

1 instance, you arrive to do anything about it?
2 Possibility, isn't it?

3 A. There's a possibility, yes.

4 MR. ALFORD: Thank you, Officer.

5 I'll pass the witness.

6 MR. MOSS: No further questions.

7 THE COURT: All right. May he be excused?

8 MR. MOSS: As far as the State's
9 concerned, yes.

10 MR. ALFORD: No, your Honor.

11 THE COURT: All right. You're on call.

12 Thank you very much.

13 Call your next.

14 MR. MOSS: State calls Officer Hammerle.

15 THE BAILIFF: This witness was previously
16 sworn, your Honor.

17

18 JAY HAMMERLE,

19 having been previously duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MOSS:

22 Q. Would you please state your name for the
23 record?

24 A. My name is Jay Hammerle. I'm a Houston Police
25 officer.

1 Q. And, Officer Hammerle, what position do you
2 hold at the Houston Police Department?

3 A. I work in the Crime Scene Unit of the Homicide
4 Division of the department.

5 Q. And how long have you worked there?

6 A. With the department or with the unit?

7 Q. With the department.

8 A. Department, just over 24 years.

9 Q. And how long have you been with the Crime
10 Scene Unit?

11 A. Fourteen.

12 Q. What are some of your -- excuse me. What are
13 some of your duties as a crime scene investigator?

14 A. Our primary duties are to locate evidence,
15 document it and then start a chain of custody by
16 recovering it and putting it into the labs or property
17 rooms, depending on what it is.

18 Q. Have you had any special training as far as
19 that's concerned?

20 A. Yes, sir. We've gone through extensive
21 training.

22 Q. What kind of training have you had?

23 A. Roughly a little over 2500 hours worth of
24 training, everything from basic, intermediate and
25 advanced crime scene investigation, practical homicide,

1 homicide investigations, interviewing techniques,
2 videography, photography, several levels of photography,
3 fingerprint courses. There's about four fingerprint
4 courses, couple of dead man courses.

5 Q. So, quite a bit?

6 A. Yes, sir.

7 Q. I'm going to turn your attention to the date
8 of January 22nd, 2008. Do you recall that date?

9 A. Yes, sir.

10 Q. Were you dispatched to a scene, a homicide
11 investigation on that date?

12 A. Yes, sir.

13 Q. Where was that dispatched -- address you were
14 dispatched to?

15 A. 1320 West Pierce.

16 Q. Is that an address in Harris County, Texas?

17 A. Yes, sir.

18 Q. About what time were you dispatched?

19 A. I was dispatched at 1:25 and arrived at
20 1:40 p.m.

21 Q. When you get to the scene as a crime scene
22 investigator, what are your duties when you initially
23 arrive?

24 A. First off, we get with the primary officer
25 that's on -- first officer on the scene. See what the

1 extent is of the scene because you don't want to be
2 trampling through it and damaging evidence. Interview
3 him, get his basic information that he's got related to
4 the incident. Then we start examining the scene, look
5 for evidence related to the particular incident. Then
6 start with photography, 35-millimeter in this particular
7 case. We've since gone digital. Videotape the scene
8 and make some measurements related to the evidence that
9 you have for a diagram. And then recover the evidence,
10 fill out the forms for -- depending on where it's going,
11 property room, firearms lab, whatever.

12 Q. Now, in this case, did you do that standard
13 procedure?

14 A. Yes, sir.

15 Q. When you get there and you met with -- which
16 officer did you meet with?

17 A. Kessler, I believe was the one that first
18 approached me.

19 Q. And what was the scene looking like at that
20 point?

21 A. They had indicated it happened up in the
22 driveway of 1320. On or about that time I started
23 talking with Officer Walker who was the lead
24 investigator and dealt with him.

25 Q. Okay. And was the scene cordoned off at that

1 point?

2 A. It was blocked off, yes, sir.

3 Q. So, what's the first thing you did after the
4 scene is cordoned off, you learned what the crime
5 scene's about, what's the first thing you do in this
6 case in order to document?

7 A. In order to document was 35-millimeter film.
8 I took still pictures of the scene.

9 Q. Do you know if there was a second scene of
10 this case next door?

11 A. Once again, Officer Walker had advised me that
12 later on, near the end of the investigation, that there
13 was a pistol in another house.

14 Q. Did you make that scene as well?

15 A. Yes, sir.

16 MR. MOSS: May I approach the witness?

17 THE COURT: Yes, sir.

18 Q. (BY MR. MOSS) Let me first ask you about 29
19 and 30. Did you take measurements at the scene?

20 A. Yes, sir.

21 Q. Okay. Do you do anything with these
22 measurements?

23 A. I use them in the drawing of the diagram.

24 Q. Let me show you State's Exhibits No. 29 and
25 30. Do you recognize these?

1 A. Yes, sir. That's the diagram that I drew.

2 Q. Do you use the measurements taken from the
3 scene in order to make this diagram?

4 A. Yes, sir.

5 Q. Is it a true and accurate depiction of the
6 scene?

7 A. Yes, sir.

8 MR. MOSS: I'm now going to offer 29 and
9 30 into evidence. Asking for any objections from
10 counsel.

11 (State's Exhibit Nos. 29 and 30 offered)

12 MR. ALFORD: May we approach?

13 THE COURT: Sure.

14 (At the bench, on the record)

15 MR. ALFORD: I apologize. I just don't
16 want the jury to hear. It's already inflammatory
17 enough.

18 It's my understanding that Mr. Moss is
19 attempting to enter these into evidence not for
20 demonstrative purposes but for evidentiary purposes.

21 MR. MOSS: They're a drawing by the expert
22 at the scene --

23 THE COURT: Let me see 29.

24 MR. ALFORD: It's one we're just talking
25 about.

1 MR. MOSS: That's got so much writing on
2 it, just using this one -- you got measurements.

3 MR. ALFORD: Judge, I object. He's not
4 even laid a predicate for either of these to be admitted
5 into evidence.

6 THE COURT: I thought he did.

7 MR. MOSS: I believe I did as well, your
8 Honor.

9 MR. ALFORD: Stating that this is a
10 diagram that has all the measurements and things like
11 that on it.

12 THE COURT: You haven't gone through that
13 yet.

14 MR. MOSS: I asked him if he took
15 measurements, if they were correct.

16 THE COURT: I missed that part then.

17 MR. ALFORD: I must have been sleeping,
18 too. But the point is it's not to scale. So, we can't
19 verify that those measurements are true.

20 THE COURT: That's going to be overruled.
21 That one's in. What's that number?

22 MR. MOSS: It's No. 30.

23 THE COURT: So, 30 is in.

24 (State's Exhibit No. 30 admitted)

25 MR. MOSS: To be clear for the other --

1 MR. ALFORD: That seems repetitive, Judge.

2 THE COURT: Well, it is. I mean --

3 MR. ALFORD: We would object that it's
4 repetitive. Just go with the one with the measurements.

5 MR. MOSS: We just put that one in as
6 evidence.

7 MR. ALFORD: So, the objection is
8 sustained as to --

9 THE COURT: Your objection is --

10 MR. MOSS: We'll withdraw it, your Honor.

11 THE COURT: Your objection is sustained.
12 Thirty is in with the measurements.

13 (Open court, Defendant and jury present)

14 MR. MOSS: May I publish 30 to the jury,
15 your Honor?

16 THE COURT: Sure.

17 Q. (BY MR. MOSS) Will you step down, Officer
18 Hammerle. I'll show you State's Exhibit No. 30. Now,
19 you see a lot of arrows and numbers. What are these?

20 A. Basically you've got Shell Casing No. 1, 2 and
21 3. Three shell casings here. Measurements from this
22 point to the building and this wall of the building so
23 that I can relocate by going back out there. Once
24 again, this is a cell phone and this is two shirts that
25 were bloody.

1 Q. What's this marking right here?

2 A. This is the same as this. It's just the
3 measurements for the cell phone, how far away from the
4 wall.

5 Q. From the shirts, I guess?

6 A. Edge of the wall. Over 6 inches. When you're
7 drawing the diagram, if the distance is too close, you
8 can put two arrows inside them. It looks like a big
9 black blob. You bring them to the outside. Pointing
10 from here and there, it's 6 inches between those two
11 lines.

12 Q. Okay. So, how far between the edge of the
13 driveway and the one marked "Shell No. 1"?

14 A. From the edge of the driveway over?
15 Six-foot-one.

16 Q. From how far from the driveway, the end of the
17 driveway where you have the driveway listed here into
18 the building? The end of the building to the shell, how
19 far is that?

20 A. It's 14-foot-11. The point of reference is
21 this corner.

22 Q. How far from the driveway to the second shell?

23 A. It's 18-foot-8.

24 Q. From the edge of the building to the third
25 shell?

1 A. It's 25-foot-6.

2 Q. Just for the record, how far between -- the
3 distance between Shell 1 and Shell 2?

4 A. A little over 5 foot.

5 Q. And how far from Shell 2 to Shell 3?

6 A. It's 7 foot 8 inches.

7 Q. Okay. So, and you -- how did you take those
8 measurements?

9 A. Tape measure.

10 Q. With a tape measure. Okay. You can have a
11 seat back there.

12 I'm going to show you State's Exhibits 24, 25,
13 46, and 47. Tell me what 24 is.

14 A. This is the pistol I picked up from the house
15 next door when Mike Walker advised me of it being over
16 there.

17 Q. And 25?

18 A. This is the clip that was laying on the table
19 beside it.

20 Q. And what's 46?

21 A. This is going to be the one that was inside
22 it.

23 Q. Okay. Finally, 47?

24 A. This is going to be the bullet that -- there
25 was a bullet in the chamber of the pistol when it was

1 closed, ready to fire. That's going to be the unfired
2 bullet.

3 Q. Okay. Would you mind opening up these
4 packages for me. Would you remove the contents of this
5 bag, ECC1 through 3. It's the marking on the back.

6 A. These are going to be the three shell casings
7 in the driveway.

8 Q. We need to put markers on these. So, I'm
9 going to say it on the record that it's now State's
10 Exhibits 19, 20 and 21. What are they?

11 A. Fired shell casings.

12 Q. And you pulled them out of a bag that had
13 evidence tape on it. What does evidence tape do as a --
14 for this evidence?

15 A. When I start a chain of custody after we
16 recovered the evidence and we put them in an evidence
17 submission envelope, fill out a submission form. And it
18 has the -- this is all my writing with my name. I put
19 the tape on it to seal the bag for -- in case it gets --
20 if the lab's going to go in, they have to go through my
21 seal.

22 Q. What are these initials right here on the bag?

23 A. This one and this one are mine.

24 Q. So, for integrity of evidence?

25 A. Correct.

1 Q. Looking at State's Exhibit No. 19, 20 and 21,
2 are these in the same condition as you remember them
3 being from the scene?

4 A. Yes, sir.

5 Q. Have you remove the contents of the other bag?
6 And do you know what these are?

7 A. Officer Kessler handed me those. Two rounds
8 found by him. I don't know where he found these. He
9 handed them to me when I first arrived.

10 Q. These are, I guess, live rounds?

11 A. Correct.

12 MR. MOSS: And for the record, I'm marking
13 this as State's Exhibit No. 22.

14 Q. (BY MR. MOSS) Okay. So, as far as State's
15 Exhibits 24, 25, 46 and 47, are these in the same
16 condition as you found them at the scene of the crime or
17 this would be the scene of the --

18 A. These were found in the house next door, yes.

19 Q. Okay.

20 MR. MOSS: I'm going to offer -- let me
21 put it down for the record, State's Exhibits No. 19, 20,
22 21, 22, 24, 25, 46, 47, and their contents.

23 (State's Exhibit Nos. 19, 20, 21,
24 22, 24, 25, 46, 47 offered)

25 MR. ALFORD: The weapon's been cleared,

1 correct?

2 MR. MOSS: Yes.

3 MR. ALFORD: Your Honor, we have no
4 objection to 24, 25, 46, 47, 19, 20 and 21. But we do
5 object to State's Exhibit No. 22 because I don't believe
6 the proper foundation's been laid because we don't know
7 where these came from or actually even what's in this
8 folded-up paper.

9 THE COURT: Sustained.

10 Q. (BY MR. MOSS) I'm sorry you didn't testify to
11 this earlier, but what's in here?

12 A. There's bullets in there that were given to me
13 by Officer Kessler when I first arrived.

14 MR. MOSS: All right. So, as far as the
15 other ones, do they come in, Judge?

16 THE COURT: On 22?

17 MR. MOSS: No. Not 22, just for the rest
18 of them?

19 THE COURT: Yeah. The rest are admitted.

20 (State's Exhibit Nos. 19, 20, 21,

21 24, 25, 46, 47 admitted)

22 Q. (BY MR. MOSS) So, 24, what is it?

23 A. It's a pistol that was pointed out that was
24 located by Officer Walker, who is now a lieutenant, in
25 relationship to this incident two houses -- a house

1 down.

2 Q. You said you found one clip in the gun and one
3 clip --

4 A. Laying beside it.

5 Q. -- laying beside it. Were there rounds in
6 these clips?

7 A. Yes, sir.

8 Q. Finally, looking at 19, 20 and 21, these are
9 the shells found at the scene, correct?

10 A. Correct.

11 Q. Now, have they been stepped on?

12 A. No, sir, to my knowledge.

13 Q. If a shell casing's been stepped on, what
14 happens to it oftentimes?

15 MR. ALFORD: Objection, your Honor. He
16 doesn't know if they were stepped on. He says not to
17 his knowledge. He doesn't know. It calls for
18 speculation as to what happened to a shell casing. Any
19 given moment it might be stepped on.

20 THE COURT: Sustained.

21 Q. (BY MR. MOSS) Do you work a lot of crime
22 scenes?

23 A. Yes, sir.

24 Q. Have you ever had a crime scene where shell
25 casings have been damaged?

1 A. Yes, sir.

2 Q. Okay. Now, comparing in your knowledge or in
3 you experience, were these shell casings damaged?

4 MR. ALFORD: Objection, your Honor. It
5 calls for speculation, more importantly --

6 THE COURT: I got your objection. Thank
7 you, Mr. Alford.

8 Bottom line is this, Officer, you can
9 answer that question if you have personal knowledge.

10 A. (CONTINUING) I have no personal knowledge
11 that this was stepped on.

12 MR. ALFORD: I apologize. I did not hear.

13 THE COURT: Answer it again.

14 A. (CONTINUING) I have no personal knowledge if
15 those were stepped on or not.

16 Q. (BY MR. MOSS) Once you get this evidence,
17 what did you do with it?

18 A. Once it's recovered from the scene, we take
19 those, package them, in this case in the plastic bags
20 for the small ones. Then put them in a paper bag
21 because that's the property room submission envelope.
22 They like to have uniformity. Fill out the front and
23 fill out a submission form. Seal them with the evidence
24 tape and then submit them to the property room, the HPD
25 property room.

1 Q. Is that what you did in this case?

2 A. Yes, sir.

3 MR. MOSS: Pass the witness, your Honor.

4 THE COURT: Okay.

5 Mr. Alford?

6 CROSS-EXAMINATION

7 BY MR. ALFORD:

8 Q. Officer Hammerle, how long have you been with
9 the CSU?

10 A. Fourteen years.

11 Q. Fourteen years. As far as -- you don't have
12 any personal knowledge whether or not these shell
13 casings were stepped on, for instance, correct?

14 A. Those shell casings, correct.

15 Q. Right. And, therefore, you wouldn't know if
16 they had been kicked at the scene, correct?

17 A. Once I got there, they weren't. Prior to
18 that, I don't know. Is that the question you're asking?

19 Q. Well said, Officer. You don't have any prior
20 knowledge what happened to any of those things before
21 you got there is my question that you've helped me with.

22 A. Correct.

23 Q. Did you do any ballistics on those shell
24 casings to determine whether or not they were actually
25 fired from the gun that was admitted as State's Exhibit

1 No. 24?

2 A. Personally, no, sir, I did not. I'm not a
3 firearms examiner.

4 Q. Do you know of anywhere in the case at all
5 anyone ever requested ballistics or if any ballistics
6 was done to determine if those casings were even, in
7 fact, fired from that 9-millimeter?

8 A. I wouldn't have knowledge of that, sir.
9 That's the investigator's part. I just do the physical
10 evidence and then move on to the next one.

11 Q. Yes, sir. So, to your knowledge -- to your
12 knowledge, you don't know whether any ballistics was
13 done that can tie those shell casings to the
14 9-millimeter that was State's Exhibit No. 24, correct?

15 A. I have no knowledge of it, no, sir. I have no
16 way of knowing that. I don't do that.

17 Q. Right. Without any -- as far as you know,
18 somebody could have walked through with three spent
19 shell casings prior to you getting there and dropping
20 them into the driveway, correct?

21 MR. MOSS: Objection to speculation.

22 THE COURT: Sustained.

23 Q. (BY MR. ALFORD) Are you familiar with
24 firearms?

25 A. Depends on the degree of what you mean by

1 "familiar." Do I know how to operate my own firearm?

2 Yes, sir.

3 Q. What type of firearm do you use?

4 A. Taurus.

5 Q. Taurus? A semiautomatic?

6 A. Yes, sir.

7 Q. What caliber is it?

8 A. It's a 9-millimeter.

9 Q. A 9-millimeter? Same as the pistol in this
10 case that was entered into evidence as State's Exhibit
11 No. 24 was a 9-millimeter, correct?

12 A. They're the same caliber, yes, sir.

13 Q. Different make, different model, same caliber?

14 A. Correct.

15 Q. The bullets that you recovered, the full
16 unfired rounds often referred to as bullets, but the
17 unfired rounds that you recovered specifically that were
18 entered into evidence, would you agree with me that
19 those have a casing on them or a full jacket?

20 A. Jacket. I would have to look at them again,
21 but I believe they did.

22 MR. ALFORD: May I approach the witness?

23 THE COURT: Sure.

24 Q. (BY MR. ALFORD) We'll pick State's Exhibit --
25 what's entered into evidence as State's No. 47.

1 A. Yes, sir. It's called a full metal jacket or
2 a hard-nosed round.

3 Q. Hard-nosed round. That's in contrast to a
4 softer-nosed round or a hollow point round or something
5 like that, correct?

6 A. Never heard it called softer-point, but hollow
7 point, yes, sir.

8 Q. Hollow point?

9 A. Or one without a jacket.

10 Q. And you would agree with me, I'm sure, even at
11 your level of training that a fully jacketed round is
12 going to continue to travel through things more so than
13 a hollow point round, correct?

14 MR. MOSS: Objection to speculation and
15 relevance.

16 MR. ALFORD: If he knows, your Honor.

17 THE COURT: If you know, you can answer
18 that question.

19 A. (CONTINUING) A direct comparison, same
20 materials, if they hit, the hollow point's designed to
21 slow down, yes, and stop.

22 Q. (BY MR. ALFORD) Slow down and stop as it goes
23 through the same material where the jacketed bullet is
24 going to go farther than the hollow point, correct?

25 A. All things the same, yes.

1 Q. That's -- thank you very much. That's all I'm
2 asking.

3 Let me pose a hypothetical to you. If we
4 assume that three rounds were fired, if you as a police
5 officer were engaged in a situation where you were in
6 fear for your life, would it be unreasonable for you to
7 fire three rounds?

8 MR. MOSS: Objection to speculation and
9 relevance.

10 THE COURT: Sustained.

11 Q. (BY MR. ALFORD) Officer, if we look at what's
12 admitted into evidence as State's Exhibit No. 30, can
13 you see that all right?

14 A. Uh-huh.

15 Q. If we look -- you said the distance from Shell
16 No. 1 to Shell No. 2, was how -- what distance was that?

17 A. I would have to sit with a pencil and paper
18 and do it.

19 Q. I think I wrote it down. About 5 feet?

20 A. Fifteen from 18, about 3-foot-9, I guess it
21 measures.

22 Q. Three-foot-nine?

23 A. Fourteen-eleven from 18-8, like 3 foot -- let
24 me do it by my way. It's 3-foot-9.

25 Q. Three-foot-nine?

1 A. Yes.

2 Q. So, less than 4 feet between Shell Casing
3 No. 1 and Shell Casing No. 2?

4 A. Yes, sir.

5 Q. All right. And what was the distance between
6 Shell Casing No. 2 and Shell Casing No. 3?

7 A. It's 6-foot-10.

8 Q. So, 6-foot-10. Less than 7 feet. Did you
9 bring your tape measure with you here today?

10 A. No, sir.

11 Q. Do you have a ruler with you?

12 A. No, sir, I don't.

13 Q. Okay. If you -- if we look at those shell
14 casings, shell casings between No. 1 and No. 2, there's
15 no way to determine where those -- where the gun was
16 fired in relation to where those shell casings ended up,
17 is there?

18 A. Not with what you've just given me, no, sir,
19 there's not.

20 Q. There's no way to determine based on where
21 those shell casings were of which round was fired first,
22 is there?

23 A. No, sir.

24 Q. Therefore, Shell Casing No. 2 could have been
25 spent before Shell Casing No. 3 or No. 1, et cetera, et

1 cetera, correct?

2 A. Yes, sir.

3 Q. There's nothing to indicate therefore from
4 where those rounds are where the shooter stood or
5 whether he was advancing or standing still or
6 retreating, is there?

7 A. No, sir.

8 MR. ALFORD: Thank you very much.

9 I pass the witness.

10 THE COURT: Anything else?

11 MR. MOSS: No further questions.

12 THE COURT: All right. Thank you.

13 Is he excused?

14 MR. ALFORD: No, your Honor.

15 THE COURT: All right. You're on call.

16 Thank you very much.

17 All right. Ladies and gentlemen, I'm
18 going to send you to lunch at this time. Please don't
19 discuss this case with each other. Have a nice lunch.

20 (Noon recess)

21 (Open court, Defendant and jury present)

22 THE COURT: All right. Call your next
23 witness.

24 MR. MOSS: State calls Officer Mabasa.

25 THE BAILIFF: This witness was previously