

1 THE COURT: Ladies and gentlemen, this
2 witness has previously been sworn.

3 Proceed, please.

4 DWAYNE WOLF,
5 having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. JOHNSON:

8 Q. Sir, could you please state your name for the
9 jury?

10 A. Dr. Dwayne Wolf.

11 Q. How are you employed, sir?

12 A. I'm the deputy chief medical examiner for
13 Harris County.

14 Q. Can you tell us what a medical examiner is?

15 A. Medical examiner is a physician who
16 investigates deaths. We investigate deaths that result
17 from physical or chemical injury or deaths that are
18 sudden and unexpected. In the course of those
19 investigations, we often do autopsies; and ultimately we
20 determine the cause and manner of death and collect
21 evidence from the body to be used in court.

22 Q. And you said you were the deputy chief medical
23 examiner?

24 A. Correct.

25 Q. What does that mean?

1 A. I'm over the death investigation aspects of our
2 office, the medical examiners within the Harris County
3 Institute of Forensic Sciences. Our department includes
4 the medical examiner service with death investigations,
5 along with the full service crime laboratory. So my
6 half of the office is the death investigation side. So,
7 I directly supervise a staff of physicians, 15
8 physicians now, and then also oversee the operations of
9 the morgue and the investigations division within the
10 office.

11 Q. Can you describe for the jury the education,
12 training and experience you have that qualifies you to
13 hold that position?

14 A. I graduated from Lamar University in Beaumont
15 in 1986 with a Bachelor's degree in biology. I then
16 attended The University of Texas Medical Branch in
17 Galveston, 1986 through 1993, where I completed both a
18 Ph.D. in molecular biology, as well as an M.D. degree.
19 And then began my training in pathology at Brown
20 University in Providence, and I returned to The
21 University of Texas Medical Branch in 1995 and completed
22 my general pathology training in 1998. Forensic
23 pathology subspecialty training was at the Dade County
24 Medical Examiner's Office in Miami. I completed that
25 training in 1999, and I'm board certified in forensic

1 pathology, anatomic pathology and, of course, licensed
2 to practice medicine in Texas.

3 Q. Have you testified as an expert in the area of
4 forensic pathology before?

5 A. Yes.

6 Q. On few or many occasions?

7 A. Many.

8 Q. And have you testified as an expert here in
9 Harris County?

10 A. Yes.

11 Q. You used the words pathology and forensic
12 pathology quite a bit this morning. Can you explain
13 those terms for us?

14 A. Sure. Pathology is defined as the study of
15 abnormal tissues and organs. Forensic pathology is a
16 subspecialty that deals with tissues and organs that are
17 abnormal because of injuries, trauma or toxins.
18 Pathologists by and large work in hospitals, they
19 examine tumors to see whether they're benign or
20 malignant or what cell type they are and so forth.
21 Pathologists also run the laboratory in the hospital.
22 The pathology laboratory, the chemistry lab, blood bank
23 all run by pathologists. So forensic pathology is
24 really a subspecialty of the broader field of pathology
25 that deals specifically with investigation of deaths,

1 again, traumatic deaths and drug deaths.

2 Q. Now, you mentioned that part of the duties of a
3 medical examiner here in Harris County is to conduct
4 autopsies?

5 A. Correct.

6 Q. What is an autopsy?

7 A. An autopsy is essentially physical examination
8 of a dead body. Our examination begins with the body as
9 it's received either from the scene or from the
10 hospital. We begin with an external view of the body,
11 accompanied by photographs of the external appearance of
12 the body. We then remove whatever clothing items of
13 medical intervention might be in place; and then we
14 reexamine the body, again, looking for evidence of
15 injury or evidence of disease.

16 Our examination then proceeds to an
17 internal examination. We open the body. We examine
18 each organ one at a time looking for evidence of injury
19 or any evidence of preexisting disease. Again, we
20 document our findings with photography as we go along
21 both the external as well as the internal portions of
22 the examination. And, again, we collect evidence as we
23 go along.

24 So, in a gunshot wound case, we may have
25 the bullet -- well, in the case where there may have

1 been a physical altercation, we may collect fingernail
2 scrapings and that sort of thing.

3 Q. I think you may have mentioned this earlier but
4 we don't do an autopsy on everyone who dies in the
5 county?

6 A. Correct.

7 Q. What are the parameters for how y'all decide
8 when you need to do an autopsy?

9 A. The law, which is Texas Code of Criminal
10 Procedure, Chapter 49, Section 225, is the medical
11 examiner law. And actually Section 6 under that defines
12 what deaths have to be reported to the medical examiner.
13 Those categories include deaths of all children
14 six years of age or less; deaths that occur within
15 admission to a hospital within 24 hours. So, those are
16 all reported. Sudden and unexpected deaths, any deaths
17 that result from injury, whether that's suspected
18 homicide, suicide, or accident. So traffic fatalities
19 and that sort of thing, all of those deaths are reported
20 by our office.

21 If you add all that up, every year, about
22 11,000 deaths are reported to the Harris County Medical
23 Examiner every year, out of about 25,000 deaths in our
24 county every year. The law doesn't say which deaths we
25 have to do an autopsy on. But in cases where a person

1 goes to the hospital and they're there long enough to
2 have an EKG diagnosis of a heart attack, but they die
3 within 24 hours, well, under the law that's reported to
4 our office, and we will have a report on that, but
5 there's no reason for us to bring in the body to do an
6 autopsy, so we don't. So that's the extent of our
7 involvement in those cases.

8 So, if you look at that 11,000 deaths that
9 are reported, we only bring about 4,000 bodies a year
10 for further examination; and those could include
11 anything where there's a suspicion of a homicide,
12 suicide, children deaths where there's an unclear cause
13 of death, traffic fatalities, accidents, all drug
14 deaths. Again, within that group it's at our discretion
15 whether we autopsy or not. So, in cases of traffic
16 fatalities where a person goes to the hospital and
17 they've been in a hospital for a week, say, they have a
18 lot of surgeries, CT scans and so forth, we're pretty
19 clear by the time they get to us what their array of
20 injuries are, so we don't tend to autopsy those.

21 There's another category of deaths, old
22 people who die at home who just don't have a physician
23 taking care of them, if there is no suspicion of
24 anything unnatural, a lot of those, we'll just do an
25 external examination and not do an autopsy. So, of the

1 4,000 bodies that we bring to our office for
2 examinations, we autopsy around 32, 34 hundred a year.
3 But our numbers are up for 2015, so that 4,000 is likely
4 to be higher. But we tend to autopsy about 80 percent
5 of the bodies that we bring in, and all homicides, so if
6 there's a suspicion of homicide, there's a hundred
7 percent autopsy.

8 Q. And do you decide which medical examiner does
9 which autopsy?

10 A. It's essentially a random system that we've
11 worked out. So those of us who happen to be on the
12 schedule for the day are put in rank order by seniority.
13 It's just a rotation system, and then whoever got the
14 last autopsy the day before, the next person up gets the
15 first autopsy the next day, so it's random.

16 Q. So even though you're the deputy chief medical
17 examiner, you still do autopsies?

18 A. Yes.

19 Q. I want to talk to you about an autopsy you
20 performed on January 1st of 2011 on the body of a man
21 identified as Saturnino Argueta. Are you familiar with
22 that autopsy?

23 A. Yes.

24 Q. Now, is each autopsy given its own unique
25 identifying number?

1 A. Yes.

2 Q. And what is the identifying number for the
3 autopsy of Saturnino Argueta?

4 A. It's M-L 11, dash, 0001.

5 THE COURT: Would you do that one more
6 time, please?

7 THE WITNESS: ML 11, dash, 0001, so he was
8 the first case of 2011.

9 THE COURT: Thank you.

10 MS. JOHNSON: May I approach the witness?

11 THE COURT: You may.

12 Q. (BY MS. JOHNSON) Dr. Wolf, I'm going to show
13 you what's been marked as State's Exhibit No. 107. Do
14 you recognize this document?

15 A. Yes.

16 Q. And what is that document?

17 A. It's a copy of an autopsy report for this case.

18 Q. And did you write this report?

19 A. Yes.

20 Q. Is this report something that's created in the
21 regular course of business for the Harris County
22 Institute of Forensic Sciences?

23 A. Yes.

24 Q. Is made at or near the time of the events
25 described?

1 A. Yes.

2 Q. Is it made by a person with knowledge of the
3 events reported in here?

4 A. Yes.

5 Q. And are you a custodian of records of this
6 document?

7 A. Yes.

8 Q. I'm also going to show you State's Exhibits
9 No. 108 through 114 as well as State's Exhibit No. 119;
10 do you recognize these photographs?

11 A. Yes.

12 Q. And what are they?

13 A. These are photographs that were taken during
14 the course of the examination of Mr. Argueta.

15 Q. And do each of these photographs contain that
16 identifying number in the photograph?

17 A. Yes.

18 Q. And do each of these photographs fairly and
19 accurately depict both Mr. Argueta's body and evidence
20 you recovered from it as it appeared to you during the
21 autopsy?

22 A. Yes.

23 MS. JOHNSON: At this time I'm going to
24 offer State's 107 through 114 as well as State 119 and
25 ask that they be admitted into evidence.

1 (State's Exhibit Nos. 107 through 114 and
2 119 offered.)

3 MR. CORTEZ: No objection as to the ME's
4 report, Your Honor. We would object to 108 through 119
5 as redundant, cumulative and under 403.

6 THE COURT: I'll look at those in just a
7 moment. Bring them up, please. State's Exhibit 107 is
8 admitted.

9 (State's Exhibit No. 107 admitted.)

10 (Bench conference.)

11 MR. CORTEZ: I do not object to the bullet
12 pictures.

13 THE COURT: I know. I'm pretty sure you're
14 not going to be doing that one for identification
15 purpose, we have to have that one. And this is the exit
16 wound. And so I have a couple of questions. It's going
17 to be about these three. And I'm specifically looking
18 at 109, 110 and 112. Is that the same?

19 MS. JOHNSON: No, sir. That's the close-up
20 of the exit wound on 112.

21 THE COURT: That's the close-up of this?

22 MS. JOHNSON: That, yes, sir.

23 THE COURT: Okay. Your problem is going to
24 be over here I would think.

25 MR. CORTEZ: As well as the others, Your

1 Honor, the report is very detailed, and I don't think
2 that there's anything --

3 THE COURT: You show me a case on that, and
4 I'll take a look.

5 Why do we need this?

6 MS. JOHNSON: It's difficult to tell the
7 position of the wound without a reference point. I
8 tried to pick as close in as I could get where you can
9 still see a reference point on the body. Unfortunately,
10 the Complainant had surgical intervention at the
11 hospital, so there's nothing I can do about that.

12 THE COURT: This one is not coming in right
13 now.

14 MS. JOHNSON: Okay.

15 THE COURT: So at the moment in addition to
16 State's Exhibit No. 107, I'm also admitting State's
17 Exhibit 108, 110 through 114 and 119. Keep that one
18 separately.

19 (State's Exhibit Nos. 108, 110 through 114
20 and 119 admitted.)

21 MR. CORTEZ: Thank you, Judge.

22 MS. JOHNSON: Thank you.

23 (End of bench conference.)

24 MS. JOHNSON: May I publish?

25 THE COURT: You may.

1 The excluded one was 109, correct?

2 MS. JOHNSON: Yes, sir.

3 THE COURT: Thank you.

4 Q. (BY MS. JOHNSON) All right. Dr. Wolf, first
5 of all, what are we looking at here in State's Exhibit
6 No. 107?

7 A. This is the top page of my autopsy report in
8 this case.

9 Q. And we can see here, is that the reference
10 number that you indicated earlier that identifies this
11 case?

12 A. Yes.

13 Q. And what does this date indicate?

14 A. That's the date the autopsy was actually done.

15 Q. January 1st of 2011?

16 A. Correct.

17 Q. And what do we see here?

18 A. That was the decedent's name and the address as
19 we knew it at the time of his death.

20 Q. And I want to come back to these other things
21 on the front page in a moment, and what I would like to
22 do is there are many pages where you go into great
23 detail about your findings in the report. But I'd like
24 to focus on page 7 on this section called pathological
25 findings. And before we start going through that, what

1 do we have here in State's Exhibit No. 108?

2 A. It's called an identification photograph. It's
3 a photograph of the face of the decedent taken after
4 the --

5 THE COURT: Excuse me a second. Are these
6 not working?

7 MS. JOHNSON: I turned them off because of
8 the nature of the photos.

9 THE COURT: All right. Thank you.

10 A. After the items of medical intervention are
11 removed, we leave the endotracheal tube, the breathing
12 tube, in place and just cut it off so that we can see
13 where the other end of that goes, likewise, for the
14 nasogastric tube.

15 Q. When you performed the autopsy with
16 Mr. Argueta, did you find something that was of interest
17 to you in determining how he died?

18 A. He had a gunshot wound and he also had medical
19 intervention from that, so he was transported to the
20 hospital and the surgeons actually opened his abdomen
21 and then his chest in life-saving attempts. And so when
22 he came to us, I actually had medical records from those
23 procedures as well.

24 Q. And can you tell me where the gunshot wound, or
25 I beg your pardon, where the entrance of the gunshot

1 wound was on his body?

2 A. Yeah, it was in the upper left part of the
3 abdomen or lower chest. It actually grazed along the
4 lower edge of the rib cage on the left side.

5 Q. And in State's Exhibit No. 110 here, are we
6 seeing a close-up of that entrance wound?

7 A. Yes.

8 Q. Now, I see over here on the right side of this
9 picture there is some red dots on the skin, can you tell
10 me what that is?

11 A. That's stippling.

12 Q. What is stippling?

13 A. And they're actually all the way around. So,
14 if you look close out here on this side, you'll see the
15 same thing. When a gun is fired, obviously the bullet
16 comes out of the end, but there are other things that
17 come out of the end of the gun, there's smoke that
18 doesn't go very far. So the smoke, it comes out with
19 the bullet; and it goes out a couple of inches. But
20 there are also unburned particles of gunpowder that come
21 out from the end of the gun and fans out. And those
22 particles of gunpowder will fly out with enough force to
23 actually cause abrasions out to about 2 feet from the
24 end of the gun. And so in cases where the end of the
25 gun is about 2 inches to 2 feet from the skin, we'll see

1 a bullet hole and then surrounding that little pinpoint
2 abrasions from unburned particles of gunpowder striking
3 the skin; and that's stippling, so that's what this is.

4 Q. And so if we see stippling here, that gives us
5 a pretty good idea that the gun was 2 inches to 2 feet
6 from this man's body when it was fired; is that correct?

7 A. Right, and in this case he had a shirt on that
8 we didn't get to examine. So, if a gun is within the
9 closest part of that range within a couple of inches,
10 you would actually see soot from the smoke deposited on
11 the skin as well. But a lot of the particles of
12 gunpowder as well as the smoke won't make it through the
13 clothing. So, without looking at the clothing, it's
14 hard to say exactly. But, yeah, 2 inches to 2 feet but
15 given that these penetrated the shirt, it's probably on
16 the lower end of that range.

17 Q. And in your report here we see that you say
18 intermediate range; is that what you mean?

19 A. Right, when we see stippling, that's the term
20 that we use is intermediate range.

21 Q. Can you tell us what path the bullet took
22 through Mr. Argueta's body?

23 A. Sure. It was front to back and downward, no
24 right or left deviation.

25 Q. And can you just for us who don't kind of know

1 what's in the way in the body in there, can you describe
2 what it hit?

3 A. It went through the lower part of the rib cage.
4 At that point the rib cage is just cartilage, so it's
5 the lower costal margin and it went through the
6 transverse colon, which is your large bowel that extends
7 horizontally across the upper abdomen, then went through
8 the stomach, through several loops of small intestines,
9 through the tissue that holds the small intestines, the
10 back part of the abdominal wall, the mesentery. There
11 are a lot of blood vessels within the mesentery. And it
12 went through the superior mesentery artery, which is one
13 of the main blood vessels that supplies blood to your
14 small intestines. And also perforated the left ureter,
15 which is the tube that goes from your kidney to your
16 bladder. It went through the inferior vena cava, which
17 is one of the main veins of your body. That's the vein
18 that carries blood from legs, everything below your
19 navel, essentially back up to your heart. Then it went
20 through the edge of the third lumbar vertebra, and then
21 it entered into the subcutaneous tissue in the back.
22 So, I actually recovered the bullet from just under the
23 skin in the back.

24 Q. And you mentioned earlier that you knew Mr.
25 Argueta had gone to the hospital first, and you reviewed

1 his medical records from there?

2 A. Correct.

3 Q. And you also indicated that the body came to
4 you from the hospital?

5 A. Right.

6 Q. Was there evidence when it came from the
7 hospital about what they had done to try and save Mr.
8 Argueta's life?

9 A. Yes, when he got to the hospital, they
10 immediately recognized that his injuries were in the
11 abdomen, so they actually opened his abdomen. They saw
12 multiple holes in the small intestines, so they actually
13 took a section of the small intestines out. You can see
14 a big hole in the stomach, so they sewed that. Then
15 they started tying off blood vessels as they went back.
16 During the course of that, his blood pressure started
17 dropping, so they ended up opening his chest to get to
18 his aorta, the main artery in the body, to clamp across
19 that to keep blood from going down into the abdomen. So
20 it's kind of a last ditch-type effort just to keep blood
21 going up into his brain.

22 And then ultimately they just closed his
23 body back up without even closing the gaping hole in the
24 colon or finishing the procedures that they were doing.
25 So when he came to me, he had an open incision in the

1 abdomen along with an incision on the side of the chest
2 along with a bunch of IVs and so forth, just trying to
3 pump enough fluid in him to keep his blood pressure up.

4 Q. And was this evidence in that open abdomen
5 incision about how they had tried to stop the blood
6 flow?

7 A. Well, yeah, there were a lot of blood vessels
8 that were tied off, but, you know, during the course of
9 them trying to fix the abdomen, they put towels in to
10 soak up blood as they go, and it also helps to tamponade
11 the blood flow. In other words, if they close the
12 abdomen back over and they have a bunch of towels in
13 there, there's another pressure to kind of keep the
14 blood vessels from leaking, small blood vessels.

15 Q. Do you know how many?

16 A. I think there were eight towels in there still.

17 Q. Sounds like a lot?

18 A. Yeah.

19 Q. And you mentioned that they closed him back up.
20 In the bottom of State's 110 right here in the left
21 corner, we can see a little bit of Mr. Argueta's skin
22 that's a different color, do you know what this is?

23 A. That's actually subcutaneous fat. So, the
24 incision itself was a vertical incision, but it was
25 gaping open. So, it was kind of a football shape thing

1 by the time it got to me. So, you're seeing the edge of
2 that incision.

3 Q. Now, you mentioned that the exit wound, I
4 guess, for lack of a better term, was in the lower back
5 of Mr. Argueta. Is that what we're seeing here in
6 State's 111?

7 A. It really wasn't an exit wound because the
8 bullet was still in him, but the bullet ended up in the
9 subcutaneous tissue on the back, and I could see that
10 externally because there's a little bruise at that
11 location along with a little abrasion right where the
12 bullet almost came out of the skin. And, of course, I
13 could feel the bullet in the subcutaneous tissue.

14 Q. And before we talk about that a little bit
15 more, there are some silver objects up here that we can
16 see on his arm, what are those?

17 A. Those are clamps that the surgeons used to
18 close up the chest incision that they did.

19 Q. And then here in State's Exhibit No. 112, what
20 are we seeing?

21 A. That's a close-up view of the subcutaneous
22 location of the bullet under the skin. So, again,
23 there's bruising that you can see out to about right
24 here and you can also see that's kind of bulging and
25 right in the middle of that, there's a skin tear where

1 the bullet almost came out.

2 Q. And what's this in State's 113?

3 A. That's an x-ray that we took which shows the
4 location of the bullet which is right here. There are
5 also a number of other things that you see just sort of
6 randomly placed around the nose or radial tags on some
7 of the towels that the surgeons put in to try to
8 tamponade out the blood flow.

9 Q. And did you recover the bullet from Mr.
10 Argueta's body?

11 A. Yes.

12 Q. And is that what we're seeing here in State's
13 Exhibit No. 119?

14 A. Yes.

15 Q. And we see that the bullet is sitting here on
16 a manila envelope with some writing on it; what is that?

17 A. That's the envelope that I packaged the bullet
18 in to submit to evidence. And so the label here
19 indicates our case number, the decedent's name, and what
20 it is, which in this case is bullet from back, and then
21 down here at the bottom is my signature, my name printed
22 and then the date that this was collected.

23 Q. And we have a close up of that same item here
24 in State's 114. Were you able to determine anything
25 about what kind of weapon this would have come from?

1 A. It was a medium caliber bullet. It's a
2 partially jacketed bullet.

3 Q. What does partially jacketed mean?

4 A. You'll notice that up here the bullet is gray,
5 and back here it's a copper color so it's two different
6 metals, so that copper color part of that is a jacket
7 over the bullet. That jacket -- if a jacket covers the
8 entire bullet, that's a fully jacketed bullet; and the
9 bullets tends to be more intact. If the jacket only
10 goes a part of the way up the front of the bullet, the
11 bullet spreads out or mushrooms, so that's what you're
12 seeing here. These parts here are mushroomed out. So,
13 this bullet would have, you know, had a shape something
14 like that before it spread out.

15 Q. Is this something that would be fired out of a
16 firearm?

17 A. Yes.

18 Q. What do you do once you collect and recover the
19 bullets?

20 A. It's photographed. It's sealed in that bag,
21 that bag is then placed into another evidence bag, and
22 then we place it into a locked room in our morgue and
23 then it's picked up by the evidence handling division of
24 our office, and it ultimately goes to whatever police
25 agency is responsible for the case. If it's a sheriff's

1 office case, it stays within our office because our
2 firearms lab handles those; but if it's the Houston
3 Police Department, for example, somebody from their
4 property room will pick it up and take it back over to
5 their laboratory to work the evidence.

6 Q. Okay. Is it also part of your autopsy process
7 to collect a known DNA sample from a deceased person?

8 A. Yes.

9 Q. Did you do that in this case?

10 A. Yes.

11 Q. What do you do once you collect that known DNA
12 sample?

13 A. I guess it depends on the case. We always
14 collect a tube of blood and a preservative that's
15 appropriate for DNA. So, on every case we collect a
16 tube of blood that can be used for DNA; but depending on
17 the type of case and the police jurisdiction, we may go
18 ahead and make a bloodstain card. So, if it's a Houston
19 Police Department case and it's a homicide at the time
20 of autopsy, we'll go ahead and make a bloodstain card.
21 In other words, we'll put drops of blood on a filter
22 paper and then allow that to dry while we're finishing
23 the autopsy; and then we will package that along with
24 the other evidence in the case.

25 Q. And that goes into that same secure evidence

1 room that you described?

2 A. Correct.

3 Q. I want to move on to page 8 of your autopsy
4 report, which continues your pathological findings.
5 Under Subsection D here you wrote about the direction
6 that the bullet took in Mr. Argueta's body. Can you
7 just describe that for us again?

8 A. It's front to back and downward with no
9 significant deviation left or right. In case you're
10 wondering, the front to back there is underlined because
11 the original autopsy inadvertently said back to front,
12 which clearly wasn't the case. And so at some point
13 when I reviewed the report, I realized the report, the
14 mistake and issued an amended report. So, what we
15 usually do on those is keep the original report intact
16 and then we issue an amended underlining any changes we
17 made, and then we'll put a comment down here that tells
18 why the report was amended.

19 Q. And then Subsection 2 here on your pathological
20 findings, what is that outlining?

21 A. So that just describes some of the therapeutic
22 interventions that he had.

23 Q. After you did your autopsy on Mr. Argueta, were
24 you able to form an opinion as to the cause and manner
25 of his death?

1 A. Yes.

2 Q. And what was your opinion on what caused the
3 death of Mr. Argueta?

4 A. It was a gunshot wound of the abdomen.

5 Q. And did you reach a conclusion about the manner
6 of death?

7 A. Yes.

8 Q. And what was that?

9 A. Homicide.

10 MS. JOHNSON: I'll pass the witness.

11 MR. CORTEZ: May it please the Court?

12 Can I see the report?

13 **CROSS-EXAMINATION**

14 BY MR. CORTEZ:

15 Q. Dr. Wolf, when was it amended?

16 A. When was it amended?

17 Q. Yes.

18 A. June 2014, the signature on this page is from
19 the amendment.

20 Q. Okay. And in the original you actually had two
21 places where you claimed that the progress of the bullet
22 was back to front; is that correct?

23 A. Right, so it's in the description as well as
24 the pathological finding which is essentially a summary
25 of the description.

1 Q. Dr. Wolf, how long have you worked for Harris
2 County?

3 A. Since 2001.

4 Q. And where did you work prior to that?

5 A. Alabama Department of Forensic Sciences, the
6 regional office in Mobile.

7 Q. And why did you leave there?

8 A. I'm from southeast Texas, and I wanted to move
9 back here. There was a job opening, so here I am.

10 Q. And your salary is paid by Harris County,
11 correct?

12 A. Yes.

13 Q. And you said you testified many times in court.
14 Can you give us an approximation, hundreds, thousands?

15 A. Over 300 approximation.

16 Q. And each time for the government, correct?
17 You've never testified for the Defense?

18 A. I mean, we testify for whoever calls us.
19 Usually the subpoena comes from the State.

20 Q. Have you ever testified for a defendant?

21 A. You know, I've been subpoenaed by Defense in a
22 few cases, but usually also by the Prosecution. It's
23 been a minority of times.

24 Q. So you have, in fact, testified for the Defense
25 in the past?

1 A. I don't know. I've been subpoenaed by the
2 Defense, and in those cases I was probably also
3 subpoenaed by the Prosecution.

4 Q. Dr. Wolf, the patient arrived at Ben Taub at
5 approximately 7:00 p.m.; is that correct? Do you need
6 the report?

7 A. I've got it. Yeah, it was 6:50 p.m.

8 Q. And he was declared dead approximately
9 two hours later?

10 A. Correct.

11 Q. Why did you describe the abdominal incision as
12 gaping?

13 A. Because it was. The edge, if the edges of the
14 incision are reapproximated, so that it's a linear
15 incision, then it's not gaping. If the edges are out,
16 you know, six inches apart from one another, that's
17 gaping; and that's kind of how it was here.

18 Q. And how large would you say the incision was?

19 A. 23 centimeters in length, the width, in other
20 words, how far apart the edges were were 15 centimeters.
21 So 23 centimeters vertically gaping opening 15
22 centimeters.

23 Q. So that was almost a foot long incision down,
24 right?

25 A. Yeah, 23 centimeters.

1 Q. And then he had another one 30 centimeters,
2 about a foot long on his side?

3 A. Correct.

4 Q. Right?

5 A. Yes.

6 Q. So, he's got two big cuts in him?

7 A. Yes.

8 Q. Now, you said that the bullet struck the
9 transverse colon, the stomach, part of the duodenum,
10 part of the superior mesenteric artery; I want to make
11 sure that's clear. Is that also in your report?

12 A. Yeah, so, I'm sorry, which part of that?

13 Q. Well, you testified earlier today that it
14 struck the major mesentery artery but, in fact, your
15 report says it struck branches of that artery. So, did
16 it pierce that artery or just the branches? I'm sorry,
17 the -- yeah, the mesentery?

18 A. Yeah, so, that was based on the medical
19 records. And so what I have in my report is according
20 to the surgical note to include branches of the superior
21 mesentery artery.

22 Q. So a portion of that artery, correct?

23 A. Branches of that artery, yes.

24 Q. The inferior vena cava, the left ureter,
25 portion of the groin muscle and the left edge of the L3

1 vertebra; is that correct?

2 A. Yes.

3 Q. No vital organs were struck; is that correct?

4 A. Well, the inferior vena cava, the mesentery,
5 small intestines, I'm not sure what you're getting at.

6 Q. Was the heart struck?

7 A. No.

8 Q. Lungs?

9 A. No.

10 Q. Liver?

11 A. No.

12 Q. Kidneys?

13 A. No.

14 Q. The stomach and the intestines were the primary
15 portions that were hit, correct?

16 A. The blood vessels were the main issue in terms
17 of his mechanism of death.

18 Q. So, are you saying he bled out?

19 A. Yes.

20 Q. That's what I'm trying to get at. Is there
21 anything from your examination that would tell you who
22 shot the deceased?

23 A. No.

24 MR. CORTEZ: I'll pass the witness, Your
25 Honor.

1 MS. JOHNSON: Your Honor, at this time I
2 would reoffer State's 109 so that the Doctor can show
3 the jury the gaping incision and incision across the
4 chest that the Defense has asked him to describe.

5 (State's Exhibit 109 offered.)

6 MR. CORTEZ: Your Honor, I think he
7 sufficiently described it. And at this point it would
8 just be, again, redundant, cumulative and under 403.

9 THE COURT: You opened the door on this
10 one, State's 109 is admitted.

11 (State's Exhibit No. 109 admitted.)

12 **REDIRECT EXAMINATION**

13 BY MS. JOHNSON:

14 Q. And I apologize for the graphic nature of the
15 photo. I won't leave it up too long. Just so that the
16 jury understands what we're talking about in State's
17 109, do we see the gaping incision where they attempted
18 abdominal surgery on the bottom left of the photo?

19 A. Right, and it's covered with a yellow plastic
20 sheet, it's iodine impregnated adhesive sheet. Under
21 that there's a blue towel; and in the center of that,
22 they cut a window so they can see the abdominal
23 contents.

24 Q. And then can we also see the chest incision
25 that Defense counsel described?

1 A. Yes.

2 Q. And is that the aortic clamping that you had
3 described earlier?

4 A. Well, the aorta is deep within the chest.
5 These are just towel clamps that were used to hold the
6 edges of the skin back together when they closed him
7 back up hurriedly. At that point, I think they realized
8 it was fatal.

9 Q. We can also see the bullet entry wound right
10 here on State's 109, correct?

11 A. Correct.

12 Q. And finally, and I apologize, I forgot to ask
13 you a moment ago. I want to talk to you about
14 specifically in reference to the bullet you recovered
15 and the envelope that you place it in that we can see in
16 114 and 119. I want you to, I'm going to pull these
17 items out of this envelope here, specifically this
18 envelope and this fragment?

19 A. Yes.

20 Q. Does this appear to be the envelope that you
21 placed the bullet you recovered from Mr. Argueta's body
22 into?

23 A. Yes.

24 Q. And is that your signature?

25 A. Yes.

1 Q. And if this is packaged with it, does this
2 appear to be the bullet that you recovered from his
3 body?

4 A. It's somewhat altered during the course of
5 their subsequent examination, but it's consistent with
6 the same bullet.

7 Q. And by their examination, do you mean the
8 firearm examiner?

9 A. Correct.

10 Q. Okay. Other than that alteration, does this
11 appear to be in the same or substantially similar
12 condition?

13 A. Right, again, the mushroom part has been pulled
14 forward so that they can actually see the shaft of the
15 bullet; but, yeah, it looks like the same bullet.

16 Q. Okay. At this time I would offer State's
17 Exhibit No. 115 into evidence?

18 (State's Exhibit No. 115 offered.)

19 MR. CORTEZ: No objection, Judge.

20 THE COURT: State's 115 is admitted.

21 (State's Exhibit No. 115 admitted.)

22 MS. JOHNSON: And then I'll pass the
23 witness.

24 THE COURT: Anything else?
25

1 MR. CORTEZ: With the Court's permission?

2 **RECROSS-EXAMINATION**

3 BY MR. CORTEZ:

4 Q. Doctor, did you just testify that you said you
5 closed him up hurriedly?

6 A. Yeah, that that part of the chest, the chest
7 incision was closed pretty quickly.

8 Q. I'm trying to think how to ask this, is a wound
9 like this survivable?

10 A. It wasn't for him. It really depends on how
11 quickly they get to him.

12 Q. Is there anything you can tell from your
13 examinations if there was anything else they could have
14 done medically? In other words, is it possible that
15 something the doctors did in the operating room may
16 have--

17 MS. JOHNSON: Judge, I'm going to object to
18 the relevance.

19 THE COURT: I'm going to let him ask the
20 question.

21 Q. (BY MR. CORTEZ) Is there something possibly
22 that the doctors did or did not do that could have
23 caused the death of Mr. Argueta?

24 A. No, nothing that's apparent to me.

25 Q. There were no other bullet fragments, correct?

1 A. Correct.

2 Q. This is not a hollow point bullet?

3 A. I don't know.

4 Q. Well, you did say it was jacketed, correct?

5 A. Partially jacketed.

6 MR. CORTEZ: All right. Pass the witness,
7 Judge.

8 **FURTHER REDIRECT EXAMINATION**

9 BY MS. JOHNSON:

10 Q. But for the gunshot wound would Mr. Argueta
11 have been in the hospital that day?

12 A. No.

13 Q. Did he have any evidence of any other disease
14 or defect at that time that would have prevented him
15 from living a normal life?

16 A. No.

17 MS. JOHNSON: I have no further questions.

18 MR. CORTEZ: Nothing further, Your Honor.

19 THE COURT: You may stand down.

20 MS. JOHNSON: May this witness be excused?

21 THE COURT: May he be excused?

22 MR. CORTEZ: Yes, Your Honor.

23 THE COURT: You may step down. Call your
24 next, please.

25 MS. JOHNSON: State calls Mark Deleon.

1 THE COURT: He's got to be sworn.

2 THE BAILIFF: Oh, come back, she's got to
3 swear you in. Raise your right hand.

4 (Witness sworn.)

5 THE BAILIFF: Okay.

6 THE COURT: Proceed, please.

7 **MARK DELEON,**

8 having been first duly sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 BY MS. JOHNSON:

11 Q. Good morning, sir.

12 A. Good morning.

13 Q. Can you please tell the ladies and gentlemen of
14 the jury your name?

15 A. Mark Deleon.

16 Q. How old are you, sir?

17 A. 38.

18 Q. Are you from the Houston area?

19 A. Yes, ma'am.

20 Q. How long have you lived here?

21 A. All my life.

22 Q. Are you married?

23 A. Divorced.

24 Q. How long have you been divorced?

25 A. Six years.