

1 *(Lunch recess)*

2 *(Jury enters courtroom)*

3 THE COURT: Welcome back.

4 MS. LOGAN: For the record, the State
5 would call to the stand Dr. Milton. And this witness
6 has been sworn.

7 **DR. ROGER MILTON,**
8 having been first duly sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 BY MS. LOGAN:

11 Q. Good afternoon, sir. Would you please
12 introduce yourself to our jury?

13 A. Yes. My name is Dr. Roger Milton.

14 Q. What is it that you do for a living, Dr.
15 Milton?

16 A. I'm an assistant medical examiner at the Harris
17 County Institute of Forensic Sciences.

18 Q. How long have you been an assistant medical
19 examiner with the Harris County Institute of Forensic
20 Sciences?

21 A. Fifteen years.

22 Q. Now give the folks on the jury the benefit of
23 your education and experience that qualifies you to be
24 an assistant medical examiner.

25 A. I have a medical degree from Howard University

1 in Washington, D.C. I completed a five-year residency
2 training program in pathology at Howard University
3 Hospital. And I completed a one-year fellowship
4 training program in forensic pathology in Baltimore,
5 Maryland, and have been practicing forensic pathology
6 for fifteen years.

7 Q. Now, as an assistant medical examiner, is it
8 one of your duties to conduct autopsies?

9 A. Yes.

10 Q. Explain to the folks on the jury what an
11 autopsy is and in what scenarios that we perform them.

12 A. Yes. An autopsy is an examination that occurs
13 after someone has died that consists of essentially two
14 phases. There is an external examination phase, where
15 the external appearance of the body -- and these are all
16 factors such as height, weight, eye color, hair color,
17 as well as distinguishing marks, scars, tattoos and, of
18 course, injuries such as bruises, scrapes, stabs or
19 gunshot wounds -- are all described and documented in
20 detail on the external phase of the examination.

21 The internal phase of the examination
22 exists of a Y-shaped incision made on the front of the
23 body, usually from shoulder-to-shoulder and down the
24 front of the chest, down the front of the abdomen. The
25 body is opened, and the internal organs are removed and

ROGER MILTON - October 28, 2013
Direct Examination by Ms. Logan

1 examined thoroughly. The organs are weighed. Any
2 disease processes are documented; and it also includes
3 an examination of the under surface of the scalp, and
4 also an examination of the brain and the internal
5 structures of the throat, including the larynx and
6 tongue. We also retrieve bodily fluids such as blood,
7 urine, bile from the gallbladder and fluid from the eyes
8 and may, in some instances, test those substances for
9 drugs or chemical imbalances.

10 Upon completion of the examination, we
11 attempt to arrive at a cause and manner of death.

12 Q. Now when you conduct an autopsy, is it common
13 procedure for you-all to write a report and also take
14 photographs that document the findings of your
15 investigation?

16 A. Yes.

17 MS. LOGAN: May I approach the witness,
18 Judge?

19 THE COURT: You may approach.

20 Q. (By Ms. Logan) Dr. Milton, I'm going to show
21 you what I've marked for identification purposes as
22 State's Exhibits 118 through 131 and ask you whether or
23 not you recognize those items?

24 A. Yes, I do.

25 Q. Now, let's talk about State's Exhibit 118

ROGER MILTON - October 28, 2013
Direct Examination by Ms. Logan

1 first. Is this a fair and accurate copy of the report
2 that you generated with respect to your autopsy of Thi
3 Nguyen on June 16th of 2006?

4 A. Yes.

5 Q. Is this a document that you created at or near
6 the time that you conducted the autopsy on Mr. Nguyen?

7 A. Yes.

8 Q. And was this a report that is kept in the
9 ordinary course of business there at the Harris County
10 Institute of Forensic Sciences?

11 A. Yes.

12 Q. Now with respect to State's Exhibits 119
13 through 131, do these photographs fairly and accurately
14 depict the condition of Mr. Nguyen's body and items that
15 were brought for your review at the time of his autopsy,
16 June 16th of 2006?

17 A. Yes.

18 MS. LOGAN: I would offer into evidence
19 State's Exhibits 118 through 131 -- 132 and offer those
20 into evidence and tender to defense counsel for
21 inspection.

22 MR. EASTERLING: No objection to State's
23 Exhibit 118, Your Honor.

24 THE COURT: Okay.

25 MR. EASTERLING: No objection to State's

ROGER MILTON - October 28, 2013
Direct Examination by Ms. Logan

1 Exhibits 119 through 132, Your Honor.

2 THE COURT: State's 118 through 132 are
3 admitted.

4 State's 118, you may publish. It's
5 admitted.

6 MS. LOGAN: Thank you, Judge.

7 Q. (By Ms. Logan) All right. Dr. Milton, I'm
8 going to put up the top page of your autopsy report,
9 which is State's Exhibit 118 in this case. Can you tell
10 us, when you conduct an autopsy there at the Medical
11 Examiner's Office, is there a unique medical legal
12 number that becomes associated with each individual
13 autopsy?

14 A. Yes.

15 Q. And can you tell us what the unique medical
16 legal number was for the autopsy of Mr. Thi Nguyen?

17 A. Yes. It was Medical Legal No. 2006-1826.

18 Q. And tell us what the date of autopsy was.

19 A. Date of autopsy is June 16th, 2006.

20 Q. Tell us what you ruled the cause of death to
21 be.

22 A. Cause of death was gunshot wound of the chest.

23 Q. And what was the manner of death for Mr.
24 Nguyen?

25 A. Homicide.

ROGER MILTON - October 28, 2013
Direct Examination by Ms. Logan

1 Q. Now we can see your signature here and a second
2 signature below it. Tell us why that's done that way.

3 A. It's the policy at the Institute of Forensic
4 Sciences that all homicide cases, and also cases where
5 the cause and manner of death are not found, that the
6 chief medical examiner will cosign the case after
7 reviewing the case.

8 Q. And what was the date of Mr. Nguyen's death?

9 A. His date of death was June 15th, 2006.

10 Q. Now you mentioned a moment ago that you conduct
11 an external investigation of the body of the deceased.
12 I'm putting up Page 2 of your report. Can you tell us
13 how old Mr. Nguyen was?

14 A. He was forty-nine years old.

15 Q. How tall was he?

16 A. He was sixty-five inches, or five-foot-five.

17 Q. And how much did he weigh?

18 A. 145 pounds.

19 Q. You also told us part of your job as the person
20 doing the autopsy is to document the condition of the
21 body of the deceased. Do you do so by taking
22 photographs?

23 A. Yes.

24 Q. Do you take those during the autopsy?

25 A. Yes.

1 Q. I'm going to show you State's Exhibit 119. And
2 tell us who this photograph is of.

3 A. It's a photograph of the decedent, Mr. Nguyen.

4 Q. I want to talk to you specifically about the
5 injury you noted as a gunshot wound of the chest. We
6 can see your initial description beginning at the bottom
7 of Page 3. Tell us what you observed with respect to
8 the gunshot wound of Thi Nguyen during autopsy.

9 A. Yes. He had a penetrating gunshot entrance
10 wound defect on the left front of his chest.

11 Q. I'm going to show you State's Exhibit No. 121.
12 Is that a photograph of the gunshot wound that you're
13 notating in your autopsy report?

14 A. Yes.

15 Q. Now let's look at State's Exhibit 122, which is
16 a close-up of that very same gunshot wound, correct?

17 A. Yes.

18 Q. Tell us what is remarkable about this gunshot
19 wound to you.

20 A. What's remarkable to me is that this is a very
21 typical gunshot entrance wound. You can see how regular
22 and circular it is. It's like a punched-out cookie
23 cutter type of appearance, which we rarely see gunshot
24 wounds this, quote, unquote, perfect when we examine
25 gunshot wound victims.

1 Also, there are some very sparse, faint
2 reddish punctate lesions around the gunshot wound that
3 are consistent with gunpowder stippling.

4 Q. All right. Now I want to direct your attention
5 to State's Exhibit 120. As a part of your autopsy, is
6 it sometimes helpful to look at the clothing of the
7 deceased to determine things such as range of fire,
8 distance from the gun at the time the injury was
9 inflicted?

10 A. Yes.

11 Q. So we're looking at State's Exhibit 120 here.
12 Tell us what, if anything, you noted about this item,
13 the shirt worn by Mr. Nguyen.

14 A. Yes. We can see on the left front of the shirt
15 there is a circular defect in the same area of the
16 defect on the front of the chest of the body. And we
17 also see of note there are multiple small, gray flecks
18 of gunpowder on the outer surface of the shirt.

19 In this picture you can see them at about
20 the 2:00 o'clock position. You can see a cluster of
21 small, dark flake-like deposits of gunpowder.

22 Q. Now is there a range or a distance that you can
23 expect the gunpowder from a weapon to travel out from
24 the -- from the weapon itself at the time that it's
25 fired?

ROGER MILTON - October 28, 2013
Direct Examination by Ms. Logan

1 A. Yes.

2 Q. Okay. Tell us what you know about that, as far
3 as range of fire and what distance you would expect to
4 see that kind of gunpowder.

5 A. A general rule of thumb that we use to estimate
6 the range of fire when we see gunpowder debris on the
7 target is roughly about eighteen inches. With modern
8 ammunitions and the various types of weapons, we know we
9 can theoretically see gunpowder debris out to
10 two-and-a-half to three feet. But generally, as a rule
11 of thumb, we say about eighteen inches.

12 Q. So that means that this shirt, which, you know,
13 assuming it was worn by Mr. Nguyen at the time of his
14 death and the end of the gun that shot him, our best
15 estimate is about they were eighteen inches away?

16 A. At a maximum.

17 Q. Okay. So, eighteen inches or closer?

18 A. Correct.

19 Q. Now you mentioned the red markings around the
20 bullet hole to the complainant's chest. Tell us, do
21 those marks tell you anything about distance or range of
22 shot?

23 A. Yes. They tell me the same information as the
24 gunpowder on the shirt. With thin clothing, such as
25 T-shirts and certain types of fabrics, the gunpowder can

ROGER MILTON - October 28, 2013
Direct Examination by Ms. Logan

1 actually pass through and mark the skin, which is what
2 happened in this case.

3 Q. Now, based on the type of entry wound we have
4 here, the presence of gunpowder on the shirt, can you
5 tell us whether or not the injuries on Thi Nguyen are
6 consistent with a high power or high velocity round?

7 A. They are.

8 Q. Tell the folks on the jury what we mean when we
9 say a high velocity round.

10 A. Yes. High velocity round is usually reserved
11 for a rifle round. Rounds that usually travel 1500 to
12 2000 feet per second are usually fired from rifles.
13 This is a unique handgun round that we recovered from
14 this decedent, and these rounds are high velocity
15 handgun rounds.

16 Q. All right. Now before we get to the items that
17 you recovered from the body of Mr. Nguyen, I want to
18 talk a little bit more about stippling, which is what
19 you noted observing around the gunshot wound in this
20 case. If we look at the neck area of Mr. Nguyen, did
21 you note anything at autopsy that was important about
22 that?

23 A. Yes. He has gunpowder stippling on the left
24 side of his neck, as well.

25 Q. And can you circle for us some of the portions

1 of stippling that you're referring to?

2 A. There is -- on the left front of his neck just
3 beneath the beard line you can see a cluster of small
4 punctate markings, and that's consistent with gunpowder
5 stippling.

6 Q. Okay. And what causes gunpowder stippling?

7 A. Gunpowder stippling is caused when gunpowder
8 particles strike the skin with enough velocity to
9 actually inflict trauma. They're very lightweight
10 particles. But traveling at high rates of speed over
11 short distances, they can actually cause injuries such
12 as these abrasions. And that's what we call gunpowder
13 stippling.

14 Q. Now, let's talk about the left hand of Mr.
15 Nguyen. Did you, likewise, notate similar abrasions
16 that we're calling stippling on his left hand?

17 A. Yes.

18 Q. Is that what we're looking at here in State's
19 Exhibit 123?

20 A. Yes.

21 Q. Now, let's look at State's Exhibit No. 124,
22 which is going to be, I believe, the left forearm of Mr.
23 Nguyen; is that right?

24 A. That's correct.

25 Q. Did you note any stippling marks on that

1 portion of his body?

2 A. Yes.

3 Q. Now, how did the stippling on his left forearm
4 compare to the stippling that you saw on his left hand?

5 A. The stippling on his left forearm is a little
6 bit less dense, quite a bit less dense, as you can see.
7 There is a lot more dense stippling on the back of the
8 hand as opposed to the forearm, neck and on the skin
9 around the wound.

10 Q. Well, what does that suggest to you?

11 A. It suggests -- it can suggest different things.
12 First and foremost, if I were to assume that this was a
13 single discharge, that there was only one bullet fired
14 in this case, then that would indicate that the hand was
15 closer to the muzzle of the gun at discharge.

16 So as the bullet and gunpowder exit the
17 muzzle of the gun, the density, that tends to fan out
18 over a distance. So the cluster of stippling would be
19 much tighter and denser very close to the gun. And then
20 as it traveled closer to the body, the friction from the
21 air would separate it and it would become a lot more
22 dispersed, which is what we see.

23 Q. Based on the stippling injuries that we see to
24 Mr. Nguyen's forearm, hand, neck and area surrounding
25 the gunshot entrance wound, what can you tell us as far

ROGER MILTON - October 28, 2013
Direct Examination by Ms. Logan

1 as the distance between the muzzle of the gun and Mr.
2 Nguyen at the time it was fired?

3 A. Yes. I'd say it was consistent with what we
4 call an intermediate-range gunshot wound, and it was
5 within eighteen inches.

6 Q. Now, when we look at the entrance wound here on
7 State's Exhibit 121, can you tell us whether or not that
8 entrance wound is consistent with the bullet directly
9 leaving the weapon and entering Mr. Nguyen, or do you
10 believe there was some intermediate target that it went
11 through first?

12 A. Yes. This entrance wound is consistent and
13 probably typical of what we would expect to see with a
14 wound that travels directly -- a bullet that travels
15 directly into the body without any intermediary target.

16 Q. Now when we talk about the pattern of stippling
17 that we see on the neck, forearm and hand of Mr. Nguyen
18 and then the dispersement, specifically of that powder,
19 could it be consistent with two gunshots having been
20 fired?

21 A. Yes.

22 Q. Tell us why.

23 A. Whenever we see cases where we see different
24 areas of the body that are covered with stippling, it
25 can be one of two scenarios. Either there is one shot,

ROGER MILTON - October 28, 2013
Direct Examination by Ms. Logan

1 in this case where the hand would be close to the muzzle
2 of the gun, and you've got the dense stippling coming
3 out, hitting the hand and then traveling a distance to
4 strike the body; or we could have two discharges where
5 maybe the hand is in an area where the discharge of the
6 gun can throw gunpowder on it but the bullet actually
7 misses the body. And then there is a second shot that's
8 also intermediate range that does strike the body. So,
9 it could be consistent with one or two shots.

10 Q. And so, based on the information that you have
11 here with respect to the body of Mr. Nguyen, his
12 clothing, information you may have been provided about
13 the case, can you say definitively whether there was one
14 gunshot wound or two?

15 A. No.

16 Q. Now, can you say whether he was struck first
17 and then missed second if there were two gunshots?

18 A. No.

19 Q. Can't tell which order that happened then?

20 A. That's correct.

21 Q. Now when you see stippling like this, is it
22 difficult to determine the posture of the body of the
23 deceased at the time that the bullets were fired?

24 A. Yes.

25 Q. Why?

1 A. We would have to assume one shot and assume
2 that there are no intermediary targets for the
3 gunpowder. Because even though there is no intermediary
4 target for the bullet, there could be an intermediary
5 target that's blocking gunpowder, either an object, or a
6 limb, or maybe a clothed limb where the stippling may
7 not become apparent.

8 And so, it could lead to speculation. And
9 we, you know, tend not to do that.

10 Q. We try not to do that, right? Okay. Now when
11 we talk about the wound to Mr. Nguyen's chest, would you
12 call that a contact wound?

13 A. No.

14 Q. What is a contact wound?

15 A. A contact wound is a wound that's inflicted
16 when the muzzle of the gun is actually in contact with
17 the part of the body that the bullet is penetrating, and
18 this is not a contact wound.

19 Q. How can you tell that?

20 A. Contact wounds tend to be much less regular.
21 And the gunpowder, fire, smoke and all of these
22 substances are actually driven into the wound because
23 there is no space for the gunpowder or smoke to escape.
24 So what we see is an irregular wound that's burned and
25 seared with smoke and actually burned flesh and then

ROGER MILTON - October 28, 2013
Direct Examination by Ms. Logan

1 gunpowder actually seared into the skin, and it's a very
2 striking appearance.

3 Q. But that's not what we have here?

4 A. No.

5 Q. So you can put us inside that eighteen-inch
6 window that we were talking about before, but not a
7 contact wound where the muzzle is up against the skin?

8 A. That's correct.

9 Q. Okay. Now I'm going to show you State's
10 Exhibit No. 129. Is this a photograph of the clothing
11 that was brought to you along with the body of the
12 deceased, Mr. Nguyen?

13 A. Yes.

14 Q. Why do we document the clothing?

15 A. We document the clothing because the clothing
16 is submitted into evidence. And once we log it into
17 evidence, we lose control over it. And we need to
18 document what we actually saw and try to retrieve as
19 much information from that evidence, quote, unquote, as
20 we can before it leaves our custody.

21 Q. All right. Now we'll look at State's Exhibit
22 No. 130. Is this a photograph of the same clothes
23 except it's just the backside of them?

24 A. Yes.

25 Q. The wound to Mr. Nguyen's chest caused him to

ROGER MILTON - October 28, 2013
Direct Examination by Ms. Logan

1 bleed quite a bit; is that right?

2 A. Yes.

3 Q. Was there an exit wound?

4 A. No.

5 Q. Okay. I'm going to show you State's Exhibit
6 No. 126. Tell us what we're looking at here, Doctor.

7 A. We're looking at the photo of the left side of
8 his back. The head of the decedent is to the right of
9 the screen, and the feet are to the left of the screen.
10 So, we're looking at his body rolled on its side.

11 And right above the ruler and the medical
12 legal number we see a small cluster of purple
13 discoloration, which are contusions caused by the
14 projectiles striking the under surface of the skin and
15 inducing these injuries.

16 Q. So, no part of a bullet actually exited his
17 body through his back; is that right?

18 A. That's correct.

19 Q. Now if we look at State's Exhibit No. 127, tell
20 the folks on the jury what we see here.

21 A. What we're looking at here is an X-ray of his
22 chest; and we can see multiple areas of opacity on the
23 left side of the chest, these very small circular areas
24 that are whitish, discolored. And we also see an
25 angular, kind of broken glass-looking, grayish material.

ROGER MILTON - October 28, 2013
Direct Examination by Ms. Logan

1 And then we also see near the bottom of the screen a
2 flattened, irregular cluster of material. And what
3 we're looking at are fragments of a bullet projectile
4 that passed through his left chest and fragmented into
5 these pieces.

6 Q. Did you retrieve those pieces at all?

7 A. Yes, ma'am.

8 Q. So if we look at State's Exhibit No. 128, are
9 those the items that we can see there in the x-ray
10 photograph?

11 A. Yes.

12 Q. Are you familiar with ammunition that's
13 consistent with this?

14 A. Yes.

15 Q. Tell us about that.

16 A. Yes. This is consistent with ammunition
17 referred to as mag safe ammunition. This is a very
18 unique, specialized form of ammunition that's designed
19 to perform in a particular fashion; and it performed as
20 it's designed to perform in this particular instance.

21 Q. What do you mean by that?

22 A. This ammunition is very lightweight compared to
23 solid lead bullets. They're usually much, much lighter;
24 and they're constructed in a unique way. We have a
25 copper jacket, which is the flower-like copper. That

1 copper jacket is filled with a soft Epoxy resin material
2 which is, you can see, represented by these glass-like
3 pieces. And then that's -- that is filled with lead
4 pellets, which you can see represented by five pellets.
5 When that hardens, you get a solid construction of a
6 bullet that can leave the muzzle of a gun; and it's
7 designed to travel at very high rates of speed. But the
8 fact that it's designed to fragment, it is not supposed
9 to perforate the body, meaning, if you were to shoot
10 someone with this, you wouldn't have to be concerned
11 about the bullet passing through them and injuring
12 someone that's not your intended target. And that's
13 where the safe part comes in. So, they're designed as
14 mag safe, mag meaning magnum velocity, high velocity
15 rounds, and safe meaning you're less likely to perforate
16 an individual and strike an unintended victim.

17 Q. Now when we talk about the velocity of a bullet
18 such as this as we see in State's exhibit 128, about how
19 fast are we talking with the velocity of that type of
20 round?

21 A. They're designed to travel extremely fast for
22 handgun rounds. Comparatively speaking, the typical
23 handgun round might travel at 900 to 1,000 feet per
24 second. And the mag safe rounds can travel 2000 feet
25 per second or higher. And they are designed to inflict

ROGER MILTON - October 28, 2013
Direct Examination by Ms. Logan

1 high energy damage when they strike because of the
2 fragmentation. They deliver much more devastating
3 wounds than solid bullets.

4 Q. Now the kind of ammunition that we see here
5 that you took from the body of Mr. Nguyen, is that made
6 for revolvers, semiautomatic handguns?

7 A. Yes.

8 Q. And are the kind of guns that shoot the items
9 that we see here in State's Exhibit 128 -- were they
10 firearms?

11 A. Yes.

12 Q. Were they considered deadly weapons?

13 A. Yes.

14 Q. Now, tell us what the wound path was as far as
15 the bullet that entered the chest of Mr. Nguyen and came
16 to rest near the skin on his back.

17 A. Yes. The bullet entered the left front of his
18 chest; and it passed through the left second rib and
19 struck the left lung, both the upper lobe and the lower
20 lobe. And then it struck ribs in the back of his -- the
21 back of his chest, or in his back; and it fractured the
22 left eighth and ninth ribs, and I recovered the pellets
23 from the back.

24 Q. All right. Now when you have damage to the
25 left lung such as what was caused to Thi Nguyen, what

1 starts happening inside the body at that point?

2 A. Yes. An injury such as this would cause two
3 lethal sequelae. Number one, the lungs are extremely
4 vascular; and they are filled with large amounts of
5 blood that pass through the lungs. Once the lung tissue
6 is torn or perforated, blood starts to spill out into
7 the left side of the chest.

8 The second aspect of this injury is that
9 the lung tissue is held in contact with the inner
10 surface of the chest by tension. And so, once the blood
11 enters that potential space, the lung separates from the
12 chest wall and you can no longer get expansion. Because
13 the way that we breathe, as we expand our chest, since
14 the lung is attached or sealed against the chest wall,
15 it causes negative pressure, and then we can take in a
16 breath. Once that seal is broken, then the lung begins
17 to collapse down; and you get blood filled into that
18 collapsing space, and you also lose usage of the left
19 lung for breathing.

20 Q. Looking back at State's Exhibit 121 here, can
21 you tell us the direction of the wound?

22 A. Yes. The bullet went straight in and slightly
23 downward; so we have a slightly downward direction,
24 front to back and downward.

25 Q. Now, at autopsy, did you recover a quantity of

ROGER MILTON - October 28, 2013
Direct Examination by Ms. Logan

1 blood from the chest cavity of Mr. Nguyen that's
2 consistent with the kind of wound you've just described
3 for us?

4 A. Yes.

5 Q. Now let's talk about some of the other injuries
6 that you noted to the body of Mr. Nguyen. I'm going to
7 put State's Exhibit 131 up here on the document camera.
8 What are we looking at in this photograph, Doctor?

9 A. We're looking at the right hand.

10 Q. And why did you notate injury to this hand?

11 A. Yes. We document any and all injuries on the
12 body.

13 Q. Now in your experience as an assistant medical
14 examiner, are the injuries that we see here,
15 specifically to the thumb and finger area, could they be
16 consistent with an individual grabbing the slide of a
17 firearm?

18 A. Maybe the thumb injury could be consistent with
19 that, but not the injuries to the back of the hand.

20 Q. Okay. And when we look at State's Exhibit 132,
21 which hand are we looking at here?

22 A. Also the right hand.

23 Q. And is this injury that we see here to the
24 index finger?

25 A. Yes.

ROGER MILTON - October 28, 2013
Direct Examination by Ms. Logan

1 Q. Would that be consistent with grabbing the
2 slide of a firearm?

3 A. It could be.

4 Q. Now aside from the gunshot wound to the chest
5 of Mr. Nguyen, did you find him to be an otherwise
6 healthy forty-nine-year-old man?

7 A. Yes.

8 Q. Were there any other health problems or
9 diseases that in any way contributed to his death?

10 A. No.

11 Q. Now you mentioned earlier as a portion of your
12 autopsy you collect fluids for the purposes of
13 conducting toxicology on him; is that right?

14 A. Yes.

15 Q. And did you do that in this case?

16 A. Yes.

17 Q. If I show you the last page of State's Exhibit
18 118, tell us what the results of the toxicology testing
19 were on Mr. Nguyen.

20 A. The results were negative for stimulant drug,
21 such as cocaine, PCP, amphetamine, methamphetamine; and
22 it was also negative for alcohol.

23 Q. Now, in the event that an individual suffers
24 the type of injuries that we've talked about that you
25 found to the body of Mr. Nguyen, can you tell us, would

1 you expect that person to survive for any length of
2 time?

3 A. Yes.

4 Q. Okay. Tell us what you think about that.

5 A. Well, this type of injury does not cause
6 instant death. The death occurs as the blood volume is
7 spilled into the chest and outside of the body. And at
8 a critical point the blood pressure drops related to
9 that blood loss, and the individual loses consciousness
10 and subsequently dies. So there is a period of
11 consciousness that is variable, but it's not an instant
12 death.

13 Q. And as far as total survival, whether conscious
14 or not, approximately how long would you expect someone
15 to last after sustaining the kind of injuries you
16 observed on Mr. Nguyen?

17 A. Well, estimating the length of time before
18 incapacitation and death is associated with several
19 factors. Number one, the level of activity of the
20 decedent at the time. If it's someone that's exercising
21 or working out to their maximum capacity, their blood
22 pressure is going to be much higher. They're going to
23 lose blood a lot quicker. If it's someone who's in a
24 sedentary state, resting, they're going to have a little
25 bit more time. But I think we're talking about minutes

1 here, maybe a couple of minutes at the most. I estimate
2 three to five minutes.

3 MS. LOGAN: I'll pass the witness, Judge.

4 THE COURT: Your cross, Counsel.

5 MR. EASTERLING: Yes, Your Honor.

6 **CROSS-EXAMINATION**

7 BY MR. EASTERLING:

8 Q. Dr. Milton, how are you doing? Good to see you
9 again.

10 A. Yes, sir. Thank you.

11 Q. The stippling, I want to cover that first.
12 There has been some studies, and I guess some articles,
13 as well, about stippling, about the distance between the
14 muzzle of a gun to the skin to give us sort of a range
15 on stippling. So I want to talk about that with you a
16 little bit. You're familiar with that, correct?

17 A. Yes.

18 Q. Okay. The -- the back of the left hand of Mr.
19 Nguyen -- show you State's Exhibit 123 again. Can you
20 tell the jury at least a range or an approximate
21 distance from the muzzle of the gun to his left back of
22 his hand?

23 A. Yes. I'd say we're dealing with probably maybe
24 six to eighteen inches. It's very dense and close.
25 It's definitely well within the eighteen inches.

ROGER MILTON - October 28, 2013
Cross-Examination by Mr. Easterling

1 Q. If you get closer than six inches, then you're
2 going to get a different pattern. It's going to be much
3 more localized and not as spread out, right?

4 A. Right.

5 Q. And if you get too far away, past a
6 foot-and-a-half, then the gunpowder is just going to
7 start to dissipate and not burn the skin, right?

8 A. Correct.

9 Q. So here, this stippling on the left outer hand,
10 I think you described it as a dorsal? Is that what you
11 said?

12 A. Yes.

13 Q. Dorsal means the outside of the hand to the
14 palm, right?

15 A. Correct.

16 Q. Would that be consistent if the shooter is
17 standing in front of Mr. Nguyen, that his hand is
18 somewhere -- I'm talking about the shot that hit him,
19 okay?

20 A. Yes.

21 Q. The one we know hit him in the chest, would
22 that be consistent with somewhere in the same general
23 area as his chest at the time of the discharge of the
24 weapon, to here to the chest?

25 A. Yes. The -- the pattern.

ROGER MILTON - October 28, 2013
Cross-Examination by Mr. Easterling

1 Q. Within the same general range of the six to
2 eighteen inches?

3 A. Well, the pattern being so much tighter and so
4 much more dense on the hand, if it's the same shot, it
5 would -- I would think it would be closer to the muzzle
6 of the gun than just in front of the chest.

7 Q. Okay. So that would bring his hand outward
8 from the chest at the time of the discharge, right?

9 A. Yes.

10 Q. So that could be consistent with maybe holding
11 his hand up somewhere in this area about, I don't know,
12 nine to eighteen inches away from the barrel of the gun,
13 right?

14 A. Yes.

15 Q. Okay. And so, that gunpowder would spray,
16 basically, the hand here; and then the bullet would go
17 on and strike him in the chest, right?

18 A. Correct.

19 Q. Now the right hand on the outer part of the
20 hand did not have any stippling, correct?

21 A. Correct.

22 Q. That would be more consistent with that hand
23 being out of the way of the discharge, right?

24 A. Yes.

25 Q. Like either down here, grabbing an object, or

ROGER MILTON - October 28, 2013
Cross-Examination by Mr. Easterling

1 down here somewhere away from the pattern of the
2 gunpowder, right?

3 A. Yes.

4 Q. So it wouldn't be up here in the same area?

5 A. No.

6 Q. Or we would have seen the stippling on the
7 right hand, correct?

8 A. Correct.

9 Q. Now would the right hand not having the
10 stippling, could that be consistent with him, Mr.
11 Nguyen, the deceased, grabbing towards a weapon and his
12 hand going behind the muzzle of the gun?

13 A. Yes.

14 Q. Okay. So let's talk about the right avulsion
15 injuries that you've described and documented. Well,
16 let's first cover this one. This is, I believe, the
17 right hand. Right here on the ring -- I'm sorry -- the
18 middle finger -- the middle finger; is that correct?

19 A. Yes.

20 Q. On the middle finger there seems to be a small
21 abrasion or cut there that I'm zooming in on where the
22 skin seems to be sort of a half moon avulsion or cut,
23 correct?

24 A. Correct.

25 Q. This was, in your opinion, caused by some sort

ROGER MILTON - October 28, 2013
Cross-Examination by Mr. Easterling

1 of force, right?

2 A. Yes.

3 Q. Some sort of sharp instrument?

4 A. Some sharp or blunt instrument.

5 Q. It could be blunt, depending on what it was,
6 right?

7 A. Correct.

8 Q. The bluntness could have had an edge to it,
9 right?

10 A. Yes.

11 Q. And does that appear to be fresh?

12 A. Yes.

13 Q. Would that be consistent within minutes of him
14 being shot?

15 A. Yes.

16 Q. I think there was something on the thumb here
17 you documented. Looks like a similar type of avulsion
18 or cut, or maybe even a smaller one here on his thumb;
19 is that correct?

20 A. Yes.

21 Q. Same questions. Would that probably be caused
22 by some sort of sharp object or a blunt object,
23 depending on what kind of edge it had, right?

24 A. That's correct.

25 Q. Okay. And did that appear to be fresh, also?

ROGER MILTON - October 28, 2013
Cross-Examination by Mr. Easterling

1 A. Yes.

2 Q. Within minutes of the death?

3 A. Yes.

4 Q. And you can tell that by the freshness of the
5 flesh and the blood there, correct?

6 A. That's correct.

7 Q. No healing, right?

8 A. No.

9 Q. Let's cover the forearm stippling in just a
10 minute.

11 THE COURT: Counsel, we're going to take a
12 brief, two-minute recess.

13 You guys remember your admonitions from
14 the Court.

15 Court's in recess.

16 *(Jury enters courtroom)*

17 THE COURT: All right. Please be seated.

18 You may proceed.

19 Q. *(By Mr. Easterling)* Okay. During the break I
20 put up State's Exhibit 124. In your report you talk
21 about the dorsal medial aspect of the left forearm. Can
22 you show the jury where that is on your left forearm,
23 sir?

24 A. Right here.

25 Q. So that would be not the -- what we call the

ROGER MILTON - October 28, 2013
Cross-Examination by Mr. Easterling

1 outside, I guess, more of the inside?

2 A. Yeah. It's like a combination of the back and
3 the inside.

4 Q. A little bit of the back and a little bit of
5 the inside?

6 A. Yes.

7 Q. Okay. Would that be consistent with the left
8 arm being up in this type of position, again, for the
9 gunshot wound to the chest and the left forearm taking
10 some of the stippling from that shot?

11 A. So now -- so we're not referring to the left
12 hand being involved at all now.

13 Q. This is the left forearm, right?

14 A. Okay.

15 Q. This is the left forearm, correct?

16 A. Okay.

17 Q. Do I have that correct?

18 A. Yes.

19 Q. Would that be consistent with that?

20 A. Yes.

21 Q. But we have the left hand, though, as more
22 rotated to where it's taken it on the backside of the
23 hand, right?

24 A. Yes.

25 Q. But could it still take that stippling even

ROGER MILTON - October 28, 2013
Cross-Examination by Mr. Easterling

1 with the left hand being at an angle? It doesn't have
2 to be flat to the barrel, does it?

3 A. No.

4 Q. It could take it at an angle, right?

5 A. Yes.

6 Q. So would that be consistent with this left hand
7 and the dorsal medial aspect of the left forearm being
8 in this position and the shot going underneath it and
9 striking the chest?

10 A. It's difficult to envision those two patterns
11 occurring from the same shot, just given the distance
12 between the back of the hand and the forearm and, also,
13 the density -- the change in the density, also.

14 Q. Understood. It's much more dense in the hand
15 in State's Exhibits 123 than it is faintly on the
16 forearm, right?

17 A. Yes.

18 Q. Okay. So, could that be an indication there
19 might be two gunshots here?

20 A. Could be.

21 Q. Could be. It's difficult to say for sure, for
22 certainty, right?

23 A. That's correct.

24 Q. Now, of course, if there is a struggle and
25 things are moving and things are happening fast, then

ROGER MILTON - October 28, 2013
Cross-Examination by Mr. Easterling

1 that's another variable that would affect this, right?

2 A. Yes.

3 Q. And it's rare that something moves real slow
4 whenever a gun is being pointed at somebody during a
5 robbery, right?

6 A. I'd say that was true.

7 Q. Okay. The next, State's Exhibit 125, was that
8 also faint as opposed to dense stippling?

9 A. It was.

10 Q. Or maybe somewhere in between dense and faint,
11 right?

12 A. Right. It's more sparse than faint. So it's
13 true stippling, but it's less dense than it is on the
14 back of the hand. But it's still not what I would call
15 faint. It's just a little less dense.

16 Q. These little burns, little red, little speckled
17 burn marks you see here, right?

18 A. Yes.

19 Q. Okay. Could that be consistent with gunpowder
20 that's going over the top of the left hand and now
21 striking the left neck area during the gunshot?

22 A. Yes.

23 Q. Okay. All right. The right hand, again,
24 State's Exhibit 132, this was the most significant
25 injury on the right hand, on the inner part of the right

ROGER MILTON - October 28, 2013
Cross-Examination by Mr. Easterling

1 index finger. Is that what you call that?

2 A. Yes, the right second finger.

3 Q. Okay. There was significant tearing of the
4 skin that tore the skin back in this joint right here,
5 correct?

6 A. Yes.

7 Q. And that's, obviously, a fresh injury, correct?

8 A. Yes.

9 Q. You're familiar with the slide action on a
10 semiautomatic handgun, correct?

11 A. Yes, I am.

12 Q. In case the jury doesn't understand, the slide
13 action on a semiautomatic handgun can be pretty
14 powerful, pretty quick. Whenever a round is discharged,
15 it pops that slide back, takes one from the magazine,
16 loads it back in and slams it back and is ready to fire
17 again, correct?

18 A. Correct.

19 Q. It's usually on the top part of the
20 semiautomatic machine gun, and they call it a slide
21 because it goes back and forth; is that correct?

22 A. That's correct.

23 Q. And there can be sharp edges on that slide,
24 correct?

25 A. Correct.

ROGER MILTON - October 28, 2013
Cross-Examination by Mr. Easterling

1 Q. Someone can get pinched by that slide if they
2 have their hand on it at the wrong time, right?

3 A. Yes.

4 Q. So if -- I'm going to put where I think this
5 wound is on my right finger, this piece of paper here.
6 Is that the general area where that wound was on my
7 right finger?

8 A. Yes.

9 Q. Okay. And then I'm going to State's Exhibit
10 131. The thumb injury seems to be along the inner edge.
11 Would that be where I put that on my thumb? Is that
12 approximately where that wound right there is?

13 A. Yes.

14 Q. Okay. So for the jury's information, if these
15 two wounds were discovered fresh by you on Mr. Nguyen,
16 would that be consistent with him grabbing at a
17 semiautomatic handgun and getting his hand clipped or
18 pinched at those two locations by the slide whenever
19 it's firing?

20 A. Could be consistent with that.

21 Q. And I'm holding my arm out in front of me.
22 Would that be in that same general range that you were
23 talking about of six inches to eighteen inches when
24 someone would reach out like that at a gun?

25 A. Yes.

ROGER MILTON - October 28, 2013
Cross-Examination by Mr. Easterling

1 Q. So in summary, these injuries and what I've
2 just described could be consistent with a struggle over
3 a handgun, correct?

4 A. Could be.

5 Q. The front to back path, and I believe you said
6 slightly upward of the path of the bullet, slightly
7 upward just means when it entered, and the pellets and
8 everything that you were taking out of the back, you
9 tried to get a wound track on whether it was exactly
10 level or whether it was slightly upward or slightly
11 downward, correct?

12 A. Correct.

13 Q. Now that's a little tougher when you don't have
14 an exit wound you can put a rod through there; but you
15 can still go through the wound track with all of those
16 pellets you look at when you opened the chest cavity,
17 right?

18 A. Right.

19 Q. So slightly -- let me get that one more time
20 from your wording. Slightly downward would be
21 consistent with a gun being pointed down slightly at the
22 time of discharge, again, depending on where it was; but
23 we assume it's six to eighteen inches if it's pointed
24 slightly downward, the barrel?

25 A. Yes.

ROGER MILTON - October 28, 2013
Cross-Examination by Mr. Easterling

1 Q. Of course, it's going to depend on how tall the
2 shooter is versus five-foot-five Mr. Nguyen, too, right?

3 A. And assuming that they're facing one another.

4 Q. Yeah. A lot of variables?

5 A. Yes.

6 Q. I mean, there wasn't anything radical or
7 anything way out of the ordinary with the track. I
8 mean, when you say slightly, you mean slightly downward,
9 right?

10 A. Correct.

11 MR. EASTERLING: I'll pass the witness,
12 Judge.

13 THE COURT: Okay.

14 MS. LOGAN: Nothing further, Judge.

15 THE COURT: All right. You are excused.

16 MS. LOGAN: The State would call Quoc
17 Nguyen, Q-U-O-C.

18 THE COURT: Please have a seat in the
19 witness stand.

20 You may proceed, Counsel.

21 MS. LOGAN: Thank you, Judge.

22

23

24

25