

## 1 CROSS-EXAMINATION

2 BY MS. SCARDINO:

3 Q. Well, just to make sure that we're all clear,  
4 Seitrich Buckner's DNA was not on any of the -- either of the  
5 items that you tested; is that correct?

6 A. Correct.

7 Q. Thank you.

8 MS. SCARDINO: I'll pass the witness.

9 THE COURT: Thank you, ma'am.

10 May this witness be excused?

11 MS. FULLER: Yes, your Honor.

12 THE COURT: Thank you so much for coming. You're  
13 excused.

14 Call your next.

15 MR. REISS: The State of Texas would call Darrell  
16 Stein, your Honor.

17 May I proceed, your Honor?

18 THE COURT: You may.

19 MR. REISS: Thank you.

20 DARRELL STEIN,

21 having been duly sworn, testified as follows:

## 22 DIRECT EXAMINATION

23 BY MR. REISS:

24 Q. Mr. Stein, good afternoon.

25 A. Good afternoon.

1 Q. Just move the microphone a little closer. There you  
2 go.

3 Could you please introduce yourself to the ladies and  
4 gentlemen of the jury and then spell your name for the court  
5 reporter, please, sir.

6 A. Yes, sir. Good afternoon. My name is Darrell Stein,  
7 D-a-r-r-e-l-l S-t-e-i-n.

8 Q. Mr. Stein, where do you work, sir?

9 A. I'm employed by the City of Houston as a firearms  
10 examiner in the firearms section of the Houston Police  
11 Department crime laboratory.

12 Q. Let's talk about your educational background to get  
13 to that part. Where did you go to college, all that good  
14 stuff?

15 A. My formal education consists of a bachelor of science  
16 degree in microbiology from Texas A&M University.

17 Q. Okay. Do you have any specialized training in the  
18 area of firearms examination, ballistics testing?

19 A. Yes. My firearms training consists of the successful  
20 completion of an approximate two-year on-the-job training  
21 program under the direct supervision of more senior firearms  
22 examiners. I've also received training from Glock arms; from  
23 Ruger arms; from Colt arms; from Smith and Wesson arms; from  
24 the Bureau of Alcohol, Tobacco and Firearms, as well as the  
25 Federal Bureau of Investigations.

1 Q. Okay. So I guess with regard to this particular  
2 case, you have received training with regard to Glock's?

3 A. Yes, sir.

4 Q. Okay. I see that you also have brought with you a  
5 model of a bullet. Is that --

6 A. Of a cartridge, yes, sir.

7 Q. Cartridge. Okay.

8 Would you -- this will help with the testimony.  
9 Would it help you to explain to the ladies and gentlemen of the  
10 jury with regard to your testimony about your ballistics about  
11 what makes up a bullet?

12 A. A cartridge?

13 Q. A cartridge.

14 A. Yes, sir.

15 Q. Obviously help me. Can you -- can you please explain  
16 to the ladies and gentlemen of the jury again for the record,  
17 you brought, looks like a model of a plastic cartridge, model  
18 of a cartridge about 40 or 50 times the size of a regular  
19 cartridge?

20 A. Yes, sir.

21 Q. Could you please explain to the ladies and gentlemen  
22 of the jury the components parts of it?

23 A. Sure.

24 Well, if we're going to be talking about firearms, we  
25 need to make sure we understand terminology very clearly. This

1 is a model of what we call a cartridge. Folks sometimes will  
2 call it a bullet, but the actual correct term is a cartridge.  
3 And an unfired cartridge contains several components, one being  
4 the projectile, which is the bullet; one being the casing  
5 itself; and the other being what you find on the base, which is  
6 called a primer, or a primer cup.

7           What happens is that this priming cup, right here, a  
8 primer, contains a mixture that when struck by a firing pin of  
9 a firearm gets crushed. It then shoots a flame into the casing  
10 itself. Inside the casing is the propellant, or gunpowder.  
11 That gunpowder then ignites, burns very rapidly. It doesn't  
12 explode, it burns very rapidly, and produces a lot of gas.  
13 That gas exerts pressure in all directions on the casing,  
14 including forward. That gas is what propels the bullet down  
15 the barrel of the firearm and leaves the barrel and then goes  
16 towards its target then.

17           MS. SCARDINO: Your Honor, excuse me, may we approach  
18 the bench for just a moment, please?

19           THE COURT: Sure.

20           (The following proceedings were had at the bench:)

21           MS. SCARDINO: I'm not sure what Mr. Stein is going  
22 to testify to. We don't have a gun. We have a box of bullets  
23 located in a house. If he's going to testify to trying to link  
24 up a bullet with a gun that was used in this case or if he's  
25 going to -- I mean, I really don't understand why we have a

1 ballistics expert when all we have is a box of bullets.

2 MR. REISS: He's going to testify to two things,  
3 Judge. He's going to testify to two things, Judge. The first  
4 is, if you will recall, there was a recovered bullet fragment  
5 at the scene. He is going to testify that he tested that  
6 fragment, and that he can't find any evidence that was  
7 associated with this offense.

8 The second thing he's going to testify to is he's  
9 going to use State's Exhibit No. 99, which is the Glock, the  
10 demonstrative, and demonstrate to the jury, again with the  
11 instruction from the Court that we're not making any  
12 representation that this is the actual firearm, as to all of  
13 the intentional steps that an individual needs to make to load  
14 and chamber that firearm, all the intentional steps that you  
15 have to take to disengage or bypass all the safeties on a Glock  
16 40 in order to expel the projectile. It all goes to the intent  
17 of capital murder.

18 THE COURT: Okay.

19 MS. SCARDINO: Thank you.

20 (The following proceedings were had in open court:)

21 Q. (By Mr. Reiss) Let me move this along quickly, sir.  
22 Did you examine some evidence in regard to HPD case no.  
23 088525110?

24 A. Yes, sir.

25 Q. Okay. Let me back up. Was there -- before that is

1 there anything else that you wanted to explain with regard to  
2 the cartridge?

3 A. No, sir.

4 Q. Okay.

5 MR. REISS: May I approach the witness, your Honor?

6 THE COURT: You may.

7 Q. (By Mr. Reiss) Sir, I'm showing you what has been  
8 marked as State's Exhibit No. 36. Can I take you -- ask you to  
9 take a look at it and its contents, please.

10 A. (Complies.)

11 Okay, sir.

12 Q. Are you familiar with the contents of State's Exhibit  
13 No. 36?

14 A. Yes, sir.

15 Q. Okay. Does it have any distinctive markings on it  
16 that you recognize?

17 A. Yes, sir, it does.

18 Q. Okay. What are those, sir?

19 A. It contains the HPD incident number that you  
20 mentioned a moment ago, 088525110, as well as a unique item  
21 number, which in this case is number one.

22 Q. Okay. And it's the evidence you tested in this case?

23 A. Yes, sir.

24 Q. Okay. It's in the same or substantially the same  
25 condition as it was when you tested it?

1           A.    Yes, sir.

2           MR. REISS:  Your Honor, tendering to defense counsel  
3 for inspection State's Exhibit No. 36.  Barring any objections,  
4 ask it be tendered into evidence.

5           MS. SCARDINO:  I have no objection, your Honor.

6           THE COURT:  It will be admitted.

7           Q.    (By Mr. Reiss) Sir, what is the --

8           MR. REISS:  Again, can I approach the witness, your  
9 Honor?

10          THE COURT:  Yes.

11          Q.    (By Mr. Reiss) What are we looking at in State's  
12 Exhibit No. 36?  Let me put it on the Elmo actually.

13          MR. REISS:  Your Honor, just so I'm clear, I want to  
14 make sure I introduced 36 was the baggie and its contents.

15          THE COURT:  Okay.

16          Q.    (By Mr. Reiss) What are we looking at in the contents  
17 of State's 36, what is that?

18          A.    That item is a fired bullet.

19          Q.    Okay.  What type of fired bullet is it, sir?

20          A.    It's a jacketed fired bullet.

21          Q.    Okay.  Were you able to tell the caliber of it?

22          A.    Just from looking at this, no, sir.

23          Q.    Okay.  Could you tell from your examination, is it --  
24 is it -- the bullet capable of being ejected from a Glock?

25          A.    Based on the notes that I took here, yes, sir.

1 Q. Okay. Was there any blood or any biohazardous  
2 material that you saw on this exhibit?

3 A. No, sir, I did not see any.

4 Q. Cutting to the chase, was there anything that you  
5 could find on State's Exhibit 36 that indicated that it was  
6 used in this offense?

7 A. Hmm, I'm not -- sure that I follow the question. I'm  
8 sorry.

9 Q. Okay. Did you -- well, this was capable of being  
10 ejected from a Glock 40?

11 A. Yes, sir.

12 Q. Okay. But again, you didn't find any blood on it,  
13 right?

14 A. Correct, sir.

15 Q. No biohazardous materials on it; is that right?

16 A. Correct, sir.

17 Q. Okay. And with regard to the instant offense, you  
18 can't necessarily associate it with what happened on June 19,  
19 2010, correct?

20 A. That's correct, sir.

21 Q. Okay. Why is that?

22 A. I have no personal knowledge of the origin of the  
23 fired projectile, so I don't know where it came from or the  
24 source or anything.

25 Q. Okay. It could have just been just laying out there



1 at the scene?

2 A. Could have been, yes, sir.

3 Q. Okay.

4 MR. REISS: Permission to approach the witness, your  
5 Honor?

6 THE COURT: Sure.

7 Q. (By Mr. Reiss) Sir, I want to talk to you about a  
8 Glock 40 and how it's loaded. To do that would it help you if  
9 you were able to step up in front of the jury?

10 A. Yes, sir.

11 MR. REISS: Permission for him to stand down.

12 THE COURT: Okay.

13 A. (Complies.)

14 Q. I'm showing you what has been marked for  
15 identification purposes as State's demonstrative Exhibit  
16 No. 99. What are we looking at there?

17 A. State's Exhibit 99 is a Glock model .22 pistol. The  
18 caliber of it is a 40 Smith and Wesson caliber.

19 Q. So referred to as a Glock 40?

20 A. Yes, sir.

21 Q. Can you please explain to the ladies and gentlemen of  
22 the jury -- first answer this, are there a series of  
23 intentional steps that you need to take in order to load a  
24 Glock 40?

25 A. Yes, sir.

1 Q. Okay. Let's begin at the most basic one. What is  
2 your first intentional step you have to take to load a Glock  
3 40?

4 A. This firearm comes with what's called a detachable  
5 magazine. The magazine comes out of the firearm, and this is  
6 where the cartridges are loaded. So in order to discharge this  
7 firearm, cartridges are loaded into a magazine, anywhere from  
8 one up to the capacity of the magazine, are loaded in here. So  
9 that's the first step, is loading the magazine.

10 Q. Okay. I guess even before that, there would have to  
11 be, I would take it, an intentional step up, you would have to  
12 get at least a bullet. You'd have to get a bullet from  
13 somewhere first, right?

14 A. A cartridge?

15 Q. A cartridge, yes, sir.

16 A. Yes, sir.

17 Q. You'd have to get a cartridge first?

18 A. Yes, sir.

19 Q. And you'd have to load a cartridge into the magazine?

20 A. Yes, sir.

21 Q. Okay. How many cartridges can you load into a Glock  
22 40 magazine?

23 A. It would depend on the model, and whether or not a  
24 factory magazine or one that's after-market. This one appears  
25 to be the representative of the types of magazines we see, and

1 the particular capacity of this magazine is 15 cartridges.

2 Q. So that's your first intentional step. What would  
3 the second intentional step be, sir?

4 A. Once one has loaded the cartridges into the magazine,  
5 the next step will be actually to insert the magazine into the  
6 firearm locking it in place.

7 Q. Now, I notice that to do that you needed two hands;  
8 is that right?

9 A. Yes, sir.

10 Q. Okay. Does -- well, let me -- what's your next  
11 intentional step?

12 A. Assuming that the slide is down, what I would need to  
13 do is, just because I put a magazine with cartridges into the  
14 gun, I can pull the trigger all day long and it won't fire  
15 because there is no cartridge in the chamber. All the  
16 cartridges are still in the magazine. So once I lower the  
17 cartridges in the magazine, insert the magazine into the  
18 firearm, my next step then is to pull back on the slide and  
19 release it, and doing that is what actually chambers a  
20 cartridge to be fired.

21 Q. Okay. Let me stop you before that. When you put the  
22 magazine into the gun, obviously you can't see it on the  
23 record, but you put it in there with some level of force.

24 A. Yes.

25 Q. So if you just put it -- it's necessary, I guess, an

1 intentional step, you have to put enough force in that magazine  
2 in order to do that, correct?

3 A. Right, to be locked in place, yes, sir.

4 Q. Okay. And then the slide, I think you can't just  
5 slide it, correct? Isn't there a release on that weapon?

6 A. Yes, sir.

7 Q. Show the ladies and gentlemen of the jury where that  
8 release is to do that.

9 A. There's a release here. Now, what I can do is I can  
10 pull the slide back without the release -- without pushing down  
11 on the release. The reason I did is because the magazine on  
12 this firearm is empty, and it's designed for this release to be  
13 pushed up on an empty magazine to where the fire will stay  
14 open.

15 If there were actual cartridges in this magazine, I  
16 would not need to press down on this lever. I would simply  
17 just pull it back and let it go. It would come forward by  
18 itself. So the only reason I did that was for demonstrative  
19 purposes here, so you would actually see (demonstrating) that's  
20 what it would look like if I actually had cartridges in the  
21 firearm.

22 Q. Now, do you necessarily have to put a cartridge in  
23 the magazine, or can you put it in the chamber individually?

24 A. Yes, sir, what one can do, is pull back the slide on  
25 the firearm, lock it in place, and then take a cartridge and

1 very carefully try to drop it into the chamber (demonstrating)  
2 and then drop the slide.

3 Q. And, again, that would be an intentional step,  
4 correct?

5 A. Yes, sir.

6 Q. And, again, you had to take that intentional step of  
7 either loading the magazine or putting the slide in place with  
8 two hands, correct?

9 A. Yes, sir.

10 Q. Okay. What would you then have to do after you've  
11 done -- after you've chambered the firearm, what next, if you  
12 want to fire a bullet, or a cartridge?

13 A. Then one would have to go and actually exert enough  
14 pressure on the trigger in order for the gun to fire.

15 Q. Okay. And let me talk to you about pulling the  
16 handle on the trigger. Another intentional step would be,  
17 would it not, is that you actually have to make a decision to  
18 put your finger on the trigger, correct?

19 A. Yes, sir.

20 Q. Okay. Now, do all firearms have the same amount of  
21 pressure on the trigger?

22 A. No, sir.

23 Q. Okay. What is the weight of measure, if you will,  
24 with regard to the amount of pressure you have to put on a  
25 trigger?

1 A. Are you looking for a specific value?

2 Q. Just in general, is it -- pounds of force, is that --

3 A. Yes, sir, pounds, we measure it in pounds.

4 Q. With regard to a Glock 40, how much pounds of  
5 pressure or pounds of force do you have to use on the trigger  
6 in order to eject?

7 A. My personal experience with Glock firearms, it ranges  
8 anywhere from about five and a half pounds of pressure to maybe  
9 eight to eight and a half pounds of pressure in order to  
10 discharge a cartridge.

11 Q. Okay. Now, in terms of trying to put that in terms  
12 of value and things that we commonly associate every day, is  
13 there something you can buy in the supermarket that you can  
14 associate with that amount of pressure?

15 A. Yes, sir.

16 Q. What would that be?

17 A. As you know, bags of sugar, they're sold in four  
18 pounds, not five pounds any more but four pounds, so imagine  
19 that I have the firearm cocked and ready to fire, and I took an  
20 imaginary hook that had no weight and I hung the hook from the  
21 trigger here, it would take more than one bag of sugar to hang  
22 one bag from here. I wouldn't expect it to fire. It would  
23 actually take two bags of sugar hanging from here in order to  
24 discharge the firearm.

25 Q. Okay. Now, are there any safeties on a Glock 40?

1 A. Yes, sir.

2 Q. Okay. What are some of those safeties, sir?

3 A. One, they have what's called a trigger safety. It's  
4 a little difficult to see, but there's actually a separate part  
5 of the trigger. It's actually two separate components. If one  
6 were to pull from the side --

7 Q. Okay. Let me interrupt, stop you there. For  
8 purposes of the record, you appear to be pointing on the  
9 trigger. There appears to be like a little piece of plastic or  
10 metal sticking out from the trigger. Is that an accurate  
11 description?

12 A. Yes, sir.

13 Q. Okay. Please continue. I'm sorry.

14 A. It actually juts out of the trigger. So if one were  
15 to grab from the side of the trigger or some other point  
16 besides the secondary component and pull rearward on the  
17 trigger, the trigger would not go back in order to fire. This  
18 middle separate component of the trigger must be pushed back to  
19 the rear in order for the trigger to be pulled completely to  
20 the rear to fire.

21 Q. Okay.

22 A. So that's one safety.

23 Q. All right. So it would be then an intentional act to  
24 bypass that safety to fire, correct?

25 A. Yes. One would have to -- this would have to -- this

1 would have to be intentionally pressed back.

2 Q. What's the next safety, sir?

3 A. Once the -- firearm is ready to fire, it comes with a  
4 safety, what's called a firing pin block. This block is  
5 designed so that if the firearm is dropped, it will not  
6 discharge a cartridge because there is a piece of metal that's  
7 holding the firing pin in place and won't let it go forward.  
8 When one pulls the trigger completely to the rear, that firing  
9 pin block moves out of the way allowing the firearm pin to come  
10 forward.

11 So, again, if it was working properly, the firearm  
12 would not discharge unless the trigger is pulled completely to  
13 the rear. So that's another safety feature of the firearm.

14 Q. Is there any more safeties?

15 A. Yes, sir. There's one more. It's called a slide  
16 disconnect. In order for this cartridge -- in order for the  
17 firearm to fire a cartridge, the slide must be completely  
18 forward, or in battery, like you see right now.

19 If for some reason the firearm is out of battery, now  
20 you can see the slide is moved back some (demonstrating), I  
21 cannot pull the trigger and it won't fire. It must be  
22 completely forward, in battery, and that's to protect the  
23 shooter from accidentally discharging a cartridge while this is  
24 open and possibly injuring the shooter.

25 Q. So by my account there were at least three



1 safeties --

2 A. Yes, sir.

3 Q. -- that you listed. In addition to, would you  
4 consider the fact that you have to physically use two hands to  
5 load that firearm, would you consider that to be a safety as  
6 well?

7 A. I wouldn't technically consider it part of the  
8 safety, no, sir.

9 Q. Okay. You can have a seat, sir.

10 A. Yes, sir.

11 Q. Actually, are you familiar with what a Glock  
12 compensated is?

13 A. Yes, sir.

14 Q. Okay. What is a Glock compensated?

15 A. Would you like me to stay here or go back?

16 Q. Why don't you stay here, sir.

17 A. A compensated firearm is a firearm that has slots cut  
18 in this top part called the slide, and it also has slots cut in  
19 the barrel itself. Some compensators are actually external to  
20 the firearm, meaning they're a separate component. Others,  
21 however, like I've seen on Glock firearms, it's actually in  
22 arrear to the firearm, so you will see two slots cut in up here  
23 and two corresponding slots cut into the barrel as well.

24 Q. Sir, I'm showing you what I've marked as State's  
25 Exhibit No. 92 for demonstrative purposes. Are you familiar

1 with what State's 92 is?

2 A. Yes, sir.

3 Q. What is that?

4 A. That appears to be a photograph of a Glock fire -- a  
5 compensated Glock firearm being discharged.

6 MR. REISS: Tendering to Defense counsel for  
7 inspection State's Exhibit 92 for demonstrative purposes only.

8 MS. SCARDINO: No objection.

9 THE COURT: All right.

10 MR. REISS: Permission to publish to the jury State's  
11 92. Again, we're not making any representation that was the  
12 actual firearm used.

13 Q. (By Mr. Reiss) This photo is going to appear on the  
14 screen right there. What are we looking at in State's  
15 Exhibit 92?

16 A. When the firearm is discharged, what you see there is  
17 actually small flames or fire exiting the front of the firearm,  
18 and because again, when the cartridge is discharged we have  
19 gunpowder that's burning very rapidly in there. So it -- we  
20 commonly see a flame come out of the front of the firearm as  
21 the burning gunpowder exits the firearm.

22 What we see up top, however, is two additional  
23 flames. We talked a moment ago about a compensator having cuts  
24 in the slide and the barrel, those are also places where the  
25 flame is coming out. So we have flames coming out of the top

1 and the front.

2 Q. Okay. So those flames coming out of the front, sort  
3 of like in the photo, in a V shaped pattern, if you know, okay,  
4 that -- well, that's going to be -- that's going to be hot  
5 coming out of the gun, is it not?

6 A. Yes, sir.

7 Q. Okay. And that would if it's a close contact cause  
8 burning on the skin possibly?

9 A. I would think so, but I'm not an expert in that area.

10 Q. Sure, of course.

11 Now, does the Glock 40 have a mechanism to eject the  
12 cartridge?

13 A. Yes, sir.

14 Q. After it's been -- okay. How does that happen, how  
15 is that?

16 A. Once a cartridge is discharged, the bullet has left  
17 the front of the barrel, but what remains in the firearm is the  
18 cartridge casing now that's empty. So, when the slide moves  
19 rearward (demonstrating), there is a component called an  
20 extractor that actually hooks around the cartridge case and it  
21 pulls it out of the chamber, pulls it back here. As it's  
22 coming back it strikes another component of the firearm called  
23 the ejector.

24 And the ejector does exactly what it sounds like it  
25 would do, it actually ejects or throws the empty casing clear

1 of the firearm and then allows this chamber to be emptied.  
2 Once that's done, the next cartridge in the magazine comes up,  
3 the slide returns forward in the battery, that chambers the  
4 next cartridge to be fired.

5 Q. Okay. Now, are there -- are there things that could  
6 occur with a Glock 40 that might cause it not -- for that not  
7 to happen, for it not to eject the cartridge?

8 A. Could be, yes, sir.

9 Q. Okay. What are some -- well, this way. Could the  
10 possibility of a gun just being dirty or used or not  
11 functioning properly, could that cause that to happen?

12 A. That could, yes, sir.

13 Q. Okay. What might some other things be?

14 A. It could be if the firearm is missing an extractor  
15 and/or ejector, those things might also prevent the firearm  
16 from successfully extracting and ejecting a fired cartridge  
17 case. If something were to impede the movement of the slide to  
18 the rear, that could also prevent it from properly extracting  
19 and ejecting. A cartridge that doesn't have a proper power  
20 load in it, it wouldn't have enough power to cycle the action  
21 like it's supposed to, that can be something else that could  
22 contribute to it not extracting and ejecting like it's designed  
23 to do.

24 Q. So those are all things that could explain the  
25 absence of a cartridge at a crime scene?

1 A. Those might, yes, sir.

2 Q. I want to go back to something you said before. It  
3 requires two hands on a Glock to chamber a round; is that  
4 correct?

5 A. Yes, sir.

6 Q. That's an intentional act obviously, two hands,  
7 correct?

8 A. Yes, sir.

9 Q. What is the purpose of a safety on I guess a Glock 40  
10 or any firearm in general?

11 A. They are designed to prevent the firearm from  
12 discharging unintentionally.

13 Q. Okay. In sum, it takes a series of intentional  
14 deliberate acts to load and chamber and fire a Glock 40?

15 A. Yes, sir.

16 Q. Thank you, sir.

17 A. (Returns to seat.)

18 MR. REISS: Can I have one moment please, your Honor?

19 THE COURT: Sure.

20 MR. REISS: Thank you.

21 Q. (By Mr. Reiss) Oh, you know, what is the -- we talked  
22 about the Glock compensator. What is the purpose of a Glock  
23 compensator?

24 A. The purpose of a compensator is to reduce the felt  
25 recoil for the shooter so that when a person shoots --

1 MS. SCARDINO: Excuse me, I didn't understand what  
2 you said.

3 A. Oh, I'm sorry.

4 The purpose of a compensator is to reduce the felt  
5 recoil of the firearm on the shooter. So that when they  
6 discharge a cartridge, the force they feel in their hand is  
7 lessened by the compensator and it also allows the firearm to  
8 return onto target more quickly.

9 Q. Now, on State's Exhibit No. 92, we see two hands on  
10 the firearm, right?

11 A. Yes, sir.

12 Q. We see a hand on the magazine and a hand on the  
13 trigger?

14 A. Yes, sir.

15 Q. Okay. Is it possible to fire a Glock 40 with one  
16 hand?

17 A. Yes, sir.

18 Q. Okay. Could, if you did that, might that also  
19 explain why the cartridge is not ejected, if you're holding the  
20 firearm loosely?

21 A. Yes, sir.

22 Q. Or not without two hands I guess?

23 A. Right. If the shooter does not have a firm grip on  
24 the firearm, it could be also if they are -- if they're holding  
25 it loosely or perhaps in an awkward position, those factors

1 could also contribute to the firearm not properly extracting  
2 and ejecting as it's designed to do.

3 Q. I guess one other thing we talked about that might  
4 explain, if you know, the absence of a cartridge at a crime  
5 scene might be someone, if the gun did properly eject the  
6 cartridge and they just picked it up, right?

7 A. That could be one, yes, sir.

8 Q. Okay.

9 MR. REISS: One moment please, your Honor. Thank  
10 you.

11 (Pause.)

12 Q. (By Mr. Reiss) All right. Sir, if intentional acts  
13 had not been performed to load a magazine, chamber it, bypass  
14 the safeties and pull the trigger, would a gun discharge  
15 accidentally?

16 A. If it was functioning properly, I wouldn't believe  
17 so, no, sir.

18 MR. REISS: Your Honor, I'll pass the witness.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MS. SCARDINO:

22 Q. Mr. Stein, nice to see you again. I think I've seen  
23 you over the years.

24 A. It's been a long time, yes, ma'am.

25 Q. One of the things that Mr. Reiss asked you a few

1 questions about and that caught my attention, you said that  
2 if -- his question was if you did all these things step by step  
3 by step, you did them intentionally, and it required thinking  
4 and doing certain steps, and you said, you know, yeah, it would  
5 all -- if the gun was working properly, then all these things  
6 would work right.

7 A. Yes, ma'am.

8 Q. But what -- we don't know in this case, the condition  
9 of the gun, right? I mean, you've not been given a gun to  
10 examine, correct?

11 A. That's correct.

12 Q. Which is odd. It's not so much odd, but, I mean,  
13 it's not the first time it's happened I'm sure.

14 MR. REISS: Objection. Assumes facts not in  
15 evidence.

16 THE COURT: Overruled.

17 Q. (By Ms. Scardino) Did you get a gun to examine in  
18 this case, Mr. Stein?

19 A. No, ma'am.

20 Q. And if there had been a gun in this case, would it  
21 have been normally given to you to examine and talk to the DA  
22 about for testimony in this case, correct?

23 A. Yes, ma'am.

24 Q. And actually, the only thing that you were given in  
25 this case to look at is that smashed cartridge.



1 A. Bullet.

2 Q. Bullet. I have never been able --

3 A. I'll educate you still.

4 Q. That smashed cartridge, that --

5 A. Bullet.

6 Q. I'm going to quit.

7 That smashed bullet that was just picked up out of  
8 the dirt on the scene, did Mr. Reiss tell you that?

9 A. No, ma'am. I don't know where the bullet came from.  
10 You're correct in that the only thing I received for analysis  
11 in this case was that bullet, yes, ma'am.

12 Q. Okay. At which is of no significance to a jury in  
13 this case as far as evidence of a crime, correct?

14 A. I --

15 Q. In this case?

16 A. I don't know that.

17 Q. But -- well, you have nothing to say to this jury  
18 about anything that you found on that smashed bullet that would  
19 connect anybody to this crime?

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

21 Q. Now, there was a lot of testimony about how it would  
22 be impossible for a -- a gun to fire subsequently or  
23 unintentionally, correct?

24 A. Yes, ma'am.

25 Q. I don't know, do you hear or do you read lots of

1 situations where people, accidental discharge of a firearm,  
2 that kind of thing?

3 A. I hear --

4 MR. REISS: Objection as to relevance and as to what  
5 he reads. It's vague. It's also hearsay.

6 THE COURT: Overruled.

7 Q. (By Ms. Scardino) Does that happen?

8 A. I hear of it happening, yes, ma'am.

9 Q. It may not be very smart of that person, right, but  
10 it happens, correct?

11 A. That's what I hear, yes, ma'am.

12 Q. And you gave us all sorts of reasons about why if a  
13 gun is operating properly and a person is properly trained in  
14 the use of this Glock 40, that it would not discharge  
15 accidentally, or when you didn't want it to, correct?

16 A. Yes, ma'am.

17 Q. Okay. Well, those are a lot of what if's, but one of  
18 the things that you said to Mr. Reiss was that all of these  
19 things would be fabulous and work right if the gun was working  
20 properly, right?

21 A. Yes, ma'am.

22 Q. But you know from your experience and your years at  
23 the -- as in the department that you're in and the ballistics  
24 and testifying on many many cases, that sometimes things just  
25 don't always work out of the textbook, correct?

1 A. That's correct.

2 Q. And you may have an inexperienced shooter, right?

3 A. Yes, ma'am.

4 Q. You could have a situation where the gun, as Mr.  
5 Reiss has called it, dirty, picked up off the street, bought  
6 from a -- who knows from whom, or how old the gun is. All  
7 those things may have an influence on the way this particular  
8 gun in this particular case worked?

9 A. Yes, ma'am. And that's why we tell every one of our  
10 people who handle firearms, never ever point a firearm at  
11 anything you're not willing to destroy.

12 Q. Right.

13 A. Yes, ma'am.

14 Q. And you are all trained adults, correct?

15 A. Yes, ma'am.

16 Q. But that's not the way it is on the street, is it?

17 MR. REISS: Objection, calls for speculation.

18 THE COURT: Overruled. It's cross-examination.

19 A. I'm sorry, uh --

20 Q. (By Ms. Scardino) That's not the way it is on the  
21 street. You don't have people walking around the city of  
22 Houston with guns in their pocket who are trained individuals  
23 in ballistics, do you?

24 A. I wouldn't think so, no, ma'am.

25 Q. Do you think -- in your experience, do you believe

1 that it would be possible for a gun to fire just by, say,  
2 dropping the gun, for instance?

3 A. It would depend on the firearm and what safeties were  
4 present, and whether or not they're all working properly.

5 Q. Okay. None of which you can answer in this case,  
6 because we don't have a gun, correct?

7 A. That's correct.

8 Q. And if I can just somewhat hypothetically, if you  
9 were to -- if an individual were to walk off -- walk up to  
10 somebody and hit them with a gun, is it going to go off? Would  
11 it go off if it were working properly?

12 A. It would depend on the firearm and what safety  
13 features it has as to whether or not it could prevent that.

14 Q. So all of the answers to these questions really  
15 depends on the condition of the gun and the shooter, the person  
16 who's got it in his hand, correct?

17 A. Yes, ma'am.

18 Q. You just explained all the safety features of that  
19 really nice looking gun that Mr. Reiss handed to you, but it  
20 looked like it was very well handled and taken care of, did it  
21 not?

22 A. Yes, ma'am.

23 Q. But a gun is kind of like anything else, if you don't  
24 take care of it right, it's not going to work right, correct?

25 A. It may not, that's correct, yes, ma'am.

1 Q. Thank you, sir.

2 MS. SCARDINO: I'll pass the witness.

3 THE COURT: Anything further?

4 MR. REISS: One moment please, your Honor.

5 (Pause.)

6 MR. REISS: Couple of follow-up questions, your  
7 Honor.

8 THE COURT: All right.

9 REDIRECT EXAMINATION

10 BY MR. REISS:

11 Q. All right, sir, you're obviously only going to be  
12 able to -- you're not out collecting evidence, correct?

13 A. That's correct, sir.

14 Q. You're only going to be able to test evidence that  
15 officers who are in the field collecting evidence are able to  
16 provide you to test, correct?

17 A. Correct.

18 Q. So if there is no firearm at a crime scene that is  
19 collected, obviously you're not going to be able to test that  
20 firearm from that crime scene, correct?

21 A. Correct.

22 Q. You won't be able to test the working condition of a  
23 firearm in that case, correct?

24 A. Yes, sir, that's correct.

25 Q. Do you always get a firearm in every ballistic case?

1 A. No, sir, I do not.

2 Q. In fact, in many cases you don't, correct?

3 A. Many cases we don't, that's correct, sir.

4 Q. Because the person who has care, custody, and control  
5 of the firearm is the person -- well, I'll withdraw that.

6 MR. REISS: I'll pass the witness, your Honor.

7 THE COURT: Any questions?

8 MS. SCARDINO: No.

9 THE COURT: May this witness be excused?

10 MR. REISS: Yes, your Honor.

11 THE COURT: Thank you for testifying. You are  
12 excused.

13 THE WITNESS: Thank you, your Honor.

14 THE COURT: Call your next.

15 MR. REISS: Your Honor, the State of Texas would  
16 rest.

17 THE COURT: All right. Would the lawyers approach,  
18 please.

19 I think this is a good time to take our afternoon  
20 break. I'm not sure how much further we'll go today, but we'll  
21 take a break for now.

22 All rise for the jury, please.

23 (Jury out.)

24 THE COURT: You-all may be seated. Thank you.

25 Do you have a motion?