clip, a pair of underwear and there's a plastic bag
22 that contains a hairpiece or wig.

23 Q. Okay. Was that wig recovered along with
24 everything else that we see, the jacket, the medical
25 scrubs?

1 A. Yes.

2 Q. I'm showing you State's Exhibit 101.

3 A. State's Exhibit 101 shows what she looked
4 like when I first saw her. This is how she looked
5 when she came in.

6 Q. This is before cleaning her?

7 A. That's correct.

8 Q. Let's talk about the wounds. Do y'all
9 perform x-rays?

10 A. Yes, we do.

11 Q. Okay. And is there anything particular
12 that you found about her x-ray? I'm showing you
13 State's Exhibit 102.

14 A. Okay. State's Exhibit 102, this is an
15 x-ray of her head, although it's slightly rotated a
16 little bit. That bright white circle down towards
17 the edge right there where I put the pink mark is
18 actually a snap on her hospital shirt. That's just a
19 clothing artifact. But what is visible in the head
20 are metal fragments that I outlined in pink that are
21 in her head and those represent bullets and bullet
22 fragments.

23 Q. Okay. Were those bullets recovered?

24 A. Yes.

25 Q. Were you able to tell where those bullets

1 came from -- or I guess that's going to be depicted
2 in the pictures that we'll see from the wounds,
3 outside wounds?

4 A. That's correct.

5 Q. Now, this is another x-ray shot. It looks
6 like her head is turned sideways.

7 A. Yes. This is what we call a lateral x-ray
8 of the head. And it's hard for me to see on my
9 screen. There's a bobby pin that was actually in the
10 hair. There's some dental work in the teeth, but
11 then you also see the metallic bullet fragment in the
12 skull.

13 Q. I don't know if you can see it on your
14 screen. Is that these marks here?

15 THE COURT: Counsel, if you want to
16 zoom in on that particular part? Maybe she can see
17 off her screen.

18 THE WITNESS: I can see on theirs, but
19 not on my own.

20 A. There we go. Now I can see them.

21 Q. (BY MR. REED) Okay.

22 A. So all of those things I marked in pink
23 represent bullet and bullet fragments with the
24 exception of the bobby pin.

25 Q. And you were able to remove all bullet

1 fragments?

2 A. I removed the majority of the larger ones,
3 yes.

4 Q. Okay. Now I'm getting ready to show you
5 State's Exhibit 104. What are we looking at here?

6 A. Okay. So this is the right side of her
7 head. You can see her ear there towards the bottom
8 and there's two defects on this side of her head.
9 There's one here and one here that I'm marking with
10 the pink lines. Those are gunshot entrance wounds.

11 Q. Now, is there anything else significant
12 about this photo?

13 A. Yes.

14 Q. What is that?

15 A. On the tip of the ear that I drew a pink
16 line under is some black residue, which is actual
17 soot that's been deposited on her ear that came out
18 of the gun at the same time the bullet came out.

19 Q. How's that soot -- I guess what does that
20 show? Does it show that it's close range or does it
21 show that it was shot far away?

22 A. The presence of soot in a gunshot wound is
23 significant because you're only going to see that
24 within a very short distance, usually only up to
25 about an inch, depending on the weapon.

1 But when you see soot, it means that
2 the muzzle of the weapon was extremely close or in
3 contact with the surface that we found the soot on.

4 Q. How is it that you can tell that it's a
5 gunshot or that those two are gunshot wounds?

6 A. Well, I was trained to recognize them, for
7 one. The appearance, they're circular. One's a
8 little more circular than the other appearing. I can
9 tell that they're gunshot entrance wounds for two
10 reasons: Number one, the circular appearance of the
11 wound is consistent with a bullet going through the
12 tissues and essentially obliterating the tissues
13 that's in there. The energy and the forces that come
14 with the bullet just really leaves the circle so that
15 even if you wanted to push the edges back together,
16 they wouldn't go back together nicely because the
17 center tissues are gone.

18 Another reason I know that they're
19 entrance wounds is because I recovered bullets.
20 There were no exit wounds.

21 Q. Now I'm showing you State's Exhibit 105.
22 Is that essentially, I guess, the same picture?

23 A. Yes. This is a closer-up picture showing
24 those two wounds in a little bit more detail.
25 They're about half of an inch apart and then the soot

1 is visualized a little bit better on the top part of
2 the right ear.

3 Q. Okay. Now, is there a way to tell which
4 one of these gunshot wounds the soot came from?

5 A. Yes. The gun -- the soot is associated
6 with a lower wound.

7 Q. Okay. Again, I guess a closer shot of the
8 actual soot?

9 A. That's correct.

10 Q. I'm sorry. I was showing you State's
11 Exhibit 106.

12 I'm showing you now State's Exhibit
13 107. Can you tell me what this is?

14 A. Yes. State's Exhibit 107 is a photograph
15 of the skin of the back of the head. This case --
16 well, it was a little bit surprising that I had those
17 two wounds by the ear documented and was not aware
18 that there was a third gunshot wound on the back of
19 the head.

20 So we were in the process of
21 reflecting the scalp back, which requires us to make
22 an incision across the top of the head and then we
23 kind of generally pull the tissue forward so that we
24 can get to the skull. And it was when we made that
25 incision that we noticed this wound, which is why

1 there aren't any pictures of it nice and clean like
2 the other ones. So this wound was found as we were
3 opening the head.

4 Q. Do you typically find the wounds first and
5 then cut or was this -- sometimes this happens?

6 A. Occasionally this happens. These are small
7 wounds, small caliber. They're about
8 three-sixteenths of an inch, quarter of an inch.
9 They're very small. They do get missed when someone
10 has really thick hair.

11 In retrospect, looking at the x-rays,
12 I only had one of them to look at the time I started
13 the autopsy. If I had both of them to look at, I
14 would have been able to see that there were, in fact,
15 three different tracks going through the head. But
16 99 percent of the time we find all the wounds before
17 we do this, but in cases with small gunshot wounds
18 like this, occasionally, we don't find them until
19 we're doing more manipulation of the body.

20 Q. Now, I'm showing you State's Exhibit 108.
21 Is that that same wound?

22 A. Yes. This is the close-up picture of that
23 same wound.

24 Q. I see a lot of black around here. What is
25 that?

1 A. That is actually soot around this entire
2 wound. So this is around the edges of the wound.

3 Q. What's the significance of this photo?

4 A. The presence of soot around this wound
5 indicates that the gun was in contact with the skin
6 at this area. So this is a contact gunshot wound.

7 Q. So -- just so the jury understands, we saw
8 that the two gunshot wounds to the side of the head,
9 but where exactly, I guess, if you were to kind of
10 point on me, would wound be in the back?

11 THE COURT: You can step down.

12 THE WITNESS: The third wound that is
13 the surprise wound for me was approximately right
14 here. And the other two were right here. So one
15 here and two here.

16 Q. (BY MR. REED) And now after you cut the
17 scalp, what's the next process of an autopsy?

18 A. So after we reflect the scalp back, then we
19 actually remove the top part of the skull so that we
20 can look at the brain and remove the brain to look
21 for trauma or natural disease processes.

22 Q. Now I'm showing you State's Exhibit 110. I
23 think this is a closer shot of the inside -- I'm
24 sorry. Can you tell us what we're looking at?

25 A. State's Exhibit 110 represents a photograph

1 of the inside of the skull at that third gunshot
2 wound on the back of the head. So it's essentially
3 the back part of the skull looking at it from the
4 inside.

5 Q. Just for clarification for the jury, when
6 you say "third," that's not necessarily the order
7 that the gunshots took place?

8 A. That's correct. I number them one, two,
9 three for purposes of description without any regard
10 to severity of injury or the order in which they
11 occurred.

12 Q. Is there a way to tell which gunshots came
13 first?

14 A. The majority of the time, I can't tell you
15 which one came first, no, sir, most of the time.

16 Q. Now, you mentioned you were able to recover
17 the bullets.

18 A. Yes.

19 Q. I'm showing you what's been entered into
20 evidence as State's Exhibit 111. What are we looking
21 at here?

22 A. State's Exhibit 111 represents the three
23 bullets and then some more bullet fragments that I
24 recovered at the time of the autopsy.

25 Q. And 112?

1 A. 112 represents the fragments of bullets
2 that were recovered under the -- where the first two
3 gunshot wounds went in are the ones I call No. 1 and
4 2. Because they went in so close together, the
5 bullets fragmented. And so these are fragments that
6 are actually in the muscle, directly under the
7 entrance wounds.

8 Q. Did any of those wounds or did any of those
9 gunshots exit Ms. Ogunleye's head?

10 A. No.

11 Q. 113, I believe is a closer view of those
12 same fragments?

13 A. That's correct.

14 Q. 114?

15 A. State's Exhibit 114 represents one of the
16 two bullets that I recovered from the brain, which
17 came from the right temple/ear area.

18 Q. That's a close-up of that bullet?

19 A. That's correct.

20 Q. I'm showing you State's Exhibit 115. Just
21 going on to State's Exhibit 116?

22 A. State's Exhibit 116 represents the bullet I
23 recovered that goes with the gunshot wound on the
24 back of the head.

25 Q. Okay. Again, this is close-up view of

1 that.

2 Now, I see a ruler in these photos.
3 Does that signify -- I think you mentioned it
4 earlier -- a small caliber bullet or a bullet from a
5 small caliber gun?

6 A. In my opinion, yes. The base of the bullet
7 is typically how bullets are measured and these are
8 small, in my opinion, small caliber projectiles.

9 Q. Showing you State's Exhibit 118.

10 A. State's Exhibit 118 represents the other
11 bullet that goes along with one of the right side of
12 the head wound or the one above the ear.

13 Q. And State's Exhibit 119?

14 A. That's a close-up. This has the base of
15 the bullet and the ruler is there to give you a
16 gauge. So it's less than one-quarter of an inch
17 across, which would be a small caliber projectile.

18 Q. To your knowledge, did all of these bullets
19 come from the same gun?

20 A. I have no way -- I don't examine the
21 bullets, but they looked very similar.

22 Q. I'm sorry. Were all the bullets similar?

23 A. Yes, they were.

24 Q. You talked about soot a little bit and you
25 saw soot in the back -- the bullet -- I'm sorry. The

1 wound from the back of her head, we saw that the soot
2 was actually on the wound and then we saw the soot on
3 that side of the ear from one of the wounds right
4 above her ear.

5 If a gunshot or if the gun was shot,
6 like, maybe two or three feet away from her head,
7 would we see soot like we saw in those photos?

8 A. No, we would not.

9 Q. Okay. So we'd only see soot if it was a
10 contact shot as we saw in the back of her head,
11 right?

12 A. Contact or near contact or loose contact,
13 but the soot from the back of the head wound not only
14 was on the skin, it was deposited on the bone and
15 also on the superficial covering of the brain called
16 the dura. You're not going to get that unless the
17 weapon is pressed against the skin as if in a contact
18 gunshot wound.

19 The ear soot deposition could be that
20 the gun was not completely pressed against the skull.
21 That can happen sometimes with people that have very
22 thick hair or that the gun is more at an angle.
23 That's where you see the soot that it's more on that
24 outside. It doesn't actually go all the way in with
25 the bullet like we saw the one on the back of the

1 head. And then the wound just above that didn't have
2 any soot that was visible and deposited on the skin
3 that I could see.

4 Q. As part of your autopsies that you've done
5 and this autopsy, are you able to tell whether or not
6 there was a struggle or any type of fight, any type
7 of defensive wounds?

8 A. We do look for any other wounds that may be
9 on that body and sometimes we can determine whether
10 or not there were defensive type wounds or wounds
11 that would be consistent with someone being in a
12 fight with someone else.

13 Q. Did you do that with Ms. Ogunleye's
14 autopsy?

15 A. Yes, I did look for that.

16 Q. Did you find any defensive wounds on her?

17 A. No, I did not.

18 Q. Now, the report also shows on the last page
19 of the toxicology screening. Was toxicology
20 screening done for Ms. Ogunleye?

21 A. Yes.

22 Q. And what'd you found?

23 A. We tested blood for illegal substances such
24 as amphetamine, methamphetamine, PCP and cocaine. We
25 did find that she had cocaine as well as two cocaine

1 metabolites in her blood at the time of her death.

2 Q. Did you -- did that have anything to do
3 with her cause of death?

4 A. No. She did not die from cocaine being in
5 her system.

6 Q. Let me ask you: Why do you do that? Why
7 do you perform that test?

8 A. Well, we don't need it for cause and manner
9 of death in cases like this. We typically do it for
10 court purposes. That's part of a thorough autopsy
11 procedure. It's customary or standard procedure for
12 us to do a stimulant drug screen on anyone who dies a
13 violent type death like this.

14 Q. My last question is: What was the cause of
15 death for Ms. Ogunleye?

16 A. I determined the cause of death to be
17 gunshot wounds of the head.

18 MR. REED: State passes this witness,
19 Your Honor.

20 THE COURT: All right. Mr. Loper.

21 MR. ROBERT LOPER: Thank you, Judge.

22 **CROSS-EXAMINATION**

23 **BY MR. ROBERT LOPER:**

24 Q. Good morning, Doctor.

25 A. Good morning.

1 Q. How you doing?

2 A. Just fine, thank you.

3 Q. Good. I have a couple questions for you
4 about your findings in this case. And you were one
5 of the rare assistant medical examiner's who's ever
6 come in and said, We kind of goofed on the autopsy a
7 little bit. It's very refreshing.

8 I wanted to ask you -- and I will tell
9 you that it's my experience that you rarely --
10 something like that would happen where you would miss
11 a wound.

12 What I want to specifically ask about
13 that particular part of it is, did I understand you
14 to say that you didn't have access to the x-rays
15 before you began looking for the wounds and that's
16 the reason that that happened?

17 A. That's partially what I said. We have a
18 digital x-ray service and from time to time when two
19 x-rays are taken, only one of them gets transferred
20 initially. And I saw -- typically, we're looking for
21 projectiles. I think she had the two wounds. I saw
22 they were projectiles and that was kind of as far as
23 I looked. I knew that the other x-ray had been
24 taken, but it's my oversight for not tracking it
25 down. At that time, I did not realize the importance

1 of that other x-ray, the lateral x-ray.

2 Q. However you found it, you still had the
3 same findings ultimately, correct?

4 A. That's correct.

5 Q. When you're doing that, looking for wounds,
6 as you said, sometimes there could be some
7 interference, if someone has particularly thick hair
8 or something like that. Does someone actually go
9 through, as I am right now, touching my head and
10 moving my hair around, things like that?

11 A. Yes. And I did that. Wounds are just so
12 small, they're so hard to find.

13 Q. And one of the photographs that we had up
14 on the screen, it showed after you had found that
15 third wound and I know that was just your numbering
16 process, but you know the one I'm talking about?

17 A. Yes, sir.

18 Q. That was the missing wound, so to speak?

19 A. Correct.

20 Q. When we had that photo up, it looked like
21 that area around the wound had been shaved, correct?

22 A. I shaved that, that's correct.

23 Q. Okay. I guess then obviously the wound was
24 found and then it was shaved and then you -- because
25 you had already begun doing sort of the cutback?

1 A. That's correct.

2 Q. Okay. But that did not interfere in your
3 ability -- and I'm only talking about the third
4 wound -- your ability to be able to determine what
5 bullet would have caused that wound and your ability
6 to recover that bullet or the bullet fragments, if
7 that's what it was?

8 A. That's correct. It did not interfere with
9 that.

10 Q. A couple things and I think you've already
11 said this, but based on your training and experience
12 and your review of this particular case, you're not
13 able to give the jury any idea of the order of the
14 shots that were fired, correct?

15 A. That's correct.

16 Q. And that includes your very careful
17 description of the different places where soot is
18 present and the places where soot is not present,
19 correct?

20 Let me say that a little bit better, I
21 hope.

22 Even with the presence of the soot in
23 some of the wounds and not being present in some of
24 the other wounds, even with that additional
25 information, I think what you're saying is you still

1 aren't able to offer us any opinion as to the order
2 of the shots that were fired, correct?

3 A. When I have a contact wound, it suggests an
4 order to me, but it's just my opinion. It's not
5 really based on any medical --

6 Q. Within any reasonable degree of medical
7 certainty?

8 A. Correct. It's just my opinion.

9 Q. Okay. Would we be accurately stating it
10 then that you still aren't able to tell this jury the
11 order the shots that were fired?

12 A. That's correct, not with a hundred
13 percent -- or not with a reasonable degree of medical
14 certainty.

15 Q. Okay. I think you also said that the
16 bullet appeared to have come from a small caliber
17 projectile or a small caliber gun, correct?

18 A. It's a small caliber projectile. Oh, I
19 believe I did answer that it would have come from a
20 small caliber gun, yes.

21 Q. You're basing that, I think, primarily upon
22 the size of the bullet that was recovered, correct?

23 A. That's correct.

24 Q. Is there a way that someone maybe having
25 training that you aren't necessarily affiliated with,

1 someone in a police department capacity that might be
2 able to determine the actual caliber of that
3 particular bullet? If you know if that can be done?

4 A. Yes. A firearms examiner can examine the
5 bullet and then also determine whether or not they
6 were fired from that same weapon.

7 Q. That was my next question. I believe you
8 said you weren't able to tell whether they all came
9 from the same gun or not?

10 A. No. That's not part of my training.

11 Q. When you were looking for the defensive
12 wounds, do you look for cuts and scratches and
13 bruises? Or what else do you look for, let me say it
14 like that?

15 A. That would be probably mostly what we look
16 for. We look for bruises or the knuckles or the
17 forearms or any cuts that may be on the arms. We
18 look for broken fingernails, things like that.

19 Q. Okay. And you -- your testimony was that
20 you did not find any in this particular case?

21 A. That's correct.

22 Q. Were you able to or would you be able to
23 give an opinion as to how the shots would have been
24 fired into the person's head? In other words, I know
25 you had Mr. Reed up in front of the jury a minute ago

1 and you were standing behind him and pointing to the
2 back of his head on -- I think that was Wound No. 3,
3 correct?

4 A. That's correct.

5 Q. I know you said you are not able to give us
6 an opinion as to the order of the shots, but would
7 you be able to give us an opinion as to where the
8 person was that fired that shot?

9 A. The way that I work with this is I can't
10 tell you what position her head was in when the shots
11 were fired. I can tell you what position the gun was
12 in in relation to her head, but I can't tell you what
13 position the person holding the gun was in.

14 Q. So I guess since you can determine -- I'm
15 sorry. Let me start that over.

16 The way you can determine the way the
17 gun was held is probably by the bullet path through
18 the brain, correct?

19 A. That's correct.

20 Q. Okay. You kind of extrapolate that back
21 to: This is the angle of the gun when the weapon was
22 fired, correct?

23 A. Correct.

24 Q. So if you had a person that was standing
25 straight in front of you, like Mr. Reed was a minute

1 ago, and if he was looking straight ahead, and I
2 think he was, probably -- well, not probably --
3 certainly, your opinion would be that the gun was
4 pointed straight at the back of his head when it was
5 fired, correct?

6 A. That's correct.

7 Q. And that would indicate that the person who
8 shot him in this little scenario we had here was
9 standing directly behind him, correct?

10 A. Somewhere where the muzzle of the weapon
11 could be at the back of the head, yes.

12 Q. And I guess, also, if Mr. Reed had been
13 standing in front of the jury and he turned his head
14 over at our court reporter or at the witness box,
15 then that would mean that the gun would have been
16 from the side of his body when it was fired, correct?

17 A. The gun would still be on the back of the
18 head, but the person holding it could be where you're
19 saying, yes.

20 Q. So depending upon how the head was
21 situated, the person who fired the shot could have
22 been directly behind Mr. Reed in that scenario a
23 minute ago, correct?

24 A. Correct.

25 Q. And if his head was turned, the person

1 could be to the side of Mr. Reed when that gun was
2 fired, correct?

3 A. That's also a possibility, yes.

4 Q. And then to extend that to Ms. Ogunleye
5 here, would that also be accurate, based on your
6 findings in this particular case?

7 A. Yes.

8 Q. Is there any way -- you told the jury about
9 the toxicology screen and, obviously, you don't need
10 to do that for your very obvious manner of death in
11 this case, correct?

12 A. That's correct.

13 Q. But you do it as a way to determine what a
14 person may have in their system. Is there any way
15 for you to give the jury an idea whether this is a
16 large amount of substance, a small amount of
17 substance or can you give an opinion on that?

18 A. I can't really give you an opinion on how
19 much this particular amount is for this individual.
20 I can tell you that the cocaine is there and there's
21 two metabolites, but that's typically as far as I
22 feel comfortable going with cocaine.

23 Q. Is there any way for you to determine,
24 based upon the amount that's present, as to when it
25 may have been ingested prior to her death? Or is

1 that possible?

2 A. Yes, that actually is possible. The fact
3 that we identified the actual apparent drug of
4 cocaine indicates that she used the cocaine within a
5 couple of hours of her death. I can't tell you
6 exactly when. I can't tell you how much. Just that
7 cocaine is a substance that gets rapidly metabolized
8 by the body. Even after someone dies, it's still
9 being metabolized. So the fact that we find it
10 indicates that it was taken within a couple hours
11 prior to death.

12 Q. Thank you, Doctor.

13 MR. ROBERT LOPER: That's all I have,
14 Your Honor.

15 THE COURT: Mr. Reed.

16 MR. REED: Yes, Judge.

17 **REDIRECT EXAMINATION**

18 **BY MR. REED:**

19 Q. Doctor, is a .22 caliber gun a small
20 caliber gun?

21 A. In my opinion, yes.

22 Q. Is it possible a .22 caliber may have been
23 used to put those wounds or pretty much kill
24 Ms. Ogunleye?

25 A. That would be consistent with the

1 projectile types that I recovered, yes.

2 MR. REED: Your Honor, may I approach?

3 THE COURT: Yes.

4 Q. (BY MR. REED) Now, Mr. Loper gave you, I
5 guess, kind of a hypo and I stood up here and, you
6 know, you showed the jury that if I was standing
7 pointing -- facing this way, this back shot would be
8 obviously from behind my head. Would it be straight
9 on behind my head, or?

10 A. I determined that trajectory or the path of
11 that bullet to go from the back of the head to the
12 front of the head. From the right side, it went
13 towards the left side of the body. So from the right
14 to the left and it went slightly upward, but that's
15 really just based on her standing straight ahead. It
16 doesn't really necessarily mean that it went
17 particularly up or down. It could just be a little
18 bit of variation of her head, being raised up or
19 down.

20 Q. In your report -- and we're looking at one
21 of the pages of your report here on the screen -- you
22 show, I guess, exactly where you found that shot,
23 correct? That back shot?

24 A. That's correct.

25 Q. Now, you said you do have an opinion of the

1 order of the shots, right, when you were speaking to
2 Mr. Loper?

3 A. Whenever I have a contact gunshot wound, I
4 do think that it provides insight into the order of
5 the wounds.

6 Q. Is the way that you saw Ms. Ogunleye's
7 gunshot wound --

8 MR. REED: If Ms. Barnett would come
9 and sit in this seat?

10 MS. BARNETT: With the Court's
11 permission?

12 THE COURT: You may.

13 Q. (BY MR. REED) We're sitting in a car, a
14 vehicle. The way that you saw the gunshot wounds and
15 the way that you saw all the results from your
16 autopsy report, is it consistent with somebody taking
17 a gun from the backseat of a car, pointing it right
18 here, just about where you have that gunshot wound on
19 the screen, and firing a .22 caliber gun?

20 A. Yes, that's a consistent scenario with what
21 I found.

22 Q. Okay. And then, if afterwards
23 Ms. Barnett's head was to turn this way -- or I'm
24 sorry -- maybe turn around this way, again shoot to
25 the side of the head?

1 A. That's a consistent scenario of what I
2 found.

3 Q. I'm sorry. So the jury can see me.

4 So we started off right here with the
5 back of the head and I'm in the backseat of a
6 vehicle.

7 You said it is consistent with someone
8 shooting in the back of Ms. Barnett's head.

9 A. Yes, that's a consistent scenario.

10 Q. Straight on?

11 A. Yes.

12 Q. And contact, like you stated?

13 A. Yes.

14 Q. And from the side of Ms. Barnett's head
15 afterwards?

16 A. Yes. It makes more sense to me to have the
17 contact gunshot wound first just because it's less
18 common for someone to shoot someone and then put the
19 gun up close to them and shoot it. It's not out of
20 the realm of possibilities, like I said. I can't say
21 for certain what order they came in, but it makes
22 more sense to me that the contact wound came first.

23 MR. REED: Thank you, Dr. Pinneri.

24 No further questions, Judge.

25 THE COURT: Mr. Loper.

1 MR. ROBERT LOPER: May I, Judge?

2 THE COURT: You may.

3 **REXCROSS-EXAMINATION**

4 **BY MR. ROBERT LOPER:**

5 Q. If you can leave the car back up here,
6 please. Or I'll move it.

7 Doctor, with all respect -- I know
8 you're not a detective.

9 A. No, I'm not.

10 Q. So when you said a minute ago, It makes
11 more sense that the contact wound came first because
12 most people wouldn't just stand over a person and
13 shoot them, that's sort of commonsense approach that
14 you're telling the jury, right?

15 A. That's correct.

16 Q. That's certainly not based on any medical
17 degree, education or experience that you have, is it?

18 A. That's correct.

19 Q. And that's certainly, as you said a minute
20 ago, not within the greater weight of medical
21 certainty?

22 A. Yes, as I stated.

23 Q. Okay.

24 MR. ROBERT LOPER: Judge, I'm going to
25 ask if I can have --

1 THE COURT: Young Loper?

2 MR. ROBERT LOPER: -- my son come up
3 for a second. If you would sit right here.

4 Q. (BY MR. ROBERT LOPER) And if you would
5 imagine with me for a second, just as we did a minute
6 ago, I believe you said that if the person was in --
7 if you'll envision this is the driver's seat and I'm
8 repeating a little bit what Mr. Reed said for a
9 second, but he got you to agree that it was
10 consistent that the way I'm holding the gun at the
11 back of his head that that's a way the shot could
12 have occurred, correct?

13 A. Yes.

14 Q. Did I also understand you to say that if
15 the head was turned and the gun was in the right
16 hand, it could have been done like this?

17 A. That's correct, yes.

18 Q. Did I also understand you to say that it
19 could be consistent that a person in the front seat
20 could also be holding the gun in the left hand if the
21 head was turned?

22 A. That's correct.

23 Q. Since you really don't know the order of
24 shots, not really, not just your feeling, but not
25 really, you don't really know which one of these

1 shots came first, either the shot in the back of the
2 head or the two shots that are above the right here,
3 correct?

4 A. That's correct.

5 Q. It could have happened in any of those
6 different ways; is that right?

7 A. That's right.

8 Q. And then, finally, obviously none of this
9 tells you, as the doctor, about who it was who
10 actually fired the shots, does it?

11 A. No. I have no idea.

12 Q. You certainly have no idea about who fired
13 the shots, do you?

14 A. No, I don't. That's correct.

15 Q. Thank you, ma'am.

16 MR. ROBERT LOPER: That's all we have,
17 Judge.

18 THE COURT: Anything further?

19 MR. REED: Nothing further.

20 THE COURT: Thank you, Doctor. You're
21 excused. Free to go.

22 If you'd call your next witness.

23 MS. BARNETT: One moment, Judge.

24 THE COURT: All right.

25 MS. BARNETT: State calls Christopher

1 Faulk.

2 MR. ROBERT LOPER: Judge, may we
3 approach?

4 THE COURT: Yes.

5 **(At the bench, on the record.)**

6 MR. ROBERT LOPER: I know you wanted
7 to put the medical examiner on first. That's fine.
8 I ask you to do whatever it is you're going to do
9 about Kendrick Jackson and/or I need to put something
10 on the record about the whole situation that occurred
11 yesterday.

12 THE COURT: We put an hour and a half
13 on the record yesterday. We'll see if he shows up.
14 Do you have a motion?

15 MR. ROBERT LOPER: I do. I'd like to
16 state for the record and I think I'm being accurate.

17 MS. BARNETT: Can we have the jury
18 taken out? They can't hear.

19 **(End of Bench discussion.)**

20 THE COURT: I apologize. I need you
21 to step out for just a minute.

22 **(Jury leaves courtroom.)**

23 THE COURT: Go ahead and put on the
24 record what you choose.

25 MR. ROBERT LOPER: Thank you, Judge.

1 I'm not going to repeat all of what we said
2 yesterday. I think it is adequately on the record
3 yesterday what occurred with the witness, Kendrick
4 Jackson; but today is Friday, March 9th. I know that
5 yesterday after all the discussion about Kendrick
6 Jackson, the things that he said, what I feel to be
7 the misrepresentation of his testimony to the jury
8 and the mistaken impression that they have right now,
9 the Court instructed the State to get in touch with
10 Mr. Jackson to have him return. I know that the
11 Court's process server actually had Mr. Jackson on
12 the phone and had a rather heated discussion with him
13 about how Mr. Jackson was to reappear here in the
14 court this morning.

15 We were starting at 10:30 this
16 morning. It's now 11:50. As far as I know, he is
17 not here. I think that this jury still has this
18 mistaken impression of his testimony yesterday and
19 because he has not appeared pursuant to the Court's
20 instruction, it's put us in a position that that
21 mistaken impression can't be cured.

22 When you take that, plus the *Brady*
23 violation that we had, which was after the State --
24 after his testimony yesterday, the State instructed
25 Mr. Jackson to tell his lawyer about what he had done

1 for them as soon as he got arrested and they would
2 call his court to let them know that he was a witness
3 in a capital murder case.

4 It's clearly the promise of benefit
5 and as the record accurately reflected yesterday,
6 they did not come in and report that to the defense,
7 did not come in and report that to the Court. They
8 only admitted it after I asked about his warrant.

9 The *Brady* violation is clearly there
10 and the misrepresentation to the jury can't be cured
11 because Mr. Jackson is not here. We are forced to
12 move for a mistrial.

13 *THE COURT:* I am denying that. I
14 think at the very end of our discussion yesterday,
15 you did say that you -- this is not addressing the
16 prosecution learning yesterday that clearly that
17 witness did have a Motion to Adjudicate filed, that
18 there was a warrant for his arrest.

19 But you did say on the record that you
20 did know that there was a motion filed against him.
21 I've gone through the testimony. There was never a
22 question by you of -- if I have gotten all the
23 testimony that I believe is accurate, there was never
24 a question by you asking him that. So if you had
25 that knowledge, you should -- I'm not addressing her.

1 I'm addressing the state of the record and your
2 knowledge. You did not ask him that.

3 Beyond that, I think -- I've done some
4 research and -- one of the cases that I've reviewed
5 is *Drew v. State*, 76 S.W.3d 436, which discusses a
6 number of circumstances. But the witness was
7 released and excused by me yesterday and that -- you
8 did not ask that the witness remain. I hoped through
9 my efforts that maybe the witness will show back up.
10 Nobody has his address, but I'm hoping that he will
11 show back up. Right now for this, I'm assuming that
12 he is not going to show back up.

13 So the question is: Did anything that
14 he -- he is on probation still. There is not that --
15 there's no misrepresentation on whether or not he is
16 on probation. There's no misrepresentation about
17 that. He did not say that, as of today, his
18 probation was in good standing. I went back
19 yesterday and reviewed the testimony. So although
20 the words were very particular, they were honest and
21 accurate, according to the state of his probation.
22 So I do not find that there was a misrepresentation
23 in his testimony.

24 So here's the question: If he had
25 been on the stand and you had said: Is there a

1 motion to adjudicate filed, and he would have said:
2 Yes, there's a warrant for me, or even if he had been
3 in custody, would that be a material difference? And
4 I do not believe it would be any -- I don't believe
5 that that is material. His discussion with the
6 police was back in October of 2010 and 2011. And
7 from the state of the record, I did not see
8 cross-examination that his statement had changed. So
9 I cannot see where he is on his probation today is
10 material.

11 Is there a reasonable probability that
12 if the jury knew today that he was on probation and
13 that there was a warrant outstanding that there would
14 be a difference in the verdict? No. I just can't
15 see that that's the case. Looking at the state of
16 the evidence at this point and, you know, I know
17 supposedly what the proffer is from the witness that
18 is to come. So I do not see that there would be
19 reasonable probability of a different verdict.

20 Further, I guess I need to look at the
21 fairness to the defendant in the trial and the
22 State -- fairness to the defendant in the trial that
23 they did not know that this defendant -- the witness
24 had a warrant. I should have known. They should
25 have known. But is that unfair to this defendant? I

1 cannot see that that makes the proceedings that we
2 have had so far unfair to the defendant.

3 The jury is clear by the demeanor of
4 the defendant and I want to put that up -- the
5 witness and I want to put that on the record. He was
6 animated, lively, person with all gold front teeth or
7 no teeth, I couldn't quite tell. He made faces. He
8 would turn to me. He was angry. He was clearly an
9 unusual person. And then based on the testimony that
10 he is on probation, that he went back into drug
11 treatment facility, that he went and stayed in jail
12 before he did that, I don't think that they see him
13 as a stellar citizen who they want living next door.
14 So I don't think that they have an image of him that
15 would be affected by knowing that there is an
16 outstanding warrant on him.

17 They should have known that there was
18 a Motion to Adjudicate and they should know that the
19 State will talk to the prosecutor in those cases.

20 I'm denying your motion and we'll
21 discuss everything else later on and see what else
22 happens.

23 Let's go ahead and bring -- we need --
24 Mr. Faulk, come on over here and have a seat.

25 Just so you'll know, your attorney is

1 out here in the back row.

2 Bring in the jury.

3 **(Jury enters the courtroom.)**

4 *THE COURT:* You may call your next
5 witness.

6 *MS. BARNETT:* Thank you. State calls
7 Christopher Faulk.

8 *THE COURT:* Make sure you keep your
9 voice up for all the jury.

10 **CHRISTOPHER FAULK,**
11 having been first duly sworn, testified as follows:

12 **DIRECT EXAMINATION**

13 **BY MS. BARNETT:**

14 Q. Would you please state your name, sir?

15 A. Christopher Faulk.

16 Q. Mr. Faulk, you are currently in jail, are
17 you not?

18 A. Yes, ma'am.

19 Q. What are you charged with?

20 A. Aggravated robbery.

21 Q. All right. And you and I have had how many
22 conversations?

23 A. One.

24 Q. Where did that conversation take place?

25 A. In the jail, 701.