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KIMBERLY ZELLER,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STAYTON:

Q. Good morning, ma'am. Would you please introduce yourself for the Court?

A. My name is Kimberly Zeller.

Q. And how are you employed?

A. I'm employed by the City of Houston at the Houston Forensics Science Center as a firearms examiner.

Q. And how long have you held that position?

A. Approximately six-and-a-half years.

Q. Can you describe for the Court your training and education and experience that's prepared you to do the work that -- as a firearms analyst?

A. I have a bachelor's degree in biological sciences from Southern Illinois University. I have also completed an in-house training program that lasted approximately two years under the direct supervision of experienced firearms examiners. And I've also taken armors courses provided by Glock, Sig Sauer, Smith & Wesson, and Hi-Point Firearms.

Q. And in your years as a firearms analyst with the Houston Forensics Science Center, have you had the opportunity to examine few or many firearms that were

1 connected with criminal investigations?

2 A. Many.

3 Q. Prior to your work here in Houston, did you
4 have any other experience in this work before coming to
5 Houston?

6 A. No, I have not.

7 Q. I want to talk about a -- and ask you questions
8 about an examination of a shotgun that was connected
9 with a capital murder investigation that you were asked
10 to perform.

11 But before I ask you the questions about
12 it, ma'am, can -- did you -- following your examination
13 of the firearm and any other evidence that was given to
14 you, did you have an occasion to put your findings and
15 conclusions into a written report?

16 A. Yes, I did.

17 Q. And did you -- did you do that at or near the
18 time or shortly after the time of your -- of the actual
19 examination of the evidence?

20 A. Yes.

21 Q. And prior to your testimony today, did you have
22 a chance to -- on one or more occasions to look over the
23 report that you prepared to refresh your memory and to
24 prepare for testimony today?

25 A. Yes, I did.

1 Q. Did you bring a copy of your report with you,
2 ma'am?

3 A. Yes, I did.

4 Q. If you could pull it out because I'm going to
5 ask you some questions related to that.

6 A. (Witness complies).

7 Q. Was there -- when your -- when you conduct an
8 examination connected with a criminal investigation here
9 in Harris County, how is it that you receive a specific
10 request?

11 A. It is processed through our LIMS program, which
12 is the Laboratory Information Management System. That
13 part is handled by our manager of the section. And then
14 I just get an e-mail with a request to do the work.

15 Q. Does your office generate a unique case number
16 that is connected with each specific examination of
17 evidence?

18 A. Yes, it does.

19 Q. And was there -- can you tell us from the
20 report in front of you what was the unique lab number or
21 case number that was -- that your office generated
22 connected with this investigation?

23 A. We call it the forensic case number. And it
24 was 2013-22882.

25 Q. Did you also have information at the time of

1 your examination of this evidence about the unique case
2 number that the Houston Police Department assigned to
3 this criminal investigation?

4 A. Yes, I did.

5 Q. And does that unique number also appear on the
6 report?

7 A. Yes, it does.

8 Q. And would you please tell us what that number
9 is?

10 A. It is 089033513.

11 Q. And now referring to your report, what was it
12 that you were asked to examine and do connected with
13 this capital murder investigation?

14 A. I was asked to compare the fired shot shell to
15 the shotgun.

16 Q. Anything other than that, ma'am?

17 A. No, that was all I was asked.

18 MR. STAYTON: May I approach the witness,
19 Judge?

20 THE COURT: Yes.

21 Q. (By Mr. Stayton) Ms. Zeller, I'm showing you
22 what's been marked and admitted into evidence as State's
23 Exhibit 78-A, an envelope. And then I'm removing from
24 the envelope what's been premarked and admitted into
25 evidence as State's Exhibit 78. If you would just take

1 a look at those items (indicating).

2 A. (Witness complies).

3 Q. Do you recognize State's Exhibit 78?

4 A. Yes, I do.

5 Q. And how is it that you recognize it?

6 A. The HPD incident number that is on the bag.

7 Q. And what do you recognize it to be, the
8 contents of State's 78?

9 A. This is one fired 20-gauge shot shell.

10 Q. Is that the shot shell that you were given
11 as -- with the request to conduct an examination of
12 evidence in this case?

13 A. Yes, it is.

14 Q. I'm also showing you what's been marked and
15 admitted into evidence as State's Exhibit 104, and ask
16 if you would, also, please take a look at this
17 (indicating).

18 A. (Witness complies).

19 Q. Ms. Zeller, can you see it sufficiently inside
20 of the bag or would it be helpful for your testimony to
21 remove it from the bag?

22 A. No, it's fine. I can see it. Thank you.

23 Q. All right.

24 A. Yes, I recognize it.

25 Q. If you'd just keep that up next to you for now.

1 State's Exhibit 104, how is it that you
2 recognize the contents of the plastic bag that's marked
3 State's Exhibit 104?

4 A. It's marked with the HPD incident number, as
5 well as the item identifier.

6 Q. And what are the contents of State's Exhibit
7 104?

8 A. State's Exhibit 104 is a 20-gauge Mossberg
9 model 88 shotgun.

10 Q. And is that the same shotgun that you were
11 asked to examine in connection with this capital murder
12 investigation?

13 A. Yes, it is.

14 Q. When you received that evidence -- how is it
15 that you receive evidence connected with your
16 examinations?

17 A. We generally receive it labeled from the HPD
18 Property Room and the envelopes are sealed as well.

19 Q. And what did you do with the pieces of evidence
20 marked State's 78 and State's 104?

21 A. I examined State's Exhibit 104, the shotgun,
22 for functionality. I also tested the safeties, the
23 magazine capacity, the bore condition, and I also
24 test-fired State's Exhibit 104, the shotgun.

25 Q. And what were your conclusions in connection

1 with your examination?

2 A. During test-firing, State's Exhibit 104
3 functioned as expected. It had a magazine capacity of
4 two. And the bore condition had light particulate
5 matter throughout.

6 Q. Did you have an occasion to test-fire State's
7 Exhibit 104?

8 A. Yes, I did.

9 Q. And can you tell us, what were your findings
10 from the test-firing?

11 A. I created two sets of test-fires of three shot
12 shells each and the firearm test-fired as expected.

13 Q. Can you describe the type of shotgun; that is,
14 in relation to how a shotgun shell or a shot casing
15 would be ejected from the shotgun post discharge?

16 A. This is what's considered a pump-action
17 shotgun. I know it's in the bag. May I use it to
18 demonstrate? Would that be helpful or it doesn't -- I
19 can --

20 Q. Would it help you in your testimony?

21 THE COURT: The Court knows what a pump
22 shotgun is.

23 Q. (By Mr. Stayton) You can just describe it,
24 ma'am.

25 A. All right. There is a pump on the underside of

1 the shotgun. And moving the pump forward and backwards
2 is what extracts and ejects the fired shot shell, as
3 well as loads the next one from the magazine.

4 Q. There is no -- this is not an automatic or
5 semiautomatic shotgun where the shell shot casing ejects
6 automatically post discharge?

7 A. It is not.

8 Q. When you received the firearm marked State's
9 Exhibit 104, were there any live rounds chambered or
10 within the -- that you found inside of the shotgun?

11 A. No, there were not.

12 Q. And did you also have an occasion to do a
13 comparison of State's Exhibit 78 with the test-firings
14 that you did of State's Exhibit 104 to say whether or
15 not State's Exhibit 78 was fired from State's Exhibit
16 104?

17 A. I did.

18 Q. And what was your conclusion?

19 A. In my opinion, State's Exhibit 78 was fired in
20 State's Exhibit 104.

21 Q. And can you say, what was the -- from State's
22 Exhibit 78, the shot casing, what was the size of the
23 shot or pellets in that shot casing?

24 A. It is 7-and-a-half shot, size shot.

25 Q. Was there anything that you noted about State's

1 Exhibit 104 that would have prevented it from operating
2 under normal circumstances? Was there anything that
3 was -- that you found that was wrong with State's
4 Exhibit 104, the shotgun, that caused it to not fire as
5 you would have expected?

6 A. No. It fired as I expected it to.

7 Q. Did you also do an analysis of the trigger
8 pull?

9 A. Yes, I did.

10 Q. And what was your finding?

11 A. That it had a measurement of 5 to 6 pounds.

12 Q. And I believe you already testified, but this
13 was a single-action?

14 A. Yes, that's correct.

15 MR. STAYTON: Pass the witness, Your Honor.

16 THE COURT: Mr. Wentz.

17 MR. WENTZ: May it please the Court?

18 **CROSS-EXAMINATION**

19 **BY MR. WENTZ:**

20 Q. You've just indicated that this was a
21 single-action shotgun. What do you mean by that?

22 A. One pull of the trigger causes one action.
23 That causes the hammer to fall and strike the firing
24 pin. That is the only action when you pull the trigger.

25 Q. And I think you've indicated that the magazine

1 in this particular firearm contains two shells; is that
2 correct?

3 A. It has the capacity to hold two shot shells,
4 yes.

5 Q. And there were none -- no shot -- there were no
6 other shells in it when you received it; is that
7 correct?

8 A. That was -- that's correct, there were no shot
9 shells in it when I received it.

10 Q. In the course of your work at the firearms lab,
11 you've examined other 20-gauge shotguns; is that
12 correct?

13 A. Yes, a few.

14 Q. You're familiar with the characteristics of a
15 shotgun; is that correct?

16 A. That's correct.

17 Q. Can you tell us how many pellets are generally
18 within a Remington 20-gauge shotgun shell?

19 A. It's based on the ounces of shot that was
20 loaded into that particular shot shell. Per ounce of
21 led shot -- there's more than one type of shot out
22 there. It could be between 344 and 358 pellets per shot
23 shell.

24 Q. Three hundred forty-four pellets possibly?

25 A. Possibly, yes.

1 Q. What would the weight of the shells be?

2 A. Per ounce of led size 7-and-a-half size shot,
3 it is approximately 419 grains.

4 Q. Could you compare the weight of the shotgun
5 pellets in a 20-gauge shell that you're talking about
6 with the weight of a 9-millimeter Glock semiautomatic?

7 A. When you say "9-millimeter Glock," that's a
8 type of firearm. Do you mean 9-millimeter Luger
9 cartridge?

10 Q. Yes. I'm sorry.

11 A. Okay. A 9-millimeter styled bullet is
12 typically 115 grains. There is some variance depending
13 on the style of that particular bullet.

14 Q. The shotgun shell projectiles substantially
15 outweigh the projectile from a 9-millimeter Glock round,
16 correct?

17 A. I would say that's accurate.

18 Q. And would you agree with me that once a shotgun
19 is fired and the projectiles flow forth from the barrel,
20 they tend to expand?

21 A. Yes, they do.

22 Q. And would you say that that is something that
23 makes a shotgun different than a handgun? In a handgun,
24 the projectile remains the projectile and simply goes
25 forward until it hits an object.

1 A. That is true. However, there are cartridge
2 cases designed for pistols that do also have shot in
3 them instead of the one projectile.

4 Q. Well, where you have a handgun that handles --
5 a handgun that is firing the normal cartridge, it is
6 just going to go forward, that one projectile, correct?

7 A. Generally speaking, yes.

8 Q. And that will be the only projectile hitting
9 the target, correct?

10 A. Generally speaking, yes. There are some other
11 types of ammo called frangible ammunition, but that
12 generally doesn't happen until impact.

13 Q. So, with a normal cartridge from a 9-millimeter
14 round, it is going to go forward independently,
15 individually, until it strikes its target; isn't that
16 correct?

17 A. I would say that's correct in general.

18 Q. And with a shotgun shell, the pellets are going
19 to expand as it goes forward, correct?

20 A. Generally speaking, yes.

21 MR. WENTZ: May I approach, Your Honor?

22 THE COURT: Yes.

23 Q. (By Mr. Wentz) Let me have you refer to State's
24 Exhibit No. 87 or 86. And could you tell us what you
25 estimate the size of the entrance wound to be in State's

1 Exhibit No. 86 or 87, noting the marker placed there by
2 the medical examiner (indicating)?

3 A. You want me to use the ruler on the picture to
4 estimate the size?

5 Q. Yes.

6 A. Does that 4 represent that's 4 inches from here
7 to here (indicating)? Is that --

8 Q. I think it's 1 inch.

9 A. That's 1 inch from here to here.

10 Maybe 1-and-a-half inches, roughly.

11 Q. What would you expect the entrance wound from a
12 9-millimeter Glock projectile to be when it struck a
13 body?

14 A. That's really out of my area of expertise. I
15 could tell you the diameter of the projectile, but not
16 the diameter of the wound that it would cause.

17 Q. What would be -- what is the diameter of a
18 9-millimeter Glock projectile?

19 A. It's approximately .357 inches.

20 Q. And would you agree with me that the diameter
21 of a shotgun shell is substantially larger than the
22 9-millimeter Glock projectile in diameter?

23 A. As a total, the whole shot shell is wider than
24 the entire cartridge of the 9-millimeter Luger.

25 Q. Would you agree with me that upon impact, the

1 pellets -- the pellets emitted from the shotgun would
2 continue to expand?

3 A. Could you repeat the question?

4 Q. Would you agree with me that when the pellets
5 of a shotgun is fired and hits a body, they would
6 continue to expand after hitting the body?

7 A. I honestly don't know.

8 MR. WENTZ: I pass the witness, Your Honor.

9 THE COURT: Mr. Stayton.

10 MR. STAYTON: Yes, one question.

11 **REDIRECT EXAMINATION**

12 **BY MR. STAYTON:**

13 Q. Ms. Zeller, when you -- you said that you've --
14 on many occasions that you have examined evidence
15 connected with criminal investigations in Harris County,
16 Texas, as part of your work. Right?

17 A. That's correct.

18 Q. Do you receive -- when you receive weapons from
19 a law enforcement agency for testing and examination, at
20 the time that you receive them have the weapons been
21 cleared of live rounds or do you receive them with live
22 rounds still chambered or in the weapons, whether they
23 are handguns or shotguns?

24 A. Generally speaking, our laboratory policy has
25 them cleared before we receive them.

1 Q. And this weapon in State's 104 was cleared at
2 the time that you received it?

3 A. That's correct.

4 Q. And you have no -- do you have any way of
5 knowing prior to that -- prior to you receiving it
6 cleared if homicide investigators have cleared the
7 weapon prior to your examination?

8 A. No, I don't.

9 MR. STAYTON: Pass the witness.

10 THE COURT: Mr. Wentz.

11 MR. WENTZ: One question.

12 **RECROSS-EXAMINATION**

13 **BY MR. WENTZ:**

14 Q. You've indicated that it was your opinion that
15 the fired shotgun casing was fired from the State's
16 Exhibit 104. What is the basis of that opinion?

17 A. Based on the markings left from the firearm on
18 the fired shot shell and the comparison of those
19 markings from the test-fires to the evidence shot shell,
20 the markings matched.

21 Q. The markings on the back of it, markings on the
22 side of it? What markings are you referring to?

23 A. I used the markings that were left from the
24 firing pin of State's Exhibit 104 that were left on the
25 fired shot shell, on the primer area of State's Exhibit

1 78.

2 Q. So, essentially, the side of the shell that is
3 struck by the hammer; is that correct?

4 A. No. The side of the shot shell that was struck
5 by the firing pin.

6 Q. Firing pin. The back of it, the flat end?

7 A. Yes.

8 Q. Not a matter of checking the sides of the
9 cartridge as it was ejected from the firearm?

10 A. No.

11 Q. That might be done with a 9-millimeter Glock,
12 semiautomatic?

13 A. Are you referring to what we call chambering
14 marks?

15 Q. Yes.

16 A. No. I did not use chambering marks. I used
17 the firing pin impression.

18 Q. And that's the only basis?

19 A. For this particular case, yes.

20 MR. WENTZ: Pass the witness, Your Honor.

21 MR. STAYTON: Nothing further, Your
22 Honor.

23 THE COURT: You may step down, ma'am.

24 Call your next witness.

25 MR. STAYTON: J.C. Galindo.

1 THE COURT: All right. Go ahead.

2 J.C. GALINDO,
3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. STAYTON:

6 Q. Sir, would you please introduce yourself for
7 the Court?

8 A. I'm Justin Galindo. I'm an officer with the
9 Houston Police Department. And I'm currently assigned
10 to the Houston Forensics Science Center.

11 Q. And how long have you been a certified peace
12 officer with the Houston Police Department?

13 A. Since 2008.

14 Q. And prior to 2008, do you have any other law
15 enforcement experience?

16 A. No, sir.

17 Q. Or military experience?

18 A. No, sir.

19 Q. Can you, for the record, tell us about your
20 training and education that prepared you for the work
21 that you do?

22 A. I started taking coursework in 2010 in digital
23 forensics, primarily through some law enforcement
24 grants, where they were working on trainings of law
25 enforcement officers. And then in 2011, I moved to the