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**JOSE PENA,**

having been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

**BY MS. EPLEY:**

Q. Can you please introduce yourself to the ladies and gentlemen of the jury?

A. My name is Jose Pena and I've been a Houston police officer for the last 13 years and I'm assigned to the crime scene unit. Been there for about five years.

Q. Do you need any special education or training in order to be a part of the crime scene unit at HPD?

A. You do. There is a process, a selection process for crime scene investigators where you do a rotation for about a month at the unit and then there is a selection process where you interview and based on your background, experience that you have as far as classes and training, then you're selected at that point.

Once you are selected into the unit, you go under the wing of a senior CSU. You're on probation for about a year. And while you're on probation, they are taking you by the hand step-by-step how to take photographs, how to collect evidence, how to document evidence and so on.

Q. And what about -- where did you grow up?

1           A.    I grew up on the north side of Houston, Texas.  
2 I emigrated here from Mexico at seven years of age in  
3 1977.

4           Q.    And after high school, did you get any more  
5 schooling?

6           A.    No, I did not. I did join the military and I  
7 was part of the United States Army for six and a half  
8 years and I did a tour in Kuwait and also served in  
9 Croatia and Hungary and Bosnia for about ten months.

10          Q.    After your tour in the United States military,  
11 what made you want to be a police officer?

12          A.    Well, my decision to be a police officer goes  
13 back before that.

14                    MS. VALENTINE: Objection, relevance.

15                    THE COURT: Overruled.

16          A.    My decision to be a police officer was made  
17 when I was 13 years old. As I stated, I grew up in the  
18 north side area, by the Fifth Ward area. I don't know  
19 if some of you are familiar with it or not.

20                    And my dad was robbed and after that --  
21 after that, I decided I wanted to be police officer.

22          Q.    (BY MS. EPLEY) You need a moment, Officer?

23          A.    No.

24          Q.    I hadn't asked you that question before today,  
25 have I?

1           A.    No, ma'am.  (Officer loses composure.)

2                       MR. MARTIN:  Maybe we can take a break or  
3 something, Judge?

4                       THE COURT:  Do you need a break.

5                       THE WITNESS:  No.  I'm okay.

6                       THE COURT:  Okay.

7           Q.    (BY MS. EPLEY)  Officer Pena, after becoming a  
8 member of the crime scene unit, do you work a particular  
9 shift?

10           A.    Yes, I do.  I work the night shift.

11           Q.    And were you working on May 5th, 2011?

12           A.    I was, yes, ma'am.

13           Q.    Were you working the night shift that night as  
14 well?

15           A.    I was.

16           Q.    Do you recall at some point receiving a phone  
17 call in regards to this case?

18           A.    I did.  I received a call from Sergeant Graley  
19 (phonetic) at about 232 hours.  That's 2:32 in the  
20 morning.

21           Q.    And at some point did you arrive at this crime  
22 scene.

23           A.    I did at 3:47.  I was dispatched to 12600  
24 Dunlap to the Pines of Westbury apartment complex.

25           Q.    And that's in Harris County, Texas?

1           A.    Yes, ma'am.

2           Q.    Officer, why would it take a little over an  
3 hour for you to arrive?

4           A.    In these cases we have to gather our equipment,  
5 load up the vehicle. I work out of the downtown office,  
6 the headquarters at 1200 Travis, and this is located  
7 down the southwest side or sector of Houston, Texas.  
8 So, it's quite a ways off.

9           Q.    When a Crime Scene Unit responds to a scene,  
10 what are the goals? What are you trying to achieve?

11          A.    When we arrive at a scene, what we're trying to  
12 get is basic information from the officers. The  
13 officers have already done the hard part for us. That's  
14 basically push the people back, set up the crime scene  
15 tape and establish a crime scene for us. At some point  
16 if they have enough time to where they go and locate  
17 evidence for us, make our job a little bit easier.

18                    What I am trying to do when I get there is  
19 talk to the primary officer, get the information down  
20 and then tour the scene with them. When I mean tour the  
21 scene with them, I go to the locations where the  
22 evidence is located or what we think at that point is  
23 evidence that we might need. And basically I walk the  
24 location from end to end.

25          Q.    And I'm going to pause for just a moment.

1                   Officer, did you work last night?

2           A.    I didn't.  I took off.  I have a couple days on  
3 vacation.

4           Q.    So, you were able to get some sleep?

5           A.    Oh, yes, ma'am.

6           Q.    So, when you arrive at the crime scene unit,  
7 you want to get basic information, make sure the tape is  
8 set up, the evidence is identified?

9           A.    That's correct.

10          Q.    Are those the procedures that you took on  
11 May 5th, 2011?

12          A.    Yes, ma'am.

13          Q.    Let's start from the beginning.  When you first  
14 arrived at 12600 Dunlap Street, what is the first thing  
15 you see?

16          A.    I see the scene has already been secured.  By  
17 that, what I mean, they have officers on either end of  
18 the scene because it is an extensive scene that curves  
19 around an apartment building.  And you're looking at a  
20 location that's about 50 feet in one direction and about  
21 150 feet in another direction.  And the officers have  
22 already secured the scene.  And there are primary  
23 officers there at the scene that I meet with.

24          Q.    Okay.  You said you try to get basic  
25 information from the primary officers.  What kind of

1 information?

2 A. The information I usually get from them is the  
3 case number. I verify the location. If I didn't see  
4 the name of the complex on the way in, I verify that as  
5 well. And if I am not familiar with all the areas of  
6 town, I verify which direction is north and as long as  
7 two of us are in agreement, then that's what we start  
8 using. And, of course, as I discussed earlier, by  
9 touring the scene and making notes of evidence.

10 Q. You will notice that State's Exhibit 2 is up on  
11 the screen beside you. We had a little confusion  
12 earlier and since you just mentioned directions, I  
13 thought you could help us.

14 Can you see the screen well enough for me  
15 to ask you a question or should I bring the from up to  
16 you?

17 A. No, that's fine.

18 Q. Okay. Can you please identify which direction  
19 is north on this map?

20 A. The location on here should be -- is this  
21 Fonmeadow up here?

22 Q. You're going to need the --

23 A. Is this Fonmeadow down here?

24 Q. This is Main. This is Fonmeadow here.

25 A. That would be north.

1 Q. Fonmeadow?

2 A. Yes. And this location here.

3 Q. This is north?

4 A. Correct. And Fonmeadow is an east-and-west  
5 street.

6 Q. When you arrive, Officer, is the victim, Walter  
7 Moore, still on the scene?

8 A. No, ma'am. He had been transported by medical  
9 personnel.

10 Q. When you arrived, what type of crime do you  
11 think that you're investigating?

12 A. I'm investigating a murder at this point as far  
13 as I know.

14 Q. Were you able to identify any witnesses on the  
15 scene?

16 A. No, ma'am.

17 Q. What about evidence?

18 A. Evidence, there was some evidence already  
19 located by the officers, as I stated. There was  
20 clothing and some coins and a hat and an extensive  
21 amount of blood. And we also ended up with some casings  
22 and a fired bullet towards the end.

23 Q. Now, Officer, in addition to looking at  
24 individual items, do you guys have a way to kind of  
25 summarize the evidence at the scene?

1 A. Summarize? Do you by --

2 Q. Like a diagram, for example?

3 A. Oh, yes, ma'am.

4 MS. EPLEY: May I approach the witness?

5 THE COURT: You may.

6 Q. (BY MS. EPLEY) Officer Pena, I'm showing you  
7 what's been marked as State's Exhibit 3. Do you  
8 recognize this document?

9 A. Yes, ma'am. It's a copy of the finished  
10 diagram that I made at the scene.

11 Q. Okay. And without going into the contents,  
12 would you say that this fairly and accurately depicts  
13 the scene as you saw it that day?

14 A. It does, yes, ma'am.

15 MS. EPLEY: State offers State's Exhibit 3  
16 and tenders to opposing counsel.

17 THE COURT: Any objections?

18 MS. VALENTINE: No objections.

19 THE COURT: State's Exhibit 3 is admitted  
20 without objection.

21 Q. (BY MS. EPLEY) Now, Officer, do you think it  
22 would be better in helping the jury understand evidence  
23 if they looked at the diagram first or if we go through  
24 the individual evidence first and then the diagram?

25 A. Whichever you please. The diagram depicts



1 about the location of the evidence. It's up to you,  
2 ma'am.

3 Q. Let's start with the first piece of evidence  
4 that you found. Let's actually go through the evidence  
5 in the way they were marked.

6 A. Yes, ma'am.

7 Q. Comfortable with that?

8 A. Yes, ma'am.

9 Q. So, tell me what's the first thing you found.

10 A. The first thing should have been a hat with a  
11 coin or a penny, a U.S. penny that was out there. And  
12 that should have been on the southwest corner of the  
13 complex.

14 MS. EPLEY: Your Honor, may I approach the  
15 witness again?

16 THE COURT: You may.

17 Q. (BY MS. EPLEY) Officer Pena, I'm going to show  
18 what's been marked as State's Exhibit 4 through 29.  
19 Would you take a moment and look at each of these  
20 individually?

21 A. Ma'am, these are all copies of photos I took at  
22 the scene that night.

23 Q. Do they fairly and accurately depict the things  
24 that they're intended to depict in each and every one of  
25 those photographs?

1           A.    They do, yes, ma'am.

2           Q.    Okay.  I'm going to set these aside for just a  
3 moment and I'm going to show you State's Exhibit 31, 36  
4 through 46 -- let me say that again.  State's 31, 36,  
5 then 37 straight through to 46.

6           A.    These are all copies of photos I took that  
7 night.

8           Q.    Do they fairly and accurately depict the items  
9 displayed therein?

10          A.    They do, yes.

11                    MS. EPLEY:  At this time, Your Honor, the  
12 State offers State's Exhibit 4 through 29, State's  
13 Exhibit 31 and State's Exhibit 36 through 46 and tenders  
14 to opposing counsel.

15                    MS. VALENTINE:  No objection.

16                    THE COURT:  Then State's Exhibit 4 through  
17 29, 31 and 36 through 46 are admitted.

18                    MS. EPLEY:  Permission to publish, Your  
19 Honor?

20                    THE COURT:  You may.

21          Q.    (BY MS. EPLEY)  Officer Pena, I'm going to  
22 start with the markings.  You have a copy of the diagram  
23 in front of you, correct?

24          A.    I do, yes, ma'am.

25          Q.    Okay.  I'm going to start with the markings in

1 terms of the exhibit number and then I'll give you the  
2 marking number, or at least identify what they relate  
3 to.

4 A. Yes, ma'am.

5 Q. First we have Marking 1, State's Exhibit 4. Do  
6 you know what this is?

7 A. Yes, ma'am. That's a hat. Once -- you don't  
8 see it on the photo, but once the hat is picked up, the  
9 penny is around that location as well.

10 Q. Okay. And approximately where was this in  
11 terms of the apartment complex parking lot?

12 A. It was hard in this apartment complex, for one  
13 reason, the buildings for some reason didn't have any  
14 numbers and I couldn't get ahold of anybody during my  
15 course of the investigation or at a later date to get  
16 building numbers. But it is on the southwest corner of  
17 the apartment complex.

18 Q. Okay. Quickly, I'm going to show the jury  
19 what's been marked State's Exhibit 3. This is the  
20 diagram we were referencing a moment ago, correct?

21 A. That's correct, yes, ma'am.

22 Q. To get a reference point, we spoke about the  
23 map in regards to the southwest corner of the complex.  
24 Do you agree with me that's here?

25 A. That's correct.

1 Q. This space here is the parking lot?

2 A. That's correct.

3 Q. What is going up to this line here?

4 A. That's the sidewalk and this is the building  
5 here. And this is another building. As I put on that  
6 diagram, there is no building number.

7 Q. And Items 18 and 19 are up here -- and I'll  
8 explain those to the jury in a moment -- in the upper  
9 right-hand corner, what area is this?

10 A. That's the north middle sector of the complex.

11 Q. Okay. If the jury heard earlier that the blood  
12 traveled from the original point east and then north, do  
13 you -- is this where the markings go in regards to your  
14 diagram?

15 A. That's correct. The blood trail starts  
16 somewhere around here where No. 5 is and travels all the  
17 way up here to No. 19 in that location, in this  
18 direction here.

19 Q. Now, Officer, when we look at State's Exhibit  
20 4, the hat, and you referred to the southwest corner of  
21 the complex, is this the first item of marking?

22 A. Yes, that's correct.

23 Q. After the hat, what is Marking 2 shown in  
24 State's Exhibit 5?

25 A. That's a piece of paper that the officer put

1 down with two pebbles to keep the paper down. What  
2 we're actually focusing on is this right here, the spent  
3 casing.

4 Q. The circled item is a spent casing?

5 A. Yes, ma'am.

6 Q. And, I'm sorry, I was a little distracted.  
7 What are these on the paper?

8 A. Just a piece of paper that the officers -- the  
9 first responders put down to identify evidence.

10 Q. Okay. What about Marking 3, State's Exhibit 6?

11 A. It's another casing and as you can see, I put  
12 the tent marker or yellow marker over the paper and  
13 that's the casing there.

14 Q. Are those items actually collected from the  
15 scene?

16 A. Yes, I collected them.

17 *THE COURT:* Are you able to tell what  
18 caliber they are with?

19 *THE WITNESS:* Yes, sir. They were .32.  
20 .32 autos.

21 Q. *(BY MS. EPLEY)* Were you able to determine what  
22 caliber of bullet the casings were in Marking 2 and 3  
23 shown in State's Exhibit 5 and 6?

24 A. Yes, ma'am. They are .32 auto.

25 Q. That's something you were able to tell at the

1 scene?

2 A. All you have to do is take a casing, wearing  
3 gloves of course, and look at the back of the casing.

4 Q. And after looking at the casing determining  
5 that it was a .32, did you recover it?

6 A. I did, yes, ma'am.

7 Q. Were those items brought to court today?

8 A. They were. At your request I have them in that  
9 package back there in the room.

10 Q. Okay. We'll come back to the packages in a  
11 moment. We're going to do the photographs for now.

12 We have State's Exhibit 7, Marking No. 4.  
13 What is this?

14 A. This is an area where blood is located. You  
15 see here the dark spots, it's all blood in this location  
16 here.

17 Q. And, Officer, was this found near any other  
18 items?

19 A. Yes, ma'am. That's in close proximity to No. 5  
20 and, of course, No. 3, which are in close proximity to  
21 those. The spent casing is No. 3 and then No. 5 is  
22 where the blood trail begins.

23 Q. Referring back to State's Exhibit 3, the  
24 diagram, if here is 1 and 1A, the penny and the hat; 2  
25 and 3, the casings; 4 is in the same general area as the

1 other evidence that begins the case, correct?

2 A. That's correct, yes, ma'am.

3 Q. Okay. What is shown in Marker No. 5, State's  
4 Exhibit 8?

5 A. It's more small drops of the blood. All that  
6 you see here, blood.

7 Q. Same for Marker 6 in State's 9?

8 A. That's correct.

9 Q. Now, give the jury some perspective. I'm  
10 showing you State's Exhibit 10. In looking at this  
11 item, if we zoom in, do you agree this is Marker 6 -- 5  
12 and 6, the blood?

13 A. That's correct.

14 Q. Marker 1, the hat, which you can see in the  
15 diagram?

16 A. Yes, ma'am.

17 Q. Two and 3, the casing; and 4, the beginning of  
18 the blood?

19 A. That's correct, yes, ma'am.

20 Q. Okay. After leaving the parking lot, where  
21 does the blood trail lead next?

22 A. It goes on to the sidewalk that's north to  
23 south sidewalk between the buildings and continues on  
24 from there from No. 10, but from 5 to 10 is in the  
25 parking lot area.

1 Q. Okay. So, going through these quickly, State's  
2 Exhibit 11, 12, 13 here, and 14, which takes us through  
3 Marker 10, all depict blood leading from the parking lot  
4 to the sidewalk.

5 A. That's correct, yes, ma'am.

6 Q. Okay. Referring back to State's Exhibit 3,  
7 we've concluded the travel through the parking lot and  
8 we're now headed up to this walkway, correct?

9 A. That's correct, ma'am.

10 Q. What's the first marker here?

11 A. The first marker should be No. 10, that cluster  
12 of photographs that you see there.

13 Q. From 10 to 15?

14 A. That's going to be additional blood. The blood  
15 trail travels all the way from No. 5 all the way to  
16 No. 17.

17 Q. Yes, sir. Showing you State's Exhibit 20, do  
18 you recognize this?

19 A. Yes, ma'am. It was a continuation of the blood  
20 and, of course, as you go more north on the sidewalk, it  
21 is more clusters, it's more blood leaking out of  
22 somebody in this case. That's why you have a bigger  
23 cluster.

24 Q. Officer, you refer to the blood that the  
25 complaining witness in this case, Walter Moore, is



1       losing.  Have you been on scenes that have blood before?

2           A.  Yes, ma'am.

3           Q.  On few or many occasions?

4           A.  Many occasions.  I've worked over 400 homicide  
5 cases either by myself or with other CSUs and I would  
6 say maybe about 150 scenes where we had extensive amount  
7 of blood.

8           Q.  In your training and experience, is this amount  
9 of blood a small or a large amount for one individual to  
10 lose?

11          A.  It's a large amount.

12          Q.  Looking at State's Exhibit 20, this is leading  
13 up to a walkway to a door?

14          A.  That's correct, yes, ma'am.

15          Q.  In regards to No. 17.

16          A.  Yes, ma'am.

17          Q.  Are we yet at the place where the complaining  
18 witness, Walter Moore, is going to collapse?

19          A.  We are not, no, ma'am.

20          Q.  State's Exhibit 22?

21          A.  This is more blood and you see also footprints  
22 or shoe prints within the blood at these locations here.  
23 That's why it looks like that.

24          Q.  Now, these shoe prints, were you able to  
25 determine whose they were?

1           A.    Yes.  Later on, you can see a photograph where  
2 there is a shoe print and a shoe with it.  And we  
3 determined that they belonged to the complainant,  
4 Mr. Moore.

5           Q.    Officer, I'm going to show you what's been  
6 marked State's Exhibit 31.  Is that the photograph you  
7 were just referencing?

8           A.    Yes, ma'am.

9           Q.    Okay.  How can you tell the footprints were the  
10 same?

11          A.    If you look at the markings on the shoe and the  
12 blood, of course, more testing has to be done, but, you  
13 know, for easy reference, we put the shoe next to the  
14 blood print here and it kind of sort of matches.  
15 Testing has to be done later, but I don't think it was  
16 done in this case.

17                    *THE COURT:*  Do you think you're going to  
18 be much longer?  I mean, I want to give the jury a break  
19 right now, afternoon break, if you want one.  And Myrna  
20 is -- I promised her we would break every hour and a  
21 half.

22                                So, why don't we take a quick break and  
23 we'll come back out.

24                                So, all rise for the jury.

25                                *(Jury out.)*

1                   THE COURT: All right. We're still with  
2 Ms. Epley on direct.

3                   MS. EPLEY: Thank you, Your Honor.

4           Q.     (BY MS. EPLEY) You had explained to the jury  
5 how you could tell the footprints belonged to the  
6 complainant, correct?

7           A.     That's correct, that particular shoe, ma'am.

8           Q.     Let me ask this differently. Where was the  
9 shoe that you're holding found?

10          A.     It was not far from that location. If you go  
11 back to the previous photo with No. 17 marker on it --

12          Q.     If you don't mind, let me show you State's  
13 Exhibit 24 instead. And you see Marker No. 19 here.

14          A.     That's correct. The shoes are located in this  
15 location and this area back here would be the little  
16 area in front of the apartment where No. 17 was with all  
17 the excessive blood around this area here.

18          Q.     Why would a person's clothes be cut off the  
19 body and left here?

20          A.     That's probably developed by Houston Fire  
21 Department a couple years ago. We had issues where the  
22 complainant was shot or stabbed and was taken to a  
23 hospital and then the clothing comes up missing once  
24 they get there and we couldn't collect it as evidence.  
25 So, they usually leave it at the scene for us and that's

1 what they did, as I understand.

2 Q. Okay. So, the pair of blue jeans, the black  
3 button-up shirt and the brown leather shoes, who do you  
4 understand them to belong to?

5 A. From the person who got shot in this case. It  
6 was Mr. Moore.

7 Q. Just to be thorough, because we have gone  
8 through Markers 1 through 17 and then 19, what is Marker  
9 18 in State's Exhibit 23?

10 A. It's another piece of clothing that's away from  
11 all the blood and everything. We don't know what it is;  
12 so, we go ahead and tag it anyway. It was a smaller  
13 size T-shirt, I think it was, like, a 10 or 12. So, it  
14 didn't match the other clothing. We didn't know where  
15 it fit in, but we collected it as evidence.

16 Q. In looking at the totality of the scene,  
17 Officer Batiste (sic), do you have any reason to think  
18 Marker 18, the item depicted in State's 23, has  
19 relevance in this case, now that you've looked at it?

20 A. It does not.

21 Q. I'm sorry. Officer Pena.

22 A. I'm Pena, yes.

23 Q. Sorry about that.

24 A. It's all right.

25 Q. Do you have any reason to think that item

1 marked 18, State's Exhibit 23, has a bearing in this  
2 case?

3 A. Not that I'm aware about and I'm not aware  
4 there was any testing done to determine anything on it.

5 Q. Thank you. We are going to just about  
6 conclude. The markers go through 20, correct?

7 A. That's correct, because later on, we find  
8 another, what we call fired bullet in this case. It was  
9 a bullet jacket that we found later on once we  
10 recanvassed the scene towards the end of investigation.

11 Q. Okay. Then we'll explain Item No. 20 in just a  
12 moment. Let's return to State's Exhibit 3.

13 If you yourself, then, could explain to  
14 the jury, based on your training and experience, what  
15 you are able to determine as a crime scene unit on  
16 May 5th, 2011, based on the evidence that you have  
17 marked?

18 A. Because on the evidence at this location, there  
19 was a person involved in some type of struggle and that  
20 person starting running away from the location and here  
21 with No. 5 there, the blood drops start dropping there  
22 at that location and also at No. 4. And they increase  
23 as he's running in this location and ends up over here  
24 by No. 19.

25 Q. Okay. Do you have any reason to think there is

1 a second victim?

2 A. No, ma'am. Based on the blood and the way the  
3 blood is running -- and when I say "running," I have to  
4 go into the blood spatter analysis of it and that might  
5 take about 30 minutes. But in this case, just to  
6 simplify, it's just one person running to the location  
7 and running up to that location there. And in my  
8 experience and my training, the blood is only coming  
9 from one person.

10 Q. Okay. I'm now going to return you to the  
11 physical evidence outside of the blood. And you  
12 mentioned an item that's going to be marked or is  
13 referenced in the offense report as Item 20. It's  
14 State's Exhibit 27. There is no marker number. Why is  
15 that?

16 A. The reason for that is because once we  
17 videotape the scene and once we take photos, sometimes  
18 towards the end of the scene, like in this case, we get  
19 daylight; so, we recanvass the scene and look for more  
20 evidence. In this case, Sergeant McPherson found this  
21 bullet jacket in front of that vehicle in the sidewalk  
22 area north of that parking lot, the one we've been  
23 talking about.

24 Q. Now, when you say Sergeant McPherson found it,  
25 you don't have any reason to think that he touched it?

1           A.    He has instructions specifically from me not to  
2 move anything. All the officers and/or investigators  
3 who go out there with me, they get those instructions  
4 upon arriving at the scene. If they find something,  
5 mark it with something, don't touch it. Let me know  
6 about it.

7           Q.    It's a pretty important rule, correct?

8           A.    Yes, ma'am.

9           Q.    Now, do you have any doubt your officers  
10 understand why they are not to touch pieces of evidence?

11          A.    They are aware, ma'am.

12          Q.    Do you have any reason to think that an officer  
13 might just go ahead and pick a bullet up anyway?

14          A.    We have had situations like that, yes. And in  
15 this case, it didn't happen.

16          Q.    Okay. And you would agree with me that it  
17 doesn't happen often?

18          A.    It doesn't happen often, no, ma'am.

19          Q.    And here, State's Exhibit 26, is this item the  
20 officer is pointing at the same bullet jacket he is  
21 looking at?

22          A.    That's my sergeant. He was new in the unit.  
23 So, I was out there just running him through the process  
24 of what we do. He is identifying the location of the  
25 bullet jacket in proximity to that vehicle.

1           Q.    Now, Officer, now that we have gone through  
2 Items 1 through 20, I want to talk to you a little about  
3 your methodology with the pictures.

4                           Is this the middle of the day?

5           A.    No, ma'am.  Actually it's the middle of the  
6 morning, sometime around 6:30.

7           Q.    Okay.  Would you agree it's still a little dark  
8 outside?

9           A.    No, it's not, because it was already daybreak.

10          Q.    What about some of your other photographs?  
11 They look dark in one moment and bright in another.  How  
12 might that happen?

13          A.    That's because we use a technology that follows  
14 available light photography.  And basically what you do  
15 is you put the camera on a tripod and you leave the  
16 camera with the lens open and the camera is sucking in  
17 all the available light that's around there, if there is  
18 no available light because it's too dark, then I would  
19 shoot a flashlight for a couple of seconds into the  
20 photo.  And that would give me that bright-of-day  
21 photograph that you saw earlier where there was multiple  
22 markers.

23          Q.    Okay.  I am going to move and show or tell the  
24 story a different way.  Starting with State's Exhibit  
25 44, can you tell me what items are found here?



1           A.    Yes, ma'am.  Over here you see No. 4.  No. 3  
2 back here in the distance.  No. 1 and No. 2.

3           Q.    And this is where you were explaining to the  
4 jury you believe the shooting would have began, correct?

5           A.    That's correct.

6           Q.    Looking at State's Exhibit 41, would you agree  
7 with me that the hat and the bullet casings were found  
8 back this direction such that Walter Moore would have  
9 run forward?

10          A.    That's correct, ma'am.

11          Q.    And then I'm going to show you State's Exhibit  
12 39.  After you run through the parking lot, these  
13 markings show the way he entered the parking lot?

14          A.    Between those two buildings and going in the  
15 north direction.

16          Q.    Now I'm going to show you State's Exhibit 37,  
17 the walkway he would have taken, correct?

18          A.    That's correct.  Continuation of the blood  
19 trail.

20          Q.    Is this green grass inside this bright picture  
21 an example of the available light you were talking  
22 about?

23          A.    This one is not.  I have such a good camera  
24 issued by the department.  This one is flash  
25 photography.

1 Q. Okay. Other than Item 20, though, the rest of  
2 the photographs were taken in the dark, right?

3 A. That's correct.

4 MS. EPLEY: May I approach, Your Honor?

5 THE COURT: You may.

6 Q. (BY MS. EPLEY) Officer Pena, I'm sorry I  
7 misspoke your name earlier.

8 So, now I'm going to have you look at this  
9 envelope. Do you recognize this?

10 A. Yes, ma'am. This is an envelope that I use to  
11 tag evidence. And the reason I know is because they put  
12 this fancy label in the property room on it with my  
13 information on there.

14 Q. Who brought this to court today?

15 A. I did, at your request.

16 Q. Do you know whether or not this envelope was  
17 sealed when you brought it here?

18 A. It was sealed. I just opened it a minute ago.

19 Q. Do you know who would have the authority to  
20 package it or to ensure that it was stored in evidence  
21 correctly the first time?

22 A. That would be me.

23 Q. Okay. Do you have any reason to think it was  
24 tampered with or anything?

25 A. Not that I am aware of.

1 Q. From the moment that we opened the outside of  
2 this envelope, does it appear to be in the same  
3 condition as when you last saw it?

4 A. Yes, ma'am.

5 Q. Now, who opened this envelope?

6 A. I opened it today, but it had been opened in  
7 the past. The reason you can tell, it has markings  
8 where it was opened. I guess somebody opened it to test  
9 the evidence or conduct analysis on the evidence.

10 MS. VALENTINE: Objection calls for  
11 speculation.

12 THE COURT: Sustained.

13 Q. (BY MS. EPLEY) Officer, based on your training  
14 and experience, do items that need to be tested by a lab  
15 get opened by someone other than you?

16 A. That's correct, a lab technician.

17 Q. What purpose would the lab technician have to  
18 open the item?

19 A. They would get a request from the homicide  
20 investigator that they need analysis and they would go  
21 get the item out of the property room and take it to  
22 their office and open it and do whatever they do, which  
23 I'm not aware of.

24 Q. Based on just common sense and your training  
25 and experience, would they have reason to open this

1 envelope?

2 A. As far as I'm concerned, yes.

3 Q. Do you have any reason to doubt that someone  
4 other than someone working for the crime lab opened this  
5 envelope?

6 A. As far as I know, no.

7 Q. Now, looking inside the envelope, I'm going to  
8 show you what's has been marked as State's Exhibit 73,  
9 74 and 75. Can you take a moment and look at that?

10 A. This is evidence --

11 *THE COURT:* She'll ask you another  
12 question.

13 A. This is evidence I collected at the scene and  
14 placed in these individual ziploc bags. And the reason  
15 I told you is I marked with my handwriting on here and  
16 the case information and location and the date and the  
17 particular tent marker that the items relate to.

18 Q. So, I see that, for the record, State's  
19 Exhibit -- well, before we get there.

20 Do you have any reason to think that  
21 someone other than yourself has opened these sealed  
22 ziploc baggies?

23 A. Only if they were submitted for testing.

24 Q. Is there anything on the outside of these  
25 envelopes that suggest to you they had been tested?

1           A.    Yes, ma'am.  The blue handwriting on these two  
2 envelopes here.

3           Q.    But for the blue handwriting on the outside of  
4 State's Exhibits 73, 74, 75, do these items appear to be  
5 in the same or substantially the same condition as when  
6 you last saw them?

7           A.    They do, yes.

8                    MS. EPLEY:  Your Honor, at this time State  
9 offers State's Exhibit 73, 74, 75 and tenders to  
10 opposing counsel for review.

11                   MS. VALENTINE:  No objection.

12                   THE COURT:  State's 73, 74 and 75 are  
13 admitted without objection.

14                   MS. EPLEY:  For the record, State's  
15 Exhibit 73, 74 and 75 all came out of an envelope that  
16 I'm now going to label 73A -- no?  I don't need the  
17 label?

18                   Permission to publish, Your Honor.

19                   THE COURT:  You may.  You may do it  
20 manually as well, if you like.

21                   MS. EPLEY:  Thank you, Your Honor.

22           Q.    (BY MS. EPLEY)  First, I want to show you here.  
23 Can you please show the jury where State's Exhibit 2 is?

24           A.    In this location right there, ma'am.

25           Q.    What is that?

1 A. That's one of the spent casings.

2 Q. What about State's Exhibit 3?

3 A. They would be right here at this location.

4 Q. State's Exhibit 2 -- excuse me. The Item No. 2  
5 in your diagram in State's Exhibit 3, is that the same  
6 as the item contained in State's Exhibit 73?

7 A. Yes, ma'am.

8 Q. And State's Exhibit 74, do these correspond to  
9 No. 2 and 3 respectively?

10 A. They do, yes, ma'am.

11 Q. I'm not suggesting one -- for example, this is  
12 73 or this is 74, but these two items come from those  
13 two spots?

14 A. That's correct.

15 Q. And State's Exhibit 75 is labeled No. 20. Can  
16 you please identify for the jury on the diagram where  
17 that was found?

18 A. At that location from that corner.

19 Q. Okay. Now, State's Exhibit -- what I am now  
20 going to refer to as State's Exhibit 73 and 74, the  
21 casings, can you remind the jury what kind of bullet --  
22 ammunition is used.

23 A. It's a .32 automatic.

24 Q. And what about Item No. 20 in your diagram now  
25 labeled State's Exhibit 75?

1 A. As far what caliber that is, I have no idea.

2 Q. Is that the type of information the firearms  
3 lab might be able to tell us?

4 A. That's correct.

5 Q. Other than the items we have already discussed,  
6 did you mark anything else at the scene?

7 A. I did. I marked the clothing as we discussed  
8 and all the blood trail. I used tent markers on that as  
9 well. And also the hat and the penny that was under the  
10 hat.

11 Q. But all of the items you just listed are  
12 contained within the diagram as Items 1 through 20?

13 A. That's correct, yes, ma'am.

14 Q. Other than Items 1 through 20, were there any  
15 other pieces of evidence you collected in this case?

16 A. I did not, no, ma'am.

17 MS. EPLEY: May I approach, Your Honor?

18 THE COURT: You may.

19 Q. (BY MS. EPLEY) Officer Pena, I'm showing you  
20 what has been marked as State's Exhibit 84. Do you  
21 recognize this item?

22 A. Yes, ma'am. This is a copy of the scene video.  
23 And the reason I say it's a copy because we shoot 8  
24 millimeter at that time. Now we're using digital.

25 Q. This has been digitally converted so it can be

1 on a disk?

2 A. That's correct.

3 Q. All right. And is it a fair and accurate  
4 depiction of what you videotaped on that day?

5 A. Yes, ma'am. I viewed it.

6 MS. EPLEY: Offer State's Exhibit 84,  
7 tender to opposing counsel.

8 MS. VALENTINE: May we approach, Your  
9 Honor?

10 THE COURT: Yes.

11 (At the Bench, on the record.)

12 MS. VALENTINE: Judge, my objection is  
13 that this is a crime scene video and at this point it  
14 has not been redacted so there is audio on it that could  
15 lead to testimony. Also, this being admitted, would go  
16 back to the jury and they would be able to see it.

17 MS. EPLEY: And if I may clarify, Your  
18 Honor. State withdraws our offer at this point and I'll  
19 just lay the predicate and we'll make the decision  
20 later.

21 THE COURT: Okay.

22 MS. VALENTINE: Thank you, Your Honor.

23 MR. BURDETTE: Just for the record, if we  
24 intend to offer it, we will redact all audio and just  
25 offer the video copy. Is that agreeable?



1 MS. VALENTINE: Yes.

2 THE COURT: Then all right.

3 MS. EPLEY: Thank you, Your Honor.

4 (End of bench discussion.)

5 MS. EPLEY: May I proceed?

6 THE COURT: You may.

7 Q. (BY MS. EPLEY) Officer Pena, who is  
8 responsible for collecting and bagging evidence?

9 A. I am at the scene.

10 Q. In the case involving this evidence, did you do  
11 that?

12 A. Yes, ma'am.

13 Q. After creating the diagram, measurements,  
14 taking pictures, doing the video, what else did you do?

15 A. We recanvassed the scene and looked for  
16 additional evidence and make sure we didn't leave  
17 anything, miss anything or, you know, anything that  
18 might have been missing when there was darkness.

19 Q. Was Officer Batiste on scene what you arrived?  
20 Do you know?

21 A. He was, but I didn't speak with him. I spoke  
22 with another officer.

23 Q. Do you have any reason to think that the scene  
24 had not been secure after the shooting?

25 A. I did not. They had the scene set up. As you

1 can see in the photos, the crime scene tape was put up  
2 prior to me getting there.

3 MS. EPLEY: If I can have just a moment,  
4 Your Honor?

5 THE COURT: You may.

6 MS. EPLEY: May I approach?

7 THE COURT: You may.

8 Q. (BY MS. EPLEY) Officer, I'm showing you what's  
9 been marked as State's Exhibit 85. Do you recognize  
10 this box?

11 A. Yes, ma'am. This is the box I placed the  
12 clothing in, along with the hat, the T-shirt, the blue  
13 jeans and such.

14 Q. That would be the hat in Item 1, correct?

15 A. That's correct.

16 Q. The jeans, brown shoes and shirt from Item 19?

17 A. That's correct.

18 Q. The blue shirt from Item 18?

19 A. That's correct.

20 Q. Is there anything else?

21 A. That should be it. It should say up here on  
22 the box.

23 Yeah, that's it.

24 Q. Do you see any indication that these items have  
25 been tampered with since they left your custody on

1 May 5th, 2011?

2 A. No, ma'am. Everything is still the same as  
3 when I tagged it.

4 Q. Same or substantially the same as the last time  
5 you saw it?

6 A. That's correct.

7 MS. EPLEY: The State offer State 85 and  
8 tenders to opposing counsel.

9 MS. VALENTINE: No objection.

10 THE COURT: Then State's 85 is admitted  
11 without objection.

12 MS. EPLEY: We have two more items PWAUFT  
13 CAN'T UNDERSTAND HER ON SYNC OR TAPE) because they are  
14 reported in the chain of custody and then we will be  
15 finished.

16 THE COURT: Okay.

17 MS. EPLEY: May I approach, Your Honor?

18 THE COURT: You may.

19 MS. EPLEY: For purposes of a clean  
20 record, I'm going to approach the defense for a moment.

21 Q. (BY MS. EPLEY) I'm showing you what's been  
22 marked as State's Exhibits 85 and 86 and keep them  
23 below. Eighty-six and 87, if you can keep them below.

24 Do you recognize these items?

25 A. I did not, but I did bring them here at your

1 request this morning.

2 Q. Okay. Have you tampered with them in any way  
3 since you picked up this evidence?

4 A. I have not, no, ma'am.

5 MS. EPLEY: State will offer these items  
6 at a later time, Your Honor. We just wanted to preserve  
7 the questions for chain of custody.

8 THE COURT: Okay. No objections?

9 MR. MARTIN: No, not if it's nothing to  
10 object to right now.

11 THE COURT: Okay. Thank you, sir.

12 Q. (BY MS. EPLEY) And, Officer Pena, the last  
13 items you brought, State's Exhibit 90, 91, 92, 93 and  
14 94, would you agree that all of those envelopes are  
15 sealed?

16 A. Yes, ma'am.

17 Q. Are they items that you can speak to or that  
18 you have logged in?

19 A. These items were checked out of the property  
20 room at your request to bring here today to court.

21 Q. Have you tampered with the envelopes in any  
22 way?

23 A. I have not.

24 MS. EPLEY: Again, the State will be  
25 offering these later. Just asking questions for

1 purposes of the record.

2 Pass the witness.

3 *THE COURT:* Okay. Thank you, Ms. Epley.

4 Mr. Martin or is it Ms. Valentine?

5 *MS. VALENTINE:* Thank you, Your Honor.

6 **CROSS-EXAMINATION**

7 **BY MS. VALENTINE:**

8 Q. Good afternoon, Officer Pena. How are you?

9 A. Afternoon, ma'am. I'm great.

10 Q. You talked earlier about -- you said you've  
11 been with HPD for 13 years, correct?

12 A. That's correct.

13 Q. Five of those you have been with the crime  
14 scene unit?

15 A. That is correct.

16 Q. And before that, you were in the Army for six  
17 years?

18 A. Six and a half, yes, ma'am.

19 Q. Okay. Now, you take your job as a police  
20 officer very seriously; is that correct?

21 A. I do, yes, ma'am.

22 Q. You also take your job working with the crime  
23 scene unit very seriously; is that correct?

24 A. I do, yes, ma'am.

25 Q. You do your best to do a good job no matter

1 what the task is; is that right?

2 A. That is correct, ma'am.

3 Q. When you become a police officer, you actually  
4 take an oath; is that correct?

5 A. That is correct.

6 Q. To uphold the law, ensure that justice is  
7 served, that type of thing; is that right?

8 A. Yes, ma'am.

9 Q. That's something you take seriously?

10 A. Yes.

11 Q. Earlier the prosecutor asked you what kind of  
12 scene you thought you were investigating; is that right?

13 A. That's correct.

14 Q. And you said initially, you thought you were  
15 investigating a murder scene; is that right?

16 A. That's the information I was given from  
17 Sergeant Bridges at the homicide desk.

18 Q. But given that you do your job effectively, you  
19 would take your job seriously whether you were  
20 processing a murder scene or whether you were processing  
21 an aggravated robbery scene; is that correct?

22 A. That's correct.

23 Q. You wouldn't make any type of distinctions of  
24 those things; is that correct?

25 A. Of course not.

1 Q. So, say you're responding to an aggravated  
2 robbery instead of a murder. You're not just going to  
3 leave evidence there because it's not a murder; is that  
4 right?

5 A. That's correct.

6 Q. So, regardless of what kind of scene you're  
7 processing, you take it seriously; is that right?

8 A. Yes, ma'am.

9 Q. You are going to do the most effective job that  
10 you know to do regardless of what type of scene it is?

11 A. I agree, yes, ma'am.

12 Q. Officer, I want to turn your attention to the  
13 diagram that you prepared. And it's on the screen as  
14 State's Exhibit No. 3? Three, believe it is?

15 A. Yes, ma'am, it's 3.

16 MS. VALENTINE: Judge, may I approach?

17 THE COURT: You may.

18 Q. (BY MS. VALENTINE) Officer Pena, I want to ask  
19 you, in particular, about -- now you have on here that  
20 the diagram is actually not drawn to scale; is that  
21 right?

22 A. That's correct, measurements are approximate.

23 Q. You do take measurements, but you're not sure  
24 they are actually right to scale?

25 A. That is correct. We don't do diagrams to

1 scale.

2 Q. According to the bottom of the screen, it does  
3 appear that you do have some type of measurements there;  
4 is that right?

5 A. As far as this location? Where are you talking  
6 about?

7 Q. At the bottom. It looks like -- trying to see.

8 THE COURT: Are you talking about the  
9 train tracks?

10 A. You talking about this line here?

11 Q. (BY MS. VALENTINE) Yes.

12 A. Okay. This depicts the 6-foot chain link fence  
13 that was in the back of that property separating it.

14 Q. Okay. All right. Now, Officer Pena, you  
15 indicated that the shooting is alleged to have occurred  
16 right where you have No. 1, No. 1A, No. 2, No. 4, that  
17 general area; is that right?

18 A. I allege that some incident started at that  
19 location. The reason I say shooting is because you have  
20 two spent casings there.

21 Q. But the blood does not begin until Area 5?

22 A. Well, there's some right here on 4, but from 5  
23 on.

24 Q. From 5 on?

25 A. Yes, ma'am.



1 Q. Incidentally, Officer Pena, did you do any type  
2 of measurements to see how much space there is between  
3 Marking 4, Marking 5?

4 A. Yes, ma'am.

5 Q. What are those measurements?

6 A. I would say it's about -- using this, if you  
7 see that right here, it is a RP. That's my reference  
8 point to get the measurements to all these locations  
9 here. When we take measurements, we take measurements  
10 from two different locations.

11 In this case, this being east and west and  
12 this being north and south, then we would take  
13 measurements from this corner here down south. So that  
14 would be north-to-south measurements. Then we would  
15 take measurements from, in this case, east to west to  
16 the location of them. The measurement you're looking  
17 for would be between 4 and 5, looking at about a hundred  
18 feet.

19 Q. What about the measurements between Nos. 2 and  
20 3?

21 A. You want east or west measurement or north and  
22 south measurement?

23 Q. The north and south measurement.

24 A. Between 2 and 3?

25 Q. Yes.

1           A.    I would say that's about 80 feet.

2           Q.    Now, Officer Pena, you indicated when you first  
3 got to the scene, one of your jobs is to talk to the  
4 primary officer there?

5           A.    That's correct.  It's protocol.

6           Q.    In this instance you were actually dispatched  
7 out at 2:32 a.m.?

8           A.    About, yes, ma'am.

9           Q.    And you arrived there at 3:47 a.m.?

10          A.    Yes, ma'am.

11          Q.    But when you got there, the fire department had  
12 already been there; is that right?

13          A.    That is correct.

14          Q.    Mr. Moore had already been taken away; is that  
15 correct?

16          A.    Yes, ma'am.

17          Q.    And the initial arriving officers had already  
18 been there for at least a few hours?

19          A.    That is correct.  I'm not aware what time they  
20 got dispatched.  Yes, ma'am.

21          Q.    Now, Officer Pena, although the officers may  
22 have secured the scene when they got to the scene, you  
23 don't know what had happened before the officers  
24 arrived; is that correct?

25          A.    That's correct.

1 Q. So, if somebody had touched something or  
2 something like that before the officers were able to  
3 secure the scene, you would not be able to testify to  
4 that?

5 A. No, ma'am.

6 Q. As an indication of that, you had indicated you  
7 had marked No. 18, which had been kind of like a white  
8 T-shirt.

9 A. That's correct.

10 Q. That's something that you marked at the time,  
11 but later on, when you were going through the evidence,  
12 you realized it probably had no bearing at all in this  
13 particular case?

14 A. That's correct.

15 Q. Given that you were able to find maybe some  
16 piece of clothing or something else that you initially  
17 marked for evidentiary value, there could have been  
18 other things that could have been at the scene prior to  
19 you getting there?

20 A. That's correct, yes, ma'am.

21 Q. And prior to this incident in total?

22 A. Correct.

23 Q. And possibly even after but before the police  
24 got there to secure the scene?

25 A. That is correct. That's why in CSU we have a

1 saying. We go out there and try to collect what's  
2 fresh. Fresh is a good word in CSU because we try to  
3 get stuff that we know hasn't been out there baking in  
4 the sun for a month, like cigarette butts, beer cans.  
5 And with our experience, we can pretty much tell if it's  
6 fresh.

7 Q. Okay.

8 MR. MARTIN: May we have a moment, Your  
9 Honor?

10 THE COURT: You may.

11 (Pausing.)

12 MS. VALENTINE: May I approach, Your  
13 Honor?

14 THE COURT: You may.

15 Q. (BY MS. VALENTINE) Officer Pena, I'm going to  
16 show you -- do you recognize this document?

17 A. Yes, ma'am. This is a copy of my diagram with  
18 the measurements.

19 Q. Okay. So, you had two different diagrams, one  
20 with measurements and one without?

21 A. It's not two different ones. When I completed  
22 it, I have one with measurements and one without because  
23 that's what the investigators like.

24 Q. So, even though you have one with measurements,  
25 the one that you're looking at right now is State's 3

1 and the one that has been admitted is one without  
2 measurements?

3 A. That's correct, yes, ma'am.

4 MR. MARTIN: Could we have a moment,  
5 Judge?

6 THE COURT: You may.

7 (Pausing.)

8 Q. (BY MS. VALENTINE) Officer Pena, do you have  
9 an approximate measurement from Marker No. 20 that was  
10 found to Marker No. 2?

11 THE COURT: Would you draw that line on  
12 the diagram?

13 A. Yes. You would have to blow up the whole  
14 diagram here so I can draw the line like the Judge  
15 requested. And you are talking about No. 2 here to  
16 No. 20?

17 Q. (BY MS. VALENTINE) Yes.

18 A. That location? This one, there is not going to  
19 be a measurement for it. The reason for it, if we find  
20 evidence after we take a video and we take measurements,  
21 then there is no measurement to it. I can get one for  
22 you. And basically all you have to do is count the  
23 parking spaces. Each packing space is about 8 to 9 feet  
24 wide and then just do the math.

25 Q. Okay. You indicate that Item 20 was actually

1 found when it was light outside and you were able to see  
2 a lot more than you could when it was dark?

3 A. That's correct. Sergeant McPherson found that  
4 for me at this location.

5 Q. That is the casing you're unable to identify  
6 what kind of caliber?

7 A. It's not a casing, ma'am.

8 Q. A live bullet? I'm sorry.

9 A. It's not a live bullet either.

10 Q. Live jacket?

11 A. It's a bullet jacket.

12 Q. You are not able to determine what kind of  
13 caliber that's from?

14 A. Just by looking at it, no.

15 Q. Officer Pena, do you know why a particular  
16 crime investigator would want a diagram without  
17 measurements?

18 A. No. It's actually for several reasons that we  
19 do two types of diagrams, with measurements and without  
20 measurements. One, when you look at your diagram and  
21 you look at this one, you see a bunch of the legends  
22 where it describes the evidence, then you see  
23 measurements. You get a cluster. So, if you try to do  
24 everything on one diagram on one sheet, it's just going  
25 to be a big cluster. And it's going to confuse them and

1 it's going to confuse you guys and it's going to confuse  
2 the jury.

3 So, for that reason, we do two. Just make  
4 it easier on the eye for everybody.

5 MS. VALENTINE: May I approach?

6 THE COURT: You may.

7 Q. (BY MS. VALENTINE) Officer Pena, just showing  
8 you what's been marked as State's Exhibit 95. Is that a  
9 copy of the diagram with the measurements?

10 A. Yes, ma'am, it is.

11 MS. VALENTINE: Judge, I would move to  
12 offer State's 95 into evidence.

13 MR. BURDETTE: It's an agreed exhibit,  
14 Judge.

15 THE COURT: State's or it's your exhibit,  
16 isn't it?

17 MR. BURDETTE: Judge, I had already marked  
18 it. So, we can offer it as an agreed exhibit.

19 THE COURT: State's Exhibit 95 is admitted  
20 without objection.

21 MS. VALENTINE: Thank you. And pass the  
22 witness.

23 THE COURT: Redirect?

24 MS. EPLEY: Quickly, Your Honor.

25

**REDIRECT EXAMINATION**

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**BY MS. EPLEY:**

Q. Officer Pena, as to the one without measurements, when you came to my office, did we discuss both?

A. Yes, we did.

Q. Would you agree that it was discussed that it was easier to present the one without measurements because it didn't have longitude and latitude?

A. That's correct. I made that suggestion to you, ma'am.

Q. But, otherwise, State's Exhibit 95 is an exact replica of the one we've been using all day?

*MS. EPLEY:* Permission to publish, Your Honor?

*THE COURT:* You may.

Q. (*BY MS. EPLEY*) And here in this middle part, I'll go through this quickly, but you still see, for example, 1 2, 3, 4 line from 5 to 9, and then 10 up to 19 here, correct?

A. That's correct, ma'am.

Q. The difference could be just numbers here, for example, here across the length and then this main section right here?

A. That's correct.



1           Q.    There's nothing that was on it earlier in the  
2 prior diagram is now missing, for example?

3           A.    No, ma'am.  We take a lot of time to complete  
4 these diagrams -- don't get me wrong -- sometimes we  
5 might have a measurement that's missing or something  
6 from one with the measurement to one without the  
7 measurement, but rarely happens.  Rarely happens.

8           Q.    Just a couple more in regards to casings that  
9 were found here, 2 and 3.  These were the .32 caliber  
10 casings.

11                         Now, Officer, how does a casing get  
12 ejected from a gun?  Do you know?

13           A.    Yes, ma'am.  You're in luck because of my  
14 military training.

15                         All weapons basically, unless you're a  
16 left-hand shooter or if it's a semiautomatic weapon, and  
17 what I mean by semiautomatic weapon, it's the  
18 semiautomatic weapon is a weapon that's a square-looking  
19 weapon that you see most of the time and what we use in  
20 the police, whatever, not the cowboy weapon that you see  
21 with the little circle in it.  These weapons are  
22 designed to eject a fired bullet out the muzzle and then  
23 the casing goes out to the side, to the right and to the  
24 rear.  And most of them are designed that way.

25                         As I stated earlier, if you're a

1 left-handed shooter, then they are going to eject to the  
2 left and to the rear, but that's rarely.

3 Q. Okay. But, Officer, you can't say just because  
4 the typical casing ejects out and to the rear doesn't  
5 mean you can tell where someone was standing based on  
6 where the casing is, right?

7 A. You can, but you have to go into hours and  
8 hours of testimony in how to determine that and you can.  
9 Yes, you can.

10 Q. Well, anything is possible in science. So,  
11 let's say the casing is ejected and I kick it. How do  
12 you know where I was standing?

13 A. If it's windy out there and you have nice  
14 Italian tile or granite, it's just going to slide off.  
15 And you're correct on that, yes, ma'am.

16 Q. Okay. What about -- no, I think you answered  
17 it.

18 MS. EPLEY: No further questions.

19 THE COURT: Okay. Mr. Martin, recross --  
20 Ms. Valentine?

21 MS. VALENTINE: No.

22 THE COURT: Then, Officer, thank you very  
23 much. You're excused.

24 MS. EPLEY: State calls Officer Nelson.

25 (Witness sworn.)