

1 THE COURT: Yes.

2 R. SCHOBNEY,

3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 CONT'D BY MS. KNECHT:

6 Q. Sergeant Schobey, at some time during your
7 investigation on March 3rd, did you develop a photo
8 array with the help of another officer?

9 A. Yes, ma'am.

10 Q. And in comprising that photo array, did you
11 have a picture of Albert Thompson placed within that
12 photo array?

13 A. Yes, ma'am.

14 MS. KNECHT: May I approach the witness,
15 Judge?

16 THE COURT: You may.

17 Q. (By Ms. Knecht) I'm going to show you what's
18 been pre-marked as State's Exhibit No. 21. Do you
19 recognize this (indicating)?

20 A. Yes, ma'am.

21 Q. What is that?

22 A. This is the sheriff's office admonishment form.

23 Q. Okay. When you say "admonishment form," what
24 do you mean? What is it?

25 A. Basically, it's an instruction sheet. When you

1 go to show somebody a photo array, it tells them what
2 they shouldn't and should do.

3 Q. Are there procedures in place for the sheriff's
4 department to use any kind of show-up photo array to a
5 witness?

6 A. Yes.

7 Q. And what's the purpose of that?

8 A. It keeps everything above reproach.

9 Q. And do y'all have a procedure that you use in
10 every case?

11 A. Yes.

12 Q. And does that include showing this admonishment
13 form to the witness?

14 A. Yes.

15 Q. Okay.

16 A. Now, granted, every once in a while, if it's
17 just a weird case you may have to do a verbal
18 admonishment, but we still do the admonishment before we
19 show any type of photo array.

20 Q. Did you do a written admonishment in this
21 particular case?

22 A. Yes.

23 Q. Then looking at State's No. 21, is this a black
24 and white copy of the photo array that you showed to
25 Tereva Smith (indicating)?

1 A. Yes, ma'am.

2 Q. And when you comprised this photo array or when
3 you work with officers to comprise a photo array, what
4 are some things that you are taking into consideration
5 when making a photo array?

6 A. We try and look at the topic image and try to
7 pick five other images that would sort of have the same
8 physical characteristics. I'm not saying they should
9 look exactly alike, but we try and go like same
10 hairstyles, same ethnic origin, same type clothing, or at
11 least some of the pictures should have some of the same
12 clothing as to not build a bias against one particular
13 individual.

14 Q. And then showing you State's Exhibit No. 32.
15 Is this just a color copy --

16 A. Yes, ma'am.

17 Q. -- of State's Exhibit No. 21 (indicating)?

18 A. Yes, ma'am.

19 Q. In looking at both State's Exhibits 21 and 32,
20 the photographs, are all of the people in the photograph
21 male?

22 A. Yes, ma'am.

23 Q. Are they all approximately the same age?

24 A. Yes, ma'am.

25 Q. Do they have approximately the same color skin?

1 A. Yes, ma'am.

2 Q. Do they have the type of hairline?

3 A. Yes, ma'am.

4 Q. What about the same sort of facial features,
5 like eyebrows and that kind of thing?

6 A. You could say they're pretty similar.

7 Q. Anything about this photo array, when you had
8 it comprised, that would make it suggestive to Ms. Ross?

9 A. No, ma'am.

10 Q. Now, when you read the instructions to
11 Ms. Ross, did you tell her that, look, you need to make
12 a selection here?

13 A. No. In fact, that's one thing I stress, is
14 that you're under no obligation to identify anybody.
15 It's better not to identify anyone than to guess.

16 Q. And so, you told her don't guess?

17 A. Exactly.

18 Q. When you are showing a witness a photo array,
19 do you show it to them by themselves or in a group or
20 how do you do that?

21 A. I will separate the people -- or the person
22 that I'm going to show the photo array to. We'll go
23 into another room for privacy. And plus, if there is
24 anyone else that's going to see the photo array, we
25 don't want them to have an unbiased opinion by

1 overhearing something.

2 Q. Okay. So, when did you actually show the photo
3 array to Ms. Ross?

4 A. It was on March 3rd, 2011, that day.

5 Q. Okay. That day.

6 And where did you show her the photo array.

7 A. I showed at her place of employment at Wells
8 Fargo Bank.

9 MR. SMITH: Capital One.

10 THE COURT: I'm sorry. Please retire the
11 jury.

12 (Open court, defendant present, no jury)

13 THE COURT: Thank you. Please be seated.
14 Who is that talking?

15 VENIREPERSON: I'm the husband of Tereva
16 Smith.

17 THE COURT: Come on up, sir.

18 What's your full name?

19 MR. SMITH: Shaun Landry Smith, Sr.

20 THE COURT: You understand it's very
21 serious that you're not under oath and not under
22 questioning and you just communicated information to the
23 jury.

24 MR. SMITH: Okay.

25 THE COURT: And you're going to cause a

1 mistrial and we're going to have to redo all of this.
2 So, I'm going to order you not to be in the courtroom
3 any more during this trial. Obviously, you can't behave
4 yourself. Sitting in the audience and yelling out like
5 that, do you know how often I've seen that happen during
6 the trial? You are the first one ever. So, you don't.
7 Surely you know that. So, you are out of here. Don't
8 come back in the courtroom. And I'll order you not to
9 be on this floor.

10 MR. SMITH: Yes, ma'am.

11 THE BAILIFF: This way, sir.

12 THE COURT: Wait for your wife somewhere
13 else.

14 (Mr. Smith escorted out of courtroom)

15 THE COURT: I propose an instruction to the
16 jury to disregard any comments made by anyone in the
17 audience. Is that all right with everyone?

18 MS. KNECHT: That's fine.

19 MR. OWMBY: That's fine.

20 THE WITNESS: Judge, may I? He is correct.
21 It was the Capital One Bank. I misspoke when I said
22 Wells Fargo.

23 THE COURT: Y'all can clear that up.

24 THE WITNESS: Yes, but he was correct.

25 (Open court, defendant and jury present)

1 THE COURT: Thank you.

2 Please be seated.

3 Members of the jury, something was said by
4 someone in the audience. So, you should disregard what
5 was said from the audience and not consider it for any
6 purpose. Thank you.

7 MS. KNECHT: May I proceed, Judge?

8 THE COURT: Yes.

9 MS. KNECHT: Thank you.

10 Q. (By Ms. Knecht) Sergeant Schobey, did you
11 proceed to the Capital One Bank at 529 and Fry?

12 A. Yes, ma'am.

13 Q. Okay. So, when you got to the bank, who did
14 you meet with?

15 A. When I got to the bank, I met with Ms. Tereva
16 Ross-Smith.

17 Q. Okay. And did Ms. Ross talk with you about the
18 case?

19 A. We discussed the generalities of it. I wanted
20 to make sure she understood what we were there for
21 and -- but, yes.

22 Q. You didn't take a formal statement from her, I
23 guess?

24 A. No, no.

25 Q. Okay. And did you take her away from the other

1 patrons and employees of the bank?

2 A. Yes.

3 Q. Where did you show her the photo array?

4 A. I took her to one of the side offices.

5 Q. And did you go over the admonishments that we
6 talked about?

7 A. Yes, ma'am.

8 Q. Did you give her an opportunity to make a
9 selection?

10 A. Yes, ma'am.

11 Q. Was she able to do so?

12 A. Yes, ma'am.

13 Q. And after she made that selection, did you tell
14 her: Hey, good job, or anything like that?

15 A. Not that I'm aware of, no.

16 Q. Did you ever tell her: Hey, you picked the
17 right guy, you got him, or anything like that?

18 A. No. We still had more people we wanted to show
19 the photo array to. So, no.

20 Q. Okay. And after you met with Ms. Ross -- let
21 me show you this.

22 MS. KNECHT: Judge, may I approach the
23 witness, please?

24 THE COURT: You may.

25 Q. (By Ms. Knecht) I'm going to show you what's

1 already been admitted into evidence as State's Exhibit
2 No. 18. Do you recognize that (indicating)?

3 A. Yes, ma'am.

4 Q. And while I'm up here, 19 (indicating)?

5 A. Yes, ma'am.

6 Q. And 20 (indicating)?

7 A. Yes, ma'am.

8 Q. Okay. Now, you mentioned that you were part of
9 the group or officers that showed up where the
10 individual driving the Chrysler was stopped; is that
11 right?

12 A. Yes, ma'am.

13 Q. Okay. And I'm going to show you State's
14 Exhibit No. 20. And if you would, kind of point to us
15 on State's Exhibit No. 20 approximately where that stop
16 was made. You need me to blow it up?

17 A. I'm trying to see where 529 would be.

18 Q. 529 --

19 A. Oh, yes. I was looking over on Freeman. It
20 would be just to the right of where it has Stockdick
21 School Road.

22 Q. Okay. So, right where my finger is here
23 (indicating)?

24 A. Yes, ma'am, right in that general area.

25 Q. So, for the record, that's going to be at the

1 intersection of 529 and the School Road {sic},
2 approximately to the right of that area just a little
3 bit, just for the record; is that right (indicating)?

4 A. Yes, ma'am.

5 Q. Then I'm going to show you State's Exhibit
6 No. 18. What are we looking at here?

7 A. Right here is the intersection of 529 and Fry.
8 And on the southwest quadrant to that, which would be
9 the bottom left, would be the bank.

10 Q. So, right here is the Capital One (indicating)?

11 A. Yes, ma'am.

12 Q. How close is that Capital One location to the
13 area where the defendant was stopped on March 3rd?

14 A. A couple of miles.

15 Q. So, close?

16 A. Yes, ma'am.

17 Q. And in doing your investigation at some point
18 did you learn where the defendant lived?

19 A. Yes, ma'am.

20 Q. Do you recall what street it was?

21 A. Cypress Vale.

22 Q. Showing you State's Exhibit No. 19. Is that
23 what we see here where I have this "A" (indicating)?

24 A. Yes.

25 Q. And that "A" represents where the defendant

1 resided?

2 A. Yes, ma'am.

3 Q. Does -- this yellow line that goes across the
4 page here, is that 529 (indicating)?

5 A. Yes, ma'am.

6 Q. And here we see Fry Road (indicating)?

7 A. Yes, ma'am.

8 Q. This box, if I can -- this outline that we see
9 here, that same southwest quadrant that we talked about
10 in State's Exhibit No. 18, is that where the Capital One
11 Bank is located (indicating)?

12 A. Yes, ma'am.

13 Q. So, is that close to where the --

14 A. Yes, ma'am, that's very close.

15 Q. Within a couple of miles?

16 A. Yes, ma'am.

17 Q. And going back to State's Exhibit No. 18,
18 looking at the satellite view of it. So, if this is the
19 bank here, this Capital One Bank, where we see this
20 neighborhood in the top left-hand corner of State's
21 Exhibit No. 18, is that the neighborhood where the
22 defendant lived (indicating)?

23 A. I believe it is.

24 MS. KNECHT: Judge, may I have just a
25 moment?

1 THE COURT: You may.

2 (Pause)

3 MS. KNECHT: Judge, I pass the witness.

4 THE COURT: Thank you.

5 Mr. Owmbly.

6 MR. OWMBY: Thank you, Your Honor.

7 **CROSS-EXAMINATION**

8 **BY MR. OWMBY:**

9 Q. Good afternoon, Detective Schobey.

10 A. How are you doing, sir?

11 Q. You went to the bank on March 3rd, 2011; is
12 that correct?

13 A. Correct.

14 Q. And this was hours -- would it be fair to say
15 hours after you had first met Mr. Thompson at the scene
16 of the stop where the car was stopped; is that correct?

17 A. Yes, sir.

18 Q. Now, this was on a Thursday. You had called
19 the bank to see if any of the people that were working
20 on February 19th, 2011 were there on March 3rd, that
21 would be a natural thing to do to see if we got lucky
22 and had those witnesses there at the bank that day; is
23 that correct?

24 A. Yes, sir.

25 Q. So, you called and found out that Ms. Ross and

1 Bridget Tate were there at the bank?

2 A. Correct.

3 Q. Now, were there any other people there that had
4 been there on February 19th, 2011?

5 A. When I called I spoke with Ms. Hamilton, I
6 believe, the assistant branch manager and asked her if
7 the complainants were there, the main people, and she
8 told me about Ms. Ross and Ms. Tate being there.

9 Q. All right. Well, and she told you Ms. Ross and
10 Ms. Tate were there?

11 A. Yes. She said two of the three people were
12 there.

13 Q. All right. So, you said you spoke to
14 Ms. Hamilton. So, she either was not there or was not
15 in the position to see anything at the time of the
16 robbery; would that be a fair thing to say?

17 A. Yes.

18 Q. All right. So, you go -- you go there and
19 Ms. Ross and Ms. Tate are there working. Do you pull
20 them aside?

21 A. Yes, individually.

22 Q. And you pulled them aside individually and you
23 leave them there at their work station as you take each
24 one into a room that, I guess, you had borrowed from the
25 bank for that purpose; is that correct?

1 A. Yes.

2 Q. And according to the notes on the forms you
3 interviewed Ms. Ross at 2:52 and Ms. Tate at 3:00; is
4 that right?

5 A. Yes. I can take a look at the form to make
6 sure, but I believe that is correct.

7 Q. Okay. But it took -- did you take about eight
8 minutes with Ms. Tate also?

9 A. No, sir. Not necessarily that it takes that
10 length of time. You show the admonition form, you show
11 the photo array, and the other person may have been busy
12 finishing with a customer. I don't remember exactly how
13 long it took for her to come.

14 Q. All right. But at least the forms were signed
15 eight minutes apart 'is that correct?

16 A. I need to see -- look at the forms to see the
17 times, but, yes.

18 Q. Now, did you talk with Ms. Ross any longer
19 after she made her positive identification?

20 A. Right now, I don't remember speaking with her
21 afterwards. I remember we finished that up, I thanked
22 her, and went for the other.

23 Q. All right. So, correct me if I'm wrong, but
24 one of the things that is normally done is that you take
25 formal witness statements at or near the time of the

1 incidents; is that correct?

2 A. Yes, sir.

3 Q. And a formal witness statement means a
4 statement that the witness either dictates and reviews
5 and signs and says: Yes, swear to this, or writes in
6 there on hand and swears to. Is that correct?

7 A. Those are formal statements, yes.

8 Q. Right. That's what I'd describe as a formal
9 statement.

10 A. Okay.

11 Q. I'm asking, are we in agreement, that that's --

12 A. Yes, that can be a formal statement.

13 Q. And the purpose -- I'm sorry. The purpose for
14 getting that statement is so the witness has a chance to
15 be sure that nobody misinterpreted or mistranslated what
16 they said; is that correct?

17 A. Yes.

18 Q. And that's an important part of police work
19 because you certainly want at least this witness to
20 write down their recollections while they're fresh; is
21 that right?

22 A. If you are going to go with that type of
23 statement, yes.

24 Q. Right.

25 And another type of statement is for

1 someone to say something to an officer, he takes his own
2 notes, never shows them to the witness, so the witness
3 doesn't have the opportunity to say: Well, yeah, that
4 is it what I said or that is not what I said. That's
5 another type of statement that you could use, correct?

6 A. Well, me personally, I would not just take the
7 notes and then, you know, hide them where the person
8 couldn't see them. When I take notes like that, say
9 when we go out on the bank robbery scenes, we sort of
10 follow the FBI guidelines as far as how we do our
11 interviews, which we will take the notes, I will take
12 all the detailed notes, and then go back over with the
13 person as to, you know, exactly what transpired as far
14 as I have written.

15 Q. Right.

16 A. And the person will say: Yes, that's correct,
17 or change this or change that. I will make the
18 appropriate changes and then I put that inside my
19 report.

20 Q. But I suppose that as opposed to the local
21 police departments who -- and, I mean, if I'm saying
22 something that's not right -- most local police
23 departments take statements from witnesses when they
24 have the opportunity, take formal statements as we have
25 been calling them here today when they have the

1 opportunity; is that correct?

2 A. Yes.

3 Q. So, someone interviewed Ms. Ross closer to the
4 time of the incident that would be February 19th, 2011.
5 Is that right?

6 A. Yes.

7 Q. And did she talk about the weapon at all during
8 that time?

9 MS. KNECHT: Judge, I object. This calls
10 for hearsay.

11 THE COURT: Sustained.

12 Q. (By Mr. Owmbly) Well, let me ask you -- ask you
13 this: Does she have a formal statement from February
14 19th, 2011? Did anybody take a formal statement from
15 her on February 19th, 2011?

16 A. The statement that was taken was -- she was
17 interviewed by Agent Mark Michalek of the FBI and --

18 Q. Right. But did anybody take what we have been
19 calling here a formal statement, a statement that was
20 written down, that she could review, sign, and/or
21 affirm, as you said, so that there is no untoward --
22 nothing is missed? Because you had her sign something
23 to make sure that, yes, this is what I was read, didn't
24 you?

25 A. When I showed her the admonition part of this?

1 Q. Yes. But that wasn't done on February 19th,
2 was it?

3 A. The standard way that the FBI does it --

4 Q. Right.

5 A. -- they will go interview the person, they will
6 go over it with the person, and their notes are the
7 interview.

8 Q. So, she didn't sign a formal statement, she
9 didn't get to go over what she said in this case?

10 A. I did not -- I was not present, but as far as
11 her being able to sign anything, no, there's nothing for
12 her to sign.

13 Q. There's nothing in your files or the task
14 force's files indicating that she signed anything?

15 A. Well, there's an F-D2303 from Mark Michalek
16 indicating what her statement was.

17 Q. Did she sign that?

18 A. No, sir. It's not their custom. It's not
19 their procedure.

20 Q. All right. Let me ask you this. You found
21 what's been marked as State's Exhibit No. 16. I'm
22 sorry. Yes. No. It is 16, the weapon?

23 A. Yes, sir.

24 Q. And you found that in the car. And as you
25 pointed out to the jury --

1 A. Actually, sir, it was not inside the car. It
2 was in the ditch behind the vehicle.

3 Q. You found it at that scene on March 3rd and you
4 pointed out to the jury that there are red dye stains on
5 the weapon.

6 A. Yes, sir.

7 Q. Would you look inside the pistol grip?

8 A. Okay.

9 Q. Now, there are red dye stains inside that
10 pistol grip also, aren't there?

11 A. There's some right at the outer edge of it. I
12 wouldn't say there's any further down in it, but maybe
13 I'm missing it. Is there any further down?

14 Q. Let me see. Maybe you can show the jury there
15 is --

16 A. Yes. Right here on the outer edge, right here,
17 but it doesn't seem like it went any further down into
18 the grip (indicating).

19 Q. All right. So, there's that red mark there
20 (indicating).

21 A. Right. It's almost --

22 Q. And there's a red --

23 THE COURT: Excuse me.

24 The witness and the lawyer may not talk at
25 the same time. Mr. Owmbly, you are an experienced trial

1 lawyer. Don't talk over the witness and help with the
2 pacing, please.

3 Q. (By Mr. Owmbly) And there's some red mark there
4 (indicating)?

5 A. May I get up and --

6 Q. Uh-huh.

7 A. Basically, we have some reddening right here
8 and right here, but it seems like it stops right there
9 and doesn't carry further into the actual recessed area
10 where the clip would go. It's almost like if -- when
11 the clip was in, maybe it was just --

12 Q. So --

13 A. -- right there on the side (indicating).

14 Q. -- without speculating --

15 THE COURT: Just remember, let him finish
16 his question -- his answer all the way through before
17 you start --

18 A. If something is inserted in something --

19 Q. Well --

20 THE COURT: Hold on. Your answer is over.
21 Let him ask the next question.

22 MR. OWMBLY: And I --

23 THE COURT: Let me talk, too, before you
24 jump. You are too quick on the draw, Mr. Owmbly.

25 All right. Thank you. Wait for the next

1 question, please.

2 Q. (By Mr. Owmbly) Are you familiar with the
3 operation of this weapon and how the magazine is loaded?

4 A. How it's loaded?

5 Q. How the magazine is loaded into this weapon.

6 A. I'm not real familiar with a Smith & Wesson,
7 per se. I do not own one, but I'm a little familiar
8 with some semiautomatic handguns.

9 Q. Most semiautomatic handguns, when the weapon is
10 loaded, it might not create an airtight seal, but most
11 magazines create a seal on the bottom when they load,
12 don't they?

13 A. When the magazine slides into the actual pistol
14 grip --

15 Q. If they don't, you can just answer "no."

16 A. I would say depending on tightness of the
17 magazine, but it should have some kind of seal there,
18 yes.

19 Q. Because the magazine has a -- kind of a -- I
20 call it a flange bottom, but there is a rim around the
21 bottom of the magazine so that when it fits, it creates
22 a solid base across the bottom. Is that true?

23 A. I would say no.

24 Q. All right. Do you have a magazine?

25 A. Yes, sir. I carry an automatic.

1 Q. Can I see it?

2 A. It's fully loaded right now. If you want to
3 have a bailiff unload my weapon, I can --

4 THE COURT: Well, I don't think it's proper
5 to use the officer's weapon for demonstration.

6 MR. OWMBY: All right.

7 THE COURT: Excuse me. If you want to get
8 a demonstration weapon over here or something, we can
9 always take a brief recess, an afternoon recess.

10 Are you finished with this weapon or will
11 use it some more?

12 MR. OWMBY: No, I'm not going to use it.

13 THE COURT: Will the bailiff come get it?

14 THE BAILIFF: Yes, ma'am.

15 THE WITNESS: May I say one thing?

16 THE COURT: No, sir. You have to answer
17 questions that are asked.

18 THE WITNESS: All right.

19 Q. (By Mr. Owmbly) Did you find a clip at the
20 scene?

21 A. No, sir.

22 Q. Did you collect --

23 MR. OWMBY: And, Your Honor, I'm sorry. I
24 may need that weapon.

25 THE COURT: Well, you can have it any time

1 you need it.

2 MR. OWMBY: Thank you, Judge.

3 Q. (By Mr. Owmbly) You collected a hat at the
4 scene; is that correct?

5 A. I'm sorry. Did you say hat?

6 Q. On the scene, at the scene of March 3rd, 2011,
7 on 529, did you collect a hat?

8 A. Yes, sir.

9 Q. And you marked it and submitted it to the
10 laboratory; is that correct?

11 A. Yes.

12 Q. And you submitted it to undergo testing; is
13 that correct?

14 A. Correct.

15 Q. You took custody of all the money; is that
16 correct?

17 A. Correct.

18 Q. You submitted the weapon to the firearms lab so
19 they could check -- or to a fingerprint lab so they
20 could check for the possibility of fingerprints; is that
21 correct?

22 A. Yes. I asked for latent and for DNA swabbing.

23 Q. But you did not submit the weapon to a firearms
24 examination, did you?

25 A. Yes, sir. It's standard procedure with the

1 sheriff's office.

2 Q. Was the weapon functioning?

3 A. When you -- the laboratory result came back and
4 said: Yes, the weapon was functional.

5 Q. Do you have the laboratory results with you?

6 A. I believe it's with the prosecutors.

7 Q. Was the rust on the magazine release lever
8 there when you picked the weapon up?

9 A. I don't remember, sir. I'm sorry.

10 Q. Could you see it in the photograph?

11 A. I'd have to look at the photograph again.

12 Q. Did you show Bridget Tate a photospread?

13 A. Yes, sir.

14 Q. Now, both Bridget Tate -- the description you
15 had were of a person wearing a hat and glasses; is that
16 correct?

17 A. Correct.

18 Q. Now, when you showed the photospread, did
19 anybody else make a positive identification besides
20 Ms. Ross?

21 A. At this location?

22 Q. Yes.

23 A. No.

24 Q. You took a photograph of the cartridge that you
25 removed from the gun at the scene?

1 A. Yes. The casing is with the weapon.

2 Q. The casing is what I'm speaking of.

3 MS. KNECHT: It's with the weapon.

4 MR. OWMBY: I didn't want -- I want the
5 photograph.

6 MS. KNECHT: Right here (indicating).

7 Q. (By Mr. Owmby) The reason I'm asking that --
8 let me see if I can zoom in -- there are some markings
9 on the casing; is that correct (indicating)?

10 A. Yes, sir, it appears to have some markings on
11 it.

12 Q. Some of the markings appear to be laboratory
13 markings, or, perhaps, your markings for identification;
14 is that correct?

15 A. I did not write on the casing because I did not
16 want to disturb any kind of evidence that may have been
17 on the casing. That's why I packaged it and marked on
18 the package.

19 Q. Is the casing old? Is it rusty?

20 A. I can't say on the age of a piece of brass.
21 You know, if it gets moisture on it, it could look older
22 than it would appear.

23 Q. If it got moisture on it -- and we're talking
24 about -- and that's why I want the photograph. We're
25 talking about the casing as it appeared to you that day.

1 A. Right.

2 Q. So, you think it could have had moisture on it
3 and --

4 A. No. I was answering your question. You said
5 if something looked older.

6 Q. I'm asking: Did it look older that day?

7 A. As far as the picture, it looks like it has
8 markings on it. As to the age of it, I can't say.

9 Q. Could it be rust markings?

10 A. I don't know, sir. I'm not sure if brass
11 rusts.

12 Q. Based on your training and experience, did it
13 look like the weapon had been recently fired?

14 A. I can't make that determination, sir.

15 Q. Have you been able to make that determination
16 in other cases?

17 A. Whether a weapon has been recently fired?

18 Q. Right.

19 A. Not me.

20 MR. OWMBY: Pass this witness.

21 THE COURT: Thank you.

22 MS. KNECHT: May I approach the witness,
23 Judge?

24 THE COURT: Yes, ma'am.

25 **REDIRECT EXAMINATION**

1 **BY MS. KNECHT:**

2 Q. I'm going to show you State's Exhibit No. 16.
3 Is this the firearm that we have been talking about
4 (indicating)?

5 A. Yes, ma'am.

6 Q. Based on your training and experience, do you
7 believe that if a clip had been in the chamber here that
8 it would have prevented the red dye from going up into
9 the chamber?

10 A. That is my belief.

11 Q. Okay. In looking at this, do you see any red
12 dye up in the chamber?

13 A. I do not. The light is not the best in here,
14 but I do not.

15 Q. Okay. Is it fair to say that when that dye
16 pack exploded, it went all over that car?

17 A. Yes. The smoke would have been everywhere.
18 Out the windows, everywhere.

19 Q. So, when we're talking about a dye pack
20 exploding, are we talking about a few drops or is it
21 something that's pretty --

22 A. It's pretty intense.

23 Q. Okay.

24 MS. KNECHT: Judge, I pass the witness.

25 THE COURT: Thank you.

1 Any recross?

2 MR. OWMBY: Just a couple.

3 **RECROSS-EXAMINATION**

4 **BY MR. OWMBY:**

5 Q. As I understand it, you have enough training
6 and experience with this weapon to conclude that the dye
7 stain that's in there is only so far as a magazine would
8 it allow it to go?

9 A. That's what I would believe.

10 Q. Okay. But you really don't have enough
11 training and experience to say whether that weapon
12 looked to be recently fired or not; is that what you are
13 telling me?

14 A. Yes.

15 MR. OWMBY: All right. We pass the
16 witness.

17 THE COURT: Thank you.

18 MS. KNECHT: Nothing further, Judge.

19 THE COURT: Thank you.

20 Is this witness excused for all purposes?

21 MR. OWMBY: Yes, Your Honor.

22 MS. KNECHT: We'd like to leave him
23 on-call, actually.

24 THE COURT: Don't leave town. Are you
25 going to be around?

1 THE WITNESS: Yes, ma'am. I will make
2 myself available.

3 THE COURT: Thank you. You're free to go
4 to today. Thank you so much.

5 THE WITNESS: Thank you.

6 THE COURT: I suggest we take the afternoon
7 recess until 3:15.

8 All rise, please, for the jury.

9 (Recess)

10 (Open court, defendant and jury present)

11 THE COURT: We need the witness back on the
12 witness stand.

13 MS. KNECHT: It's a new witness.

14 THE COURT: I'm sorry. Your next witness.

15 MS. BRUCHMILLER: The State calls Diana
16 Wolfshohf Gonzalez.

17 THE BAILIFF: Judge, she has not been
18 sworn.

19 THE COURT: Thank you.

20 (Witness sworn)

21 THE COURT: Thank you. Please have a seat
22 on the witness stand.

23 Thank you.

24 MS. BRUCHMILLER: May I proceed?

25 THE COURT: Yes, ma'am.

1 **DIANA GONZALEZ WOLFSDHOF,**
2 having been first duly sworn, testified as follows:

3 **DIRECT EXAMINATION**

4 **BY MS. BRUCHMILLER:**

5 Q. Good afternoon.

6 A. Hello.

7 Q. Would you please state your name for the jury?

8 A. My name is Diana Gonzalez Wolfshohf.

9 Q. Would you spell your last name for the court
10 reporter?

11 A. W-o-l-f-s-h-o-h-f.

12 Q. And did you recently change your last name?

13 A. About a year ago.

14 Q. How are you employed?

15 A. I work for the Harris County Institute of
16 Forensic Sciences.

17 Q. And is that formally the Harris County Medical
18 Examiner's Office?

19 A. Yes.

20 Q. How long have you been there?

21 A. For approximately six-and-a-half years.

22 Q. And what division at the office are you in?

23 A. I work for the DNA department.

24 Q. And what do you do for the DNA department?

25 A. I'm a DNA analysis.