

1                   Next witness, please.

2                   MR. BALLENGEE: The State calls Christy  
3 Smejkal to the stand.

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

6                   THE COURT: Would you raise your right  
7 hand?

8                   (Witness sworn)

9                   THE COURT: From the State, please.

10                                   **CHRISTY SMEJKAL,**

11 having been first duly sworn, testified as follows:

12                                   **DIRECT EXAMINATION**

13 **BY MR. BALLENGEE:**

14           Q. Ms. Smejkal, would you please introduce  
15 yourself to the jury, please?

16           A. My name is Christy Smejkal. And I'm a DNA  
17 analyst at the Harris County Institute of Forensic  
18 Sciences.

19           Q. And how long have you been at the Harris County  
20 Institute of Forensic Sciences?

21           A. Almost six years.

22           Q. You said you're a DNA analyst. What does that  
23 entail?

24           A. Okay. My duties are to analyze evidence for  
25 the presence of biological stains such as blood, semen,

1 or saliva, depending on what kind of case it is; to cut  
2 those stains, extracting DNA from those stains, and then  
3 get a DNA profile, compare the DNA profile in question  
4 to known stains and decide if they are the same.

5 Q. What kind of education did you have to get in  
6 order to become a DNA analyst?

7 A. I have a bachelor's degree in molecular biology  
8 from Auburn University in Alabama. And I have a  
9 master's of science degree from the University of Texas  
10 Medical Branch in Galveston.

11 Q. Do you have to go through any training after  
12 you've received that kind of education?

13 A. The training is all on the job.

14 Q. What kind of on-the-job training do you  
15 receive?

16 A. Well, when I started, I didn't know anything  
17 about forensics. So, they taught me how to do serology,  
18 which is the evidence of -- examination of evidence.  
19 And then I learned DNA and so on and so on.

20 Q. And is there a period of time where you are  
21 observed before they just let you do any kind of DNA  
22 analysis?

23 A. Yes. First you observe other analysts and then  
24 you do practice tests and then you are observed and then  
25 you get signed off.

1 Q. And about how long is that process?

2 A. I'd say about a year.

3 Q. And is Harris County IFS an accredited lab?

4 A. Yes, it is.

5 Q. What organization gives it accreditation?

6 A. ASCLD/LAB.

7 Q. And are they accredited in serology as well as  
8 DNA analysis?

9 A. Yes.

10 Q. What did the lab have to do in order to become  
11 accredited?

12 A. For the ASCLD/LAB accreditation, basically,  
13 there is a list of things you need to follow. And  
14 they're anywhere from security of evidence to safety  
15 measures around the lab, education for DNA analysts. We  
16 actually have to have certain classes. And all of these  
17 things together, if we pass -- if we follow all of these  
18 things, we pass. And every five years, we get  
19 recertified. So, they come out and do a whole new  
20 accreditation.

21 Q. When was the last time you-all were certified?  
22 You're not sure?

23 A. I think it was two years ago.

24 Q. Okay. You said that y'all have to take  
25 education and tests. Do you have to -- did you have to

1 take a proficiency?

2 A. I take a proficiency test every six months.

3 Q. And so, when was the last time you took a  
4 proficiency test?

5 A. It was last year, the end of last year.

6 Q. Have you testified as an expert in the field of  
7 forensic serology and DNA analysis before?

8 A. Yes.

9 Q. Approximately how many times?

10 A. I would say about fifty.

11 Q. Have you testified in criminal and civil cases?

12 A. Just criminal.

13 Q. How do you receive the evidence that you're  
14 supposed to test?

15 A. The evidence is received into the lab by the  
16 agency. So, for example, the sheriff's office, they  
17 have CSU and evidence people that are designated to  
18 bring the evidence. And it's brought to our lab and  
19 then it is given a unique case number and then it is  
20 locked in the vault until we need access to it.

21 Q. And you say it's locked in the vault. What do  
22 you mean by a vault? What's in this vault?

23 A. It's a big room and it has all of our evidence  
24 in it. And only evidence techs, which I think we have  
25 four or five now, only they can access it.

1 Q. So, are you able to access it?

2 A. No. I have to go through the evidence tech and  
3 then she will scan it to me.

4 Q. Okay. I'm showing you what's been previously  
5 marked as State's Exhibit No. 54 and 69 (indicating).

6 A. Okay.

7 Q. Do you recognize them?

8 A. Yes, I do.

9 Q. What do you recognize them to be?

10 A. They are pictures of the bloodstain card from  
11 the decedent.

12 Q. And what is State's Exhibit No. 69?

13 A. It is a portion of the bloodstain card from the  
14 decedent.

15 Q. And do you recognize -- or let's start with  
16 No. 54. Is that a fair and accurate depiction of the  
17 bloodstain card that you examined in this case?

18 A. Yes.

19 Q. And is it -- well, No. 69, have you previously  
20 viewed State's Exhibit No. 69?

21 A. Yes, I have.

22 Q. And is it in the same or substantially similar  
23 condition as the last time you saw it?

24 A. Yes.

25 Q. Has it been altered in any way?

1 A. No, it has not.

2 Q. How do you know it hasn't been altered in any  
3 way?

4 A. Because I put evidence tape and my initials and  
5 date. And this would -- any other way somebody would  
6 try to get into the package, I would be able to see it.

7 MR. BALLENGEE: State offers State's  
8 Nos. 54 and 69, tendering to opposing counsel for  
9 objection.

10 (State's Exhibit No. 54 and 69 Offered)

11 MS. McLAUGHLIN: No objections, Your Honor.

12 THE COURT: State's 54 and 69 are admitted.

13 (State's Exhibit No. 54 and 69 Admitted)

14 Q. (By Mr. Ballengee) On State's Exhibit No. 54,  
15 does it have an ML-number?

16 A. Yes, it does.

17 Q. What is ML-number.

18 A. ML10-1293.

19 Q. Now, did you perform DNA tests on any items in  
20 this case?

21 A. Yes, we did.

22 Q. And can you explain to the jury what DNA  
23 actually is?

24 A. DNA can be thought of as a person's genetic  
25 blueprint. It's what makes us who we are. Basically,

1 we share some. We have two arms, two legs, and the same  
2 kind of body, but some are different, such as hair color  
3 and eye color. Now, in the forensic community, we look  
4 at anywhere from 13 to 17 locations in the DNA. And  
5 this is a person's DNA profile. We take profiles from  
6 evidence and compare them to profiles from known samples  
7 such as blood and saliva in victims and suspects and we  
8 compare the two and we draw conclusions and write up our  
9 report.

10 Q. Does DNA vary from person to person?

11 A. No.

12 Q. Is DNA in a single person's body the same  
13 throughout this body?

14 A. I'm sorry. You said does DNA vary from person  
15 to person. Yes, we all have different DNA profiles  
16 except identical twins. I so apologize.

17 Q. That's what I thought you were saying. Maybe I  
18 should have clarified. Excuse me.

19 So, is the DNA in a single person's body  
20 the same throughout their body?

21 A. Yes.

22 Q. And as you just said, it's different from  
23 person to person?

24 A. Yes.

25 Q. Okay. Even if you and I are the same gender,

1 the same ethnicity, our DNA wouldn't be the same,  
2 correct?

3 A. Correct.

4 Q. Okay. Is it possible to identify the DNA of an  
5 individual person?

6 A. Yes.

7 Q. Is it possible to compare that DNA to DNA of a  
8 known donor, without an unknown -- or with an unknown  
9 sample of blood?

10 A. Yes.

11 Q. Okay. What are the difference steps in DNA  
12 analysis that you take?

13 A. All of DNA?

14 Q. Well, what are the steps that you would take in  
15 trying to identify who an unknown -- or an unknown  
16 sample was?

17 A. Okay. Well, what we do in, as a reporter, I  
18 get all the DNA profiles from the evidence stains and  
19 the known stains. And what I do is I look at my  
20 evidence stains and I decide: Oh, okay, this is a male  
21 profile. And then what I will do, I will go to the  
22 known samples that I have and look at those and I will  
23 be like: Oh, it is the same as this individual. And  
24 then I will write a report to say that they are  
25 consistent and I will do the statistics.



1 THE COURT: Is it necessary to be standing  
2 up there?

3 MR. BALLENGEE: I was --

4 THE COURT: Unless you are showing her  
5 something that she needs to see.

6 MR. BALLENGEE: I was going to go into the  
7 documents, Your Honor. I'm sorry.

8 THE COURT: Then you must do that standing  
9 up there as opposed to --

10 MR. BALLENGEE: I can do it from the  
11 projection.

12 THE COURT: Okay.

13 MR. BALLENGEE: Yes, sir.

14 Q. (By Mr. Ballengee) Have you -- what items of  
15 evidence did you examine in this case?

16 A. I examined swabs and projectiles.

17 Q. And what swabs did you examine?

18 A. Would you like me to read them off by number,  
19 number or description?

20 Q. By description, please.

21 A. Okay. Pool in parking lot, northeast of main  
22 pool, near sidewalk, on sidewalk, from slide, from  
23 trigger, from grips, and from magazine.

24 Q. And were you able to determine -- were you able  
25 to get a DNA profile from any of those swabs?

1 A. Yes, I was.

2 Q. Which swabs were you able to get a DNA profile  
3 from?

4 A. The pool parking lot, the northeast of main  
5 pool, near sidewalk, on sidewalk, and from grips.

6 Q. And were you able to get a DNA profile from  
7 those pieces of evidence?

8 A. Not all of them.

9 Q. Which ones were you not able to get a DNA  
10 profile from?

11 A. From slide swab, from trigger swab, and from  
12 magazine swab.

13 Q. So, the items that you were able to get a DNA  
14 profile were from the blood droplets and the blood pool,  
15 correct?

16 A. And from grips.

17 Q. And from grips.

18 Did you compare those DNA profiles that you  
19 obtained to any known profile?

20 A. Yes.

21 Q. And what was the known profile that you  
22 compared it to?

23 A. Tevin Williams.

24 Q. And how were you able to determine that that  
25 was a known profile for Tevin Williams?

1           A.    During autopsy, blood is taken.  And then when  
2 we work the case, we have a person who makes bloodstain  
3 cards.  He requests the evidence from where it is stored  
4 and we get the blood tubes and then he makes a  
5 bloodstain card from the known blood.  And so, then it's  
6 labeled and then stored in our vault.

7           Q.    Is that the bloodstain card you were referring  
8 to in State's Exhibit No. 54?

9           A.    Yes.

10          Q.    Once you obtained the -- or once you compared  
11 it to that bloodstain card, compared those DNA profiles,  
12 were you able to find a match?

13          A.    I found that some that were consistent with  
14 him.

15          Q.    And which were consistent with him?

16          A.    The pool parking lot, the northeast of main  
17 pool, near sidewalk, and on sidewalk.

18          Q.    And were you able to prepare statistics based  
19 on those comparisons?

20          A.    Yes.

21          Q.    And what were the ratios in those statistics?

22          A.    1 in 81.44 quintillion for Caucasians; 430.6  
23 quadrillion for African-Americans; and 70.71 quintillion  
24 for Hispanics.

25          Q.    Why do you prepare statistics when making these

1 comparisons?

2 A. To show how rare or common a profile is.

3 Q. Were you able to find a DNA profile for any  
4 other items that were submitted to Harris County IFS?

5 A. Yes. From the grip swab and from the  
6 projectile.

7 Q. And let's talk about the projectile for a  
8 moment. How were you able to obtain a DNA profile from  
9 the projectile?

10 A. The projectile is basically, I guess, a spent  
11 bullet, but we just get it and then we swab it with  
12 sterile swabs and DIH<sub>2</sub>O, distilled water, which we  
13 sterilize. And we just swab it. And then we cut half  
14 of the swab and send it to DNA and hope to get a  
15 profile.

16 Q. Is this the projectile that you examined that  
17 day (indicating)? Oops. Excuse me.

18 A. Yes, it is.

19 Q. And how were you able to determine that that is  
20 the projectile?

21 A. Because that's what was on the submission form.  
22 We're not firearms analysts, but it was said projectile  
23 and that was found in the box that said projectile. And  
24 so, this is what we call a projectile.

25 Q. And for the record, I'm showing you what's been

1 previously marked as State's Exhibit No. 43  
2 (indicating).

3 A. Yes, this is the package.

4 Q. When you obtained -- or when you received this  
5 projectile and were asked to do testing on it, were you  
6 able to determine -- or how did you test it?

7 A. Well, with every piece of evidence, we always  
8 look for blood or any stains that could be blood. And  
9 there were no reddish-brown stains -- that's the color  
10 we look for -- on this item. So, we just swabbed it  
11 with the swab and the sterile water and then cut half  
12 the swab and sent it to DNA.

13 Q. And I'm showing you what's been previously  
14 marked as State's Exhibit No. 63 (indicating). Is that  
15 the swab that you took from the projectile on State's  
16 Exhibit No. 43?

17 A. Yes, it is.

18 Q. When you -- is State's Exhibit No. 63, is it in  
19 the same or similar condition as the last time that you  
20 saw it?

21 A. Yes, it is.

22 Q. Has it been altered in any way?

23 A. No, it hasn't.

24 Q. And how do you know that that is the swab that  
25 you took when you were doing the DNA analysis on this

1 case?

2 A. It has the case number, the item number, what  
3 it is, and the date and initials.

4 Q. Okay.

5 MR. BALLENGEE: State offers State's No. 63  
6 into evidence.

7 **(State's Exhibit No. 63 Offered)**

8 MS. McLAUGHLIN: No objections.

9 THE COURT: Thank you.

10 State's 63 is admitted.

11 **(State's Exhibit No. 63 Admitted)**

12 Q. (By Mr. Ballengee) Were you able to obtain a  
13 DNA profile from State's Exhibit No. 63?

14 A. Yes, I was.

15 Q. And did you compare that DNA profile to any  
16 known profiles?

17 A. Yes. Tevin Williams.

18 Q. And when you compared that DNA profile from the  
19 projectile in 43 that was swabbed on to 63, what was the  
20 results of that comparison?

21 A. The DNA profile I took was partial, which just  
22 means it didn't get every location. I didn't get  
23 information at every location, but it was consistent  
24 with Tevin Williams. And the statistics were a little  
25 bit lower because it was a partial. And they are:

1 424.8 million for Caucasians; 276.4 million for  
2 African-Americans; and 1.05 billion for Hispanics.

3 Q. Is it rare to get DNA from a projectile?

4 A. It's hit or miss. It really is. You either do  
5 or you don't. All we do is swab it. I don't really  
6 know do we always get a DNA profile. It's really --  
7 sometimes we do, sometimes we don't.

8 MR. BALLENGEE: Pass the witness.

9 MS. McLAUGHLIN: Thank you, Your Honor.

10 THE COURT: Thank you.

11 **CROSS-EXAMINATION**

12 **BY MS. McLAUGHLIN:**

13 Q. Good morning, Ms. Smejkal.

14 A. Good morning.

15 Q. Just briefly, you testified that you were  
16 unable to get a swab of DNA from the grip of the .380  
17 handgun, correct?

18 A. What I have here is -- yeah, the grips from --  
19 I don't know what gun it was, but the grip swabs. I was  
20 able to get a DNA profile.

21 Q. You were?

22 A. I was.

23 Q. You were able to?

24 A. Yes.

25 Q. Okay. And did the profile match any other

1 profile?

2 A. The only known profile I had was Tevin Williams  
3 and he was actually excluded.

4 Q. Okay.

5 MS. McLAUGHLIN: Pass the witness, Your  
6 Honor.

7 MR. BALLENGEE: No further questions.

8 THE COURT: And you are excused. Thank you  
9 so much for your testimony.

10 THE WITNESS: Thank you.

11 THE COURT: How long is the next witness?

12 MR. BALLENGEE: Maybe 20, 30 minutes.

13 THE COURT: We can break now for a small  
14 break or break around 12:00, 12:15 for lunch. Do we  
15 need a break right now or -- you do need a break?

16 JUROR: Yes.

17 THE COURT: All right. Let's take a short  
18 break.

19 (Recess)

20 (Open court, defendant and jury present)

21 THE COURT: Thank you. You may be seated.  
22 Let's continue, please.

23 MR. BALLENGEE: Your Honor, State calls  
24 Robert Baldwin. He has been pre-sworn.

25 THE COURT: All right. Thank you.



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**ROBERT BALDWIN,**

having been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

**BY MR. BALLENGEE:**

Q. Mr. Baldwin, if you would, introduce yourself to the jury.

A. Good morning, ladies and gentlemen of the jury. My name is Robert Baldwin.

Q. And if you'd spell your name for the record, please.

A. Last name is B-a-l-d-w-i-n.

Q. And normal spelling of your first name?

A. Yes.

Q. Okay. Thank you.

A. Sure.

Q. What do you do for a living?

A. I'm currently employed by the Harris County Institute of Forensic Sciences in the firearms identification laboratory and I'm the manager of that section.

Q. And what do you do as a manager of the firearms section?

A. Well, aside from overseeing the administrative responsibilities of the manager's position, I also perform the duties of a firearms examiner.