

1 MR. GRABER: Same here, Judge.

2 THE COURT: You may step down, sir. You're
3 free to go.

4 Call your next witness.

5 MS. DEVINE: State calls Dr. Roger Milton.

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

8 (Witness sworn)

9 MR. GRABER: Judge, may we approach the
10 bench?

11 THE COURT: Okay.

12 (At the Bench, on the record)

13 MR. GRABER: Judge, the defense is going to
14 object to this medical -- assistant medical examiner
15 testifying. He was not the medical examiner who
16 performed the autopsy upon the complainant and we would
17 object under the United States and Texas Constitution
18 confrontation clause.

19 THE COURT: That will be overruled.

20 MR. GRABER: Thank you, Judge.

21 Can we have a running objection to all of
22 his testimony regarding that objection?

23 THE COURT: Yes.

24 MR. GRABER: Thank you, Judge.

25 (Open court, defendant and jury present)

1 THE COURT: Go ahead, Ms. Devine.

2 MS. DEVINE: Thank you, Judge.

3 DR. ROGER MILTON, JR.,

4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. DEVINE:

7 Q. Good afternoon, Dr. Milton.

8 A. Good afternoon.

9 Q. Test that microphone for me.

10 A. (Witness complies).

11 Q. Okay. Dr. Milton, can you please introduce
12 yourself to the ladies and gentlemen of the jury?

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

14 Q. And who do you work for?

15 A. Harris County Institute of Forensic Sciences.

16 Q. Is that what we used to know as the Harris
17 County Medical Examiner's Office?

18 A. Yes.

19 Q. But truth be told, you-all's building does more
20 than just what the medical examiner does, right?

21 A. That's right.

22 Q. Hence the renaming?

23 A. Yes.

24 Q. Now, Dr. Milton, how are you employed by the
25 Harris County Institute of Forensic Sciences?

1 A. I'm currently employed as an assistant medical
2 examiner.

3 Q. And how long have you been an assistant medical
4 examiner?

5 A. Thirteen years.

6 Q. All with the Harris County IFS, as we'll call
7 it?

8 A. Yes.

9 Q. Can you tell the jury a little bit about your
10 educational background?

11 A. Yes. I have a medical degree from Howard
12 University in Washington, D.C. I completed a five-year
13 residency training in pathology at Howard University
14 Hospital. And I completed a one-year fellowship
15 training program in forensic pathology in Baltimore,
16 Maryland.

17 Q. And who was that with?

18 A. Which one?

19 Q. What office was the-- I'm sorry -- the forensic
20 pathology fellowship?

21 A. That was in Baltimore, Maryland, the office of
22 the chief medical examiner of the State of Maryland.

23 Q. And do they do the same types of things that
24 the Harris County Institute of Forensic Sciences does?

25 A. Yes.

1 Q. Are you certified?

2 A. No.

3 Q. Do you have extensive training and experience
4 in the area of forensic pathology?

5 A. Yes, I do.

6 Q. And is that both training and on-the-job
7 experience?

8 A. Yes.

9 Q. Do you have any research experience?

10 A. No.

11 MS. DEVINE: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes.

14 Q. (By Ms. Devine) Dr. Milton, I'm showing you
15 what's been marked as State's Exhibit No. 209. Do you
16 recognize that document (indicating)?

17 A. Yes.

18 Q. And is that, in fact, a document that you
19 provided to me in preparation for your testimony today?

20 A. Yes.

21 Q. Does this document detail your educational and
22 training backgrounds as well as other things relevant to
23 your employment?

24 A. Yes.

25 MS. DEVINE: Your Honor, after tendering to

1 defense counsel, I'll offer State's Exhibit No. 209 into
2 evidence.

3 **(State's Exhibit No. 209 Offered)**

4 MR. GRABER: I don't have any objections.

5 THE COURT: State's 209 is admitted.

6 **(State's Exhibit No. 209 Admitted)**

7 Q. (By Ms. Devine) For purposes of the record,
8 Dr. Milton, what is State's Exhibit 209?

9 A. It's my CV, curriculum vitae.

10 Q. In other words, your resume?

11 A. Yes.

12 Q. Dr. Milton, what are your duties and
13 responsibilities as an assistant medical examiner?

14 A. My primary duties are performing autopsies and
15 rendering causes and manners of death and court
16 testimony.

17 Q. And have you done that on few or many occasions
18 over your 13 years with the Institute of Forensic
19 Sciences?

20 A. Many occasions.

21 Q. Can you tell the jury what an autopsy is?

22 A. An autopsy is an examination that occurs after
23 death where the external distinguishing features of the
24 body of the deceased as well as the internal findings
25 are documented in autopsy report form. It begins with

1 the Y-shaped incision made on the front of the body from
2 shoulder to shoulder, down to the center of the chest
3 and down to the front of the abdomen. The internal
4 organs are removed and examined. It also involves
5 removal of the brain and the internal structures of the
6 neck and throat. In the examination process, we can
7 usually determine the cause and manner of death.

8 Q. And is that done in every instance where there
9 is a death in Harris County?

10 A. No.

11 Q. Under what circumstances is an autopsy
12 performed?

13 A. Autopsies are performed on cases where someone
14 dies of unnatural causes, such as suicide, homicide,
15 accidents, and in cases where the manner of death is not
16 determined at the time of death. And we may not perform
17 an autopsy on a case if we feel that the medical history
18 supports a logical determination of a cause and manner
19 of death or in a case where an attending physician or
20 someone who's caring for an individual that has died is
21 willing to certify the death.

22 Q. At the time that the autopsy is conducted, are
23 there steps taken to document things as the autopsy is
24 performed?

25 A. Yes.

1 Q. And what steps are those?

2 A. Photographs are taken at various stages of the
3 examination.

4 Q. Of what -- of both the exterior of the body as
5 well as any noted injury to the internal organs or the
6 insides of the body?

7 A. Yes.

8 Q. How about written documentation?

9 A. Yes.

10 Q. What type of written documentation is
11 generated?

12 A. Two forms of written documentation are
13 generated. There are autopsy notes that are made on a
14 body diagram that depicts the general appearance of the
15 body, and, of course, any injuries, both normal and
16 abnormal features are described. And then there are raw
17 notes taken about the internal examination as well.
18 Those notes are used to generate a formal autopsy
19 report.

20 Q. Dr. Milton, I'd like to direct your attention
21 to December, 2009. Are you familiar with the case
22 number ML09-3856?

23 A. Yes.

24 Q. Have you had an opportunity to review the file
25 regarding this particular autopsy?

1 A. Yes.

2 Q. And on what date was this autopsy performed?

3 A. December 3rd, 2009.

4 Q. And by whom was this autopsy conducted?

5 A. It was performed by Dr. Luisa F. Florez.

6 Q. Now, after any of -- how many assistant medical
7 examiners are there at the office?

8 A. Fourteen.

9 Q. After an assistant medical examiner performs an
10 autopsy, is there a review process?

11 A. Yes.

12 Q. And can you describe what that entails for the
13 jury?

14 A. Yes. The peer-review process that occurs at
15 the Institute of Forensic Sciences begins when a body
16 arrives to the medical examiner's office or to the
17 Institute of Forensic Sciences, rather. At a morning
18 meeting before the autopsy is performed or assigned, the
19 details of the pending autopsy are discussed among the
20 staff. Once the autopsy is assigned and the medical
21 examiner performs that autopsy, the following day that
22 case is reviewed again with the pertinent findings
23 explained and also demonstrated with photographic
24 documentation before the entire staff. At that time,
25 staff members are encouraged to critique openly the

1 findings. If they -- if they have concerns, they're
2 welcome to express them. And there are occasions where
3 that occurs and appropriate alterations can be --
4 adjustments, rather, can be made.

5 Q. Were you a -- I guess, a party to the peer
6 review that was conducted in this autopsy?

7 A. I don't recall if I was, but I have reviewed
8 the case extensively and I'm in agreement with the
9 findings.

10 Q. Now, after that peer review, all of those -- if
11 there's any concerns or anything like that that are
12 voiced, those are resolved before a final autopsy report
13 is generated, correct?

14 A. Yes.

15 Q. And was that done in this particular case?

16 A. Yes.

17 Q. When was this autopsy performed?

18 A. It was performed December 3rd, 2009.

19 Q. And on whom was this autopsy performed?

20 A. It was performed on the body of Juan Cesarez
21 Rodriguez.

22 Q. And as an assistant medical examiner at the
23 Harris County Institute of Forensic Sciences, do you
24 maintain care, custody, and control of records that are
25 generated in the course of the regular business of

1 conducting autopsies?

2 A. Yes.

3 Q. And are those entries into those documents made
4 at or near the time of the observations?

5 A. Yes.

6 Q. And are those records kept in the normal course
7 of business of the Harris County Institute of Forensic
8 Sciences?

9 A. Yes.

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

12 THE COURT: Yes.

13 Q. (By Ms. Devine) Dr. Milton, I'll show you what
14 is marked as Exhibit 210. Do you recognize that
15 document (indicating)?

16 A. Yes.

17 Q. Does it appear to be a true and accurate copy
18 of the original autopsy report that was generated as a
19 result of the autopsy conducted on Juan Rodriguez?

20 A. Yes.

21 Q. And as -- have you had an opportunity to review
22 this autopsy in conjunction with the photographs?

23 A. Yes, I have.

24 Q. And do you concur with the findings --

25 A. Yes.

1 Q. -- based on your own individual personal review
2 of all of the documents?

3 A. Yes, I do.

4 MS. DEVINE: Your Honor, after tendering to
5 defense counsel, I'm going to offer State's Exhibit
6 No. 210 into evidence.

7 **(State's Exhibit No. 210 Offered)**

8 MR. GRABER: Would you please note our
9 previous confrontation clause objection?

10 THE COURT: That will be overruled. 210 is
11 admitted.

12 **(State's Exhibit No. 210 Admitted)**

13 Q. (By Ms. Devine) Dr. Milton, I'd like to walk
14 through the autopsy with you.

15 MS. DEVINE: Your Honor, may I approach the
16 witness again?

17 THE COURT: Yes.

18 Q. (By Ms. Devine) Before we do that, Dr. Milton,
19 I'd like you to take a look at State's Exhibits No. 20,
20 269 and 270, 211 through 215, 217 through 220, 234, 222
21 through 228, 230 through 233, 235 through 239 and 241.
22 Do you recognize all of these photographs (indicating)?

23 A. Yes.

24 Q. And are they, in fact, photographs that you've
25 seen in preparation for your testimony today?

1 A. Yes, they are.

2 Q. Do they fairly and accurately depict the
3 condition of the body of Juan Rodriguez at the time of
4 the autopsy conducted on December 3rd, 2009?

5 A. Yes.

6 MS. DEVINE: Your Honor, after tendering to
7 defense counsel, I'll offer State's Exhibit 20, 269 and
8 270, 211 through 215, 217 through 220, 234, 222 through
9 228, 230 through 233, 235 through 239 and 241 into
10 evidence.

11 **(State's Exhibit No. 20, 211 through 215,**
12 **217 through 220, 222 through 228, 230**
13 **through 239, 241, 269 through 270 Offered)**

14 MR. GRABER: May we approach, Your Honor?

15 THE COURT: Yes.

16 (At the Bench, on the record)

17 MR. GRABER: Judge, we would have a Rule
18 403 objection that I think the State's Exhibits 20 and
19 211 are cumulative of each other. I don't think there's
20 a necessity to offer both. One of them, I think, she's
21 allowed to, but not both. That would be my objection.

22 And then on State's Exhibit No. 212, we
23 would object under Rule 403 that the prejudicial
24 effect -- there's a substantial -- that the relevance of
25 State's Exhibit No. 212 is substantially outweighed by

1 the prejudicial effect. I think it's just a gross photo
2 of his teeth and I don't think there's a necessity for
3 her to offer that.

4 THE COURT: What is this for?

5 MS. DEVINE: It's part of the wound tract,
6 Judge, that he's going to testify that the teeth got
7 knocked out by the penetration of the projectile that
8 went --

9 THE COURT: He can testify to that. I
10 sustain the objections as to 212. I'll overrule the
11 objection as to 211.

12 MR. GRABER: I didn't hear the last thing
13 you said.

14 THE COURT: It's overruled as to 211.

15 MR. GRABER: Okay. Just for the record, I
16 don't have any objection to all the other ones that she
17 offered.

18 THE COURT: Okay.

19 (Open court, defendant and jury present)

20 THE COURT: State's 20, 269, 270, 211, 213,
21 214, 215, 217 through 220, 222 through 228, 230 through
22 239, and 241 are admitted.

23 **(State's Exhibit No. 20, 211, 213 through**
24 **215, 217 through 220, 222 through 228, 230**
25 **through 239, 241, 269 through 270**

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Admitted)

Q. (By Ms. Devine) Dr. Milton, what do we see in State's Exhibit No. 220 (indicating)?

A. It's a picture of the face of the decedent showing a gunshot wound.

Q. Is this typically what we call an identification photograph?

A. Yes.

Q. Now, on every photograph we see this small placard that has a number on it. As soon as it focuses. Is that placard placed in every picture during the course of photographs during an autopsy so that these photos can be linked to a particular case number?

A. Yes.

Q. Is every autopsy that is conducted given its own unique case number?

A. Yes.

Q. And does that case number track with it everything -- every process that occurs during the parts of the autopsy?

A. Yes.

Q. Is there initially an external examination that is conducted on a body during an autopsy?

A. Yes.

Q. And in this particular case, what was the

1 height and weight of Mr. Rodriguez?

2 A. His height was 70 inches.

3 Q. Which translates to how many feet and inches?

4 A. Five-foot-ten.

5 Q. Okay. And how much did he weigh?

6 A. 203 pounds.

7 Q. How was he dressed when he arrived at the
8 medical examiner's office?

9 A. He was dressed in a hospital gown.

10 Q. Was there any clothing that came to the office
11 with him?

12 A. Yes.

13 Q. And what was that?

14 A. Clothing accompanying him consisted of blue
15 pajama pants and boxers and a red towel.

16 Q. Did anything else come with him from the
17 hospital?

18 A. Yes. Some teeth that had been broken
19 accompanied the body as well as a small copper fragment.

20 Q. And is that what we see in State's Exhibit --
21 or the packaging done by Dr. Florez of that fragment
22 that came from the hospital in State's 269 (indicating)?

23 A. Yes.

24 Q. And in State's 270, is that just a closer-up
25 look of what that fragment looked like (indicating)?

1 A. Yes.

2 MS. DEVINE: May I approach the witness?

3 THE COURT: Yes.

4 Q. (By Ms. Devine) I'm showing you what's been
5 marked as State's 271. Do you recognize that
6 (indicating)?

7 A. Yes.

8 Q. Is that, in fact, the actual fragment that we
9 see in State's 269 and 270?

10 A. Yes, it's the envelope.

11 Q. And if you feel in there, there's -- it's the
12 actual fragment is contained in there, correct?

13 A. Okay.

14 MS. DEVINE: Your Honor, after tendering to
15 defense counsel, I'll offer State's 271 into evidence.

16 **(State's Exhibit No. 271 Offered)**

17 MR. GRABER: No objection, Judge.

18 THE COURT: State's 271 is admitted.

19 **(State's Exhibit No. 271 Admitted)**

20 Q. (By Ms. Devine) Did Mr. Rodriguez have anything
21 on his hands?

22 A. Yes.

23 Q. What were they?

24 A. He had paper bags on his hands.

25 Q. For what purpose?

1 A. Those bags are used to preserve any evidence
2 that may be on the hands.

3 Q. In the case of a shooting investigation, is
4 evidence collected from the decedent's hands by your
5 office and sent on for analysis?

6 A. Yes.

7 Q. And was that done in this case?

8 A. Yes.

9 Q. Other than the evidence of injuries that we're
10 about to talk about, was there anything notable upon the
11 external examination of Mr. Rodriguez?

12 A. No.

13 Q. How many major injuries were observed to
14 Mr. Rodriguez?

15 A. He had five gunshot wounds.

16 Q. I'd like to start with the first one, which is
17 designated as Wound A in the report, correct?

18 A. Correct.

19 Q. What do we see in State's 211 (indicating)?

20 A. We see a group of injuries to the left side of
21 the face, including the nose, that are indicative of
22 gunshot wound injuries.

23 Q. Okay. Now, can you point on your screen where
24 the -- what would be considered the entrance wound for
25 this -- for Wound A?

1 A. (Witness complies).

2 Q. If you could push a little harder for me.

3 A. (Witness complies).

4 Q. There you go.

5 And that would be to the corner of the left
6 side of the -- Mr. Rodriguez's mouth, correct?

7 A. Yes.

8 Q. What can you tell the jury about the shape of
9 that wound?

10 A. This wound is what we would call an atypical
11 entrance wound. It's irregular and very ragged, unlike
12 the usual circular punched-out wound that we tend to see
13 with gunshot wounds.

14 Q. And what does that indicate to you as a medical
15 examiner?

16 A. It's indicative of what we call an intermediary
17 target. That means that the bullet either passed
18 through a target prior to striking the decedent or the
19 bullet may have struck an object and ricocheted after
20 fragmenting into the face.

21 Q. These other -- characterize them as abrasions
22 above the entrance wound around the nose, what can you
23 tell the jury about those (indicating)?

24 A. Yes. Those injuries are, again, indicative of
25 secondary projectiles. When the bullet passes through

1 an intervening target or strikes an object before
2 fragmenting, particles of that object that the bullet
3 has passed through as well as fragments of a bullet that
4 has fragmented all strike the target together. Some of
5 the heavier particles actually perforate the body and
6 the lighter particles, whether they're parts of the
7 bullet itself or parts of the target that the bullet
8 passed through, can strike the face leading to more
9 superficial injuries like these tan-reddish abrasions
10 that we see on the left cheek.

11 Q. Is that something akin to shrapnel?

12 A. Yes.

13 Q. Was any soot or stippling observed around these
14 wounds?

15 A. No.

16 Q. Can you tell the jury what that is?

17 A. Soot and stippling is what we see in
18 association with gunshot wounds and they're indicative
19 of close-range firing. For example, if the muzzle of a
20 gun is within a certain distance of the intended target,
21 we would see soot or gunpowder deposited on that target
22 within certain distances. As the target moves further
23 away from the muzzle of the gun, that light smoke or
24 soot as well as the small gunpowder particles will not
25 be able to reach out far enough to actually strike the

1 skin. And usually that's 1-and-a-half to 2 feet outside
2 of that distance we tend not to see gunpowder stippling
3 or soot deposited.

4 Q. Can you tell the jury what the path of the
5 projectile that caused the wound -- caused Wound A?

6 A. Yes. The major main bullet fragment or
7 projectile passed through the soft tissue of the cheek,
8 lip, the tongue, fractured the teeth and jaw, and
9 actually passed through the deep soft tissue of the neck
10 and exited the left side of the neck.

11 Q. And is the exit wound what we see here in
12 State's Exhibit No. 213 (indicating)?

13 A. Yes.

14 Q. And, again, we have that unique identifying
15 number, correct?

16 A. Correct.

17 Q. Was any evidence recovered at the exit wound of
18 Wound A -- or the exit of Wound A?

19 A. Yes.

20 Q. And what was that?

21 A. There were two small copper-jacketed lead
22 fragments that were recovered near the exit wound.

23 Q. And is the packaging of what we see in State's
24 Exhibit 214 (indicating)?

25 A. Yes.

1 Q. And the actual fragments themselves in State's
2 215 (indicating)?

3 A. Yes.

4 Q. Dr. Milton, I'm showing you what's been marked
5 as State's Exhibit 216. Do you recognize that item
6 (indicating)?

7 A. Yes.

8 Q. And does that appear to be the items in State's
9 214 and 215?

10 A. Yes.

11 MS. DEVINE: Your Honor, after tendering to
12 defense counsel, I'll offer 216 into evidence.

13 **(State's Exhibit No. 216 Offered)**

14 MR. GRABER: No objection, Judge.

15 THE COURT: State's 216 is admitted.

16 **(State's Exhibit No. 216 Admitted)**

17 Q. (By Ms. Devine) Moving on to Wound B, where was
18 that located on autopsy?

19 A. It's on the left side of the abdomen.

20 Q. And is that what we see in State's 217
21 (indicating)?

22 A. Yes.

23 Q. Can you describe the entrance wound for the
24 jury?

25 A. Yes. This entrance wound you see depicted by

1 this somewhat irregular defect (indicating).

2 Q. I'll put State's 218 up here. Is that just a
3 close-up view of that entrance wound (indicating)?

4 A. Yes.

5 Q. And can you describe it for the jury?

6 A. Yes. It's a circular to slightly irregular
7 entrance wound. And there's a distinct marginal
8 abrasion along the interior border of that wound
9 depicted by this dark -- dark reddish-brown area just
10 adjacent to the defect (indicating).

11 Q. Two points on that. The atypical shape, what
12 does that indicate to you?

13 A. Well, it's mildly atypical. It could be any
14 number of reasons. Of course, the intermediary target
15 is also possible with this wound. And there could also
16 be two body parts adjacent to this entrance wound that
17 could cause that type of appearance.

18 Q. And can you tell the jury what -- how this
19 marginal abrasion is caused?

20 A. Yes. The marginal abrasion is what we
21 typically see with gunshot entrance wounds and they're
22 caused by the actual burrowing process of the projectile
23 into the body. The skin being a flat surface, once the
24 projectile strikes the skin, it crushes and burrows its
25 way through and actually leaves these scrape marks or

1 abrasions along the -- along the skin.

2 Q. Any soot or stippling around this wound?

3 A. No.

4 Q. Can you describe for the jury the path that
5 this projectile took?

6 A. Yes. This projectile entered the upper left
7 abdomen, passed through the anterior abdominal wall,
8 struck the liver, the right side of the diaphragm, the
9 sternum, and passed through the right thoracic wall, and
10 the projectile was recovered in the lateral right side
11 of the body.

12 Q. Thoracic means chest, right?

13 A. Correct.

14 Q. Now, at the time the autopsy is performed is
15 the body x-rayed --

16 A. Yes.

17 Q. -- in the case of gunshot wounds?

18 A. Yes.

19 Q. For what purpose?

20 A. The projectiles highlight very well in x-ray.

21 Q. And is that what we see here in State's 234
22 (indicating)?

23 A. I think I see projectiles in the neck, the
24 upper neck.

25 Q. If I direct your attention to the lower left

1 portion of the picture where my finger is pointing, is
2 that the projectile that we're talking about in Wound B
3 (indicating)?

4 A. I'm not sure. I don't believe it is, no.

5 Q. Now, you said a lead bullet was recovered in
6 the chest wall?

7 A. Yes.

8 Q. Is that what we see in 219 (indicating)?

9 A. Yes.

10 Q. And a close-up in 220 (indicating)?

11 A. Yes.

12 Q. Showing you what's been marked as State's 221.
13 Do you recognize that packaging and the contents within
14 (indicating)?

15 A. Yes.

16 Q. And is that what we've seen in the last two
17 photographs?

18 A. Yes, it is.

19 MS. DEVINE: Offer State's 21 after
20 tendering to defense counsel.

21 THE COURT: 21 or 221?

22 MS. DEVINE: 221. I apologize, Judge.

23 **(State's Exhibit No. 221 Offered)**

24 MR. GRABER: No objection.

25 THE COURT: 221 is admitted.

(State's Exhibit No. 221 Admitted)

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Q. (By Ms. Devine) Moving onto Wound C, where was that located?

A. Wound C is on the back right side of the right thigh.

Q. And is that what we see in State's 222 (indicating)?

A. Yes.

Q. And then a close-up of 223 (indicating)?

A. Yes.

Q. Can you describe the entrance wound?

A. This entrance wound is what we expect to see in a typical gunshot entrance wound without any intermediary target or ricochet going on. You can see it's very circular. There's a relatively even marginal abrasion depicted by these -- this bright pink rim on the surrounding skin (indicating).

Q. Any soot or stippling around this wound?

A. No.

Q. Can you describe the path of the projectile?

A. Yes. This projectile passed through the right thigh, fractured the right femur, and exited the upper right thigh anteriorly, the front of the thigh.

Q. And the femur is the upper leg bone, correct?

A. Correct, the thigh bone.

1 Q. What do we see in State's 224 (indicating)?

2 A. This is the x-ray of the right leg, right
3 thigh.

4 Q. Does it show the fractured bone?

5 A. Yes, it does.

6 Q. And what is this -- these white -- small white
7 marks to the right side of the fractured bone
8 (indicating)?

9 A. Yes. These small flecks are indicative of
10 fragmented shattered bullet. It's referred to commonly
11 as a lead snowstorm and it's indicative of a high
12 velocity, usually a rifle bullet that has struck an
13 object and disintegrated it essentially.

14 Q. Is it practical or even possible to recover any
15 of these flecks or fragments?

16 A. No.

17 Q. Based on that, what would you expect the cavity
18 of damage to be that would be caused by a projectile
19 that ended up like that?

20 A. Yes. These bullets that -- the wound in this
21 way tend to be extremely damaging. They're usually very
22 high-velocity rifle bullets and they create enormous
23 wound damage both in the soft tissue, they create large
24 wound cavities, and shred soft tissue, muscle, blood
25 vessels as they pass through. And once they shatter a

1 bone such as the femur, those boney particles also serve
2 to create an even more devastating wound.

3 Q. Once that bone is fractured like that, is it --
4 would it be possible for a person to support weight on
5 that leg?

6 A. No.

7 Q. Was any evidence -- oh, I'm sorry. Was there
8 an exit wound?

9 A. Yes.

10 Q. And where was that?

11 A. It's in the upper front of the right thigh.

12 Q. Is that what we see in 225 (indicating)?

13 A. Yes.

14 Q. And a close-up in 226 (indicating)?

15 A. Yes.

16 Q. Now, where is the exit wound on this
17 photograph?

18 A. The exit wound is here (indicating).

19 Q. That would still be in the upper part of the
20 right leg?

21 A. Yes.

22 Q. Okay. And then where does that projectile go?

23 A. Then the projectile reenters in this area, the
24 anterior lateral right pelvic region (indicating).

25 Q. So, that would be the wound in the upper

1 right-hand corner of the placard?

2 A. Yes.

3 Q. Was any evidence recovered from this wound?

4 A. Yes.

5 Q. And what was that?

6 A. A deformed copper jacket was recovered from the
7 soft tissue of the right pelvic region.

8 Q. And is that what we see in State's Exhibit
9 No. 227 (indicating)?

10 A. Yes.

11 Q. And close-up in 228 (indicating)?

12 A. Yes.

13 Q. Do you recognize what's been marked as State's
14 229 (indicating)?

15 A. Yes, I do.

16 Q. And is that what was recovered during the
17 autopsy from Wound C?

18 A. Yes.

19 MS. DEVINE: Your Honor, after tendering to
20 defense counsel, I'll offer State's 229 into evidence.

21 **(State's Exhibit No. 229 Offered)**

22 MR. GRABER: Judge, regarding State's
23 Exhibit No. 229 -- and just to clarify, also regarding
24 State's 216 and State's 221, just to clarify, please
25 note the previous objection we made to the Court --

1 THE COURT: Okay.

2 MR. GRABER: -- that we approached prior to
3 his testimony.

4 THE COURT: Okay.

5 MR. GRABER: Same objection on those three.
6 Other than that, no objection.

7 THE COURT: Okay. 229 is admitted.

8 **(State's Exhibit No. 229 Admitted)**

9 MS. DEVINE: Thank you.

10 Q. (By Ms. Devine) Moving on to Wound D, where was
11 this located?

12 A. Wound D is located on the left -- the outer
13 aspect of the left thigh.

14 Q. Okay. Is that what we see in State's 230
15 (indicating)?

16 A. Yes.

17 Q. And just an up-close view of that in 231
18 (indicating)?

19 A. Yes.

20 Q. Can you describe the entry wound for the jury?

21 A. Yes. This entrance wound is similar to the
22 last one, to the opposite extremity. And you can see
23 it's a very regular oval to circular punched-out
24 entrance wound with a rim of red abrasion along the
25 margin (indicating).

1 Q. Any soot or stippling around that wound?

2 A. No.

3 Q. And is there an exit wound?

4 A. Yes.

5 Q. Is that what we see in State's 232

6 (indicating)?

7 A. Yes.

8 Q. Where is that located?

9 A. It's located on the dorsal aspect of the left
10 thigh.

11 Q. Which would be the back side, right?

12 A. Yes.

13 Q. And is that, 233, just an up-close version of
14 that (indicating)?

15 A. Yes.

16 Q. What do you typically call this sort of wound?

17 A. We call this a perforating gunshot wound.

18 Q. Okay. Was there any evidence recovered --

19 A. No.

20 Q. -- from this wound?

21 And why is that?

22 A. The bulk of the bullet passed straight through
23 the extremity, so we have the entrance and the exit
24 without material within the wound path.

25 Q. Can you tell the jury what the path of this

1 bullet was?

2 A. Yes. The path was through the soft tissue
3 musculature of the left thigh and also through the left
4 thigh bone with fracture.

5 Q. At this point, if this had been the second of
6 the leg injuries, would the person -- would
7 Mr. Rodriguez have been able to support any weight on
8 his legs?

9 A. No.

10 Q. Wound E, can you tell the jury where that was?

11 A. This is an entrance wound of the right forearm.

12 Q. And is that what we see in State's 235
13 (indicating)?

14 A. Yes.

15 Q. And a closer view in State's 236 (indicating)?

16 A. Yes.

17 Q. What is notable about this entrance wound?

18 A. This is what we call a tangential entrance
19 wound, meaning that the projectile is traveling parallel
20 to the long axis of the body part. And it kind of
21 burrows along at a relatively good distance before it --
22 before it penetrates into the body.

23 Q. What about the shape of the wound is
24 significant to you?

25 A. It's also slightly atypical. You can see it

1 has some irregular margins here (indicating).

2 Q. Any soot or stippling?

3 A. No.

4 Q. Is there anything about this wound that would
5 be indicative of the potential of an intermediary
6 target?

7 A. Yes.

8 Q. Okay. And what about this wound is indicative
9 of that?

10 A. This entrance wound, again, is -- has jagged
11 margins. And without the intermediary target, these
12 types of injuries tend to be a little bit more
13 irregular. They may be elliptical, but usually without
14 the sharp angles and tears that we see along the margin.

15 Q. Can you tell the jury what the path of that
16 bullet was?

17 A. Yes. It traveled upward along the long access
18 of the right forearm and was recovered in the elbow
19 region.

20 Q. And is that what we see here in State's Exhibit
21 No. 239 (indicating)?

22 A. Yes.

23 Q. And that would be the white circular object
24 just inside the crook of the elbow?

25 A. Yes.

1 Q. Was there any evidence that was recovered?

2 A. Yes.

3 Q. And what was recovered?

4 A. The lead projectile was recovered.

5 Q. Is that what we see with packaging in State's
6 237 (indicating)?

7 A. Yes.

8 Q. And the projectile -- better view of the
9 projectile in 238 (indicating)?

10 A. Yes.

11 Q. Showing you what's been marked as State's
12 Exhibit No. 40 -- 240. Do you recognize that item
13 (indicating)?

14 A. Yes.

15 Q. Is that the projectile and its packaging as we
16 see in State's 238 (indicating)?

17 A. Yes.

18 MS. DEVINE: Your Honor, after tendering to
19 defense counsel, I'll offer State's Exhibit 240 into
20 evidence.

21 **(State's Exhibit No. 240 Offered)**

22 MR. GRABER: Nothing additional regarding
23 this, Judge.

24 THE COURT: 240 is admitted.

25 **(State's Exhibit No. 240 Admitted)**

1 Q. (By Ms. Devine) Dr. Milton, were there other
2 external injuries noted to the complainant?

3 A. Yes.

4 Q. What were those?

5 A. There were superficial abrasions of the right
6 and left elbow regions.

7 Q. And is that what we see here on State's 241
8 (indicating)?

9 A. Yes.

10 Q. Specifically on the right elbow, which is on
11 the left side of the photograph (indicating)?

12 A. Yes. I think that's the left elbow.

13 Q. You're right. The left elbow on the left side
14 of the photograph.

15 And then you can see some redness to the
16 right elbow, correct (indicating)?

17 A. Yes.

18 Q. Would that be consistent with Mr. Rodriguez
19 having fallen down and struck the pavement?

20 A. Yes.

21 Q. Dr. Milton, did you make a conclusion as to the
22 cause -- based on your review of the photographs and the
23 findings and the diagrams that are contained in the
24 autopsy report that's previously been admitted into
25 evidence, did you -- do you have an opinion as to the

1 cause and manner of the death of Juan Rodriguez?

2 A. Yes.

3 Q. And what is that?

4 A. That he died of multiple gunshot wounds.

5 Q. Now, we have five wounds, correct?

6 A. Correct.

7 Q. Did any one of those wounds in and of itself
8 cause his death?

9 A. No.

10 Q. Was it a combination of all of the wounds and
11 the damage caused by those wounds that led to his death?

12 A. Yes.

13 Q. How -- what sort of death is this characterized
14 as?

15 A. The manner of death?

16 Q. Correct.

17 A. Homicide.

18 Q. And are you familiar with the -- the cause of
19 these wounds, you said gunshot wounds, correct?

20 A. Correct.

21 Q. In your training and experience, are you aware
22 of whether or not a firearm is considered to be a deadly
23 weapon?

24 A. It is.

25 MS. DEVINE: Your Honor, I'll pass the

1 witness.

2 THE COURT: Mr. Graber.

3 MR. GRABER: Thank you, Judge.

4 **CROSS-EXAMINATION**

5 **BY MR. GRABER:**

6 Q. Doctor, can you tell us which of these five
7 wounds was the most serious wound that Mr. Rodriguez
8 had, meaning the most life-threatening?

9 A. I couldn't.

10 Q. Could or could not?

11 A. Could not.

12 Q. Would you agree with me that the wound to his
13 face and neck and the wound to his abdomen, those wounds
14 are more likely -- or were more likely to contribute and
15 cause his death than the wounds to his leg and to his
16 forearm?

17 A. Not in this case, no.

18 Q. Why do you say that?

19 A. Typically, we consider those types of injuries
20 to be more fatal or have more lethal potential, but in
21 this particular case, the damage in those areas, while
22 significant, were no less -- no more or less significant
23 than the ones to his lower extremities due to the
24 fractures to those bones and the fact that we have
25 high-velocity rifle injuries to those lower extremities.

1 The damage, I think, is considerable.

2 Q. The gunshot wound of his right leg,
3 specifically gunshot Wound C, did that wound in and of
4 itself -- would you agree with me that if a person -- or
5 if Mr. Rodriguez, or anybody else, had just Wound C,
6 that it's unlikely they would have died? Would you
7 agree with that?

8 A. No. Again, not in this case due to the
9 high-velocity nature of that injury. The soft tissue
10 destruction with very large vessels present in that
11 extremity, femoral artery, femoral vein, I think that
12 typical gunshot wounds of the extremities tend to be
13 more or less survivable unless they damage major
14 structures such as large vessels. And I think in this
15 case, we more than likely have evidence that large
16 vessels were damaged.

17 Q. And in this case, you did not perform the
18 autopsy, correct?

19 A. That's correct.

20 Q. And you indicated that there's a process that
21 some of the doctors go through on your staff that the
22 doctor who performs the autopsy, that after she is done,
23 her -- his or her work is actually peer-reviewed by some
24 other doctors to make sure that there's no mistakes and
25 everything was done accurately, correct?

1 A. Correct.

2 Q. Is that safe -- fair to say what the
3 peer-review process is all about?

4 A. Yes.

5 Q. Okay. And you weren't even part of the
6 peer-review process in this case, were you?

7 A. Not that I recall. Being several years ago,
8 I'm not -- I can't recall if I was actually there that
9 day.

10 Q. And I think you indicated on direct examination
11 that you were not part of the peer-review process.

12 A. I think I said I wasn't sure.

13 Q. Okay.

14 A. Yeah.

15 Q. Do you-all document it if you are at all,
16 meaning if you are?

17 A. We -- we sign in every day and I'm sure that
18 there's -- there would be a way to find out, but I guess
19 my recollection from that time period, you know, would
20 be as good as my opinion now looking at the photographs.

21 Q. Sure. But at least you don't have a
22 recollection that you were a part of the peer-review
23 process?

24 A. That's correct.

25 Q. And how many doctors typically are part of the

1 peer-review process after an autopsy is completed by the
2 primary doctor?

3 A. It's at least -- at least five doctors.

4 Q. And in this case, Dr. Florez was the one who
5 performed the autopsy?

6 A. Yes.

7 Q. And Dr. Wolf, as the chief medical examiner --
8 medical examiner signed his name to the autopsy report,
9 which is standard in all autopsies, correct?

10 A. Right. He's the deputy chief medical examiner.

11 Q. My mistake. Yes, sir. Thank you.

12 So, would it be safe to say that because of
13 what you just explained, your involvement in this case,
14 you don't have any personal knowledge since you weren't
15 an actual part of the autopsy, but you are testifying
16 from the records and the reports that were written by
17 Dr. Florez --

18 A. Yes.

19 Q. -- is that correct?

20 A. Coupled with photographs that she took.

21 Q. Yes.

22 A. Yes.

23 Q. And you've had a chance prior to today to read
24 her report and look at the photographs, and I'm sure you
25 met with the prosecutors in this case, or at least one

1 of them, correct?

2 A. That's correct.

3 Q. Wouldn't you agree with me it's readily
4 apparent, even by not a medical examiner, that
5 Mr. Rodriguez died from gunshot wounds?

6 A. Yes.

7 Q. You knew that from the external examination
8 looking at -- not you, since you didn't do it, but by
9 reviewing the external -- the photos of the external
10 part of his body, that that was the cause of his death?

11 A. That's correct.

12 MR. GRABER: That's all I have, Judge.

13 THE COURT: Ms. Devine.

14 MS. DEVINE: Nothing further, Your Honor.
15 May this witness be excused?

16 THE COURT: You may step down.

17 Counsel, approach for a second.

18 (At the Bench, on the record)

19 THE COURT: What's left?

20 MS. DEVINE: Firearms. That's it.

21 MS. BAILY: One witness, Judge. Although,
22 I have to leave at 5:00 to work at intake.

23 THE COURT: You're not leaving until we're
24 finished with this witness. They can wait.

25 I'll take a five-minute break and you can