

— Aldape: Trial Transcript (pp. 1–155)
(10/82) (testimony) (v. 20)



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RICARDO GUERRA

VOL. XX

TRIAL IN CHIEF

69.081

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CAUSE NO. 359,805

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

OF HARRIS COUNTY, TEXAS

RICARDO ALDAPE GUERRA

248TH JUDICIAL DISTRICT

VOLUME XX
STATEMENT OF FACTS
TRIAL IN CHIEF
OCTOBER 4, 1982

FILED IN
COURT OF CRIMINAL APPEALS
DEC 12 1983
Thomas Lowe, Clerk

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VOLUME XX

October 4, 1982

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1 CAUSE NO. 359,805

2 THE STATE OF TEXAS

IN THE DISTRICT COURT

3 VS.

OF HARRIS COUNTY, TEXAS

4 RICARDO ALDAPE GUERRA

248TH JUDICIAL DISTRICT

5 * * *

6 A P P E A R A N C E S:

7 For the State of Texas:

Mr. Bob Moen

and

8 Mr. Dick Bax

9 For the Defendant:

Mr. Candelario Elizondo

and

10 Mr. Joe L. Hernandez

11 * * *

12 BE IT REMEMBERED that upon this the 4th day of
13 October, A.D. 1982, the above entitled and numbered
14 cause came for Trial before the Honorable Henry K.
15 Oncken, Judge of the 248th District Court of Harris
16 County, Texas, and a jury; and both the State and the
17 Defendant appearing in person and/or by counsel,
18 announced ready for trial; and all preliminary matters
19 having been disposed of, a jury was duly selected,
20 impaneled, and sworn, and proceedings had, the
21 following facts were adduced in evidence, viz:

22 * * *

1 (At this time State's Exhibits Nos.
2 1, 2, 3, and 4 were marked for identification
3 purposes by the court reporter.)

4 MR. ELIZONDO: May it please the Court,
5 for the record, we have filed a Motion for
6 Continuance in this case.

7 THE COURT: At this time, the Motion
8 for Continuance is overruled. I will, however,
9 provide any reasonable assistance that the Court
10 can render in finding these witnesses, including
11 the appointment of an investigator to search the
12 matter.

13 Are both sides ready?

14 MR. MOEN: Yes, sir.

15 MR. ELIZONDO: Ready, Your Honor.

16 THE COURT: Bring out the jury.

17 (At this time State's Exhibit No. 5 was
18 marked for identification purposes by the court
19 reporter.)

20 (The jury was seated in the jury box,
21 and in their presence and hearing, the following
22 proceedings were had.)

23 THE COURT: Members of the jury, if the
24 number looks a little strange to you, we pick an
25 alternate juror on capital cases because of the

1 time that is consumed in the jury selection
2 process. If something should happen during the
3 course of the trial to one of the jurors, we have
4 enough to go forward.

5 Please raise your right hands and be
6 sworn.

7 (The jurors were sworn.)

8 THE COURT: You may be seated, please.

9 The State may present the indictment.

10 MR. ELIZONDO: Your Honor, we need to
11 swear Ms. Hernandez in.

12 THE COURT: Ms. Hernandez, please stand
13 and be sworn as an interpreter, please.

14 (Ms. Hernandez was sworn as an
15 interpreter.)

16 MR. BAX: May I proceed, Your Honor?

17 In Cause No. 3459,805, the State of
18 Texas versus Ricardo Aldape Guerra.

19 In the name and by authority of the
20 State of Texas: The duly organized Grand Jury
21 of Harris County, Texas, presents in the District
22 Court of Harris County, Texas, that in Harris
23 County, Texas, Ricardo Aldape Guerra, hereafter
24 styled the Defendant, heretofore on or about July
25 13th, 1982, did then and there unlawfully,

1 intentionally, and knowingly cause the death of
2 James D. Harris, hereafter styled the Complainant,
3 a peace officer in the lawful discharge of an
4 official duty, by shooting the Complainant with a
5 gun knowing at the time the Complainant was a
6 peace officer.

7 Against the peace and dignity of the
8 State. Signed by the Foreman of the Grand Jury.

9 THE COURT: To which charge the Defendant
10 enters his plea of?

11 MR. ELIZONDO: Not guilty, Your Honor.

12 THE COURT: May I have the plea from
13 the Defendant himself?

14 THE DEFENDANT: Not guilty.

15 THE COURT: The plea will be noted.
16 Does either side desire to invoke the
17 rule?

18 MR. ELIZONDO: We do, Your Honor.

19 THE COURT: Call your first.

20 MR. BAX: We would call Terry Wilson,
21 Your Honor.

22 THE COURT: All witnesses present who
23 expect to give testimony in this trial, please
24 stand, raise your right hand, and be sworn as a
25 witness.

1 If they are in the hallway, bring them
2 in.

3 (All witnesses were sworn both in
4 English and by the interpreter.)

5 THE COURT: All right. The rule has been
6 invoked, which means that only the witness who is
7 giving testimony is allowed to be in the courtroom
8 at that time. The others of you must remain in
9 the hallway until you are called to the courtroom
10 as a witness.

11 While in the hallway, do not discuss
12 your testimony with anyone nor allow anyone to
13 discuss their testimony with you. You may visit
14 with the lawyers on either side, but if you do that,
15 do so only outside the presence and hearing of
16 another witness.

17 You may retire to the hallway until you
18 are called as a witness.

19 Mr. Moen and Mr. Bax, if y'all would,
20 be sure all of your witnesses have left the
21 courtroom.

22 MR. MOEN: Yes, sir. They have.

23 THE COURT: All witnesses are now outside
24 the courtroom?

25 MR. BAX: Yes, Your Honor. They are out,

1 Your Honor.

2 THE COURT: All right. Let's proceed.
3
4
5

6 TERRY WILSON,
7 was called as a witness on behalf of the State of
8 Texas, after having first been duly sworn, testified
9 as follows:
10

11 DIRECT EXAMINATION
12

13 QUESTIONS BY MR. BAX:

14 Q Would you tell us your name, please?

15 A Terry Wilson.

16 Q Tell us how you are employed.

17 A I am employed as an Assistant District Attorney
18 for Harris County, Texas.

19 Q How long have you been with the District Attorney's
20 Office here in Harris County?

21 A Since July 16th, 1973.

22 Q Would you tell the members of the jury what position
23 you now hold with the Harris County District
24 Attorney's Office?

25 A I am presently chief of the Civil Rights Division

1 of the District Attorney's Office.

2 Q For the information of the members of the jury,
3 would you tell us exactly what your duties include
4 in your capacity as chief of the Civil Rights
5 Division?

6 A Our primary function is to investigate allegations
7 of misconduct by police officers. Specifically, we
8 are required to investigate all police-involved
9 shootings, and to investigate allegations of the
10 use of excessive force by police officers..

11 Q All right. Is it part of your regular duties to
12 make the scenes anytime a civilian is shot by a
13 police officer or vice versa, where a police officer
14 is shot by a civilian?

15 A My duties are to respond to the scene of a police-
16 involved shooting where someone is injured as a
17 result of an activity by a police officer.

18 Generally speaking, we respond to those
19 where a police officer has been injured, because
20 at the time we get the first information, we don't
21 know always whether the civilian has been injured
22 or not.

23 If the officer is the only one injured,
24 we turn the investigation over to a Felony Division
25 chief.

1 Q Is it your personal practice, however, to become
2 involved, nonetheless, in the shooting, whether
3 it involves the misconduct by a police officer or
4 not, where a police officer is injured?

5 A We are not -- like I say, we turn that investigation
6 over to a division chief. We initially respond to
7 those scenes. If we determine an officer has been
8 injured, we will call a Felony Division chief to
9 the scene.

10 Generally speaking, we end up having to
11 investigate from the standpoint of both usually.
12 In my experience, most of those instances have
13 involved a shoot-out where multiple persons are
14 injured or something of that nature.

15 Q You keep mentioning "we."

16 Who else is a member of your division?

17 A Besides myself, Steve Morris, also a District
18 Attorney, and John Panameul, also an investigator
19 with the District Attorney's Office.

20 Q I would like to call your attention back to July
21 13th of 1982, and I will ask if on that date did
22 you have an occasion to go to the intersection of
23 Dumble and Walker here in Houston, Harris County,
24 Texas?

25 A July the when, sir?

1 Q July 13th.

2 A Yes, I did.

3 Q How were you notified you were needed at that
4 area?

5 A I was watching the news on TV that night and saw
6 something on the news about it and called Homicide.
7 They asked me to respond to the scene. They had no
8 details as to who was injured other than there was
9 a shooting.

10 Q What basic information did you have from the
11 television newscast?

12 MR. ELIZONDO: Objection to hearsay,
13 Your Honor.

14 THE COURT: Sustained.

15 Q (By Mr. Bax) What did you do when you called
16 Homicide?

17 A I notified Mr. Panameul -- Mr. Morris was out of
18 town -- and told him I would meet him on the scene,
19 got in a motor vehicle, and proceeded to the
20 shooting scene.

21 Q Do you recall the approximate time you arrived at
22 the area of Dumble and Walker?

23 A About 11:00 p.m., sir.

24 Q Were you directed to some other location when you
25 arrived at Dumble and Walker?

1 A. When I first arrived, there was a great deal --
2 because of the streets being blocked off, traffic
3 was backed up, so I stopped down the street a ways
4 and walked to the shooting scene, which I could
5 pick out, obviously, because of the way it was
6 cordoned off.

7 Q. Where was that scene?

8 A. At the intersection of Edgebrook and Walker.

9 Q. Whereabouts in Houston is that located?

10 A. Near east side, downtown, just east of downtown
11 itself in the south of Harrisburg, north of the
12 Gulf Freeway.

13 Q. If I wanted to go to that area from the courthouse
14 here today, how would I do that?

15 A. You would go south on Fannin to San Jacinto, turn
16 east -- excuse me -- go to Texas and turn east
17 and go out. Texas turns into Harrisburg. Go to
18 Dumble, turn right, and you are five or six or
19 eight blocks north of the location at that time.

20 Q. And about how far is that from downtown?

21 A. Five miles.

22 Q. What did you do after you arrived at the location
23 at Edgebrook and Walker?

24 A. When I first arrived and got up to the shooting
25 scene, I did not -- the shooting scene itself had

1 been taped off with a yellow plastic tape that
2 says "Crime scene. Do not enter," to keep non-
3 participating persons out of the scene.

4 I went up to the outside of that and
5 began to look around the area to try to determine
6 where things were, what was happening, and then
7 tried to get some feel for the physical scene
8 itself.

9 Q And did you talk to any of the detectives out there
10 at that time to try to find out what information
11 had been gathered at that point?

12 A Yes, sir. The first thing was to try to find out
13 where everything was, what had happened, to give
14 me some idea of what I needed to look for and what
15 I needed to do.

16 Q Give the members of the jury some idea of the
17 number of people out there at that location at
18 11:00 o'clock on July 13th.

19 A There were people inside the taped-off area, which
20 was a very small area, three car lengths in each
21 direction, four car lengths.

22 There were probably a half a dozen
23 within the taped-off area.

24 Outside that, there were of course,
25 numerous police officers involved in maintaining

1 some security of the scene itself. There were
2 bystanders. I would guess that at Edgebrook and
3 Walker, there were probably thirty to fifty people
4 within the block or two-block area, people rubber-
5 necking, if you will, from down the street. There
6 was probably a couple of hundred.

7 Q. After you had gotten your visual observations about
8 the scene, what did you do at that point in time?

9 A. I had some discussions with the homicide detectives
10 there as to what physical evidence was available
11 at the scene, what had occurred, where had it
12 occurred, and began to develop some of that type
13 information, when I was asked to by Assistant
14 Chief Bayles to go with a homicide lieutenant
15 and look for the suspect in the case at another
16 location where he was thought to be.

17 Q. Had you determined at that time who was, in fact,
18 the victim of the shooting that occurred there
19 at Edgebrook and Walker?

20 A. By that point in time, we had two shooting victims
21 that we knew had been shot for sure. We had
22 another person who had been treated for what we
23 thought was probably flying glass, but could have
24 been a gunshot victim.

25 The Houston Police officer had been shot

1 and killed, or we determined, found out by, say,
2 11:15 he was dead.

3 Q Would that be Officer James D. Harris?

4 A Yes, sir. It would.

5 A civilian who was driving down the
6 street near that location, we determined, had been
7 shot and injured and it took us some time to
8 determine whether or not he and the officer had
9 been in a shoot-out or what the circumstances
10 were until we got ahold of some of the witnesses
11 there and managed to talk to them to find out what
12 had happened.

13 Q Did you later learn the other person injured or
14 shot was a man by the name of Jose Armijo?

15 A I learned it later that evening, didn't know at
16 that time.

17 Q And did you know if anyone was in that vehicle when
18 he was shot?

19 A Yes, sir. I believe two of his children were.

20 Q You had mentioned you had received some information
21 concerning the possible location of the suspect or
22 suspects.

23 A Yes, sir.

24 Q What did you do in relation to that information
25 you had received?

1 A. I was requested to go with the homicide
2 lieutenant because they felt like there may be
3 a further shooting when they attempted to arrest
4 him, and I proceeded with Lieutenant Swain of the
5 Homicide Division, Sergeant Walter Stewart, who is
6 a Houston Police officer, and a detective by the
7 name of George Powers, and we left to go get in my
8 vehicle to go to the other shooting scene.

9 I left them en route to go to my vehicle
10 to arrange to have a patrol unit with at least
11 two uniformed officers to meet us at that location.
12 I didn't want to put it on the radio where it was,
13 but wanted someone to meet us there that were
14 uniformed officers, and I went and got my vehicle
15 and drove it to the -- between the intersection
16 of Walker --

17 MR. ELIZONDO: Objection, Your Honor.
18 Question-and-answer form.

19 THE COURT: All right.

20 Q. (By Mr. Bax) All right. What was the purpose of
21 moving your van between, right around that area of
22 Walker and Dumble?

23 A. My purpose was to pick up the other men. We were
24 going to go together in the vehicle.

25 Q. Where was your vehicle originally parked in the

1 location to meet the officers?

2 A. West on Walker, Walker where it meets Dumble
3 street, which is a block east of the shooting
4 scene. It jogs -- it doesn't match up on opposite
5 sides of Dumble. There is a space, so if you are
6 going eastbound on Walker, you turn right on Dumble
7 and back on Walker to continue on Walker, and I
8 had been west of that location on Walker, turned
9 on Dumble and stopped there before you would get
10 to the turning left.

11 Q. Did you, in fact, at that time meet other officers
12 and go to another location looking for a suspect?

13 A. I met some officers. We did not leave that
14 location in the vehicle to go where we had been
15 going to go.

16 Q. Why not?

17 A. As I was out unlocking the doors to let them in
18 the vehicle, a shooting happened within approximately
19 one hundred feet to two hundred yards of us.

20 Q. What time are we talking about now?

21 A. About 11:30.

22 Q. Some thirty minutes or so after you had arrived
23 at the scene?

24 A. That's correct, sir.

25 Q. Were you able to tell then where that shooting

1 was? Where it was coming from?

2 A. At first, I couldn't tell exactly. I could tell
3 the direction. It was from northeast of where I
4 was, but because of buildings in the way, I couldn't
5 see that specific place itself.

6 Q. Could you describe that gunfire that you heard?
7 One shot, two shots, or what?

8 A. I heard numerous shots, then a space of time, and
9 even more numerous shots. I would have no estimate
10 of the number of shots. They were numerous.

11 Q. I take it then two volleys of shots separated by
12 a few seconds?

13 A. Yes, sir. With the second volley being maybe
14 twice as many shots as the first one.

15 Q. What did you do at this point in time?

16 A. At that point in time, I got into my vehicle and
17 got a pistol out, got my flashlight, and went
18 running north on Dumble street along with Sergeant
19 Stewart. Both of us were trying to get the bystanders
20 to take cover and get down instead of just standing
21 out milling around in the streets.

22 Q. Let me just ask you this: Are you also a
23 certified peace officer?

24 A. Yes, sir. I am.

25 Q. And where did you go at that time?

1 A I went up to the intersection of Rusk and Dumble.
2 As I got to Rusk and Dumble, the shooting ended
3 approximately at the time I arrived at that
4 location, that being a block, short block north
5 of where I was parked.

6 Q Well, is Rusk the next block north of Walker then?

7 A Yes, it is, and it is not like a downtown block.
8 It is a residential area-like block, one house on
9 each corner with their yards, that being the length
10 of the block.

11 Q And as you arrived at the corner of Dumble and Rusk,
12 what were you able to do?

13 A Looking east to my right, first directly across
14 the street was a parking lot area, paved for
15 parking. Next to it was a two-story house. Next
16 to it was a house that set back off the street a
17 little further, and there at that house I could
18 see officers down behind patrol cars pointing their
19 weapons over their vehicles, hollering, screaming,
20 people taking cover and hiding behind things.

21 Q Had you at that time -- did you at that time
22 decide where the shots had been fired from or the
23 area they came from?

24 A That area was consistent with the sounds I heard,
25 and from the actions of the persons, it was

1 obvious it was in close proximity.

2 Q What did you do when you arrived at the corner of
3 Rusk and Dumble? Did you stay there?

4 A No, sir. I ran up to the shooting scene area and
5 I took cover behind a police patrol car that was
6 in front of the house where the shooting occurred
7 until someone came out and told us the shooting
8 was over.

9 Q Can you give us some idea of how many police
10 officers were there at that second house on Rusk
11 street?

12 A By the time we were told it was clear to go back,
13 which was within thirty seconds or so after I
14 arrived there, I would say there were twenty,
15 twenty to twenty-five, something like that.

16 Q How did you find out it was clear to go back --
17 and when you say "go back," what are you talking
18 about there?

19 A Okay, in the house, the front yard, the front yard
20 itself contained no -- out between --

21 Let me describe it this way: The car
22 I was taking cover behind was a patrol car
23 parallel parked immediately in front of that house
24 on the edge of the street. The front yard up to
25 the front porch, in that area, there was no direct

1 evidence of a shooting right at that location
2 from what I could see. The persons there that were
3 taking cover were all directing their attention to
4 the east or right side of the house if you are
5 facing the house. The house is on the north side
6 of Rusk street. From that area, from that side
7 of the house, an officer emerged telling us that
8 an officer had been shot and that the suspect was
9 D.O.A.

10 Q. Do you know who that officer was?

11 A. No. It was a uniformed police officer.

12 Q. What did you do at that point in time?

13 A. I proceeded around that corner of the house,
14 observed the suspect laying on the ground, observed
15 the officer down being attended by other officers,
16 and observed a large number of people arrive there.

17 Q. When you say "went around that side," are you
18 talking about the right-hand side or east side?

19 A. That's correct, sir. The area where everyone
20 focused their attention.

21 Q. You said the suspect was down. Where in relation
22 to the house was there a suspect down?

23 A. On the east side of the house if you figured from
24 front to back on the east side of the house. There
25 is a chain-link fence that runs on the east side

1 of that, so you have a space, say, six to ten
2 feet wide between the chain-link fence and the
3 east side of the house itself.

4 Toward the back of that side portion
5 of the house, the suspect was laying on the ground
6 next to the house itself, head towards the north,
7 feet towards the south.

8 Q. Do you know if he was dead or alive?

9 A. He appeared to be dead at the time I observed
10 him.

11 Q. Where was the officer that was down?

12 A. You go around the corner of the house to the
13 north side of the house, the back of the house
14 is one that is cut in like this, and the east
15 side comes in down here. Around the corner in the
16 immediate backyard of the house the officer was
17 laying down feet to the east, head to the west,
18 laying on his back being treated.

19 Q. Did you see his wounds at all?

20 A. Yes, I did.

21 Q. Describe those for the members of the jury.

22 A. Two wounds that I observed, one in the mid-
23 abdomen and one in the upper abdomen, lower chest
24 area, diaphragm area.

25 Q. Do you know if he had other wounds, or did you later

1 learn he had other wounds?

2 A. Later, I found he had other wounds. Those were
3 the ones I observed at that time. Those were the
4 ones everybody was concerned about at that time.

5 Q. Describe the officer's condition.

6 A. He was conscious, quiet, appeared to be calm. You
7 couldn't carry on a conversation, like how are you
8 doing; how are things going, not that kind of
9 consciousness, but he was aware obviously there
10 were people there talking to him, giving some
11 responses to their comments to him.

12 As I said, very quiet, and appeared to
13 be calm, much calmer than I would have been under
14 the circumstances.

15 Q. Tell us that officer's name.

16 A. Trepagnier.

17 Q. Larry Trepagnier?

18 A. Yes, sir.

19 Q. What did you do after you have observed the dead
20 suspect on the east side of the house and Officer
21 Trepagnier lying behind the house on Rusk?

22 A. I was unfavorably impressed, if you will, with the
23 number of people coming into the shooting scene
24 itself, and my function being the investigation
25 of those type shootings, I was very concerned that

1 the physical evidence at the crime scene itself,
2 physical scene, be protected, so I got a homicide
3 lieutenant -- I don't remember which one it was.
4 There were two or three at the location -- but I
5 grabbed one of them and hollered at him to get
6 people out of the crime scene and I ran back of
7 my van and got the crime scene tape that we carried
8 in the van in order to restrict access to that
9 shooting scene.

10 Q. And will you describe to the members of the jury
11 how you put up crime scene tape?

12 A. I ran to the van and got it and ran back. When I
13 arrived back, the house next door, as I told you,
14 is a two-story house immediately west, sits out
15 further from where the shooting occurred. The
16 one where the shooting occurred sits further from
17 the street. I started this crime scene tape by
18 tying to a column on the porch on the next-door
19 house, taking it immediately east of the front
20 yard of the house where the shooting occurred,
21 tied it to the chain-link fence, went north along
22 the fence to the corner of the house itself where
23 the exact shooting scene itself was, the east
24 side of the residence, tied it across the chain-
25 link fence to a tree growing there by the corner

1 of the house.

2 I then took and went around the back-
3 yard; that restricted pretty much access to the
4 front of the yard, and around to the east side
5 of the house. I went around then to the backyard
6 of the house to restrict access to the west side,
7 and the way the house is set up, it is a house with
8 an attached garage that would be immediately north-
9 west of the house. The driveway runs down the
10 west side of the house, the front of the garage
11 being approximately even with the back of the
12 house, with just a walkway in between the two.
13 I went around to that side and there was a junk
14 car sitting in the driveway backed in the driveway.
15 The rear of the car was towards the garage and
16 the front was towards the street. I went to the
17 outside mirror on that vehicle, which would have
18 been on the driver's side. I tied the crime scene
19 tape to it to restrict access to that walkway
20 between the garage and the house. I went to the
21 corner of the garage where a tree was growing,
22 went around the tree, and went to the back of the
23 garage to restrict access from the back of the
24 garage, and to a fence that ran along the north
25 of the lot itself.

1 Q How many police officers were there in the back-
2 yard area at 4911 Rusk when you were taking the
3 crime scene tape from the junk car in the driveway
4 back to the back portion of the yard, if you can
5 estimate that for us?

6 A Police officers, fifteen to twenty.

7 Q And other persons there also?

8 A Yes, sir. By then, the ambulance personnel had
9 arrived and were treating Officer Trepagnier.

10 Q How much time would you say elapsed from the time
11 you first heard the two volleys of gunshots until
12 you were in the back of the garage putting the
13 last piece of crime tape up?

14 A Five minutes.

15 Q As you were tying off that crime scene tape to the
16 tree behind the garage there, did you notice
17 anything?

18 A Yes, sir. Before I could tie it to the tree, the
19 tree set between the garage and the fence, and I
20 reached to tie it to the tree and I caught some
21 movements with my eye and observed a male crouched
22 behind the house trailer at the back of the lot.

23 Q Come out to the jury and demonstrate, and if I am
24 you and I am going to be stringing up this piece
25 of crime scene tape around the tree, is this where

1 the person you saw squatted?

2 A. If you would, you would be standing something like
3 this with the garage over here and stretched out
4 towards the tree, here, a horse trailer or stock
5 trailer sat in this position, and I observed the
6 man crouched like this.

7 Q. May we move out more so the members of the jury
8 can see that?

9 A. He was crouched approximately like this.

10 Q. And what did you do at that point?

11 A. I pulled my weapon and pointed it at him and ordered
12 him to lie on the ground.

13 Q. Did he do it?

14 A. No, sir.

15 Q. What did he do?

16 A. He stood up. I again ordered him to lie on the
17 ground twice, and at that time, he began to lay
18 down.

19 Q. Did you call for assistance from any of the
20 officers there?

21 A. After I had him in that position where I could
22 turn my head for a second, I turned and got the
23 attention of Sergeant Stewart who was in that
24 area where Officer Trepagnier was treated, and
25 he gave me assistance.

1 Q Do you see the person today that was squatted
2 behind the horse trailer at 4911 Rusk?
3 A Yes, I do.
4 Q Point him out and describe what he was wearing
5 for the members of the jury.
6 A He is seated at the opposite side of the counsel
7 table from you, the first person in the back,
8 wearing a beige shirt, dark hair, approximately
9 collar length.
10 Q Does he look the same as he did back on July 13th?
11 A No, sir. He doesn't.
12 Q How is he different?
13 A His hair is shorter. He is cleaner. He does not
14 have the mustache, the Fu Manchu, and the slight
15 beard that he had at that time.
16 Q What was done with the Defendant at that point in
17 time?
18 A Officer -- or Sergeant Stewart grabbed him and got
19 his hands behind him, and he didn't have handcuffs
20 and he hollered, and another officer came and
21 brought us handcuffs, and he was handcuffed and
22 taken by one of the Chicano squad detectives from
23 that scene back to the original scene.
24 Q Later that evening, did you have occasion to look
25 under that horse trailer in the area in which you

1 found the Defendant squatting and hiding?
2 A. Yes, sir. A few minutes after that.
3 Q. And what did you observe at that time?
4 A. I observed a red bandanna with something wrapped
5 inside it, was the first thing I observed.
6 Q. And later did you observe what was inside that
7 red bandanna?
8 A. Yes, sir. I did.
9 Q. What was that?
10 A. A Datonic .45 caliber semiautomatic pistol.
11 Q. Did you recover that?
12 A. No, sir. I didn't.
13 Q. Who did?
14 A. I believe Officer Anderson with the Houston Police
15 Department recovered it.
16 Q. In relation to where the Defendant was crouched
17 or squatted down behind that trailer, how far was
18 the red bandanna with the .45 caliber pistol?
19 A. About that far, within reach.
20 Q. About the length of your arm?
21 A. Yes, sir. Two feet.

22 THE COURT: Excuse me. Just a moment.
23 You are not taking notes, are you?

24 A JUROR: Just dates.

25 THE COURT: Jurors are not allowed to

1 take notes. If you would, please, do not take
2 notes.

3 Thank you.

4 Q (By Mr. Bax) Mr. Wilson, if you will come down
5 from the stand, please, I will ask you to look at
6 what has been marked for identification purposes
7 as State's Exhibit No. 1 and State's Exhibit No.
8 2 and State's Exhibit No. 3 and State's Exhibit
9 No. 4.

10 Have you seen these photographs before?

11 A Yes, sir. I have.

12 Q When did you see these photographs?

13 A Just before testimony started.

14 Q And tell me what State's Exhibit No. 1 is. Can
15 you describe what State's Exhibit No. 1 is a
16 photograph of for the members of the jury?

17 A Yes, sir. This photograph depicts the shooting
18 scene on the second shooting, the shooting that
19 occurred when I was at the crime scene, this being
20 Dumble, this being the railroad tracks I referred
21 to earlier, Harrisburg being here -- Harrisburg
22 runs off of Dumble and runs in this direction --
23 this being the house setting back where the shooting
24 occurred, here on the east side of this house.

25 Walker would be right down here

1 parallel to us.

2 Q Where was your van? Would your van be available
3 in State's Exhibit No. 1, the location where you
4 were?

5 A No, sir. It would be just south of it, somewhere
6 in this area here.

7 Q That would be the first area where you heard the
8 two volleys of shots?

9 A Yes, sir.

10 Q And shows the corner you went to after you heard
11 those?

12 A From here to this side of the street to this side
13 of the street to this corner here.

14 Q State's Exhibit No. 1 shows the members of the
15 jury where you first saw the police officer then?

16 A From that location, I could see there was a
17 patrol car parked here parallel parked on the side
18 of Rusk. I say parallel parked. It was angled
19 in, but essentially parallel parked, and they were
20 crouched down behind that car. Others were
21 crouched down behind the vehicles parked in front
22 of this house.

23 Q And where is the patrol car you said you went to
24 and got behind?

25 A I went to one parallel parked roughly here, and

1 got behind it. It was headed in a westbound
2 direction, and I got behind the driver's side
3 or driver's side area of that vehicle.

4 Q The officer that came from behind the house and
5 said there was an officer down and a suspect that
6 was dead, do you know what side of the house he
7 came from?

8 A He came running down this side of the house here.

9 Q Where was the suspect, the dead suspect, on State's
10 Exhibit No. 1?

11 A Right back in this area, beside the house.

12 Q And the officer, where was he, Officer Trepagnier?

13 A Immediately behind the house in this area right
14 here.

15 Q Looking now at State's Exhibit No. 2, can you
16 describe what that is a photograph of?

17 A Yes, sir. This shows the same scene in this area,
18 this being the house where that shooting occurred,
19 this being Dumble and Rusk streets. This is
20 Edgebrook, and this is Walker street here, the first
21 shooting scene being at this intersection here.

22 Q Is that the first area you had gone to when you
23 had arrived at the scene on July 13th around 11:00
24 o'clock?

25 A Yes, sir. I got out of my vehicle, walked up

1 Walker in this direction and stood primarily in
2 these -- say in that quarter of the circle around
3 the shooting scene, moving around once or twice
4 to the other side to look at something.

5 Q. The area we are talking about from where Officer
6 Harris was shot and killed back to where the
7 Defendant was apprehended and another suspect was
8 killed: About how many feet are we talking about?

9 A. Two hundred yards, something like that.

10 Q. Were you able to determine how much time had
11 elapsed between the shooting of Officer Harris
12 and the shooting of Officer Trepagnier and the
13 suspect?

14 A. Approximately an hour and a half.

15 Q. The shooting of Officer Harris taking place
16 somewhere around 10:00 that evening?

17 A. Yes, sir.

18 Q. Looking at State's Exhibit No. 3 and 4, show the
19 jury what those are photographs of.

20 A. Okay. No. 3 is a view looking west and looking
21 toward the west from the east. Here is the
22 railroad tracks right here that correspond in
23 State's Exhibit No. 1.

24 This is Dumble where it crosses the
25 railroad tracks, again, Rusk street right here,

1 the house where the second shooting occurred
2 right here.

3 This being Walker, this is Walker where
4 it comes and makes the jog on Dumble and comes
5 back in this area. Initially, I came here and
6 moved the van to here, the shooting of Officer
7 Harris having occurred right in this area right
8 here where Edgebrook comes through into Walker
9 street.

10 Q. To help the jury a little bit, would you take this
11 marker and just circle the area where Officer
12 Harris was shot, maybe put an "H" inside there?

13 A. (The witness complied.)

14 Q. And where the suspect and Officer Trepagnier were,
15 put a "T" inside there, if you would.

16 A. (The witness complied.)

17 Q. And State's Exhibit 4 now --

18 A. State's Exhibit No. 4 is a view from west towards
19 the east of the same rough general area.

20 The shooting -- do you want me to go
21 ahead and circle?

22 Q. Why don't you do that?

23 A. The shooting of Trepagnier being in this area here,
24 this being Dumble street here, Rusk, Walker here,
25 and here you can see Edgebrook coming into Walker,

1 and Harris was shot here.

2 Q. Looking at State's Exhibit No. 3, is that downtown
3 Houston that you can see in the background?

4 A. Yes, sir. Downtown Houston is there, and the
5 ship channel is here in State's Exhibit 4 to the
6 east.

7 Q. Can you show us -- just one more question here --
8 on State's Exhibit No. 1, the area you first
9 clipped off with the crime scene tape?

10 I know you can't go behind the house
11 because the trees are blocking the view.

12 A. I started and tied it to this upright pole on the
13 front part of this house, tied it to a chain-link
14 fence that runs to the east side of the house at
15 4911 Rusk, I tied it here, came here to a chain-
16 link and tied it to this tree you can see at the
17 corner of the house, thereby blocking access in
18 this direction.

19 I then went around the house and tied
20 it to a junk car in the driveway and was tying it
21 back along the garage toward a tree right there
22 and found the suspect.

23 Q. And that's where you arrested the Defendant seated
24 here at counsel table?

25 A. Yes, sir.

1 Q. Take your seat.

2 (At this time State's Exhibits Nos. 6
3 through 13 were marked for identification purposes
4 by the court reporter.)

5 Q. (By Mr. Bax) Mr. Wilson, let me show you what
6 has been marked for identification as State's
7 Exhibit No. 6, and would you take a look, without
8 making any comment at this time.

9 Would you tell us generally what State's
10 Exhibit No. 6 through 13 are photographs of?

11 A. Generally speaking, they are photographs taken
12 around the second shooting scene where Officer
13 Trepagnier was shot and the other person killed.
14 They were taken essentially showing the backyard,
15 the east side, the front yard, and one photograph
16 of a vehicle on the west side of that residence.

17 Q. Do State's Exhibits Nos. 6 through 13 truly and
18 accurately depict the scene as it appeared on
19 July 13th, 1982, at 4911 Rusk as you observed it?

20 A. Yes, they do.

21 MR. BAX: Your Honor, at this time, the
22 State would offer State's Exhibits Nos. 6 through
23 13 after tendering same to counsel for
24 inspection.

25 MR. ELIZONDO: Your Honor, may I have

1 a moment?

2 THE COURT: Mr. Bax, move that back a
3 little bit. I can't see Defense counsel.

4 (At this time State's Exhibits Nos. 14,
5 15, and 16 were marked for identification purposes
6 by the court reporter.)

7 MR. ELIZONDO: We have no objections.

8 THE COURT: Those are Exhibits Nos.
9 6 through 13?

10 6 through 13 are admitted in evidence.

11 Q. (By Mr. Bax) Mr. Wilson, if you would, come down
12 once again, and I am going to hand you these
13 exhibits and ask you to explain what these exhibits
14 contain.

15 This is State's Exhibit No. 6.

16 A. No. 6 shows the front of the house at 4911 Rusk,
17 the west side of the house being where the van
18 was located, the east side over here. You can see
19 the scene of the area I taped off, the tape running
20 from the next-door house across the front down
21 to the chain-link and back to the tree at the
22 corner of the house.

23 The shooting of the suspect occurred
24 around the east side of this house.

25 Q. State's Exhibit No. 7?

1 A No. 7 shows more closely the east side itself, the
2 area by the tree taped off, the shooting having
3 occurred earlier down the east side of this same
4 house.

5 Q Now, State's Exhibit No. 8?

6 A No. 8 is the front of the van that you could see
7 in No. 6 a while ago, located on the driveway on
8 the west side of the house.

9 In front of it was the abandoned or
10 junk vehicle, I believe I described it earlier,
11 was backed in front of the garage in front of this
12 vehicle.

13 Q When you say "in front" --

14 A Between it and the garage.

15 Q The van, the junk car and the garage?

16 A That's correct, sir.

17 Q State's Exhibit No. 9?

18 A No. 9 shows more clearly the east side of the
19 house with numerous bullet holes in the trees on
20 the side of the house. The suspect is laying here.
21 The body there, the chain-link running down the
22 west side of the house, the area where these people
23 are standing immediately to their west, behind
24 the house is where Officer Trepagnier was lying.

25 Q Going to State's Exhibit No. 7, is that a

1 photograph that would be taken where these police
2 officers and other persons would be looking down
3 this side of the house?

4 A. Right. This corner corresponds to where you can
5 see the tree, I guess, this tree where you can
6 see the crime scene tape on. This tree, looking
7 down the side of the house in that direction.

8 Q. State's Exhibit No. 10?

9 A. No. 10 shows the rear or the northeast corner of
10 that house, the suspect's body laying here, seen
11 from the opposite end.

12 A tree you can see in the background
13 here is the same tree you saw in the front of the
14 house in the other photographs you looked at.

15 Officer Trepagnier's body was laying here
16 being treated behind the house. The suspect ended
17 up there.

18 Q. And, obviously, Officer Trepagnier had been removed
19 by the ambulance people at that time?

20 A. Yes, it had.

21 Q. State's Exhibit No. 11?

22 A. No. 11 is looking in a northerly direction with
23 the house being behind you and you are looking that
24 way roughly, or looking toward the northwest. This
25 is the horse trailer in the back of the backyard,

1 if you will. The chain-link fence you can see
2 separates the backyard of 4911 Rusk from the
3 backyard of the house immediately behind it.

4 The trailer is here. At this end of the
5 trailer that is depicted around the corner here
6 was where I arrested Mr. Guerra.

7 Q And I believe State's Exhibit No. 12 will show
8 that side of the trailer?

9 A Okay. I was walking down this side of the house
10 stretching this tape, and when I reached out to
11 tie it around this tree is when I observed him
12 immediately to my right down behind the horse
13 trailer.

14 Q And finally, State's Exhibit No. 13?

15 A 13 is showing the underside of the trailer looking
16 at it from the west side of the north end of the
17 trailer from the right side of the back of the
18 trailer, if you will, the back of the trailer
19 being down here, the front of the trailer in this
20 direction.

21 Looking underneath, you can see the red
22 bandanna there that had the pistol wrapped in it.

23 Q Would that be -- using State's Exhibit 12 as a
24 point of reference, State's Exhibit 13, where would
25 that have been taken from?

1 A Where the man in the white shirt is. He is looking
2 towards the trailer, is where this photograph was
3 taken from.

4 Q And the handkerchief, the red handkerchief, this
5 is where the .45 automatic was found?

6 A The semiautomatic pistol, yes.

7 Q Let me now show you what's been marked for
8 identification purposes as State's Exhibit 14, 15,
9 and 16, and I will ask if you can recognize those
10 for us?

11 A Yes, sir. I can.

12 Q What are those photographs of, State's Exhibits
13 14 through 16?

14 A Photographs of the east side of that residence at
15 4911 Rusk showing the body of the suspect that
16 had been killed.

17 Q Do these truly and accurately depict these scenes
18 as they occurred -- appeared back on July 13th,
19 1982?

20 A Yes, sir.

21 MR. BAX: Your Honor, at this time, the
22 State would offer State's Exhibits No. 14, 15, and
23 16, after tendering same to counsel.

24 MR. ELIZONDO: May I have a moment?

25 (At this time State's Exhibits Nos. 17

1 and 18 were marked for identification purposes
2 by the court reporter.)

3 MR. ELIZONDO: Your Honor, we have no
4 objections.

5 THE COURT: Exhibits 14, 15, and 16
6 are admitted in evidence.

7 Q. (By Mr. Bax) State's Exhibit 14?

8 A. 14 again shows the east side of the house showing
9 the dead man laying with his head towards the
10 north, feet towards the south. He is handcuffed,
11 which was done immediately after the shooting, and
12 his hands are bagged to preserve trace evidence
13 we were concerned with. He has paper bags over
14 his hands here.

15 Q. The bagging of the hands, is that done so they can
16 later run a trace metal test to determine if some
17 type of metal object has been held?

18 A. That is correct, sir.

19 Q. State's Exhibit 15?

20 A. 15 is a close-up of the upper half of the body.
21 Again, you can see the way the hands are bagged
22 and the physical description or view of the dead
23 man.

24 Q. State's Exhibit No. 16?

25 A. No. 16 shows the lower half of his body showing

1 the clothing that he was wearing on the lower half
2 of his body and showing a Browning High Powered
3 9 millimeter semiautomatic pistol laying under his
4 legs.

5 Q Through your later investigation, did you find that
6 was the 9 millimeter pistol used in the shooting
7 of Officer Larry Trepagnier?

8 A Yes, sir.

9 MR. BAX: The State would also offer
10 at this time State's Exhibits 1, 2, 3, and 4.

11 MR. ELIZONDO: No objections, Your
12 Honor.

13 THE COURT: 1, 2, 3, and 4 will be
14 admitted in evidence.

15 Q Let me show you State's Exhibits 17 and 18.

16 What are those photographs of?

17 A Photographs of the Defendant.

18 Q Is that the way he appeared back on July 13th,
19 1982?

20 A Yes, sir. It is.

21 Q And what you were describing earlier as the Fu
22 Manchu sort of mustache and beard and the long
23 hair; is that correct, sir?

24 A That is correct.

25 MR. BAX: Your Honor, at this time, I

1 would offer State's Exhibits 17 and 18.

2 THE COURT: Mr. Elizondo?

3 MR. ELIZONDO: No objections.

4 THE COURT: 17 and 18 are admitted in
5 evidence.

6 Q (By Mr. Bax) Just for the record, Mr. Wilson, are
7 all the areas contained in State's Exhibits 1, 2,
8 3, and 4, are those all areas of Harris, County,
9 Texas?

10 A. All of the areas that I testified about.

11 The extreme horizon in State's Exhibit
12 No. 4, I can't guarantee that.

13 Q Let me ask you this: State's Exhibits 1 and 2?

14 A. Yes, sir. Both of those, and everyplace that I
15 marked on all four of them are in Harris County,
16 Texas.

17 Q It's sort of an unfair question. Who knows how
18 far that goes?

19 MR. BAX: May we have just one moment,
20 Your Honor?

21 (At this time, State's Exhibits Nos. 19
22 and 20 were marked for identification purposes by
23 the court reporter.)

24 THE COURT: You may proceed.

25 Q (By Mr. Bax) Mr. Wilson, I would ask you to take

1 a look at State's Exhibit 19 and No. 20.

2 Speaking as to State's Exhibit 19, does
3 that truly and accurately depict the man you saw
4 squatted behind the horse trailer at 4911 Rusk?

5 A. Yes, sir. It does.

6 Q And does it do that in three dimension?

7 A. Yes, sir. It does.

8 Q And State's Exhibit 20: Does that truly and
9 accurately depict the dead suspect that was laying
10 on the ground at the east side of 4911 Rusk?

11 A. Yes, sir. It does.

12 MR. BAX: Your Honor, at this time, the
13 State would offer State's Exhibits 19 and 20.

14 MR. ELIZONDO: To which we have an
15 objection. There is a possibility of bolstering
16 other witnesses, and I can't see the materiality
17 of the mannequins except possibly to inflame and
18 prejudice the jury.

19 THE COURT: That will be overruled.
20 The exhibits are admitted in evidence.

21 MR. BAX: Your Honor, may we have the
22 photographs exhibited to the jury at this time?

23 THE COURT: Members of the jury, pass
24 the photographs among you without comment.

25 May I see them?

1 (The exhibits were handed to the Court.)

2 THE COURT: You may proceed, sir.

3 (The exhibits were handed to the jury.)

4 MR. BAX: Thank you, Your Honor.

5 Q. (By Mr. Bax) Mr. Wilson, just one or two more
6 questions concerning State's Exhibits 19 and 20.

7 In State's Exhibits 19 and 20, the
8 clothes on State's Exhibit 19, do they appear to be
9 the same clothes Ricardo Aldape Guerra was wearing
10 when he was arrested on July 13th, 1982?

11 A. They appear to be the same.

12 Q. And the clothes on State's Exhibit 20, do those
13 appear to be the same clothes worn by the dead
14 suspect located there at 4911 Rusk?

15 A. Yes, sir. They appear to be exactly the same also.

16 MR. BAX: The State would pass the
17 witness.

18 MR. ELIZONDO: May I proceed, Your
19 Honor?

20 THE COURT: Yes, sir.

21
22 CROSS EXAMINATION

23
24 QUESTIONS BY MR. ELIZONDO:

25 Q. Did you do a report on this case?

1 A. I wrote a statement there at the Homicide
2 Division.

3 Q. Do you have a copy of that today?

4 A. Yes, sir.

5 Q. May I see it?

6 A. (The witness complied, handing the document to
7 Mr. Elizondo.)

8 Q. Is this the sum total of your investigation in
9 this case, or did you make a report with the
10 Civil Rights Division or H.P.D. Homicide Division
11 or any other division?

12 A. That is it.

13 Q. Go ahead.

14 A. That statement is the only statement that I gave.
15 I made some notes that evening, minimal sort of
16 notes: names, addresses, something like that.
17 I dictated that to my secretary, a paragraph long
18 shooting summary of that shooting.

19 I have written no other formal reports.

20 Q. Do you have that one paragraph summary with you?

21 A. No, sir. I did not bring it.

22 Q. Is there any way you could get a copy of that
23 to me?

24 A. Yes, sir. I can.

25 Q. How long have you been with the D.A.'s Office?

1 A Nine, a little over nine years.

2 Q And how long have you been with the Civil Rights
3 Division?

4 A Since July 10th, 1979.

5 Q Back on July 17th, I was looking at some pictures,
6 and I want you to explain some things to me.

7 Officer Trepagnier was shot in the back
8 of the house; is that correct?

9 A He was shot around at the end of the driveway,
10 roughly in the area around the abandoned car and
11 the garage itself.

12 Q Now, for the benefit of the jury, Officer Trepagnier
13 was shot around here?

14 A No, sir. Around over here.

15 Q Was he shot in the back of the house on the south
16 side or north side of the house?

17 A He was shot at the end of the driveway,
18 approximately. Not the exact end, but approximately
19 the end of the driveway on the northwest corner
20 of the house.

21 Q Okay. Did you ever ascertain his name, the name
22 of the guy in the purple shirt?

23 A Yes, sir, and I don't recall right now what it
24 is. I believe it was -- I can't be sure.

25 Q Did they ever call him Werro?

1 A No, sir.

2 Q Did you ever find out what Werro means?

3 A No, sir.

4 Q Did you find out what it means?

5 A It is a nickname, I understand.

6 Q Here is State's Exhibit No. 14. It is a picture
7 of the decedent, Werro.

8 Does the name Roberto Carrasco Flores
9 sound familiar to you?

10 A Yes, sir. I believe so.

11 Q Where was Officer Trepagnier shot?

12 A On the opposite side of the house.

13 Q Here on State's Exhibit 9 there are what appear
14 to be bullet holes on the tree.

15 Do you see those?

16 A Yes, sir.

17 Q Do you know where those bullet holes came from?

18 A I didn't see them when it actually happened. As
19 a result of the investigation, I have a pretty
20 good idea where they came from.

21 Q Do you know where they came from?

22 A Primarily police officers shooting a Mr. Flores.

23 Q Could you show the members of the jury where those
24 bullet holes are?

25 A Most of them are shotgun pellet holes. Some of

1 them are bullet holes.

2 Q Okay.

3 A In this tree, this tree, and grayish marks along
4 the house.

5 Q And some in this tree also, aren't there?

6 A I don't recall any on the front of the tree.
7 There could be, if you had another photograph,
8 sir.

9 (At this time State's Exhibit No. 6
10 was handed to the witness.)

11 Q (By Mr. Elizondo) There could have been?

12 A There could have been. I don't recall seeing any
13 more.

14 Q A pistol was found next to Roberto Carrasco Flores.

15 Do you see that pistol?

16 A Yes, sir.

17 Q Can you show the jury where that is?

18 A Yes.

19 Q What kind is that again?

20 A A Browning 9 millimeter.

21 Q Were you able to find another pistol on or about
22 this man?

23 A There was another pistol I was told later that
24 was found near him.

25 Q Do you know what kind of pistol it was?

1 A I believe it was a revolver, sir. I don't know
2 exactly.
3 Q Whose pistol was it?
4 A It belonged to Officer Harris.
5 Q Where was that pistol found?
6 A It was found in his pants at the morgue.
7 Q On whose pants was this pistol found on?
8 A Mr. Flores.
9 Q The dead man?
10 A Yes, sir.
11 Q Could you describe the pistol that was in Mr.
12 Flores' pants, or Werro's pants?
13 A I didn't see it, sir. I was told it was a
14 revolver, the on-duty revolver of Officer Harris.
15 I don't know.
16 Q Have you ever seen it?
17 A I have not seen it.
18 Q When you arrested the Defendant in this case,
19 Ricardo Guerra, how far was he from you now again?
20 A Three feet.
21 Q And he was kind of just sitting kind of hunched
22 down?
23 A Squatted down as low as he could squat.
24 Q Was he hiding behind a trailer?
25 A Yes, sir. Hiding in back of the trailer.

1 Q Was he in plain view of you?

2 A He was at the time I first saw him. You couldn't

3 see him from anywhere in the yard except if you

4 were in position to look at the back of the horse

5 trailer.

6 Q And next to him was a pistol, right? Or near him?

7 A That's correct.

8 Q How was it, a .45?

9 A Yes, sir.

10 Q Were you able to ascertain what kind of pistol

11 killed Officer J. D. Harris?

12 A Not positively. I believe I know what kind, but the

13 weapon, the slugs did not stay in the body, and

14 were not recovered from the body, so it is

15 speculation.

16 Q You mentioned that Officer J. D. Harris was shot

17 at the corner of Edgebrook and Walker streets?

18 A Yes, sir.

19 Q Could that be Edgewood and Walker?

20 A Yes, sir. Not Edgebrook.

21 Q Could you show the jury where Mr. Harris was

22 situated when you got to the corner of Edgewood

23 and Walker?

24 A Mr. Harris was not there.

25 Q He was not there?

1 A. He was taken by ambulance to the hospital.

2 Q. How could you ascertain where he was?

3 A. I know where the blood pool was.

4 Q. Could you show the jury where that was?

5 A. Right there.

6 Q. Right about here?

7 Could you tell the jury where the other
8 person was that was shot on Walker street?

9 A. He was in his vehicle down Walker street in front
10 of the next house.

11 Q. Could you draw a picture of that, please, draw
12 a circle of where he was?

13 A. It was down up against the tree. I believe it
14 was this tree right there.

15 Q. You are sure it was that tree and not the other
16 tree?

17 A. I believe it was that tree, sir.

18 Q. Were you able to ascertain ever what kind of pistol
19 was used to kill the bystander?

20 A. Again, the same speculation, but I believe it was
21 the same pistol that killed Officer Harris.
22 Speculation.

23 Q. Did you ever ascertain the name of the man that
24 was shot after J. D. Harris?

25 A. I believe it was Mr. Armijo.

1 MR. ELIZONDO: May I have a moment to
2 peruse this report?

3 THE COURT: Yes, sir.

4 Q. (By Mr. Elizondo) You also -- I believe you
5 mentioned or told the jury that you told him to
6 lie down a couple of times? Did you him in English
7 or Spanish?

8 A. In English.

9 Q. Did you later find out he speaks Spanish?

10 A. Primarily Spanish.

11 Q. When you arrived at the scene, did you see any
12 shooting from the front of the house to the back
13 of the house?

14 A. I did not observe the shooting actually take place,
15 sir.

16 Q. You heard the gunshots, right?

17 A. Yes, sir.

18 Q. But you never saw any exchange of gunfire at all?

19 A. No, sir. It had stopped by the time I could see
20 as I came around the corner.

21 Q. Now, the gunshot was coming from the east side
22 of the house and not the west side of the house?
23 Is that correct?

24 A. There was an exchange of gunfire on the west side.
25 There was an exchange of gunfire on the east side.

1 Trepagnier and Flores shot at each
2 other, Flores being in the garage, we believe,
3 when he shot Trepagnier on the west side of the
4 house, with Trepagnier returning fire.

5 They then both ran to the east side of
6 the house, Trepagnier making it partway where he
7 fell and was subsequently treated; Flores making
8 it all the way to the east side of the house where
9 a subsequent shoot-out occurred between he and
10 other officers on the scene, in which he was
11 killed.

12 Q That makes it clearer. I couldn't find out how it
13 happened.

14 MR. ELIZONDO: Your Honor, at this time,
15 I will pass the witness.

16
17 RE-DIRECT EXAMINATION

18
19 QUESTIONS BY MR. BAX:

20 Q Mr. Wilson, if you would, would you approach the
21 blackboard for us, approach the board?

22 This has been labeled State's Exhibit
23 No. 5. Would you briefly go over that with the
24 jury and tell us what that diagram depicts?

25 A Essentially, State's Exhibit 5 is a hand-drawn

1 diagram of the area, Dumble street being labeled
2 here, runs approximately north and south. Walker
3 coming down here, making a jog and going down here
4 in this direction, running approximately east and
5 west. Rusk, again, running down this direction,
6 and Edgewood over here.

7 The area right in here is the scene
8 where Officer Harris was shot and killed, the
9 black vehicle I drew on the other photograph being
10 drawn in here in this location.

11 The vehicle parked here was Harris'
12 patrol car, which was subsequently moved to
13 another area; the car occupied by the two men
14 involved in the shooting; a witness' vehicle; Mr.
15 Armijo's vehicle, where it ended up against a tree
16 where he was shot.

17 Q. Let me stop you for a second.

18 Was this portion of the diagram, the
19 placement of the vehicles and other placements
20 placed on the diagram by yourself?

21 A. No, sir. They were not.

22 Q. Were they placed there by Detective Neely? I
23 believe he will testify after you concerning the
24 locations there, concerning the location up at 4911
25 Rusk.

1 Is that the proper outline for 4911

2 Rusk?

3 A. No, sir.

4 Q. How should that be?

5 A. The back of the house should be something like
6 this, being the back of the house, and this portion
7 is not -- the back is offset, as drawn here.

8 Q. Where is the garage you were speaking of?

9 A. The garage would be here.

10 Q. Now, would you go over, using State's Exhibit 5,
11 the sequence of events that took place with
12 Officer Trepagnier and Roberto Carrasco Flores,
13 as you later learned from the evidence?

14 A. The junk vehicle was sitting in the driveway here,
15 pointing towards Rusk street down here.

16 Officer Trepagnier approached and got
17 in this area trying to determine if there was
18 anything in the garage, because his function was
19 to watch the back of this house at 4907, while
20 some other officers looked for suspects there.
21 He was going to guard the back of the house, and
22 before he did, he wanted to make sure there was
23 no one behind him in the garage area, so he
24 approached and was roughly in this area here
25 when he was shot by Mr. Flores, presumably from

1 the garage area here.

2 He shot him, and there was an exchange
3 of gunfire there. They then proceeded, Flores
4 around the side of the house here and Trepagnier
5 over to approximately this location, where he
6 fell as a result of gunshot wounds.

7 Q And can you tell where the other officers were
8 that returned the fire?

9 A The officers that returned fire were roughly in
10 this area, across in front of the house there,
11 roughly, firing in this direction, striking Mr.
12 Flores, who turned to run as he was shot, and fell
13 in that area there.

14 Q And where is the fence line boundary of this?

15 A This would be the fence on the east side of the
16 house, and then there is a fence that runs across
17 the back or the north side of the house, roughly
18 in this area.

19 There is a fence running down this side
20 that comes down and covers the side of 4907.

21 Q Does that pencil run out of ink?

22 Let me see if I can find another one.

23 (Another pencil was handed to the
24 witness.)

25 A That being the fence area itself (indicating

1 drawing).

2 Q Could you also include the horse trailer?

3 A The horse trailer sat something like that.

4 Q And can you just put an "X" where the Defendant,
5 Ricardo Aldape Guerra, was?

6 A (The witness complied.)

7 MR. BAX: No further questions.

8 THE COURT: Mr. Elizondo?

9

10 RE-CROSS EXAMINATION

11

12 QUESTIONS BY MR. ELIZONDO:

13 Q Mr. Wilson, at 4911 Rusk, this is where the van
14 was located? Correct?

15 A The van is not drawn on there. That is a junk
16 vehicle. The van is further down the driveway
17 towards Rusk street.

18 Q The van would be here then?

19 A Approximately.

20 Well, you have drawn it a little far
21 out, but --

22 Q Right about here?

23 A That is close enough.

24 Q Now, what kind of vehicle is this here?

25 A It was an old junk car that had obviously been

1 sitting there a long time without moving.

2 Q Do you recall what kind of car that was?

3 A No, sir. I don't.

4 Q Now, when you arrived, the firing and shooting had

5 stopped; is that correct?

6 A That is correct, sir.

7 Q Were there any police officers around here?

8 A When I first went around there, yes, sir. There

9 were.

10 Q How about around here?

11 A When I first went around to that side, no, sir,

12 there were not.

13 Q Any at a later time?

14 A Yes. There were police officers over the whole

15 area at some point during that evening.

16 Q And right here is where the boundary is, the

17 gate, the chain-link fence, correct?

18 A I don't recall a gate. There was a chain-link

19 fence.

20 Q What is over here?

21 A That is a chain-link fence also.

22 Q And where were you tying that ribbon, that crime

23 scene tape?

24 A I tried it initially from the corner of this post

25 right here, from there, across the front, to the

1 fence, up the fence to here, across to the tree,
2 and tied it off here, and then went around to the
3 house, tied it onto the mirror of this car here,
4 went to the tree, once around the tree, was going
5 back and attempting to tie off to a tree here,
6 and I observed him right there.

7 Q. And Werro was shot over here, or died over here.
8 Right?

9 A. On the east side of the house. Right.

10 Q. And the pistol, the 9 millimeter, was here?

11 A. Yes.

12 Q. And Officer J. D. Harris' pistol was found here?

13 A. No, sir. It was found at the morgue after the
14 body was transported to the morgue, at the basement
15 of Ben Taub Hospital.

16 Q. Where was it found at the morgue?

17 A. In his pants somewhere.

18 Q. This was Werro?

19 A. The man depicted in State's Exhibit 20, I believe.

20 MR. ELIZONDO: No further questions.

21 MR. BAX: No further questions, Your
22 Honor.

23 THE COURT: Thank you, Officer Wilson.

24 It was nice to see you.
25

1 G. T. NEELY,
2 was called as a witness on behalf of the State of
3 Texas, after having first been duly sworn, testified
4 as follows:

5
6 DIRECT EXAMINATION

7
8 QUESTIONS BY MR. BAX:

9 THE COURT: All right, sir. You may
10 proceed.

11 MR. BAX: Thank you, Your Honor.

12 Q. (By Mr. Bax) Would you tell us your name, please?

13 A. G. T. Neely.

14 Q. Would you pull the mike just a little closer to
15 you?

16 There you go.

17 How are you employed, sir?

18 A. Homicide detective with the City of Houston.

19 Q. How long have you been with the City of Houston
20 Police Department?

21 A. Approximately eight and a half years.

22 Q. And how long have you been assigned to the Homicide
23 Division?

24 A. Approximately one and a half years.

25 Q. Would you tell us just briefly what your duties are

1 as a detective with the Homicide Division?

2 A. Our first duty is normally to make the scene of
3 any homicide where a shooting or stabbing of a
4 serious nature is.

5 Our first purpose would be to preserve
6 and record the scene as we find it. Later on, we
7 may follow with later investigation and file
8 subsequent charges.

9 Q. Calling your attention back to July 13th of this
10 year, did you have an occasion to go to the scene
11 of Edgewood and Walker here in Houston, Harris
12 County, Texas?

13 A. Yes, sir.

14 Q. Where Officer J. D. Harris had been killed?

15 A. Yes, sir. I did.

16 Q. What time did you receive your assignment to go to
17 that location?

18 A. We received our assignment at 10:10 p.m.

19 Q. When you say "we," were you working with a partner
20 that evening?

21 A. Yes, I was.

22 Q. Who was your partner?

23 A. R. W. Holland.

24 Q. How long did it take you to get from the Houston
25 Police Department to the location at Edgewood and

1 Walker?

2 A. Thirteen minutes.

3 Q. Arriving at what time?

4 A. 10:23 p.m.

5 Q. Could you tell the members of the jury, or briefly

6 describe the scene as it appeared when you first

7 arrived there at Edgewood and Walker?

8 A. We had first received the assignment to the

9 intersection of Dumble and Walker. However, when

10 we arrived, the scene was blocked off. They had

11 traffic blocked off to and from the scene.

12 We found the scene was not there but at

13 Walker and Edgewood. We went a little bit further

14 eastward down Walker to Edgewood. The area there

15 is mainly populaced by older residences built

16 several decades ago, some in the thirties and

17 forties, mainly built with wood. Some are on

18 blocks. There are very few brick homes in the

19 vicinity. There are, however, some. Most are

20 inhabited by Mexican-American people, and most

21 of these people are in a low income range.

22 Q. When you arrived at the scene, did you know a

23 police officer had, in fact, been shot?

24 A. We didn't know which officers had been shot when

25 we arrived, but we were told some had.

1 Q And how long were you at the scene before you
2 found out it was Officer James Harris?

3 A Two or three minutes.

4 Q Did you personally know Officer James Harris?

5 A Yes, sir.

6 Q Did you know how he was assigned?

7 A He was a K-9 officer with the department, worked
8 with a German shepherd dog.

9 Q Instead of another police officer, his partner
10 would have been a dog, a German shepherd?

11 A Yes.

12 Q Would you describe or tell the members of the jury
13 the vehicle or vehicles you felt were important in
14 the investigation located there at the scene?

15 A We arrived on the scene --

16 Q Perhaps it would be easier if you maybe stepped
17 down to the diagram, State's Exhibit No. 5, and
18 used that as you explain your positions for us.

19 A When we arrived on the scene, most apparent of the
20 vehicles there at the scene were two vehicles here,
21 this vehicle, the same as the other vehicle lined
22 in blue. This is a police car. It is a blue
23 and white police car, has no emergency equipment
24 on the top of the car, just blue and white. This
25 vehicle was a red or black Buick two-door, which

1 was in this position.

2 When we arrived on the scene, these two
3 vehicles were parked as such. This was meant to
4 be the original positions. This vehicle was found
5 parked nine and a half feet west of the Buick.
6 A third vehicle was parked down the street in the
7 ditch, and this vehicle was occupied by someone
8 shot during this.

9 Q I take it then someone had moved Officer Harris'
10 patrol vehicle from this location forward to the
11 location parallel to the Buick that was there?

12 A Yes, sir. It had been moved by the Houston Fire
13 Department ambulance personnel, trying to get
14 Officer Harris, and they had to make room for the
15 ambulance.

16 Q Would you tell us the condition of Officer Harris'
17 patrol vehicle when you first observed it, whether
18 it had its lights on, engine on, or what was its
19 condition when you observed it?

20 A Officer Harris' vehicle, as I said before, was
21 parked here, facing south in this direction. This
22 map is not marked; however, north is going to be
23 straight up.

24 For purposes of description during the
25 scene, we referred to north as being in the

1 direction. These streets, east and west, being
2 in this direction, and Officer Harris' car was
3 found facing south. The vehicle was found in a
4 running condition, the drive selector was in
5 park position, the doors were closed, the head-
6 lights were on and in high beam position.

7 There is a hand-operated spotlight on
8 the driver's side of the car just at the junction
9 of the window and the driver's door. The spotlight
10 was on. It was angled backward and down and
11 focused on a spot that was midline of the car
12 four and a half feet and out. The vehicle was not
13 equipped with red lights and sirens or red lights
14 on top of the car as you normally see on a regular
15 patrol car.

16 The K-9 officers were not equipped with
17 this. The only red lights this car had were on
18 the dashboard behind the grille, red lights about
19 four inches in diameter, and they were blinking
20 on and off.

21 Q. They were functioning at the time you observed the
22 vehicle?

23 A. Yes, sir. They were. The doors were closed.

24 The doors on the passenger side of the
25 vehicle were both locked. The doors on the

driver's side were unlocked.

The windows were rolled down approximately four inches on each window, I assume so as to give the dog ventilation.

The dog I referred to was in the back seat of the car.

Q. What was it doing?

A. It was cowering in the backseat when I saw him, wouldn't get up, wouldn't respond.

Q. Would you tell us about the condition of the vehicle that was parked parallel to Officer Harris' vehicle when you arrived?

A. The red-over-black Buick was not running. The keys were in the ignition, however. The keys were turned off. The gearshift lever on this particular vehicle was in a drive position. There was an eight-track tape inserted into the vehicle. We didn't turn it on, because we didn't want to get inside the car and mess up anything that was there.

Q. What do you mean "mess up anything that was there"?

A. Any trace elements such as blood, hair, fingerprints.

The vehicle has only two doors. Both windows were down; both doors were unlocked.

How were the wheels in the Buick positioned?

1 A. The front wheels were placed to the left this
2 way.

3 Q. Observing the Buick with the wheels turned to the
4 left and the fact that the ignition was off and
5 the gearshift was in the drive position, did you
6 form an opinion as to whether it had stalled trying
7 to make a U-turn?

8 A. It was possible, associated with that, the thing
9 being cut this way and the thing being in a drive
10 position.

11 Q. Were there any hulls or spent cartridges found
12 inside the red-over-black Buick?

13 A. Yes, sir. There were. This small "X", as the rest
14 of these small blue "X's," represent a cartridge
15 case, fired cartridge case. In other words, it
16 has to have a bullet in it. There was a cartridge
17 case on the passenger side of the front seat, in the
18 junction formed by the backseat and driver's
19 position. This was facing approximately four
20 inches on the east side of this door.

21 Q. Is there any way to determine when that shot would
22 have been fired or that spent case would have been
23 placed in that vehicle?

24 A. No, sir.

25 Q. Now, there was another vehicle down the street at

1 this location.

2 Can you tell us what type of vehicle
3 that was and what condition it was in when you
4 saw it?

5 A. That was a red-over-red Ford Elite, two-door. That
6 vehicle sat there with the gearshift lever in the
7 park position.

8 However, the headlights were on, both
9 doors were closed in this car. There was some
10 bullet damage to this vehicle.

11 Q. Would you tell us about the bullet damage you
12 observed to the Ford Elite?

13 A. Yes, sir. There was one bullet hole, or apparent
14 bullet hole in the windshield of the vehicle. It
15 was located two feet inward and two feet down from
16 the windshield, just left from the center.

17 This bullet traveled through the
18 windshield and made a gouge in the dashboard, and
19 it corresponded with the hole. That was all the
20 bullet damage inside the car, and the other bullet
21 damage -- there was a lot of blown glass there --
22 but no other bullet damage.

23 There was bullet damage to the base of
24 the radio antenna which is mounted to the passenger
25 side of the fender where the antenna comes from

1 the surface of the fender and goes in right here.

2 Q Were you able to tell by the way the two bullets
3 had struck the vehicle the probable position in
4 relation to the passenger's or driver's side of the
5 person firing the shot was on?

6 A It appeared to have been coming from the passenger
7 side.

8 Q Were you able to determine who, in fact, was the
9 driver of that vehicle?

10 A Yes, sir. It was a Mr. Armijo. He had already
11 been loaded by ambulance when we arrived or was
12 being loaded when we arrived.

13 Q I take it then you did not have a chance to see
14 Mr. Armijo as he was inside this vehicle or being
15 taken by the emergency people at the scene?

16 A No, sir. I didn't.

17 Q Did you determine whether anyone else was in the
18 car along with Mr. Armijo?

19 A Yes, sir. Two small children were in the car with
20 Mr. Armijo.

21 Q Would those be his two children?

22 A Yes, sir.

23 Q Did you determine what type of injuries Mr.
24 Armijo sustained or received as a result of being
25 in his vehicle?

*not
qualified
as expert*

1 A. He received a single gunshot wound to the back
2 of the head, at the skull of the head.
3 Q. And did you later learn he passed away on July
4 20th, 1982?
5 A. Yes, he did.
6 Q. Did you know whether either one of his two children
7 were injured at all?
8 A. A little girl in the front seat was slightly
9 injured by flying glass which struck her on the
10 right side of the face.
11 Q. How about the little boy?
12 A. I don't believe he was injured.
13 Q. One other question: Did you later learn what
14 type of bullet was recovered from Mr. Armijo?
15 A. Yes, sir.
16 Q. As far as from the back of his head?
17 A. A 9 millimeter semiautomatic. 9 millimeter.
18 Q. Going back to this location here, there is a third
19 or fourth vehicle parked just to the west of the
20 red-over-black Buick.
21 Could you describe that vehicle for us?
22 A. Yes, sir. This was a maroon Chevrolet Nova, two-
23 door. This vehicle was parked in a normal position
24 facing east. The doors were closed on this car.
25 They were unlocked. Both windows were fully down.

1 The car has two doors.

2 Q And did you later learn who that car belonged to?

3 A We later learned that car belonged to Trinidad

4 Medina, a witness in this case.

5 Q And did you later learn when that car came to the

6 position you see it now, perpendicular to the

7 red and black Buick?

8 A That car was said to have come to that position

9 moments before or partly at the time this car came

10 down.

11 Q You have located on the diagram you have mentioned

12 earlier certain "X's." Those are 9 millimeter

13 holes, I believe.

14 A All of these "X's" shown are 9 millimeter semi-

15 automatic firing, three in this area, one here,

16 one here. We have one in this area, one here,

17 and two here.

18 Q Three in close proximity to Officer

19 Harris' vehicle before the people removed that

20 vehicle from that location to the location it

21 was when you were at the scene?

22 A Yes. One, two.

23 Q One inside the red-over-black Buick?

24 A Yes, sir.

25 Q One, I take it is that on top of the Ford Elite?

1 A. No. That is beneath the position. These two
2 were on top of the driveway at 4919.
3 Q. So there were a total of seven spent cases or
4 hulls that were recovered at the scene back on
5 July 13th?
6 A. 9 millimeter.
7 Q. Any bullets recovered?
8 A. Yes, sir. There were three recovered.
9 Q. Where were they recovered?
10 A. The bullets were recovered from this building,
11 directly across the street from this scene. I
12 believe the bullets were in the wall of the house,
13 the east wall, just slightly southward of the door.
14 It gives access up here; this room here is the
15 southwest bedroom of this home.
16 Q. Did you later learn the types of injuries that
17 Officer Harris had received back on July 13th?
18 A. Yes, sir.
19 Q. Would you describe those injuries just briefly
20 for the members of the jury?
21 A. Officer Harris was shot in the left side of the
22 face with a firearm. They entered the left side
23 of his face and exited the right side.
24 Q. How many shots?
25 A. Three.

1 Q And all exited from the right side of his head?
2 A Yes.
3 Q And there were three 9 millimeter hulls found in
4 this area with three 9 millimeter bullets being
5 recovered at 4919?
6 A Let me explain this red area.
7 Q If you would.
8 A This red area is a pool of blood approximately
9 two feet in diameter located at the east edge of
10 Edgewood street, approximately fourteen feet from
11 the northern boundary of Walker street.
12 Q How wide is Walker street?
13 A Walker street is eighteen feet in width. Edgewood
14 is nineteen feet in width.
15 Q How much distance -- I believe you can mark it --
16 on it between the Nova and the red-over-black Buick?
17 A Nine and a half feet.
18 Q And would the distance from the rear of the Buick
19 back over to this area where Officer Harris was
20 located --
21 A From this area here to the blood spot is twenty-
22 six feet.
23 Q Twenty-six feet from the blood spot to the back
24 of the Buick?
25 A Yes, sir.

1 A. And the approximate distance from the corner where
2 Officer Harris was shot back to where the Ford
3 Elite was parked?

4 A. Seventy-six feet.

5 Q. And you have another marking of fifty-three feet.
6 What is that?

7 A. This is the measurement from the rear of Mr.
8 Armijo's Ford where the last two cartridges were
9 found.

10 Q. Would you tell the members of the jury -- you have
11 marked this one, two, three locations of what
12 appear to be lights.

13 Would you explain what these are?

14 A. These small items are streetlights, the normal
15 vapor lights present on top of utility poles. These
16 particular lights were ninety-four feet west of
17 the scene.

18 This light was on the north side of the
19 street.

20 The distance approximated on this light
21 is -- now the distance is going to be a hundred
22 and forty feet.

23 This is an additional light that was
24 mounted on the northeast corner of 4922 Walker.
25 This light faces northward into the scene.

1 Q Take your seat just for a second.

2 (The witness complied.)

3 THE COURT: Cindy, let me interrupt
4 just a minute.

5 Members of the jury, I am going to take
6 about a fifteen or twenty-minute recess. The
7 bailiff will accompany you to the coffee shop and
8 we will take twenty minutes for a recess.

9 Let me give you an admonition that will
10 carry with you throughout this trial. Do not
11 discuss what you have heard so far with anyone.
12 That includes amongst yourselves as jurors. Do not
13 discuss the testimony you have heard.

14 The only time it will be proper to
15 discuss this testimony among yourselves will be
16 when you go to deliberate the guilt or innocence
17 of the Defendant. Until such time, you are not
18 to discuss it among yourselves.

19 (The jury retired, and out of their
20 presence and hearing, the following proceedings
21 were heard.)

22 MR. ELIZONDO: Judge, for the record,
23 I object to the press taking a picture of these.
24 I am going to have to object.

25 I object to any taking of photographs

1 of these two mannequins. It serves no purpose
2 whatsoever and is infalmmatory and prejudicial.

3 THE COURT: Overruled.

4 (At this time, State's Exhibits 21
5 through 42 were marked for identification purposes
6 by the court reporter.)

7 (At this time a recess was taken.)

8 MR. ELIZONDO: Your Honor, for the
9 record --

10 THE COURT: Let your Defendant in.

11 MR. ELIZONDO: For the record, we are
12 going to object to any photographing of State's
13 Exhibits Nos. 19 and 20 which are the mannequins
14 which purport to be similar to the Defendant and
15 Roberto Carrasco Flores.

16 We are objecting to the photographing
17 or showing of the exhibits to the jury on the
18 grounds they are, first of all, immaterial to
19 this case. There is no benefit to be derived from
20 a showing of these mannequins to the jury.

21 Our other grounds are that they are
22 prejudicial and inflammatory to the jury, and we
23 also object they will be bolstering to some of
24 these witnesses who are coming here to testify
25 as to who the Defendants were in this case.

1 THE COURT: The objection will be
2 overruled.

3 MR. ELIZONDO: As to all grounds? Even
4 photographing them?

5 THE COURT: Yes, sir.

6 I will admonish the jury as to any
7 publicity concerning the case, but I think that
8 should take care of it.

9 The jury will have seen the exhibits
10 in the courtroom, and whether or not they see
11 them in the newspaper or on the news would make no
12 difference, but I will admonish them very strongly,
13 the jury, to avoid viewing any publicity, to avoid
14 listening to or reading any publicity concerning
15 this case.

16 All right. Bring out the jury, please.

17 (Whereupon the jury returned to the
18 courtroom, and in their presence and hearing, the
19 following proceedings were had.)

20
21 DIRECT EXAMINATION, CONTINUED

22
23 QUESTIONS BY MR. BAX:

24 Q. Detective Neely, I had to get you comfortable over
25 there, and now I need you over here now.

1 Why don't we just use this pointer.
2 It is a little touchy with wet fingers, and smeared
3 somewhat.

4 I want you to first take a look at these
5 photographs, State's Exhibits 21 through 42, and
6 look through those for a second, and I will ask you
7 about them.

8 Just look at them, without letting the
9 jury see those. Put one underneath the other one.

10 Would you just briefly tell us what
11 State's Exhibits 21 through 42 are photographs
12 of, please?

13 A. They are photographs of the scene here at Walker
14 and Edgewood where Officer Harris was shot and
15 killed.

16 Q. And do these photographs depict different areas
17 you have just testified to a few moments ago?

18 A. Yes, sir. They do.

19 Q. Do they truly and accurately, each one of these
20 photographs, State's Exhibits 21 through 42, truly
21 and accurately depict the scene back on July 13th,
22 1982?

23 A. Yes, they do.

24 MR. BAX: The State would offer State's
25 Exhibits 21 through 42 after tendering same to

1 counsel.

2 MR. ELIZONDO: May I have a moment?

3 THE COURT: Yes, sir.

4 MR. BAX: Just for the record, the State,
5 prior to tendering the photographs to Mr.
6 Elizondo, has withdrawn State's Exhibit 22, and
7 it will not be offered.

8 It will be State's Exhibit 21 and 23
9 through 42.

10 MR. ELIZONDO: No objections, Your
11 Honor.

12 THE COURT: Exhibit 21 and Exhibits 23
13 through 42 are admitted in evidence.

14 Q. (By Mr. Bax) Detective Neely, I will be handing
15 you the photographs and we will move this back,
16 and describe what it is a photograph of, the first
17 photograph being State's Exhibit No. 21.

18 A. This photograph was taken from the north-to-south
19 direction from this side of the street.

20 The camera lens was pointed in this
21 direction. This shows the blood spot here and
22 also shows Officer Harris' car here. It also
23 shows the red-over-black Buick parked here.

24 The blood spots are visible. You can
25 see them on the corner of the street here.

1 Q That also shows, I take it, Officer Harris' spot-
2 light on the side pointing down on the direction
3 you pointed to earlier?

4 A The spotlight is here. Here is the spot.

5 Q You can see there are no shells.

6 Can you describe how these roads are
7 constructed for the members of the jury, please?

8 A These roads are constructed, as you can see, of
9 asphalt. They have no curbs. Edgewood street
10 itself has grass all the way to the street on
11 the west.

12 On the east side, there is one foot of
13 dirt and gravel visible on this photograph to the
14 grass. There is a shallow ditch that runs the
15 entire length east and west on Walker on the north
16 side and on the south side.

17 The driveway of these houses are mainly
18 made of gravel, such as you see here. There are
19 small concrete culverts that you drive over on
20 this shell. This street has a shallow ditch not
21 as pronounced as this, but doesn't have sidewalks
22 as Walker street does.

23 Q As far as the red-over-black Buick shown in State's
24 Exhibit 21, and which was also shown in State's
25 Exhibit 5, did your investigation reveal who the

1 occupants of that vehicle were?

2 A. Yes. The occupants of that vehicle were found to
3 be your Defendant over here --

4 Q. Guerra?

5 A. Yes, sir, and the deceased suspect.

6 Q. Flores?

7 A. Werro Flores.

8 Q. And I show you State's Exhibit No. 23.

9 A. This photograph was taken from a west-to-east
10 direction which shows the rear of this vehicle.
11 It also shows the rear of this vehicle. The
12 vehicles back here that you see don't have anything
13 to do with the case.

14 Q. If this photograph were extended, where was Officer
15 Harris' -- where would that pool of blood be?

16 A. The pool of blood would be back here.

17 Q. I believe you testified the distance from the
18 back of that Buick to the pool of blood was twenty-
19 six feet?

20 A. Yes. It would be in that perspective, but goes
21 back in a direction, if you can follow me, back
22 in this direction rather than straight this way.

23 Q. State's Exhibit No. 24?

24 A. This is a front view of the Buick taken in a
25 direction such as this. It shows the front of the

1 Buick itself. It also shows Officer Harris'
2 police car. These men are standing in the
3 approximate vicinity of the blood spot. This a
4 crape myrtle tree on the northeast corner of the
5 intersection.

6 Q All right. Does that tree appear in State's Exhibit
7 No. 5?

8 A Yes, sir. This is a green, shaded area here.
9 This is a bush, a tree, and another tree.

10 Q State's Exhibit No. 25?

11 A No. 25 was taken in this direction, eastward to
12 west. It shows Officer Harris' vehicle, and it
13 shows the house where the bullets impacted after
14 striking Officer Harris. It shows the street sign
15 on the corner.

16 This is the suspects' vehicle here.
17 Barely visible behind this yellow line is this
18 maroon vehicle parked here. This is the front
19 of the car.

20 Q That was one of the witnesses' cars, I believe
21 you testified to earlier?

22 A Yes, sir.

23 Q State's Exhibit No. 26?

24 A This photograph was taken from the north-to-south
25 direction showing the rear of both of these

1 vehicles, both Officer Harris' car and this car,
2 the Buick.

3 Q Does this also contain the light that you testified
4 to earlier?

5 A The mercury light which is right here. This is the
6 chain-link fence, this dotted line, the same chain-
7 link fence in this.

8 Q State's Exhibit 27?

9 A This is also a roughly south-to-north exposure.
10 It shows the front of Officer Harris' car in this
11 position, as well as the Buick in this position.

12 Visible in this photograph is the street
13 sign and the house where the bullets impacted, also
14 the two blinking red lights I described to you
15 earlier that were behind the grille.

16 Those are the headlights still in bright
17 position.

18 Q State's Exhibit 28? Let's keep it to the side.

19 A Yes, sir. This is a rear view, north-to-south,
20 of the Buick and the way it appeared when we got
21 there. This is the same chain-link fence that
22 runs across it that I referred to before.

23 Q The Nova would be parked on this side and Officer
24 Harris' vehicle on the other side?

25 A Yes, sir. This side.

1 Q Let's put two of these together, and maybe --
2 State's Exhibits Nos. 29 and 30?

3 A These are rear and front views of the Nova described
4 here parked on the street. This faces into the
5 scene. This photograph was made after the police
6 vehicle and the Buick had been moved. You can
7 see this car and its proximity to the curb.

8 Q Where would the pool of blood be?

9 A The pool of blood would be to the left of these
10 men standing here. This is the crape myrtle tree
11 I described before.

12 This is the front view of the vehicle,
13 and again the chain-link fence.

14 This is the utility pole on which this
15 streetlight is on.

16 Q State's Exhibit No. 31?

17 A This is the top of Officer Harris' car taken from
18 an east-to-west position, and these small marks,
19 there are a few of these; they are rust marks,
20 and some of these are blood spatters visible over
21 Officer Harris' car and the red-over-black Buick
22 described before.

23 Q Is there any significance to the blood spots you
24 noticed on top of the roof of Officer Harris'
25 vehicle?

1 A. Yes, sir.

2 Q. Explain that to the members of the jury, please.

3 A. The blood spots on the roof of the vehicle showed
4 a definite direction of travel. The blood is
5 always generally along the projection of the impact.
6 You can tell the direction of the blood if it's
7 in any other than a straight-down position.

8 You can tell this not only by the
9 concentration of the blood but by the way the blood
10 scatters itself. You can see it more readily in
11 this.

12 Q. State's Exhibit 32?

13 A. This is the same area on the car. This is a rust
14 spot. However, this, this, this, and this are
15 blood spots.

16 Q. By looking at State's Exhibit No. 31 and 32, were
17 you able to tell the direction in which the blood
18 went across the roof of Officer Harris' patrol
19 car?

20 A. Yes, sir. The travel of the blood from Officer
21 Harris' vehicle appeared to be from the driver's
22 side across the vehicle towards the passenger
23 side. This was determined by the projection of
24 the blood spots towards the passenger's side, and
25 also determined by the size of the blood spatters.

1 The blood will start heavily on this
2 side. As it went toward the passenger side, the
3 blood thins out considerably and the drops became
4 much smaller, coming to the point of a fine mist,
5 the way a spray of water becomes finer and finer
6 the further it goes.

7 Q. Knowing that Officer Harris was shot three times
8 in the left side of his face, do you know how he would
9 have been positioned in the vehicle at the time those
10 bullets entered his head?

11 A. Yes, sir. From the blood here, blood on the
12 vehicle and the impact, in my opinion, he was
13 standing by his door when he was shot on the left
14 side of his face, the bullets traveling across
15 the car in an almost perpendicular position towards
16 this house.

17 Q. I want to show you State's Exhibit 33 and 34.
18 This is a photograph of the left rear fender as
19 well as this.

20 A. This is a closer view of those three spots here.
21 If you will notice, in the one at the top right,
22 you can see the projections I was speaking of
23 before. You see how the blood was keyholed; the
24 direction of the keyhole will show the direction
25 of the flight.

1 This is going to be in an upward manner
2 like this. The blood was generally in a funnel
3 shape.

4 Q State's Exhibit 35?

5 A This is a photograph of Mr. Armijo's car taken from
6 east to west, and it shows Mr. Armijo's vehicle
7 astraddle of the ditch I spoke of earlier. Here
8 is the ditch, and here is the sidewalk I spoke of.

9 This item here is a bloody paper sack.
10 This small item -- it's fuzzy to me, and I am sure
11 it is fuzzy to you -- is a yellow Michelob baseball
12 cap, the type you see in supermarkets, located
13 directly in front of the wheel.

14 This yellow line is an electrical cord
15 used at the scene, has nothing absolutely to do
16 with its appearance.

17 This is a Miller Lite can on top of the
18 vehicle, moved inside the vehicle by the hand of
19 the person.

20 Q State's Exhibit -- let me show you these quickly --
21 36 and 37 are other angles of the same vehicle?

22 A Yes, sir. They are. You can see the cap more
23 clearly in this photograph. You can see that the
24 window is down on this side. You can't see -- you
25 can see that it's down. There is no reflection

1 on the glass. You can see the position of the
2 wheels near the sidewalk.

3 Q. Now, I believe you testified earlier that from
4 the front of Mr. Armijo's vehicle back to the area
5 where Officer Harris was shot was approximately
6 how far?

7 A. Seventy-six feet from the front of this vehicle to
8 the concrete post at the intersection. This post
9 was ten feet east of the east edge of Edgewood
10 and eight feet north of the north edge of Walker.

11 Q. We are talking about a distance of approximately
12 then, about eighty-five feet or so?

13 A. Eighty-five to eighty-six feet.

14 Q. From the front end of that vehicle to the area
15 where Officer Harris was shot?

16 A. Yes, sir.

17 Q. State's Exhibit 38?

18 A. This was a photograph of the bullet damage to
19 the base of the radio antenna on Mr. Armijo's
20 vehicle I described to you earlier. This is the
21 area of the impact here. You can see where it is
22 dented. This is located on the left front fender,
23 I think, of the windshield.

24 Q. Would that be right front?

25 A. Right front. I am sorry.

1 Q State's Exhibit 39?

2 A This was a picture of the front windshield of
3 Mr. Armijo's car. This shows the bullet hole in
4 the windshield we spoke of. This bullet hole --
5 this is the radio antenna -- and the bullet hole
6 was two feet to the right of this edge and two
7 feet downward to the top edge.

8 Q From the direction of the bullet hole, were you
9 able to determine that?

10 A Outward to inward.

11 Q Coming from the passenger side to the vehicle?

12 A Passenger side, absolutely.

13 Q Would that be the same direction of the bullet
14 that struck, apparently struck the antenna on the
15 right front fender?

16 A It is.

17 Q State's Exhibit 40 is just a closer view of that
18 same bullet hole?

19 A A closer view of that same bullet hole from
20 another angle. You can also see the damage to the
21 dashboard inside the windshield.

22 Q State's Exhibit 41?

23 A This is a picture of the inside of the dashboard.
24 This shows -- here is the hole over here, radiating
25 lines from the hole, and this is the hole itself

1 that was dug through the dashboard.

2 Q And finally, State's Exhibit 42: If you will, tell
3 us what that is a photograph of.

4 A Yes, sir. This is the east wall of this home at
5 4919 Walker. This particular photograph -- I will
6 have to point out the bullet damage to you -- here
7 is one bullet hole. The other bullet hole is
8 located at the tip of this corner here, the porch
9 surface.

10 The other bullet hole is right about here.
11 You can't see it because of the bush and because
12 of this bed frame or headboard.

13 The pole here was actually chipped by
14 the bullet, so you can see it was placed
15 horizontally.

16 Q Would you say what you just described in State's
17 Exhibit 42 would be the three bullets you have in
18 State's Exhibit 5?

19 A Yes, sir. These are the three impact scenes in
20 this direction in this photograph. This is
21 actually this wall.

22 Q You had testified earlier that there were, I
23 believe, seven 9 millimeter casings found?

24 A Yes, sir.

25 Q Do you know if there were any .45 caliber casings

1 found out there?

2 A. Yes, sir.

3 Q. Do you know the general area where they were
4 found?

5 A. Two .45 caliber cases were found in this general
6 area here. They were located in the ditch near
7 a utility pole on this side of the street.

8 Q. Two .45's.

9 How many police officers arrived in
10 and about this scene while you were conducting
11 your investigation?

12 A. Several.

13 Q. When you say "several," could you give me some
14 type of figure?

15 A. Detective personnel would include myself and
16 Detective Holland, Detective Yanchak, and internal
17 affairs investigators, twenty to twenty-five
18 personnel.

19 THE COURT REPORTER: I'm sorry. I can't
20 hear you.

21 A. Detective Yanchak, Detective Holland, several
22 internal affairs personnel, and several uniformed
23 personnel there were used to block off the scene
24 and the streets.

25 Q. Describe the efforts that were made by yourself

1 and the other officers out there to canvass the
2 area for witnesses to come forward and give any
3 knowledge concerning the shooting of Officer Harris.

4 A. Yes, sir. Anyone who wasn't directly involved
5 with making evidence and taking photographs of
6 the scene would either be scouring the scene or
7 canvassing for witnesses. All the detective
8 personnel there with the exception of myself would
9 be interviewing witnesses and trying to canvass
10 the neighborhood and trying to see who had seen
11 all or parts of this.

12 This would include Officer Yanchak and
13 Officer Holland and persons not posted to guard
14 evidence or block off streets.

15 Q. Do you know what is called a Chicano Squad?

16 A. Yes.

17 Q. Tell the members of the jury what the Chicano
18 Squad is.

19 A. The Chicano Squad had several members at the scene.

20 Q. First of all, explain to the jury what that squad
21 is.

22 A. The Chicano Squad is a group of Spanish-speaking
23 police officers and detectives assigned to the
24 Homicide Division. Their main purpose is to work
25 murders where we do have Latin-speaking people

1 involved. In other words, there is a language
2 barrier for someone like myself. These people
3 go and talk to people who do speak Spanish, and
4 their results were better than ours, obviously.

5 Q And was the Chicano Squad called to this location,
6 also called to the July 13th occasion to help and
7 assist in finding witnesses who had knowledge
8 concerning the events which took place that night?

9 A Yes, sir. They were.

10 Q And the officers in uniform, some were Spanish-
11 speaking officers in assisted in locating any
12 witnesses?

13 A Yes, sir.

14 Q You may take your seat again.

15 (The witness returned to the witness
16 stand.)

17 Q (By Mr. Bax) How long did the investigation --
18 how long were you at the scene at Walker and
19 Edgewood, if you could give us a time that you left
20 that scene, approximately.

21 I know it's --

22 A Approximately 3:30 to 4:00 a.m.

23 Q And during that time, were most of the other
24 officers out there still conducting the
25 investigation and trying to locate witnesses?

1 A Yes, sir.

2 MR. BAX: Pass the witness, Your
3 Honor.

4

5 CROSS EXAMINATION

6

7 QUESTIONS BY MR. ELIZONDO:

8 Q Officer Neely, how are you doing?

9 A Okay.

10 Q Let me ask you how the lighting was at the corner
11 of Edgewood and Walker.

12 I notice in your pictures they are pretty
13 well lit up. Were you using a flash at that time
14 or some kind of lighting aid?

15 A Yes, sir. For photographs, electronic flash.

16 Q How far is this light pole from the corner of
17 Edgewood and Walker?

18 A Thirty-four feet.

19 Q And how about this light pole over here? How far
20 is this light pole from the corner of Edgewood
21 and Walker?

22 A That one should be approximated at about one hundred
23 forty feet.

24 Q Are those the only utility poles that were there
25 on the corner of Edgewood and Walker?

1 A. The only lights were right there in that area,
2 besides the lights in the residences.
3 Q. You found 7 millimeter shells; is that correct?
4 A. Sir?
5 Q. You found 7 millimeter shells?
6 A. Seven 9 millimeter shells.
7 Q. I'm sorry.
8 A. Yes, sir. I'm sorry.
9 Q. Three found here?
10 A. Yes, sir.
11 Q. One found here?
12 A. Two found there.
13 Q. I am sorry. Two found there and two more found
14 here?
15 A. I am sorry. You are right. Three in the first
16 location, one in the second. Two in that one, and
17 one in the Buick.
18 Q. The Buick being that red and black car; is that
19 right, sir?
20 A. Yes, sir.
21 Q. And two .45 shells down over here? Is that
22 correct?
23 A. That's correct.
24 Q. And you were able to ascertain what type of bullet
25 killed Officer J. D. Harris?

1 A Personally, no.

2 Q Well, you testified a little while ago that right
3 here were found three bullet -- three shells?
4 Is that correct?

5 A Yes, sir.

6 Q And there were three holes found here? Right?

7 A Yes, sir.

8 Q Did you ever determine what caliber these holes over
9 here were?

10 A Yes, sir. The bullets recovered from that building
11 were 9 millimeter.

12 Q And I believe you testified a little while ago that
13 would be consistent with the line of travel --

14 A Yes, sir.

15 Q -- from where J. D. Harris was, wouldn't they?

16 A Yes, sir. They would.

17 Q Now, was there a yellow hat or yellow cowboy
18 hat found anywhere around there?

19 A Yes, sir. There was a brown felt hat found.

20 Q Where was it found?

21 A It was found in the driveway of that last house
22 east on the north side where your pointer is.

23 Q Right here?

24 A Yes, sir. Twenty-nine feet north of that.

25 Q We are going north?

1 A It should be right in the center of the driveway.
2 Q Right about here or here?
3 A No, where you marked it.
4 Q And how was the lighting, without the aid of the
5 artificial lighting, your artificial lighting?
6 A The lighting, as far as picking up small objects,
7 was pretty poor. People could be recognized.
8 Large objects could be recognized.
9 Q I believe in your report you stated that there were
10 some items that could not be identified because
11 of the visibility; is that correct?
12 A Small items?
13 Q I didn't say small items. I said items.
14 A We didn't find several small items that night,
15 but we did find them in the daylight later.
16 Q That is because of the lighting?
17 A Yes, sir.
18 Q Also, you testified a little while ago that the
19 passenger -- or that the doors to the police car
20 were open?
21 A No. They were unlocked on the driver's side. They
22 were locked on the passenger's side.
23 Q And the windows: Were they open or closed?
24 A The windows on the driver's side were rolled down
25 about four inches.

1 Q And the passenger side?

2 A They were up.

3 Q And the doors were locked, right?

4 A On the passenger side.

5 Q Do you know a Sergeant Cavazos?

6 A Personally, no.

7 Q Do you know where he lives?

8 A No.

9 Q Was he there at the scene?

10 A Yes, sir.

11 Q Let me show you State's Exhibit No. 26, and let

12 me show you some people that are depicted in there

13 right behind the police car.

14 A Okay.

15 Q Do you know if they were talked to by the police?

16 A No, sir. I didn't handle the witnesses in this

17 particular case. I handled the scene in this

18 immediate area.

19 Q Do you know what kind of moon was out that night?

20 A No, sir. I don't.

21 Q Was it a full moon, a quarter moon, or no moon at

22 all? Do you recall?

23 A I don't know, sir. It was partly cloudy, but I

24 couldn't tell you what kind of moon it was.

25 Q Did you make the scene at 4911 Rusk?

1 A I didn't document it, no, sir.

2 Q Did you make the scene, though?

3 A I was there a few minutes.

4 Q Were you there when Werro or Roberto Carrasco

5 Flores was killed?

6 A I arrived just after the man was shot and killed.

7 The last round went off about the time I hit the

8 front yard.

9 Q Did you go to where he was?

10 A Yes, sir.

11 Q And did you find a weapon around him?

12 A Yes, sir.

13 Q And would you tell the jury what kind of weapon

14 that was?

15 A It appeared to be a 9 millimeter, or I say a 9

16 millimeter. It was a blue steel automatic pistol.

17 Q Did you later ascertain what kind of pistol it was?

18 A Yes, sir.

19 Q And what kind of pistol was it?

20 A 9 millimeter.

21 Q Did you find any other weapons at or about his

22 person?

23 A No, sir. I saw that weapon lying on the ground.

24 Q Did you come to hear of any weapons being found

25 around him?

1 A I had heard there was one additional weapon found
2 on the body later.

3 Q And did you know whose that weapon was?

4 A Yes, sir.

5 Q Whose weapon was it?

6 A Officer Harris' weapon.

7 Q Did you ever determine or ascertain where that
8 weapon was found in him?

9 A I had heard it was on the body at the waistband or
10 somewhere around there.

11 Q And what kind of weapon was that?

12 A I believe it was a .357 Python revolver, Colt.

13 Q How big a weapon is that?

14 A It's large framed, a good sized weapon.

15 Q Six-inch barrel, eight-inch barrel?

16 A I don't know what size barrel.

17 Q This big, that big?

18 A I never saw it.

19 MR. BAX: Your Honor, I object to any-
20 thing further. He has stated he doesn't know.

21 THE COURT: Sustained.

22 Q (By Mr. Elizondo) Have you ever seen a Colt
23 Python .357 magnum revolver?

24 A Yes, sir.

25 Q Were you ever able to ascertain what kind of bullet

1 hit Mr. Armijo's car antenna?

2 A What type of bullet?

3 Q What caliber.

4 A Mr. Armijo's car or Mr. Armijo?

5 Q Mr. Armijo's car in the antenna.

6 A No, sir.

7 Q Were you able to ascertain what kind of bullet

8 struck Mr. Armijo?

9 A Yes, sir.

10 Q What kind?

11 A 9 millimeter.

12 Q You are telling this jury everybody that was killed

13 or shot at that night was with a 9 millimeter; is

14 that correct?

15 A All the bullets we recovered were 9 millimeter.

16 Q And their shells and casings; is that right?

17 A No, we recovered some .45 automatic shells and

18 casings.

19 Q You recovered the .45 caliber shell casings on the

20 south side of the street?

21 A On the south side.

22 Q Right here?

23 A Uh-huh.

24 Q And the bullet that struck Mr. Armijo came from

25 this direction, going down this way? Is that

1 correct?

2 A. We think from the north side of the street some-
3 where.

4 Q. Going south?

5 A. Going southeast.

6 Q. And there was two 9 millimeter shells found roughly,
7 oh, would you say about five feet away?

8 A. Yes, sir.

9 Q. Now, there was a Michelob cap, right, found by Mr.
10 Armijo's car?

11 A. Yes, sir.

12 Q. And there was a brown or yellowish cowboy hat found
13 on Lenox and Walker, or thereabouts?

14 A. Yes, sir.

15 Q. On the left-hand side of Lenox?

16 A. Yes, sir. On the north side.

17 Q. Do you have that yellow Michelob cap?

18 A. Do I have it, sir?

19 Q. Yes.

20 A. I believe it was recovered.

21 Q. Is it down in the evidence locker?

22 A. I assume it is.

23 MR. ELIZONDO: Thank you.

24 Pass the witness.

25

RE-DIRECT EXAMINATION

QUESTIONS BY MR. BAX:

Q What was the time, if you know, between the first shooting when Officer Harris was shot, and the time Officer Trepagnier and Flores were shot over there at 4911 Rusk?

A It was over an hour.

Q Did you learn it was approximately somewhere around 10:00 that night that Officer Harris was shot?

A Uh-huh.

Q And around 11:30 or so when Officer Trepagnier and the suspect, Flores, was shot, an hour and a half or so?

A Yes, sir.

Q Now, going back to the time that Officer Harris was shot, I guess what you are telling the jury is whoever had the 9-millimeter pistol back at 10:00 o'clock shot Officer Harris, ran down this side of the street, shot Mr. Armijo, and continued on in this direction? Would that be correct?

A Yes, sir.

Q And the other person, or another person was obviously running down the other side of the street with a .45 and fired at least two times running on

1 this side of the street on the south side of
2 Walker?

3 A. Yes, sir.

4 Q. Now, were there any -- besides this car -- any
5 other cars or other vehicles parked along Walker
6 street?

7 I am not going to ask you specifically
8 which one, but did people have their cars in front
9 of their homes parked on the sides of Walker
10 street?

11 A. Yes, sir, they did.

12 Q. And after these shots were fired, it was still an
13 hour and a half later before you arrived back to
14 this location where Flores now has the 9-millimeter
15 pistol, and Officer --

16 MR. ELIZONDO: Your Honor, I object to
17 counsel leading the witness and suggesting the
18 answers to the questions.

19 THE COURT: Sustained.

20 MR. BAX: That is all I have.

21 THE COURT: Thank you, Detective Neely.
22 Anything further, Mr. Elizondo?

23 MR. ELIZONDO: No, Your Honor.

24 THE COURT: Thank you, Detective Neely.
25 You may stand aside.

1 Call your next.

2 MR. MOEN: We would call Mr. Cooper,
3 Judge.

4
5
6
7 LEONARD LEE COOPER, JR.,
8 was called as a witness on behalf of the State of
9 Texas, after having first been duly sworn, testified
10 as follows:

11
12 DIRECT EXAMINATION

13
14 QUESTIONS BY MR. MOEN:

15 Q. Would you tell the ladies and the gentlemen of the
16 jury your name, please, sir?

17 A. Leonard Lee Cooper, Jr.

18 Q. And how are you employed?

19 A. I am a latent print examiner in the Identification
20 Division of the Houston Police Department.

21 Q. Will you tell the ladies and gentlemen of the jury
22 what practical experience you have had in the area
23 of fingerprint identification, classification, if
24 you would, please, sir?

25 A. I have been with the Identification Division of

1 the Houston Police Department for approximately
2 twelve years. During that time, on a daily basis,
3 I have developed, of course, preserved, eliminated,
4 compared, and identified evidence by fingerprints.

5 I am a graduate of the Identification
6 Officers School and Latent Print Examiners School
7 sponsored by the Department of Public Safety and
8 I am a graduate of the Advanced Administrative
9 Latent Print Examiners School sponsored by the
10 Federal Bureau of Investigation.

11 I am a member of the Southeast Texas
12 Association for Identification, the Texas Division
13 of the International Association for Identification,
14 and I am a certified latent print examiner for the
15 International Association for Latent Print
16 Identification.

17 Q. Have you ever had occasion, during the course
18 of your career, and it seems foolish to ask you
19 to take an unknown fingerprint and compare it with
20 the print of a known individual to make a
21 determination, as to whether or not those finger-
22 prints come from one and the same individual?

23 A. I have.

24 Q. And you have done that on few or many occasions?

25 A. Many occasions.

1 Q Let me ask you if you had, on July 13th, an
2 occasion to go to a location here in Harris County,
3 Texas, an intersection at the location of Edgewood
4 and Walker streets?

5 A. Yes, I did.

6 Q Let me show you a photograph that has been marked
7 as State's Exhibit No. 28 and introduced into
8 evidence, and also a photograph marked State's
9 Exhibit No. 23, State's Exhibit No. 24, and finally,
10 State's Exhibit No. 25, and ask you if you
11 recognize the Buick vehicle, two-tone Buick vehicle
12 that appears in that photograph, please?

13 A. I do.

14 Q What, if anything, did you have to do as far as
15 assisting in the investigation of Officer Harris'
16 death in regards to this vehicle that appears in
17 these photographs before you?

18 A. I processed this vehicle for fingerprints.

19 Q When you say "processed," can you explain to the
20 ladies and gentlemen of the jury exactly what you
21 did in regards to this vehicle?

22 A. Yes, sir.

23 We applied a black fingerprint powder,
24 which is a very fine powder, to the surface, and it
25 will adhere to moisture or what happens, where

1 someone has touched, and we can develop a print
2 that way.

3 Once we develop the print and make it
4 visible, we apply a piece of tape to that part,
5 to the top of it, and when we lift that tape, the
6 powder adheres to it, and we apply that tape to
7 a contrasting card, black powder on a white card,
8 and that preserves the print for future
9 identification.

10 Q It is possible for you -- for the ladies and
11 gentlemen of the jury who may not know this --
12 to lift certain prints off certain surfaces and
13 to preserve that print for identification purposes
14 later?

15 A Yes, it is.

16 Q Were you able to do that with regards to this
17 Buick vehicle which is the subject matter of the
18 photographs placed in front of you?

19 A Yes, I did.

20 Q What portions of the vehicle did you find
21 fingerprints or palm or handprints that were
22 suitable for identification purposes on?

23 A I will have to pull them out and look at them.

24 Q Would you, please, sir?

25 A The driver's door below the window.

1 Q. Let me, if I can, hold up this photograph marked
2 State's Exhibit 25, and as best as you can, can
3 you point out and tell the ladies and gentlemen
4 of the jury where you lifted that fingerprint from?

5 A. Just below the window here.

6 Q. Were there other portions of that vehicle where
7 you were able to obtain or lift prints suitable
8 for identification?

9 A. On the passenger side of the vehicle under the
10 right rear quarter panel.

11 Q. Let me show you another photograph marked State's
12 Exhibit 23, and can you, for the ladies and
13 gentlemen of the jury, point out the portions of the
14 vehicle where you were able to lift fingerprints
15 from?

16 A. It would be this area here.

17 Q. Let me ask you if you ever had occasion to come
18 in contact with this individual represented by
19 the life-sized mannequin marked State's Exhibit
20 20?

21 A. Yes, I have.

22 Q. Did you have occasion, at some time during the
23 course of your investigation of this case, to
24 proceed to the Harris County Morgue?

25 A. Yes, sir.

1 Q In connection with the individual who has been
2 identified as Roberto Carrasco Flores?
3 A Yes, I have.
4 Q When you got to the morgue, what, if anything, did
5 you do with regard to Mr. Flores' corpse?
6 A I printed Mr. Flores' corpse.
7 Q After printing Mr. Flores' corpse, did you have
8 occasion to compare them with any on the vehicle
9 that's the subject matter of the photographs?
10 A I did.
11 Q What were the results of your comparison?
12 A I identified one palm print, the palm print developed
13 on the right rear quarter panel.
14 Q And once again, holding up State's Exhibit 23, I
15 believe you indicated from this area of the Buick
16 automobile?
17 A Yes, sir.
18 Q And that was positive to the prints of Mr. Flores
19 that you obtained at the morgue?
20 A Yes. I have them.
21 Q Did you make any comparison of the fingerprints
22 that you were able to lift off of the driver's
23 side door below the window that you had pointed
24 out to the jury, the area on State's Exhibit No.
25 25?

1 A. Yes, I did.

2 Q. And with whose known prints did you compare those
3 lifted off the Buick automobile?

4 A. Those of Richard Aldape Guerra.

5 Q. And what, if anything, was the result of your
6 comparison in that area?

7 A. I identified a left palm print from the driver's
8 door below that window of Richard Aldape Guerra.

9 Q. In your opinion, were the fingerprints that you
10 lifted from below the window on the driver's side
11 of the door one and the same as the known prints
12 of Ricardo Aldape Guerra?

13 A. They were.

14 Q. And the same results, if they were the same results,
15 in regards to Robert Carrasco Flores? Were the
16 prints you lifted off the right rear quarter panel,
17 depending on how you were looking at the
18 automobile, one and the same with the known
19 fingerprints of Robert Carrasco Flores?

20 A. They were.

21 Q. Did you make any efforts with regards to Officer
22 Harris' vehicle to obtain any prints that were
23 suitable for identification purposes?

24 A. Yes, sir. I did.

25 Q. And what, if anything, were the results of your

1 efforts in that regard, please, sir?

2 A. Developed one print of Officer Harris' on the

3 trunk of his vehicle, and several other prints

4 that were unsuitable.

5 Q. Okay. Did you attempt to lift any fingerprints,

6 palm prints, handprints, et cetera off the front

7 portion of Officer Harris' vehicle?

8 A. Yes, sir. I did.

9 Q. Were any prints suitable for comparison purposes

10 on that area?

11 A. No, sir. There were not.

12 Q. Did you find any prints suitable or non-suitable

13 at all in that particular area?

14 A. Yes, sir. I found some not suitable prints.

15 Q. What portion of the hand did you find on that part

16 of the car?

17 A. A palm print.

18 Q. And that print was one, again, not suitable for

19 comparison purposes?

20 A. That's correct.

21 Q. Just out of an abundance of caution, can you explain

22 when you say "not suitable for comparison purposes,"

23 can you be specific to the ladies and gentlemen

24 of the jury what you are referring to?

25 A. By not suitable, we mean we are looking for a print

1 that is not smeared, looking for minute
2 characteristics we can identify. Most prints are
3 smudged or smeared and not suitable for making that
4 comparison.

5 Q. In other words, it wouldn't be just difficult for
6 you, but you are saying it was impossible for you?

7 A. It was impossible for me.

8 MR. ELIZONDO: Objection, Your Honor,
9 to counsel leading the witness.

10 THE COURT: Overruled.

11 MR. MOEN: Your witness.

12
13 CROSS EXAMINATION
14

15 QUESTIONS BY MR. ELIZONDO:

16 Q. Officer Cooper, let me see if I've got this straight.

17 There was a palm print found on Officer
18 Harris' hood? Is that right?

19 A. Not the hood. It would be the driver's right front
20 quarter panel.

21 Q. Do you have a report you have used to refresh your
22 memory?

23 A. Yes, I do.

24 Q. Could I see it, please?

25 (The witness complied, handing.)

1 MR. ELIZONDO: Your Honor, may I have
2 a moment?

3 THE COURT: Yes, sir.

4 Q. (By Mr. Elizondo) Let me see if I got this
5 straight.

6 What you testified to is that Werro was
7 a passenger, correct, according to your fingerprints?

8 A. Pardon me?

9 Q. Werro was a passenger -- Roberto Carrasco Flores?

10 A. Yes, sir.

11 Q. Ricardo Guerra was the driver of the car, right?

12 A. I found prints in that area.

13 Q. And there was a palm print found on the police car's
14 hood or quarter panel or fender, right around there;
15 is that correct?

16 A. Yes. That was one.

17 Q. Now, you say that palm print was not suitable for
18 identification; is that correct?

19 A. That's correct.

20 Q. How many points, or how many characteristics did
21 you find on that palm print?

22 A. Well, there are no number or set number of
23 characteristics, I don't believe.

24 It lacked the clarity.

25 As far as the number of characteristics,

1 I can't give you a number. I don't think there were
2 any at all that I could see. It was just like a
3 smudge or touch or fast movement.

4 Q All you are saying is that somebody put their hand
5 on that hood?

6 A That's all I'm saying, yes, sir.

7 MR. ELIZONDO: Pass the witness.

8 THE COURT: Thank you. You may stand
9 aside.

10 Call your next.

11 MR. MOEN: We would call C. E. Anderson.
12
13
14

15 C. E. ANDERSON,
16 was called as a witness on behalf of the State of Texas,
17 after having first been duly sworn, testified as
18 follows:
19

20 DIRECT EXAMINATION
21

22 QUESTIONS BY MR. MOEN:

23 Q Mr. Anderson, will you tell the ladies and
24 gentlemen of the jury your name, please?

25 A C. E. Anderson.

1 Q Tell them how you are employed, please.

2 A Firearms examiner, Houston Police Department.

3 Q You've been there a few years, but would you tell
4 the ladies and gentlemen of the jury how long you
5 have been the chief firearms examiner for the City
6 of Houston?

7 A Since 1972.

8 Q What type of training and education and practical
9 experience have you had in the area of ballistics
10 and firearms identification and classification?

11 A Prior to being a firearms examiner, I was a
12 fingerprint man, latent print examiner.

13 Then in 1972, I took the examination, the
14 civil service examination for the promotion to
15 firearms examiner, which consisted of seven books
16 written by a previous firearms examiner, and since
17 being promoted to a firearms examiner, I have
18 studied daily on the job, and then under Mr. R. O.
19 Queen, K. D. Swartzel, and R. R. Sullivan, previous
20 firearms examiners, and in 1978, I went to the
21 F.B.I. Academy and studied the computerization
22 of grooves on bullets to determine the particular
23 types of weapons they were fired by, and again,
24 in '81, I went back to the F.B.I. Academy and
25 studied distance determination.

1 Q Is it possible, Mr. Anderson, and can you explain
2 to the ladies and gentlemen of the jury -- you
3 might be able to explain -- is it possible when a
4 projectile has been fired by a gun or a rifle to
5 make a determination of whether or not that
6 projectile was, in fact, fired from a particular
7 weapon?

8 A Yes, sir. It is.

9 Q How is it possible to do that?

10 A This is by firing the bullet. The bullet is fired
11 through the bore of a weapon, which has been
12 manufactured by tools made of stronger metal, and
13 inside is the bore itself and this causes
14 striations and cuts and jagged marks in the tool
15 traveling through, from the wear and tear of the
16 tool and wear and tear of the instrument after
17 it has been used some time, and this leaves
18 striations which are transferred in the negative
19 form to the bullet as it travels through the bore
20 of a weapon.

21 Q Does the firing of a projectile through a weapon
22 form a fingerprint, so to speak, on the weapon
23 sometimes?

24 A This is the term we use sometimes. It does leave
25 the fingerprint of the bore of the weapon on the

bullet.

Q. What if you have two identical weapons that come from the same manufacturer? Won't they leave the same fingerprints on the projectile fired?

A. We run tests on weapons that were manufactured where the barrels were known to be cut of the same stock and of the same drilling and same manufacturer, and we were able to identify the different weapons that the bullets came out of.

Q. So even though the guns may come from the exact, same manufacturer and the barrels even be cut from the same metal, are you saying then that the projectiles fired from guns of that type of manufacturer or design will even, under those cases, leave different markings on the projectile?

A. This is what we found.

Q. Did you have occasion to assist other members of the Houston Police Department back on July 13th in the investigation of a homicide, in fact, a double homicide in the east portion of Houston at the intersection of Edgewood and Walker?

A. Yes, sir, I did.

Q. Let's start first with that location.

About what time was it that you arrived at that location of Edgewood and Walker streets on

1 July 13th?

2 A I will have to refer to my notes.

3 Q As best you can remember.

4 A It was about 10:30.

5 Q Okay. Did you have occasion from that location,
6 first of all, the location where Mr. Armijo and
7 Officer Harris were killed, to recover some items
8 of evidence at that location?

9 A Yes, sir. I did.

10 Q Specifically, what did you recover at that location?
11 What items of evidence?

12 A There were three bullets recovered from the house,
13 and then six cartridges from around the area at
14 which the investigation was carried on.

15 Q Okay. How many cartridge cases were from that
16 immediate area, not referring to the address at
17 4911 Rusk, but strictly speaking of the area and
18 the blocks -- well, let me refer to the diagram
19 over here. That might help.

20 Can you see from where you are at this
21 diagram, State's Exhibit No. 5?

22 A Yes, sir. I can.

23 Q How many weapon or cartridge cases did you recover
24 specifically and/or bullets from this area here
25 where Walker intersects with Edgewood and runs

1 on into Lenox to this area, including 4919 Walker
2 street? How many projectiles and cartridge cases
3 did you recover?

4 A. There were nine cartridge cases total and three
5 bullets.

6 Q. Okay. You were actually physically present, were
7 you not, when all of those items of evidence were
8 recovered?

9 A. Yes, sir. I was.

10 Q. Was there any difference in the cartridge cases
11 you recovered, and when I say difference, were they
12 fired from different revolvers or pistols, in your
13 opinion?

14 A. There was two .45 caliber cartridges and six 9
15 -- or seven 9 millimeter cartridges total.

16 Q. I want to get back to that in a second.

17 Let me ask you to direct your attention
18 again to the diagram over here on this location
19 on Rusk street, specifically 4911 Rusk. Did you
20 have occasion to be at that location later on in
21 the evening?

22 A. Yes, sir. I did.

23 Q. Also assisting in the investigation of another
24 homicide and a police officer shot in that
25 location?

1 A Yes, sir.

2 Q Did you have occasion at that location to recover
3 any items of evidence, either spent cartridges or
4 weapons?

5 A Yes, sir. I did.

6 Q What, if anything, did you recover from this
7 location at 4911 Rusk or the vicinity of that
8 location, 4911 Rusk?

9 I should say -- let me, before I ask you
10 to do that -- because I know there were a number
11 of officers involved in the shooting accident that
12 took place there -- let me ask you specifically
13 what did you recover as far as 9 millimeter
14 casings were concerned?

15 Let me limit you to any 9 millimeter
16 revolvers or .45 caliber revolvers that you
17 recovered.

18 A I recovered 9 millimeter cartridges. There were
19 six of them.

20 Q Okay.

21 A And --

22 Q Did you recover a 9 millimeter automatic, semi-
23 automatic?

24 A Yes, I did.

25 Q Did you bring that weapon with you to the courtroom

1 today?

2 A. Yes, I did.

3 Q. Did you recover a .45 caliber semiautomatic
4 pistol as well?

5 A. Yes.

6 Q. Did you bring those to the courtroom?

7 A. Yes, sir. I did.

8 Q. I wonder if you might hand those two weapons to me
9 at this time, if you would, please, sir.

10 I wonder if you might remove the weapons,
11 if you would, from the bags that you brought them
12 into the courtroom in, and hand them to me, please,
13 sir.

14 I know what kind of person you are, but
15 can you assure the ladies and gentlemen of the jury
16 that the gun you have handed me is in an unloaded
17 condition?

18 A. I have just checked it again to a make sure.

19 Q. And the same thing in regards to this weapon you
20 are passing me? Can you give me your assurance
21 that this weapon as well is unloaded and of no
22 danger?

23 A. That's correct, sir.

24 MR. MOEN: Would you mark these,
25 please?

1 (At this time, State's Exhibits Nos.
2 43 and 44 were marked for identification purposes
3 by the court reporter.)

4 Q (By Mr. Moen) Mr. Anderson, let me show you what's
5 been marked for identification purposes as State's
6 Exhibit No. 43, and I want to hand it back to you
7 and ask you if you can identify it, please, for
8 the ladies and gentlemen of the jury.

9 A This is a .45 caliber Datonic semiautomatic
10 pistol.

11 Q Back to the night of July 13th, 1982, where did
12 you have occasion to recover that?

13 A It was under the rear part of the trailer that was
14 in the backyard, wrapped with a cloth.

15 Q Let me show you what's been marked for
16 identification purposes -- and these have been
17 admitted in evidence and seen by the jury -- and
18 ask if you can point out for the jury where you
19 recovered that pistol marked State's Exhibit No.
20 43.

21 Can you see from this photograph?

22 A This is the red bandanna. Before I pulled it out
23 from the trailer, it was wrapped up in this red
24 bandanna-type of cloth.

25 Q Were there live rounds of ammunition in State's

1 Exhibit No. 43 when you recovered it?

2 A. Yes, sir. It was four.

3 Q. Can you explain for the ladies and gentlemen of
4 the jury a little bit about the work of the
5 semiautomatic pistol for those who might not be
6 familiar with how it works? When that gun is fired,
7 do the rounds stay inside, or are they expelled
8 from the pistol?

9 A. They are ejected from this ejection part on the
10 top right side.

11 Q. And does that happen every time a round is fired?

12 A. Yes, it does.

13 Q. Let me ask you this: When the round is ejected
14 or expelled from the pistol, are there any type of
15 marks left on the case that is ejected from the
16 gun?

17 A. On the breach face, it leaves markings on the head
18 of the cartridge and on the primer.

19 Q. Is it possible, if you have an ejected cartridge
20 casing, to make a determination as to whether it
21 was fired from a particular weapon?

22 A. Yes, sir.

23 Q. Can that be done?

24 A. Yes, sir.

25 Q. Can that be done with a degree of accuracy?

1 A. Yes, sir.

2 Q. How does it compare with ballistics as far as --
3 is there any possibility two guns from a similar
4 manufacturer would make the same type of
5 identifying marks on the ejected casing?

6 A. The same method is used in manufacturing a tool
7 as is used to cut and dress the breach facing
8 down, and this tool leaves breach markings on it,
9 and these markings are transferred whenever the
10 cartridge is loaded and driven back against the
11 face of the weapon.

12 Q. Are the weapons on the shell cases kind of in a way
13 like fingerprints, individual and distinct to the
14 bullet itself?

15 A. We use the same term for the bullet, the fingerprint
16 of the cartridge case and of the weapon, and marking
17 on the cartridge case.

18 Q. This weapon marked State's Exhibit 43, and while
19 you are at it, weapon 44, can you explain to the
20 ladies and gentlemen of the jury the operation of
21 that weapon?

22 A. This weapon is fired and ejects the cartridge
23 case through the port on the right side. After
24 it ejects, it picks up another one out of the
25 magazine and drives it up into the choker or throat

1 of the weapon where it is seated, and it is fired
2 the same way.

3 In fact, this is an automatic loading
4 weapon that reloads itself each time until the
5 magazine is empty.

6 Q. Is it necessary to pull the hammer back each time
7 before the gun is fired, manually?

8 A. No, sir. The slide brings the hammer back each
9 time it is fired. The slide cocks the hammer and
10 leaves it in a cocked position.

11 Q. To fire the gun the very first time, is it necessary
12 to pull the hammer back on that gun marked State's
13 Exhibit No. 44?

14 A. Yes, sir.

15 Q. Every shot after that, what is necessary to be
16 done?

17 A. Just pull the trigger.

18 Q. What is the round or magazine capacity of State's
19 Exhibit No. 44?

20 A. Thirteen to fifteen rounds.

21 Q. What is the magazine capacity of State's Exhibit
22 43?

23 A. Five to six rounds.

24 Q. Can you identify State's Exhibit No. 44 for the
25 ladies and gentlemen of the jury?

1 Where did you recover this gun back on
2 July 13th, 1982?

3 A. I recovered it from a latent print examiner who
4 printed it in my presence at the time I observed
5 it being taken from underneath his leg.

6 Q. Let me show you a photograph marked for
7 identification purposes and introduced into
8 evidence, and see if you can recognize that
9 photograph marked State's Exhibit No. 16, please,
10 sir.

11 A. Yes, sir. I do.

12 Q. Is that the same pistol that you have identified
13 as State's Exhibit No. 44? Does that appear in the
14 photograph marked State's Exhibit No. 16?

15 A. Yes, sir.

16 Q. Is that the location as to where that pistol was at
17 when you first saw it back on July 13th, 1982?

18 A. It is.

19 Q. Did you bring with you the cartridge casings you
20 recovered from the Edgewood, Walker street area?

21 A. Yes, I did.

22 Q. I wonder if you would hand those to me, please.

23 A. Yes, sir.

24 MR. MOEN: Would you mark these, please?

25 (At this time State's Exhibits Nos. 45

1 through 52 were marked for identification purposes
2 by the court reporter.)

3 Q. (By Mr. Moen) Mr. Anderson, let me hand you what
4 has been marked as State's Exhibits Nos. 45, 46, 47,
5 48, 49, 51, 52, and we will skip to 54 -- we
6 have marked them out of order -- and for the record,
7 now that they have been identified, can you
8 describe what these exhibits are?

9 A. Okay. 45, 46, 47, 48, 49, 51, and 54 are 9
10 millimeter Luger cartridge casings.

11 Q. Okay. Are the cases you have described, by way of
12 your oral testimony already to the jury that you
13 recovered in the vicinity of Edgewood and Walker,
14 in the vicinity of that intersection?

15 A. Yes, sir. They are.

16 Q. Those are contained in little envelopes, those 9
17 millimeter cases, just talking about those?

18 A. Yes, they are.

19 Q. And you have made notations on them?

20 A. Yes, sir. I have.

21 Q. What notations have you made on the envelopes
22 containing the cartridge cases?

23 A. My case number, the date they were picked up, my
24 initials, and also on some of them, I put the
25 location where I found them.

1 Q. So you have made on the envelopes your marks as
2 a way of being able to identify these exhibits,
3 and also on some of the envelopes, you have put
4 notations as to where you found them at the scene
5 of Edgewood and Walker?

6 A. Yes, sir.

7 Q. I wonder if you would identify the others, 52 and
8 50? I believe those are the only ones I've placed
9 in front of you so far.

10 A. Yes, sir. 50 and 52 are .45 caliber semiautomatic
11 cartridges. They are often known as auto-loading
12 cartridges.

13 Q. Also contained in little plastic envelopes as well,
14 are they not?

15 A. Yes, sir.

16 Q. And there are some notations that appear on the
17 outside of those envelopes as well, are there not?

18 A. The case number and date where they were located.

19 Q. Okay. What, if any determination or tests did you
20 make to determine whether or not any of these
21 cartridge casings had been fired from either
22 State's Exhibits 43 or 44?

23 A. I fired both of these weapons at least three times
24 each, and then under the microscope, I tried to
25 determine if the striations were enough to identify

1 the cartridge casings with each weapon.

2 Q Can you tell the ladies and gentlemen of the jury
3 the results of your examination, please, sir?

4 A Yes, sir. I identified the 9 millimeter cartridge
5 casings with this Browning High Powered 9 millimeter
6 pistol and the .45 cartridge casings with this
7 Datonic .45 caliber semiautomatic pistol.

8 Q In your expert opinion, in all the 9 millimeter
9 cartridge cases you found yourself or picked up
10 in the vicinity of Edgewood and Walker, or in the
11 vicinity, were all five from State's Exhibit 44?

12 A Yes, sir.

13 Q And the .45 caliber cartridge cases that you, once
14 again, recovered out there at the scene of Edgewood
15 and Walker, were fired from 43?

16 A That's correct.

17 MR. MOEN: Judge, at this time, we would
18 offer into evidence 45, 46, 47, 48, 49, 50, 51,
19 52, and 54, and would also offer at this time State's
20 Exhibits 43 and 44.

21 For the record, I have tendered Mr.
22 Elizondo all of the cartridge cases and will tender
23 to him as well State's Exhibits 43 and 44.

24 MR. ELIZONDO: No objections.

25 THE COURT: The exhibits are admitted in

1 evidence.

2 (At this time, State's Exhibits Nos. 55
3 and 56 were marked for identification purposes by
4 the court reporter.)

5 Q. (By Mr. Moen) Let me ask you now if you would
6 look at State's Exhibits 53, 55, and 56.

7 Do you recognize those exhibits, please,
8 sir?

9 A. Yes, sir. I do.

10 Q. What do you recognize State's Exhibits 53, 55, and
11 56 to be?

12 A. Semi-jacketed -- I will stand corrected. They are
13 jacketed lead bullets, 9 millimeter.

14 Q. Where did you get or come into possession of those
15 items?

16 A. I recovered them from a house on the corner of
17 Walker and Edgewood, I believe it was.

18 Q. Let me direct your attention over here to this
19 diagram that's been introduced into evidence
20 marked as State's Exhibit No. 5, and I would once
21 again direct your attention to Walker street and
22 Edgewood as it intersects into Walker, and, of
23 course, if we were to proceed down to Harrisburg
24 north from this intersection, can you direct me
25 to the house that you recovered these fired

1 projectiles from, please, sir?

2 A. The house on the northwest corner.

3 Q. Are you talking about 4919 --

4 A. Yes, sir.

5 Q. -- Walker street?

6 I believe it has the address on it.

7 A. Yes, sir.

8 Q. Were you able to make any determination as to
9 whether or not those projectiles that you recovered
10 were, in fact, fired from this weapon that has been
11 introduced in evidence as State's Exhibit 44?

12 A. I was not able to determine that they were fired
13 from that particular weapon.

14 Q. How come you couldn't make that determination?

15 A. There were not enough consistent striations I could
16 make a positive identification with it.

17 Q. You can't come in the courtroom and tell the jury
18 that?

19 A. That's correct.

20 Q. Can you tell the jury anything about those
21 projectiles as far as what type of projectiles
22 they are or even the manufacturer of those
23 projectiles?

24 A. They are 9 millimeter projectiles, and they appear
25 to be -- one of them, a Winchester Western, and

1 the other one appears to be a Spear, the other
2 two.

3 Q. Can you make any determinations and tell the ladies
4 and gentlemen of the jury with any certainty as to
5 whether or not they were, in fact, fired from a
6 Browning weapon?

7 A. By the measurements of the lands and grooves it
8 left on the bullets after they were fired, they
9 were fired from a Browning weapon.

10 Q. How do you make that determination? Can you be
11 a little more descriptive to the ladies and
12 gentlemen of the jury and tell them how it is you
13 are able to make that determination?

14 A. Each manufacturer has a specification for the
15 measurement of his lands and grooves and the amount
16 of the lands and grooves, and this is a
17 determination we make from measuring the lands and
18 grooves and counting the amount left on the bullet.

19 Q. You are telling us Browning pistols are different
20 from Colt and Smith & Wesson?

21 A. Yes, sir. The twists are different than Colt and
22 also the amount of lands and grooves are the same
23 as the Colt, but the measurements on the distance
24 from one shoulder of the grooves on the bullet,
25 which is the lands on the weapon, is different.

1 Q When you say "lands and grooves," explain that a
2 little bit.

3 A Lands and grooves are put inside the bore of a
4 weapon to impart a spin to the bullet as it travels
5 down the bore. It will impart a spin in the air
6 to stabilize it in flight so it will go on a
7 straight line to the target.

8 Q And as you have mentioned to the jury, that differs
9 from manufacturer to manufacturer?

10 A Yes, sir. It does.

11 Q You were able to make a determination those were
12 fired from a Browning pistol?

13 A That's correct.

14 Q But as far as making a further identification as
15 to whether or not they were fired from State's
16 Exhibit 44, you were not able to make that
17 determination?

18 A No, sir.

19 MR. MOEN: We would offer 53, 55, and 56.
20 Would the record reflect I have tendered
21 those to Mr. Elizondo?

22 THE COURT: Yes, sir.

23 MR. ELIZONDO: No objections.

24 THE COURT: 53, 56, and 55 are admitted
in evidence.

1 Q (By Mr. Moen) Mr. Anderson, did you bring with
2 you to the courtroom the ejected 9 millimeter
3 casings you found at the 4911 Rusk street address?

4 I wonder if you might tender those,
5 please, sir.

6 (The witness complied.)

7 (At this time, State's Exhibits Nos. 57,
8 58, 59, 60, 61, 62, and 63 were marked for
9 identification purposes by the court reporter.)

10 Q (By Mr. Moen) Let me show you what's been marked
11 for identification purposes as 57, 58, 59, 60, 61,
12 62, and let's stop there for right now.

13 I would like to direct my remarks and
14 your responses to 57 through 62.

15 Do you recognize those cartridges in
16 those envelopes placed in front of you?

17 A. Yes, sir. I do.

18 Q. What do you recognize them to be?

19 A. 9 millimeter semiautomatic Luger cartridge cases.

20 Q. How did they come into your possession?

21 A. I recovered them from the shooting scene over on

22 --

23 Q. Rusk street?

24 A. -- Rusk street.

25 Q. They are also in plastic bags, are they not?

1 A. Yes, sir. They are.

2 Q. And they have some information that appears on
3 those envelopes as well, do they not?

4 A. Yes, sir. They do.

5 Q. What is the information that appears on the plastic
6 envelopes?

7 A. They are designated by the number that I put on
8 them as an item number and also as a location where
9 I picked them up from, and my case number, and also
10 my initials.

11 Q. Did you make any determination during the course of
12 your investigation with regard to these cases as
13 to whether or not those cartridges marked State's
14 Exhibits 57 through 62 were, in fact, fired from
15 State's Exhibit 44?

16 A. Yes, sir. I did.

17 Q. What type of determination did you reach as a result
18 of your examination?

19 A. They were fired from a 9 millimeter weapon.

20 Q. Are you definite in your opinion on that?

21 A. Yes, sir. I am.

22 MR. MOEN: Judge, at this time, we would
23 offer 57 through 62 in evidence.

24 Would the record reflect I have tendered
25 those to Mr. Elizondo as well?

1 THE COURT: Yes, sir.

2 MR. ELIZONDO: We have no objections.

3 THE COURT: Exhibits 57 through 62 are
4 admitted in evidence.

5 Q (By Mr. Moen) When and where did you come into
6 possession of this exhibit marked State's Exhibit
7 63, sir?

8 A The night of the shooting, I took this out -- the
9 next morning, I took this out of the van that was
10 parked in the driveway.

11 Q The driveway? Are you talking about the 4911 Rusk
12 address?

13 A Yes, sir.

14 Q What portion of the van? Do you remember where you
15 found that slug?

16 A It was in the backrest of the seat.

17 Q I'm jumping ahead of myself, but for the ladies
18 and gentlemen of the jury, would you identify
19 what, in fact, that object is?

20 A Yes, sir. This is a fired jacketed lead bullet.

21 Q Were you ever able to make a determination as to
22 that item of evidence as to whether or not it was,
23 in fact, fired from State's Exhibit 44?

24 A Yes, sir. It was.

25 Q From this photograph marked State's Exhibit 8, can

1 you tell the ladies and gentlemen of the jury
2 whether or not that is the van that you recovered
3 that object from?

4 A. Yes, sir. It is.

5 Q. And you were able to determine State's Exhibits
6 63 was fired from this weapon marked State's Exhibit
7 44?

8 A. Yes, sir. It was.

9 MR. MOEN: Judge, at this time, we would
10 offer into evidence State's Exhibit 63.

11 Would the record reflect I have tendered
12 that to Mr. Elizondo as well?

13 THE COURT: Yes, sir.

14 MR. ELIZONDO: No objections.

15 THE COURT: No. 63 is admitted in
16 evidence.

17 Q. (By Mr. Moen) Now, at any period of time during
18 the course of your investigation, did you have any
19 other slugs given to you by other officers in this
20 case to determine whether they were fired from
21 State's Exhibit No. 44?

22 A. No, sir.

23 Q. No other fragments or slugs or fired bullets, rather,
24 were submitted to you to make any determination
25 as to whether they were fired from State's Exhibit

1 No. 44?

2 A. I recovered more bullets from the scene, but I
3 didn't have any more submitted.

4 Q. Now, you brought another weapon, did you not, to
5 the courtroom with you as well?

6 A. Yes, I did.

7 Q. I wonder if you might produce that weapon as well,
8 please, sir.

9 (The witness complied.)

10 Q. (By Mr. Moen) So I can assure the ladies and
11 gentlemen of the jury, you have checked this weapon
12 as well and the condition it is in, and it is
13 unloaded as well?

14 A. Yes, it is.

15 MR. MOEN: Would you mark this as well,
16 Cindy?

17 (At this time, State's Exhibit No. 64
18 was marked for identification purposes by the
19 court reporter.)

20 Q. (By Mr. Moen) Can you identify this weapon marked
21 State's Exhibit No. 64 for the ladies and gentlemen
22 of the jury, please, sir?

23 A. Yes, sir. I can.

24 Q. Would you identify it?

25 A. Yes, sir. This is a Colt Python .357. It is a .357

1 magnum revolver.

2 Q Is that, in fact, the service revolver of Officer
3 J. D. Harris?

4 A It has --

5 No, sir. This one here says it is Mr.
6 Trepagnier's weapon.

7 Q I am sorry. Larry Trepagnier's weapon?

8 A Yes, sir.

9 Q Did you bring any other weapons to the courtroom
10 today?

11 A That is the only weapon I have.

12 Q Okay. Do you have in your possession, or did you
13 examine the weapon of Officer J. D. Harris?

14 A Yes, sir. I did.

15 Q Where was that at?

16 A It was released. It was released to the Crime
17 Lab. I don't know exactly who it was released to.

18 Q Do a couple of things for me.

19 First of all, describe Officer Harris'
20 weapon to the ladies and gentlemen of the jury here.

21 First of all, describe Officer Harris'
22 weapon to the ladies and gentlemen of the jury here,
23 what type of weapon it is, if you have it reflected
24 in your records.

25 A At this time, I don't believe I could determine

1 just which one. It wasn't submitted.

2 Q Okay. That's all right. I wanted to get a
3 description from you if you had that information.

4 Did you have occasion to see Officer
5 Harris' revolver anytime that night while you were
6 at the 4911 Rusk address?

7 A. No, sir. I didn't.

8 MR. MOEN: Thank you, Mr. Anderson.
9 I appreciate your help, and I will pass you to the
10 Defense.

11
12 CROSS EXAMINATION

13
14 QUESTIONS BY MR. ELIZONDO:

15 Q Mr. Anderson, do you have before you a report that
16 you used to refresh your memory?

17 A. Yes, sir. I do.

18 Q Can I see it, please?

19 A. That is one of them (handing).

20 MR. ELIZONDO: May I have a moment?

21 THE COURT: Yes, sir.

22 MR. ELIZONDO: May I proceed, Your
23 Honor?

24 THE COURT: Yes, sir.

25 Q (By Mr. Elizondo) Mr. Anderson, State's Exhibit

1 No. 47 was found in the ditch in front of 4925
2 Walker, which would be right here, correct?
3 A. Yes.
4 Q. And that would be a 9 millimeter shell?
5 A. Yes, sir.
6 Q. State's Exhibit 51 was found right about here under
7 a bush in the northeast corner of the intersection
8 of Edgewood and Walker; is that correct?
9 A. That is correct.
10 Q. And that would also be a 9 millimeter shell?
11 A. Yes, sir.
12 Q. And State's Exhibit No. 48 was found right about
13 in the ditch on the northeast corner of Walker
14 and Edgewood; is that correct?
15 A. That is correct.
16 Q. That also was a 9 millimeter shell?
17 A. Yes, sir.
18 Q. And State's Exhibit 49 was also found right around
19 here, right around in the northeast corner, and
20 also was a 9 millimeter; is that correct?
21 A. That is correct.
22 Q. State's Exhibit No. 45 was found at 4925 Walker
23 in the driveway?
24 A. Yes, sir.
25 Q. And is also a 9 millimeter; is that correct?

1 A. Yes, sir.

2 Q. And State's Exhibit No. 46 was found in the right
3 front seat of the "YTX portion" of a vehicle; is
4 that correct?

5 A. Yes, sir.

6 Q. Is that correct?

7 A. Correct.

8 Q. Also a 9 millimeter?

9 On the passenger side?

10 A. On the passenger side.

11 Q. And State's Exhibit No. 54 was found in the driveway
12 portion of 4925 Walker and was also a 9 millimeter?

13 A. Yes, sir.

14 Q. And State's Exhibit No. 52 was found across the
15 street from 4925 Walker in a ditch and is a .45
16 caliber; is that correct?

17 A. Correct.

18 Q. And State's Exhibit No. 50 was also found in a
19 ditch across from 4925 Walker and is also a .45
20 caliber; is that correct?

21 A. That's correct.

22 Q. How many bullets does a .45 caliber pistol, such as
23 a Datonic, hold?

24 A. It holds six total.

25 Q. How many were found that were live in the clip?

1 A Four.

2 Q Did you find any live bullets on Roberto Carrasco
3 Flores?

4 A I didn't search for them.

5 Q Did you later come to find out there was a military
6 pouch on or about his person?

7 A I didn't search him, so --

8 Q Did you later find out that he had a military
9 pouch?

10 A No, sir. I did not.

11 Q What you are telling this jury, if I got you
12 correctly, is a 9 millimeter bullet was used to
13 kill Officer J. D. Harris; is that correct?

14 A I don't know what type bullet was used. I know
15 this is what we found on the scene, was cartridges
16 from a 9 millimeter. I know what we found in the
17 house were 9 millimeter bullets, but I don't know
18 for sure if these are the bullets that killed him.

19 Q Did you ever examine the bullet found on Francisco
20 Armijo?

21 A Yes, sir. I did.

22 Q And did you ever determine what caliber of bullet
23 that was?

24 A It was 9 millimeter.

25 Q And that particular bullet, can you say that came

1 from a Browning 9 millimeter?

2 A. Yes, sir. That bullet that was found did come
(from a 9 millimeter Browning.

4 Q. And can you tell the jury where that Browning 9
5 millimeter was found back on July 13th of 1982?

6 A. Yes, sir. It was found under the leg of the dead
7 suspect.

8 Q. Roberto Carrasco Flores; is that correct?

9 A. I didn't know his name, sir.

10 Q. Did you go to the scene?

11 A. Yes, sir.

12 Q. Did you find another pistol on or about his person?
13 A. No, sir.

14 Q. Were you ever asked to examine the bullet -- I mean,
15 the pistols that were found on or about Roberto
16 Carrasco Flores' body?

17 A. Yes, sir.

18 Q. And did you examine all of the pistols or one
19 pistol?

20 A. I later examined the one determined to be Officer
21 Harris' gun that was found.

22 Q. And can you tell the jury where that was found?

23 A. I don't know for sure. My understanding was it was
24 found at the morgue when he was searched at the
25 morgue.

1 Q Who are you referring to?

2 A The dead suspect found at the scene.

3 Q Roberto Carrasco Flores, also known as Werro; is

4 that correct?

5 A I don't know the names.

6 Q How do you load a 9 millimeter?

7 A You use a magazine. You can load it by putting

8 your ammunition into the magazine and inserting

9 the magazine into the handle of the weapon.

10 Q Do you have a magazine?

11 A Yes, I do.

12 Q This magazine belongs to this pistol; is that

13 correct?

14 A Yes, sir.

15 Q All you do is go like this and it is loaded, right?

16 A That's correct. Then the slide has to be pulled

17 to the rear and the round inserted into the throat

18 of the weapon.

19 Q And you just keep on firing.

20 Did you find any other magazines at the

21 scene --

22 A No, sir.

23 Q -- that belonged to that particular pistol?

24 A No, sir. I didn't.

25 Q Were you asked to examine other magazines that

1 belonged to that pistol?

2 A. I understand there was another magazine found at
3 the scene, but I didn't see it.

4 Q. Do you know where that other magazine was found?

5 A. On the suspect, I believe.

6 Q. Do you know where it is now?

7 A. I am not sure where it is at now.

8 Q. Do you know where on the suspect it was found?

9 A. Let me make sure.

10 No, sir. I don't know where it was found
11 on the suspect.

12 Q. So then it would be a safe assumption to assume
13 that he had two magazines of 9 millimeter bullets
14 on his person?

15 A. That is correct.

16 Q. Can you tell the jury how big a .357 magnum is?

17 A. A .357 magnum is approximately .358 in diameter.

18 Q. How big is a pistol, let's say a Colt Python?

19 A. This one, it could be as large as this one here,
20 could be larger, could be smaller.

21 Q. Can you tell the jury what stippling is?

22 A. Stippling is where the nitrates or unburned powder
23 and burned powder strikes the skin and penetrates
24 it.

25 Q. And would it be a safe assumption to say that

1 stippling can be detected from as far as four
2 feet away after a person has fired a pistol at
3 an object?

4 A. It is a possibility some would be that distance.

5 Q. A scant amount; is that correct?

6 A. A slight amount, yes, sir.

7 MR. ELIZONDO: Pass the witness, Your
8 Honor.

9 THE COURT: Any further questions?

10 MR. MOEN: Just a couple, Judge.

11
12 RE-DIRECT EXAMINATION

13
14 QUESTIONS BY MR. MOEN:

15 Q. You did bring along the clip of ammunition
16 recovered by yourself from State's Exhibit No. 43,
17 did you not?

18 A. Yes, sir. I did.

19 Q. I wonder if you might turn that over to me, please,
20 sir. That includes the clips and lives rounds for
21 that weapon?

22 A. Yes, sir.

23 (The witness complied, handing.)

24 MR. MOEN: Judge, we would offer these
25 clips and rounds as well as part of State's Exhibit

1 43 we have already tendered.

2 (At this time, State's Exhibit No. 43-A
3 was marked for identification purposes by the court
4 reporter.)

5 MR. MOEN: We would pass these to Mr.
6 Elizondo, please.

7 MR. ELIZONDO: No objections.

8 THE COURT: You are tendering that as
9 part of 43?

10 MR. MOEN: Part of 43.

11 THE COURT: That will be admitted in
12 evidence.

13 I would request that the rounds be placed
14 in something.

15 MR. MOEN: Let me just use this bag here.

16 Q (By Mr. Moen) Mr. Anderson, you indicated that
17 it was possible to have stippling at a distance of
18 four feet from a human being when he had, in fact,
19 shot, shot at, or had been hit or struck, rather,
20 by an individual holding a weapon and firing it at
21 him.

22 Is it probable you would have much
23 stippling from a distance of forty-eight inches
24 or four feet?

25 A No, sir. It is not.

1 Q What is the distance you are most likely to have
2 stippling on an individual being spotty as a
3 result of being shot at by a weapon?

4 A Different pistols would be different. The charge
5 of the cartridge would make it different. The 9
6 millimeter would --

7 Q Let's address your comments or answers to that
8 question in regards to that 9 millimeter that's
9 been introduced in evidence.

10 A Normally, eighteen to twenty-four inches.

11 Q So to really see any stippling effect -- and can
12 you explain to the ladies and gentlemen of the jury
13 just exactly what that is, a stippling effect, what
14 we are talking about?

15 A The penetration of the powder and the burning
16 effect, the penetration of burned and unburned
17 powder on the skin.

18 Q Actually, that's on the skin?

19 A Yes, sir.

20 Q When a projectile leaves a weapon such as State's
21 Exhibit 44, it is accompanied by some of the
22 discharge as a result of that projectile being
23 fired through the barrel, is it not?

24 A That's correct.

25 Q And this discharge, the powder will, in fact,

1 leave a stippling effect on a person's skin?

2 A. Yes, sir.

3 Q. But the reasonable range or most likely range is
4 eighteen to twenty-four inches, in your expert
5 opinion?

6 A. Yes.

7 Q. There's a possibility that it could be all the way
8 to four feet, but not very probable at that
9 distance?

10 A. That's correct, sir.

11 Q. One final thing, and that is that I know you were
12 not present when Officer Harris was shot. That
13 goes without saying. But, based on your examination
14 of the scene at Edgewood and Walker where Officer
15 Harris was shot back on July 13th of this year and
16 your location of the projectiles that you have
17 found in the house at 4919 Walker, is it
18 consistent, based on your investigation, that
19 Officer Harris was, in fact, shot with a 9 millimeter
20 pistol?

21 A. Yes, sir. It is.

22 MR. MOEN: That is all I have.

23 Thank you, sir.

24

25

RE-CROSS EXAMINATION

QUESTIONS BY MR. ELIZONDO:

Q For the benefit of the jury, Mr. Anderson, a .45 caliber bullet is bigger than a 9 millimeter; is that correct?

A. That is correct.

Q I am not sure you have not answered this question, but what kind of bullets hit Larry Trepagnier? Do you know? What caliber?

A. I don't have any idea. I didn't see the wounds, and I didn't --

Q. Examine the bullets?

A. Well, there's no bullets that were found, that were determined to have gone into or penetrated. I understand all the bullet wounds were penetrating all the way through the body and were not found. They were not found by me or anyone else that I know of at the scene.

Q. Did you examine the bullet wounds?

A. No, I did not.

MR. ELIZONDO: I will pass him, Your Honor.

MR. MOEN: Judge, that is all I have.

THE COURT: Thank you, Mr. Anderson.

1 You may now be excused.

2 Members of the jury, we are now going
3 to recess for the evening. I want you to listen
4 very closely to what I have to say. Do not --
5 I will repeat -- do not read, listen to, or watch
6 anything in connection with this case. If you hear
7 a broadcast on the radio on the way home, turn it
8 off. Don't listen to it. If it comes on the news
9 at 10:00 o'clock or whatever, turn it off. Don't
10 listen to it. If there is anything in the
11 newspapers this evening or tomorrow morning about
12 it, do not read it. Am I clear? It will be
13 absolutely impermissible for you to receive any
14 information concerning this case other than what
15 you hear from this chair right here in this
16 courtroom. So, do not read or listen to anything
17 concerning this case.

18 Do not attempt to visit the scene of this
19 incident or obtain any information concerning this
20 case other than what you hear in this courtroom,
21 and with that admonition, I will excuse you until
22 9:30 in the morning.

23 Please come directly into the jury room,
24 and as soon as all of you are assembled and we have
25 other matters out of the way, we will begin the

1 testimony again.

2 Again, let me tell you not to discuss
3 the facts that we have so far with anyone. Don't
4 go home and tell your wife or husband or children
5 or anybody about what you have heard. Do not
6 discuss it period.

7 The only time that would be permissible
8 for you to discuss this case is after you have heard
9 the arguments of counsel and you go back to decide
10 the guilt or innocence of the Defendant. Anything
11 other than that is not permissible.

12 With that, we will see you at 9:30 in
13 the morning.

14 (At this time court recessed for the
15 day.)
16
17
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25

from a Browning 9 millimeter?

Yes, sir. That bullet that was found did come from a 9 millimeter Browning.

And can you tell the jury where that Browning 9 millimeter was found back on July 13th of 1982?

Yes, sir. It was found under the leg of the dead suspect.

Roberto Carrasco Flores; is that correct?

I didn't know his name, sir.

Did you go to the scene?

Yes, sir.

Did you find another pistol on or about his person?

No, sir.

Were you ever asked to examine the bullet -- I mean, the pistols that were found on or about Roberto Carrasco Flores' body?

Yes, sir.

And did you examine all of the pistols or one pistol?

I later examined the one determined to be Officer Harris' gun that was found.

And can you tell the jury where that was found?

I don't know for sure. My understanding was it was found at the morgue when he was searched at the morgue.

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9 the magazine into the handle of the weapon.

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12 Q This magazine belongs to this pistol; is that
13 correct?

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17 to the rear and the round inserted into the throat
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21 scene --

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3 that he had two magazines of 9 millimeter bullets
4 on his person?

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23 (The witness complied, handing.)

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25 clips and rounds as well as part of State's Exhibit

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(At this time, State's Exhibit No. 43-A was marked for identification purposes by the court reporter.)

MR. MOEN: We would pass these to Mr. Elizondo, please.

MR. ELIZONDO: No objections.

THE COURT: You are tendering that as part of 43?

MR. MOEN: Part of 43.

THE COURT: That will be admitted in evidence.

I would request that the rounds be placed in something.

MR. MOEN: Let me just use this bag here.

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A No, sir. It is not.

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3 result of being shot at by a weapon?

4 A Different pistols would be different. The charge
5 of the cartridge would make it different. The 9
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7 Q Let's address your comments or answers to that
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9 been introduced in evidence.

10 A Normally, eighteen to twenty-four inches.

11 Q So to really see any stippling effect -- and can
12 you explain to the ladies and gentlemen of the jury
13 just exactly what that is, a stippling effect, what
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24 A That's correct.

25 Q And this discharge, the powder will, in fact,

leave a stippling effect on a person's skin?

A Yes, sir.

Q But the reasonable range or most likely range is eighteen to twenty-four inches, in your expert opinion?

A Yes.

Q There's a possibility that it could be all the way to four feet, but not very probable at that distance?

A That's correct, sir.

Q One final thing, and that is that I know you were not present when Officer Harris was shot. That goes without saying. But, based on your examination of the scene at Edgewood and Walker where Officer Harris was shot back on July 13th of this year and your location of the projectiles that you have found in the house at 4919 Walker, is it consistent, based on your investigation, that Officer Harris was, in fact, shot with a 9 millimeter pistol?

A Yes, sir. It is.

MR. MOEN: That is all I have.

Thank you, sir.

1 RE-CROSS EXAMINATION

2
3 QUESTIONS BY MR. ELIZONDO:

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6 that correct?

7 A That is correct.

8 Q I am not sure you have not answered this question,
9 but what kind of bullets hit Larry Trepagnier?
10 Do you know? What caliber?

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12 I didn't --

13 Q Examine the bullets?

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15 determined to have gone into or penetrated. I
16 understand all the bullet wounds were penetrating
17 all the way through the body and were not found.
18 They were not found by me or anyone else that I
19 know of at the scene.

20 Q Did you examine the bullet wounds?

21 A No, I did not.

22 MR. ELIZONDO: I will pass him, Your
23 Honor.

24 MR. MOEN: Judge, that is all I have.

THE COURT: Thank you, Mr. Anderson.

1 You may now be excused.

2 Members of the jury, we are now going
3 to recess for the evening. I want you to listen
4 very closely to what I have to say. Do not --
5 I will repeat -- do not read, listen to, or watch
6 anything in connection with this case. If you hear
7 a broadcast on the radio on the way home, turn it
8 off. Don't listen to it. If it comes on the news
9 at 10:00 o'clock or whatever, turn it off. Don't
10 listen to it. If there is anything in the
11 newspapers this evening or tomorrow morning about
12 it, do not read it. Am I clear? It will be
13 absolutely impermissible for you to receive any
14 information concerning this case other than what
15 you hear from this chair right here in this
16 courtroom. So, do not read or listen to anything
17 concerning this case.

18 Do not attempt to visit the scene of this
19 incident or obtain any information concerning this
20 case other than what you hear in this courtroom,
21 and with that admonition, I will excuse you until
22 9:30 in the morning.

23 Please come directly into the jury room,
24 and as soon as all of you are assembled and we have
25 other matters out of the way, we will begin the

1 testimony again.

2 Again, let me tell you not to discuss
3 the facts that we have so far with anyone. Don't
4 go home and tell your wife or husband or children
5 or anybody about what you have heard. Do not
6 discuss it period.

7 The only time that would be permissible
8 for you to discuss this case is after you have heard
9 the arguments of counsel and you go back to decide
10 the guilt or innocence of the Defendant. Anything
11 other than that is not permissible.

12 With that, we will see you at 9:30 in
13 the morning.

14 (At this time court recessed for the
15 day.)
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