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 2 VOLUME 6 OF 9 VOLUMES
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10 STATE OF TEXAS * IN THE DISTRICT COURT OF
 11 VS. * HARRIS COUNTY, TEXAS
 12 DONALD NEALEY * 228TH DISTRICT COURT
 13 *
 14 *
 15 *

16 *****
 17 *** TRIAL ON THE MERITS ***
 18 *****

19 On November 12, 2015, the following proceedings
 20 came on to be heard in the above-entitled and numbered
 21 cause before the Honorable Leslie Yates, Judge
 22 presiding, held in Houston, Harris County, Texas;

23 Proceedings reported by machine shorthand.

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E X H I B I T I N D E X

TRIAL ON THE MERITS
VOLUME 6 OF 9 VOLUMES
November 12, 2015

State's	No.	Description	Offered	Admitted	Vol.
	153	Print Card	12	12	6
	154-A	Print Card	12	12	6
	154-B	Palm Card	12	12	6
	155	Print Card	12	12	6
	156-A	Print Card	12	12	6
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	161	Photograph	105	108	6
	162	Photograph	105	108	6
	163	Photograph	105	108	6
	164	Photograph	105	108	6
	165	Photograph	105	108	6
	166	Photograph	105	108	6
	167	Photograph	105	108	6
	168	Photograph	105	108	6
	169	Photograph	105	108	6
	170	Photograph	105	108	6
	171	Photograph	105	108	6

1	172	Photograph	105	108	6
2	173	Photograph	105	108	6
3	174	Photograph	105	108	6
4	175	Photograph	105	108	6
5	176	Photograph	105	108	6
6	177	Photograph	105	108	6
7	178	Photograph	105	108	6
8	179	Photograph	139	139	6
9	180	Photograph	139	139	6
10	181	Photograph	139	139	6
11	Defense				
12	No.	Description	Offered	Admitted	Vol.
13	3	Letter	90	126	6
14	4	Letter	90	126	6
15	5	Letter	90	126	6
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1 **P R O C E E D I N G S**

2 **November 12, 2015**

3 (Open court, Defendant present.)

4 THE COURT: You want to raise your right
5 hand to be sworn, please?

6 (Witness sworn.)

7 THE BAILIFF: All rise for the jury.

8 (Jury enters courtroom.)

9 THE COURT: Thank you. Please be seated.
10 Good morning, ladies and gentlemen.
11 Welcome back.

12 Ms. Meriwether, you may call your next
13 witness.

14 MS. MERIWETHER: Thank you, Your Honor.
15 The State would call Kirk Miller.

16 THE BAILIFF: Your Honor, this witness has
17 been sworn in.

18 THE COURT: Thank you.

19 You may proceed.

20 MS. MERIWETHER: Thank you, Your Honor.

21 **KIRK MILLER,**

22 having been first duly sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 BY MS. MERIWETHER:

25 Q. Good morning, sir. Could you introduce

1 yourself to our jury?

2 A. My name is Kirk Miller, and I work for the
3 Houston Police Department.

4 Q. And how long have you been with the Houston
5 Police Department?

6 A. For approximately 17 years.

7 Q. And what do you do for the Houston Police
8 Department?

9 A. I process evidence in an attempt to develop
10 latent prints using fingerprint powders and chemicals.
11 I also analyze and compare latent prints to record
12 prints.

13 Q. And is that what you've always done for the
14 Houston Police Department, or have you held any other
15 positions?

16 A. For the first nine years, I was actually
17 working with the AFIS inside the jail; and then I
18 proceeded to the latent print section.

19 Q. And what kind of training have you had that
20 allows you to be a latent print examiner?

21 A. I have a Associates of Applied Science degree
22 in criminal justice from North Harris Community College
23 and a Bachelor's of Science degree in criminal justice
24 from University of Houston. I've also attended
25 approximately 1100 hours in training and comparisons and

1 processing.

2 Q. And those 1100 hours has that been an ongoing
3 process, or is it something you did all in a couple of
4 years' span?

5 A. No, that's been an ongoing process from the
6 time I started.

7 Q. And do you hold any certifications?

8 A. No, I do not.

9 Q. Do you have any affiliations with national
10 organizations?

11 A. Yes, I'm a member of the International
12 Association for Identification or IAI.

13 Q. And what is that, and what's involved in
14 getting that?

15 A. You have to work within the field and apply and
16 be sponsored by someone else who is already in the
17 organization, and they offer training and allow us to
18 write articles and share with the community.

19 Q. You're here today to testify about some prints
20 that were recovered in both an aggravated robbery and a
21 capital murder; are you familiar with that case?

22 A. Yes.

23 Q. And prior to testifying about these prints, did
24 you go and collect fingerprints from two individuals?

25 A. Yes, I did.

1 Q. And who were those two individuals?

2 A. I went and printed Donald Nealey and Marquis
3 Davis.

4 Q. And as part of that print work or in order to
5 take those prints, was that done by a search warrant
6 that was signed?

7 A. Yes.

8 Q. When you went to print Marquis Davis and Donald
9 Nealey, how did you determine who they were?

10 A. Before I printed them, I looked at the
11 wristband that they had on and compared it with the
12 number that was on the subpoena itself.

13 Q. And do you see anybody in the courtroom today
14 as the same individual that you printed?

15 A. Yes, I do.

16 Q. Can you point to him and identify an article of
17 clothing he's wearing?

18 A. It's that gentleman right over there, he's
19 wearing a white shirt.

20 MS. MERIWETHER: Your Honor, may the record
21 reflect the witness has identified the Defendant?

22 THE COURT: The record will so reflect.

23 Q. (BY MS. MERIWETHER) And did you learn that
24 individual's name?

25 A. Yes, that's Donald Nealey.

1 MS. MERIWETHER: Your Honor, may I approach
2 the witness?

3 THE COURT: You may.

4 Q. (BY MS. MERIWETHER) Who was the other
5 individual that you printed?

6 A. Marquis Davis.

7 Q. I'm going to show you first what I've marked as
8 State's Exhibits 153 and 155; are you familiar with
9 these?

10 A. Yes, I am.

11 Q. And what are these?

12 A. These are palm impressions that I took myself
13 from Donald Nealey and Marquis Davis.

14 Q. And now showing you State's Exhibits 154-A and
15 B, what are these two items?

16 A. This is the record or database fingerprints and
17 palm prints of Donald Nealey.

18 Q. And showing you State's Exhibits 156-A and B,
19 what are these items?

20 A. These are the record or AFIS database prints of
21 Marquis Davis.

22 Q. And were these items what you used to compare
23 to the unknown prints that we're going to talk about in
24 a minute from the aggravated robbery and the capital
25 murder?

1 A. Yes, they were.

2 MS. MERIWETHER: Your Honor, at this time I
3 move to offer the following exhibits, which are 153,
4 154-A and B, 155 and 156-A and B.

5 (State's Exhibit Nos. 153, 154-A and B,
6 155, 156-A and B offered.)

7 MR. ROBERT SCARDINO: May I have just a
8 moment, Your Honor?

9 THE COURT: You may.

10 MR. ROBERT SCARDINO: The documents have
11 been examined; and there's no objection, Your Honor.

12 THE COURT: State's Exhibits 151 (sic)
13 through 156-B are admitted.

14 (State's Exhibit Nos. 153, 154-A and B,
15 155, 156-A and B admitted.)

16 MS. MERIWETHER: And may I publish, Your
17 Honor?

18 THE COURT: I'm sorry, I said that wrong.
19 It was 153 through 156-B.

20 Yes, you may.

21 MS. MERIWETHER: Thank you.

22 Q. (BY MS. MERIWETHER) Starting with State's
23 Exhibit 153, what is this item?

24 A. That is the inked palm print of Donald Nealey
25 that I obtained.

1 Q. And I noticed at the bottom of this, there's
2 the ability to take individual fingerprints, did you do
3 that in this case?

4 A. No, I did not.

5 Q. And why not?

6 A. All I needed was some section of fingerprint
7 detail in order to compare it to the record prints, and
8 I was informed that it would be --

9 MR. ROBERT SCARDINO: Object to the
10 hearsay.

11 THE COURT: Sustained.

12 Q. (BY MS. MERIWETHER) So you took just enough of
13 a print so you could take it back and then compare it to
14 knowns?

15 MR. ROBERT SCARDINO: Object to the leading
16 question.

17 THE COURT: Sustained.

18 Q. (BY MS. MERIWETHER) Why did you only take a
19 palm print -- I'm sorry.

20 I'll move along, Your Honor.

21 THE COURT: Thank you.

22 MS. MERIWETHER: I think I'm having a hard
23 time this morning, more coffee.

24 Q. (BY MS. MERIWETHER) Showing you 154-A, what is
25 this item?

1 A. This is the AFIS record for Donald Nealey.

2 Q. And what's an AFIS record?

3 A. It was obtained from a database that has his
4 fingerprints in it.

5 Q. And also the backside, what's on -- more
6 fingerprints of Donald Nealey; is that correct?

7 A. It's his other hand, yes.

8 Q. And then showing you State's Exhibit 154-B,
9 what is this item?

10 A. That is a ten-print card of Donald Nealey, also
11 obtained from the AFIS database.

12 Q. Is this a database with lots of prints in it?

13 A. Yes, it is.

14 Q. And are you able to enter specific information
15 to find a person that you're looking for?

16 A. Yes.

17 Q. Did you take the known of 153, the person that
18 you inked that you've identified here in court today,
19 those known prints and compare it to the ones that came
20 out of the database?

21 A. Yes, I did.

22 Q. Was that the same individual?

23 A. Yes, it was.

24 Q. And also with 155, what is this?

25 A. That is the palm print that I obtained for

1 Marquis Davis.

2 Q. And did you follow the same process with
3 State's Exhibits 156-A and B, these cards?

4 A. Yes, I did.

5 Q. And now let's talk a little bit about the
6 comparison side of it. So, you've got your known prints
7 of two individuals, did you also have some unknown
8 prints?

9 A. Latent prints that were submitted in the case.

10 Q. And what are latent prints?

11 A. Latent prints are reproduction of the ridge
12 detail on hands or feet, sweat or oily materials; and
13 they require some type of processing in order to make
14 them visible.

15 Q. As part of this aggravated robbery, I want to
16 start first with the aggravated robbery; did you have
17 some print cards that were unknowns that you did a
18 comparison on?

19 A. Yes, I did.

20 MS. MERIWETHER: Showing you first State's
21 Exhibit 137; are you familiar with this print card?

22 A. Yes, I am.

23 Q. Okay. And does it, in fact, contain your
24 initials here at the bottom and your markings on it?

25 A. Yes, it does.

1 Q. And there are some additional markings at the
2 top here, are you familiar with that group?

3 A. Yes, that is a contract group that formally
4 worked the case.

5 Q. So back in March 23rd of 2014, that group also
6 evaluated those prints --

7 A. Yes.

8 Q. -- these prints, I'm sorry; is that correct?

9 A. That's correct.

10 Q. Does that group still exist within the Houston
11 Police Department?

12 A. No, they do not.

13 Q. Did you reexamine these exact same prints in
14 September of 2015?

15 A. Yes, I did.

16 Q. Showing you the backside of State's
17 Exhibit 137, were you able to do any comparison with
18 this item?

19 A. Yes.

20 Q. To the known prints?

21 A. Yes, I marked one as L2; and I compared it to
22 both individuals.

23 Q. And you're referring to this note here?

24 A. Yes.

25 Q. And what were the results?

1 A. That I excluded both Marquis Davis and Donald
2 Nealey from making that print.

3 Q. So, the print that's from the cash register
4 neither Davis nor Nealey?

5 A. Correct.

6 Q. Showing you State's Exhibit 138, another from a
7 cash register screen, did you do a comparison on this
8 one to the two knowns?

9 A. Yes, I did.

10 Q. And showing you the backside of 138 where it's
11 marked L3, is that the print you did a comparison on?

12 A. Yes, it is.

13 Q. And what results did you obtain there?

14 A. I excluded Marquis Davis and Donald Nealey.

15 Q. Showing you State's Exhibit 139, another from
16 the cash register screen or cash register drawer, excuse
17 me, did you do a comparison on it to the knowns?

18 A. Yes, I did.

19 Q. And showing you L4, did you do a comparison on
20 this item?

21 A. Yes, I did.

22 Q. And what were the results?

23 A. I excluded Marquis Davis and Donald Nealey.

24 Q. And lastly the cell phone screen, which is
25 State's Exhibit 140, were you able to do a comparison on

1 it?

2 A. Yes, I was.

3 Q. And that's this and you've marked an L1 here,
4 were you able to do a comparison on it?

5 A. I analyzed the print and determined that it was
6 no value.

7 Q. Explain that to us?

8 A. That according to our policy, there was not
9 enough significant information on there in order to form
10 a conclusion.

11 Q. So, no exclusion or inclusion, just not enough?

12 A. Just not enough.

13 Q. Before I leave these prints, can you give the
14 ladies and gentlemen an idea how you do the comparison
15 aspect? You've looked at three of them and excluded
16 Nealey and Davis, how did you do that?

17 A. Well, we used a process or an acronym called
18 ACE-V, that is analysis, comparison, evaluation and
19 verification. During our analysis phase, we look at the
20 complete card. We'll try to find the orientation, where
21 it came from like a finger, a joint, a palm, or even a
22 foot. We'll look at any smudging or background noise,
23 anything that will hinder the ability to make a
24 comparison. From that point, I will go even further and
25 look at the different levels of characteristics.

1 Level 1, being just a general ridge flow.
2 Level 2, being individual characteristics such as
3 bifurcations where the ridges slid apart. Ending ridges
4 where they just stop or just plain dots. Once I find a
5 grouping of characteristics, I will then look for those
6 same groupings in the submitted cards or even enter
7 those into an AFIS database. Once I compare them, I
8 will make a determination on whether they are, in fact,
9 an identification, exclusion, or if I cannot come up
10 with a conclusion.

11 Q. With regard to the three that are found on the
12 register drawer, L2, L3 and L4, were those also put into
13 the AFIS database?

14 A. Yes, they were.

15 Q. Were they also inputted into the Federal Bureau
16 of Investigation database?

17 A. Yes, they were.

18 Q. And the City of Houston's database?

19 A. Yes, they were.

20 Q. And the Texas Department of Public Safety
21 database?

22 A. Yes.

23 Q. And were we able -- did it -- as a result of
24 entering in the prints to all of those databases, were
25 they matched to anyone?

1 MR. ROBERT SCARDINO: We'd object to that
2 question. May we approach?

3 THE COURT: You may.

4 (Bench conference.)

5 MR. ROBERT SCARDINO: Your Honor, I'm
6 concerned that that question may bring a response that
7 will reveal an extraneous offense since all those
8 databases are --

9 MS. MERIWETHER: There's no match.

10 MR. ROBERT SCARDINO: Say it again?

11 MS. MERIWETHER: There's no match.

12 MR. ROBERT SCARDINO: Okay. I'm just -- I
13 didn't know what his answer was going to be.

14 MS. MERIWETHER: I'll be happy to show you
15 in the report.

16 MR. ROBERT SCARDINO: Also, would you ask
17 him to make sure that there was a search warrant used
18 for those fingerprints?

19 MS. MERIWETHER: I already did, but I can
20 ask him again.

21 THE COURT: Just be careful how you word
22 the question.

23 MS. MERIWETHER: Which question?

24 THE COURT: Just be sure that it's not
25 going to lead to any extraneous information.

1 MS. MERIWETHER: Oh, I thought you were
2 talking about the search warrant question, I'm sorry.

3 THE COURT: No.

4 MS. MERIWETHER: He asked me another
5 question, I'm sorry.

6 MR. ROBERT SCARDINO: Thank you.

7 (End of bench conference.)

8 Q. (BY MS. MERIWETHER) Mr. Miller, I think my last
9 question to you was were these prints matched to anyone
10 out of those databases?

11 A. No, they were not.

12 Q. What other databases were these prints put into
13 for possible comparison later?

14 A. It was for City of Houston, the Texas DPS and
15 FBI.

16 Q. Okay. All right. Let me move on now to the
17 fingerprints that came out of the capital murder, and
18 that's under Incident No. 027788514. All right. Again,
19 so the same process that you've already described to the
20 ladies and gentlemen of the jury and that you look at
21 the fingerprint cards and compare it to the knowns?

22 A. Yes.

23 Q. All right. I'm going to start first with
24 State's Exhibit 129, which is the exterior driver's door
25 rear edge below the door handle. Were you able to make

1 a comparison of this one?

2 A. I looked at the card, and I did not find
3 anything of value.

4 Q. And does that happen from time to time?

5 A. Yes.

6 Q. Explain how that occurs?

7 A. Sometimes an object is touched and not enough
8 detail is left behind, or sometimes it's been touched so
9 many times that it actually starts smudging and having
10 overlaps of prints.

11 Q. So, in this instance, it was collected, you
12 reviewed it and you couldn't see anything for
13 comparison?

14 A. Correct.

15 Q. I want to show you next State's Exhibit 130,
16 which is the exterior right rear door, front edge center
17 of window and the diagram here. Showing you the other
18 side, which you've marked as L7?

19 A. Yes.

20 Q. Were you able to do a comparison on this print?

21 A. Yes, I was.

22 Q. Okay. And what were your results?

23 A. I excluded Marquis Davis and Donald Nealey.

24 Q. Now, showing you State's Exhibit 131, which is
25 the exterior front passenger door, rear edge bottom of

1 window level; were you able to do some comparison on
2 this item?

3 A. I looked at the card and determined that there
4 was nothing of value.

5 Q. Nothing for you to do any comparison on?

6 A. Correct.

7 Q. And is that indicated with the "NV" here?

8 A. Yes, it is.

9 Q. And, again, your initials and dating at the
10 bottom?

11 A. Yes, it is.

12 Q. And I'm going to skip to 133 at this point.
13 This is the exterior driver's door, just above the door
14 handle. Were you able to make a comparison of this item
15 to the known prints?

16 A. No, I determined it to be of no value.

17 Q. And going to 134, which is the exterior left
18 rear door towards the front just below the window; and
19 showing you the other side, were you able to make a
20 comparison on State's Exhibit 134?

21 A. Yes, I was.

22 Q. And what were the results of that item?

23 A. I excluded Marquis Davis and Donald Nealey.

24 Q. Okay. Now, I've saved the largest card for
25 last, and there's multiples on this one; is that

1 correct?

2 A. Yes.

3 Q. So, this is the one that's on the -- partially
4 on the front windshield A-pillar area. And showing you
5 the backside of it, of State's Exhibit 132, let's first
6 deal with the, what we have on this side; and it appears
7 that you've got some markings for an L5 and L6 in this
8 area?

9 A. Yes.

10 Q. Talk to us about what you obtained there?

11 A. After making a comparison of L5, I determined
12 that it was an identification to the right palm of
13 Marquis Davis.

14 Q. And how did you determine that?

15 A. I did a side-by-side comparison and looked for
16 the characteristics and made sure that they matched in
17 both prints.

18 Q. And now I want to take you to L6, which is this
19 area here. Were you able to make a comparison on that
20 item?

21 A. Yes, I was.

22 Q. And did you obtain results?

23 A. Yes.

24 Q. And what were they?

25 A. It was an identification to the right palm of

1 Marquis Davis.

2 Q. Okay. And before I leave this area, I want to
3 ask you, it's kind of hard to see, but there are some
4 additional -- that helps a little bit -- some additional
5 writing here in red. What is that information?

6 A. That is the signature of the verifier.

7 Q. And who was the verifier on your case, if you
8 recall?

9 A. Latent print examiner, Darren Jukes.

10 Q. And also on your L6, was that verified as well?

11 A. Yes, it was.

12 Q. And tell us what's involved in the verification
13 process?

14 A. The verifier will receive the case and they
15 will go through it just as I did, start with an analysis
16 and determine whether things are of value or not, then
17 they'll go to the comparison phase where they'll look at
18 both the record prints and the latent prints to
19 determine if there's an identification, exclusion, or if
20 no decision can be made.

21 Q. Is it the same process that you go through?

22 A. Yes, it is.

23 Q. So, is it an independent review of what you've
24 done?

25 A. Yes, it is.

1 Q. Do you collaborate or be in the same room at
2 the time that that's done?

3 A. No.

4 Q. I want to move to this side of the print card,
5 and, first, let me start with L2, which is this print
6 here, were you able to make any comparisons on it to the
7 known prints?

8 A. Yes, I was.

9 Q. And what were the results?

10 A. I determined that it was an identification to
11 the right index finger of Marquis Davis.

12 Q. And there's some writing up here. Was this
13 print verified by the same individual?

14 A. Yes, it was.

15 Q. And now I next want to move to, I think, is
16 this L3, this one here?

17 A. Yes, it is.

18 Q. Okay. Were you able to do any analysis on this
19 item?

20 A. Yes, I was.

21 Q. And what were the results?

22 A. I determined it was an identification of the
23 right middle finger of Marquis Davis.

24 Q. And was that print also verified?

25 A. Yes, it was.

1 MS. MERIWETHER: I'll pass the witness,
2 Your Honor.

3 MR. ROBERT SCARDINO: May I proceed, Your
4 Honor?

5 THE COURT: You may.

6 **CROSS-EXAMINATION**

7 BY MR. ROBERT SCARDINO

8 Q. Mr. Miller, good to see you again?

9 A. Good to see you.

10 Q. And how long have you been doing fingerprint
11 analysis?

12 A. I've been working with fingerprints for
13 17 years and working with latents for the last
14 approximately seven or eight years.

15 Q. Would you like to spend the next hour or so
16 talking about the ACE-V method of fingerprint analysis?

17 A. If you wish.

18 (Laughter.)

19 Q. (BY MR. ROBERT SCARDINO) I don't think we'll
20 go through it with this case. So, you were given a set
21 of prints to examine that were taken by somebody other
22 than yourself?

23 A. Yes.

24 Q. And how long from the time the prints were
25 taken to when you got to analyze them?

1 A. I don't know. I'd have to look at the date.

2 Q. And can you tell how long a print has been on a
3 surface before it's lifted from a surface?

4 A. No, I can't.

5 Q. And so the prints that you've talked about here
6 we don't know when they were placed on the surface of
7 the item that it was taken from?

8 A. That is correct.

9 Q. That was an awful question. All right. Are
10 you familiar at all with this case other than just what
11 you've done here with the fingerprints?

12 A. No, I'm not.

13 Q. And when the Prosecutor makes a reference to a
14 capital murder case, you're not familiar with any of the
15 facts or circumstances surrounding that at all, are you?

16 A. No, I'm not.

17 Q. Okay. Your focus is strictly just on rather
18 there are fingerprints that can be identified or not,
19 correct?

20 A. Correct.

21 Q. Did you have an opportunity to determine
22 whether or not the police officer that handed you these
23 print cards did a thorough job of printing a car looking
24 for evidence?

25 A. No, I did not.

1 Q. You didn't look at the car yourself, did you?

2 A. No, I did not.

3 Q. Okay. But you were given information about
4 Donald Nealey's fingerprints, weren't you?

5 A. Given information?

6 MS. MERIWETHER: Objection to the form of
7 the question.

8 MR. ROBERT SCARDINO: That was a bad
9 question, and I'll withdraw it.

10 THE COURT: Thank you.

11 MR. ROBERT SCARDINO: It is early.

12 Q. (BY MR. ROBERT SCARDINO) You were able to
13 obtain Donald Nealey's fingerprints?

14 A. Yes, I was.

15 Q. And you got good prints from Donald Nealey, did
16 you not?

17 A. Yes, I did.

18 Q. Did you have any issue with that at all when
19 you looked at them to see whether or not you thought,
20 yeah, I can look at these and compare 'em with an
21 unknown print?

22 A. No, I did not have any problem.

23 Q. And did you get prints from all of his fingers?

24 A. No, I did not.

25 Q. Okay. Just a particular finger or fingers?

1 A. I just did one of his palms.

2 Q. A palm, not fingers?

3 A. It had his fingers attached to it.

4 (Laughter.)

5 Q. (BY MR. ROBERT SCARDINO) Well, let's hope so.
6 I guess, the point I'm trying to make is you were
7 confident that the information that you were given from
8 the unknown prints, that were taken from a car, that
9 belong to the victim of a case, that you could make a
10 good comparison?

11 A. Yes, I was confident.

12 Q. And you're confident that the prints that the
13 police officer lifted off of the deceased car, the only
14 ones that he was able -- you were able to identify
15 belonged to a fella named Marquis Davis?

16 A. Yes.

17 Q. And you're confident that none of the prints
18 that you found that could be identified belonged to
19 Donald Nealey?

20 A. That is correct.

21 MR. ROBERT SCARDINO: Pass the witness.

22 MS. MERIWETHER: No further questions, Your
23 Honor.

24 THE COURT: May he be excused?

25 MS. MERIWETHER: Yes, Your Honor.

1 THE COURT: Thank you, sir. You may step
2 down, and you are excused.

3 Call your next witness.

4 MS. MERIWETHER: Chandler Bassett.

5 THE BAILIFF: Your Honor, this witness has
6 not been sworn in.

7 THE COURT: Thank you. If you'll raise
8 your right hand to be sworn, please?

9 (Witness sworn.)

10 THE COURT: You may proceed.

11 MS. MERIWETHER: Thank you, Your Honor.

12 **CHANDLER BASSETT,**
13 having been first duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 BY MS. MERIWETHER.

16 Q. Good morning. Will you introduce yourself to
17 our jury?

18 A. Sure, my name is Chandler Bassett.

19 Q. And how are you employed?

20 A. I am employed by the Houston Forensic Science
21 Center as a firearms examiner.

22 Q. And how long have you been with the Houston
23 Forensic Science Center?

24 A. Approximately six and a half years.

25 Q. And during those six and a half years, have you

1 always been assigned to the firearms division?

2 A. Yes, I have.

3 Q. And what is your training and background that
4 allows you to be a firearms examiner?

5 A. I have a Bachelor's degree in forensic science
6 from Baylor University with a minor in chemistry and
7 criminal justice. And once I was hired, I went through
8 a two-year in-house training program. I've also had
9 training from the ATF, Glock Arms, Colt Arms, High Point
10 Arms, Sig Arms and Smith & Wesson arms.

11 Q. And what does that training in particular
12 involve?

13 A. The in-house training program was a
14 comprehensive two-year program. And we started with the
15 history of firearms examination, the history of
16 firearms. We then went into how firearms work and what
17 markings that the firearms leave on evidence. And then
18 we went into a period of following or shadowing more
19 senior examiners and looking at the matches and the
20 eliminations. And then after that period, we went into
21 doing a series of fake cases or mock cases; and then we
22 signed off to supervised casework and then independent
23 casework.

24 Q. And prior to joining the Houston Forensic
25 Science Center, what type of work did you do?

1 A. I worked in construction.

2 Q. Did you also do an internship with the Waco
3 Police Department Crime Scene Unit?

4 A. Yes, I did.

5 Q. And you graduated from Baylor University?

6 A. Correct.

7 Q. What degree do you hold?

8 A. It's a Bachelor's of Science in forensic
9 science.

10 Q. All right. Are you affiliated with any
11 professional organizations?

12 A. Yes, I am. I'm a member of AFTE, which is the
13 Association of Firearm Tool Mark Examiners.

14 Q. I want to talk to you about some firearms
15 analysis that you did related to 027788514; are you
16 familiar with that case?

17 A. Yes, I am.

18 Q. And how are cases assigned to you at the
19 Houston Forensic Science Center?

20 A. They're assigned to me by my supervisor.

21 Q. And were you assigned this case to do some
22 analysis related to cartridge casings that were
23 collected?

24 A. Yes, I was.

25 MS. MERIWETHER: Your Honor, may I approach

1 the exhibits?

2 THE COURT: You may.

3 Q. (BY MS. MERIWETHER) I'm showing you what has
4 been marked as State's Exhibit 45 and the contents. Can
5 you take a look at these items and see if you're
6 familiar with them?

7 A. Sure. Yes, I'm familiar with them.

8 Q. And what are they?

9 A. They are eight fired cartridge cases.

10 Q. And are they related to the case that you're
11 here to testify about today?

12 A. Yes, they are.

13 MS. MERIWETHER: Your Honor, may I approach
14 the witness again?

15 THE COURT: You may.

16 Q. (BY MS. MERIWETHER) Showing you what I've
17 marked as State's Exhibit 157. Are you familiar with
18 these items, and I may need a pair of scissors if you
19 can't check them there?

20 A. Yes, I'm familiar with these items.

21 Q. And what are those items?

22 A. These are some bullet fragments.

23 Q. And do they relate to this case as well?

24 A. Yes, they do.

25 Q. And they appear to have come from -- or do you

1 know where these came from?

2 A. These are consistent with coming from the
3 Medical Examiner's Office.

4 Q. And did you look at these items as part of your
5 work on this case?

6 A. Yes, I did.

7 Q. I want to first talk to you about the actual
8 cartridge casings, there's eight of them; is that
9 correct?

10 A. That's correct.

11 Q. And I'm just going to use one for the first
12 part here. What can you tell us about this cartridge
13 casing?

14 A. It's a fired from a 9-millimeter cartridge
15 case.

16 Q. How were you able to determine that it was a
17 9-millimeter cartridge case?

18 A. That's the caliber and that is stamped on the
19 back of the cartridge case.

20 Q. And when you refer to the back, are you talking
21 about this end of the item?

22 A. Yes.

23 Q. And what is this end also known as?

24 A. It's known as the head stamp.

25 MR. ROBERT SCARDINO: I didn't hear you.

1 Say it again.

2 THE WITNESS: The head stamp.

3 MR. ROBERT SCARDINO: Thank you.

4 Q. (BY MS. MERIWETHER) And are all eight of these
5 9-millimeter cartridge casings?

6 A. Yes, they are.

7 Q. Were you able to perform any analysis on these
8 items to determine if they were fired from the same type
9 of weapon?

10 A. Yes, I was.

11 Q. And what were your results?

12 A. When I have a series of cartridge casings, I
13 compare them microscopically to try to determine if they
14 were fired in the same firearm; and in this case I
15 determined that these were all fired in the same
16 firearm.

17 Q. And how do you make that determination?

18 A. The first thing I do is I compare what we call
19 class characteristics, and these are markings that the
20 gun puts onto the casing that are common to a series of
21 firearms. For example, a model of firearm, all firearms
22 in that model are going to have the same caliber.
23 They're going to have the same fire pin shape. So, once
24 I determined that those are consistent, I then use the
25 comparison microscope to look at the individual

1 characteristics. And these are markings, striations,
2 impressions on the casing that will -- that are unique
3 to a particular firearm. So, I can identify them back
4 to one specific firearm.

5 Q. Okay. So, in this case did you do that with
6 each cartridge casing to the other?

7 A. Yes. What I did was I took one cartridge
8 casing, and I compared all the other seven to that one;
9 and that would mean that they were all fired in the same
10 firearm.

11 Q. Now, with this case, did you have a firearm at
12 the time to compare the cartridge casings to?

13 A. No, I did not.

14 Q. So, you're not able to tell us what specific
15 gun they were fired from?

16 A. That's correct.

17 Q. Are you able to tell us what type of gun might
18 have fired them?

19 A. Yes, we have a database where we enter in our
20 class characteristics, and it gives us --

21 MR. ROBERT SCARDINO: I object to the
22 nonresponsive answer.

23 THE COURT: Sustained.

24 Q. (BY MS. MERIWETHER) Were you able to -- were
25 you able to input information that was obtained from

1 looking at these cartridge casings into a database and
2 get a result?

3 A. Yes, I was.

4 Q. What information do you put into the database?

5 A. We enter in the class characteristics that we
6 observed.

7 Q. And what were the results of possible guns that
8 could have fired these items?

9 MR. ROBERT SCARDINO: We object. May we
10 approach, Your Honor?

11 THE COURT: You may.

12 (Bench conference.)

13 MR. ROBERT SCARDINO: Judge, once again,
14 this question would lead possibly to an answer that
15 would reveal an extraneous offense.

16 THE COURT: Is he going to talk about what
17 type of gun?

18 MS. MERIWETHER: Yeah, whether it's a Glock
19 or a Smith & Wesson.

20 MR. ROBERT SCARDINO: Of course, we know
21 where it came from and so does she, and I don't know if
22 he does or not, but I'm concerned that her question
23 might reveal -- his answer might reveal.

24 THE COURT: Are you planning on getting
25 into that?

1 MS. MERIWETHER: No, Your Honor. I think
2 the Court's told me no.

3 THE COURT: Okay.

4 MS. MERIWETHER: Unless you've changed your
5 mind.

6 THE COURT: Maybe.

7 (End of bench conference.)

8 THE COURT: You may proceed.

9 MS. MERIWETHER: Thank you.

10 Q. (BY MS. MERIWETHER) I think my last question
11 simply was were you -- are you able to tell us what type
12 of gun might have fired -- what type of gun might have
13 fired those cartridge casings?

14 A. Yes, we have a list of possible firearms that
15 these could have been fired in.

16 Q. Manufacturers?

17 A. Yes, that's correct.

18 Q. And who are those manufacturers?

19 A. There were three on my list, and those were
20 Glock, Glock Olympic Arms and Smith & Wesson.

21 Q. And how do you arrive -- how does this database
22 work?

23 A. This is a database given to us by the FBI, and
24 what it does is it allows us to input the class
25 characteristics we observe. So, I would put in the

1 caliber, which was 9-millimeter, the firing pin shape,
2 and the breech face markings, the general direction of
3 the breech face markings, and that will give us a list
4 of manufacturers that either currently or sometimes in
5 the past have produced firearms that exhibit those class
6 characteristics. And it's not an all-inclusive list,
7 but it's something we use to help the investigators.

8 Q. Now, I want to go to some additional evidence,
9 evidence that you got in this case to review from the
10 Medical Examiner's Office. What types of items did you
11 receive from the Medical Examiner's Office?

12 A. I received a series of bullets and bullet
13 fragments.

14 Q. And were you able to make any conclusions on
15 those items?

16 A. Yes, I was.

17 Q. And what were those conclusions?

18 A. When I compared the bullet, the bullet items, I
19 came to an inconclusive conclusion.

20 Q. An inconclusive conclusion?

21 A. Yes.

22 Q. Can you explain that to us?

23 A. Yes. Whenever I compare two items and there's
24 not enough individual characteristics for me to say that
25 these were fired in the same firearm, and there's not

1 enough difference in characteristics for me to say that
2 these are not fired in the same firearm, we come to an
3 inconclusive conclusion, which means I don't know.

4 Q. And these items, if you recall, were there lots
5 of -- what did they look like?

6 A. These items were a series of bullet fragments,
7 which are just small pieces of bullets for the most
8 part, there were some that were bigger and some that
9 were smaller.

10 MS. MERIWETHER: Your Honor, may I approach
11 the witness again?

12 THE COURT: You may.

13 Q. (BY MS. MERIWETHER) You stated that you had
14 looked at these items that are in State's Exhibit 157;
15 is that correct?

16 A. That's correct.

17 Q. And these are the items that you're referring
18 to as being bullet fragments and pieces?

19 A. Correct.

20 MS. MERIWETHER: Your Honor, at this time I
21 move to offer State's Exhibit 157, tender to Counsel for
22 any objections.

23 (State's Exhibit No. 157 offered.)

24 THE COURT: Do y'all need to stand up and
25 stretch?

1 MR. ROBERT SCARDINO: Can we have just a
2 moment, Your Honor?

3 THE COURT: You may.

4 MR. ROBERT SCARDINO: Your Honor, the
5 documents have been examined; and there are no
6 objections.

7 THE COURT: State's Exhibit 157 is
8 admitted.

9 (State's Exhibit No. 157 admitted.)

10 Q. (BY MS. MERIWETHER) All right. Mr. Bassett,
11 all of these items contain a particular number on them,
12 do they not?

13 A. Yes, they do.

14 Q. And it's an ML14766?

15 A. Yes.

16 Q. Are you familiar with that number?

17 A. Those are the numbers that are consistent with
18 being from the Medical Examiner's Office.

19 Q. And all of these items contain information
20 about where they were recovered, and they appear to be
21 noted from a body; is that correct?

22 A. Yes, that's correct.

23 Q. Okay. Let me just show you a few of these.
24 Showing you this State's Exhibit, the contents of, are
25 you familiar with this item?

1 A. Yes, I am.

2 Q. And were you able to make any comparisons on
3 it?

4 A. Yes, I did.

5 Q. And what were those results?

6 A. This particular item it was inconclusive to the
7 other bullet fragments.

8 Q. What about this item?

9 A. It was also inconclusive.

10 Q. Is it fair to say that when I put all of these
11 baggies up here with all of these little pieces of
12 bullet fragments, your response is going to be
13 inconclusive?

14 A. Yes, some are unsuitable for comparison, which
15 means they had no markings on them whatsoever, so I
16 didn't even compare them; but the rest were all
17 inconclusive.

18 Q. And some of these little pieces of bullets are
19 so small that you couldn't do anything with them; is
20 that correct?

21 A. That's correct.

22 Q. For instance, some of these that are in all of
23 these little packages, these are microscopic ones?

24 A. I'm not sure. I can tell you the items that
25 were unsuitable if you'd like me to.

1 Q. Yes, sir.

2 A. Going by our numbers, it would be 18.1, 18.8,
3 18.9, 18.11 and 18.23.

4 MS. MERIWETHER: Pass the witness, Your
5 Honor.

6 MR. ROBERT SCARDINO: My I proceed, Your
7 Honor?

8 THE COURT: You may.

9 **CROSS-EXAMINATION**

10 BY MR. ROBERT SCARDINO:

11 Q. Officer Bassett, how are you today?

12 A. I'm good, sir. How are you?

13 Q. Good to see you again. So, that the
14 information that you have to share with us is that you
15 were given some data to examine in the form of spent
16 cartridge casings?

17 A. Yes, that's correct.

18 Q. And that the only information that you have
19 about this case is what was presented to you by other
20 police officers, correct?

21 A. All I have is what was given to me as far as
22 the evidence, that's all the information I have.

23 Q. That's my question. You didn't go out and work
24 any crime scenes or interview witnesses or anything of
25 that nature, did you?

1 A. No, I did not.

2 Q. You strictly work in the lab?

3 A. Yes, that's correct.

4 Q. And you said you work in the -- you're a
5 firearms examiner for the Houston crime lab?

6 A. Well, it's the Houston Forensic Science Center.

7 Q. Houston Forensic Science Center. That used to
8 be the Houston Crime Lab, though, didn't it?

9 A. Yes, it used to be the Houston Police
10 Department Crime Laboratory.

11 Q. Why did you change names?

12 MS. MERIWETHER: Objection, relevance.

13 THE COURT: Sustained.

14 Q. (BY MR. ROBERT SCARDINO) When did you change
15 names?

16 A. I believe it was in 2014 that it was official
17 that the Houston Forensics Science Center took over the
18 HPD crime lab.

19 Q. You say, took it over, did you change
20 locations?

21 A. No, we're in the same location.

22 Q. In fact, you just changed the name on the door,
23 didn't you?

24 A. No, sir, actually, all the upper management
25 went out from control of HPD; and now there is a

1 separate management system with a Board of Directors and
2 a CEO, and we're no longer controlled by the Houston
3 Police Department.

4 Q. But you work there when it was called the
5 Houston Crime Lab, right?

6 A. Yes, I did.

7 Q. And you said that, I believe your testimony was
8 that these cartridge casings came from one of two types
9 of weapon, either a Glock or a Smith & Wesson-type
10 weapon?

11 A. There were three on my list, actually, the
12 Glock, the Smith & Wesson, and the Glock Olympic Arms.

13 Q. So you excluded the manufacturers like Colt,
14 H&K, and Remington?

15 A. We didn't exclude them. This is just a list of
16 possible manufacturers. This is not an all-inclusive
17 list.

18 Q. So it could have been H&K or Colt, right?

19 A. It's possible that it could have been.

20 Q. So, you really didn't exclude any type of gun,
21 did you? You're just guessing that it might have been a
22 Glock or a Smith & Wesson-type weapon that fired these
23 bullets, right?

24 A. Well, we're not guessing. We're using the
25 database to generate the list.

1 Q. But when you can't exclude other manufacturers,
2 you're making a subjective opinion of it, are you not?

3 A. I'm not sure I understand your question.

4 MR. ROBERT SCARDINO: Pass the witness.

5 MS. MERIWETHER: Just briefly, Your Honor.

6 **REDIRECT EXAMINATION**

7 BY MS. MERIWETHER:

8 Q. I forgot to ask, Chandler, on these eight shell
9 casings, what type of gun would give us shell casings, a
10 semiautomatic or a revolver?

11 A. They both produce fired shell casings, fired
12 cartridge cases.

13 Q. And if fired cartridge casings are found on the
14 ground, would they possibly have come from a
15 semiautomatic?

16 A. Yes, usually whenever cartridge cases are on
17 the ground, it's from a semiautomatic.

18 Q. And why is that?

19 A. Whenever you fire a semiautomatic, the
20 cartridge cases are extracted and ejected from the
21 firearm. Whenever you fire something like a revolver,
22 they stay in the firearm. You have to manually take
23 them out.

24 Q. So, all eight of these were fired from the same
25 weapon?

1 A. That's correct.

2 MS. MERIWETHER: No further questions, Your
3 Honor.

4 MR. ROBERT SCARDINO: Just briefly.

5 **RECROSS-EXAMINATION**

6 BY ROBERT SCARDINO:

7 Q. Do you have any familiarity or expertise in
8 blood spatter from a weapon being fired?

9 A. No, I do not.

10 Q. Okay. Do you have an opinion, hypothetically,
11 if I were to stand over a person and shoot them with a
12 revolver, would there be a spent casing coming out of
13 the revolver when I fired the weapon?

14 A. No, it would not.

15 Q. How about if I had a revolver and I was in the
16 room and I shoot it in the ceiling, would a shell casing
17 be ejected from that weapon?

18 A. No, it would not.

19 MR. ROBERT SCARDINO: Pass the witness.

20 MS. MERIWETHER: No questions, Your Honor.

21 THE COURT: May this witness be excused?

22 MS. MERIWETHER: Yes, Your Honor.

23 THE COURT: Thank you, sir. You may step
24 down, and you're excused.

25 Let me ask about a scheduling question for

1 the lawyers, please.

2 (Bench conference.)

3 THE COURT: I'm assuming this next witness
4 is going to be much more lengthy than the first two?

5 MS. MERIWETHER: It's the DNA, yes, Your
6 Honor.

7 THE COURT: It's going to take awhile. I'm
8 going to go ahead and give the jury a break.

9 MS. MERIWETHER: Okay.

10 (End of bench conference.)

11 THE COURT: Ladies and gentlemen, I'm going
12 to go ahead and give you your mid-morning break at this
13 time. So, I'll let you go with the bailiff; and, again,
14 please feel free to go get a snack or step outside if
15 you'd like.

16 THE BAILIFF: All rise for the jury.

17 (Jury exits courtroom.)

18 (A recess was taken.)

19 (Open court, Defendant present.)

20 THE BAILIFF: All rise for the jury.

21 (Jury enters courtroom.)

22 THE COURT: Thank you. Be seated.

23 Ms. Meriwether, you may call your next
24 witness.

25 MS. MERIWETHER: State will call Lloyd

1 Hassell.

2 THE BAILIFF: Your Honor, this witness has
3 not been sworn in.

4 THE COURT: Raise your right hand to be
5 sworn.

6 (Witness sworn.)

7 LLOYD HASSELL,
8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. MERIWETHER:

11 Q. Good morning. Could you please introduce --

12 MS. MERIWETHER: I'm sorry, Your Honor.

13 May I proceed?

14 THE COURT: You may.

15 Q. (BY MS. MERIWETHER) Could you please introduce
16 yourself to our jury?

17 A. Hi. My name is Lloyd Hassell, and I am a
18 supervisor of the biology unit at the Houston Forensic
19 Science Center.

20 Q. How long have you been with the Houston
21 Forensic Science Center?

22 A. I've been working there since April of 2012.

23 Q. And where did you work prior to that?

24 A. I was the DNA technical leader at The Human DNA
25 Identification Laboratory in Nebraska.

1 Q. Nebraska?

2 A. Yes, ma'am.

3 Q. How are you liking Texas weather?

4 A. Born and raised here, so I love it.

5 Q. Fair enough. Where did you go to school?

6 A. Undergrad at Texas State University, where I
7 obtained a Bachelor's of Science in microbiology, minor
8 in biochemistry and computer science. And my graduate
9 education at the University of North Texas Health
10 Science Center in Fort Worth with a Master's in forensic
11 genetics.

12 Q. And you're here to testify regarding some DNA
13 work done on two separate cases; is that correct?

14 A. Yes, ma'am.

15 Q. And did you and I work on a PowerPoint
16 presentation to help the jury kind of understand what
17 we're talking about?

18 A. Yes, ma'am.

19 MS. MERIWETHER: Your Honor, may I approach
20 the witness?

21 THE COURT: You may.

22 Q. (BY MS. MERIWETHER) I'm going to show you what
23 I've marked as State's Exhibit 158. Does this appear to
24 be the same presentation that we talked about?

25 A. Yes, ma'am.

1 MS. MERIWETHER: Your Honor, at this time
2 I'd offer State's Exhibit 158 for demonstrative
3 purposes; and I've tendered a copy to Defense counsel
4 previously but if they wish to review again today.

5 MR. PHILIP SCARDINO: I've seen it, Judge.

6 THE COURT: No objection?

7 MR. PHILIP SCARDINO: No.

8 THE COURT: It's admitted for demonstrative
9 purposes only.

10 (State's Exhibit No. 158 admitted for
11 demonstrative purposes.)

12 MS. MERIWETHER: And I have made individual
13 copies to help the jury see some of the smaller prints
14 on the charts.

15 THE COURT: The bailiff can hand those to
16 the jurors, please.

17 And, ladies and gentlemen, what that means
18 for demonstrative purposes only, we're giving you copies
19 for your use in the courtroom only. They're not
20 actually admitted into evidence, so we will be
21 collecting them at the end of the witness' testimony.

22 Q. (BY MS. MERIWETHER) I'm going to leave one for
23 you.

24 MS. MERIWETHER: And, Your Honor, would you
25 like one as well?

1 THE COURT: Sure. Thank you.

2 Q. (BY MS. MERIWETHER) All right. So, first off,
3 is the Houston Forensic Science Center where you work an
4 accredited laboratory?

5 A. Yes, ma'am.

6 Q. And what does that mean?

7 A. To be an accredited laboratory means that we
8 have applied for and had an outside agency come in and
9 review us against established standards. They review
10 our SOPs to make sure that they are in line with those
11 established standards and guidelines. We are accredited
12 by ANAB and the Texas Forensic Science Commission.

13 Q. And what is ANAB?

14 A. ANAB is NCASQ National Accreditation Board.
15 It's a, as it says, National Accreditation Board.

16 Q. And do you engage in certain practices in the
17 testing phase, and are those regimented?

18 A. Yes, ma'am. So, we have detailed technical
19 SOPs for all of the steps that we do throughout our
20 testing that we must follow, and any -- if there were
21 any deviations from those that would have to be
22 documented and approved by our technical leader.

23 Q. And what about proficiency testing?

24 A. Yes, ma'am, we're required to participate in a
25 biology section and a minimum of two proficiency tests

1 per year per analyst.

2 Q. And have you done that?

3 A. Yes, ma'am.

4 Q. Every year as required?

5 A. Yes, ma'am.

6 Q. And can you briefly tell us about the quality
7 controls that the Houston Forensic Science Center has in
8 place?

9 A. So, we have numerous controls that dictate one,
10 that we wear protective equipment, which can be gloves,
11 masks, lab coats, those are changed throughout the
12 process whenever being necessary or when changing,
13 moving from different pieces, items of evidence. We
14 also decontaminate our surfaces with bleach and other
15 decontaminating agents. We also introduce positive
16 controls and negative controls into our process that
17 help us determine if our tests are accurate, working
18 correctly and to detect any possible contamination that
19 may be in our testing.

20 Q. All right. So, what exactly is DNA?

21 A. So, DNA stands for deoxyribonucleic acid, and
22 it's the genetic material inside of all our cells that
23 makes us who we are. We get our DNA from our parents.
24 So, half from mom, half from dad. And it's essentially
25 the bulk of who we are. It tells our bodies what

1 they're going to be. Most of our DNA, over 99 percent,
2 is the same. We all have arms, legs, hair, eyes, things
3 of that nature. But there are some differences, hair
4 color, eye color. And then there are some differences
5 that have no outward appearance, and that's where our
6 testing comes in.

7 Q. DNA, is it used both in the courtroom and
8 elsewhere?

9 A. Yes, ma'am. It's used throughout clinical
10 testing, ancestry testing, numerous aspects that are
11 non-criminal.

12 Q. And where does our DNA lie within us?

13 A. So DNA is found in all of our tissues. Red
14 blood cells are some of the only cells that don't have
15 DNA because they don't have what we call a nucleus,
16 which is really the center of every cell, and that's
17 where the DNA is housed within each cell. So, when we
18 say it's from our tissue, you can get it from blood,
19 hair roots, skin, you know, sample of tissues, teeth
20 even have a root, have pulp inside of them, bones even
21 have, you know, bones where bone marrow is made so there
22 are cells that are deep inside that hard bone. So, it's
23 found in that tissue.

24 Q. Now, let's talk about DNA analysis in and of
25 itself. What process is used for DNA analysis?

1 A. So, before we get into a short tandem repeat,
2 to step back is one of the first processes, we use
3 methods to remove the DNA from the cell and to purify it
4 so that then we can move on to detecting how much DNA we
5 have, and once we've determined that we have DNA, we can
6 move on to what's called the short tandem repeat
7 analysis. What this is is there are segments of DNA
8 what we generally refer to as STRs that have variable
9 lengths. So one way to think of it is think of it like
10 a train, everybody's got the train engine that will move
11 it, but how many cars do you have? Do you have 10 cars?
12 Do you have 12 cars? And so that variable number, the
13 tandem numbers of cars and the repeat is that there are
14 10, 11, 12 cars; and then what will vary from individual
15 is how many of those repeats do we have.

16 Q. And how many spots are you looking at for DNA?

17 A. So, we look at a total of 16 locations, 15 STRs
18 and then one sex-determining marker called amelogenin.

19 Q. And what determines a match?

20 A. So, in simplest terms, a match can be if DNA of
21 a unknown evidentiary item is the DNA profile of that
22 item is the same as the DNA profile of a known reference
23 sample. There's, also, it may not be an exact match
24 because the unknown evidentiary item may be what we call
25 a mixture, meaning that there's more than two people's

1 DNA there.

2 Q. So, are there types of results that we're going
3 to be seeing?

4 A. Yes, ma'am.

5 Q. And what type of results will we be seeing out
6 of your presentation today?

7 A. So, first off, we start off with the most
8 obvious, we got no DNA. There was no DNA profile to
9 start with. Next, we can kind of go into what we call
10 insufficient data, meaning that we observed DNA that was
11 present; however, it's too insufficient for us to use
12 within our analysis. A next step of that is what we
13 might call a partial profile, meaning that we observed
14 the DNA. We don't have all of it, but what we did have
15 may or may not have been enough for us to do a
16 comparison. And then we move into the variation of
17 whether it's a mixture DNA profile, meaning that there's
18 more than one person, so at least two, if not three or
19 more, or a full DNA profile from a single individual, a
20 full single-source DNA profile.

21 Q. And did you find a variation of all of these in
22 the different items you tested in these cases?

23 A. Yes, ma'am.

24 Q. I want to first start with this case number and
25 your results from it. Are these the items that were

1 tested in this case?

2 A. Yes, ma'am, they are some of the items that
3 were tested in this case.

4 Q. All right. And were you able to make some
5 conclusions about the presence of DNA on some of the
6 items?

7 A. Yes, ma'am.

8 Q. First, starting with the inside of the glove
9 swab, which is Item 2.1.1?

10 A. So, from Item 2.1.1, we determined that we had
11 a mixture of at least three individuals; and at least
12 one of them would be male. But we determined that due
13 to the excessive number of contributors, we were not
14 able to perform a comparison on that item.

15 Q. And were the same conclusions reached on the
16 pair of pants from there?

17 A. Yes, ma'am.

18 Q. Next, I want to go to the sunglasses that were
19 tested. Were you able to reach any conclusions on it?

20 A. Yes, ma'am.

21 Q. And what are those results?

22 A. So, we determined that a full single-source
23 male DNA profile was obtained from that item. Known
24 reference from Stanly Kumbanattel could not be excluded
25 as a possible contributor and that Marquis Davis and

1 Donald Nealey are excluded as possible contributors.

2 Q. And that stain that's found on the sunglasses,
3 was it tested to determine if it was blood?

4 A. I can check.

5 For Item 311, the stain was insufficient,
6 meaning that it was too small that we decided to not do
7 any presumptive testing for blood on it, and we moved on
8 straight to DNA.

9 Q. But that was swabbed, and that's where we get a
10 full single-source male DNA profile from?

11 A. Yes, ma'am.

12 Q. Now, are you able to generate any statistical
13 interpretations on the stain from those sunglasses?

14 A. Yes, ma'am.

15 Q. And tell us what we're seeing here?

16 A. So, anytime -- once we do our interpretation,
17 we determine that we have a profile that's eligible for
18 comparison, once we've done that comparison to determine
19 that somebody is not excluded, what we then do is we
20 have to provide a statistical weight to that
21 non-exclusion or inclusion. What we then do is
22 depending on the type of profile we have a couple of
23 different statistics that we can apply. What we applied
24 here is what we call a random match probability, and so
25 that's the probability or likelihood that another

1 unrelated individual could be found within the
2 population that has that DNA profile as the evidentiary
3 item. And so as displayed, you can see for the three
4 common initial groups that we report, that it was at
5 least greater than 1 in 12 quintillion for all three
6 racial groups.

7 Q. And I have a number there at the bottom that
8 the Earth's population is about 7 billion people?

9 A. Yes, ma'am.

10 Q. And the numbers that are being displayed here
11 for the other groups, are those greater than --

12 A. Yes, ma'am.

13 Q. -- our population? What does that mean to us?

14 A. So quintillion is at least one million times
15 greater than a billion. So, you would need over a
16 million Earths to expect to find that profile again.

17 Q. Now, it's difficult to see on the screen; but
18 what are we looking at here?

19 A. So, what you're seeing here is what we call our
20 allele table. It's a summary of the profile that is
21 generated. So, when we talk about the number of
22 repeats, this is essentially the number of repeats that
23 were observed for those evidence items. For the very
24 first one, the 2.11 portion of swabs from inside of
25 glove, you can see that at numerous locations we have

1 three, four, numbers listed. So, what that is
2 indicative of is that we have a mixture. We have DNA
3 from more than one person because if you look at Item
4 311, the portion of the stain from sunglasses, you see
5 that at any location all we have is two numbers. And
6 being that we get our DNA from mom and dad, we can get
7 different numbers from them. So, that is what we expect
8 to see when we have a full single-source individual.

9 Q. And how do you determine these positions that
10 we have here, these loci?

11 A. So, after we've done our STR analysis, we have
12 instrumentation that can analyze our DNA that's
13 generated that gives us electronic information that
14 helps us generate these tables.

15 Q. Now, right below those top two tables are two
16 other tables, what are those?

17 A. So those are the DNA profiles from our known
18 references that were in this case, Donald Nealey and
19 Stanly Kumbanattel.

20 Q. And how are those generated?

21 A. Those are generated through the exact same
22 process that we generate our evidentiary profile. We're
23 just generating those from a known sample source. So,
24 in the instance of Donald Nealey, it was from buccal
25 swabs, which are swabs of the inside of the cheek; and

1 then from Stanly, it was from a bloodstain card.

2 Q. So, these two items are basically knowns, those
3 are people that you know what their DNA is?

4 A. Yes, ma'am.

5 Q. And the items up above are things that you're
6 trying to figure out whose DNA is present on them; is
7 that a fair statement?

8 A. Yes, ma'am.

9 Q. Just kind of break it down to the bottom
10 picture. I didn't put it on the slide, but was Marquis
11 Davis' information also included in the analysis that
12 you've done?

13 A. Yes, ma'am.

14 Q. For instance, when we compare item 3.1.1 to
15 20.1.1, which is Stanly's, and we compare just those two
16 lines, what results do we see?

17 A. So, that's where what we would see is we have a
18 match. We have the DNA profile of our unknown evidence
19 matches our known reference.

20 Q. I want to move on to some other items you
21 tested. Did you also test the arm and the nose pad area
22 of those sunglasses?

23 A. Yes, ma'am.

24 Q. And what results did you obtain on that item?

25 A. So, we determined that a partial male DNA

1 profile was present; but it was insufficient for
2 comparison.

3 Q. Now, on this strip here, this table that we
4 see, there's some NRs added, what does that reflect?

5 A. So, each of the little boxes is one of those 16
6 locations that we talked about. The NR in a particular
7 box means that we got no result at that location. So,
8 we got no DNA there.

9 Q. And what about the little carets, the little --
10 that are next to some of the numbers, what do those
11 indicate?

12 A. So during our analysis, as I said, the tables
13 are a summary of our analysis. The profiles that are
14 generated that we look at also have an intensity value
15 to it, and so what we call that is a RFU, a Relative
16 Fluorescence Unit, and one way to think of it is how
17 tall is something, stories in a building, is it
18 10 stories high? Is it 200 stories high? Is it
19 one story high? And we use that intensity in our
20 analysis. We have a couple of thresholds that we use,
21 the first being what we call an analytical threshold.
22 So, think of an analytical threshold as kind of the
23 ground. If it's below the ground, it's not labeled, and
24 we see an NR, we see no results were obtained.

25 Once we come above that ground, now we can

1 establish a number. We can establish repeats were
2 observed. So that means it's gone above our analytical
3 threshold. Now, our next threshold is what we call a
4 stochastic threshold. And what that means is if there's
5 data that's below our stochastic, it means we could
6 actually be missing some additional data that
7 potentially goes with that DNA. And so if we have data
8 observed below that stochastic threshold, we will attach
9 a caret to that number saying this particular allele was
10 below the stochastic threshold.

11 Q. And how are we able to know that this is a
12 partial male DNA profile? What led you to the male
13 part?

14 A. The location that has the NRs, no results.

15 Q. But you're able to determine that it's still
16 male DNA based on the X/Y presence in this item?

17 A. Yes, ma'am.

18 Q. Next, I want to talk to you about Item 5.2.1.1,
19 which was a cuff and collar of a jacket?

20 A. Yes, ma'am.

21 MS. MERIWETHER: And may I grab an exhibit,
22 Your Honor?

23 THE COURT: Yes.

24 Q. (BY MS. MERIWETHER) Showing you this item
25 that's marked 5.2. Is that the jacket that you had

1 swabs taken from?

2 A. If it's marked 5.2, I would believe so.

3 Q. Yes. Let me get a little closer, sorry.

4 A. Yes, ma'am.

5 Q. And it seems to indicate that they were taken
6 from the cuffs and collar of the jacket. Why collect
7 from that area?

8 A. When we swab cuffs and collar, we're attempting
9 to swab areas basically who have worn the jacket. So
10 areas that we know or we are reasonably certain have
11 come in contact with the skin of the person wearing the
12 jacket.

13 Q. And were you able to obtain any results from
14 this item?

15 A. Yes, ma'am.

16 Q. And what were those results?

17 A. So, we determined that we had a mixture of at
18 least two individuals and that one of them was male.
19 What we were also able to determine based on the
20 intensity of the data is that we had a major component,
21 meaning that we had DNA that was detected more
22 intensely. So, it's our 200-story building versus our
23 10-story buildings and that Marquis Davis cannot be
24 excluded as a possible contributor to that major
25 component.

1 Q. Okay. And I think that's the first time we've
2 had the use of a major component. Can you explain to
3 the jury what that means?

4 A. So, as I was saying, when we have a mixture,
5 what we can think of it is one what we call an
6 unresolved mixture. So unresolved is all of our data,
7 and it's pretty level. So, all of our buildings are 10,
8 15, there's really no huge distinct difference from
9 them. A major is okay, you have all of these buildings
10 that are maybe 10 stories and now somebody put a
11 200-story skyscraper right next to it, so you have a
12 much taller building or much more DNA being detected
13 than some of the other DNA. So, when we do that we're
14 able to say that we have a major component within that
15 DNA mixture.

16 Q. So, on this jacket the more component is
17 Marquis Davis?

18 A. Yes, ma'am.

19 Q. And were you able to determine whether the two
20 other knowns, Stanly and Donald Nealey, were excluded?

21 A. Yes, ma'am. So, we determined that Donald
22 Nealey and Stanly are excluded as possible contributors
23 to the overall mixture.

24 Q. Next, were you able to draw some statistical
25 conclusions about that major?

1 A. Yes, ma'am.

2 Q. And what -- is that what we see displayed here?

3 A. Yes, ma'am.

4 Q. And why are these numbers a little bit smaller
5 than the ones that we previously saw on that stain of
6 sunglasses?

7 A. So, in this instance where I said we were able
8 to determine a major contributor, well, sometimes we're
9 not able to determine that major contributor at all of
10 our locations. So, when we look at the DNA, I
11 potentially can only obtain a major at half of those
12 locations. In this instance that was, I determined that
13 a major contributor was present at eight locations. So,
14 when I've determined that major contributor at eight
15 locations, those are the eight locations that were
16 suitable for me to apply my statistical analysis to.
17 So, instead of my statistical analysis being applied to
18 all 15 locations, it was applied to those eight
19 locations.

20 Q. All right. Next I want to move to some swabs
21 that were taken from inside of Marquis Davis' vehicle.
22 There is a total of four swabs that you analyzed that
23 were from his vehicle; is that correct?

24 A. Yes, ma'am.

25 Q. And is what we see here on this screen a

1 summary of your results?

2 A. Yes, ma'am.

3 Q. And so, Item 9.1.1 is the only one that you
4 were able to make a conclusion to a known; is that
5 correct?

6 A. Yes, ma'am.

7 Q. And the major contributor on that item is whom?

8 A. Marquis Davis.

9 Q. And showing you the next slide, does this
10 depict the table as it relates to those swabs from
11 Davis' vehicle?

12 A. Yes, ma'am.

13 Q. And in particular we see a lot of NRs, what
14 does that indicate?

15 A. So, the NR indicates that once again no result
16 was obtained at that location.

17 Q. Now, if -- with regard to the portion on the
18 9.1.1, the swab from the steering column -- or from the
19 driver's area, excuse me, with regard to that swab, if
20 somebody is wearing gloves, would you expect them to
21 leave DNA behind when they're driving the vehicle?

22 A. Not necessarily, no, ma'am.

23 Q. All right. With regard to the results you
24 received from that swab of the driver's area, were you
25 able to determine a major contributor?

1 A. Yes, ma'am.

2 Q. And who was that?

3 A. We determined that for 911?

4 Q. Yes.

5 A. So, okay, so actually from 911, what we
6 determined is that the major component was a mixture of
7 at least two individuals. So in this instance, overall
8 the mixture was at least three individuals, and what we
9 were able to tell of those three individuals is that our
10 major component, our really tall data was from two
11 people. And that the third, at least three or other
12 people was very low level. We then determined that
13 Marquis Davis cannot be excluded as a possible
14 contributor to that major component.

15 Q. And were you able to draw any conclusions about
16 Stanly and Donald Nealey?

17 A. Yes, ma'am.

18 Q. And what were those?

19 A. We determined that they were excluded as
20 possible contributors to the major component.

21 Q. Is it possible that Donald Nealey could have
22 been one of the minor contributors?

23 A. We made no conclusions or no comparison on the
24 minor component due to the excessive number of
25 contributors.

1 Q. And did you reach statistical conclusions about
2 the likelihood of finding another person with the same
3 DNA as with regard to Marquis Davis as a major?

4 A. So, for 911 it's not that the statistics are
5 slightly different than from a single-source individual.
6 So with a single-source person, we talked about that we
7 have a random match probability. If we were to look
8 within the population, what do we expect somebody to
9 have this exact DNA profile. When we have this mixture,
10 the statistical tool that we apply once we determined
11 that somebody is included is what we call a CPI, a
12 Combined Probability of Inclusion. And so what that
13 does it takes all the data in this instance that we are
14 attributing to our major component into account, and it
15 says what is the probability or likelihood that an
16 individual would be included within that mixture, so
17 within that mixture of the major component. And, yes,
18 we were able to do that for 911.

19 Q. And is that the result that we see on the
20 screen here?

21 A. Yes, ma'am.

22 Q. I next want to go to the swabs that were taken
23 from Stanly's vehicle. Those are Items 10.1 through
24 10.4. Is the table that we see here displaying the
25 results for those swabs?

1 A. Yes, ma'am.

2 Q. And then showing you the next slide, are these
3 the tables that reflect those results?

4 A. Yes, ma'am.

5 Q. And were you able to make any statistical or
6 any conclusions, or, I'm sorry, strike, bad question.
7 Were you able to link Marquis Davis, Stanly or Donald
8 Nealey to any of these results?

9 A. No, ma'am.

10 Q. I want to talk about some additional items that
11 were tested from Stanly's vehicle. A laptop that was
12 found in the vehicle, were you able to make any
13 conclusions or matches on the laptop?

14 A. No, ma'am.

15 Q. What about a cell phone that was found in
16 there?

17 A. No, ma'am.

18 Q. And there was also a glove that was found
19 inside of that vehicle, were you able to obtain any DNA
20 off of it?

21 A. No, ma'am.

22 Q. And what does that mean, no DNA profile
23 obtained?

24 A. That means that those NRs would have been in
25 all 16 locations.

1 Q. And then lastly there was a pair of swimming
2 goggles. Were you able to draw any information about
3 those goggles?

4 A. Yes, ma'am.

5 Q. And what were those results?

6 A. So, we determined a mixture of at least two
7 individuals, at least one of which is male. And once
8 again we had a major contributor and that Stanly could
9 not be excluded as a possible contributor to that major
10 component. We then also determined that Marquis Davis
11 and Donald Nealey were excluded as possible contributors
12 to the overall mixture.

13 Q. So, in essence, the major user of the swimmer
14 goggles or the major on the swimming goggles DNA-wise
15 was Stanly; and they did not belong to Davis or Nealey?

16 A. Yes, ma'am.

17 Q. And what we see here the statistical
18 interpretation for those results as well?

19 A. Yes, ma'am.

20 Q. And, again, we see the numbers greater than the
21 Earth's population?

22 A. Yes, ma'am.

23 Q. I next want to move to the second case that you
24 analyzed, the aggravated robbery and some items that
25 were collected there. Showing you this slide here and

1 Items 2.1, 2.2, 2.22 and 2.3. And let's talk about some
2 of these items. Namely I want to talk to you about the
3 toothbrush. Were you able to obtain any results on the
4 toothbrush?

5 A. Yes, ma'am.

6 Q. And showing you what's been marked as State's
7 Exhibit 145, is this the toothbrush that we're talking
8 about?

9 A. Appears to be, yes, ma'am.

10 Q. Now, the results that we see up here, were
11 there two swabs taken off of this toothbrush?

12 A. One swab and then a portion of the bristles,
13 but we actually cut the bristles off.

14 Q. Okay. Explain that to us?

15 A. In that instance, we just wanted to, you know,
16 maximize our possibility for getting results, so we took
17 a swab from the handle for somebody that may have
18 grabbed it or held it in case that was different than
19 who was on the head of the brush, we took some cuttings
20 from the bristles to determine whose DNA might be on the
21 bristles.

22 Q. The results that we see here on Item 2.2.1.1,
23 with regard to the swab from the toothbrush, were you
24 able to draw a conclusion on those items as to who they
25 belong to?

1 A. Yes, ma'am.

2 Q. Whose DNA that is?

3 A. Yes, ma'am.

4 Q. And what results did you obtain?

5 A. So, we determined that Stanly could not be
6 excluded as a possible contributor to the DNA profile.
7 From the -- I'm sorry, you were referring to the swab of
8 the toothbrush?

9 Q. Swab of the toothbrush, yes.

10 A. Okay. Yes, that Stanly could not be excluded
11 as a possible contributor to the DNA profile from the
12 swab.

13 Q. And then, also, what about the bristles of the
14 toothbrush swab?

15 A. Yes, ma'am, Stanly could not be excluded as a
16 possible contributor to that DNA, also.

17 Q. And then also within this group of items that
18 was recovered was a Sony power cord and a swab taken
19 from it. What results did you reach on it?

20 A. So, for Item, the 2111 swab for the power cord,
21 we determined that it was a mixture of at least three
22 individuals, one of which was male; but that due to the
23 excessive number of contributors, no comparisons were to
24 be made.

25 Q. And then the last item up there, a swab from a

1 phone case, which is 2.3 --

2 A. So.

3 Q. -- .1.1?

4 A. So, for 2.3.1, we determined once again a
5 mixture of three individuals at least one of whom is
6 male. However, this one we determined we did have a
7 major component; and that major component was an unknown
8 female. And so all three, Stanly, Marquis and Donald
9 were excluded as possible contributors to the major
10 component, and no conclusions made to the minor.

11 Q. So showing you item, is this Item 2.3, the one
12 that we're talking about, the phone case?

13 A. Appears to be, yes, ma'am.

14 Q. And so, this did not belong to a male but
15 rather a female?

16 A. The major component, yes, ma'am.

17 Q. Okay. All right. Now, I want to talk about
18 some of the clothing items that were recovered, the
19 shoes, the right and left shoes. Looking at Items
20 6.1.1, that was a left shoe; is that correct?

21 A. Yes, ma'am.

22 Q. And it says it's a swab from the inside of a
23 left shoe. Explain what that means?

24 A. So, by swabbing the inside of the shoe, once
25 again, like the jacket, we would have been interested in

1 swabbing the shoe to determine perhaps who had worn the
2 shoe. So, we're looking for areas that might come in
3 contact with the skin.

4 Q. So, in essence, showing you, can you point to
5 this item and tell me where we would have swabbed from?

6 A. Let me confirm that. So, the swabbings for
7 both shoes would have been the upper region around the
8 top where somebody not been wearing -- had been wearing
9 no socks or low socks with the ankle would have
10 potentially come in contact.

11 Q. And what were you able to determine in showing
12 you 6.1, which was the left shoe, what were you able to
13 determine there?

14 A. From the swab from that, we had a mixture of at
15 least two individuals.

16 Q. Now, also on Item 6.1, was there a stain on it?

17 A. Yes, ma'am.

18 Q. And showing you 6.1, is this the stain area on
19 the shoe?

20 A. Yes, ma'am.

21 Q. And you appear to be referring back to
22 pictures, were pictures taken throughout the process of
23 where samples are taken from?

24 A. Yes, ma'am.

25 Q. And is that done to help you when you come to

1 court?

2 A. Yes, ma'am.

3 Q. Okay. So, we're referring to a drop of blood
4 in this area; and I might have stepped too far ahead.
5 Were y'all able to determine if this was blood or not?

6 A. Yes, ma'am, it was.

7 Q. So, this small area here is blood?

8 A. Yes, ma'am.

9 Q. And whose blood is it based on your DNA
10 analysis, or whose DNA is present?

11 A. So, the swab from the stain on the left shoe,
12 so we obtained a full single-source DNA profile; and
13 that DNA profile matched Stanly.

14 Q. Did you also swab the right shoe in that group?

15 A. Yes, ma'am.

16 Q. In that set, and what were the results of it?

17 A. So, we just swabbed the inside; and we had
18 insufficient data.

19 Q. I want to go on to the stain from the left
20 shoe. This is the one you said it was a full
21 single-source profile; is that correct?

22 A. Yes, ma'am.

23 Q. And showing you the next slide, are these the
24 statistical results for that?

25 A. Yes, ma'am.

1 Q. And, again, is this the situation where it
2 exceeds the Earth's population?

3 A. Yes, ma'am.

4 Q. Now, there was also a long-sleeved shirt that
5 you tested in this group, Item 6.3; were you able to
6 draw any conclusions on this item?

7 A. Yes, ma'am.

8 Q. Showing you State's Exhibit 149-A; is this Item
9 6.3?

10 A. Appears to be, yes, ma'am.

11 Q. And what were your conclusions on this item?

12 A. So, for 6.3 we had a portion of swabs from
13 cuffs, armpits and collar of the long-sleeved shirt. We
14 obtained a mixture from at least three individuals, at
15 least one of them was male. We then also determined
16 that a major component was present on that item and that
17 Marquis Davis cannot be excluded as a possible
18 contributor to that major component.

19 Q. Were you able to draw any statistical
20 conclusions?

21 A. Yes, ma'am.

22 Q. And is that what we see displayed here?

23 A. Yes, ma'am.

24 Q. And what are these conclusions in reference to
25 the population?

1 A. So, once again these numbers are greater than a
2 million times the Earth's population.

3 Q. Now, next I want to move on to some gloves that
4 were recovered at the scene. We see Items 8.2.1 and
5 then 8.2.2 and then 8.31 and an 8.32. Are you with me?

6 A. Yes, ma'am.

7 Q. Okay. Now on these results, it appears as if
8 swabs were taken of both the inside and the outside of
9 the glove?

10 A. Yes, ma'am.

11 Q. Explain to us that process?

12 A. So, sometimes when we receive gloves depending
13 on the glove type, we can't tell whether it's
14 necessarily inside out, so as we receive it, we don't
15 know whether the inside is the inside or when the glove
16 was removed has it been turned inside out, so, we will
17 swab both the inside and the outside to determine if
18 there's DNA present.

19 Q. And showing you -- oh, showing you Item 150-B
20 and C, do these appear to be the gloves that we're
21 talking about?

22 A. Yes, ma'am.

23 Q. Okay. And how would you describe these gloves?

24 A. Latex gloves.

25 Q. Okay. All right. So, starting first with item

1 8.2, the inside or the outside of the glove, what did
2 you determine?

3 A. So, we determined we had a mixture of at least
4 three individuals and that no conclusions were made, no
5 comparisons were made due to the excessive number of
6 contributors.

7 Q. And showing you the chart from those three,
8 I'll go back one more. On 8.2 were you able to make any
9 conclusions about the inside of that glove?

10 A. 8.2 on the inside, the same results, mixture of
11 at least three, no comparison.

12 Q. And then also 8.3, which is the other glove, on
13 the inside of that glove, what conclusions did you draw?

14 A. The same conclusion, the mixture of at least
15 three individuals, no comparisons due to the excessive
16 number of contributors.

17 Q. And showing the chart that we have for those
18 items, how are we able to tell that there are at least
19 three individuals in those pairs, in those gloves?

20 A. So, at several of the locations, we have --
21 well, with the first example based on sheer number
22 count. So, when we say number counts, one way to
23 determine a mixture is count the number of alleles that
24 are present. So the number of alleles, the number that
25 we observed. So, how many repeats did we see? Did we

1 see one repeat or one number? Did we see two, three,
2 four at each location? We expect that a single
3 individual can have up to two. So, if we have two, that
4 could be single source, it can be more than one. If we
5 have three, then we expect at least two. If we have
6 four, could be up to two. If we have five, then we can
7 go there.

8 One of the other things that we can do is
9 also look at the intensity because when you have
10 profiles of the DNA from them, from individuals when
11 they have two numbers it will be generally even. So, we
12 can also look at the intensity difference between the
13 DNA to determine potential number of contributors. So,
14 when we look at 8211, that's what we would have been
15 taking into account, some intensity differences to
16 determine the number -- that at least three people were
17 there. Same when we look at 8221 and then also 8321,
18 what we can see is in 8221, there's several locations.
19 The first box and then halfway down the box at least
20 five if not six numbers present, so we would expect at
21 least three people to be present.

22 In 8321, you can see we have one box kind
23 of towards the first third that does have five numbers,
24 so we would have taken that along with some intensity
25 differences that would lead us to believe we were

1 actually looking at a mixture of a least three people.

2 Q. Out of these two gloves, was one that you were
3 able to link to one of the knowns?

4 A. Yes, ma'am.

5 Q. And which item was that?

6 A. 8.3.1.1. The swab from the outside of the
7 glove.

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

9 A. So, we determined that it was a mixture of at
10 least two individuals, one of which was male, and that
11 we had a major contributor, Donald Nealey could not be
12 excluded as a possible contributor to that major
13 component, and Marquis Davis and Stanly are excluded as
14 possible contributors to the major and insufficient data
15 did not allow for comparison to any of the other minor
16 DNA that was present.

17 Q. And is this the slide that depicts the results
18 that you obtained with the first line being the results
19 from the unknown item?

20 A. Yes, ma'am.

21 Q. And then below it are the three known
22 individuals?

23 A. Yes, ma'am.

24 Q. And just taking Box 1 for instance, it appears
25 as if Marquis and Stanly do not have that same number?

1 A. Yes, ma'am.

2 Q. Are they immediately excluded?

3 A. Well, I would like to see additional
4 information but, yes, ma'am.

5 Q. And are you able to tell from the additional
6 information that they would be excluded?

7 A. Yes, ma'am.

8 Q. If we do a comparison box by box between the
9 known and/or the unknown and Donald Nealey, do we see
10 the presence of numbers being the same at every spot?

11 A. Yes, consistent with there are some locations
12 where the -- that we didn't obtain all the DNA for the
13 evidence item. Example, looking at the third box in, we
14 see that we just have a 10; but you'll also see we apply
15 that caret, which means I could be missing information.
16 As we determine, if we look at his, his was a 10, 11;
17 but we recognize that we don't have all the information
18 at that location. So, we would take that into account.
19 And, yes, looking throughout for the major component, we
20 do see the numbers that are consistent.

21 Q. And the results that we see in the next slide,
22 talk to us about these results?

23 A. So, once again this is on our major component.
24 So, what we're doing is we're looking at, now that we've
25 called it a major component from a single individual,

1 we're going to do what we call a random match
2 probability, so our single-source statistics. But what
3 we're going to do is only use the locations that we
4 believe within the evidence that we have obtained all of
5 our information.

6 So, as an example, where that, only that 10
7 was observed, before I even compare the reference, I
8 would know I cannot use that location in my statistical
9 analysis. Even if I had gotten my reference and he was
10 just a 10, my data is telling me there is possibly some
11 missing, so I would have made the determination that
12 (A), I'm not going to use that location. So, what we've
13 done here is we're doing our statistics on a subset of
14 those 15 locations.

15 Q. And how many locations did you use on this one?

16 A. Appears that we used in total six locations for
17 our statistical analysis.

18 Q. And is that what we see as the result here?

19 A. Yes, ma'am.

20 Q. So while there are a number of obvious spots
21 where the numbers compare and match Donald Nealey, you
22 drop those out out of an abundance of caution?

23 A. Yes, ma'am.

24 Q. And the results that we see still put the
25 random likelihood of finding another person with the

1 same genetic material at almost our population?

2 A. For a Caucasian and Southwest Hispanics, yes,
3 ma'am.

4 Q. And for the African American range, you would
5 have to go 1 in 60 million to find another individual
6 with the same DNA as Donald Nealey?

7 A. No, it would be the same. It would be the same
8 DNA as that evidentiary profile at those six locations.
9 We would then be able to use some of the other data
10 where we recognize we may not have it all but help us to
11 determine whether somebody would then truly be included
12 or excluded.

13 Q. What is the population of the City of Houston?

14 A. Greater area, I believe, around 4 million.

15 MS. MERIWETHER: I pass the witness, Your
16 Honor.

17 **CROSS-EXAMINATION**

18 BY MR. PHILIP SCARDINO:

19 Q. It's Mr. Hassell?

20 A. Hassell, yes, sir.

21 Q. Hassell, let's start where we were right there
22 on 8.3.1.1, the outside of a latex glove that you said
23 does not exclude Donald Nealey as being a contributor to
24 that glove, correct?

25 A. Yes, sir.

1 Q. And you said it's a 1 in 60 million chance; is
2 that right?

3 A. For African Americans, yes, sir.

4 Q. So, we've got 3 hundred million people in the
5 United States?

6 A. I believe over that.

7 Q. So, even at best that's a one in five chance
8 that it's him, right?

9 A. Possible, yes, sir.

10 Q. Now, let's talk a little bit about COTIS. You
11 know what COTIS is?

12 A. Yes, sir.

13 Q. Tell the ladies and gentlemen of the jury what
14 COTIS is?

15 A. COTIS is a combined DNA indexing system. It's
16 a database that is maintained by the FBI. It allows us
17 to enter viable unknown DNA profiles, evidentiary
18 profiles that can then be compared to other known
19 profiles. We also have the ability to enter known
20 suspect references into that database, and the unknown
21 profiles will also be compared against those profiles.

22 Q. Okay. A COTIS has standards, does it not?
23 There has to be so many loci, so much -- enough
24 information for you to submit a profile to COTIS,
25 correct?

1 A. Yes, sir.

2 Q. Now, this one you said that has Donald Nealey's
3 can't be excluded from the outside of that glove, was
4 not submitted to COTIS, was it?

5 A. Let me double check. No, sir, it was not.

6 Q. And the reason it was not is because there
7 wasn't enough, for lack of a better term, identifiers to
8 send it to COTIS. COTIS won't accept it unless it has
9 at least ten loci, correct?

10 A. Incorrect.

11 Q. Well, what are the identifiers COTIS has to
12 have?

13 A. The reason 8311 was not submitted is we were
14 pending further information from the investigator to
15 determine if the facts of the case would allow it to be
16 entered. But the numbers that COTIS requires is that
17 you, there are 13, so of the 15 markers we look at, 13
18 are COTIS loci, locations. So, you have to attempt all
19 13 of those locations. There used to be a rule that
20 would say you had to have at least ten locations. The
21 current rule, the way it's established is you actually
22 will apply a statistical match to that; and if that
23 statistical match is acceptable, then you are allowed to
24 upload it.

25 Q. Now, we're on the verge of changing the

1 protocol for DNA, are we not?

2 A. We're in the stance of increasing the number of
3 loci that are required to be tested, yes, sir.

4 Q. Okay.

5 MR. PHILIP SCARDINO: May I approach the
6 witness, Your Honor?

7 THE COURT: You may.

8 (Marking exhibit.)

9 MR. PHILIP SCARDINO: May I approach, Your
10 Honor?

11 THE COURT: You may.

12 Q. (BY MR. PHILIP SCARDINO) And say it for me one
13 more time, Hassell?

14 A. Hassell.

15 Q. Hassell, are you familiar with a Department of
16 Public Safety letter that went out to the industry on
17 September the 10th of 2015 addressing CPI and likelihood
18 ratio in dealing with DNA analysis?

19 A. I'm aware they sent a letter. I'm not aware
20 that it went to industry. I believe the letter they
21 sent went to counselors, but I'm not familiar with the
22 contents of the letter.

23 Q. Let me show you what's been marked as Defense
24 Exhibit No. 3 and ask you if you're familiar with that
25 letter from the Department of Public Safety?

1 A. I know the letter exists. I'm not, like I said,
2 familiar with the content of the letter.

3 Q. Okay. How do you know the letter exists?

4 A. Because I know a letter was sent out and that
5 particular one I have not had the instance to read the
6 entire letter.

7 Q. Okay. Can I give you just a moment to read it?

8 A. Okay.

9 Q. Because I'm going to ask you questions about
10 it?

11 THE COURT: You need to stand up?

12 JUROR: No.

13 THE COURT: You can stand up if you want.

14 A. Okay.

15 Q. (BY MR. PHILIP SCARDINO) Now, who was that
16 letter addressed to?

17 A. As I read it, I would have thought it would
18 have been addressed to the judicial system not
19 laboratories.

20 Q. Okay. Let me show you what's been marked as
21 Defense Exhibit No. 5 and ask you, first, are you
22 familiar with the Texas Forensic Science Commission?

23 A. Yes, sir.

24 Q. And let me hand you what's been marked Defense
25 Exhibit No. 5 and ask you are you aware of that letter,

1 and have you seen it?

2 A. Yes, sir.

3 Q. Okay. And lastly another letter from the Texas
4 Forensic Science Commission, that last one was dated
5 August the 21st of 2015. This one dated August 21st,
6 2015, are you familiar with that letter?

7 A. I'm not familiar with the letter, but I'm
8 familiar with the contents or the topic that's being
9 discussed.

10 Q. In Defense Exhibit No. 4, who is this letter
11 directed to?

12 A. The lab director for accredited crime labs.

13 Q. It says, "Dear Accredited Laboratory
14 Directors."

15 A. Yes, sir.

16 Q. Okay. All right. So, you're familiar with the
17 contents of all three of these exhibits?

18 A. Yes, sir.

19 MR. PHILIP SCARDINO: After tendering to
20 Counsel for the State, Your Honor, we offer Defense 3, 4
21 and 5.

22 (Defense Exhibit Nos. 3, 4 and 5 offered.)

23 MS. MERIWETHER: May I have a moment, Your
24 Honor?

25 THE COURT: You may.

1 MS. MERIWETHER: Your Honor, may I
2 approach?

3 THE COURT: You may.
4 (Bench conference.)

5 MS. MERIWETHER: I would have an objection
6 to 3 and 5. There appears to be highlighting that's
7 been placed on them.

8 MR. PHILIP SCARDINO: I gave her a clean
9 copy of these the other day so we can sure get those; or
10 I've got a clean copy I can use.

11 THE COURT: That's your only objection?

12 MS. MERIWETHER: Yes, Your Honor.

13 THE COURT: Why don't you put the clean
14 copies in?

15 MR. PHILIP SCARDINO: Yes, Your Honor.
16 (End of bench conference.)

17 THE COURT: Objection is sustained.

18 MR. PHILIP SCARDINO: The objection is just
19 to 3, correct?

20 MS. MERIWETHER: No, I believe two of them
21 have --

22 THE COURT: There was two. It was Defense
23 Exhibit 3 and --

24 MR. PHILIP SCARDINO: Okay.

25 THE COURT: And, Mr. Scardino, you may

1 proceed. And we'll substitute alternate exhibits over
2 the lunch hour.

3 MR. PHILIP SCARDINO: Yes, Your Honor.

4 Q. (BY MR. PHILIP SCARDINO) Now, let's start with
5 the letter from the Department of Public Safety, and I
6 need -- if you need to refresh your recollection from
7 it, I'll bring it back to you.

8 A. I would appreciate that.

9 Q. Yes, sir. Now, doesn't this letter from the
10 Department of Public Safety suggest to the forensic
11 science community, to the judiciary, to the District
12 Attorneys, to the Courts in Texas that we change the
13 calculations that we do in DNA protocol from the CPI
14 method to what's called the Likelihood Ratio method?

15 A. Yes, sir.

16 Q. The method that you used to determine the DNA
17 analysis in this case was the CPI method, correct?

18 A. The statistical analysis that I performed on
19 the unresolved mixtures was a CPI, correct.

20 Q. And not the Likelihood Ratio method?

21 A. Correct.

22 Q. In Defense Exhibit No. 5, from the Texas
23 Forensic Science Commission that's addressed to Members
24 of the Texas Criminal Justice Community, this -- not the
25 DPS, but the Texas Forensic Science Commission, it

1 addresses the use of CPI and CPE in determining mixed
2 DNA samples, correct?

3 A. It's addressing the statistical analysis using
4 CPI.

5 Q. And it's recommending that we change the way
6 we've been doing it in the past?

7 A. I believe they are saying that if CPI is used,
8 it needs to be ensured that it was used correctly.

9 Q. All right. Do you agree with me that for a
10 jury in a Texas court to rely on science that they
11 should be able to understand the underlying science that
12 comes to them?

13 A. Yes, sir.

14 Q. Okay. And if it's ununderstandable to them,
15 it's useless to us, isn't it?

16 MS. MERIWETHER: I'm going to object that
17 this invades the province of the jury.

18 THE COURT: Ask the question again.

19 MR. PHILIP SCARDINO: Let me rephrase it.

20 THE COURT: Thank you.

21 Q. (BY MR. PHILIP SCARDINO) The Courts have
22 allowed science to come into the courtroom for a hundred
23 years. And the founding principle for that has always
24 been that for a fact finder jury to reach a conclusion
25 based on that science, they have to understand it. You

1 agree with me on that?

2 A. I don't know that I -- to that particular
3 wording, no.

4 Q. Okay. So, to come into a courtroom and just
5 tell a jury the science behind a conclusion and then ask
6 them to rely on the conclusion when they don't
7 understand the science behind it is not science at all?

8 MS. MERIWETHER: I'm going to object.

9 THE COURT: Sustained.

10 MR. PHILIP SCARDINO: May I have just a
11 moment, Your Honor?

12 THE COURT: You may.

13 MR. PHILIP SCARDINO: I'll pass the
14 witness, Your Honor.

15 THE COURT: Ms. Meriwether.

16 MS. MERIWETHER: Just briefly.

17 **REDIRECT EXAMINATION**

18 BY MS. MERIWETHER:

19 Q. This science and this testimony that you've
20 given today, is this the first time you've ever
21 testified?

22 A. No, ma'am.

23 Q. This science of DNA, is it used throughout the
24 courthouse and in many fields?

25 A. Yes.

1 Q. Is this accepted science?

2 A. Yes, ma'am.

3 Q. And the questions that he was asking regarding
4 some documents that he's offered from Texas Forensic --

5 MS. MERIWETHER: Can I have the exhibits?

6 MR. PHILIP SCARDINO: Sure.

7 Q. (BY MS. MERIWETHER) You stated that you were
8 familiar with some of these?

9 A. Yes, ma'am.

10 Q. The CPI method and some of the things that he
11 asked you about, are you familiar with those processes?

12 A. Yes, ma'am.

13 Q. And is the Forensic Science Center using the
14 CPI method?

15 A. Yes, ma'am.

16 Q. Is it still an accepted practice?

17 A. Yes, ma'am.

18 Q. Is there a change coming that may affect it?

19 A. We are also looking into moving likelihood
20 ratios and supplementing CPI, but CPI will never be
21 removed entirely.

22 Q. Why not?

23 A. There are some instances where CPI is the
24 appropriate statistical approach.

25 Q. The results that you've testified to today, are

1 they based in grounded science?

2 A. Yes, ma'am.

3 Q. And the results that you have obtained, do you
4 have any doubts about those results?

5 A. No, ma'am.

6 MS. MERIWETHER: Pass the witness, Your
7 Honor.

8 MR. PHILIP SCARDINO: Couple more
9 questions.

10 **RECROSS-EXAMINATION**

11 BY MR. PHILIP SCARDINO:

12 Q. CPI is still good if it's a single source that
13 we're looking at, correct?

14 A. Incorrect.

15 Q. Well, you said CPI would still be good in the
16 future, what are you saying still good for?

17 A. CPI is not used on a single-source statistic.
18 A random match probability is used on single-source
19 statistics. A CPI is used when you have a mixture in
20 which you may not be able to determine the number of
21 contributors. The only assumption that you have to
22 assume is I am not missing any data because once you
23 start to miss that data, then you cannot use that
24 location. So, in the future, even when we move to
25 likelihood ratios, if I have a sample where I don't

1 believe I'm missing any data but I can't concretely
2 establish a set number of contributors, CPI will be the
3 correct statistical approach.

4 Q. So, in the letter from the Department of Public
5 Safety, it tells us that just to notify the Criminal
6 Justice System and the community, Texas Forensic Science
7 Commission is specific to combined probability of
8 conclusion, CPI, method of calculating statistics of DNA
9 mixtures?

10 MS. MERIWETHER: Your Honor, I'm going to
11 object to Counsel reading.

12 THE COURT: Overruled.

13 Q. (BY MR. PHILIP SCARDINO) So what they're
14 telling us in the future, it's not okay to use CPI on
15 mixtures, mixed DNA?

16 MS. MERIWETHER: Objection, best evidence.

17 THE COURT: Overruled.

18 A. I don't believe that's what they're saying.

19 Q. (BY MR. PHILIP SCARDINO) Didn't you just tell
20 us yourself that y'all, even your laboratory is on the
21 verge of making changes and adopting these new rules?

22 A. We will be bringing online Likelihood of Ratios
23 to supplement CPI in certain circumstances, yes, sir.

24 Q. And that wasn't done in this case?

25 A. For this case, no, sir.

1 Q. Thank you.

2 MR. PHILIP SCARDINO: I'll pass the
3 witness, Your Honor.

4 MS. MERIWETHER: No further questions, Your
5 Honor.

6 THE COURT: May this witness be excused?

7 MS. MERIWETHER: Yes, Your Honor.

8 MR. PHILIP SCARDINO: No objections, Your
9 Honor.

10 THE COURT: Thank you, sir. You may step
11 down, and you are excused.

12 Call your next witness.

13 MS. MERIWETHER: Dr. Hines.

14 THE COURT: And while we're waiting for
15 this witness, let me ask the lawyer a scheduling
16 question, please. And if you wouldn't mind collecting
17 those items from the jury.

18 (Bench conference.)

19 THE COURT: So, how long do you think the
20 ME is going to take?

21 MS. MERIWETHER: Probably 30 minutes or so.

22 THE COURT: For direct and cross?

23 MS. MERIWETHER: I can't anticipate cross,
24 I'm sorry, Judge.

25 THE COURT: I'm just trying to figure out

1 should we have him come back after lunch.

2 MS. MERIWETHER: I think we can, Your
3 Honor.

4 THE COURT: Try to get him through so he
5 doesn't have to come back.

6 MS. MERIWETHER: Yes, Your Honor.

7 MR. PHILIP SCARDINO: I have another
8 question, Judge. My, Dr. Collins, who was sitting with
9 me, the DNA expert, never been to court, never
10 testified. Can he remain in the courtroom? Do you have
11 any problems with that, just to watch?

12 THE COURT: Only if she agrees, otherwise,
13 it's not really relevant.

14 MR. PHILIP SCARDINO: You agree?

15 MS. MERIWETHER: I'll agree. That's fine,
16 Your Honor.

17 MR. PHILIP SCARDINO: I can move him away
18 from Counsel table.

19 THE COURT: That's fine. Why don't you do
20 that?

21 THE BAILIFF: Your Honor, this witness has
22 not been sworn in.

23 THE COURT: Thank you. Would you raise
24 your right hand to be sworn?

25 (Witness sworn.)

1 THE COURT: Have a seat, please.

2 MS. MERIWETHER: Your Honor, may I proceed?

3 THE COURT: You may.

4 MERRILL HINES,

5 having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. MERIWETHER:

8 Q. I think good afternoon, just slightly. Could
9 you please introduce yourself to our jury?

10 A. My name is Merrill Hines.

11 Q. And how are you employed?

12 A. I'm employed as an assistant medical examiner
13 at the Harris County Institute of Forensic Sciences.

14 Q. And how long have you been employed there?

15 A. Approximately nine years now.

16 Q. And what do you do at the Harris County
17 Institute of Forensic Sciences?

18 A. I perform postmortem examinations, primarily
19 autopsies to determine the cause and manner of death.

20 Q. And what training and experience do you have
21 that allows you to do that?

22 A. I hold a medical degree from Louisiana State
23 University School of Medicine in New Orleans. I'm board
24 certified in anatomic and clinical pathology, following
25 a residency at University of California, San Francisco;

1 and I'm board certified in forensic pathology, following
2 a fellowship at Albuquerque, New Mexico.

3 Q. And you said you've been at the Harris County
4 Institute of Forensic Science for nine years?

5 A. Yes.

6 Q. Have you worked at any other medical examiner's
7 offices?

8 A. Not following training.

9 Q. And the training was at which place?

10 A. At the office of the medical investigator in
11 Albuquerque, New Mexico.

12 Q. And what exactly do you do on a daily basis?

13 A. I perform postmortem examinations and generate
14 autopsy reports to reflect my findings.

15 Q. And what is an autopsy?

16 A. An autopsy is a postmortem examination of a
17 person. Autopsy means to see with one's own eyes, auto
18 opsy, and consists of essentially viewing a deceased
19 person, taking notes about the appearance of the body,
20 the condition of the body, any injuries or evidence of
21 disease that may be present. Similarly any items of
22 potential evidentiary value are documented and/or
23 collected, followed by an internal examination whereby
24 the organs are examined in the body then removed and
25 further examined. All the while various photographs are

1 taken and various samples are retained for possible
2 laboratory analysis.

3 Q. And so the Harris County Institute of Forensic
4 Sciences conducts full-body examinations both external
5 and internal; is that correct?

6 A. Yes, primarily complete autopsies, which
7 include an internal examination.

8 Q. And in your capacity as an assistant medical
9 examiner here in Harris County, have you performed few
10 or many autopsies?

11 A. Many.

12 Q. Approximately how many in your career?

13 A. 2,000.

14 Q. And have you had to testify in the area of
15 autopsies and pathology during the course of your
16 career?

17 A. Yes.

18 Q. On few or many occasions?

19 A. I would say many.

20 Q. And has that been in Harris County courtrooms
21 and courtrooms elsewhere?

22 A. Both.

23 Q. Now when a body is brought to the Harris County
24 morgue, is it assigned a medical legal number?

25 A. Yes. Every case that is brought into the

1 office, when it is accepted by our office as a medical
2 examiner's case, is assigned a sequential number that is
3 coded to the year in which it was received. Go ahead.

4 Q. Are you here today to testify about a
5 particular medical legal number?

6 A. Yes, I am.

7 Q. And what legal number is that?

8 A. ML 14, referring to 2014, dash, 766.

9 Q. And did you perform that autopsy?

10 A. Yes, I did.

11 Q. And are a number of photographs taken during
12 the course of the autopsy?

13 A. Yes.

14 Q. And tell us about that?

15 A. Photographs are a part of every examination
16 that we perform. Every examination includes a series of
17 photographs taken when the body is first viewed by the
18 pathologist. This would include the body in an
19 undisturbed state, if possible, fully clothed if they do
20 happen to have clothing. They're minimally manipulated
21 and photographed in that state. Following that, the
22 clothing is removed, the body is cleaned up and a second
23 series of photographs are taken. Any additional
24 photographs that are taken are taken at the discretion
25 of the examining pathologist.

1 Q. The photos, do they also include some that are
2 a graphic nature that include the inside of the body?

3 A. Yes.

4 Q. And particular organs and some of the wound
5 tracks that can occur?

6 A. Yes.

7 Q. And did you and I meet prior to your testimony
8 and go through the photographs to develop some that
9 would aid the jury in understanding your testimony
10 today?

11 A. Yes.

12 Q. And did we leave out a large number of the
13 photographs?

14 A. Yes.

15 Q. As part of your preparation of the report, do
16 you generate a report that documents all of your
17 findings?

18 A. Yes.

19 Q. And do you keep that in the regular course of
20 business?

21 A. Yes.

22 Q. That's kept at the Harris County Institute of
23 Forensic Sciences?

24 A. Yes.

25 Q. And are you a custodian of those records?

1 A. Yes.

2 MS. MERIWETHER: Your Honor, may I approach
3 the witness?

4 THE COURT: You may.

5 Q. (BY MS. MERIWETHER) I'm going to show you,
6 first, State's Exhibit 159. Is this a copy of your
7 autopsy report?

8 MR. ROBERT SCARDINO: I didn't hear the
9 number.

10 MS. MERIWETHER: 159.

11 MR. ROBERT SCARDINO: Thank you.

12 A. Yes.

13 Q. (BY MS. MERIWETHER) Okay. And now I want to
14 show you State's Exhibits 160 through 178. Do all of
15 these photographs relate to the autopsy that you're here
16 to discuss today?

17 A. Yes.

18 MS. MERIWETHER: Your Honor, at this time I
19 move to offer State's Exhibits 159 through 178.

20 (State's Exhibit Nos. 159 through 178
21 offered.)

22 MR. ROBERT SCARDINO: May we approach, Your
23 Honor?

24 THE COURT: Yes, sir.

25 (Bench conference.)

1 MR. ROBERT SCARDINO: I don't have an
2 objection to 159, which is the medical examiner's
3 report, nor do I have an objection to 178, which are the
4 bullet fragments that were removed from the deceased,
5 they photographed them. However, I will have an
6 objection to the Prosecutor displaying these photographs
7 to the witness with the family of the deceased sitting
8 in the courtroom; if she plans to do it on the overhead
9 where it's public. It can't be displayed to the family.

10 THE COURT: Your objection to that extent
11 is overruled. I'm not sure I understand.

12 You have an objection to her publishing to
13 the jury with certain individuals in the audience, is
14 that your objection?

15 MR. ROBERT SCARDINO: I'm having a hard
16 time hearing the Court. What did she say? I'm going to
17 have my interpreter step in.

18 MR. PHILIP SCARDINO: I speak judge, Your
19 Honor.

20 THE COURT: I don't understand the
21 objection.

22 MR. PHILIP SCARDINO: Oh, the objection is
23 we made an agreement to allow the family of the deceased
24 to stay in the courtroom as long as the family of the
25 Defendant can stay in the courtroom. Now, it becomes a

1 little problem. We don't have objections to the photos.
2 We have objection to them being placed on the overhead
3 with the family of the deceased in the courtroom. They
4 might react or freak out or whatever.

5 THE COURT: Why don't we do this, I will
6 advise her to ask them not to, but I certainly will not
7 exclude them from the courtroom. Now, the individual
8 who's testifying, if you want to change your agreement
9 about them being under the Rule, I guess we could ask
10 them to step out. But certainly non-testifying
11 witnesses, I have no basis.

12 MR. PHILIP SCARDINO: I agree. Up to you.

13 MS. MERIWETHER: What's that?

14 MR. PHILIP SCARDINO: Well, we have an
15 agreement to have the family stay in the courtroom.
16 It's not a problem. The objection is them being able to
17 see this on the screen.

18 MS. MERIWETHER: She's a medical student.

19 MR. PHILIP SCARDINO: Well, I'm just
20 asking.

21 MS. MERIWETHER: I've advised her what is
22 going to be shown. The mother has left, but she wishes
23 to remain.

24 MR. PHILIP SCARDINO: Okay.

25 THE COURT: She understands, both family

1 members understand that that would be inappropriate for
2 them to make any outburst?

3 MS. MERIWETHER: I can remind them of that.

4 MR. PHILIP SCARDINO: Would you remind
5 them?

6 THE COURT: Why don't you have Catina talk
7 to them about that?

8 MS. MERIWETHER: Okay.

9 (End of bench conference.)

10 THE COURT: Your objection is overruled.
11 State's Exhibits No. 159 through 178 are admitted.

12 (State's Exhibit Nos. 159 through 178
13 admitted.)

14 Q. (BY MS. MERIWETHER) All right. Now, Dr. Hines,
15 State's Exhibit 159, what is this item?

16 A. That is a copy of my autopsy report.

17 Q. And does it contain the information related to
18 this offense and your pathological findings?

19 A. Yes.

20 Q. Does it also contain diagrams that show where
21 the wounds were on the body?

22 A. Yes.

23 Q. And also ones of the head diagrams?

24 A. Yes.

25 Q. And then lastly, does it contain a toxicology

1 report?

2 A. Yes.

3 Q. So a toxicology report is what we're seeing
4 here on the overhead; is that correct?

5 A. Yes, it is.

6 Q. All right. I want to talk to you about,
7 showing you State's Exhibit 160, what do we see here?

8 A. This is a photograph of the decedent that we
9 refer to as the identification photo.

10 Q. And is this the individual that you performed
11 the autopsy on?

12 A. Yes.

13 Q. And are we able to see in State's Exhibit 160
14 any injuries to the body?

15 A. Yes, we can see a contusion and abraded
16 laceration of the face on the left side, as well as the
17 right side of the face.

18 Q. Did he appear to have any injury to his nose
19 area as well?

20 A. On the bridge of the nose.

21 Q. And did you observe any injury at the hairline
22 area?

23 A. Yes, an abrasion.

24 Q. Now, did you observe any other injuries to the
25 body?

1 A. Yes, I observed multiple gunshot wounds.

2 Q. And did you attempt to document these gunshot
3 wounds?

4 A. I did document them, yes.

5 Q. Okay. And I'm going to put your -- how do you
6 document them numerically? Alphabetically?

7 A. I arbitrarily assign each gunshot wound a
8 letter for purposes of correlation with this diagram.
9 Typically, I will start at the top of the body and
10 assign sequential letters from top to bottom, from front
11 to back and from torso out to the extremities.

12 Q. Is this any indication whatsoever of the actual
13 order that the shots were fired in?

14 A. No, the letters are strictly for correlation
15 with diagrams.

16 Q. Because you have no idea whether A came first
17 or whether H came first?

18 A. In this case, I do not.

19 Q. And you stated you started at the head; is that
20 what we see documented here with the "A" and the
21 entrance wound?

22 A. Yes, the gunshot wound of the neck is the first
23 injury I described in my report.

24 MS. MERIWETHER: And may I approach the
25 witness, Your Honor?

1 THE COURT: Yes, you may.

2 Q. (BY MS. MERIWETHER) Showing you State's Exhibit
3 161, Dr. Hines, is this Gunshot A?

4 A. Yes, it is.

5 Q. And how do you know that it's an entrance
6 wound?

7 A. It has the characteristics that are typical of
8 an entrance wound. That is, it's a circular hole or
9 defect in the skin surrounded by a very thin grain of
10 abrasion that is caused when a bullet enters from the
11 outside of the surfaces of the skin into the body.

12 Q. And did you observe an exit wound related to
13 this one?

14 A. I did not.

15 Q. Did you recover any bullet or fragments related
16 to this wound?

17 A. Yes, I did. I recovered the fragmented bullet
18 from the back of the left side of the neck.

19 Q. And what areas did it pass through?

20 A. The bullet perforated the internal jugular vein
21 and carotid artery, which are the two large vessels on
22 the left side of the neck, as well as a portion of the
23 spine or vertebral column in the neck.

24 Q. I next want to talk to you about Gunshot Wound
25 B and show you State's Exhibit 162. Can you show us on

1 State's Exhibit 162 which of these is the gunshot wound
2 that you've labeled B?

3 A. (Indicating) The one on the left side of the
4 chest.

5 Q. And how do you know that this is an entry
6 wound?

7 A. It, too, has features that are typical of a
8 typical entrance gunshot wound.

9 Q. And this is what we see here in 163?

10 A. Yes, it is.

11 Q. And were you able to locate an exit wound with
12 this item?

13 A. No.

14 Q. Were you able to determine a track of that
15 bullet?

16 A. Yes, the bullet passed through the left side of
17 the chest and into the abdomen and lodged in the spine.

18 Q. Were you able to recover any bullets or
19 fragments related to it?

20 A. Yes, I was able to recover multiple bullet
21 fragments from the wound track of this gunshot wound.

22 Q. I want to show you State's Exhibit 162 again.
23 Can you identify where Gunshot Wound C is?

24 A. Right below the right nipple.

25 Q. And were you able to determine that that's an

1 entry wound?

2 A. Yes.

3 Q. And showing you State's Exhibit 164, is that a
4 picture of that entry wound?

5 A. It is and I should add that it's an atypical
6 entrance wound.

7 Q. And what does that mean?

8 A. That means that unlike the previous two wounds,
9 the shape of this wound is not circular or oval; and the
10 area of abrasion around the edge of the wound is
11 irregular.

12 Q. And what path did this bullet travel?

13 A. The bullet traveled through the right chest
14 wall and the right lung and lodged in the right side of
15 the back.

16 Q. And were you able to recover any bullets or
17 fragments from this path?

18 A. Yes, I recovered a bullet in the back.

19 Q. Now, when I met with you, we discussed that
20 there was some wounds that you could tell that were
21 fired or some injuries that you were able to tell the
22 order of those injuries. Does that question make any
23 sense?

24 A. It does, in terms of the severity of the
25 injuries.

1 Q. Okay. Were you able to tell that some of the
2 bullets were actually entries, exits and reentries into
3 Stanly's body?

4 A. So you're referring, when you say the order --

5 Q. Yes, to the order. Were you able to tell that
6 some of these gunshot wounds came in a particular order?

7 A. I was able to tell that multiple gunshot wounds
8 were actually continuations of one another. So, in the
9 case of three of -- I should say six of the gunshot
10 wounds actually represent three bullet paths whereby the
11 bullet went through a portion of the body and then
12 entered another portion of the body, thereby causing two
13 separate wounds with one bullet.

14 Q. Okay. And is that what we see with regard to
15 Gunshot Wound H and then D?

16 A. Gunshot Wound H and Gunshot Wound C.

17 Q. C, I'm sorry, C.

18 A. That's correct, so --

19 Q. Explain that to us?

20 A. -- Gunshot Wound H, which is a gunshot wound on
21 the right elbow, entered the back of the right elbow as
22 you can see here and exited the front of the right arm
23 here, and then re-entered the body through the right
24 side of the chest as I just described. That accounts
25 for the atypical appearance of the gunshot wound on the

1 right side of the chest. A destabilized bullet or
2 bullet that has passed through an intermediate target
3 produces an atypical entrance wound. So, I could
4 interpret that along with the position of the wound in
5 the arm and the chest and deduce that the bullet that
6 caused the gunshot wound of the right arm also caused
7 the gunshot wound into the right chest.

8 Q. And showing you State's Exhibit 165, is this a
9 photograph of that entry wound into the right arm?

10 A. Yes, it is.

11 Q. And are you referring to which part of the
12 photograph as being the entry?

13 A. (Indicating.)

14 Q. This one here?

15 A. A typical entrance wound.

16 Q. And then showing you State's Exhibit 166, what
17 do we see here?

18 A. This is the exit wound on the front of the
19 right arm.

20 Q. And using your own arm, could you demonstrate
21 for the jury how this would be possible to have this
22 entry into the body and exit and then into the main --
23 exit out the arm and then back into the body?

24 A. So, the bullet entered in the back of the right
25 arm, exited the front of the arm and continued into the

1 right chest. So, if the arm were positioned in this
2 manner and the bullet entered into the elbow, you can
3 see how it can continue through the arm and into the
4 chest.

5 Q. Thank you. All right. I now want to move to,
6 I believe, Gunshot Wound J. Is this another one of
7 those where we take them out of order because you can
8 tell the entry, re-entry situation?

9 A. Yes.

10 Q. And showing you -- let me make sure I have the
11 right photo for you. Showing you State's Exhibit 168,
12 will this aid the jury in understanding the path that
13 we're talking about?

14 A. Yes, a portion of it.

15 Q. Okay. And do we need another photograph to
16 show the lower arm area?

17 A. Yes.

18 Q. And is that what we see here in State's Exhibit
19 No. 169?

20 A. Yes, so you can see the entrance wound on the
21 right wrist.

22 Q. Okay. And does this one have an exit wound?

23 A. Yes.

24 Q. And is that what we see here in State's
25 Exhibit 170?

1 A. Yes. So, this would be on the opposite side of
2 the right wrist.

3 Q. And so once it enters the front side, goes out
4 the backside, where does that bullet travel from there?

5 A. It actually enters the backside and exits the
6 front side --

7 Q. Yes.

8 A. -- of the wrist and then continues into the
9 right side of the chest.

10 Q. And do we see that here in State's Exhibit 168,
11 the entry?

12 A. Yes, barely.

13 Q. There, okay. And would you be able to
14 demonstrate the path of that bullet to the jury as well?

15 A. Yes. So, the bullet entered the back of the
16 wrist, exited the front of the wrist and re-entered the
17 right side of the chest. So, if the arm and hand were
18 positioned in this way, you can see how the bullet could
19 basically perforate the wrist and continue into the
20 chest.

21 Q. All right. Now, did you also locate a Gunshot
22 Wound E?

23 A. Yes.

24 Q. And where was that located?

25 A. It was on the abdomen just above and to the

1 right of the belly button.

2 Q. And could you point to State's Exhibit 162 and
3 where that one is?

4 A. (Indicating.)

5 Q. Again, an entry wound; is that correct?

6 A. That's correct.

7 Q. And showing you State's Exhibit 68, is that a
8 picture of that entry wound?

9 A. Yes.

10 Q. And, again, is there an exit wound associated
11 with this item?

12 A. No.

13 Q. What path did this bullet travel?

14 A. The bullet perforated the abdominal wall and
15 the stomach and lodged in the spine.

16 Q. And then Gunshot Wound F, where was it located?

17 A. Just below Gunshot Wound E.

18 Q. And is that in State's Exhibit 162?

19 A. That's correct, here.

20 Q. The bottom one just above the sticker. And
21 showing you State's Exhibit 172, is this a close up of
22 that wound?

23 A. Yes, it is.

24 Q. And did it have an exit?

25 A. No.

1 Q. What path did this bullet take?

2 A. The bullet perforated the anterior abdominal
3 wall, the root of the small bowel and continued into the
4 spine.

5 Q. And did you recover bullet fragments along this
6 path?

7 A. Yes.

8 Q. Showing you State's Exhibit -- I'm sorry, there
9 is next Gunshot Wound G. Where was that located?

10 A. G was on the back on the right side of the
11 lower back.

12 Q. And showing you State's Exhibit 173, what do we
13 have depicted here?

14 A. This depicts Gunshot G.

15 Q. And is this an entry wound?

16 A. Yes, it is.

17 Q. And showing you State's Exhibit 174, is this a
18 photograph of that entry wound?

19 A. Yes.

20 Q. And did it have an exit wound?

21 A. No.

22 Q. Did you -- were you able to determine the path
23 of that bullet?

24 A. Yes, it perforated the musculature of the back
25 and entered the spine.

1 Q. And did you recover fragments along this path
2 as well?

3 A. Yes.

4 Q. And next I want to go to Gunshot Wound K. Is
5 this another one of those situations where you're able
6 to tell an order of a bullet, an order of the entry
7 wounds?

8 A. Yes, Gunshot Wound K was associated with
9 another gunshot wound.

10 Q. Okay. And showing you State's Exhibit 175,
11 what do we see here?

12 A. This is the photograph depicting the entrance
13 portion of Gunshot Wound K. So, this is a picture of
14 the left hand showing the entrance.

15 Q. And showing you State's Exhibit 176, what's
16 here?

17 A. This is a photograph depicting the exit of the
18 same gunshot wound.

19 Q. And how do you know that?

20 A. By the appearance of the wound configuration.
21 Even though it's not typical because it's located on the
22 finger and because of the structures involved with the
23 hands and feet, the wound appears somewhat different
24 than other parts of the body. I was able to determine
25 which of the two wounds was an entrance and which was an

1 exit.

2 Q. And were you able to determine that the bullet
3 that entered the finger and exited out made entry into
4 Stanly's body again?

5 A. Yes.

6 Q. And how did you determine that?

7 A. Again, by the appearance of the wound both the
8 wound of the left hand as well as the associated wound
9 of the right elbow.

10 Q. And showing you State's Exhibit 165, is that
11 what we see displayed here?

12 A. Yes, this large, irregular wound is actually
13 the entrance wound that the bullet that had perforated
14 the hand caused when it entered the elbow.

15 Q. And did this have an exit wound?

16 A. No.

17 Q. Did you recover any items along this path?

18 A. Yes.

19 Q. What did you recover?

20 A. Bullet fragments similar to the ones that were
21 recovered from the other wounds.

22 Q. And could you demonstrate how this wound, this
23 bullet path could have taken place?

24 A. So, the entrance is on the front of the left
25 hand; and the exit is on the back of the left hand. The

1 associated injury is on the right elbow. So, if I were
2 to position my hand in this manner, a bullet passing
3 through the left hand causes an atypical entrance wound
4 on the right elbow.

5 Q. I'm showing you State's Exhibit 178, what do we
6 see depicted here?

7 A. This photograph shows the bullets and bullet
8 fragments that I recovered from the various gunshot
9 wound paths.

10 Q. And showing you State's Exhibit 157, are you
11 familiar with these items?

12 A. Yes, I am.

13 Q. And all of these items?

14 A. Yes.

15 Q. And what are all these items?

16 A. These are the actual bullet fragments that I
17 recovered from the various wound tracks, and these are
18 the envelopes that I sealed those bullet fragments in at
19 the time I performed the autopsy.

20 Q. So, all of these little individual baggies are
21 items that were removed from Stanly's body during your
22 autopsy?

23 A. Yes.

24 Q. Now, Dr. Hines, there obviously was more than
25 11, there was 11 entry wounds on Stanly's body, is that

1 correct, or am I incorrect? How many wounds?

2 A. I think there were 13.

3 Q. 13. And were some of those actually not --
4 were you able to tell how many times Stanly had been
5 shot?

6 A. He was shot with ten bullets.

7 Q. Okay. Are you sure about that?

8 A. Let me do the calculation again just to be
9 certain. Three of the wounds are associated with other
10 wounds.

11 Q. Correct.

12 A. So, get a correct count here. We have Gunshot
13 Wound A, B, C, D, E, F, G, H, I, J, that's ten K, 11, so
14 you were correct. So, that would be a total of eight
15 bullets.

16 Q. 11 wounds, 8 bullets?

17 A. That's correct.

18 Q. Now, Dr. Hines, were you able to determine
19 whether or not there was any evidence of disease in
20 Stanly's body that would have kept him from living a
21 normal and active life?

22 A. I was.

23 Q. Based on your review of Stanly's body on that
24 date, do you have an opinion as to the cause of death of
25 Stanly?

1 A. Yes.

2 Q. And what is that opinion?

3 A. He died from multiple gunshot wounds.

4 Q. And, Dr. Hines, based on your education,
5 training and experience as a medical doctor and as a
6 forensic pathologist, can you tell the jury whether or
7 not a firearm is a deadly weapon?

8 A. A firearm is a deadly weapon.

9 MS. MERIWETHER: Thank you. I'll pass the
10 witness.

11 THE COURT: Okay. Ladies and gentlemen, I
12 think this will be a good time for us to take our lunch
13 break. The bailiffs have arranged to take you out for
14 lunch again today. So, if you will, if you will go with
15 the bailiff, please.

16 THE BAILIFF: All rise for the jury.

17 (Jury exits courtroom.)

18 THE COURT: Be seated, please.

19 MR. PHILIP SCARDINO: Here are the ones
20 that had markings on them, here's the substitution. I
21 want the State to look at them.

22 THE COURT: So, just so the record is
23 clear, I had sustained the State's objection to Defense
24 Exhibits 3, 4 and 5 because they had Defense
25 highlighting. Mr. Scardino has substituted clean

1 copies, exact copies of Defense Exhibits 3, 4, 5 to
2 substitute in their place; and we will ask the
3 Prosecutor to examine them, but I'm sure they're
4 perfectly fine.

5 MR. PHILIP SCARDINO: Thank you, Your
6 Honor.

7 (A lunch recess was taken.)

8 (Open court, Defendant present.)

9 THE COURT: All right. I have given both
10 sides a copy of the Court's proposed Charge. Does
11 either side have any objections, requested additions, or
12 deletions? Mr. Scardino.

13 MR. PHILIP SCARDINO: Yes, Your Honor, I
14 have reviewed the proposed Charge that the Court has
15 provided for us, and we would request the addition of a
16 lesser-included charge of just, of murder or
17 lesser-included charge of robbery. I believe that a
18 reasonable person -- would have been raised by the
19 evidence to a reasonable person sitting on a jury.

20 THE COURT: That request is denied.
21 Anything else?

22 MR. PHILIP SCARDINO: That's all the
23 objections or additions or deletions we have, Your
24 Honor.

25 THE COURT: Anything from the State that

1 looks like that we left out or added in?

2 MS. MERIWETHER: I'm sorry. None from the
3 State, Your Honor.

4 THE COURT: Thank you. Are we ready, oh,
5 and did you have an opportunity to look at those
6 exhibits? We substituted in, in your absence, Defense
7 3, 4 and 5, clean versions of those; and Mr. Scardino
8 wanted you to be sure to see those.

9 MS. MERIWETHER: Your Honor, State would
10 have no objections to Exhibits 3, 4 and 5.

11 THE COURT: Okay. Thank you.

12 I think we're ready for the jury.

13 THE BAILIFF: All rise for the jury.

14 (Jury enters courtroom.)

15 THE COURT: Thank you. Be seated.

16 Did y'all have a good lunch?

17 JURORS: Yes.

18 THE COURT: Good.

19 MS. MERIWETHER: May I have a moment with
20 Counsel, Your Honor?

21 THE COURT: Yes.

22 MR. ROBERT SCARDINO: May I proceed, Your
23 Honor?

24 THE COURT: Yes, you may.

25

CROSS-EXAMINATION

1

2 BY MR. ROBERT SCARDINO

3 Q. Dr. Hines.

4 A. Yes, sir.

5 Q. My name is Robert Scardino. We haven't met,
6 have we?

7 A. No, we have not.

8 Q. I appreciate you speaking distinctly into the
9 microphone. I've gotten old and don't hear as good as I
10 used to. I have a few questions for you.11 MR. ROBERT SCARDINO: May I approach the
12 witness, Your Honor?

13 THE COURT: Yes, you may.

14 Q. (BY MR. ROBERT SCARDINO) To help speed this up
15 a little bit, Doctor, I'm going to show you the report
16 that is in evidence there, State's Exhibit 159, and open
17 it to a page that shows a diagram of a person and a
18 bullet wound that's been drawn on it; do you remember
19 that?

20 A. Yes.

21 Q. So, what I'm referring to if I may show it to
22 the jury is a diagram that's part of your report, and
23 you made the mark on the diagram, did you not?

24 A. Yes.

25 Q. And I believe your testimony was the man that

1 was shot to death was shot eight times?

2 A. Yes.

3 Q. Okay. And one of the wounds was a wound into
4 his neck that I believe your testimony was that it
5 struck his carotid artery, correct?

6 A. Correct.

7 Q. Would that have been a killing wound?

8 A. It would have resulted in death in and of
9 itself, yes.

10 Q. Would it be consistent, Doctor, with if the
11 person that is the deceased was on the ground and a
12 person that shot him that caused that wound had reached
13 over and shot him in the neck, would that wound be
14 consistent with that type of activity?

15 A. Yes.

16 Q. I believe you testified that that particular
17 wound you found no soot or stippling on the body of the
18 deceased around the wound?

19 A. I believe that's correct, yes.

20 Q. I'm going to get to that in a minute, but would
21 you explain what that is to the jury, what is soot and
22 what is stippling?

23 A. Soot, as the name implies, is gray or black
24 material that's essentially burned and partially burned
25 gunpowder that is deposited on the skin around an

1 entrance wound if the muzzle of the gun, which is the
2 end of the barrel, is within less than a foot typically
3 of the target. So, if the end of the barrel is a foot
4 or less, you may see -- I take that back. You may see
5 soot if the muzzle of the gun is less than a foot away
6 from the surface of the skin when it is fired, assuming
7 there is no clothing that would block the deposition of
8 that.

9 Typically, it's seen in cases where the gun
10 is within a few inches of the skin when it is fired.
11 Stippling are injuries that are caused by particles that
12 are ejected from the muzzle of the gun striking the skin
13 and causing dot-like abrasions on the skin. That mark
14 or those injuries occur when the muzzle of the gun is
15 less than 3 feet from the skin when the gun is fired.
16 So, again, with the caveat that assuming nothing is on
17 the skin to block the particles that cause those
18 injuries. So, if you were to see or if I was to see
19 soot around a wound, I could conclude that the muzzle of
20 the gun was less than a foot away from the skin when it
21 was fired, more likely much closer than a foot, a few
22 inches. If I were to see stippling around a wound, I
23 would conclude that the muzzle of the gun was closer
24 than 3 feet from the skin when it was fired.

25 Q. Thank you, Doctor. So the wound that was a

1 deadly wound into the neck of the deceased, you saw no
2 soot or stippling?

3 A. I did not.

4 Q. Doctor, would it be consistent from your
5 examination of the body of the deceased, and if I may
6 demonstrate by standing and pretending that I have the
7 person in a headlock with my left hand or my right hand,
8 either one and I have a gun in my other hand, and I
9 shoot the deceased in that circumstance, would that more
10 likely to show stippling and soot on the victim or not?

11 A. Assuming there was no clothing to block it, I
12 would think it would be likely.

13 Q. Likely to show soot or stippling?

14 A. Correct.

15 Q. When you examined the body of the deceased, did
16 you notice if he had any clothing around his neck that
17 would block soot or stippling when he received that
18 wound?

19 A. Let me refer to my report to see what he was
20 wearing. No, I did not.

21 Q. The answer is no?

22 A. Yes.

23 Q. So if I could get you to pull your report up, I
24 believe it's page 3 where you document your findings and
25 you list the gunshots from A through H, I think, no, J,

1 however long it was. Do you have that in front of you?

2 A. I do.

3 Q. Let's walk through that for a second. Your
4 findings from the first gunshot wound, if you'll tell us
5 what you saw? From what direction did the deceased
6 receive the wound?

7 A. The wound was on the right side of the neck.

8 Q. And that's the wound we just talked about?

9 A. Yes.

10 Q. And I believe in your report your findings were
11 it was the wound consisting of a 9-millimeter circular
12 defect?

13 A. Yes.

14 Q. Would that tell you the type of weapon that was
15 used?

16 A. No, the size of the hole produced by a bullet
17 is an unreliable indicator of the size of the bullet
18 that produced the hole.

19 Q. But it could have been caused by a 9-millimeter
20 weapon?

21 A. It could have, yes.

22 Q. And it could have been caused by a 38-caliber
23 weapon?

24 A. Yes.

25 Q. And you found, again, no soot or unburned gun

1 powder around the wound?

2 A. I did not see any soot, and I did not see any
3 definitive stippling.

4 Q. Let's go to B, gunshot wound of the left chest.
5 From what direction did the deceased receive that wound?

6 A. The wound was on the left; and the bullet
7 traveled from, basically, from front to back.

8 Q. Okay. So, the deceased man's assailant was in
9 front of him?

10 A. The muzzle of the gun was pointed toward the
11 back.

12 Q. Okay. If you'll look at your report on page 3
13 where it says "B" and it has entrance, you see that?

14 A. Yes.

15 Q. Don't you say on the left chest 18 inches below
16 the top of the head?

17 A. I do.

18 Q. And so your testimony is that he received the
19 wound from the back?

20 A. No, I'm saying the muzzle of the gun was
21 pointed from front to back.

22 Q. Okay.

23 A. I can't tell where the assailant was, I can
24 only tell where the muzzle of the gun was relative to
25 the body.

1 Q. So, the deceased received the blow, the muzzle
2 was pointed towards him, towards his chest when he
3 received the wound?

4 A. That's right.

5 Q. He wasn't shot in the back?

6 A. No.

7 Q. And you found no stippling or soot around that
8 wound, did you?

9 A. I did not; however, the decedent was wearing a
10 shirt.

11 Q. Yes, sir. Let's go to the C. You found a
12 gunshot wound to the right upper chest?

13 A. Yes.

14 Q. And from what direction did the deceased
15 receive that wound?

16 A. So, the wound is on the chest. The muzzle of
17 the gun would have been in front of him.

18 Q. So, in your opinion, he was shot from his front
19 and not from his back?

20 A. That's correct.

21 Q. And you found no soot or stippling or unburned
22 gunpowder around that wound?

23 A. That's correct.

24 Q. In fact, in your report at the bottom when you
25 talk direction, you say the bullet passes from front to

1 back?

2 A. Yes.

3 Q. And let's go to D, gunshot wound of the right
4 lower chest.

5 A. Okay.

6 Q. Do you have an opinion as to what direction the
7 deceased received that wound?

8 A. Similar to C, the muzzle of the gun would have
9 been in front of him.

10 Q. And then E, gunshot wound of central abdomen,
11 from what direction did he receive that wound?

12 A. Again, the muzzle would have been in front of
13 him because the gunshot wound was on the front of his
14 body.

15 Q. Let's go to F, from what direction did he
16 receive that wound?

17 A. Similar to E, the muzzle would have been in
18 front of him rather than behind him.

19 Q. So, generally, Dr. Hines, would you say that
20 the person that was shooting the deceased was likely to
21 be in front of him when he shot him?

22 A. Rather than behind him, yes.

23 Q. Do you have an opinion as to whether or not
24 more than one weapon was used that shot the deceased?

25 A. I can't say for certain if more than one weapon

1 was used. All of the ammunition appeared to be of
2 similar type.

3 Q. But it's possible two weapons could have been
4 used?

5 A. Certainly.

6 Q. Is it possible that more than two could have
7 been used?

8 A. Yes.

9 Q. Do you have an opinion as to which wound is
10 most likely to have caused the death of the deceased
11 from the wounds that you examined?

12 A. I do not.

13 Q. Do you have an opinion as to whether or not the
14 deceased could have survived all of the wounds except
15 for the wound to his neck that severed his carotid
16 artery?

17 A. I think that the carotid artery injury was by
18 far the most severe, and the relative survivability of
19 the other wounds was much greater than that.

20 Q. So, that if a person stepped over him and shot
21 him, leaned over and shot him in the neck, that was the
22 wound that most likely killed him?

23 MS. MERIWETHER: Objection.

24 A. All the wounds contributed to his death, blood
25 loss including the one of the neck.

1 Q. Thank you, Doctor.

2 MR. ROBERT SCARDINO: Pass the witness.

3 MS. MERIWETHER: Just brief, Your Honor.

4 **REDIRECT EXAMINATION**

5 BY MS. MERIWETHER:

6 Q. Doctor Hines, on Gunshot Wound A, was there
7 some stippling present?

8 A. There was no definitive stippling. I saw some
9 marks that may or may not represent stippling.

10 Q. And those marks, are you able to determine a
11 distance that the gun would have been from the neck when
12 it was fired?

13 A. If the marks were stippling, then it would have
14 been less than 3 feet.

15 MS. MERIWETHER: Pass the witness.

16 MR. ROBERT SCARDINO: May I have just a
17 moment, Your Honor?

18 THE COURT: You may.

19 MR. ROBERT SCARDINO: Thank you. No more
20 questions.

21 THE COURT: May this witness be excused?

22 MS. MERIWETHER: Yes, Your Honor.

23 THE COURT: Thank you, sir. You may step
24 down, and you're excused.

25 Call your next witness.

1 MS. MERIWETHER: Your Honor, the State
2 would call Sofia Kumbanattel.

3 THE BAILIFF: Your Honor, this witness has
4 not been sworn in.

5 THE COURT: Raise your right hand to be
6 sworn.

7 (Witness sworn.)

8 THE COURT: Have a seat, please.

9 You may proceed.

10 MS. MERIWETHER: Thank you, Your Honor.

11 **SOFIA KUMBANATTEL,**

12 having been first duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 BY MS. MERIWETHER:

15 Q. Would you please introduce yourself to our
16 jury?

17 A. My name is Sofia Kumbanattel.

18 Q. Sofia, how old a woman are you?

19 A. 29 -- 28, 29.

20 Q. Go with 28?

21 A. I stopped counting.

22 Q. Fair enough. How are you employed?

23 A. I'm a resident physician at Baylor University.

24 Q. Going through medical school right now?

25 A. No, I'm finished with medical school. I'm a

1 family physician right now.

2 Q. Are you married?

3 A. I am.

4 Q. And who are you married to?

5 A. Josh Humus (phon.).

6 Q. And is he in the courtroom today as well?

7 A. Yes.

8 Q. When did you get married?

9 A. Just last weekend, October 31st.

10 Q. Is your mom here today as well?

11 A. Yes.

12 Q. What's her name?

13 A. Cindy Kumbanattel.

14 Q. And do you have some other family members that
15 are here as well?

16 A. Yes, I have a few cousins, a co-worker of my
17 mom and a brother and family friend.

18 Q. Who --

19 MS. MERIWETHER: Your Honor, may I approach
20 the witness?

21 THE COURT: You may.

22 Q. (BY MS. MERIWETHER) Sofia, I'm going to put a
23 picture in front of you; and when you're ready, if
24 you'll turn it over and tell us who is in the
25 photograph?

1 A. It's my brother.

2 Q. And what's his name?

3 A. Stanly Kumbanattel.

4 Q. I want to show you some other exhibits. I'm
5 going to show you State's Exhibit 179, 180 and 181, if
6 you'll take a look at those for me?

7 A. Also, my brother.

8 MS. MERIWETHER: Your Honor, at this time I
9 move to offer 179, 180 and 181.

10 (State's Exhibit Nos. 179 through 181
11 offered.)

12 MR. ROBERT SCARDINO: No objections.

13 THE COURT: State's Exhibits 179 through
14 181 are admitted.

15 (State's Exhibit Nos. 179 through 181
16 admitted.)

17 MS. MERIWETHER: Thank you, Your Honor.

18 Q. (BY MS. MERIWETHER) Sofia, who is this?

19 A. That's my brother, Stanly.

20 Q. And how old was he when he passed?

21 A. 32.

22 Q. And what was he doing with his life?

23 A. He was working. He was working at Memorial
24 Hermann, and he was going to school for engineering at
25 UT in Dallas.

1 Q. The weekend of this incident was he in Dallas
2 and on his way home to see you?

3 A. Yes.

4 Q. What were y'all supposed to be doing that
5 weekend?

6 A. It was his birthday, March 7th, so we were
7 going to celebrate his birthday.

8 Q. Showing you State's Exhibit 180, who's in this
9 picture?

10 A. My dad, my mom, my brother and I.

11 Q. Is your brother older than you?

12 A. Yes.

13 Q. How much?

14 A. Four years.

15 Q. What kind of relationship did you have with him
16 growing up?

17 A. A regular brother/sister relationship. I mean,
18 he was very protective of me and my mom.

19 Q. And showing you State's Exhibit 181, who is
20 this?

21 A. My brother and I.

22 Q. And do you remember when this was taken?

23 A. Yes, it was at my cousin's wedding.

24 Q. How did you learn about your brother passing?

25 MR. ROBERT SCARDINO: Excuse me. I'll

1 object to the relevance.

2 THE COURT: Sustained.

3 MS. MERIWETHER: I'll pass the witness,
4 Your Honor.

5 MR. ROBERT SCARDINO: No questions.

6 THE COURT: Thank you, ma'am. You may step
7 down.

8 Call your next witness.

9 MS. MERIWETHER: The State would rest, Your
10 Honor.

11 MR. ROBERT SCARDINO: The Defense rests,
12 Your Honor.

13 THE COURT: Well, let me give the jury a
14 brief recess. We will resume shortly.

15 THE BAILIFF: All rise for the jury.

16 THE COURT: Thank you. Be seated.

17 MR. PHILIP SCARDINO: At this time, Your
18 Honor, the Defense would move for an instructed verdict
19 of not guilty.

20 THE COURT: Denied.

21 MR. PHILIP SCARDINO: You're taking the
22 wind out my sails, can I at least say why I wanted you
23 to do it?

24 THE COURT: Go ahead.

25 MR. PHILIP SCARDINO: If I may address the

1 record, the State produced no corroborating evidence to
2 convict our client, Mr. Nealey. The only evidence that
3 they had of him committing a murder was the testimony of
4 a accomplice witness, Marquis Davis. We would ask for a
5 judgment of not guilty.

6 THE COURT: It's denied.

7 (A recess was taken.)

8 (Open court, Defendant present.)

9 THE BAILIFF: All rise for the jury.

10 (Jury enters courtroom.)

11 THE COURT: Thank you. Please be seated.

12 Well, ladies and gentlemen, both sides have
13 rested; and I will now read to you the law that will
14 cover your deliberations. Following that, you will hear
15 closing arguments from Counsel. Now, I have to tell you
16 that this law is rather lengthy; but you will have a
17 copy of it to take into the jury room with you.

18 (Court's Charge read to the jury.)

19 THE COURT: Ms. Meriwether, you may
20 proceed.

21 MS. MERIWETHER: Your Honor, the State
22 would waive its right to open and reserve its time for
23 close.

24 THE COURT: Okay. Mr. Scardino.

25 MR. ROBERT SCARDINO: Thank you, Your

1 Honor.

2 **OPENING ARGUMENTS BY MR. ROBERT SCARDINO**

3 MR. ROBERT SCARDINO: May it please the
4 Court, members of the Prosecution, brother, ladies and
5 gentlemen of the jury. Yesterday was Veterans Day. We
6 honored the men and women that defended our country.
7 What you are doing here today is no less important or
8 viable than what any of our Veterans have done. Your
9 coming down here to serve on this jury makes the process
10 work. It's what separates America from Russia and China
11 and Iran. George Washington said when we formed our
12 country, the one thing in our Constitution, in our
13 contract, that will guarantee that democracy will live
14 will be the jury system. The fact that jurors, citizens
15 make the decision about whether a person who is charged
16 with a crime is guilty or not. So be proud that you're
17 here, and we thank you for being here.

18 Now, what Judge Yates just read to you,
19 you'll get a copy of, lots of legal language in it, but
20 it's critical and here's why. This is called due
21 process. It's a legal term. What it means is everybody
22 accused of a crime gets the same rules every time,
23 depending on the facts. A murder case will have a
24 different set of rules than an aggravated sexual assault
25 case or a DWI.

1 But what Judge Yates has done is told you
2 what our system of government requires in a murder case,
3 and you must follow her instructions. Not what you
4 think you would do talking to a neighbor or not even
5 what you think you might do talking to another juror
6 when you deliberate, to come up with a verdict, Latin
7 for the truth. But you follow these instructions, which
8 means you must decide this case based on these rules,
9 which is right out of the Constitution of the United
10 States, due process.

11 She tells you, No. 1, and please don't lose
12 focus of this because -- and I have a great deal of
13 respect for the Prosecution. I've known her. We try
14 cases together. They are good and honorable and
15 hard-working folks, I'll give them that. Even when they
16 have difficult cases. This is a murder case. It's a
17 murder case. This is not a robbery case. You heard
18 evidence of a robbery. You heard an eyewitness say that
19 he identified Donald Nealey in the robbery. You heard
20 DNA, 1 in 5 chance there was DNA on the glove near the
21 robbery. This is a murder case, a capital murder case;
22 and that's what Judge Yates tells you in the
23 instructions. So, please, look at that closely; and as
24 you're looking at the evidence, see what it has proven
25 to you or not.

1 She tells you that you must examine the
2 evidence and decide whether or not it convinces you of
3 the very high standard that we have, which is does it
4 convince you beyond a reasonable doubt? And if you
5 don't feel like it's convinced you beyond a reasonable
6 doubt, you are to acquit. And she goes on to tell you
7 there are certain things that you must be focused on in
8 this case. One would be that the witness, Marquis
9 Davis, and I'll talk about him in a second, she tells
10 you that he is an accomplice. The Judge is telling you
11 that. You don't have to decide whether he is or not.
12 He is an accomplice. Judge Yates tells you.

13 Therefore, if you rely on his testimony to
14 convict, the Judge tells you, the witness, Marquis
15 Davis, is an accomplice. If an offense was committed
16 and you cannot convict the Defendant upon his testimony,
17 unless you further believe that there is other evidence
18 in the case outside the testimony of Marquis Davis
19 tending to connect the Defendant with the offense
20 committed, if you find that an offense was committed.
21 And the corroboration is not sufficient if it just shows
22 the commission of the offense, but must tend to connect
23 the Defendant to the offense, the murder case, the
24 capital murder case, not the robbery.

25 The Judge goes on to talk to you about in

1 this case the Defendant has elected not to testify.
2 You're instructed you cannot and must not refer to or
3 allude to that fact. The Judge tells you all persons
4 are presumed innocent. No person may be convicted of an
5 offense unless each element is proven beyond a
6 reasonable doubt.

7 And then the Judge tells you something
8 towards the end of her instructions that I think is the
9 most important part, in my opinion, the Judge tells you
10 that you are the exclusive judges of the facts proved of
11 the credibility of the witnesses and the weight to be
12 given their testimony. When you look at this, when you
13 go back to deliberate, you can take it back and look at
14 it. You can touch it and feel it and talk about it.
15 Think about what you have to believe to convict. What
16 you have to believe is Marquis Davis.

17 Now, don't you know that these fine
18 Prosecutors founded a bitter pill to swallow to put that
19 liar and that thief and that murderer in front of you
20 and ask you to believe his testimony? Don't you know
21 they hated doing that? They put people like that in
22 prison, but they had to do it in this case to have a
23 case, or they wouldn't have put him on. They are much
24 better than that, I can promise you, but they had to put
25 him on and ask you to believe him beyond a reasonable

1 doubt to convict.

2 Now, what did he tell you in his testimony
3 to make him believable? Well, you learned that he was
4 charged with capital murder and then after numerous
5 stories he got appointed -- he changed his mind, he got
6 appointed great lawyers. So, he goes from looking at
7 the death penalty to cutting a deal that can get him out
8 of jail in 25 years. What do you think a person like
9 him would say to get that kind of deal? Well, that's up
10 to you to decide. What did we hear from this guy? We
11 heard that he said he didn't know there was anything
12 going to happen down there bad, that he picked up Donald
13 Nealey in his car and drove him to the Little Nell
14 Apartments where he didn't know anything was going to go
15 down there. And he told you and wanted you to believe
16 after he told numerous lies to the police. By the way
17 Officer McLean, said, oh, I believe him. He never lied
18 to me. But after he does all that, he says he's
19 standing there just waiting, oh, they picked up a guy
20 named K.C., but I lied about that. Don't know who K.C.
21 or where K.C. is. Didn't know anything about the House
22 of Pies before, but they knew to run out the back door.
23 Donald Nealey made him take that gun and
24 shoot it in the air. Look at the video and see if you
25 believe that, made him go into the House of Pies, look

1 at the video and see if you believe that. And then here
2 comes Donald Nealey with this poor man, and who wouldn't
3 want revenge for what happened to that poor man, I don't
4 blame them a bit, but he claims Donald Nealey had him
5 around the neck, was beating on him and the guy says
6 please help me. And he said, I was just so afraid I
7 didn't do anything. Then he says Nealey shoots him to
8 death.

9 Now, you heard from the medical examiner;
10 and I wanted to point out to you how the medical
11 examiner found this poor man was shot. Now, Jerome
12 Monroe testified that he was an eyewitness. Now, they
13 don't want you to believe him. If you don't believe
14 him, you don't believe him. But he was there, I asked
15 the Investigator McLean, did you find any reason not to
16 believe him? He told too many different stories. Well,
17 what did he tell you that was different? Well, there
18 were two guys, then there were three guys. He's in his
19 house or he's in his garage, he's cutting hair, he hears
20 people running. He looks and sees, he thought he saw
21 three people, that's what he said, consistent with a
22 prior statement maybe he said there were other people
23 later or before.

24 But they were chasing somebody and it
25 sounded desperate to him, so he looked. He sees a young

1 man run by; he described the deceased. He sees three
2 men chasing him. He hears gun fire, he turns around, he
3 sees muzzle flashes. From what direction do you think
4 he would have seen muzzle flashes as he turned around in
5 his garage and looked down that alleyway? Would it be
6 facing the deceased, or behind the deceased, the people
7 chasing him? What does Marquis Davis want you to
8 believe? He was in front of the deceased. Where was
9 the deceased shot? From the front.

10 What did Jerome Monroe tell you he saw? He
11 saw the man get out of the car where Marquis Davis told
12 you he was, in front of the car, sees the man get out,
13 walk over to the man on the ground and shoot him. Where
14 was the deceased shot in the neck? From what direction?
15 Was it more than a couple of feet away if he shot him
16 exactly the way Jerome Monroe said, no stippling, no
17 soot? It fits. Who do you believe? Can you believe
18 Marquis Davis enough to convict beyond a reasonable
19 doubt?

20 You can go back and deliberate and talk
21 about how many lies he told. You can talk about whether
22 or not he had a reason to testify or motive to testify.
23 You can look at all this evidence and see whether all
24 this standing by itself is enough to convict Donald
25 Nealey without Marquis Davis' testimony. You know the

1 pathologist was telling you the truth, he wouldn't have
2 a reason to lie. It fits with what Jerome Monroe
3 testified in front of you under oath.

4 When I sit down and quit talking, the
5 Prosecutor is going to get a chance to talk to you. And
6 she's going to get to rebut and contradict what I say.
7 And she's going to tell you she's proven her case. And
8 she's going to ask you to find Donald Nealey guilty. I
9 don't get a chance to talk again. My brother is going
10 to say something after I sit down, but we don't get to
11 rebut what she says. So, whatever she says and she is a
12 good and effective lawyer, if you would apply some test
13 and credibility and validity to what she says the same
14 as I would if I had a chance, that would give us a fair
15 trial. And I submit this to you, our rules of law
16 require in a felony, especially a capital murder case,
17 that the Prosecution has to convince 12 people beyond a
18 reasonable doubt, all 12. Not 8 or 9 or 10, not a
19 majority, but each one of you, which means that whatever
20 your verdict is is your verdict and not the next
21 person's verdict.

22 Now, you're required to go listen to what
23 the other jurors have to say, that's called
24 deliberating. But there's nothing that says you have to
25 change your mind if you disagree with what the other

1 jurors says of what the case is -- how the case has been
2 presented and how you view the evidence. So, you vote
3 to make sure you follow your oath, vote what your
4 conscience says, what your eyes and ears heard, and what
5 you believe or not believe applying Judge Yates' rules
6 to this case, to these facts. I submit to you that a
7 proper verdict in this case is not guilty.

8 THE COURT: Mr. Scardino.

9 MR. PHILIP SCARDINO: Thank you, Your
10 Honor.

11 **CLOSING ARGUMENTS BY MR. PHILIP SCARDINO**

12 MR. PHILIP SCARDINO: Ladies and gentlemen,
13 I just have a couple of things to say to you. First,
14 I'd like to thank you for coming down here. A lot of
15 people were called, few people are chosen. Appreciate
16 your jury service, juries come to service, coming down
17 here, it's difficult. This is a difficult case. I want
18 to point out a couple of things to you and talk to you
19 about how you get out of that jury room. A lot of
20 jurors tell us later that's kind of the hardest thing
21 about this, is getting back there and doing that.

22 Do you really feel comfortable with the
23 evidence that you heard? Do you feel comfortable with
24 the testimony of the police officers? I heard them say,
25 oh, that's not my job; or, no, I don't do that. I

1 passed it off to this guy; or, no, I didn't look at
2 those interviews. I don't do that, or I didn't do this.
3 None of them really came up here and said anything to
4 you. None of them, even Cisneros, who was the lead
5 detective, said, oh, I never saw Davis' interviews.
6 Never saw them. He told you he didn't know about the
7 blood on Davis' shoes.

8 Davis got up there in his statement because
9 he told you himself, oh, when they caught me, I took
10 those shoes off, and then I ran. Why would he take the
11 shoes off? Because they have blood on them. And then
12 he lied in his interview and said, oh, Nealey made me
13 switch shoes with him. And then they catch him, they're
14 his shoes and whose blood on them? The poor dead man's
15 blood is on Davis' shoes. Well, what's that consistent
16 with? Standing over somebody and shooting them. You
17 saw all the blood out there. That's who the shooter is.
18 The State has made a deal with the shooter to try to get
19 Nealey. And like my brother told you, what evidence do
20 you have of Nealey out there? Zero. Zero.

21 Ms. Bumpers, she came out there and said,
22 oh, I can identify somebody that's out there. The only
23 person she said she could identify was Davis. We bring
24 him in the courtroom, she can't identify him. Three
25 witnesses were at the murder: Jerome Monroe, Ms. Bumpers

1 and Davis, that's it. So, if you want to convict this
2 young man and send him to his death, you have to rely on
3 that kind of evidence. They brought you some other
4 stuff, but most of it was for the robbery. They brought
5 you a DNA guy to talk about it. I introduce some
6 letters. I want you to go back there and read them.
7 They do just what we said they did, they say, they tell
8 you The Department of Public Safety, the FBI, and the
9 Texas Forensic Science Commission said don't do it like
10 that anymore. It's not reliable. Quit.

11 MS. MERIWETHER: Your Honor, I must object.
12 That's a misstatement of those letters.

13 MR. PHILIP SCARDINO: Take them back there,
14 they're in evidence. You can ask any --

15 THE COURT: Your objection is sustained.

16 MR. PHILIP SCARDINO: Okay. You can
17 request any piece of evidence, take them back there,
18 read them. Davis' testimony is bought and paid for and
19 it's bought and paid for with something more precious
20 than money, it's bought and paid for with his time. The
21 thing that is most precious to any of us on the planet
22 is our time, our finite time here on Earth. And he went
23 and made him a deal that you'll get out one day versus
24 never getting out. But if that's not an incentive to
25 lie, I don't know what is.

1 You might be sitting there saying to
2 yourself, you know, you know Nealey might be guilty, he
3 could be guilty, but you better be sure because if you
4 find him guilty, you know what happens. You sentence
5 him to his death. You sentence him --

6 MS. MERIWETHER: Objection, improper
7 argument.

8 THE COURT: Sustained.

9 MR. PHILIP SCARDINO: You sentence him to
10 the penitentiary until he dies.

11 MS. MERIWETHER: Objection, improper
12 argument.

13 THE COURT: Sustained, Counselor.

14 MR. PHILIP SCARDINO: Life without parole,
15 what do you think that means? Life in the penitentiary
16 without parole, you never get out. My brother told you
17 each one has your own vote, and you do. And the Judge
18 told you in her instructions to go back there and
19 deliberate. Well, deliberate in the dictionary says to
20 coolly reflect. So, when I sit down, the Prosecutor is
21 going to get up; and she's going to talk to you about
22 murder and how terrible it is and all that stuff and try
23 to stampede you to a verdict. Go back there and think
24 about what you heard and ask yourself, am I really
25 convinced enough to send this young man to the

1 penitentiary for the rest of his life?

2 One of the problems with verdicts is they
3 last forever. So, when you're back there thinking about
4 it, ask yourself, am I happy with my verdict? Am I
5 going to be happy with my verdict a year from now? Am I
6 going to be happy with my verdict five years from now?
7 You don't want to be standing around at that time a year
8 from now and go, you know, God, I wish I hadn't done
9 what I did. I wish I hadn't sentenced that young man to
10 prison. I wish I would have not done that because, you
11 know, they just didn't convince me. And the law says
12 I'm not convinced, then I've got to acquit him. But I
13 want to tell the State of Texas go try him for the
14 robbery. Go try him for something else.

15 MS. MERIWETHER: Objection, improper
16 argument.

17 THE COURT: Sustained.

18 MR. PHILIP SCARDINO: The Judge will lift
19 the admonishment when you're done here and tell you you
20 can talk to your family and friends about this case.
21 When you go and talk to them, what are you going to say?
22 You're going to say, well, I heard this case and they
23 put on some evidence and, you know, it wasn't all that
24 great, and I heard some stuff and the main thing they
25 had was this guy, Davis, and the stuff I know about

1 Davis was he sure wasn't afraid to pull the trigger. I
2 saw him in a video robbing the House of Pies. He was
3 the only one shooting.

4 And you're going to tell your friends who
5 ask you about your jury service, well, I sat there and I
6 heard this and I heard that. The main thing I heard
7 about this young man was testimony from another young
8 man who admitted his guilt and told lie after lie after
9 lie after lie. And when they ask you, well, what did
10 you do? And you say, well, I convicted him. They're
11 going to ask you, well, why did you do that? And you're
12 going to have to answer them. And you're going to have
13 to say to convict you're going to have to say I did it
14 because I believed a liar and a murderer and a thief.

15 So, go back there, vote your own vote,
16 that's why we got 12 instead of just one, your vote,
17 everyone's vote is just as important as the other,
18 listen to your other fellow jurors but stick to your
19 guns. Vote your own vote, and you'll do yourself
20 service. Don't do yourself a disservice by coming down
21 here and doing something that you didn't want to do.
22 And if you do that, you'll render a true verdict. Thank
23 you.

24 MS. MERIWETHER: May I have a moment to
25 collect some evidence, Your Honor?

1 THE COURT: You may.

2 **CLOSING ARGUMENTS BY MS. MERIWETHER**

3 MS. MERIWETHER: Let's be clear about one
4 thing. Marquis Davis, his testimony and his story
5 wasn't bought and paid for with 50 years in prison. He
6 told that story, that Donald Nealey killed a man back on
7 March 7th of 2014. That's when he gave that statement
8 to Va'Shawnda McLean, laying out what happened. That's
9 when he gave that statement. It wasn't a statement that
10 he gave because I gave him 50 years in prison. That
11 statement was already out there and already made. He
12 didn't get a benefit. That night he wanted to come
13 clean. That night he realized he needed to say it.
14 That night he realized he was about to go down for
15 something he didn't do. He readily admitted his role in
16 the aggravated robbery, said, I did it. But he wasn't
17 going to be held responsible for shooting him because he
18 didn't. He's the one that shot him eight times. That's
19 the man who shot him.

20 I only have to prove these elements to you;
21 we talked about them back on Monday. Simply put, the
22 robbery of Stanly, the taking of his vehicle, the taking
23 of his property plus his death equals capital murder.
24 It's simply put. The question is, do you believe that
25 Donald Nealey was a participant and an actor in it? I

1 don't have to prove it beyond all doubt, beyond all
2 possible doubt, beyond a shadow of a doubt, just beyond
3 a reasonable doubt.

4 We talked about Law of Parties, my four
5 lovely friends and I that went and did our bank robbery
6 together and remember each and every person who is
7 involved in that crime is guilty of capital murder,
8 whether it be the shooter, a participant in it, a
9 get-away driver or a lookout. Even if you don't believe
10 the Defendant shot Stanly, you may believe that he was
11 the get-away driver. You may believe that he was seated
12 in that car and got him away, he's guilty of capital
13 murder. I believe that the evidence adds up to the fact
14 that he held the gun; that he pulled the trigger; that
15 he ended Stanly's life. Now, some of those pieces are
16 missing; but don't you know you got more than enough to
17 convict him.

18 The truth is simple; the Defense spent a
19 lot of time talking to you. I didn't put a whole lot on
20 my notepad here, but they put all of their pieces into
21 just a few areas. They left out so much evidence
22 because that's the evidence that they don't want you to
23 look at. That's the evidence they don't want to you
24 take into account. But, ladies and gentlemen, those are
25 the pieces that you need. That evidence that they don't

1 want you to look at is what you got to look at.

2 Who has the motive to commit this crime?

3 Who has the motive? I don't have to prove a motive, but
4 I will. Who needed money? Donald Nealey. He needed
5 money. How do you know that? He's arrested on
6 March 4th, you heard that. You heard that the police
7 took his cell phone and \$2,000 from him. He gets out of
8 jail on March 5th, no cash in his pocket, so what does
9 he got to do? He goes to his old stomping grounds, the
10 Little Nell Apartments. You can see that's where he
11 lives, his registered address on his driver's license,
12 that's where he heads over to, a place he knows a crime
13 of opportunity. And who does he find, an innocent man,
14 Stanly, who is there to see a friend, maybe smoke a
15 little weed and then get on to his family. Who has the
16 motive? Who needs the money? Donald Nealey. Marquis
17 told you he was working at that time. He had a car. He
18 was doing what he needed to. Donald Nealey, on the
19 other hand, was not. He was the one missing the cash
20 and a reason to commit the crime.

21 This case is not only direct evidence from
22 the testimony of Marquis Davis but it's also
23 circumstantial evidence that adds up and gets you to
24 that guilty verdict, okay?

25 Now, let's think about that timeline of

1 events that will help you also realize that the people
2 that killed Stanly are the same people that committed
3 the House of Pies aggravated robbery. You can go back
4 and watch the videos that we presented to you. You know
5 that Officer Gwosdz came there at 8:38. You can watch
6 the video and see that that vehicle, that black Acura
7 that belongs to Stanly, first pulled into that parking
8 lot at 9:28. They sit in the car for a little while.
9 You even see Nealey get out at one point from the
10 driver's side, use the restroom, then get back in,
11 adjust himself and leave.

12 You see Nealey and Davis head into the
13 store at 9:37. You can see that Nealey has a gun in his
14 hand when he first gets out. They enter the House of
15 Pies, and then you can see 5 minutes later they're
16 running out the back door. The timeline fits exactly as
17 Davis tells you in terms of what they did. There's only
18 50 minutes in between the time that HPD is dispatched
19 and the time that they're at the House of Pies, very
20 short amount of time. The people that killed Stanly are
21 the same people that committed the House of Pies
22 aggravated robbery.

23 The pieces of the puzzle are all there.
24 The witnesses tell you. The video tells you. The
25 physical evidence that's recovered from the capital

1 murder scene, the physical evidence at the House of Pies
2 scene, it all adds up. And then you throw in Marquis
3 Davis' testimony, and that's how you know you're headed
4 down the right path.

5 Let's talk about those witnesses, Jerome
6 Monroe. Why did I bring him to you? I don't think he's
7 telling the truth about everything that he saw.

8 MR. PHILIP SCARDINO: Objection, Your
9 Honor. Excuse me, improper voir dire what she thinks.

10 THE COURT: Sustained.

11 MR. PHILIP SCARDINO: We'd ask the Court
12 instruct the jury to disregard the Prosecutor's last
13 statement.

14 THE COURT: The jury will disregard the
15 last comment from the Prosecutor.

16 MR. PHILIP SCARDINO: We move for a
17 mistrial, Your Honor.

18 THE COURT: Overruled.

19 MS. MERIWETHER: Jerome Monroe would have
20 you believe that there was three people at one point and
21 then maybe four people, and they all jump in his car.
22 Tell me how they're getting in the back of this car, all
23 of these people? This is Stanly's car, packed to the
24 brim. He was home to see his mom and his family,
25 probably get some laundry done. Where are all these

1 people going to fit in the car? The story doesn't make
2 sense. It doesn't match the physical evidence.

3 I think that Jerome probably wants to do
4 the right thing and wants to say what he saw. But don't
5 you know he didn't tell the police right away. He
6 doesn't tell anyone until March 22nd when he finally
7 talks to the officer. And Officer McLean told you even
8 within the one statement that she took, it seemed to
9 vary. And, in fact, there was never a mention of a man
10 getting out of car and standing over him and shooting
11 him. That was all new.

12 But what does make sense is what Shejuan
13 and Sheryl told you. They heard the shots. They go to
14 their respective places. They look down and they see a
15 man in all black running or dark-colored clothing
16 running, the next thing they know a black Acura is
17 picking him up and leaving. And that makes sense, why?
18 We know Marquis Davis got in the passenger's side of
19 that vehicle. His prints are found on the passenger's
20 side of that vehicle in that A-frame and back there
21 around the front.

22 No prints are found of Donald Nealey's.
23 Why? Because he knows what's going down. He's wearing
24 gloves the whole time. That's why his prints aren't
25 there. Don't you know if Marquis Davis knew what was

1 going to happen, he would have put on some gloves before
2 it happened. He didn't know that he was going to kill
3 him.

4 Shejuan and Sheryl tell you they saw one
5 person out there and that he gets in the passenger's
6 side and away they go. You then hear from Sergeant
7 Rhoads that he talked to those two people that night,
8 but not Jerome Monroe. You also heard from the CSU,
9 who told you his attempts to document the scene, and the
10 fact that there were eight shell casings found. All of
11 those eight shell casings are clustered together. He
12 recovered those items, put them into the property room,
13 which later become very important when the firearms
14 examiner looks at them. He told you that those eight
15 shell casings were all the same type and caliber.

16 Now, let's talk about the House of Pies.
17 We brought you a whole lot of people from the House of
18 Pies to give you all of the evidence that matters,
19 right? All of those people had to be here to bring you
20 different parts. Now, one of the things that they want
21 to say is that the officers did a bad job. Well, by the
22 looks of me admitting 200 pieces of evidence, I don't
23 know how that could be possible. We've got so many
24 pictures. We've got clothes. We've got cell phones.
25 We've got gloves that are found at a scene. We've got

1 Stanly's toothbrush. We've got a laptop. We have all
2 of those pieces of evidence. The police collected
3 everything that they could and brought it here for you,
4 and we tested it all that we could.

5 Now, what's important to know about a lot
6 of that evidence is it shows you, it corroborates Davis,
7 right? It's Stanly's backpack. It's got his checkbook
8 in it. His toothbrush is out there; that laptop cord
9 similar to the laptop that's found inside of his
10 vehicle. All of those pieces of evidence lead you to
11 realizing the people that committed the murder are the
12 same people that are at the House of Pies.

13 We also brought you the two officers that
14 do the follow-up investigation, and we brought you
15 Anthony Green. And I'm going to talk a little bit more
16 about him later. We brought you two very seasoned and
17 experienced homicide detectives that put this whole case
18 together. Think about what Eli Cisneros had to do as
19 the lead detective on this case. He started working
20 that case the minute he got it the next day; and within
21 a short period of time, he's able to connect the two
22 crimes. He's able to see that it's Stanly's car back at
23 that place. He's able to put it all together and
24 realize, hey, there might be a connection.

25 And then you got Va'Shawnda McLean, who

1 goes in there and does her interview; and, yeah, Davis
2 lies. But don't you know she got him to tell the truth
3 and he admitted his role and he named the shooter back
4 on March 7th?

5 We also brought you the vehicle. We
6 brought you the evidence that's found inside of that
7 vehicle and the main piece of evidence out of that
8 vehicle, that wallet. There's no getting away from this
9 wallet with his identification in it. Why did he leave
10 his wallet there? He thought he was going to get away
11 with the crime. He thought he was going to be back in
12 that car leaving. He didn't want to go in and do that
13 aggravated robbery at the House of Pies and potentially
14 drop his wallet. So, he had to leave it in the car. He
15 leaves it in the car. You watch him on that video.
16 He's standing next to that car, adjusting everything.
17 Even Davis says he cinches up his belt and gets ready to
18 go in and do that robbery. He leaves his wallet there
19 because he thinks he's going to be back in that car and
20 ready to leave. What he doesn't realize is that House
21 of Pies is so full of people that it's never going to
22 happen. Watch that video, you can even see people that
23 go into the bathroom and are able to call 9-1-1.
24 They're not very good robbers at the end of the day.
25 And he thought he was going to get to go back for that

1 wallet, and he didn't. He's there. He's committing
2 this crime.

3 We brought you the videos through Officer
4 Tesfay. You're welcome to look at all that video
5 evidence. We brought you the fingerprints. Yes, Donald
6 Nealey's fingerprints are not found on the cash register
7 anywhere. Is anyone surprised? No. He's wearing
8 gloves. You can see it in the videos.

9 We brought you the firearms examiner. And
10 this is the main thing that I want you to walk away from
11 from the firearms examiner, there are eight shell
12 casings found at that scene; and he told you all of them
13 were fired from the same gun. The same gun. This story
14 from Jerome that there was two shooters, somebody got
15 out of the car and stood over and shot, none of that
16 makes sense because there is only one gun that fires and
17 ends Stanly's life.

18 We also brought you the DNA, which places
19 Donald Nealey at the scene of the House of Pies. It
20 adds into the fact that he committed this offense. And
21 some of you may be wondering why the DNA is found on the
22 outside of the glove rather than the inside. How do you
23 put a glove on, a latex glove? You slide it on like
24 this, and then you roll it off backwards. The inside is
25 now on the outside. That's how Donald Nealey's DNA ends

1 up on the outside of that glove because he was wearing
2 it when he was inside of the House of Pies.

3 Again, there's no DNA in the car or
4 fingerprints because he's wearing gloves. The gun is
5 not recovered because he took off with it. We know that
6 because they searched where Davis was, and there's no
7 gun there. You don't need the gun. You don't need
8 anything specific. You got more than enough to convict.

9 But let's talk about Marquis Davis. What
10 better witness could I have brought you to see it go
11 down? Stanly, not with us. The man who was there
12 watching it happen, Marquis Davis. They want you to
13 believe that he's a thief, a liar and a murderer.
14 Ladies and gentlemen, he's a thief, I'll agree to that.
15 He went into the House of Pies, and he committed a
16 crime. He's a liar, he lied in his first couple of
17 statements to the police, but he stuck to his guns and
18 he told the truth. But what he is not is a murderer.
19 He didn't pull that trigger. That man pulled the
20 trigger. That's the one you should be looking at. He
21 came clean at the end of the day. He accepted his role
22 in these crimes. He admitted his responsibility. He
23 had blood on his shoe is what they want to make a big
24 deal about. It's a little drop. He told you he got
25 close enough to break up that fight, drop of blood.

1 The medical examiner told you that there
2 was injury on Stanley's face consistent with him being
3 struck in the nose. Don't you know, Davis told you he
4 saw him walking around the corner of the apartment
5 complex with him in a headlock punching on him, exactly
6 what you see on this face, punching on him. When he
7 realized that poor Stanley was just a college kid
8 without any money, what's he going to do? He's got to
9 kill him. He can't leave a witness behind. So, he
10 shoots him eight times.

11 You also know that Davis is telling you the
12 truth because of where his prints are, passenger side of
13 the vehicle. Now, I have to admit, Marquis Davis was on
14 that stand for a very long time. And over and over
15 again all they could do was say you're a liar, you're a
16 liar, you're a liar. They could never attack what he
17 said. Because they couldn't. What he was telling you
18 was the truth. When you don't have anything to do, you
19 call somebody a liar; and that's what they did through
20 that entire cross-examination.

21 You didn't leave your common sense at the
22 door when you came to jury service. You didn't. Look
23 at the facts and look at the evidence and lead you to
24 the right verdict. Now, the Defense strategy was pretty
25 simple, attack Marquis Davis over and over, try to

1 divert your attention to Jerome Monroe, throw up lots of
2 different theories, but in reality there is no defense.
3 Keep your eye on the job. Remember the facts and
4 evidence that we presented, all of these items here.
5 Ask yourself, do you believe that I have proven to you
6 beyond a reasonable doubt each of those elements? And
7 if the answer is yes, then you easily return a guilty
8 verdict.

9 Now, let's talk about some of those
10 specific pieces of evidence. This I submit to you is
11 Donald Nealey with a gun, a semiautomatic to the back of
12 that man's head. We don't want to think that -- he
13 would have you think, oh, Marquis Davis is the only
14 person that fired a shot in the House of Pies. But
15 where did Marquis Davis choose to fire his shot? Up in
16 the air, not at anyone. Where does Donald Nealey fire
17 his shots? At people's heads, at their bodies. And
18 where is he holding that gun? With his left hand. You
19 know that Sergeant Cisneros said somebody go over and
20 check and see what hand he was when he was at the jail
21 signing for commissary. He told you he signs with his
22 left hand. You know that that's a semiautomatic
23 handgun, you can tell. There's no cylinder on it like
24 all the witnesses have testified to. Look at the
25 violent nature of this offense. Look at what he's

1 willing to do. Watch him throughout that House of Pies,
2 just jamming that gun in people's faces and walking
3 around. That's a violent person. That's a person who
4 is willing to shoot Stanly eight times for no reason.

5 This is Marquis Davis. He admitted it. We
6 got his clothes wearing that exact same outfit. You can
7 look at those down there. That's Donald Nealey, black
8 hoodie recovered, latex gloves, recovered. And
9 identified by Anthony Green. Sure, he might have gotten
10 confused when he testified and reversed them; but at the
11 end of the day, he walked in this courtroom and said
12 that was Donald Nealey. He saw his face and his eyes
13 and that's him. A man with a decorated military career,
14 a criminal defense attorney at that, willing to come in
15 here and tell you that's Donald Nealey with latex gloves
16 on and a semiautomatic in his hand. You know Donald
17 Nealey is left handed. You can see it in all of the
18 pictures, left handed, left handed, that's what he is.

19 Now, I do have to prove a reason for you
20 guys to believe Marquis Davis, right? I got to
21 corroborate him. And there is so much corroboration
22 it's unbelievable. His Grand Marquis found outside of
23 Building No. 11, consistent with his story that he went
24 over there, Nealey drove him over there, parked that
25 vehicle and he sat in there and waited. Don't you know,

1 if he thought this was going to happen, if he thought
2 they were going to kill someone, he wouldn't have left
3 his car back at the scene, but he did. He didn't know
4 what was going down. All he knew was let me jump in
5 that car and leave. Consistent timeline of events, all
6 of it makes sense, Marquis Davis' story, Cheryl's story
7 Shejuan's story. Va'Shawnda told you how it all fits
8 together. Consistent, consistent, consistent. Also,
9 Davis' fingerprints on the side of the vehicle, also
10 consistent with what the evidence adds up to.

11 Nealey's wallet in the cup holder of that
12 vehicle on the driver's side, consistent with him
13 driving away after killing the man and taking his keys.
14 Nealey's phone call to the homicide desk. He realizes
15 at the back door, Davis tells you, when they split up in
16 the back area, he says, hey, I'm going back, I left my
17 wallet in the car. That's what he tells Davis, right?
18 Because y'all remember Davis saying that. And so then
19 they separate at that point. Nealey would have liked to
20 have gone back and gotten that wallet, but he couldn't.

21 So, the next thing he's got to do is
22 figure, okay, how do I get out of this? How am I going
23 to fix this problem? So, March 7th at 6:00 a.m., he
24 places that phone call to the homicide desk and says,
25 hey, I think I left my ID in a dead man's car. And when

1 he realizes that the officer is going to start asking
2 him questions, he hangs up. But before he hangs up,
3 Sergeant Bridges is able to get some really important
4 information from him. You know that that's Donald
5 Nealey because he's out on bond, just like that caller
6 says; and he didn't have his cell phone, just like
7 Donald Nealey didn't have because they took it on March
8 4th. That's how you know that's Nealey calling. That's
9 how you know it's him who's left his wallet. It
10 certainly isn't Marquis Davis calling because he's in
11 custody. He's arrested on March 6th at the House of
12 Pies. The only person that's still out in the free
13 world to try to fix this mess, to try to cover it is
14 Donald Nealey. And don't you know that's what he's
15 trying to do, get out of this crime.

16 The statement that Marquis Davis gives you
17 about what happened is consistent with what you can see
18 on the House of Pies video, right? You can all see it.
19 The identification of Nealey and of Davis by a customer
20 is also consistent with what happened and what Marquis
21 Davis told you.

22 And lastly the thing that he can't escape,
23 and they tried to escape with some letters or some
24 potential changes that are coming to DNA down the road,
25 which the DNA analyst told you, well, that's not really

1 what that's saying. I think you're misreading all of
2 that. It's not saying that the science is bad. We're
3 still going to be using the same science, right? That
4 was their lame attempt to cover up the DNA. But there's
5 no escaping the fact that Donald Nealey's DNA is in that
6 latex glove that's found at the House of Pies aggravated
7 robbery, completely consistent with what you see on the
8 video and what you see in the commission of the offense.
9 All of the pieces that you need to convict Donald Nealey
10 exist. They are all right there for you. They're all
11 right there for you. And all the witnesses that took
12 that stand told you what you needed to know to find him
13 guilty. You know he's the shooter because of all of
14 these things.

15 Stanly was a young man coming home to enjoy
16 his birthday weekend and to see his family, to visit
17 them and to see them. He had his life taken for no
18 reason by that man, no reason, other than he couldn't
19 produce any money that he needed because he didn't have
20 any. And what better way to get money if you don't want
21 to work than to try to take it from people who do, from
22 people who are going to school and working; and that's
23 the kind of man he is. If he wants it, he's going to go
24 take it. And what's he going to use, a semiautomatic
25 handgun. He took it from Stanly, and he was willing to

1 take it from all those people in the House of Pies.
2 Violently take it from all of those people in the House
3 of Pies and try to take it from Stanly. The best he
4 could get from Stanly was his car. That's what he does.
5 And then he leaves. He flees the scene.

6 You hear he's not arrested until March
7 10th. All of the evidence points to one thing. All of
8 the evidence, the clothing description is consistent
9 with Marquis Davis' testimony, the wallet inside of
10 Stanly's car, the black Acura that's seen at both
11 places, that phone call to homicide, the fact that the
12 Defendant lived at the Little Nell Apartments, the DNA
13 in his glove, the fact that he's left handed, the
14 positive identification by Anthony Green, the fact that
15 a semiautomatic handgun is used at the capital murder
16 scene and is the same one that you see in the video,
17 that he's shot eight times with the same gun and that
18 video. All of it points to one thing and one person.

19 You've listened to me talk. You've
20 listened to the Defense talk, and you've listened to a
21 whole lot of witnesses. All we're asking is that you do
22 justice today. Do justice for Stanly. Do justice for
23 his family. Do justice for the citizens of Harris
24 County. Get a violent and dangerous person off of our
25 streets. The 12 of you have that power now. You have

1 all the evidence. You have all the witness testimony
2 that you need to put a very violent person away so that
3 he can't harm another person, so that he can't go into
4 another business, so that he can't kill another person,
5 and he can't rob another family. The 12 of you have
6 that power and that responsibility to do today.

7 I ask that you find the Defendant guilty of
8 capital murder, and you won't be telling him anything he
9 doesn't already know. He knows exactly what he did on
10 March 6th of 2014. And the 12 of you, with your
11 combined voice, are going to tell him he's guilty of
12 capital murder.

13 THE COURT: Ladies and gentlemen of the
14 jury, the 12 members can go with the bailiff to begin
15 their deliberations. Mr. Williams, you're still an
16 alternate at this point, so she's going to keep you
17 separated from the others.

18 ALTERNATE JUROR: All right.

19 THE BAILIFF: All rise.

20 (Jury exits courtroom.)

21 THE COURT: Thank you. Be seated.

22 (Trial in recess, awaiting jury's verdict.)

23 (Adjourned until 11/13/15.)

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REPORTER'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF HARRIS)

I, Mattie Kimble, Deputy Court Reporter in and for the 228th District Court of Harris County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is (See Exhibit Index) and was paid by Harris County.

WITNESS MY OFFICIAL HAND this the 21st day of January, 2016.

/s/Mattie Kimble
Mattie Kimble, Texas CSR 7070
Expiration Date: 12/31/2016
Deputy Court Reporter
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Houston, Texas 77002
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