

1 break. Why don't you do your bathroom breaks if that's
2 what you need and ring us when you are finished and you
3 are all ready to come back out. All right?

4 (Jury out.)

5 (Short recess.)

6 (Jury in.)

7 THE COURT: Call your next witness.

8 MS. EPLEY: Kimberly Zeller.

9 (Witness sworn.)

10 MS. EPLEY: May I proceed?

11 THE COURT: Yes, you may.

12 **KIMBERLY ZELLER,**

13 having been first duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 **BY MS. EPLEY:**

16 Q. Please state your name for the jury.

17 A. Kimberly Zeller.

18 Q. Ms. Zeller, where do you work?

19 A. I'm employed by the City of Houston in the
20 Houston Police Department Crime Laboratory.

21 Q. Are you from Houston originally?

22 A. No, ma'am.

23 Q. Where are you from?

24 A. Illinois.

25 Q. How long have you been in Texas?

1 A. About four years.

2 Q. What kind of education do you have?

3 A. I have a bachelor's degree in biological
4 sciences from Southern Illinois University.

5 Q. What brought you to Houston?

6 A. Job opportunity.

7 Q. Is that the one with HPD you have now?

8 A. Yes, it is.

9 Q. So, what's your title?

10 A. Criminalist.

11 Q. What's a criminalist do for the crime lab?

12 A. A criminalist in the firearms section where I
13 work examines firearms and firearms-related evidence.

14 Q. Can you briefly explain what examining a
15 firearm or firearm evidence entails?

16 A. Yes. A firearm is received into the
17 laboratory, is assigned to an analyst and we inspect the
18 firearm for functionality. We examine the safety of the
19 firearm and also test-fire the firearm. We will
20 determine the trigger pull of the firearm.

21 Q. What kind of training does someone go through
22 to have your job?

23 A. We have an in-house training program that
24 lasts approximately two years. We also take armors
25 courses. I've taken courses from Sig Sauer, Colt, High

1 Point and Glock. And we also have an independent
2 casework portion as well as a supervised casework
3 period.

4 Q. Would you mind moving that microphone just a
5 little bit away from you so it won't ring.

6 A. That better?

7 Q. As long as I can still hear you.

8 A. Okay.

9 Q. Do you belong to any professional
10 organizations?

11 A. Yes. I'm a member of the Association of
12 Firearms and Tool Mark Examiners.

13 Q. Do you have any certifications?

14 A. I do. I'm certified by the American Board of
15 Criminalistics.

16 Q. And have you been certified as an expert
17 before?

18 A. I'm sorry?

19 Q. Have you testified on few or many occasions?

20 A. Few.

21 Q. So, you are fairly new at testifying?

22 A. Yes.

23 Q. But does the type of analysis that you do, is
24 that based on the same types of information that other
25 experts in your field rely on?

1 A. Yes.

2 Q. So, you want to say types of testing that we
3 do nationally?

4 A. Yes.

5 Q. Is any conclusion that you draw based on a
6 reasonable degree of scientific certainty?

7 A. Yes.

8 Q. If you have shell casings or a bullet jacket
9 and then you have a firearm, what type of analysis would
10 you do to see if these items match?

11 A. First, I would test-fire the firearm and
12 examine the firearm safeties just to make sure they are
13 all functioning properly. The test-fire includes a set
14 of known cartridge cases and bullets that we would
15 compare back to the evidence to see if there was a
16 match.

17 Q. What types of things do you look for on a
18 casing or a bullet jacket itself?

19 A. First I would look at the class
20 characteristics. Are you speaking of what I am
21 comparing to the known test-fires?

22 Q. Yes.

23 A. First I would examine the class
24 characteristics. I might need to explain that. Class
25 characteristics are overall characteristics of items.

1 For example, let's use shoes as an example. The class
2 characteristics would be size. Everybody wears shoes,
3 but we all wear different sizes. So, I can group those
4 shoes in different categories.

5 Let's say we all wear size six shoes.
6 So, we're all wearing the same size, that's one class
7 characteristic; but we all have different colored shoes.
8 Some of us have black shoes. Some of us have white
9 shoes, brown and red. Those are different classes I can
10 separate the shoes into.

11 Same thing with evidence. We have class
12 characteristics. Could be caliber, the width of the
13 lands and grooves on a bullet. The firing pin shape is
14 a class characteristic. I break it down to those
15 general characteristics first.

16 Q. Let's start with the gun.

17 MS. EPLEY: May I approach, Your Honor?

18 THE COURT: Yes, you may.

19 Q. (BY MS. EPLEY) Ms. Zeller, I'm showing you
20 what has been premarked as State's Exhibits 86 and 87
21 and already admitted into evidence. Let's start with
22 87. Just looking at this gun, what can you tell us
23 about it?

24 A. May I pick up the firearm?

25 Q. Please.

1 A. This is a semiautomatic CZ pistol, Model 27
2 firearm.

3 Q. Semiautomatic. Can you tell from the outside
4 what caliber of bullet it will hold?

5 A. I can. It's typically written -- oh, caliber
6 7.65, which is a .32 automatic.

7 Q. So, it's a .32 caliber semiautomatic firearm?

8 A. Uh-huh.

9 Q. What about State's Exhibit 86?

10 A. This is a Smith & Wesson revolver. It's a .38
11 Special.

12 Q. And it would hold .38 caliber bullets?

13 A. Yes.

14 Q. Are you familiar with State's Exhibits 86 and
15 87 other than bringing it to court today?

16 A. Yes. This is evidence I examined in this
17 case.

18 Q. And what other evidence did you examine in
19 this case?

20 A. In this case I also had one jacket, one
21 fragment and two cartridge cases.

22 MS. EPLEY: Your Honor, may I approach
23 the witness?

24 THE COURT: You may.

25 Q. (BY MS. EPLEY) You only found two casings,

1 correct? Or you were only provided two casings?

2 A. Yes.

3 Q. State's Exhibit 74 and State's Exhibit 73, do
4 you recognize these items?

5 A. Yes, I do.

6 Q. Just by simply looking at them, can you tell
7 what caliber they are?

8 A. I can.

9 Q. And what caliber are they?

10 A. These are .32 auto cartridge cases.

11 Q. Now, for those of us who don't know the
12 difference between a revolver and a semiautomatic, can
13 you tell whether those items would come from a revolver
14 or a semiautomatic?

15 A. Typically a .32 auto cartridge is a
16 semiautomatic type cartridge; however, firearms have a
17 lot of variability. There are some revolvers that can
18 fire cartridges that are more designed for semiautomatic
19 pistols. Under a microscope, I would be able to tell
20 more likely if this was fired in a revolver versus a
21 semiautomatic. I can get into that if you would like me
22 to.

23 Q. Sure.

24 A. Okay. A semiautomatic firearm, like this
25 firearm right here, how a semiautomatic firearm works is

1 there's a magazine, which holds the cartridges, is
2 inserted into the bottom of the firearm. Then the
3 firearm needs to be cycled, which is back and forth, it
4 slides one cartridge into the chamber from the magazine.
5 One pull of the trigger allows the hammer to fall
6 forward, strikes the firing pin, which hits the primer
7 of the cartridge, causing the firing sequence and as the
8 gas and the pressure push the bullet forward and the
9 cartridge casing backwards, there is an extraction and
10 an injection process. Those leave marks on the
11 cartridge case that I can look at on a microscope.

12 On a revolver --

13 Q. Actually, if you don't mind, before we get to
14 the revolver, I see you brought a demonstrative in
15 regards to how a bullet might go through the chamber of
16 a gun.

17 A. Yes.

18 Q. Can you use that to help explain to the jury
19 what happens when a bullet is fired from that
20 semiautomatic, for example?

21 A. Sure. This is the model of the cartridge.
22 The whole thing is called a cartridge. Some people
23 refer to it as a bullet. That's incorrect. It's a
24 cartridge. There's several components. There is a
25 primer on the bottom of the cartridge case. The bullet

1 cartridge case down here, pulls it backwards and then
2 there is an ejector that's going to hit and pop it out
3 of the firearm through the ejector port, which is this
4 opening right here as the firearm is open.

5 So, to reiterate, the bullet leaves the
6 bore of the firearm, cartridge case slams back against
7 the breech face and the pressure allows the firearm to
8 open, pulls the cartridge case backwards and popping it
9 out of the ejection port, too. As the slide comes back
10 forward, the next cartridge is loaded into the chamber
11 of the firearm from the magazine and starts to fire
12 again with a pull of the trigger.

13 Q. In this case, did you look at both State's
14 Exhibit 73 and 74 under a microscope?

15 A. Yes, I did.

16 (Pausing.)

17 MS. EPLEY: For the record, I'm opening
18 State's Exhibit 74 and removing the casing; State's
19 Exhibit 73 and removing the casing.

20 Q. (BY MS. EPLEY) Now, Ms. Zeller, when you are
21 looking at a casing and a bullet, you mentioned that you
22 looking for characteristics outside of size and color,
23 correct, to compare it to a gun, for example?

24 A. The class characteristics, is that what you
25 are referring to?

1 Q. Well, I don't know. So, if it's other than
2 the caliber and the color, what sort of things do you
3 look for on a casing?

4 A. The color was just reference to the shoes. It
5 was just an example. We do look at caliber. We look at
6 the type of breech face lines. There is parallel lines
7 that run horizontally across the breech face. There is
8 arches. It depends upon the manufacturer of the firearm
9 as to what markings are even left on the head stamp by
10 the firing pin.

11 Q. Are there things called lands and grooves?

12 A. Those aren't bullets.

13 Q. So, that's not specific to the case here?

14 A. No.

15 Q. What type of analysis did you in regards to
16 these two bullet casings and the guns that you received
17 as part of the evidence in this case?

18 A. After I test-fired the firearm, I created my
19 set of known cartridge cases. And the class
20 characteristics, these being .32 auto and then I also
21 had the .32 auto firearm, that's where I begin. It made
22 sense. They are both the same caliber; so, that's where
23 I started my examination.

24 I first examined my test-fired cartridge
25 cases for reproducing marks to see how well the firearm

1 made markings on the cartridge casings. Under my
2 comparison microscope, which is two microscopes hooked
3 together on an optical bridge, and I then put one piece
4 of evidence on one side of the microscope and another on
5 the other side, and I'm able to see them together in my
6 oculars on the microscope.

7 So, I line them up together and I look
8 for reproducing markings on my test-fires. I found
9 markings that produced quite well. So, then I took my
10 evidence including my test-fires and I also lined them
11 up and made a comparison.

12 Q. So, you test-fired the gun that you're
13 provided and you compare that to the casings found at
14 the scene?

15 A. Correct.

16 Q. When you are doing that, were you able to make
17 a determination?

18 A. Yes, I was.

19 Q. What were the results?

20 A. Items -- I don't have the State's exhibit
21 numbers. I'm sorry.

22 Q. That's all right.

23 MS. EPLEY: May I approach, Your Honor?

24 THE COURT: You may.

25 Q. (BY MS. EPLEY) Let me give you this first.

1 I'll offer it in a moment and I'll get you the numbers.
2 The casings themselves are Items 73 and 74.

3 A. Items 73 and 74 were fired in State's Exhibit
4 No. 87.

5 Q. Now, is there any weight that you can provide
6 to that? Is there a qualifier? Are you sure that these
7 items were fired from that gun?

8 A. I'm certain they were fired from this gun.

9 Q. Did you do the same type of analysis in
10 regards to the .38?

11 A. To the bullet fragments?

12 Q. Yeah.

13 A. Yes.

14 Q. And a .38 revolver, is it going to eject a
15 casing?

16 A. They have to be manually ejected.

17 Q. So, you would not expect items like that to be
18 found at the scene if the gun leaves the scene?

19 A. Not unless the individual took them out him or
20 herself.

21 Q. What type of evidence, bullet, jacket,
22 fragment or otherwise, have you found from a .38 at a
23 crime scene?

24 A. All of the above. You couldn't find a jacket,
25 a bullet or a casing. It just depends if they are

1 ejected or not.

2 Q. Were you provided any items of evidence in
3 this case that you were able to use as an analysis
4 against the .38 Smith & Wesson?

5 A. There were fragments I compared to the .38
6 Smith & Wesson.

7 MS. EPLEY: May I approach, Your Honor?

8 THE COURT: You may.

9 MS. EPLEY: For the record, I have opened
10 State's Exhibit 75 and removed the fragment.

11 Q. (BY MS. EPLEY) Are you familiar with this
12 item?

13 A. May I look at it?

14 Q. Please.

15 A. Yes.

16 Q. Now, for the jury, what we looked at in
17 regards to the .32 using your demonstrative, is the
18 casing or external portion that would have been ejected
19 from the gun, correct?

20 A. Yes.

21 Q. When you are looking at something like this,
22 this fragment in regards to the .38, what portion of the
23 cartridge are you looking at?

24 A. Just the lower portion right here.

25 MS. EPLEY: Permission to publish, Your

1 Honor?

2 THE COURT: You may. It's already been
3 admitted?

4 MS. EPLEY: Yes, Your Honor.

5 THE COURT: Okay.

6 MS. EPLEY: Just for purposes of the
7 record, I wanted to make it clear.

8 Q. (BY MS. EPLEY) Okay. When you look at
9 State's Exhibit 75, the fragment, what are you looking
10 at in regards to comparing this item to the gun you
11 received in evidence?

12 A. I test-fired the firearm again, created my set
13 of known cartridge casings and bullets. Then I used the
14 bullets, test-fired bullets, compared to each other to
15 find reproducing marks and compared them under the
16 microscope, then I looked at known test-fires compared
17 to the fragment under the microscope.

18 Q. After looking at the test-fire compared to
19 this bullet fragment, were you able to discern any
20 result?

21 A. Yes. The bullet fragment was fired in the
22 revolver.

23 Q. Again, I'm going to ask you: Is there some
24 sort of statistical weight that you recall from it or
25 you identified that this bullet was fired from this gun?

1 A. I identified it was fired from that gun.

2 Q. Did you produce some sort of report?

3 A. Yes.

4 Q. Is that the item I left with you a moment ago?

5 A. Yes.

6 MS. EPLEY: May I approach, Your Honor?

7 THE COURT: Yes, you may.

8 Q. (BY MS. EPLEY) In looking at State's Exhibit
9 79, is this the report that you had generated?

10 A. Yes.

11 Q. Now, it's not signed, correct?

12 A. Correct.

13 Q. Why is that?

14 A. We did hand signatures. I have the signed
15 report and you have a copy.

16 Q. You have the original here in Court and
17 State's Exhibit 79 is a copy?

18 A. Correct.

19 Q. Is it a true and correct copy?

20 A. I will compare it to verify.

21 Yes, it is.

22 Q. Is this document kept in the regular course of
23 business? Do you keep these on most of the analyses
24 that you do?

25 A. In the case file, yes.

1 Q. Is it routine to create it on most of your
2 cases?

3 A. Yes.

4 Q. The information here, was that made at or near
5 the time that you did the test-fire comparison?

6 A. Yes.

7 Q. Was it made by a person with actual knowledge?
8 Did you do it?

9 A. Yes.

10 MS. EPLEY: State offers State's Exhibit
11 79, tenders to opposing counsel for objection.

12 MR. MARTIN: We have no objection.

13 THE COURT: State's 79 is admitted
14 without objection.

15 MS. EPLEY: Permission to publish?

16 THE COURT: You may.

17 Q. (BY MS. EPLEY) I'm going to direct your
18 attention here to the results of analysis. Now, there
19 was a fragment that you found that you were not able to
20 compare to anything, correct?

21 A. Yes, you're correct.

22 Q. So, there was no discernible characteristics.
23 We don't know who fired it or what was it fired from.

24 A. That is correct.

25 Q. But you were able to make conclusions which

1 were documented in the report?

2 A. That's correct.

3 Q. Okay. And to be very clear, it's that State's
4 Exhibit 86, the .38 Smith & Wesson revolver, is the item
5 that fired State's Exhibit 75, the fragment?

6 A. Oh. Yes. I'm sorry. I didn't realize you
7 were asking me that.

8 Q. And, again, State's Exhibit 87, the .32
9 caliber semiautomatic, is the weapon that fired State's
10 Exhibits 73 and 74, the two spent casings?

11 A. That is correct.

12 Q. Is it traditional for someone else to check
13 your work?

14 A. We have a verification process, yes.

15 Q. I phrased that poorly.

16 It's not specific to you. It's
17 procedure?

18 A. Yes.

19 Q. Did someone check your work in this case?

20 A. I was verified by another firearms examiner.

21 *MS. EPLEY:* No further questions.

22 *THE COURT:* Thank you, Ms. Epley.

23 Mr. Martin.

24 *MR. MARTIN:* Yes, Your Honor.

25

1 Pass the witness.

2 THE COURT: Nothing further, Ms. Epley?

3 MS. EPLEY: Nothing further, Your Honor.

4 THE COURT: Okay. You're excused. Thank
5 you for coming.

6 Call your next witness.

7 MR. BURDETTE: State calls Officer Kevin
8 Carr.

9 (Witness sworn.)

10 THE COURT: Mr. Burdette.

11 **KEVIN CARR,**

12 having been first duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 **BY MR. BURDETTE:**

15 Q. All right. I learned yesterday not everyone
16 is "Officer." Is it Officer or Sergeant?

17 A. Officer.

18 Q. All right. Got Sergeant Chappell and Officer
19 Carr?

20 A. Yes.

21 Q. How are you?

22 A. Pretty good. How are you?

23 Q. Good. Please introduce yourself to the ladies
24 and gentlemen of the jury.

25 A. My name is Kevin Carr. I'm an investigator