

DISTRICT COURT
COUNTY OF JEFFERSON
STATE OF COLORADO
100 Jefferson County Parkway
Golden, Colorado 80401

DATE FILED: February 25, 2019 4:54 PM

Plaintiff:
PEOPLE OF THE STATE OF COLORADO

v.

^FOR COURT USE ONLY^

Defendant:
ERIC JAMES ST. GEORGE

Case No. 16CR2509
Division 1

REPORTER'S TRANSCRIPT

The Jury Trial in the above-entitled matter recommenced on February 2, 2018, before THE HONORABLE LILY OEFFLER, Judge of the District Court.

This is a full and complete transcript of the proceedings had on this date in the aforementioned matter.

A P P E A R A N C E S

For the People:

MIKE FREEMAN, DEPUTY DISTRICT ATTORNEY
KATHARINE DECKER, DEPUTY DISTRICT ATTORNEY
District Attorney's Office
First Judicial District
500 Jefferson County Parkway
Golden, Colorado 80401

For the Defendant:

ERIC ST. GEORGE, PRO SE

For the Defendant (Advisory Counsel):

PETER MENGES, P.C.
The Law Offices of Peter D. Menges, P.C.
140 East 19th Avenue
Suite 300
Denver, Colorado 80203

I N D E X

WITNESSES	PAGE
For the People:	
EMILY ELLIOTT	
DIRECT EXAMINATION (Continued) BY MR. FREEMAN	13
CROSS-EXAMINATION BY MR. ST. GEORGE	59
REDIRECT EXAMINATION BY MR. FREEMAN	77
RECROSS-EXAMINATION BY MR. ST. GEORGE	85
JURY QUESTIONS	87
FOLLOW-UP EXAMINATION BY MR. FREEMAN	89
AGENT ERIC BRENNAN	
DIRECT EXAMINATION BY MR. FREEMAN	91
CROSS-EXAMINATION BY MR. ST. GEORGE	180
VOIR DIRE EXAMINATION BY MR. FREEMAN	182
CROSS-EXAMINATION (Continued) BY MR. ST. GEORGE	185
REDIRECT EXAMINATION BY MR. FREEMAN	195
RECROSS-EXAMINATION BY MR. ST. GEORGE	200
JURY QUESTIONS	201
SERGEANT NATHAN MULLER	
DIRECT EXAMINATION BY MS. DECKER	203
CROSS-EXAMINATION BY MR. ST. GEORGE	245
DIRECT EXAMINATION BY MS. DECKER	262
RECROSS-EXAMINATION BY MR. ST. GEORGE	270
AGENT DEVON (TRIMMER) MEYERS	
DIRECT EXAMINATION BY MS. DECKER	272

E X H I B I T S

People's Exhibits:

NUMBER	DESCRIPTION	PAGE
1	Aerial photo #1	111
2	Aerial photo #2	111
3	Aerial photo #3	14
4	Aerial photo #4	111
5	Aerial photo #5	111
8	Colorado Beauties web page	17
9	Colorado Beauties web page for Effy (Emily Elliott)	17
33	Photo outside of the front of 8139 W. Eastman Pl., Building #7	288
34	Photo outside of the back of 8139 W. Eastman Pl., Building #7	288
35	Photo of the residence and the street	288
36	Photo outside of the residence	288
37	Photo of the residence	288
38	Photo of the driveway of the residence and black truck	288
39	Photo #2 of the driveway of the residence and black truck	288
40	Closeup photo of the driveway with the black truck	288
41	Photo of the outside front of 8119 W. Eastman Pl., Building #6	288
42	Photo of the top of the driveway near the garages with the black truck in front	288
43	Photo of the driveway on the passenger side of the black truck	288
82	Photo of the bedroom of #103 including the ceiling	19
83	Photo #2 of the bedroom of #103	19
84	Photo of the blue bedroom wall	19
85	Photo of the bed	19
105	Photo looking down the street	159
106	Photo of the street corner	159
107	Overall photo of the 8139 W. Eastman Pl., Building 7	159
112	Photo of the walkway between the residences	145
318	Denver Ladies dispatch recording (Elliott and Rissler)	40
320	Emily Elliott's 911 cal to Lakewood Police Department	51
344	Voicemail Recordings	179

E X H I B I T S

Defendant's Exhibits:

NUMBER	DESCRIPTION	PAGE
S	Diagram drawn by Agent Brennan during CIRT interview	185
X	Background time chronology	247

1 PROCEEDINGS, FRIDAY, FEBRUARY 2, 2018, 8:24 A.M.

2 (The following proceedings were had in open
3 court outside the presence and hearing of the jury:)

4 THE COURT: I think we should just go on record
5 and talk about any issues that might have come up that
6 people wanted to address before we begin the trial date.

7 We're here on 16CR2509, People versus St.
8 George. And I understand Ms. Decker is not here yet?

9 MR. FREEMAN: No, Judge. I think they're on
10 their way. They will be here in a minute.

11 THE COURT: Are there issues we need to deal
12 with before we start? We have the witness on the stand.
13 We're going to resume testimony.

14 MR. FREEMAN: I don't have any issues, Judge.

15 MR. ST. GEORGE: Your Honor, it's kind of a
16 really minor point, but since you've invited it, I suppose
17 I'll bring it to your attention.

18 Yesterday during voir dire we had had that in
19 limine in which I think point number one was that my
20 education was not to be mentioned, but yet during voir
21 dire Mr. Freeman brought up that I don't hold a JD.

22 And so I just thought that that may have been a
23 door-opening issue, and if I wanted to bring up the fact
24 that I do have an education, albeit just a bachelor's,
25 perhaps that since that door was opened, that it is fair

1 game now.

2 MR. FREEMAN: Judge, I would disagree. The only
3 reason that he would want to introduce his education
4 would be to bolster his credibility, and the case law is
5 pretty clear that that's not a proper way to bolster -- or
6 bolstering someone's credibility is not proper.

7 I didn't open the door. The point I was making
8 was that whether the jury would feel sympathy for him or
9 not if he didn't do a good job in representing himself,
10 and that was the only purpose for it. So I don't think
11 the door has been opened to bring in any improper
12 character evidence at this point.

13 THE COURT: Okay. So it was brought up that
14 Mr. St. George doesn't have a law degree. There wasn't a
15 contemporaneous objection for me to deal with it at that
16 particular point in time, but I wouldn't rule out the fact
17 that Mr. St. George, if, for some reason, you feel it is
18 relevant in a part of the trial, give me a heads-up, and
19 we can have that discussion to determine whether or not.

20 Because the issue was discussed, so in that
21 respect the jury has some information that you don't have
22 a law degree. We are through opening and we're into
23 questioning, so I'm not certain where it would become
24 relevant during this stage of the proceeding, but if you
25 think it becomes relevant, we can have that discussion

1 again.

2 MR. ST. GEORGE: Thank you, Your Honor. And as
3 long as we're discussing minor issues, I am understood to
4 be main -- to stay at the podium, at the lectern, at all
5 times, and I think that we had discussed that that would
6 go both ways.

7 You know, during -- during some of the voir dire
8 questioning yesterday the district attorneys, they weren't
9 necessarily confined to the lectern, and I was just making
10 sure that that remained the case. As long as I'm not
11 allowed to leave the lectern, that they do not either.

12 THE COURT: All right. I thought people stayed
13 pretty close to the lectern yesterday.

14 I'm not seeing that as a significant issue. If
15 I see it, I'll address it.

16 MR. ST. GEORGE: Thank you, Your Honor.

17 (Pause in the proceedings.)

18 THE COURT: Okay. Let's go back on the record.

19 We're still missing one juror. We did have a
20 phone call that indicated one juror was running late, but
21 we're still missing one juror.

22 We also have Juror Number 10, who told the
23 bailiff that he went back and he spoke to his employer and
24 his employer said: This can't be. You can't be out of
25 work for this period of time.

1 The bailiff said: You're sworn; you're on the
2 jury. Contact your employer again. He wants to speak
3 with the Court. So that is Juror Number 10, and I'm going
4 to bring him in in just a moment.

5 We can talk about it before. I know these are
6 work concerns and money concerns that he has. I can do
7 any of a number of things. Most commonly I say yesterday
8 was the day to bring these issues to my attention. This
9 isn't something that is new overnight. Sometimes if
10 somebody was ill or something like that, then we can deal
11 wit. So generally I'll say that.

12 On occasion I've had agreement to use the
13 alternate and go without that noting, certainly, the
14 difficulties then with a juror with these sort of
15 concerns.

16 MR. FREEMAN: Judge, I would agree. I think the
17 appropriate course is to bring him in and just inquire
18 about his ability to remain on the case and stay focused
19 despite his conflict. So I think we just have to see how
20 that comes out.

21 I also wanted to ask the Court, I did mention
22 Investigator Gallerani yesterday. She is on our witness
23 list. We don't actually expect her to testify. We did
24 put her on the witness list because -- because we do
25 expect to have her take part in a -- sort of an in-court

1 demonstration between Agent Trimmer using Investigator
2 Gallerani as one of the participants just to describe to
3 the jury how the two parties, the defendant and Agent
4 Trimmer, were positioned in relation to each other.

5 So I don't expect her to actually testify. She
6 would like to remain in court, and I'd like to ask the
7 Court if she can be a second advisory witness because she
8 did sit through some witness interviews in this case, and
9 she is going to be needed in court at some point to take
10 part in that demonstration. I expect that to be later
11 this morning or this afternoon.

12 THE COURT: Mr. St. George, do you have an issue
13 with that?

14 MR. ST. GEORGE: No objection, Your Honor.

15 THE COURT: All right. With that being said,
16 I'm going to bring Juror Number 10 in, as my practice
17 would be, to explain to Juror Number 10 that this is the
18 day and yesterday was the time to let me know if there
19 were issues with regard to work, et cetera.

20 I'll listen to him. My thought is I'm going to
21 tell him he's on the jury, that I certainly can
22 communicate with his boss, provide any kind of
23 correspondence that he needs, and then we'll wait and see
24 what the reaction is.

25 So I'm going to bring Juror Number 10 out.

1 (Juror Number 10 entered the courtroom.)

2 THE COURT: And, sir, do you want to just have a
3 seat right there. So you're Juror Number 10, and you
4 brought to the bailiff's attention that you had concerns
5 about work.

6 JUROR NUMBER 10: Right.

7 THE COURT: What did you want to tell me?

8 JUROR NUMBER 10: Well, it wasn't a big concern
9 until I called my boss last night and let him know how
10 long everything was going to be. And there's only six
11 people that work for the company that I work for. So if
12 I'm not there, there's a lot of work to be done and a lot
13 of work I'm missing.

14 And it's also a lot of money that I'm missing
15 out on. So I'm not quite sure what to do from here.

16 THE COURT: Well, this is our issue and our
17 problem in this case: You have been selected for the jury
18 and sworn.

19 JUROR NUMBER 10: Sure.

20 THE COURT: So in that respect, you're on the
21 jury. What I can do is contact your employer myself --

22 JUROR NUMBER 10: Okay.

23 THE COURT: -- talk to your employer, let him
24 know that as soon as we're finished with this, you're free
25 to go.

1 JUROR NUMBER 10: Sure.

2 THE COURT: I can send him any kind of
3 correspondence to it. The difficulty is once the jury is
4 sworn, all sorts of legal rules fall into place with the
5 Court.

6 JUROR NUMBER 10: Sure.

7 THE COURT: So at this point in time with this
8 sort of situation, I can't just excuse you from the jury
9 in this situation. But we can do anything to accommodate
10 you in regard to contacting your employer, doing all of
11 that. And if you want me to do that, I will.

12 JUROR NUMBER 10: Yeah, if you could contact my
13 boss.

14 THE COURT: We could do that or I could
15 send -- or prepare a letter. Would you like that on my
16 letterhead?

17 JUROR NUMBER 10: A phone call would be fine.
18 If you want to do a letter, that's fine too, but a phone
19 call --

20 THE COURT: Either way we could go ahead and let
21 him know that you're on the jury and that it is not your
22 choice.

23 JUROR NUMBER 10: Okay.

24 THE COURT: It is the Court's choice and rules,
25 whatever, and that you're obligated to now sit and listen

1 and be fair.

2 JUROR NUMBER 10: Absolutely.

3 THE COURT: And you can be fair.

4 JUROR NUMBER 10: Absolutely.

5 THE COURT: Okay. So we'll do that. I'll
6 either give him a call or we'll write a letter, you can
7 talk to the bailiffs about that, and we're going to bring
8 everyone back in.

9 JUROR NUMBER 10: Okay.

10 THE COURT: Thanks very much for bringing that
11 to my attention.

12 JUROR NUMBER 10: Yes, absolutely.

13 (Juror Number 10 left the courtroom.)

14 THE COURT: All right. We're ready for our
15 jury. Can we have our witness back on the stand.

16 MR. FREEMAN: Sure.

17 THE COURT: And you remain sworn from yesterday.

18 THE WITNESS: Okay. Thank you.

19 (Pause in the proceedings.)

20 THE COURT: We're ready for the jury.

21 (The jury entered the courtroom.)

22 THE COURT: And everyone please be seated. Good
23 morning, everyone. Thanks so much for coming back here
24 today, and we're resuming testimony. Mr. Freeman.

25 MR. FREEMAN: Thank you, Your Honor.

1 EMILY ELLIOTT,
2 having been called as a witness on behalf of the People,
3 being previously duly sworn, testified as follows:

4 DIRECT EXAMINATION (Continued)

5 BY MR. FREEMAN:

6 Q Good morning, Ms. Elliott.

7 A Good morning.

8 Q I think yesterday when we left off I was at the
9 point -- you were at the point where you were telling the
10 jury about that you were about to leave the defendant's
11 apartment.

12 A Yeah.

13 Q I want to back up a little bit.

14 A Okay.

15 Q We had talked about those exhibits in front of
16 you yesterday. I want to go back to those. Do you have
17 Exhibit 3 in front of you?

18 A Yes, I do.

19 Q And do you recognize that as an aerial
20 photograph of the building in which the defendant's
21 apartment was located?

22 A Yes.

23 Q And can you see on that aerial photograph the
24 area where you parked your car?

25 A Yes.

1 Q And does that aerial photograph appear to
2 accurately depict the way that that area looked back on
3 July 31st of 2016?

4 A Yes.

5 MR. FREEMAN: Judge, I would move to introduce
6 People's 3.

7 THE COURT: Any objection?

8 MR. ST. GEORGE: No objection, Your Honor.

9 THE COURT: 3 is admitted.

10 (People's Exhibit 3 was admitted into evidence.)

11 MR. FREEMAN: And may we publish?

12 THE COURT: You may.

13 (People's Exhibit 3 was published.)

14 Q (BY MR. FREEMAN) Ms. Elliott, take a look at
15 the big screen. Can you see that?

16 THE COURT: Jurors, let me know if you need the
17 lights dimmed. Sometimes you do, sometimes you don't. So
18 give me a heads-up if you do.

19 (People's Exhibit 3 was published.)

20 Q (BY MR. FREEMAN) Can you see that okay from
21 where you're seated?

22 A Yes.

23 Q Does what's on the screen appear to be the same
24 as People's 3 that's in front of you?

25 A Yes.

1 Q And that building that is sort of depicted in
2 the middle of that, is that the building in which the
3 defendant's apartment was located?

4 A Yes.

5 Q Now, as far as you could tell, was that
6 apartment all contained on the ground floor?

7 A Yes.

8 Q You didn't see any stairs or anything?

9 A No.

10 Q And the parking area where you park, can you
11 describe for the jury where that is?

12 A It's right near that handicap parking spot on
13 the lower right-hand corner.

14 Q Okay. There's sort of an orange exhibit sticker
15 in the bottom right corner. Is it just above?

16 A Yes.

17 Q And I think you described there's some handicap
18 spots. You parked next to one of those?

19 A Yes.

20 Q And so that distance between the area where you
21 parked, where do you recall the entrance, that breezeway
22 that we talked about yesterday, being on that building?

23 A It's that big building, and it's on the
24 right-hand side of that, that right entryway.

25 Q Okay. And it looks like there's a couple of

1 driveways out front?

2 A Yes.

3 Q Is it in between the two driveways?

4 A Yes.

5 Q Do you have any ability to estimate that
6 distance between that breezeway and where your car was?

7 A Just right down that street.

8 Q Okay. Fairly short walk?

9 A Yeah.

10 Q Okay. We talked about 8 and 9. Would you take
11 a look at those? I think those are the next couple of
12 pages.

13 A Yes.

14 Q And I think you said both of these depict the
15 photos that were used for your ad that the defendant used
16 to find you?

17 A Yes.

18 Q And do these photographs accurately depict the
19 photographs that were used for your add?

20 A Yes.

21 MR. FREEMAN: Judge, I would move to introduce 8
22 and 9.

23 MR. ST. GEORGE: Objection, Your Honor. This is
24 not coming from the Backpage.com website. This is coming
25 from ColoradoBeauties.com, I believe.

1 THE COURT: Okay. So there's an objection that
2 these aren't the specific website that has been noted and
3 that the witness, I believe, indicated that she didn't
4 recognize this -- the Colorado Beauties piece of this.

5 For what purpose are these being offered?

6 MR. FREEMAN: Judge, she testified that these
7 are the exact same photos that were used for the Denver
8 Ladies ad. So this is tantamount to what the defendant
9 looked at when he decided to hire her that evening. So I
10 think it's relevant and she's authenticated it.

11 THE COURT: Okay. So regarding 8 and 9, the
12 Court will admit 8 and 9 solely for the purpose of the
13 photographs that the witness has identified and not for
14 the website itself.

15 So the information at the top of the photograph
16 indicating Colorado Beauties, et cetera, not admitted.
17 These photographs or these exhibits are admitted solely
18 for the purpose of identifying the photographs that were
19 reviewed.

20 MR. FREEMAN: And Judge, may I publish 8?

21 THE COURT: Yes.

22 (People's Exhibits 8 and 9 were admitted into
23 evidence.)

24 Q (BY MR. FREEMAN) Taking a look at the big
25 screen and now at the -- the photographs to the right are

1 a little bit small, but are those -- do you recognize that
2 as the same as People's 8 that's in front of you?

3 A Yes.

4 Q Are the photographs to the right, the smaller
5 sort of snapshots, are those all various pictures of you?

6 A Yes.

7 Q And I don't know if the jury can see it, but in
8 that very upper left corner of the ad does it say Effy,
9 "Effy"?

10 A Yes.

11 Q And is that -- you said that was your stage
12 name?

13 A Yes.

14 Q All right. If you could go to the next exhibit,
15 I think, that's underneath People's 82?

16 A Yes.

17 Q And then if you can go ahead and look at 83, 84
18 and 85. I think you looked at those yesterday, and I
19 believe you said that you recognized all of those as
20 various photographs of the defendant's bedroom?

21 A Yes.

22 Q Do those photographs accurately depict the way
23 his bedroom looked that evening?

24 A Yes.

25 MR. FREEMAN: Judge, move to introduce 82, 83,

1 84 and 85.

2 MR. ST. GEORGE: No objection, Your Honor.

3 THE COURT: 82, 83, 84 and 85 are admitted.

4 (People's Exhibits 82 through 85 were admitted
5 into evidence.)

6 MR. FREEMAN: And may I publish, Your Honor?

7 THE COURT: You may.

8 MR. FREEMAN: If we could have 82 up, please?

9 (People's Exhibit 82 was published.)

10 Q (BY MR. FREEMAN) Ms. Elliott, if you could take
11 a look at 82 that's in front of you. Does that appear to
12 be the same as what's up on the big screen?

13 A Yes.

14 Q And you described yesterday doing this sort of
15 striptease where you sort of straddled the defendant. Is
16 that the bed in which that occurred?

17 A Yes.

18 Q Did you notice -- and I might have asked you
19 this yesterday. Did you notice any weapons around or in
20 the defendant's bedroom?

21 A No, I did not.

22 MR. FREEMAN: And if we could have 85 up,
23 please.

24 Q (BY MR. FREEMAN) Could you take a look at 85?
25 (People's Exhibit 85 was published.)

1 Q (BY MR. FREEMAN) Do you see in the left-hand
2 next to the nightstand or that sort of stand that's next
3 to the left of the bed, do you see a rifle leaning up
4 against the wall?

5 A Yes.

6 MR. ST. GEORGE: Objection, Your Honor. The
7 witness has stated that she did not see it at the time. I
8 don't see the point in talking about it now.

9 THE COURT: All right. I'm going permit the
10 question about does she see that. She has indicated that
11 when she was in the room she did not observe any weapons.

12 Q (BY MR. FREEMAN) You didn't see that rifle when
13 you were in the bedroom?

14 A No, I did not.

15 Q Can you take a look at -- I think the last
16 exhibit is 88, the one with the tent?

17 A Yes.

18 Q Do you recognize that as a photograph of at
19 least part of the defendant's living room?

20 A Yes. Except I don't recognize it with the blood
21 though.

22 Q Okay. I was going to ask you that.

23 A Or the gun.

24 Q When you were there, you didn't see any blood on
25 the carpet?

1 A No.

2 Q You didn't see a shotgun on the carpet?

3 A No.

4 Q But the tent --

5 A The tent was there, yeah.

6 Q Okay. And does this photograph accurately
7 depict what that tent looked like when you were at his
8 apartment?

9 A Yes.

10 Q Okay. And I think you testified yesterday that
11 you thought that was a little strange?

12 A Yeah. I thought it was weird.

13 Q You weren't aware that he had gone camping the
14 night before?

15 A Yeah, I wasn't aware of that, so I thought it
16 was strange.

17 Q Other than the blood and the shotgun, does that
18 photograph accurately depict the defendant's -- the way
19 that tent looked in his living room?

20 A Yes.

21 Q Okay. All right. I want to get back to what
22 happened on the evening of the 16th -- I'm sorry,
23 July 31st of 2016.

24 So I think yesterday you were talking about the
25 point at which you decided to leave, and I want to back up

1 a little bit. After court yesterday, did you get another
2 chance to listen to your recorded interview with Detective
3 Larson?

4 A Yes.

5 Q And that recorded interview, was that -- did
6 that occur the next day or shortly after --

7 A Yes.

8 Q -- the events occurred?

9 A It happened the next day, yeah.

10 Q Would you say that the events were fresher in
11 your mind back then than they are now?

12 A Yeah.

13 Q In listening that recorded interview, did that
14 help refresh your recollection as to certain details about
15 your interaction with the defendant that led to you
16 deciding to leave?

17 A Yeah. Yeah. A few details, yeah.

18 Q Okay. And specifically you described yesterday
19 him touching you or trying to touch you in your private
20 parts and that led to your decision to leave?

21 A Yes.

22 Q Was there something that you listened to in that
23 interview that refreshed your recollection about exactly
24 what the defendant did?

25 A Yes. He had put his hands on my back and pulled

1 me and put his mouth on me, which I never let a client put
2 his mouth on me, so I was pretty upset.

3 Q Okay. And I'm sorry to ask this, but on what
4 part of your body did he put his mouth?

5 A Like my chest.

6 Q And I think you testified yesterday you had a
7 bra or something on at that point?

8 A Yeah. I had a bra and panties on.

9 Q Okay. Was that the last thing he did before you
10 decided to leave or was there something he did after that?

11 A Well, because I pushed him off and told him that
12 kissing was not allowed and indicated that I was upset,
13 and that's when he grabbed me.

14 Q Okay. And how did he grab you?

15 A He, kind of under, grabbed my vagina.

16 Q Okay. Did he do that forcefully or gently?

17 A It was forcefully.

18 Q Did that cause you any pain?

19 A Didn't cause me any pain, but I was very shocked
20 and very upset and really taken aback.

21 Q What did you do immediately after he grabbed you
22 down there?

23 A I pushed him off and I got up and I put my dress
24 on and proceeded to leave.

25 Q And I think that's where we kind of left off

1 yesterday is I think you described that you were -- you
2 were -- as you were leaving --

3 A Uh-hum.

4 Q -- you got on to the phone, your cell phone,
5 with your dispatcher. Was this the same dispatcher that
6 was used to sort of arrange the meeting with the defendant
7 in the first place?

8 A Yes.

9 Q Okay. Do you know at what point you got on the
10 phone with her?

11 A As I was walking out the door.

12 Q Okay. Were you aware of what the defendant was
13 doing as you were leaving and on the phone?

14 A No, I was mostly just concerned about getting
15 back to my car.

16 Q Could you hear him saying anything as you're
17 leaving his apartment?

18 A I don't recall.

19 Q Okay. And did you go out the front door?

20 A Yeah, I did, yeah.

21 Q Same door you came in?

22 A Uh-hum, yeah.

23 Q Did you notice anyone outside as you left?

24 A No.

25 Q Now, at some point as you left his apartment,

1 did it come to your attention that he was following you?

2 A Yes.

3 Q And how did that come to your attention? How
4 did you notice that?

5 A I had turned around and -- and saw him following
6 me.

7 Q Okay. And where, roughly, were you when you
8 noticed he was behind you?

9 A Right outside the door.

10 MR. FREEMAN: Okay. If we could go back to that
11 aerial photo. I think it's 3.

12 (People's Exhibit 3 was published.)

13 Q (BY MR. FREEMAN) So do you have 3 in front of
14 you still? So are you still in that covered breezeway
15 when you realize that he's following you?

16 A Um, I was pretty much out of it at that point.

17 Q Okay. So no longer in the covered breezeway?

18 A Yeah,

19 Q Okay.

20 A No, I had just got out of it.

21 Q Okay. And you said you look back, and what do
22 you see?

23 A I saw him following me in his boxers.

24 Q The black boxers you described yesterday?

25 A Yes, uh-hum.

1 Q Was he wearing anything else?

2 A No.

3 Q Did you notice at that time if he had anything
4 in his hands?

5 A No. No, I can't, because it was just, like, a
6 really quick glance back, and I'm like, he's following me.

7 Q Are you on the phone with your --

8 A Yes. Yeah. And I indicated to her that he was
9 following me.

10 Q Okay. And so as you're on the phone with your
11 dispatcher, are you sort of describing what's going on?

12 A Yeah.

13 Q And at some point did it come to your attention
14 that he had a firearm with him?

15 A Yes, because he fired it.

16 Q Okay. And was that the first time that you
17 realized that he had a gun?

18 A Yes.

19 Q And were you looking at him when he fired it?

20 A Well, I had heard the first initial shot when
21 his hand was up in the hair, and then before I had turned
22 back around again his hand lowered.

23 Q Okay. And we'll go into that. You said the
24 first time his hand was in the air. How do you know that?

25 A Because I saw it.

1 Q Okay. So you turned back and looked?

2 A Yeah.

3 Q Can you describe -- and you sort of did it
4 quickly with your right hand. Can you just demonstrate
5 for the jury how he held his hand and the gun in the air?

6 A It was like -- up like that, and then it went
7 down like that (indicated).

8 Q And for the record, you're using your right arm.
9 Was that the arm that he held the gun in?

10 A I don't know.

11 Q Okay. And for the record, if you could do that
12 again and just hold it for a second?

13 A (The witness complied.)

14 Q So you roughly have your elbow about even with
15 your shoulder and your hand above your head --

16 A Yeah.

17 Q -- pointing, more or less, straight up?

18 A Yeah.

19 Q Do you know much about guns?

20 A No. No.

21 Q Do you know the difference between a handgun and
22 a rifle?

23 A Well, size obviously.

24 Q Okay. Okay. Did he have a handgun or a rifle
25 in his hand?

1 A It was a handgun.

2 Q Okay. Do you know the difference between a
3 revolver and a semiautomatic handgun?

4 A Kind of.

5 Q Okay. A revolver I call, like, a cowboy gun.
6 It's got that kind of little wheel that goes around, John
7 Wayne.

8 A semiautomatic is more -- usually more square,
9 kind of more of a James Bond gun?

10 A Yeah.

11 Q Is that helpful at all?

12 A Yeah.

13 Q Could you tell which kind? Was it a revolver or
14 a semi-auto?

15 A It was really dark, and I just took a very quick
16 glance. So I just knew that it was in his hand, his
17 hands.

18 Q Okay. Roughly where do you recall that he was
19 standing or walking when the first shot went off?

20 A It was more like in the street, because I was
21 pretty much almost to my car when the first shot went off.

22 Q Okay. So you think he's out of the breezeway
23 when you hear the first shot?

24 A Uh-hum.

25 Q Okay. Is that a "yes"?

1 A Yes.

2 Q She's got to take it down.

3 A Sorry.

4 Q Do you -- are you still on the phone with the
5 dispatcher?

6 A Yeah.

7 Q And do you describe to her what he had just
8 done?

9 A Yeah.

10 Q Are you walking when he fires?

11 A Oh, I'm running at that point.

12 Q Okay. Try to let me finish --

13 A Okay.

14 Q -- because she can't take us at the same time.

15 A Sorry.

16 Q It's okay. At what point did you start running?

17 A Right after the first shot.

18 Q And running to your car?

19 A Yeah.

20 Q And does he continue to follow you?

21 A Yes.

22 Q Now, you described earlier that he fired a
23 second shot when he brought his arm down. Can you
24 describe that to the jury?

25 A I had just heard the shot from behind me after

1 he lowered his arm, and then I just got in my car and
2 drove away.

3 Q Okay. Did you see him lower his arm?

4 A I did.

5 Q And what did he appear to be pointing or aiming
6 the gun at at that point?

7 A Me.

8 Q And how far away from you was he?

9 A Maybe about, I don't know, like -- from, like,
10 me here to, like, the jury over there.

11 Q The jury box, like this -- the front of it?

12 A That juror right there in the white and plaid.

13 Q Okay.

14 MR. FREEMAN: Judge, I would estimate about 20
15 to 25 feet.

16 A Yeah.

17 Q (BY MR. FREEMAN) Would it be helpful to go up
18 to the -- I know it might not be comfortable, would it be
19 helpful for you to do that, just to --

20 MR. FREEMAN: Judge, can she approach the board
21 with the pointer?

22 THE COURT: Yes.

23 MR. FREEMAN: There's a wooden pointer, if you
24 can look to your right, right in front of judge there.

25 THE COURT: This stick.

1 MR. FREEMAN: Yeah, the stick.

2 Q (BY MR. FREEMAN) If you could just point out to
3 the jury where you were and where the defendant was at the
4 time of the second shot.

5 A I guess I was about here and he was about here
6 (indicated).

7 Q Okay. And for the record you're indicating the
8 leftmost parking spot, roughly? That's where you were?

9 A Yeah. I was like right around here (indicated).

10 Q Okay. And if you could for a moment hold it
11 where the defendant was roughly?

12 A Right there (indicated).

13 Q And you're indicating a spot about halfway
14 between the opening to the breezeway and the parking area?

15 A Yes.

16 Q Is that about right?

17 A Yeah.

18 Q You can go ahead and have a seat. Thank you.

19 A (The witness complied.)

20 Q The second shot, were you hit?

21 A No.

22 Q Do you know where it went?

23 A I don't.

24 Q What did you do after the second shot?

25 A I was running for my car. I got into my car and

1 put it -- got it started as fast as I could and got out of
2 there.

3 Q Was he saying anything as he was doing these
4 things?

5 A No.

6 Q Were you scared?

7 A Yeah.

8 Q What were you scared of?

9 A I was scared I was going to get shot.

10 Q Okay. Did you stay on the phone with your
11 dispatcher?

12 A Yeah, I did.

13 Q And did you continue to talk to her until you
14 were sort of out of the area?

15 A Yeah.

16 Q Do you remember how you got out of that complex?

17 A I had pulled out, reversed, and then gone down
18 that road past his apartments, so to the left.

19 Q Did you have to do anything to avoid him as you
20 were backing out and driving away?

21 A Yeah. I almost hit him with my car.

22 Q Okay. And why is that?

23 A Because he was on my passenger side door when I
24 pulled out.

25 Q Okay. So did you have to back out of the

1 parking spot?

2 A Yes.

3 Q And is that when you almost hit him?

4 A Yeah.

5 Q Did you have to do anything to avoid hitting
6 him?

7 A I did have to swerve a little, but that's
8 because he was right there.

9 Q Okay. In his boxers with a gun?

10 A Yes.

11 Q Once you got out of the apartment complex, where
12 did you go?

13 A I drove home.

14 Q And started heading back to Parker?

15 A Yes, uh-hum.

16 Q Did you have any further conversations with your
17 dispatcher or anyone that you worked with?

18 A Yes, because they had another appointment for me
19 that night. Obviously, I was distressed, so I didn't want
20 to do it. And I had asked them to call the police, and I
21 thought they had. And they told me to speak to the owner,
22 who is Cedric, and Cedric basically told me to call the
23 police right away and to just take the rest of the night
24 off.

25 Q Okay. So let's back up a little bit. Was it

1 initially your impression that the dispatcher was going to
2 call the police?

3 A Yeah, I thought that's how it worked and -- with
4 that company, that they had to call the police because of,
5 you know, the type of company that it was.

6 Q And how was it that you learned that they
7 weren't going to call and they wanted you to call?

8 A When Cedric had spoken to me, he told me that I
9 needed to to get off the phone with him and call the
10 police right away, and then that's when I called the
11 police.

12 Q And so when is this conversation with Cedric
13 taking place?

14 A I was on I-25 at that point right after the
15 incident. So I don't know, maybe about ten minutes?
16 Because I was still on the phone with dispatch for a
17 while, and then I --

18 Q When you say "dispatch," Denver Ladies dispatch?

19 A Yeah, yeah.

20 Q So you talk to dispatch for a while, and then
21 does Cedric call you?

22 A Yes.

23 Q And at that point he indicates that he wants you
24 to call the police?

25 A Yes.

1 Q So then do you call the police?

2 A Yes.

3 Q And do you call 911?

4 A Yeah, I called 911. I didn't know who else to
5 call.

6 Q Okay. And did you tell them what happened?

7 A Yes.

8 Q And did you leave your name and your phone
9 number and things like that?

10 A Yeah. Because originally I had -- I was so far
11 down I-25 that I was -- Greenwood Village answered the
12 dispatch, and they had to transfer me to the Denver
13 dispatch. And then that's when I was able to talk to
14 somebody over there.

15 Q So it took awhile for them to get you to the
16 right 911?

17 A Yeah, because I wasn't in, like, the right area
18 for them.

19 Q How long after the second shot do you think it
20 was until you actually started talking to a police
21 dispatcher about what happened?

22 A Maybe about 20 minutes.

23 Q And why did it take so long?

24 A Well, because I didn't know that I was supposed
25 to call the police. I thought my company was going to do

1 that. And then it took me awhile to get to the right
2 police to speak to about it.

3 Q Once you were talking to the right police
4 department, did a police officer call you and sort of
5 interview you over the phone.

6 A Yeah.

7 Q Do you remember his name?

8 A No, I don't.

9 Q If I said Agent Brennan, does that ring any
10 bells?

11 A Yeah, actually that does, yeah.

12 Q And did you tell him what had happened in --
13 sort of in detail?

14 A Yes.

15 Q And did he ask you to come back to the area?

16 A Yeah, he did.

17 Q Did you do that?

18 A No.

19 Q Why not?

20 A Because I was terrified. It wasn't going to go
21 back to his house.

22 Q Okay. Do you know about how long after you
23 spoke to the proper police dispatch it was that Eric
24 Brennan -- or Agent Brennan called you?

25 A I don't recall.

1 Q Okay. Was there much of a delay between when
2 you spoke to the police dispatcher and when he called you?

3 A No.

4 Q How many times did he speak to you on the phone?

5 A I think quite a couple of times, one of those.

6 Q Did you describe the defendant's apartment?

7 A Yes.

8 Q And did you describe where you parked and things
9 like that?

10 A Uh-hum.

11 Q Did you tell him about the fish tank and the
12 tent that was up in the living room?

13 A Uh-hum.

14 Q Is that a "yes"?

15 A Yes. Yes, sorry.

16 Q That's all right.

17 Have you -- I'm going to show you a couple of
18 exhibits.

19 MR. FREEMAN: Judge, can I borrow the --

20 THE COURT: Yes.

21 MR. FREEMAN: I'm going ask you to hand 318 --
22 318 is entitled Colorado Beauties's Dispatch, and 320
23 is -- just says Dispatch Tape.

24 THE COURT: So we're looking at 318 and 320?

25 MR. FREEMAN: 318 and 320, thank you.

1 Q (BY MR. FREEMAN) Just take a look at 318, the
2 one that says Colorado Beauties Dispatch.

3 Do you recognize that CD as a CD that you've
4 listened to before today?

5 A Yes.

6 Q And how is that you're able to recognize that as
7 something you listened to before today?

8 A It has my initials and the date that I listened
9 to it written on it.

10 Q And what was that date?

11 A January 26th of this year.

12 Q This year, so just a week or so ago?

13 A Yeah.

14 Q And did you recognize the voices that were on
15 the various calls on there?

16 A Yes.

17 Q But I think there are actually seven different
18 calls --

19 A Yes.

20 Q -- on that CD. And are those the various calls
21 that took place regarding the defendant calling and
22 setting up his meeting with you, and then you described
23 that you had -- I think when you got on scene there was
24 this sort of disagreement about what services you would
25 provide, and you got the dispatcher on there. Is that on

1 there as well?

2 A Yes.

3 Q And did you recognize your voice, the
4 defendant's voice, the dispatcher's voice for that?

5 A Yes.

6 Q Did you -- and I think you described at one
7 point you asked for coffee, which was sort of code for I'd
8 like a call in a few minutes for my safety?

9 A Yes.

10 Q Do you recognize your voice making that request?

11 A Yes.

12 Q And did you also listen to the call, I think
13 it's entitled when you terminate the visit, and you just
14 described a little bit ago where, as you were leaving the
15 defendant's apartment, you're on the phone with your
16 dispatcher, and that's when one of the shots occurs?

17 A Yes.

18 Q And did you recognize your voice and your
19 dispatcher's voice on that one?

20 A Yes.

21 Q And then I think the last call is just a
22 conversation you had with the dispatcher after you were
23 sort of safely away?

24 A Uh-hum.

25 Q And do you recognize your voice --

1 A Yes.

2 Q -- and the dispatcher's voice on that?

3 A Yes.

4 Q When did that last call take place in relation
5 to your conversation with the police dispatcher and Agent
6 Brennan?

7 A I don't recall.

8 Q You don't know in what order those events took
9 place?

10 A I don't recall.

11 Q Okay. Aside from that, do the seven calls on
12 there -- you said you recognized all the voices. Do they
13 accurately -- are they accurate recordings of the
14 conversations that took place?

15 A Yes.

16 MR. FREEMAN: Judge, I would move to introduce
17 318.

18 MR. ST. GEORGE: No objection, Your Honor.

19 THE COURT: 318 is admitted.

20 (People's Exhibit 318 was admitted into
21 evidence.)

22 MR. FREEMAN: And may we publish, Your Honor?

23 THE COURT: You may.

24 (People's Exhibit 318 was published.)

25 Q (BY MR. FREEMAN) Ms. Elliott, do you recognize

1 the male voice as that of the defendant?

2 A Yes.

3 Q What about the female's voice, is that your
4 voice?

5 A No. That's one of my operators, or she was one
6 of my operators.

7 Q Is she just, more or less, pretending to be you?

8 A Yeah. That's usually how it works.

9 Q You can tell she doesn't have a very good
10 English accent?

11 A No.

12 Q And is that -- do you recognize her as one of
13 the dispatchers that you worked with that night?

14 A Yeah.

15 (Publication of People's Exhibit 318 was
16 resumed.)

17 Q (BY MR. FREEMAN) Do you recognize the voices in
18 that little clip?

19 A Yes.

20 Q And whose voices are those?

21 A Daundrea's and mine.

22 Q Daundrea is the person that we heard in the last
23 call that was speaking to the defendant?

24 A Yes.

25 Q And this is her telling you that you've got a

1 client?

2 A Yeah.

3 Q Okay. And there wasn't much information shared
4 in that. Did she give you the address and the defendant's
5 name by some other method?

6 A Yeah. I always requested a text of the address
7 just so that I didn't have to run around and write it
8 down.

9 Q Easier to find the location?

10 A Yeah.

11 Q Okay.

12 MR. FREEMAN: The next one.

13 (Publication of People's Exhibit 318 was
14 resumed.)

15 Q (BY MR. FREEMAN) Do you recognize the voices in
16 that clip?

17 A Yep.

18 Q And who is that?

19 A Daundrea again and me.

20 Q And is that -- what are you telling her in that
21 call?

22 A That I was at location, that I was at the -- at
23 his home.

24 Q Okay. Had you actually made contact with the
25 defendant yet?

1 A No. I was always supposed to call and let them
2 know I was there before I actually made contact with the
3 client.

4 Q Do you know what time that was when you made
5 that call?

6 A Like around nine or something like that.

7 Q Okay.

8 MR. FREEMAN: All right. If we could have --

9 (Publication of People's Exhibit 318 was
10 resumed.)

11 Q (BY MR. FREEMAN) Did you recognize the voices
12 in that clip?

13 A Yes.

14 Q And who were the speakers on that one?

15 A The defendant, myself, and Daundrea.

16 Q And I think you described that yesterday, this
17 was the call that was on your cell phone on speakerphone
18 where she sort of mediated and convinced him to keep you?

19 A Yes.

20 Q At one point on that call you said something to
21 the effect of he's not really what you're looking for.
22 What did you mean by that?

23 A Well, it was that I wasn't what he was looking
24 for. And basically I had, right off the bat, like I
25 always did, told him exactly what it is that I offer and

1 what I don't, and he's kind of like: Oh. Well, that's
2 not really what I'm looking for.

3 Q Okay.

4 A Yeah. So that's why I used that terminology. I
5 think -- never mind.

6 Q I think you said yesterday that he indicated
7 that he wanted full service?

8 A Yes, yeah.

9 Q And you took that to mean some sort of sexual
10 contact?

11 A Yeah. Like he wanted more than I was willing to
12 offer, I would say, yeah, more sexual contact.

13 Q Okay. And just to be clear, at the end of that
14 call, did you ever agree to provide some sort of sexual
15 contact?

16 A No.

17 Q Okay. So you -- you always -- did you always
18 maintain that you were just going to provide sort of what
19 was described, the striptease --

20 A Yes.

21 Q -- the body glide?

22 A Uh-hum. Yeah.

23 Q And he indicated that he would -- that was
24 acceptable?

25 A Yeah. I mean, at that point he said that was

1 okay.

2 Q Okay.

3 (Publication of People's Exhibit 318 was
4 resumed.)

5 Q (BY MR. FREEMAN) Do you recognize the voices in
6 that clip?

7 A Yes.

8 Q And who was that?

9 A Myself and Daundrea.

10 Q Okay. And did that call take place after the
11 call that we just heard where he's deciding to keep you?

12 A Yes.

13 Q How shortly after that call was terminated did
14 you have this conversation about the coffee?

15 A I'm pretty sure that was the same call.

16 Q Okay.

17 A Yeah.

18 Q So was that on -- still on speakerphone?

19 A No. I had taken it off of speakerphone at that
20 point.

21 Q Okay. So that's a private conversation that you
22 have --

23 A Yes.

24 Q -- just with Daundrea?

25 A Uh-hum.

1 Q Okay. Is that a "yes"?

2 A Yes.

3 Q And asking for coffee, you described that
4 yesterday, is sort of a safety feature?

5 A Yeah. Yeah.

6 Q Okay. And I think you described yesterday that
7 she didn't call and -- she didn't make that call?

8 A No, she didn't.

9 Q Okay.

10 MR. FREEMAN: We can hear the next one.

11 (Publication of People's Exhibit 318 was
12 resumed.)

13 Q (BY MR. FREEMAN) Do you recognize the voices on
14 that clip?

15 A Yeah.

16 Q And what voices were those?

17 A Daundrea and mine, and then I believe it was,
18 like, one of her children in the background.

19 Q Okay. I was going to ask you about that. It
20 sounded like there was a child's voice.

21 A Yeah. She worked from home, so I'd assume
22 that's a child.

23 Q There was no child with you?

24 A I'm sorry, what?

25 Q There was no child with you?

1 A No.

2 Q Okay. Just wanted to clarify that.

3 You mentioned that you wanted her to call the
4 police.

5 A Yes.

6 Q Did she indicate that she would call the police?

7 A Yeah, she did, that's why I thought it was okay,
8 and then Cedric had told me to call the police, so...

9 Q You also mentioned that you wanted her to
10 blacklist the defendant. What does that mean?

11 A Basically means that we would not send any more
12 girls to that location because it's considered unsafe.

13 Q Okay. And is that sort of a process that takes
14 place, or did it take place with that company, when a girl
15 had a bad experience with a client?

16 A Yeah, yeah. We had a long list of blacklisted
17 people.

18 Q Okay. If you have a good experience with a
19 client, do you sometimes get tips?

20 A Yeah.

21 Q Is that a significant part of -- or was it a
22 significant part of your income?

23 A Yes. Because Cedric's cut of the money was
24 significant.

25 Q Okay. And did you ever have repeat customers,

1 customers that asked for you specifically?

2 A Yeah. I had regulars.

3 Q And was that an important part of your business
4 and your income back then?

5 A Yeah. Yeah.

6 Q And what about referrals, getting referrals from
7 customers that liked you to their friends, did you ever
8 get that?

9 A Yeah. I had quite a few referrals, actually.

10 Q Okay. Was it important, when you could, to
11 leave customers happy?

12 A Yes.

13 MR. ST. GEORGE: Objection, relevance.

14 MR. FREEMAN: Judge, he -- if I can speak to it.

15 THE COURT: I'm going allow one or two questions
16 on this and then rule.

17 MR. FREEMAN: Okay.

18 A What was your question then?

19 Q (BY MR. FREEMAN) Was it important for you, in
20 your business back then, to try to leave customers happy?

21 A Yeah, yeah. I mean, nobody wants to call a girl
22 and have a terrible experience. And I don't want to have
23 a terrible experience either, so...

24 MR. FREEMAN: If we can play the last clip.

25 (Publication of People's Exhibit 318 was

1 resumed.)

2 Q (BY MR. FREEMAN) Were you able to recognize the
3 voices in that clip?

4 A Yes.

5 Q And who was that?

6 A Myself and Daundrea.

7 Q Now, I think I asked you this earlier, and I
8 think you said you don't recall when that conversation
9 took place in relation to your conversation with a police
10 911 dispatcher; is that correct?

11 A Yeah.

12 Q Okay. There was a couple of things about that
13 call I wanted to ask you about.

14 A Yeah.

15 Q When you were going out to your car and the
16 defendant was following you, you said you were on the
17 phone, and I think we heard that, did you have Daundrea on
18 the phone or was she on a speakerphone?

19 A She was on the phone, and then I just had my
20 phone in my hand as I was running. So that was the kind
21 of dead silence for a while.

22 Q Okay. Going back to the two gunshots, the one
23 in the air and the one leveled at you, did you ever see a
24 muzzle flash or fire or anything come out of the gun?

25 A For the second one or the first one?

1 Q For either one.

2 A The first one, yes; the second one, no.

3 Q Did you hear both of those?

4 A Yes.

5 Q You were having a conversation in this last

6 clip --

7 A Uh-hum.

8 Q -- and you said something about: Why does this
9 always happen to me? And you sounded like you started
10 talking about another bad experience with a client?

11 A Yeah.

12 Q And then Daundrea said something about: We sent
13 security up there? What did she mean by that?

14 A Well, it was at a hotel, it was at a Marriott.
15 So they sent hotel security up there.

16 Q Okay. You described yesterday that Denver
17 Ladies doesn't have any security.

18 A No.

19 Q So it was hotel security?

20 A Yes.

21 Q Okay. I want to draw your attention to the
22 other CD that we gave you. I think it's marked 320.

23 A Uh-hum.

24 Q Do you recognize that as a CD that you've
25 listened to?

1 A Yes.

2 Q And how it is that you are able to recognize
3 that one as another one that you listened to?

4 A My initials and the date of January 26th.

5 Q So same day as you listened to the other one?

6 A Yep.

7 Q And did you recognize that as a recording of
8 your 911 call to the dispatcher?

9 A Yeah.

10 Q And does that also include your conversation
11 with the agent when he called you back?

12 A I don't know.

13 Q Okay. But it has your call to the police
14 dispatch?

15 A Yes.

16 Q Okay. And does that appear to be an accurate
17 and complete recording of that call?

18 A Uh-hum. Yes.

19 Q Is that a "yes"? That's all right.

20 MR. FREEMAN: Judge, move to introduce 320.

21 MR. ST. GEORGE: No objection, Your Honor.

22 THE COURT: 320's admitted.

23 (People's Exhibit 320 was admitted into
24 evidence.)

25 MR. FREEMAN: And may we publish?

1 THE COURT: Yes.

2 Q (BY MR. FREEMAN) Before we play that, let me
3 just ask you a couple more questions. On a couple of
4 those clips that we heard there's this mention of this
5 person, April. Who is April?

6 A April was kind of like the head dispatcher for
7 the company. So she took care of all the administrative
8 things.

9 Q Okay. So is that the April that Daundrea was
10 talking about on a couple of the clips?

11 A Yes, uh-hum.

12 Q And was it your understanding that April was
13 going to be the one to call the police, at least
14 initially, until Cedric called you?

15 A Yes.

16 Q Going back to that last clip, when you're having
17 a conversation with Daundrea afterwards --

18 A Yeah.

19 Q -- she asked you a question about whether, once
20 you were in your car, the defendant ever shot at you
21 again. Do you recall that?

22 A Yes.

23 Q Once you were in your car, did you ever hear or
24 see him fire the gun a third time?

25 A No.

1 Q Okay. When you got home, either that night or
2 the next day, did you ever look at your car to see if
3 there was any damage to it?

4 A I did look at it, but there wasn't any, like,
5 bullet holes in it or anything like that.

6 Q So you never noticed any damage to your car --

7 A No.

8 Q -- from this incident?

9 A No.

10 Q Okay.

11 MR. FREEMAN: All right. If we can --

12 (People's Exhibit 320 was published.)

13 Q (BY MR. FREEMAN) Is that basically the end of
14 that call?

15 A Yes.

16 Q Okay. Do you recognize your voice on that call?

17 A Yes.

18 Q And did that appear to be a complete and
19 accurate recording of your conversation with the Lakewood
20 dispatcher?

21 A Yes.

22 Q I want to ask you a couple of things about that
23 conversation.

24 A Okay.

25 Q Near the beginning of that conversation, when

1 you're sort of describing what you do and why you were
2 there, he said something -- the dispatcher said something
3 about a party. Did you ever tell him that you were at a
4 party?

5 A No.

6 Q Do you know where he got that from?

7 A I don't.

8 Q Does that appear to just be a misunderstanding
9 on his part?

10 A I believe so, yeah.

11 Q And I want to talk about after. You said he
12 would have an officer call you, and you already talked
13 about that.

14 A Uh-hum.

15 Q After this event occurred, did you ever try to
16 contact the defendant again?

17 A No.

18 Q Did you ever text him?

19 A No.

20 Q Did you ever ask anyone to text him on your
21 behalf?

22 A No.

23 Q Are you aware of anyone texting him on your
24 behalf?

25 A No.

1 Q Prior to this incident when you were arriving at
2 his house, did you send him a text that you were there?

3 A Well, I didn't actually have his number. I was
4 never given that information. So if he did receive a text
5 that I was there, then it was from my dispatcher.

6 Q Okay. And I wanted to clarify that. So you
7 never actually had his cell number?

8 A No.

9 Q Did you ask your dispatcher, did you ask
10 Daundrea to send him a text that you were there when you
11 arrived?

12 A No.

13 Q Do you know if she did that?

14 A I don't.

15 Q Okay. When this case was being investigated, we
16 talked earlier about you had a recorded interview with
17 police. At some point were you asked if they could
18 download the contents of your cell phone?

19 A Yes.

20 Q And just so we're clear, did you have more than
21 one cell phone back then?

22 A No.

23 Q You didn't have, like, a work phone and a
24 private phone?

25 A No. All of the information from my work is on

1 the phone that they downloaded.

2 Q Did you agree to that?

3 A Yes.

4 Q Had you deleted anything from your phone prior
5 to offering your phone to the police?

6 A No, because I didn't even know they were going
7 to ask for it.

8 Q So you weren't prepared for that?

9 A Yeah.

10 Q Okay.

11 (Pause in the proceedings.)

12 MR. FREEMAN: All right. Thank you. I don't
13 have any other questions.

14 THE COURT: Cross-examination.

15 MR. FREEMAN: Judge, the exhibits that have been
16 admitted -- oh, I see. She's got those. Do you want to
17 just leave those there for now?

18 THE COURT: Yes.

19 MR. FREEMAN: Okay.

20 THE COURT: Or Ms. Carr, do you want to pick
21 these up and bring them back and then we can use them as
22 wished.

23 So all the exhibits that are admitted can we
24 leave on the podium, please?

25 MR. FREEMAN: Sure.

1 THE COURT: Cross-examination.

2 MR. ST. GEORGE: Your Honor, I'd like to ask the
3 Court if this would be an appropriate time for us to take
4 a break.

5 THE COURT: Okay. If we need a break, we can do
6 that. Let's take 15 minutes. Please don't discuss the
7 case. Keep an open mind. Don't do any investigation.

8 (The jury left the courtroom and a recess was
9 taken.)

10 THE COURT: Be seated. Let's have our witness
11 back on the stand.

12 MR. FREEMAN: I'm sorry, Judge. You want the
13 witness back?

14 THE COURT: Please.

15 All right. So you can go ahead and take the
16 stand, and we're going to have the jury back out, and
17 then, Mr. St. George, we're going to start
18 cross-examination.

19 Do you have everything you want to do
20 cross-examination, like your documents or pictures or
21 anything you want?

22 MR. ST. GEORGE: I think if I need anything,
23 I've got it over here with Ian. Or I may just take
24 advantage of the fact that the district attorney has got
25 it if I need to play a recording again.

1 THE COURT: Okay. You want to give them a
2 heads-up with anything like that.

3 MR. BURNETT: I just did that.

4 MR. FREEMAN: Which recording did you want?

5 MR. ST. GEORGE: It will -- it would be the file
6 that's called Denver Ladies Dispatch to Effy. And I'll
7 get to that here in a little bit.

8 MR. FREEMAN: Okay. Just let us know.

9 MR. ST. GEORGE: Yep.

10 THE COURT: Okay. Let's bring the jury in.

11 (Pause in the proceedings.)

12 THE COURT: Do we have which number it is?

13 MR. ST. GEORGE: They called it Number 318, Your
14 Honor.

15 THE COURT: Okay.

16 MR. ST. GEORGE: So yeah, it will be a portion
17 of that, as needed.

18 THE COURT: Okay. All right. So 318. I'm
19 going bring the jury in.

20 MR. ST. GEORGE: Fantastic.

21 (Pause in the proceedings.)

22 (The jury entered the courtroom.)

23 THE COURT: All right. Everyone be seated,
24 please, and we're ready to resume. We're on cross-
25 examination.

CROSS-EXAMINATION

BY MR. ST. GEORGE:

Q So now, Ms. Elliott, do you mind if we start with establishing some time line?

A Yes.

Q So the time of your call when you were terminating, that's at 9:46 p.m.?

A Uh-hum.

Q And then that return call, that comes from -- is it Daundrea?

A Uh-hum. Yes.

Q -- from Daundrea, that comes in at 9:52?

A (The witness nodded head.)

Q And then at 10:02 you called Cedric?

A Yes.

Q And that call lasted for three and a half minutes, thereabouts?

A I don't recall.

Q Fair enough. And then at nine minutes past ten is when you were able to call 911?

A Yes.

Q Okay. And you had -- you had called at 10:06, but that call got disconnected. That was when you were --

A I think it was when they were trying to get me to the right dispatch for the right county.

1 Q Okay. And then when you were leaving the
2 apartment, you called your company's operator -- that was
3 Daundrea -- to report that you had terminated the visit?

4 A Yes.

5 Q And you dialed that number as you left the
6 apartment?

7 A Yes.

8 Q And the call connected while you were walking
9 down the street to your car?

10 A I thought it was sooner, but...

11 Q Okay. And that call was connected, and it
12 stayed connected after you got into your car?

13 A Yes.

14 Q And it didn't disconnect until you clicked over
15 when Daundrea was calling you back?

16 A Um, yes.

17 Q And in that -- in that recording that we just
18 listened to --

19 A Uh-hum.

20 Q -- you didn't hear but one gunshot; is that
21 right?

22 A I heard two, physically, when I was there.

23 Q But in this recording just today, you didn't
24 hear but the one, right?

25 A I guess not, no.

1 Q And you didn't know that that call was being
2 recorded at the time, did you?

3 A I did, yes.

4 Q Now, in your -- do you remember when you were
5 interviewed by Detective Larson here?

6 A Yes.

7 Q And you remember when he asked you that question
8 if you -- those calls were recorded?

9 A I don't recall.

10 Q In that -- in that interview, you told him that
11 you didn't know that the calls were being recorded. If
12 you don't -- you said: So there should be information
13 there. I'm not sure if the call is actually recorded
14 though.

15 MR. FREEMAN: Judge, objection to the form of
16 the question. Counsel is testifying. He's not asking a
17 question.

18 THE COURT: Could you rephrase, please.

19 MR. FREEMAN: And could we have a page of the
20 transcript, please.

21 MR. ST. GEORGE: Page 20 of 24.

22 MR. FREEMAN: Thank you.

23 MR. ST. GEORGE: Approximately -- a few minutes
24 in.

25 Q (BY MR. ST. GEORGE) Do you remember saying --

1 or, rather, you remember saying: So there should be
2 information there. I'm not sure if the call is actually
3 recorded.

4 A I don't recall that.

5 Q Okay. There was only the one gunshot into the
6 air, wasn't there?

7 A There was -- well, into the air, yes, there was
8 only one gunshot.

9 Q There was no second gunshot.

10 A There was.

11 Q The evidence is going to show that there was no
12 second gunshot into the air.

13 MR. FREEMAN: Objection, argumentative.
14 Counsel's testifying.

15 THE COURT: I'll sustain that.

16 Q (BY MR. ST. GEORGE) When you were speaking to
17 Daundrea, the two of you were talking about the
18 termination of the visit, and you guys were laughing a
19 bit, right?

20 A Well, it was a very intense situation.

21 Q And she asked you, regarding the fire in the
22 air, as you called it: Did he shoot at your car or
23 anything after that? Right?

24 A Yes.

25 Q And you remember how you answered that question,

1 right?

2 A Because I believed that she was asking if you
3 shot at me as I was driving away, which, no, you did not,
4 so...

5 Q You told her no, right?

6 A Yes.

7 Q That gunshot in the air, was it in response to
8 you swiftly turning around to face me, right?

9 A I'm sorry. Could you repeat the question?

10 Q That gunshot in the air was in response to you
11 swiftly turning around to face me, right?

12 MR. FREEMAN: Objection. Calls for speculation
13 as to why the shot was fired, Judge.

14 THE COURT: I'll allow the question.

15 A I didn't turn around to face you. I turned
16 around to see if you were -- because I heard the gunshot.

17 Q (BY MR. ST. GEORGE) So this was before there
18 was any sound of the gunshot, you were turning around.

19 A No.

20 Q You looked back to see where I was.

21 A Originally, yeah, before the original gunshot
22 went off. Because I needed -- I saw that you were
23 following me. And that's on the recording. And then you
24 shot, and that's when I turned around and saw the gun.

25 MR. ST. GEORGE: Your Honor, could we play that

1 recording again, right quick?

2 THE COURT: So you want to direct a specific
3 point in time to being played. So what -- what do you
4 want being played? So we're looking at Exhibit
5 Number 318?

6 MR. ST. GEORGE: Yes, Your Honor. We're looking
7 at 318. And I will direct Mr. Burnett to play the
8 portion.

9 THE COURT: Great. Go ahead.

10 (People's Exhibit 318 was published.)

11 Q (BY MR. ST. GEORGE) So you heard that gunshot
12 in that recording just now, yes?

13 A Yes.

14 Q And immediately thereafter you say: Oh my God,
15 he has a gun?

16 A Uh-hum.

17 Q So you were not aware of me having a gun prior
18 to that?

19 A No.

20 Q And you got into your car immediately
21 thereafter?

22 A Well, I was still running to it, but yeah,
23 that's what I did immediately after.

24 Q And then when Daundrea calls you back, you're in
25 the car and she asks you: Did he shoot at your car or

1 anything after that, in regards to that gunshot in the
2 air, right?

3 A Yes.

4 Q And you told her no?

5 A Yes, because I believed that she was asking if
6 you were shooting at my car as I drove away, to which I
7 said no because you did not.

8 Q It was dark out there in the parking lot, right?

9 A Yeah.

10 Q Do others in your line of work, your former line
11 of work, have a driver in their cars?

12 MR. FREEMAN: Objection, relevance.

13 MR. ST. GEORGE: Absolutely relevant.

14 MR. FREEMAN: It's her call. Objection
15 relevance, Judge.

16 THE COURT: I'm not seeing relevance here. I'll
17 sustain the objection.

18 Q (BY MR. ST. GEORGE) Do other people in your
19 profession have a bouncer or security in their cars?

20 MR. FREEMAN: Objection, relevance.

21 THE COURT: Sustained.

22 Q (BY MR. ST. GEORGE) You did not have a bouncer
23 or security in your car that night, did you?

24 A No.

25 Q After this incident, did you then start having

1 security in your car?

2 MR. FREEMAN: Objection, relevance.

3 THE COURT: I'll allow this question.

4 A I had my brother take me a couple places after
5 that, but he never ever made contact with any of my
6 clients thereafter.

7 Q (BY MR. ST. GEORGE) But you had a man in your
8 car that served the purpose of security or protection?

9 A I mean, after something like this, those are the
10 measures that you take.

11 Q Do others in your profession -- your former
12 profession, I apologize, do they sometimes carry guns?

13 MR. FREEMAN: Objection, relevance.

14 THE COURT: Sustained.

15 MR. ST. GEORGE: Excuse me.

16 (Pause in the proceedings.)

17 MR. ST. GEORGE: Your Honor, I would like to
18 make an offer of proof as to these questions.

19 THE COURT: I'm going to excuse the jury for a
20 few minutes. Please don't discuss the case, keep an open
21 mind, don't do any research. We'll have you back in a
22 couple of minutes.

23 (The jury left the courtroom.)

24 MR. FREEMAN: Judge, do you still want
25 Ms. Elliott to remain up here?

1 THE COURT: You can step down for a few minutes.

2 (The witness was excused.)

3 THE COURT: I'll hear you, Mr. St. George.

4 MR. ST. GEORGE: So, Your Honor, the purpose of
5 this line of questioning is to go to my state of mind at
6 the time, and that's the point of me asking this -- in
7 this line of questioning.

8 THE COURT: So regarding this, Mr. St. George,
9 whether or not this woman says that people carry guns or
10 not carry guns, what I would be concerned about is your
11 beliefs about that. I'll hear from the People.

12 MR. FREEMAN: Judge, I was going to -- my
13 objection is along the same lines. Certainly she can't
14 weigh in to what the defendant thought or feared or
15 anything like that. Only he can. She would be
16 speculating.

17 And I'm sure somewhere in the annals of history
18 of this line of work plenty of escorts have brought with
19 them somebody that robbed a client or had a gun and shot a
20 client, I mean, if we did research.

21 It doesn't matter what other people have done.
22 And she's never going to get to -- he's never going to get
23 to the point with her where she can testify to what his
24 beliefs or fears or level of comfort was, only he can.
25 And so this line of questioning is irrelevant, and I'm

1 going to continue to object.

2 THE COURT: Mr. St. George, that is the issue in
3 the case.

4 MR. ST. GEORGE: And --

5 THE COURT: Go ahead. Did you want to say
6 something further?

7 MR. ST. GEORGE: I'm sorry. Yes, Your Honor.
8 The facts show, as she testified yesterday, that she was,
9 in fact, carrying a weapon at the time. She had mace on
10 her key chain.

11 So I think this line of questioning is
12 incredibly relevant. I think she's absolutely more than
13 capable of answering in regards to what others in
14 her -- that line of work do because the facts show that
15 she was carrying a weapon.

16 THE COURT: All right. So, again, you're
17 looking to determine your state of mind regarding what you
18 undertook from her testimony, guessing whether or not
19 people in her line of work may carry a gun.

20 So we're a couple stages beyond any sort of
21 permission to allow this witness to testify. Can you ask
22 her was she carrying a gun? Sure. Can you ask her about
23 the key chain mace that she had? Yes, you can.

24 But she can't testify -- it's irrelevant as to
25 whether or not it is her belief that people in her

1 profession may carry guns.

2 You'll have the opportunity to present whatever
3 you want in your case to provide whatever foundation you
4 want then to bring this out in relation to your actions.
5 But at this point in time, it's irrelevant; I'll continue
6 to sustain those objections.

7 MR. ST. GEORGE: All right. Your Honor, I'll
8 restrict my questions to specifically what she was
9 carrying then.

10 THE COURT: Sure.

11 MR. ST. GEORGE: Right.

12 THE COURT: We'll have the jury back.

13 MR. FREEMAN: Let me get the witness, Judge.

14 (The jury entered the courtroom.)

15 THE COURT: Everybody be seated, please. Thank
16 you. We can resume cross-examination.

17 Q (BY MR. ST. GEORGE) Ms. Elliott, on that night,
18 you -- were you carrying a gun with you?

19 A Absolutely not.

20 Q On that night, were you carrying a bottle of
21 mace with you?

22 A Yeah, I believe so.

23 Q And you had that bottle of mace in your hands?

24 A No. In my purse.

25 Q Did you have your keys in your hands when you

1 went to the car?

2 A Yeah.

3 Q Okay. And at that point you had that bottle of
4 mace and your keys in your hands?

5 A Yes. I was leaving your house, so...

6 Q That's it. Now, you stated that you nearly
7 struck me with your car, right?

8 A Yes.

9 Q So I was very close to your car then, right?

10 A Yes.

11 Q And your telephone was connected to the
12 dispatcher at the time?

13 A Yes.

14 Q Had there been a second gunshot, it would have
15 been heard on the recording, would it not?

16 MR. FREEMAN: Objection, argumentative, and
17 calls for speculation.

18 THE COURT: I'll allow the question.

19 A Well, you couldn't hear me running after a
20 certain point because my hand was covering the phone. I
21 had it in my hand.

22 Q (BY MR. ST. GEORGE) So it's your belief that
23 while you were in the car you had your hand over the
24 microphone, which would have covered up the sound of a
25 gunshot?

1 A Yes.

2 Q That gunshot was awfully loud in that recording
3 we heard, right?

4 A Yes. But I didn't have my hand covering the
5 phone at the time.

6 Q Okay. You could have assumed that there would
7 be witnesses in the neighborhood who heard or saw what
8 happened in the parking lot, right?

9 A Yeah. You can hear me on recording assume that.

10 Q When you called 911, they connected your call to
11 a policeman's cell phone, right?

12 A Um, I believe so.

13 Q That would be Eric Brennan --

14 A Uh-hum.

15 Q -- I think you recall?

16 A Yeah, that's the officer that I spoke with.

17 Q When you spoke to him, you told him that when I
18 followed you out into the parking lot, that about a
19 quarter of the way from the apartment to the car is when
20 you thought that you heard a first gunshot?

21 A I'm sorry. Repeat it one more time.

22 Q You told Eric Brennan --

23 A Yeah.

24 Q -- that a quarter of the way between the
25 apartment and the car is when you heard a first gunshot?

1 A Yeah, I mean, the way I explained it when I was
2 up there showing you guys.

3 Q And then you told him that there was -- that you
4 believe that there was a second shot three-quarters of the
5 way to the car?

6 A Yes.

7 Q So at no point did you ever tell Mr. Brennan
8 that you saw a gunshot in the breezeway?

9 A No.

10 Q You never said that to him, did you?

11 A No.

12 Q You said it was out in the street?

13 A Yes, because it was.

14 Q When you were being interviewed with Detective
15 Larson, on several occasions throughout that interview
16 with him he asked you: How many times did he shoot?

17 Do you recall this?

18 A Yes.

19 Q On one of these occasions in the interview you
20 gestured, just the one. Do you remember that?

21 A No.

22 Q During that interview you then doubled back and
23 said, just the one and then the one. Do you recall that?

24 A (The witness shook head.)

25 MR. ST. GEORGE: Your Honor, would you bear with

1 me one moment while I consult with counsel?

2 THE COURT: Surely.

3 (Pause in the proceedings.)

4 Q (BY MR. ST. GEORGE) Detective Larson asked you:
5 What do you think he was trying to do, in reference to me.
6 Do you remember your answer to that question?

7 A I don't. It was a year and a half ago.

8 Q He might have been trying to just scare me, is
9 what you said. Does that sound familiar now?

10 A Yeah.

11 Q Shooting a gun pointed in a person's direction
12 is never just to scare somebody. Shooting a gun at
13 someone is --

14 THE COURT: We need a question.

15 Q (BY MR. ST. GEORGE) You do understand that,
16 right?

17 A Yeah.

18 Q One doesn't just try to scare someone by
19 pointing a gun at them and shooting?

20 A I mean, my experience is --

21 MR. FREEMAN: I'm going to object, Judge. It's
22 argumentative and calls for speculation.

23 THE COURT: Sustained.

24 Q (BY MR. ST. GEORGE) In those calls that we
25 heard earlier --

1 A Uh-hum.

2 Q -- at 9:46, when you called -- to cancel the
3 visit, right?

4 A Uh-hum.

5 Q And then it's at -- bear with me here.

6 It was at 9:52 that you got the return call back
7 from Daundrea, right?

8 A I believe so. If that's what it says.

9 Q Okay. And then you had the call with Cedric,
10 right?

11 A Uh-hum.

12 Q And then after that, at 10:09 is when you had
13 the call with 911?

14 A Uh-hum.

15 Q And we heard that recording, right?

16 A Yeah.

17 Q So those two calls are separated by close to
18 20 minutes, right? Possibly?

19 A (The witness shook head.)

20 Q There's a difference in your tone of voice in
21 those two calls.

22 A Yes.

23 Q Did you notice that?

24 A Yes, I did.

25 Q In the earlier call, you and Daundrea are

1 laughing?

2 A Yeah, I was in shock.

3 Q And then in the 911 call you're in hysterics?

4 A Yes. Because when I had spoken to Cedric, he
5 had wanted me to continue to work that night, which
6 frustrated me beyond belief, and I was very upset when I
7 actually did make the phone call.

8 But if you listen, then I do clear up after a
9 minute, and I sound just normal again.

10 Q Do you think that your tone of voice or the way
11 you were -- the way you were saying things would influence
12 the person on the other end of the line?

13 A No.

14 MR. ST. GEORGE: Bear with me, Your Honor.

15 (Pause in the proceedings.)

16 MR. ST. GEORGE: Is it People's 3 that is the
17 overhead?

18 MR. FREEMAN: Yeah. The aerial?

19 MR. ST. GEORGE: Yeah. Would you mind putting
20 that up for me?

21 MR. FREEMAN: Do we need to switch back?

22 THE COURT: Okay. Hold on a second.

23 (People's Exhibit 3 was published.)

24 Q (BY MR. ST. GEORGE) Now, Ms. Elliott, I'm going
25 and you to stand back up again, and if you don't mind

1 going back over here to the exhibit. Is that dowel rod
2 over there?

3 A Yes.

4 Q It is. Would you mind tell us exactly where it
5 is that -- that first gunshot that you heard?

6 A So, like I said, I was about here, and you were
7 about here (indicated).

8 Q Okay. And for the record, you are pointing
9 to -- when you say: I was about here, you're pointing to
10 the guest parking area, right?

11 A Yes. Right over here (indicated).

12 Q And you're pointing to the street right adjacent
13 to the guest parking, right?

14 A I'm sorry?

15 Q You're saying I'm here?

16 A Yeah, I'm right here. You're over here
17 (indicated).

18 Q And so -- and when you're saying: I'm right
19 here, you're pointing to the street right next to the
20 guest parking, correct?

21 A Yes.

22 Q And when you're saying I am right here --

23 A Okay.

24 Q -- you're pointing to a piece -- the street
25 somewhere around the southeast corner of the building; is

1 that right?

2 A Just right here (indicated).

3 Q Okay. So the -- for the court record, she's
4 pointing to a piece of the street out in front of the
5 building.

6 And then would you point to where that second
7 gunshot you believe occurred?

8 A I believe about -- if you were right here
9 originally, it would be right about here.

10 Q Okay. So you're now pointing to an
11 area -- would you mind if I said 20 feet from the first
12 shot, again, at the southeast corner of the building but
13 out in the street?

14 A Yeah, I guess so.

15 Q Okay. And at no time did you ever point to the
16 breezeway in front of my apartment as being the location
17 of the first gunshot?

18 A No.

19 Q Thank you.

20 A Uh-hum.

21 MR. ST. GEORGE: I have no further questions.

22 THE COURT: Redirect.

23 REDIRECT EXAMINATION

24 BY MR. FREEMAN:

25 Q Just a few more questions, Ms. Elliott.

1 A Uh-hum.

2 Q Just getting back to those two gunshots, I think
3 you testified earlier the first one was in the air, the
4 second one was leveled at you.

5 A Uh-hum.

6 Q I think you testified earlier that you didn't
7 recall which hand the defendant was holding the gun in?

8 A No.

9 Q Can you demonstrate, as best as you can recall,
10 how he held the gun for the second gunshot?

11 A Like down like this.

12 Q Okay. And for the record, you've got your right
13 arm basically straight out?

14 A Yeah.

15 Q And would you say roughly perpendicular with the
16 ground?

17 A Yeah.

18 Q Okay. Did he appear to be aiming, like looking
19 down the barrel, or was it just arm straight at you like
20 that?

21 A Just arm straight at me.

22 Q Okay. There were some questions about at which
23 point you first realized that he had a gun.

24 A Uh-hum.

25 Q Can you clarify for the jury, either by hearing

1 or seeing, what was the first moment that you realized
2 that he had a gun?

3 A When I heard the initial gunshot, I turned
4 around and then I saw him with the gun.

5 Q Okay. And did you turn around immediately upon
6 hearing that?

7 A Yes.

8 Q Did you recognize it as a gunshot?

9 A Yes.

10 Q And you turned around and immediately. And
11 about how far away from you was he when you turned
12 immediately? And if you want to use something from where
13 you're seated in the courtroom --

14 A I mean, kind of like I said earlier, between me
15 here, right now, and then that juror right there on the
16 end.

17 Q First juror?

18 A Yeah.

19 Q So that's, I would say, 20 to 25 feet?

20 A Yeah.

21 Q And what position was his arm in when you turned
22 after that first shot?

23 A It was moving in a downward motion.

24 Q But you -- you started --

25 A It was up in the air, and then it was --

1 Q And then as you were looking at him, did it come
2 to a downward motion? I just want to clarify because you
3 said --

4 A I'm sorry. One more time?

5 Q You said that it started moving downwards as you
6 were watching him?

7 A Yeah.

8 Q Was he stationary, was he standing still when
9 you turned to look, or was he still walking?

10 A He was still walking.

11 Q Okay. About how -- how long between the two
12 gunshots?

13 A A couple seconds.

14 Q And the second gunshot, do you know if he was
15 roughly the same distance between you and he as the first
16 shot or had it gotten farther or closer?

17 A I don't -- I really -- I started running, so --
18 but he was still walking.

19 Q Okay. Did you start running before the second
20 shot?

21 A I was walking very quickly, but I was not
22 running.

23 Q Okay. But my question was, before the second
24 shot occurred, did you start running before that or after?

25 A Right after the first shot I started running.

1 Q Okay.

2 A Yeah.

3 Q And so you don't know if you increased the
4 distance between the two of you before the second shot?

5 A I don't know.

6 Q There were some questions about that little
7 canister of mace?

8 A Uh-hum.

9 Q How big was that?

10 A Maybe that big (indicated).

11 MR. FREEMAN: And for the record, Judge, the
12 witness is holding her fingers up, I would say, about
13 3 inches.

14 Q (BY MR. FREEMAN) Did you ever have it in your
15 hand that night?

16 A I mean, it was on my keys. So I had my keys in
17 my hand to run to my car. But before that I did not have
18 it out or anything like that.

19 Q Did you ever hold it in your hand like preparing
20 to use it?

21 A No.

22 Q Did you ever use it?

23 A No.

24 Q Did you ever threaten to use it?

25 A No.

1 Q Did you ever think about using it?

2 A It actually didn't even cross my mind, honestly.

3 Q And I think you testified earlier that you're
4 not even a hundred percent sure you had it with you that
5 night?

6 A Yeah, no, but I'm -- when I listened to my
7 statement to Detective Larson, I did have it, as it turns
8 out.

9 Q So that refreshed your memory that you did have
10 it?

11 A Yes, uh-hum.

12 Q Okay. Just getting back to this little canister
13 of mace, did you ever tell the defendant you had it?

14 A No.

15 Q Never indicated to him that you had something
16 like that with you?

17 A No.

18 Q When you walked into his house, where were those
19 keys?

20 A In my purse.

21 Q Okay. And this might sound like a dumb
22 question --

23 A Yeah.

24 Q -- is your purse clear or is it, like, a
25 material that you can't see through?

1 A I believe it was black.

2 Q Okay. So you wouldn't be able to see into your
3 purse to see the contents?

4 A Yeah, no.

5 Q Did you ever take your keys out while you were
6 in his apartment?

7 A No.

8 Q What did it appear -- for the second shot, when
9 the defendant held his hand out, what did it appear that
10 he was aiming at?

11 A Me.

12 Q I want to go back a little bit to your initial
13 contact with the defendant, your initial conversation with
14 him.

15 I think you testified, I think it might have
16 been yesterday actually, that you were paid the \$220 up
17 front.

18 A Uh-hum.

19 Q Is that a "yes"?

20 A Yes. I'm sorry.

21 Q No big deal. And then --

22 MR. ST. GEORGE: Your Honor, this is beyond the
23 scope.

24 THE COURT: I'm going to allow the next
25 question.

1 Q (BY MR. FREEMAN) I had asked you questions
2 earlier about whether you received tips. Did you ever get
3 a tip from the defendant?

4 A He had attempted to tip me, and I had stopped
5 him because, you know, we hadn't had that initial
6 conversation about what I offer and what I don't offer.

7 So he had said: Well, give me the 20 back for
8 the 220, and I'll just give you a hundred. I said: Wait,
9 wait, wait. Do you have any questions for me about the
10 show, like, before we do this? And that's when the
11 conversation started. So I didn't actually accept the
12 tip.

13 Q So this is before you --

14 MR. ST. GEORGE: Your Honor, this is -- this is
15 not relevant and this is beyond the scope.

16 THE COURT: This is beyond the scope now at this
17 point.

18 MR. FREEMAN: All right.

19 Q (BY MR. FREEMAN) And just so we're clear, once
20 you got into your car, did you ever hear any more
21 gunshots?

22 A No.

23 Q Did you ever think that the defendant shot at
24 you after you got in your car?

25 A No.

1 Q And going back to your conversation with
2 Daundrea, is that what you thought she was asking you
3 about when she said --

4 A Yes.

5 Q -- did he ever shoot at you again?

6 A Yes.

7 Q Okay.

8 MR. FREEMAN: All right. That's all I've got,
9 thank you.

10 THE COURT: Recross.

11 RE CROSS-EXAMINATION

12 BY MR. ST. GEORGE:

13 Q Ms. Elliott?

14 A Yes.

15 Q You testified that you looked back after the
16 first shot, correct?

17 A Yes.

18 Q And that was the first time you saw the gun?

19 A Uh-hum.

20 Q You also testified on direct that you saw the
21 flash of the gun during the first shot?

22 A Yeah.

23 Q So you testified that you looked back after the
24 first shot?

25 A Yes.

1 Q And that was the first time that you saw the
2 gun?

3 A Yes.

4 Q But you had seen the flash of the gun?

5 A Yes.

6 Q Do you understand that if you weren't looking
7 back and you didn't know I had a gun, you would not have
8 seen a muzzle flash, right?

9 MR. FREEMAN: Objection, argumentative.

10 THE COURT: Sustained. You need to rephrase.

11 Q (BY MR. ST. GEORGE) You testified that you saw
12 me shoot at you?

13 A Well, I saw the first initial shot in the air
14 and then your hand lower.

15 Q And you testified that you did not see a gun
16 flash during that second shot?

17 A No, I did not, because I had my back turned. I
18 was running away from you.

19 MR. ST. GEORGE: No more questions.

20 THE COURT: Does anyone on the jury have a
21 question for this witness?

22 (No verbal response.)

23 THE COURT: Okay. Okay. I'm going to excuse
24 the jury for a moment. Same admonitions.

25 (The jury left the courtroom.)

1 THE COURT: Do you want to step down for a
2 second?

3 THE WITNESS: Yeah, of course.

4 (The witness was excused.)

5 JURY QUESTIONS

6 THE COURT: Okay. So the question is: Could
7 witness please retrace her steps, both in and out of the
8 apartment, on Exhibit 3 using the dowel slowly, please.

9 Any objection?

10 MR. FREEMAN: No, Judge.

11 MR. ST. GEORGE: No objection, Your Honor.

12 THE COURT: We'll bring in the jury; we'll bring
13 in the witness.

14 MR. MENGES: Is that the only question?

15 (Pause in the proceedings.)

16 MR. FREEMAN: Judge, I'll mention we do have an
17 apartment diagram. I haven't shown it to her. I'm happy
18 to do so if the Court wants.

19 THE COURT: Well, I'll allow follow-up
20 questions, if necessary, from both sides. They're looking
21 at steps both in and out of the apartment, I think what
22 we've already seen, but we'll see how the question goes.

23 MR. ST. GEORGE: Your Honor, I would object to
24 the use of this. It's not in the scope of the question
25 that was asked by the jury.

1 THE COURT: As I said, I would go ahead and have
2 the question, and then I allow follow-up questions, and
3 I'll make that decision at that time.

4 MR. ST. GEORGE: Thank you, Your Honor.

5 (Pause in the proceedings.)

6 THE COURT: Sorry for the back and forth. You
7 can be seated.

8 THE WITNESS: You're all right.

9 (The witness complied.)

10 THE COURT: And I'm going to need Exhibit 3. So
11 let me make sure --

12 MR. FREEMAN: Do you want it up?

13 THE COURT: Yeah.

14 (People's Exhibit 3 was published.)

15 MR. ST. GEORGE: Your Honor --

16 THE COURT: Yes, we're ready.

17 (The jury entered the courtroom.)

18 THE COURT: All right. So I have question for
19 you from the jury.

20 THE WITNESS: Yes.

21 THE COURT: Could you please retrace your steps,
22 both in and out of the apartment, on Exhibit 3, using the
23 dowel, slowly.

24 THE WITNESS: Okay.

25 THE COURT: So if you would go ahead and step

1 down for me one more time and use the dowel there, the
2 pointer, and go up to the board and kind of slowly trace
3 your steps both in and out.

4 THE WITNESS: Okay. So I parked here, and then
5 I walked over here into his apartment breezeway there. I
6 was in the apartment at that point.

7 And, you know, the show happened, the incident
8 happened, and this is -- and then I ran out of here this
9 way, and -- well, walked out of here. And then I heard
10 the gunshot right around here. He was here, and I was
11 here. And then I got back into my car and I left.

12 THE COURT: Are there any follow-up questions as
13 a result of the jury's questions?

14 MR. FREEMAN: A couple, Your Honor.

15 FOLLOW-UP EXAMINATION

16 BY MR. FREEMAN:

17 Q And just to clarify, I think you said that when
18 you got into your car and left, you went back across the
19 front of the parking --

20 A Yes, I did. I did pull out that way and then
21 went that way (indicated).

22 Q Okay. Do you recall where you went inside the
23 defendant's apartment?

24 A Yeah. So I walked -- right in the doorway there
25 was like a little, like, sliver of an entryway.

1 MR. ST. GEORGE: Objection, Your Honor. This is
2 beyond the scope of the question.

3 THE COURT: The question says both in and out of
4 the apartment, so I'll allow just where in the apartment
5 she went.

6 A Okay. So I walked in through that little tiny
7 entryway section. Then we went into the kitchen, which
8 was connected to the living room area, where I saw the
9 tent and the aquarium and all that.

10 So we were talking in the kitchen area kind of,
11 and then after him wanting to cancel and then him deciding
12 to keep me, then we went into the bedroom, and then that's
13 where the show happened and that's where the incident had
14 happened.

15 And then I left. I walked out of his bedroom
16 door, which was the living room at that point, and I
17 walked past the kitchen, down to that entryway, and walked
18 out of the apartment.

19 MR. FREEMAN: Judge, I would like to have the
20 witness handed Exhibit 7.

21 MR. ST. GEORGE: Your Honor --

22 THE COURT: Yeah. At this point in time, I
23 think we're going restrict to Exhibit 3.

24 MR. FREEMAN: Okay. I understood the juror's
25 questions of steps in and out, so you're not going to

1 allow me to --

2 THE COURT: Yeah. But at this point, we're
3 going use Exhibit 3.

4 MR. FREEMAN: Okay. Then I'm not going to ask
5 her any questions about Exhibit 7 then.

6 MR. ST. GEORGE: Your Honor, I've got nothing
7 further on that.

8 THE COURT: Thank you. You may step down.

9 THE WITNESS: Thank you.

10 (The witness was excused.)

11 THE COURT: You may call your next witness.

12 MR. FREEMAN: Judge, we'll call Agent Brennan.

13 AGENT ERIC BRENNAN,

14 having been called as a witness on behalf of the People,
15 being first duly sworn, testified as follows:

16 THE COURT: Have a seat, please.

17 THE WITNESS: (The witness complied.)

18 DIRECT EXAMINATION

19 BY MR. FREEMAN:

20 Q Good morning, sir.

21 A Good morning.

22 Q Would you please state your full name and spell
23 your last name for us?

24 A Yes. Agent Eric Brennan. The last name is
25 spelled B-r-e-n-n-a-n.

1 Q And, Mr. Brennan, how are you employed?

2 A I work for the City of Lakewood as a police
3 officer.

4 Q And for how long have you been a peace officer?

5 A Since January of 2015.

6 Q And how much of that time has been spent with
7 the City of Lakewood?

8 A The entire time.

9 Q I just wanted to make sure. What is your
10 current assignment?

11 A I work patrol.

12 Q And can you briefly describe what your duties
13 are as a patrol officer?

14 A Yeah. They are pretty various. It's --
15 responding to calls for service is our primary duty.
16 Other than that, we do traffic. Traffic stops, traffic
17 accident investigations, a variety of topics.

18 Q In your capacity as a patrol officer, do you
19 typically wear a uniform similar to the one you're wearing
20 today?

21 A Yes.

22 Q And if you could just stand up for a moment. I
23 don't mean to embarrass you, but if you can stand up for
24 the jury.

25 A (The witness complied.)

1 Q You're wearing what I would call a tool belt.

2 A Duty belt? Yes.

3 Q Duty belt? Can you describe the objects on that
4 belt?

5 A Yes. So this would be a handcuff case. Inside
6 are handcuffs. Spare magazines. This is my duty weapon.
7 Another handcuff case in the back. This is a police
8 radio. And there's also a flashlight. This would be a
9 baton ring.

10 Q And what's that yellow thing there?

11 A This would be a Taser.

12 Q Taser, okay. And you've got a badge on your
13 upper --

14 A That's correct.

15 Q -- left chest. It's got a black band across it.

16 A Correct.

17 Q Do you typically wear that?

18 A No. Generally speaking, we don't have this on,
19 but due to a law enforcement being killed recently. He
20 has not been laid to rest yet, so we're still wearing the
21 band.

22 Q You can go ahead and have a seat.

23 A (The witness complied.)

24 Q And the patches and things that are on your
25 shoulders that identify you as an officer, is that on all

1 your uniforms?

2 A Every uniform I wear.

3 Q Do you typically wear anything on your head when
4 you're working?

5 A Typically I don't. During a day shift sometimes
6 I'll wear, like, a -- basically a baseball cap that says
7 LPD with large letters across it.

8 Sometimes in winter weather we have a black kind
9 of beanie, I guess it would be called.

10 Q When you're working in a patrol capacity, are
11 you driving a marked Lakewood patrol car?

12 A Yes.

13 Q And is it clearly marked? Looks like a police
14 car?

15 A Yes. It's a black-and-white police car just
16 like everybody would assume it is.

17 Q Do you normally work with a partner in your
18 vehicle?

19 A No.

20 Q And I notice you've got a radio sort of hanging
21 over your right shoulder?

22 A That's correct.

23 Q How does that work?

24 A This would be what's known as a lapel mike.
25 It's just -- basically I can talk into it, but also radio

1 traffic comes out of it. Usually I'll wear an earpiece.
2 And it just makes it so you don't have to take a radio off
3 your belt to speak into it and then put it back.

4 Q What do you have to do to speak into it to
5 communicate with either other officers or your dispatch?

6 A Press this button right here on the side.

7 Q Okay. So without pressing that button, are you
8 able to communicate with folks?

9 A Just -- it only would be the intake of the radio
10 traffic. So it would -- people transmitting, I could hear
11 them. It doesn't allow me to transmit without pressing
12 the button.

13 Q Okay. So you can hear others but they can't
14 hear you?

15 A Correct.

16 Q Okay. And when you've got the earpiece in, does
17 that prevent other people from standing around you hearing
18 what you're hearing?

19 A That's correct. It is basically an officer
20 safety thing. So if you're talking to somebody and you
21 run them through dispatch, you find out they have a
22 warrant, you don't necessarily want them to know that
23 immediately because they might take off running, so yeah.

24 Q So you don't necessarily want the people around
25 you to hear what you're hearing?

1 A Correct.

2 Q I want to take you back to the evening of
3 July 31st of 2016. Were you working on that date and
4 time?

5 A I was.

6 Q In what capacity?

7 A As a police officer. I was working Watch 4,
8 which is 9 p.m. to 7 a.m.

9 Q And are you assigned to a particular part of
10 Lakewood?

11 A At that time on that night, I believe I was.
12 It's Beat 9. It's our southern east most section of our
13 city.

14 Q And as you described, did you have a -- you
15 didn't have a partner with you in your car?

16 A No.

17 Q But you were driving a marked Lakewood patrol
18 car?

19 A That's correct.

20 Q And do you know approximately how many other
21 agents would be working at 9 o'clock on that night?

22 A I would guess approximately 20 throughout the
23 city just on my watch, which is the Watch 4, 9 p.m. to
24 7 a.m. At that time there would still be Watch 3 agents,
25 which is the 3 p.m. to 11 p.m. shift.

1 Q So there's a bit of an overlap?

2 A I'm sorry, 3 p.m. to 1 a.m. Yeah, there's a
3 slight overlap there.

4 Q Did you have a sergeant on duty that night that
5 was sort of your immediate supervisor?

6 A Yeah, there's multiple.

7 Q And do you recall who they were that night?

8 A That night the sergeants that I was primarily
9 dealing with and speaking to were Sergeant Muller and
10 Sergeant Maines.

11 Q And those are both male officers?

12 A Correct.

13 Q Couple questions about your duty weapon. What
14 kind of weapon did you carry back on that night?

15 A Back on that night was the same -- the same
16 weapon. It's the Glock 17. It's a 9-millimeter.

17 Q Glock is the manufacturer?

18 A Correct. 17 is the model.

19 Q The model. 9-millimeter is the caliber or the
20 size of bullets?

21 A Correct.

22 Q How many rounds does your weapon hold?

23 A At that time it held 17 in the magazine plus one
24 in the chamber and then also two spare magazines of 17.

25 Q Okay. I'll ask you a little bit more about that

1 later, but this is the same weapon that you carried that
2 night?

3 A Yeah.

4 Q Did you have -- in your vehicle did you have any
5 other weapons, rifles or anything?

6 A At that time, no. I wasn't shotgun or rifle
7 certified.

8 Q And you have to be certified by Lakewood PD to
9 carry those?

10 A That's correct.

11 Q And by certified, does that mean special
12 training?

13 A Correct. I believe both classes are 40 hours.

14 Q Okay. I want to draw your attention to that
15 evening. I think you said you came on at nine. At about
16 10:13 p.m. do you recall getting a dispatch to 8139 West
17 Eastman Place in the City of Lakewood?

18 A I do.

19 Q Are you familiar with that part of town?

20 A Yes.

21 Q Is that in the City of Lakewood, County of
22 Jefferson?

23 A Yes.

24 Q What was the nature of that dispatch?

25 A It was actually toned out, which our dispatch

1 does for serious calls. It's basically just -- basically
2 a loud-pitched tone that goes off in our ear basically
3 saying pay attention to this.

4 Dispatch initially said it was a weapons call.
5 They said a female had called in and said somebody tried
6 to shoot her. They gathered a little more information,
7 and then they continued to say that she initially said she
8 was at a party, a male had tried to touch her
9 inappropriately, and then as she left, he shot a gun in
10 the air and then at her.

11 Dispatch then said that this occurred 25 minutes
12 prior. The female was at approximately I-25 and
13 RidgeGate, and she was refusing to come back to the scene.

14 Q And so this is information you're getting from a
15 dispatcher?

16 A That is correct.

17 Q And how did you react to that call?

18 A Well, initially, with the tone-out, like I said,
19 it being a serious call, I started driving lights and
20 sirens.

21 When dispatch said that it happened 25 minutes
22 prior, I turned off my lights and sirens because the
23 female who was calling and reporting this was already a
24 very far distance from where it occurred. And so I drove
25 there routine, is basically what it's called, and then met

1 up with my partner and basically came up with a plan on
2 how we were going to contact people involved in this.

3 Q Why did it change your approach when you learned
4 that the call was 25 minutes old?

5 A Just because if she had called and said this
6 person is currently shooting at me, I'm being fired upon,
7 that would obviously elicit a different response. We
8 would go there as fast as we could.

9 Being that she was at a safe place, she was at
10 a -- this event had occurred 25 minutes prior and she was
11 already at I-25 and RidgeGate, it didn't elicit a code
12 response, as I would say.

13 Q Is there some risk to you and other motorists if
14 you drive lights and sirens quickly to a scene?

15 A Absolutely. There's a common saying, you can't
16 help if you never make it, referring to, you know, driving
17 through a red light, running lights and sirens and you get
18 T-boned, then you're not going to help anybody.

19 It's also just going to create more problems.
20 Police officers then can't respond to original problem,
21 and they have to respond to help you in this traffic
22 accident.

23 Q You mentioned that you met up with your partner.
24 And, again, not a partner that was in your car.

25 A Correct. Another officer.

1 Q And by "partner," was that also a cover officer?

2 A Yeah. Yeah.

3 Q And who was that agent.

4 A That was Agent Devon Trimmer.

5 Q And Ms. Trimmer is a female agent?

6 A That's correct.

7 Q And was she working by herself that evening as
8 well?

9 A Yeah.

10 Q And was she wearing a uniform similar to yours?

11 A Yes.

12 Q Driving a vehicle similar to yours?

13 A Yes.

14 Q Were you familiar with her, somebody that you
15 had worked with before?

16 A Yes.

17 Q Do you recall approximately where you were when
18 you heard the tone?

19 A I would say somewhere in area of Pierce and
20 Mississippi.

21 Q Just give us your best estimate as to how long
22 it took you to get to Eastman Place.

23 A Around ten minutes maybe, five to ten minutes.

24 Q Okay. And once you got there, were you able to
25 get inside immediately?

1 A I actually made phone calls from down the street
2 initially to call the reporting party. Our dispatch, at
3 the end of them airing information, said is anybody ready
4 to take this phone call from the lady calling in. I said
5 I would take the phone call from her, so I parked down the
6 street and spoke to her.

7 Q So you didn't go immediately to the building or
8 the apartment where this incident was alleged to have
9 occurred.

10 A Correct. I would describe it as being about a
11 block away is where I stopped.

12 Q Was Agent Trimmer there with you when you
13 stopped?

14 A Yes.

15 Q And did you make some effort to contact what we
16 call the reporting party or the person that called
17 dispatch that made this report?

18 A Yes, I spoke with her.

19 Q And was that Ms. Elliott?

20 A Yeah, Emily Elliott.

21 Q Did you call her or did she call you?

22 A I believe dispatch transferred her to my work
23 cell.

24 Q Okay. And you said "work cell." Do you have
25 a -- did you have a cell phone back then that was

1 specifically dedicated to work duties?

2 A Yeah. It was issued by the department.

3 Q Separate from your personal cell?

4 A Correct.

5 Q When you spoke to her on the phone, was that
6 recorded?

7 A I don't believe so.

8 Q Okay. How did she sound on the phone?

9 A I don't specifically remember her tone on the
10 phone.

11 Q Okay. Do you remember what she told you, the
12 basic gist that she told you?

13 A Yeah. She gave me -- I actually ended up
14 speaking to her two or possibly three times, just to get
15 clarifying details later.

16 Initially, she basically told me that she worked
17 for a company called Denver Ladies. She was an escort.
18 And she gave me a quick rundown of what happened. I asked
19 for more details. She said she arrived at around 9 p.m.

20 She had met with the client. They had come to
21 an agreement of about an hour of service, and that was
22 after she had clarified that she does not partake in any
23 illegal activities. It was basically like a striptease
24 only.

25 Initially the male said that's not what he's

1 looking for, but they came to this agreement on an hour of
2 services. She said that about three-quarters of the way
3 through the services, approximately 45 minutes later, she
4 was laying on top of him wearing only her underwear in
5 sort of a T manner. He was laying down and she was laying
6 across him like this.

7 She said that he attempted to touch her vagina.
8 She told him to watch his hands. He said: I didn't know
9 I couldn't do that. She then continued with her services,
10 straddled him.

11 She said he attempted to pull her closer to him
12 by her waist, also slightly pulling on her hair. When he
13 reached around her buttocks and touched her vagina over
14 her underwear with both hands, she said she felt very
15 disrespected and she was leaving. She got off of him --

16 MR. ST. GEORGE: Your Honor, objection. This is
17 hearsay.

18 THE COURT: I'll sustain that objection.

19 MR. FREEMAN: Judge, can I be heard on that?

20 THE COURT: No. Let's continue.

21 MR. FREEMAN: All right.

22 Q (BY MR. FREEMAN) Did she describe anything
23 happening in relation to a firearm?

24 A Yes. She said that she then left. She didn't
25 think the male was following her initially. She walked

1 out of the breezeway.

2 MR. ST. GEORGE: Your Honor, objection. This is
3 more hearsay.

4 MR. FREEMAN: Judge, can I be heard?

5 THE COURT: This is different. I'm going to
6 overrule that objection.

7 Q (BY MR. FREEMAN) Go ahead.

8 A She told me that she was walking out a breezeway
9 when she noticed the male was following her. She did not
10 think he was going to continue following her because of
11 the way he was dressed. He was only wearing underwear.

12 She continued looking back as she was calling
13 her Denver Ladies dispatch to let them know that her
14 services were being terminated because she felt
15 disrespected.

16 Approximately a quarter of the distance from the
17 apartment to her car she said she turned around, saw the
18 defendant fire a gun into the air. She told the -- she
19 continued walking to her car.

20 Approximately three-quarters of the distance
21 from the apartment to her car is where the defendant was
22 as she was getting into the car. He fired another shot.
23 She said this time he had actually leveled the weapon in
24 her direction and fired.

25 She said she then got in her car, locked the

1 doors, and drove past him very fast.

2 Q Did she describe -- did she give the name of the
3 suspect?

4 A Yeah. She told me the name was Eric.

5 Q And did she tell you what apartment or what unit
6 he was in?

7 A They had told me 8119 West Eastman Place,
8 Apartment 103.

9 Q Did she describe whether or not he said that
10 this day that this happened was his birthday?

11 A Yes.

12 Q Did she ever describe anything -- sort of unique
13 features in the apartment that she noticed when she was in
14 there?

15 MR. ST. GEORGE: Object --

16 A Yes. She said there was a large tent --

17 MR. ST. GEORGE: Objection, hearsay.

18 THE COURT: Sustained.

19 MR. FREEMAN: Judge, can I be heard on these
20 objections?

21 THE COURT: No. Let's continue.

22 Q (BY MR. FREEMAN) You said that you spoke to her
23 either two or three times.

24 A Correct.

25 Q Did you call her back?

1 A Yeah, I called for clarifying details, the ones
2 that were just sustained.

3 Q What sort of details did you ask her?

4 A I asked for unique details regarding the
5 apartment.

6 Q Why did you ask that?

7 A Just to make sure that we were at the right
8 apartment.

9 Q What concerns did you have about going to the
10 right apartment?

11 A We just wanted to make sure that we were going
12 to the correct apartment. Basically we're responding to a
13 call where we have a reporting party saying she was being
14 shot at. So we don't want to be standing outside of the
15 wrong apartment and have this supposed suspect come out
16 and have our backs turned to him or something like that.
17 We want to make sure that we're in the right area.

18 Q Okay. And without telling us what unique
19 details that she described, was she able to describe some
20 fairly unique details about the inside of this apartment?

21 A Yes, I would say they were very unique.

22 Q And did you -- were you able to pass those on at
23 some point to other officers that eventually showed up at
24 the scene?

25 A Yeah.

1 Q Okay. We might go back to those later.

2 You said that Agent Trimmer was there. Was it
3 just the two of you agents at this point when you're
4 speaking to Ms. Elliott on the phone?

5 A Yes.

6 Q After you finished speaking with Ms. Elliott on
7 the phone, what was decided to do next?

8 A At that point we decided, after I spoke with
9 Emily the first time, I -- she gave me a number for a
10 dispatcher, Denver Ladies dispatcher, I spoke to. That
11 lady was actually not the dispatcher. It was, I'm
12 assuming, a manager for the company who had taken a
13 statement from the dispatcher that Emily had spoken to.

14 Q Let me stop you there. This supervisor-type
15 person that you spoke to, was that a lady named April?

16 A April Rissler, I believe.

17 Q And were you able to get some more identifying
18 information as far as the phone number of this person?

19 A I think at that point she said the company only
20 takes the client's first name. She provided a phone
21 number and an address.

22 And she basically stated that due to the nature
23 of the work they don't like to get too much personal
24 information about their clients.

25 Q Okay. They don't ask too many questions?

1 A Right.

2 Q What was the phone number that she gave you for
3 the client?

4 A I do not have the phone number memorized, so I'd
5 have to refresh my memory.

6 Q Do you have your report with you?

7 A I do.

8 Q Do you think that will help you remember?

9 A I do.

10 Q Go ahead and take a look at that and let's see
11 if that refreshes your memory.

12 A (The witness complied.)
13 865-280-3742, I believe.

14 Q 865-280-3742?

15 A Yeah.

16 Q At some point before you actually go to the
17 apartment on Eastman Place, are you in consultation with
18 your sergeant?

19 A Yeah. We basically, just due to the allegation
20 of a serious crime, we always like to keep our supervisors
21 updated on what we're finding out as we're doing our
22 investigation.

23 Q And which sergeant or sergeants are you in
24 communication with at this point?

25 A Sergeant Maines and Sergeant Muller.

1 Q Okay. And was there a determination made at
2 some point to actually go to the apartment?

3 A Yes.

4 Q And who did that? Was that you and Agent
5 Trimmer?

6 A Agent Trimmer and I, yes. Initially it was just
7 us who went to the area of the apartment.

8 Q Was this a gated apartment complex?

9 A Yes.

10 Q Did you have any trouble getting into the unit?

11 A Not that I remember. Our dispatch usually has
12 codes for gated communities.

13 Q So you were able to get in okay?

14 A Yeah.

15 Q Were you able to find the particular building
16 where this unit was located?

17 A Yes.

18 Q Did you take both of your patrol cars in?

19 A Yes.

20 Q And I'm going to show you some exhibits.

21 So I'm going to have the bailiff hand you 1, 2,
22 4 and 5. If you could take a moment to take a look at all
23 of those and let me know when you're ready.

24 A (The witness complied.)

25 (Pause in the proceedings.)

1 A I'm ready.

2 Q (BY MR. FREEMAN) Do you recognize, 1, 2, 4 and
3 5 as various aerial views of the City of Lakewood,
4 particularly the part of Lakewood where the Windsor
5 apartment complex is located?

6 A That's correct.

7 Q And do these aerial photos appear to accurately
8 depict the way that part of town and that apartment
9 complex looked back on the night of July 31st?

10 A Yes.

11 MR. FREEMAN: Judge, move to introduce,
12 People's 1, 2, 4 and 5.

13 MR. ST. GEORGE: Your Honor, I have no objection
14 to these exhibits.

15 THE COURT: 1, 2, 4 and 5 are admitted.

16 (People's Exhibits 1, 2, 4 and 5 were admitted
17 into evidence.)

18 MR. FREEMAN: And may we publish, Your Honor?

19 THE COURT: You may.

20 MR. FREEMAN: If we could have People's 1.

21 (People's Exhibit 1 was published.)

22 Q (BY MR. FREEMAN) Looking at People's 1 on the
23 big screen, does that appear to be the same as People's 1
24 that's in front of you?

25 A Yes.

1 Q And if you could sort of orient the jury to what
2 part of town we're looking at. At the bottom, sort of in
3 the east-west direction there appears to be a fairly major
4 roadway. Do you recognize what roadway that is?

5 A That would be Hampden.

6 Q Hampden or 285 at some points?

7 A Yeah.

8 Q And then sort of towards the right side there
9 appears to be a fairly large north-south roadway?

10 A That would be Wadsworth Boulevard --

11 Q So we're looking at Hampden and Wads?

12 A -- South Wadsworth Boulevard.

13 Q And in this particular exhibit, People's 1, do
14 you see the Windsor apartment complex where this 8139 West
15 Eastman Place is located?

16 A I do.

17 Q Would you mind -- I don't want to have you use
18 the laser pointer because I think from your angle --

19 A Yeah. Would you like me to go point it out?

20 Q Yeah. There's a stick right there if you want
21 to grab it. You can just point it out.

22 A Yeah. This is the area we responded to
23 (indicated).

24 Q So you're indicating an area that's sort of a
25 darker-looking cluster of units there and then towards the

1 top and somewhat to the left of the exhibit?

2 A That's correct.

3 Q Now, can you see on this exhibit the location
4 where you sort of staged with Agent Trimmer and made the
5 calls with Ms. Elliott and --

6 A That would be this parking lot right here
7 (indicated).

8 Q So that's the corner of Wads and Eastman?

9 A That's correct.

10 Q Okay. And you said you were there for a little
11 bit and then you went into the apartment complex. Can you
12 tell, roughly, on this exhibit where the building is,
13 where the suspect's unit was?

14 A Yeah, there's a thumbtack. You can kind of see
15 it's yellow. It says Unit 7, 103 right here.

16 Q Okay. And that's towards the north end of this?

17 A Yeah.

18 Q And beyond that north edge of the complex, is
19 there some sort of open space there?

20 A Beyond, yeah, this would be -- basically it's a
21 greenbelt area.

22 Q Okay. And does that sort of go into the Bear
23 Creek greenbelt at some point?

24 A Yes.

25 Q Okay.

1 MR. FREEMAN: And if we could have 2 up, please.

2 (People's Exhibit 2 was published.)

3 Q (BY MR. FREEMAN) Taking a look at 2, is this
4 just sort of a little closer-up version?

5 A Yeah, it's just slightly closer up, and then you
6 have little bit more view of the greenbelt.

7 Q Greenbelt, and some view of scale of that?

8 MR. FREEMAN: And if we could have 4 up, please.

9 (People's Exhibit 4 was published.)

10 Q (BY MR. FREEMAN) Taking a look at 4, do you see
11 that the unit -- the suspect's unit on this particular
12 exhibit?

13 A Yeah (indicated).

14 Q And you're indicating of the two
15 northeasternmost buildings, it's the one on the left?

16 A Correct.

17 Q Okay. I'm not sure if I described that well
18 enough.

19 MR. FREEMAN: If we could have 3 up.

20 (People's Exhibit 3 was published.)

21 Q (BY MR. FREEMAN) And I haven't shown you 3, but
22 3's been admitted. Do you recognize that as an aerial
23 view of the particular building?

24 A Yes.

25 Q When you went into the complex, can you tell the

1 jury where you and Agent Trimmer's -- parked your patrol
2 cars?

3 A Yeah, we would have to go one back.

4 Q One back?

5 MR. FREEMAN: Let's try, which was that, maybe
6 4?

7 (People's Exhibit 4 was published.)

8 A Yeah. We were parked approximately this area.

9 Q (BY MR. FREEMAN) And you're indicating an area
10 directly to the south?

11 A That's correct, one building away.

12 Q One building away?

13 A One building.

14 Q Why did you park down there?

15 A That's just an officer safety thing. We
16 wouldn't want to drive marked patrol cars if somebody is
17 shooting at people. We don't want to just drive up.
18 Patrol cars don't stop bullets, and they attract a lot of
19 attention.

20 Q And you described at one point when you got the
21 initial tone that you drove lights and sirens.

22 A That's correct.

23 Q Is that the overhead red and blues?

24 A Yeah. Overhead emergency lights and siren also.

25 Q Did you drive -- sorry about that.

1 Did you drive into the complex with your
2 overhead red and blues on?

3 A No.

4	Q	Why not?
---	---	----------

5 A Once again, it's an officer safety concern. We
6 would never drive up to somebody's front doorstep or
7 anything like that. We always park a short distance away.

8 And, generally speaking, even if I had run
9 lights and sirens all the way, I would have turned them
10 off quite a distance away so people don't know where
11 exactly we're at when we approach.

12 Q Why don't you want a potential shooter to know
13 that police are coming or police are in the area?

14 A It just could potentially victimize us if they
15 know exactly where we are and they are actively shooting
16 people. Then they know where we are to shoot at us.

17 Q Okay. So you parked in that area that you
18 described on -- I think we're looking at 4. Did you go on
19 foot from there?

20 || A Yes.

21 Q And can you describe to the jury where you went?

22 A We went to this area up in here (indicated).

23 Q So you went north?

24 A Yeah, we walked along here.

25 MR. FREEMAN: It might be better to go to

1 People's 3, the next one?

2 (People's Exhibit 3 was published.)

3 Q (BY MR. FREEMAN) Can you see on People's 3
4 where you approached the building from?

5 A Yeah. We walked up this, in this manner, right
6 here (indicated).

7 Q Okay. Can you describe, as you approach that
8 building, what do you see? What do you hear?

9 A It was all quiet when we arrived.

10 Q So this is after 10 o'clock at night?

11 A Uh-hum.

12 Q Do you recall what day of the week it was?

13 A I do not.

14 Q Is anybody outside?

15 A No.

16 Q Do you hear anything, any music, anything going
17 on?

18 A No.

19 Q Can you describe the weather? This is end of
20 July.

21 A Yeah, I think it was warm. I don't remember it
22 being rainy or anything like that. Clear night.

23 Q Can you describe the lighting in the front of
24 that building on the south side of that unit?

25 A Yeah, this area was fairly dark. It

1 wasn't -- there wasn't a lot of street light in there, I
2 remember.

3 Q Okay. Were you able to identify or locate the
4 front door to this Unit 103 that you had been dispatched
5 about?

6 A Yeah. It what us in this area right here
7 (indicated).

8 Q And can you describe the approach to that front
9 door?

10 A Yeah. That is a tree right here. If you can
11 see right here, there's kind of a hallway that leads down,
12 and the defendant's door was at the end of the hallway on
13 the right-hand side.

14 So we could -- by standing outside of the
15 hallway, we could barely see any part of that door.

16 Q About how long was that hallway?

17 A I would guess that it was 15 to 20 feet,
18 approximately.

19 Q Was there only one door at the end of that
20 hallway?

21 A I believe there was two, but I don't remember
22 for sure.

23 Q Do you recall being able to identify which one
24 went to Unit 103?

25 A Yeah. It was the door on the right-hand side.

1 Q At that point were you aware of whether Unit 103
2 was a ground floor unit, a second floor unit or both?

3 A No.

4 Q Were there some windows on the front of that
5 building that caused you any safety concerns?

6 A Yeah, there's windows -- I believe this little
7 outcrop right here is a window.

8 So we didn't know from his door if it was just
9 stairs up to a second-story level or if it was a flat
10 level only on the ground floor or it was booth. We had no
11 idea.

12 Q And upon your initial approach, did you know
13 whether or not there was a back door to that unit?

14 A I don't believe we knew initially.

15 Q When you first got there with Agent Trimmer, did
16 you immediately try to make contact with the suspect at
17 Unit 103?

18 A No.

19 Q Why not?

20 A Initially we basically did surveillance of this
21 area looking for damaged property and shell casings, given
22 the report.

23 Q What do you mean by "damaged property?" What
24 are you looking for?

25 A Bullet holes.

1 Q Did you have any idea where to look?

2 A Initially, I don't believe we did. It wasn't
3 until I made a follow-up question with Em -- follow-up
4 phone call with Emily where I got a better description of
5 where she was parked.

6 Q And based upon her description, can you point
7 out on People's 3 where she indicated or at least she
8 described to you where she was parked?

9 A She had told me that if you were facing the
10 building, the south side of the building, she was parked
11 to the right, and she had indicated that she was parked
12 one or two spots away from a handicap spot.

13 Q And do you see that area of parking just above
14 the exhibit sticker?

15 A Yes. So this would be facing the south side of
16 the building to the right, and here's a handicap spot.

17 Q Did you look in that area for any evidence of
18 gunshots, I guess?

19 A Yes.

20 Q And what were you looking -- were you looking on
21 vehicles, on trees? What were you doing?

22 A Yeah, we had tried to look at the side of this
23 building to see -- given her statement that he had leveled
24 out and shot towards her, we were looking at the side of
25 this building to see if we saw a bullet hole in there.

1 It was very dark, and we were responding to a
2 call where somebody was shooting at people. So we
3 obviously weren't crawling around looking for shell
4 casings, but we were trying to light up the street to see
5 if we saw the shine of shell casings.

6 MR. FREEMAN: And if we can switch to Exhibit 4
7 please.

8 (People's Exhibit 4 was published.)

9 Q (BY MR. FREEMAN) Taking a look at Exhibit 4,
10 again identifying that building, and then it looks like
11 that guest parking area sort of to the south and between
12 those two buildings, can you point out the building at
13 which you looked at for evidence of a bullet strike?

14 A (The witness complied.)

15 Q So this would be this building to the southeast
16 of the defendant's building?

17 A Yeah.

18 Q Okay. And were you using anything to illuminate
19 this search?

20 A Just our flashlights.

21 Q And did you find any evidence of bullet strikes?

22 A No.

23 Q You say you were looking for bullet casings.
24 What are those?

25 A It would be the -- basically a bullet has the

1 projectile that comes out, and then there's usually a
2 brass or aluminum casing filled with gunpowder.

3 When you're speaking about semiautomatic
4 handguns, after you fire it, the projectile comes out, and
5 the casing is automatically ejected out of the firearm.

6 If you were dealing with a revolver, that would
7 not be the case. It would stay in the cylinder.

8 Q Did Ms. Elliott tell you what kind of gun she
9 thought was used?

10 A No.

11 Q So were you certain that there would be a casing
12 outside?

13 A No.

14 MR. FREEMAN: If we could switch back to
15 People's 5.

16 (People's Exhibit 5 was published.)

17 Q (BY MR. FREEMAN) Look at People's 5. Do you
18 see the general area where you looked for a casing?

19 A Yeah. It would have been along this corridor
20 here.

21 Q And again using the your flashlights to
22 illuminate?

23 A Yes.

24 Q How long do you think you looked for casings?

25 A I would say approximately ten minutes.

1 Q Did either of you find any?

2 A No.

3 Q Was there any effort to make contact with any
4 neighbors to see if they saw or heard anything?

5 A Yeah. While I was on the phone asking follow-up
6 questions to Emily, Agent Trimmer had spoken to one unit.
7 I believe she -- I can't say for certain, but I believe it
8 just appeared that somebody was awake inside so she
9 knocked on that door and spoke to somebody.

10 Q And I don't want you to testify as to what that
11 neighbor told her.

12 A Right.

13 Q But do you know, was it a neighbor in the
14 defendant's building or a different building?

15 A I believe -- once again, I was on the phone, but
16 I believe it was actually a corner unit from one of these
17 buildings over here (indicated).

18 Q So just so we're clear, a corner unit in the
19 building to the southeast that you had been looking for
20 bullet strikes on?

21 A Can we go back to the larger view?

22 MR. FREEMAN: Yeah. Let's go back to 4.

23 (People's Exhibit 4 was published.)

24 A I was looking for evidence of the crime over
25 here, and I believe she spoke to the person that lived

1 here (indicated).

2 Q (BY MR. FREEMAN) Okay.

3 A But once again, I was on the phone. I'm not
4 certain which exact unit she spoke to.

5 Q So you think it was more the building directly
6 south?

7 A Yeah, basically directly south, slightly to the
8 east.

9 Q Okay. And, again, without -- without telling us
10 what she told you the neighbor said, she came back after
11 that conversation, and did you meet with Agent Trimmer?

12 A Yeah.

13 Q Now, just so we're clear, are you in contact or
14 at least able to be in contact with your dispatcher at
15 this time?

16 A Yes.

17 Q And did you get any indication that any other
18 people had called in to report this -- possible gunshots?

19 A I don't believe anyone else called in.

20 Q So as far as you know, no other 911 calls
21 regarding this incident other than Ms. Elliott.

22 A That's correct.

23 Q Once you finished your search for possible
24 bullet strikes and possible casings and Agent Trimmer had
25 spoken with one or more neighbors, what did you do next?

1 A I think at that point it was about that time
2 that Sergeant Muller and Sergeant Maines were showing up
3 on scene, and we decided to call the defendant.

4 Q Okay. Why don't you go ahead and have a seat
5 for a little bit.

6 A Okay.

7 Q I appreciate you standing there for a while.
8 Do you recall if Sergeant Muller or Sergeant
9 Maines, which of them arrived first or did they arrive
10 about the same time?

11 A I believe they arrived at about the same time.

12 Q Were they working in the same vehicle?

13 A No.

14 Q So they weren't partners that night in that
15 sense?

16 A No. I believe they were actually working
17 different shifts.

18 Q Okay. And were they both wearing police
19 uniforms similar to the one that you and Agent Trimmer
20 were wearing?

21 A That's correct.

22 Q And armed with the belt similar to yours and
23 Agent Trimmer's?

24 A That's correct.

25 Q Once the sergeants were on scene, did they sort

1 of take over the direction of the investigation?

2 A Yeah. You could say that.

3 Q Okay.

4 A The decision was made to try to make phone
5 contact with the defendant.

6 Q Okay. And do you remember who -- who decided
7 that or whose idea that was?

8 A It was one of the supervisors, I'm not sure
9 which one.

10 Q Okay. Was there ever discussion about just
11 going up to the defendant's front door and knocking?

12 A No.

13 Q Why not?

14 A Given the call that we were responding to, and a
15 long hallway, and we couldn't really see the door --
16 doorways are what we like to call fatal funnels. If you
17 ever notice, police officers usually knock on the door and
18 then step to the side because you don't want to be trapped
19 in a doorway, let alone a doorway that leads to a hallway.

20 If something were to go wrong and somebody were
21 to step out and start shooting, perhaps we would have
22 nowhere to go sideways. We would have to retreat and turn
23 our backs. So generally speaking, we don't make contact
24 -- we try not to make contact in hallways, and we don't
25 stand in front of doorways. It's a basic officer safety

1 thing that's taught in the academy.

2 Q It was never an option to just go up to the door
3 and knock?

4 A No.

5 Q What about using, like, a loudspeaker to order
6 or request the suspect, Eric, to come outside?

7 A Never seen that happen before.

8 Q So the decision was made to call. You had
9 indicated earlier that you got a phone number from April.
10 Was that the number that was called?

11 A I believe so.

12 Q And who initially tried the call the defendant?

13 A I did.

14 Q And did you do that using your work cell?

15 A Yes.

16 Q Do you remember what that number was back then?

17 A My work cell number?

18 Q Yeah.

19 A I believe it was 720-616-1471.

20 Q 616-1471?

21 A Yeah, I believe that's right.

22 Q And do you recall, prior to trying to call the
23 defendant's number, the 858 number, whether you unblocked
24 or did anything to unblock your number?

25 A I don't remember if I did or not.

1 Q Do you remember physically where you were
2 standing when you tried to call the defendant the first
3 time?

4 A Yeah. We were standing outside of the hallway.
5 I believe it was just on the west side. So right outside
6 of his building, the hallway that leads up to his door.
7 We were just standing on the west side of that.

8 Q And you say "we." Who was with you?

9 A Sergeant Muller.

10 Q Okay. Where was Agent Trimmer and Sergeant
11 Maines?

12 A I believe at some point around this time they
13 had circled around to the north side of the building to
14 see if they could see somebody running out of the building
15 and whatnot. It's basically a containment issue.

16 Q Okay.

17 MR. FREEMAN: And if we could have People's 3
18 up, please.

19 (People's Exhibit 3 was published.)

20 Q (BY MR. FREEMAN) So taking a look at
21 People's 3, you're just outside this hallway --

22 A That's correct.

23 Q -- with Sergeant Muller. Do you recall Agent
24 Trimmer and Agent Maines, which direction they went to go
25 around the back? Did they go clockwise or

1 counterclockwise?

2 A Yeah, if you were facing at the TV, I believe
3 they would have gone counterclock -- they would have gone
4 to the right, counterclockwise, and circled around. I do
5 not know exactly where they went from there.

6 Q And you said it was a concealment issue? Can
7 you elaborate?

8 A Containment.

9 Q Containment.

10 A Yeah.

11 Q Can you elaborate a little bit about that?

12 A Yeah. We just wanted to know if somebody went
13 running out the back door, obviously, raise some
14 suspicions. So we also, when we respond to a call like
15 this, the first thing is to set containment, basically, a
16 perimeter.

17 Q So somebody doesn't run away from police
18 contact?

19 A Yeah, exactly.

20 Q Was there any concern that somebody could come
21 out the back door and circle around to where you were --

22 A Yeah.

23 Q -- and sort of ambush you from behind?

24 A Absolutely. Especially with the way the
25 building's shaped. If somebody would have gone out the

1 back door and we were all standing at the front door, they
2 could easily circle around.

3 Q And when Agent Trimmer and Sergeant Maines left
4 your side, did you remain in radio contact with them?

5 A Yeah.

6 Q And did you have your earpiece in?

7 A Yes.

8 Q And so you were the first person to attempt to
9 call. Did you call that 865 number that you gave us
10 earlier?

11 A I believe that's the number I called, yes.

12 Q And what happened when you called that number?

13 A The first time I called it there was no answer,
14 and I left a voicemail.

15 Q On the voicemail, was it like that sort of
16 generic computerized voice or was it like -- did it sound
17 like a voice naturally?

18 A I believe it came back to the defendant, Eric
19 St. George, I believe.

20 Q And do you recall what, in essence, the message
21 said?

22 A My message?

23 Q No, the voicemail message.

24 A I don't recall exactly what was said.

25 Q Okay. Do you remember if it identified whose

1 phone it was?

2 A Yeah. It identified as the phone of Eric St.
3 George.

4 Q Okay. And as best as you can recall, what did
5 you say when you left the message?

6 A Basically a standardized recording that I leave
7 when I'm trying to contact somebody. I said, This is --
8 something to the effect of: This is the Lakewood Police.
9 I need to talk to you. Can you call me back at this
10 number.

11 Q And what number did you give?

12 A I believe I gave our dispatcher's number, which
13 would be 303-987-7111.

14 Q Okay. And that number that you just gave, you
15 said that's dispatch's number. Is that a non-emergency
16 line?

17 A That's correct.

18 Q So obviously emergency would be 911. This is a
19 non-emergency line?

20 A Yeah.

21 Q Did you identify yourself by name?

22 A I don't recall if I said this is Agent Brennan.
23 I know I said this was the Lakewood Police.

24 Q Did you indicate why you wanted to speak with
25 Mr. St. George?

1 A I don't remember if I left a detailed message or
2 not, just that I needed to speak with him.

3 Q Okay. What did you do after that first call,
4 that first attempt?

5 A I called again.

6 Q How quickly after the first call did you call
7 again?

8 A I'm not sure, but it was not a long time.

9 Q Okay.

10 A It was probably close to being immediately
11 after.

12 Q And what was the result? What happened the
13 second call?

14 A There was an answer.

15 Q Okay. And what did the voice sound like, male
16 or female?

17 A It sounded like a male.

18 Q And what was the conversation? What did you
19 say?

20 A I said something to the effect of: This is
21 Agent Brennan with the Lakewood Police Department. We
22 need to speak to you. And every time I said this, the
23 defendant said: What? And I basically just repeated
24 myself, I believe, three times, approximately, saying:
25 This is the Lakewood Police Department. Can you come

1 outside and speak to me? Continuously he said: What?

2 Finally I said: Do you understand what I'm
3 saying to you or can you understand what I'm saying to
4 you? And he said no. And then there was silence where I
5 continued to try to ask questions but it appeared as
6 though he had just set the phone down.

7 Q Okay. How long do you think that conversation
8 took place?

9 A The entire conversation? It was not a long
10 conversation. I would say probably less than a minute, I
11 don't know.

12 Q During your time as an officer, and even
13 including your life experience, have you had an
14 opportunity to speak with persons that were intoxicated?

15 A Yes, every -- almost every shift, I'd say.

16 Q So quite a bit of experience. Have you learned
17 to recognize some of the outward symptoms of intoxication
18 that people display when they've had too much to drink?

19 A Yes.

20 Q Can you sometimes hear it in their voice?

21 A Yes.

22 Q And obviously you hadn't spoken with this
23 defendant before this day, but just in your brief
24 conversation with him that you had on this evening, were
25 there any outward indications that he had been drinking

1 just based upon the sound of this voice?

2 A Yeah, even though the statements he made were
3 very short, speaking one word only, I could tell that he
4 had some slurred speech.

5 Q When you were speaking with him, was there any
6 noise or anything in the background that you thought was
7 interfering with your ability to communicate with him?

8 A No.

9 Q So he just kept responding "what"?

10 A Yeah. He said "what" after each response until
11 I asked him if he could -- or can he understand me, and he
12 said "no."

13 Q And I think you said at one point you asked him
14 if he would come outside and speak to you?

15 A That's correct.

16 Q Did you ever try to tell him why you wanted to
17 speak to him?

18 A I don't recall what the exact conversation was,
19 no.

20 Q Do you know about what time these calls with the
21 defendant, or Mr. St. George, had taken place?

22 A I do not know the time of the calls, no.

23 Q And when you were speaking with him, or at least
24 attempting to speak with him, were you on speakerphone or
25 just your regular speaker up to your ear?

1 A Back then our department-issued phone was a flip
2 phone, and I was just holding it up to my ear.

3 Q And was Sergeant Muller nearby when you were
4 doing this?

5 A Yeah.

6 Q You said that it appeared at one point that the
7 person on the other end of the line appeared to just set
8 the phone down?

9 A That's correct.

10 Q Did that call ever end or how did that call end?

11 A After I had basically talked to myself for a
12 while because there was no response, I hung up the phone.

13 Q Okay. What did you do after that?

14 A Called again.

15 Q And what happened when you called again?

16 A There was no answer, and I left another
17 voicemail saying: This is the Lakewood Police. I need to
18 speak with you. Call back at this number, which once
19 again, I gave dispatch's number.

20 Q This third call, was it, more or less, right
21 after you terminated the second call?

22 A I believe so.

23 Q Did you personally make any further calls or
24 attempts to reach the defendant by phone?

25 A No, not personally.

1 Q Okay. At some point did Sergeant Muller make
2 attempts?

3 A Yes.

4 Q Was that done in your presence?

5 A Yes. I was right next to him.

6 Q And was that with your phone, or did he use a
7 different phone?

8 A I believe he used his own phone.

9 Q Did he have a similar flip phone, or did he have
10 a different, maybe fancier --

11 A I would imagine that he used his work phone,
12 which would have been a similar flip phone, but I'm not
13 certain.

14 Q Could you hear both ends of the call or just his
15 half?

16 A I could only hear Sergeant Muller. He was
17 speaking, as I was, with the phone to his ear.

18 Q Was his first call -- how quickly did that occur
19 after your second voicemail?

20 A I believe after the second voicemail, my third
21 call, I hung up, Sergeant Muller asked for the defendant's
22 phone number, and I gave to it him and he called.

23 Q And you gave him the same 865 number?

24 A That's correct.

25 Q And hearing his half of the conversation, at

1 least of his initial call, did it sound like he got
2 voicemail, or did it sound like he was speaking with a
3 person?

4 A Sounded like he was having a conversation with a
5 person.

6 Q And can you describe, as best as you can recall,
7 what you heard him saying?

8 A Yeah. He was saying some of the same things I
9 was. He was saying: Can you come outside, come speak
10 with us? This is the Lakewood Police. Please keep your
11 hands up. Don't have anything in your hands.

12 MR. ST. GEORGE: Objection, hearsay.

13 MR. FREEMAN: Judge, it's not offered for the
14 truth. It's simply offered to show the effects on the
15 listener.

16 THE COURT: Sustained.

17 Q (BY MR. FREEMAN) Did Sergeant Muller just make
18 one call or did he make more than one?

19 A I believe he only made one call.

20 Q What happened at the end of that call?

21 A Sergeant Muller spoke to me. He turned the
22 phone away from his face and he said: I need you to air
23 that he's being threatening, and he said: He has
24 something in his hands. And when he says "air," that
25 means over the radio. So he told me that, and I aired

1 that over the radio.

2 Q After you aired that over the radio, did you
3 change your position in relation to his front door?

4 A I believe at that time it was approximately the
5 time that we had moved slightly to the west.

6 MR. FREEMAN: And if we could have 3 up, please.

7 (People's Exhibit 3 was published.)

8 Q (BY MR. FREEMAN) Can you describe for the jury
9 where you went to the west? And when you say "we," did
10 you go with Sergeant Muller?

11 A Yeah. Did you want -- would you like me to
12 go --

13 Q Yeah, I'd appreciate it, if you don't mind.

14 A It was approximately this time that the two of
15 us had moved this way.

16 Q Okay. You're indicating to more of the --

17 A The west.

18 Q -- southwest corner of the building? And why
19 did you do that?

20 A Just for safety considerations. Just to get
21 time and distance.

22 Q Okay. Now, you indicated that you aired
23 Sergeant Muller's concerns or directive. Would that have
24 been something that would have gone out to Agent Trimmer
25 and Sergeant Maines, who were on the other side of the

1 building?

2 A Correct.

3 Q And once you got to that roughly southwest
4 corner of the building, what happened next?

5 A Approximately that time, I believe, is when
6 Sergeant Maines, who was on the other side of the
7 building, had aired that the defendant had come outside
8 his backdoor and racked some sort of gun.

9 Q And what does that mean to you, that somebody
10 racked a gun?

11 A To me, I mean, if it was a shotgun, it would
12 mean that he would move the action, which is an audible
13 thing you can hear, and it's very distinct. With a
14 handgun, it would be pulling the slide back. And with a
15 rifle it would be somehow using the charging handle.

16 And basically it's loading -- or simulating
17 loading a live round into the chamber.

18 Q And is that, in your experience, a fairly
19 distinctive sound?

20 A Yes.

21 Q And is that something that a person will need to
22 do to make a gun ready to fire if it is that type of
23 weapon that needs to be racked?

24 A Yes.

25 Q What happened after Sergeant Maines aired that

1 occurrence?

2 A I believe he went back inside -- the defendant
3 went back inside, and then shortly after Sergeant Maines
4 had aired that he was back outside. Sergeant Maines could
5 see him.

6 There's a -- I believe it's this line right
7 here. There's approximately about a 6-foot tall security
8 fence, a metal fence. Sergeant Maines couldn't see what
9 he had in his hands, but he was airing that he was
10 somewhere in between the building and that fence.

11 Q And just so we're clear, you can't see what's
12 going on on the north side of this building?

13 A No.

14 Q You're only hearing what Sergeant Maines and
15 possibly Agent Trimmer are describing?

16 A Yes.

17 Q And do you remain with Sergeant Muller roughly
18 at that southwest corner?

19 A Yes, somewhere around there.

20 MR. FREEMAN: Judge, this is probably a good
21 time to take a lunch break.

22 THE COURT: All right. Do you want to resume --
23 we can stop right now. Ladies and gentlemen, we're going
24 to stop for the lunch hour right now.

25 Please keep an open mind. Don't talk about the

1 case in any way. Don't do any research. We'll see you
2 back here around -- let's say ten after one. Ten after
3 one in that area overlooking the atrium on the fifth
4 floor. We'll see you back here then.

5 (The jury left the courtroom.)

6 THE COURT: You can step down.

7 THE WITNESS: Thank you.

8 (The witness was excused.)

9 THE COURT: Okay. So there were objections with
10 reference to hearsay and request for an offer of proof
11 from the People I didn't permit.

12 I want to say that I was looking at People v.
13 Eppens, 979 P.2d 14. That's a Colorado Supreme Court
14 case. That Colorado Supreme Court case tells the Court
15 about prior consistent statements and how they can be
16 used. And they can be used for rehabilitation when a
17 witness's credibility has been attacked. And as such, the
18 Court permits prior consistent statements to come in under
19 certain aspects of it.

20 Eppens gives a pretty good explanation of all of
21 those statements. There also, of course, the Rule
22 801(d)(1)(B) does talk about prior consistent statements
23 to refute allegations of improper influence or motive.
24 But this was the case that expanded the rule in the case.

25 Eppens also tells the Court to be cautious to

1 not permit cumulative prior consistent statements so that
2 that was the grant of the hearsay objections to certain
3 portions of the witness's statement that were not
4 impeached.

5 MR. FREEMAN: Judge, could I just explain where
6 I was going with that line of questioning and why?

7 THE COURT: Surely.

8 MR. FREEMAN: So what occurred is, as the Court
9 has heard so far, is that Agent Brennan spoke with
10 Ms. Elliott, and in an attempt to identify the defendant's
11 particular unit, because of their safety concerns, she
12 described a couple of unique features, one being a tent up
13 in the living room, and the other being a large aquarium.

14 That was communicated by Agent Brennan to
15 Sergeant Maines. And when Sergeant Maines goes around the
16 back of the building, at one point he looks in the window
17 of a unit where the lights are on, and he sees a tent and
18 he sees a large aquarium, and thereby they're able to
19 identify the defendant's unit.

20 And then they see things inside, at one point
21 they see the defendant apparently on the phone, ostensibly
22 with the officers having the conversations that were
23 described. And then shortly after that, the lights go
24 out, and that causes certainly Sergeant Maines and Agent
25 Trimmer not only to have certain concerns but to also sort

1 of change their approach.

2 And so I'm trying to link that up. I understand
3 that the hearsay objection was made, but it's not offered
4 for the truth. It is offered to explain the conduct of
5 these listeners and why they take certain steps.

6 And I think that's extremely important because
7 the defendant spent a lot of time in his opening attacking
8 the conduct of the officers, basically second guessing and
9 attacking their approach to him and why they did and
10 didn't do certain things.

11 And I think it's important for the Court to
12 understand, and the jury especially to understand, why the
13 officers took certain steps and why they approached it a
14 certain way and what their safety concerns were, because
15 he's attacking everything that they're doing.

16 THE COURT: Any response?

17 MR. ST. GEORGE: Your Honor, I would offer to
18 the Court that my attack of their conduct is
19 inconsequential to the case in the fact that I'm the one
20 that's on trial here, not the police. And thusly, the way
21 I reacted to their conduct is the only thing of
22 consequence, not what they thought or what they were
23 doing. It only matters what they did, in fact, do, and my
24 reaction to it is the matter at hand.

25 THE COURT: All right. So as I indicated, the

1 rulings were made in concert with that Supreme Court case.
2 It is appropriate for -- or certainly the district
3 attorney can bring into evidence what the officers did,
4 how they proceeded, et cetera.

5 The witness had already testified about the
6 singular -- well, what were unusual to her factors within
7 the apartment, particularly the tent, and then there was
8 also questioning about the aquarium.

9 And so how the officers proceed is relevant to
10 the proceeding. So it is relevant. That didn't have
11 anything to do with the Court -- the objection that I
12 heard was not why the Court sustained objections to
13 hearsay and overruled objections to hearsay.

14 I'll see everyone back here at 1 o'clock.

15 MR. MENGES: Thank you, Judge.

16 (A recess was taken.)

17 THE COURT: Okay. So we have our jurors.
18 Everybody ready for the jury?

19 MR. FREEMAN: Yes, the People are ready.

20 MR. ST. GEORGE: As well.

21 THE COURT: Okay. We'll bring the jury out.

22 (Pause in the proceedings.)

23 (The jury entered the courtroom.)

24 THE COURT: Okay. Everybody can be seated,
25 please. And you can resume your questioning.

1 MR. FREEMAN: Thank you, Your Honor.

2 Q (BY MR. FREEMAN) Agent Brennan, before we took
3 a break, I think we were at the point where you had -- you
4 and Sergeant Muller had moved to the -- I think you
5 described the southwest corner of the building?

6 A Yeah.

7 Q I want to go back a little bit to the entryway
8 leading up to the defendant's door. You've got People's
9 112 in front of you. Do you recognize that as a
10 photograph of that area of the scene and the unit?

11 A Yes.

12 Q Does that accurately depict how that looked on
13 that night?

14 A Yes.

15 MR. FREEMAN: Judge, move to introduce
16 People's 112.

17 MR. ST. GEORGE: No objection, Your Honor.

18 THE COURT: 112 is admitted.

19 (People's Exhibit 112 was admitted into
20 evidence.)

21 MR. FREEMAN: And may I publish?

22 THE COURT: You may.

23 (People's Exhibit 112 was published.)

24 Q (BY MR. FREEMAN) Taking look at the big screen,
25 does that appear to be the same as 112 that's in front of

1 you?

2 A Yes.

3 Q And this is that area that you described and you
4 sort of called it a fatal funnel because of the safety
5 concerns that it raised for you?

6 A Yes.

7 Q Can you see the defendant's door or the door to
8 the suspect's unit in that photograph?

9 A Yes.

10 Q And where is that door?

11 A Would you like me to go point it out or just
12 describe?

13 Q If you can just describe it from where you're
14 at, that's fine.

15 A It's at the end of the hallway on the right-hand
16 side.

17 Q And can you tell from this picture if there's
18 another door to the left to an entrance to another
19 apparent unit?

20 A Yeah. You can barely see it, but there is a
21 unit directly across the hall there.

22 Q Now, do you recall at the mouth of this hallway,
23 basically where the person that has the camera in this
24 photograph would be standing or maybe directly behind, is
25 there anything there that obstructs the view down into

1 this hallway?

2 A No. On the other side there would be -- there's
3 a tree, I believe. But from where we were at, I
4 believe -- I remember making the phone calls, basically,
5 on the outside of this hallway just to the left side.

6 Q Okay. And was this your -- roughly your
7 viewpoint when you did that?

8 A Yes.

9 Q Okay.

10 MR. FREEMAN: Thank you, Your Honor. I think we
11 can have the lights.

12 Q (BY MR. FREEMAN) So let's fast-forward to you
13 and Sergeant Muller are at the southwest corner of the
14 building. You described some radio contact between
15 yourselves and Agents Trimmer and Maines?

16 A Yes.

17 Q And I think that you clarified before lunch that
18 the things that they were describing either seeing or
19 hearing, you couldn't see or hear from your vantage point?

20 A That's correct. They were on the other side of
21 the building.

22 Q And did you roughly remain in that position for
23 a period of time while this incident sort of unfolded?

24 A Yeah. There was some slight movement later on,
25 but it was -- we stayed on the southwest side of the

1 building throughout the incident the entire time.

2 Q Okay. And I think that you said at one point
3 that Sergeant Maines aired that someone had come out the
4 back door of the unit and racked a gun?

5 A That's correct.

6 Q Did you hear that?

7 A No.

8 Q Did Sergeant Maines describe what kind of gun he
9 thought it was?

10 A Not to my memory.

11 Q Okay. What was the next thing that they aired
12 after airing that event?

13 A He had gone back inside a short time later -- or
14 that he'd come back outside, and he was in between the
15 back of the building, which is the north side, and that
16 6-foot fence that I described earlier.

17 Sergeant Maines said he couldn't see what he was
18 holding because it was so dark on the back side, but he
19 was basically walking around back there.

20 Q Did Sergeant Trimmer -- I'm sorry. Did Sergeant
21 Maines and/or Agent Trimmer indicate at some point that
22 they changed position, moved to a different spot?

23 A I do not remember that.

24 Q Okay. What was the next event that they aired?

25 A The next thing I remember hearing was Sergeant

1 Maines radioing to Agent Trimmer saying that the male is
2 coming towards her quickly, he's coming at her very fast,
3 in her direction.

4 Q And what was the next thing that you saw or
5 heard?

6 A The next thing I heard was six to eight
7 gunshots.

8 Q And where did it sound like the gunshots were
9 coming from?

10 A To me it sounded like they were coming from what
11 would be the east side of the building.

12 MR. FREEMAN: And if we could go -- if we could
13 go to Exhibit 3, please.

14 (People's Exhibit 3 was published.)

15 Q (BY MR. FREEMAN) So Exhibit 3 is back up. You
16 indicated that for a period of time you and Sergeant
17 Muller were on that -- towards that southeast corner of
18 the building?

19 A Southwest.

20 Q Southwest, I'm sorry.

21 Is that the same approximate location you were
22 when you started hearing gunshots?

23 A I believe so.

24 Q And where did it sound like the gunshots were
25 coming from?

1 A Sounded like they were coming from the east side
2 of the building.

3 Q Okay.

4 A As you can see, there's -- the roadway turns up.
5 There's basically some garage units, some parking. That's
6 where it sounded like it was coming from from my vantage
7 point.

8 Q How many gunshots do you think you heard?

9 A I heard somewhere between six and eight.

10 Q How close in succession were they?

11 A Very.

12 Q And --

13 A They all seemed to basically overlap.

14 Q Okay. And I'm guessing you're not looking at a
15 stopwatch, but can you give us your best estimate as the
16 time it took for these six to eight gunshots from
17 beginning to end?

18 A 10 seconds, maybe.

19 Q Did they sound like they were coming from the
20 same gun or different guns?

21 A There was a different noise, but I couldn't -- I
22 couldn't differentiate what type of firearm it was from my
23 vantage point.

24 Q Okay. Let me ask you about that, just so we're
25 clear. Have you, as part of your training, or just in

1 your personal life, ever been around a shotgun being
2 fired?

3 A Yes. Since this incident, I am now shotgun and
4 rifle certified.

5 Q You weren't at the time?

6 A No.

7 Q Had you been around in the presence of a shotgun
8 being fired on the night this occurred?

9 A Yes.

10 Q And how many times do you think -- or maybe on
11 how many different occasions had you been in that
12 situation?

13 A Probably around a hundred.

14 Q Okay. So were you familiar with the sound of a
15 shotgun?

16 A Yeah.

17 Q How about a handgun firing, specifically a
18 9-millimeter semi-auto like you carry? I'm assuming you
19 had to qualify at the range and things like that.

20 A Yeah.

21 Q So you're familiar with that sound?

22 A That's correct.

23 Q From where you were on the other side of the
24 building, the distance, were you able to differentiate the
25 kinds of sounds that you heard?

1 A I was not able to basically describe -- I
2 couldn't tell you which particular guns had been fired or
3 at what time, but I can just tell that there were two
4 different sounds. I think it was probably because of the
5 echoing going on between the buildings and my location.

6 Q When the gunshots stopped, what happened next?

7 A I believe that's when, obviously, it was aired
8 that shots were fired. I believe Sergeant Maines did
9 that, and then he asked if Devin was okay. Devin had
10 responded she was okay but that she didn't know where the
11 defendant had gone after the -- the gunfight.

12 And then Sergeant Muller and myself had actually
13 moved further west into cover behind a car just for better
14 containment, because we knew that -- based on Devin and
15 Sergeant Maines's positions, we knew that he had gone back
16 behind the building, because they would have seen if he
17 had walked south.

18 So our kind of thought was that he may be trying
19 to get away and continue westbound. So we went -- do you
20 mind if I go point it out?

21 Q No, please do.

22 A It will be a little bit easier to explain. So
23 we were somewhere in this area at the time that the --
24 when the shots were fired. And then when they aired that
25 they didn't know where he went, we had actually gone over

1 here to approximately this location. There was a car
2 parked, or some sort of vehicle, I don't exactly recall
3 what it was. And we took cover behind that in an attempt
4 to, you know, have cover, be able to see if he leaves this
5 way but, yet, just provide some sort of containment.

6 Many people were over there. And at this
7 time -- because when they aired that he had come outside
8 and racked his shotgun, and then they aired that shots
9 were fired, more people are coming to respond now. So
10 basically every available police officer that we had was
11 coming.

12 So when Sergeant Muller and I had moved over
13 here, there was more police officers arriving on the
14 scene. And they were taking -- they had -- I know for a
15 fact that he had come up here, and they were now watching
16 the front door. So we had containment around both sides.

17 Q And you're indicating that officers that were
18 arriving were coming from the south in a northerly
19 direction?

20 A Yeah. Basically arriving in the same manner
21 that we did.

22 Q Okay. And could you see them, those agents,
23 arriving?

24 A No. I couldn't from over here. I could hear
25 things being -- yelling, yelling going on here later. I

1 don't remember being able to see them. I know we were
2 joined by another agent over here later, but I don't think
3 I could see them in this area.

4 Q And as you were situated at that spot a little
5 bit west of the building, did you ever see anybody come
6 out from behind the building in a westerly direction?

7 A From this way, no.

8 Q After that initial group of six to eight shots,
9 did you ever hear any more gunshots?

10 A Yes.

11 Q And how many more did you hear?

12 A There was a single gunshot that sounded -- I
13 would describe it as muffled. It sounded like it was
14 indoors, and it was coming from the general vicinity of
15 his apartment.

16 Shortly after that, there was two more that were
17 also muffled gunshots from, presumably, inside the
18 apartment.

19 Q Approximately how long after the end of those
20 initial six to eight shots was it until you heard the
21 first muffled shot?

22 A I would say approximately a minute.

23 Q And then how close together were those three
24 muffled gunshots?

25 A There was the one, and then shortly after,

1 possibly 15 seconds, there was two more.

2 Q And did those sound like they came from the same
3 gun or different guns?

4 A Yeah, there was a slight difference in tone.
5 They -- actually, I believe they sounded a little bit
6 quieter, but it was coming from the same area, and it
7 sounded muffled just like the first one.

8 Q Okay. And I just want to make it clear, because
9 my question might not have been great. The three muffled
10 shots, did those sound like they came from the same gun or
11 different guns?

12 A They sounded like the same gun.

13 Q Okay. What happened after the third muffled
14 gunshot?

15 A I believe after the third muffled gunshot there
16 was plenty of police agents in this area. Our dispatch
17 had received a phone call, a 911 emergency call from
18 somebody saying the they had been shot. And I believe he
19 gave the same address as we were at. So we were pretty
20 sure it was him.

21 Our sergeant had gone on the air, Sergeant
22 Maines, got on the air and said if he would like medical
23 treatment, then he needs to come outside and have nothing
24 in his hands.

25 Shortly after that, it wasn't immediately, but

1 shortly after, I could hear the police agents in this area
2 screaming: Show us your hands. Come outside. Show us
3 your hands. And presumably he had come outside at that
4 time.

5 From where I was at, I could not see what was
6 going on. I could only hear what they were yelling.

7 Q Did you maintain your position on that west side
8 while that commotion was happening out front?

9 A That's correct. I stayed there until he was
10 taken into custody outside and the apartment was cleared
11 for other people who may be injured or other people
12 involved in this.

13 Q So were you present when a person came out and
14 was taken into custody?

15 A I was present in the sense that I was over here.

16 Q But you didn't see him come out and get
17 arrested --

18 A No.

19 Q -- or anything of that?

20 Okay. Did you ever see the person that came
21 out?

22 A I don't recall seeing him ever.

23 Q Okay. And did you participate in any sort of
24 clearing of the apartment?

25 A No.

1 Q Did you ever go in the unit at all?

2 A Never went inside.

3 Q Did you ever walk around the building and help
4 look for evidence or do anything like that?

5 A Yeah. Later I eventually conducted a canvass,
6 basically, going door to door to residents here and asking
7 them if they heard or saw anything. Basically just trying
8 to talk to more witnesses of the incident.

9 Q And that canvass, that process of looking for
10 witnesses, were you the only officer that was tasked with
11 that?

12 A No, there was many others. I would say
13 approximately at least four others.

14 Q And do you know if the efforts to find potential
15 witnesses were confined to that building that the
16 defendant's unit was in, or did it include the surrounding
17 buildings?

18 A It included these buildings and this building, I
19 believe.

20 Q And without telling us what anybody told you, if
21 you did talk to a neighbor, if you knocked on the door and
22 a neighbor answered, did you document whether they heard
23 something or not in the report?

24 A Yes.

25 Q And get their name and their contact number and

1 things like that?

2 A Yes.

3 Q Okay. Did you do anything else on the scene to
4 help investigate what happened?

5 A Not to my memory. I don't believe I did. After
6 the canvass, I was done.

7 MR. FREEMAN: Judge, we're handing the witness
8 Exhibits 105, 106, and 107.

9 Q (BY MR. FREEMAN) Agent Brennan, if you could
10 take a look at those three photographs and tell us if you
11 recognize what is depicted in those.

12 A These are -- start with 107 is view of the
13 defendant's building from the south side. It appears on
14 the left-hand side is a tree where -- is the tree I was
15 describing earlier at the end of the hallway.

16 106 appears to be the southeast corner of his
17 building where it sounded like, on the east side, there
18 was -- that's where the shots were coming from.

19 And I believe 105 would be a picture from the
20 southeast corner facing west.

21 Q And those photographs are obviously taken in the
22 daytime. But other than that, do they accurately depict
23 the way those various areas outside the suspect's unit
24 looked on the night of July 31st?

25 A Yes.

1 MR. FREEMAN: Judge, move to introduce 105, 106,
2 and 107.

3 MR. ST. GEORGE: My only objection is it would
4 have been dark at night, but other than that, no
5 objection.

6 THE COURT: Okay. So 105, 106, and 107 are
7 admitted.

8 (People's Exhibits 105 through 107 were admitted
9 into evidence.)

10 MR. FREEMAN: And may we publish?

11 THE COURT: You may.

12 MR. FREEMAN: Let's start with 105, please.

13 (People's Exhibit 105 was published.)

14 Q (BY MR. FREEMAN) Take a look at the screen.
15 Does that appear to be the same as 105 that's in front of
16 you?

17 A Yes.

18 Q And you said that was roughly the southeast
19 corner of the unit?

20 A Yes.

21 Q And does that accurately depict sort of the
22 driveways and things that are on the south side of that
23 unit?

24 A Yes.

25 MR. FREEMAN: And if we could go to 106, please.

1 (People's Exhibit 106 was published.)

2 Q (BY MR. FREEMAN) Is that also a picture of the
3 southeast corner looking roughly northward of the unit?

4 A Yes.

5 Q And you said that's the area in between the
6 buildings where it sounded like the initial six to eight
7 gunshots were occurring?

8 A Yes.

9 Q Does this picture, 106, does this depict part of
10 the area that you and Agent Trimmer searched for a bullet
11 casing?

12 A Yes.

13 Q And the foliage, the trees and the landscaping
14 and things like that, that are depicted in this photo, is
15 that pretty much consistent throughout the buildings and
16 things in that area?

17 A Yeah. I think it's pretty generalized
18 landscaping.

19 MR. FREEMAN: Okay. And if we could have 107
20 up, please.

21 (People's Exhibit 107 was published.)

22 Q (BY MR. FREEMAN) Taking a look at 107, is that
23 the front of the unit -- of the south side of that
24 building looking northwards?

25 A Yes.

1 Q And if you could indicate for the jury where
2 that hallway is that leads up to his front door?

3 A (Indicated.)

4 Q And you're indicating, for the record, on the
5 far left side of the exhibit, sort of a darkened area next
6 to that last garage door?

7 A Yes.

8 Q And there appears to be sort of a wide conifer
9 or pine tree there. Is that the tree you were describing?

10 A Yeah, that's the one I was describing earlier.

11 Q A few more questions.

12 After the person was taken into custody and sort
13 of the investigation began, was it brought to your
14 attention that Sergeant Trimmer had discharged her weapon,
15 had fired her gun during this event?

16 A Agent Trimmer? Yes.

17 Q Agent Trimmer, sorry. And because of that, did
18 certain sort of investigative protocols take place, one
19 which is called a CIRT, a Critical Incident Response Team,
20 get involved?

21 A Yes.

22 Q Were you interviewed pursuant to that process
23 and also in relation to the criminal investigation?

24 A Yes.

25 Q And did you write a report in this case?

1 A Yes.

2 Q Okay. And you wrote a report in addition to
3 being interviewed?

4 A That's correct.

5 Q Okay. I just want to try to go back a little
6 bit on the time line of events just so we're clear.

7 How long would you estimate between the last of
8 the three muffled shots and the indication from dispatch
9 that somebody was calling 911 asking for medical?

10 A It would be very difficult for me to remember
11 that, but I would say approximately a minute.

12 Q Okay. So not a long time?

13 A No.

14 Q And, again, asking you to estimate how long
15 after you got that indication from dispatch that somebody
16 was calling asking for medical was it until you heard
17 agents yelling out front something to the effect of, put
18 up your hands or show us your hands?

19 A Once again, it would be a guess, but I would say
20 another minute.

21 Q Okay. So, again, not a long time.

22 We talked -- I asked you a lot of questions
23 about your attempts to contact the suspect, and I think
24 you described those. I'm going have you handed
25 Exhibit 344 and ask if you recognize 344?

1 A Yes.

2 Q And what do you recognize Exhibit 344 to be?

3 A The voicemails that I left the defendant.

4 Q Okay. Have you had a chance to --

5 MR. ST. GEORGE: Your Honor, I object to these.

6 I have never seen these before.

7 MR. FREEMAN: Judge, I'm happy to respond. I
8 don't know if you want me to do it in front of the jury or
9 not.

10 THE COURT: We're going to excuse the jury for
11 just a moment. Please keep an open mind. Don't talk
12 about the case. We'll have you back here in just a
13 moment.

14 (The jury left the courtroom.)

15 (Pause in the proceedings.)

16 THE COURT: Okay. So Mr. St. George has
17 indicated he did not receive three forty -- you can step
18 down for a minute.

19 (The witness was excused.)

20 THE COURT: Mr. St. George has indicated he has
21 not seen 344 in the past or heard it. I am a not sure
22 what 344 is. So what are we talking about with 344?

23 MR. FREEMAN: Judge, 344 is the recordings, the
24 two voicemail recordings that Agent Brennan left on the
25 defendant's phone. As the defendant's aware, we seized

1 his phone. We did a forensic download of it and
2 downloaded basically all of the contents.

3 Part of that download captured these two
4 voicemails. It was provided to him on a CD. I don't know
5 if he's listened to it or not, but as part of discovery,
6 it was provided quite a while back.

7 THE COURT: Okay. So 344 is a portion of the
8 download of Mr. St. George's phone.

9 MR. FREEMAN: That's correct, Your Honor.

10 THE COURT: Mr. St. George?

11 MR. ST. GEORGE: Your Honor, this is absolutely
12 discoverable evidence, and I have never been provided with
13 an audio recording of these voicemail -- these voicemails.

14 It's not included here on the exhibit list.
15 I've never heard these voicemails. I don't know the
16 content of these voicemails. I was not privy to the -- I
17 never heard these voicemails the night that they were
18 purportedly left, so I can't image how they're relevant,
19 and it's a discovery violation.

20 MR. FREEMAN: It's not a discovery violation
21 because we gave them to the defendant. He just hasn't
22 listened them.

23 THE COURT: Could we -- could we check and see
24 how that was produced, et cetera? Do we have a record of
25 344, the download of Mr. St. George's phone?

1 MR. FREEMAN: Judge, it was on a Blu-ray disc
2 that was provided to the defendant. It's People's 321. I
3 mean, I think we'll have to -- we'll have to look up in
4 our action system to see when it was discovered.

5 THE COURT: That would be great.

6 MR. ST. GEORGE: And, Your Honor, I'll give you
7 help here and shortcut this whole adventure.

8 If you recall, the Blu-ray disc was not
9 something that I was capable of accessing, and I
10 specifically indicated that through a motion.

11 The district attorney was obliged to give
12 these -- anything that was on that Blu-ray disc to me in a
13 format that I could access.

14 MR. FREEMAN: Judge, you didn't make any such
15 ruling on that. And if he couldn't access it, he needed
16 to immediately reach out to his investigator or his
17 defense attorney.

18 MR. ST. GEORGE: Your Honor, bear with me for a
19 moment.

20 MR. FREEMAN: I'm be happy to play it for him
21 now and play it for the Court so the Court can hear it.

22 THE COURT: Okay. I'm looking at the case to
23 take a look at this. Does anyone know approximately when
24 this issue was brought before the Court?

25 MR. ST. GEORGE: Yeah, Your Honor. I'm going

1 find that motion that I filed that this Court. In the
2 meantime, though, I'm going reassert the fact that these
3 recordings are not relevant, regardless. Because I've
4 never heard them, thusly, they're not relevant.

5 THE COURT: Okay. I wouldn't base relevance on
6 whether or not somebody heard it or not. I do see a
7 June 29, 2017, letter explaining a disc received is not
8 compatible with the jail computer. I'm going to take a
9 look at it right now.

10 And this is a letter to the office of the
11 district attorney with, I think, a copy for the Court.
12 "Attention, Mr. Freeman: I've had my first opportunity to
13 begin reviewing." And then we have the discussion about
14 the FARO 3D files that we went into at length.

15 Okay. You say then, "The jail does not provide
16 a computer with Blu-ray capabilities on which the phone
17 records were delivered." And you're telling me then about
18 the jail computers have limited file type capabilities.

19 So let me see. Okay. So we said, with
20 reference to the digital FARO scans, the Court is asking
21 the DA to pursue this with Ms. Rossi. And then we
22 considered that the defendant needed proprietary
23 permissions to look at the finished product with advisory
24 counsel, Mr. Brew any. He doesn't want Ms. Rossi to be
25 present.

1 Okay. So then on July 14th there was an
2 in-court hearing where it was believed that conversion and
3 delivery had been completed that week. And then we went
4 on to other issues, medical records.

5 So that's what I have. Defendant appears in
6 custody with advisory counsel, Damon Brune. Blu-ray phone
7 record disc. People represent and believe conversion and
8 delivery were completed this week. Parties will follow
9 up.

10 So in this case, was there any further
11 interchange, Mr. St. George, between you and the district
12 attorney's office that perhaps I'm not privy to? Because
13 this was a letter that you wrote. I don't know how I got
14 the original letter about whether or not you received any
15 other format for the phone calls.

16 I think then we're still going into the other
17 issue with regard to the whether or not we have
18 copyrights, et cetera, and how you're going to view that
19 other material on the computers. Was there further
20 follow-up about this?

21 MR. ST. GEORGE: If you're asking about the
22 FARO, that was taken care of, yes, Your Honor.

23 THE COURT: I'm not asking about the FARO. I'm
24 asking about the disc, which was the initial -- "Defendant
25 appears in custody with advisory counsel." I'm just

1 reading the minute order from there.

2 Mr. Brune was there. Blu-ray phone records,
3 disc. The People represent they believe the conversion
4 and delivery were completed this week. The parties will
5 follow up.

6 MR. ST. GEORGE: So I think, to answer your
7 question, Your Honor, I would not have known to ask
8 regarding audio recordings of voicemails because I didn't
9 know that they were on the Blu-ray because I never had
10 access to the Blu-ray. So, no, I was not -- I was never
11 delivered any CDs -- ROMs that I could access that would
12 have contained these voicemails. That never -- that was
13 never sent over to me. So I can't say about what I didn't
14 get. It would be dispositive.

15 THE COURT: Okay. We do identify those disks as
16 disks that contained phone records. So my understanding
17 is that there was never any further communication between
18 the parties regarding these phone calls?

19 MR. ST. GEORGE: So, Your Honor, what I did
20 receive was the PDF, which is the Cellebrite phone -- and
21 that PDF document had the phone records in the sense of a
22 call log which would have shown inbound, outbound. It
23 also contained other contents of the cell phone, but it
24 was in PDF format.

25 There was no audio.

1 THE COURT: Right. Right. And that would be a
2 different thing that we're talking about. Those would be
3 the phone logs.

4 From the People, was there any subsequent
5 information regarding this? I'm just reading the minute
6 order from July 14th.

7 MR. FREEMAN: Right. And I'm looking at that as
8 well, Judge. I mean, as I sit here now, I don't have an
9 independent recollection. I know once the defendant made
10 the decision to go pro se, all discovery was given to our
11 investigator, Kim Gallerani, and then she had to
12 hand-deliver it to the jail.

13 I did ask her to, you know, sort of take a log
14 of what she brought over and when in case something like
15 this came up. So we're trying to get ahold of her.

16 Also, we've -- as the Court may know, we've gone
17 to a new system, Action. Neither of us are quite as
18 familiar with it as we used to be with the old system in
19 looking up discovery as far as our office kept a pretty
20 strict log of when things were discovered and what was
21 given and things like that.

22 So I have a vague recollection that we were able
23 to convert the Blu-ray information into a different
24 format. I don't believe I ever heard or we ever heard
25 from the defendant that that was unsuccessful or that he

1 didn't get it.

2 And I can tell the Court that we took this audio
3 that's Exhibit 344, the voicemail, off of what was
4 discovered. So it was included in discovery.

5 I can tell the Court that the original Blu-ray
6 disc was discovered on December 20th of 2016, so quite a
7 while ago.

8 It sounds to me like the defendant either didn't
9 know how to navigate, because I don't know if the Court is
10 familiar with the information that comes in a phone
11 download. It's sort of a series of phone numbers, and you
12 have to know how to navigate through those for the
13 information you're looking for. It's got text messages in
14 one folder. You click on that, and it's got more sub
15 folders of incoming, outgoing, things like that. Same for
16 phone calls.

17 And so if you don't know how to navigate through
18 that discovery, you might not find what you're looking
19 for. I'm guessing that's maybe what happened here. But I
20 can tell the Court that the entire phone load -- phone
21 download, including the audio, was discovered to the
22 defendant on December 20th of 2016.

23 THE COURT: Okay. So, again, Mr. St. George 's
24 letter dated June 25th of 2017, he said he's received
25 discs and he's beginning to review them, and he said:

1 I've had my first opportunity to begin reviewing them as
2 of June 25, 2017, due to computer failures here in the
3 jail. I will need an application to review the FARO 3D
4 files delivered in -- difficult to read the handwriting
5 right there, but a specific format.

6 So then he -- then further on: The jail does
7 not provide a computer with Blu-ray capabilities on which
8 the phone records were delivered.

9 So that's where we are at the initial stage.
10 And then we talk about the FARO in detail on July 5th.
11 And then we discuss briefly, along with a number of other
12 issues, medical records, et cetera, on July 14, that there
13 was the thought that conversion and delivery were
14 completed that week regarding that particular disc,
15 Blu-ray phone records disc.

16 So I think we need to have some information
17 about that to see when and if -- in the meantime, can --
18 how -- can you play me these messages, so I know what
19 we're talking about?

20 MR. FREEMAN: Sure, Judge. They're pretty
21 short.

22 THE COURT: Mr. St. George, you can have a seat
23 while we play these.

24 (Pause in the proceedings.)

25 (People's Exhibit 344 was published.)

1 MR. FREEMAN: That's it.

2 THE COURT: Okay. Well, I need to know what, if
3 anything, was done about supplying the discs in another
4 format before I can admit, and -- so I'll leave it at
5 that. I need to know whether or not they've been
6 discovered in a readable way for Mr. St. George.

7 Mr. St. George?

8 MR. ST. GEORGE: Bear with me one second, I'm
9 sorry.

10 THE COURT: Because I'm not certain what else is
11 on -- what else is on those discs too.

12 MR. FREEMAN: On the disc that we just played?

13 THE COURT: No.

14 MR. FREEMAN: There's nothing else on the disc
15 we just played.

16 THE COURT: The Blu-ray discs that couldn't be
17 read at the jail.

18 MR. ST. GEORGE: Before we go any further, we
19 should discuss the consideration of whether these
20 recordings would be relevant anyways, having -- being that
21 there's no way that I would have been -- that I would have
22 heard these.

23 So Mr. Brennan is reported to have left this
24 voicemail. His first call was at 12:22 and 59 seconds,
25 a.m. His second call to me was at 12:23 and 21 seconds,

1 a.m. And then his -- I'm sorry. His calls are at 12:17.

2 THE COURT: Hold on. So -- okay. Because I had
3 12:22:59, 12:23:21. So...

4 MR. ST. GEORGE: And I apologize, Your Honor.

5 THE COURT: Okay. So just tell me the times.

6 MR. ST. GEORGE: I'll give you just in minutes.

7 We'll round them off.

8 THE COURT: No, give me the seconds.

9 MR. ST. GEORGE: Okay. So his first call is
10 placed to me at 12:17 and 50 seconds. His second call is
11 placed to me at 12:20 and 27 seconds. That call has a
12 duration of 2 minutes and 32 seconds. He calls me a third
13 time at 12:23 and 21 seconds.

14 THE COURT: Okay.

15 MR. ST. GEORGE: And then Nathan Muller, he
16 calls me at 12:24 and 45 seconds, with a call duration of
17 5 minutes and 5 seconds. Nathan Muller calls me a second
18 time at 12:30 and 27 seconds. That call is missed.

19 Then Nathan Muller calls me for the -- this
20 would be the sixth total phone call, Nathan's third phone
21 call -- or, rather, Mr. Muller's third phone call, 12:32
22 and 17 seconds. That call has a duration of 5 minutes and
23 54 seconds.

24 And my argument being, there's no time
25 interspersed within those calls wherein I could have

1 listened to any voicemail. I'm shot at 12:44 and 13
2 seconds.

3 So there's never any period of time wherein I
4 could have heard a voicemail. Thusly, these voicemails,
5 if left on my phone, would be irrelevant.

6 THE COURT: Response to relevancy.

7 MR. FREEMAN: Judge, I think everything that the
8 defendant said, number one, is not before the jury yet,
9 and even if he were to testify that, there's still time to
10 listen to a voicemail. And that's not the only relevance
11 of the calls. It's also to document that, A, the officers
12 made the attempt. They put him on notice that they were
13 outside.

14 They continued calling. And whether he chose to
15 answer their calls or not, the clear indication is that
16 they want to talk to him. They're not going to go away.
17 And it's only after the sixth call that he decides to arm
18 himself with two guns and go outside and confront them.

19 So it's extremely relevant to corroborate the
20 officers and their testimony of all the attempts they made
21 to call him. And, again, this goes back to his attack on
22 the officers and everything that they did and saying why
23 this is their fault and he's the victim in his opening
24 statement.

25 And this goes to show all the reasonable efforts

1 that they made to avoid what happened that night. And I
2 can tell the Court, in looking at the report that was
3 filed by one of our investigators, Debra Farnum, that she
4 delivered to the Jefferson County Sheriff's Department
5 Detention Facility 11 CDs and one thumb drive to Mr. St.
6 George.

7 Six of the CDs were the phone download from his
8 phone that were the converted Blu-ray CDs. They were
9 delivered to him on July 7, I think it is. They're
10 slashes. It's not July 17, it's July 7 of 2017.

11 So I have documentation that he was given this
12 discovery back on July 7.

13 THE COURT: Anything further, Mr. St. George?

14 MR. ST. GEORGE: Your Honor, I -- I'll actually
15 allow the jury to hear these voice messages and let you
16 bring them in under the caveat that the jury -- that it's
17 understood that these are unheard -- these voicemails were
18 not heard by me on that night or ever.

19 THE COURT: Mr. St. George, I have no idea if
20 you heard these voicemails, so -- and neither does the
21 jury. The information that has been supplied to the
22 Court -- and I certainly don't have testimony or evidence
23 on all of these -- is that we have information that some
24 messages were left and one conversation, and it indicated
25 to your phone with you, was had. And so that's what we

1 have in this case. No one can tell us, as far as the
2 witnesses we've had before, who listened to what.

3 MR. ST. GEORGE: Well, Your Honor, we do have
4 the Cellebrite report here. I'm sure that we could
5 investigate it quite quickly and determine whether or not
6 it was a listened-to voicemail, or does my phone -- the
7 download indicate that there's unheard voicemails.

8 THE COURT: Then that would be something that
9 you would want to present to the jury. But at this point
10 in time, they don't have that information.

11 So if you have no objection to their admission,
12 then I will admit them. But I can't admit them and tell
13 them that they were unheard because there's no such
14 evidence before the jury.

15 MR. ST. GEORGE: Will you give me a minute and
16 let my investigator pull the report right quickly?

17 THE COURT: Mr. St. George, this information is
18 not before the jury.

19 MR. ST. GEORGE: Okay.

20 THE COURT: Right now I have to go with what's
21 before the jury. What's before the jury is that certain
22 messages were left. And also if I look back through my
23 notes, one phone conversation was had. And so that's what
24 they have. Whether or not you listened to messages is not
25 before the jury right now.

1 MR. ST. GEORGE: Okay.

2 THE COURT: So you either have an objection to
3 their admission or you don't have an objection. You
4 certainly can provide whatever you want as you litigate
5 the case in the way you want to litigate it.

6 MR. ST. GEORGE: Your Honor, I'll rescind my
7 objection. You may let them come in.

8 THE COURT: Okay. So there's no objection. And
9 so these are the two phone calls, my understanding, two
10 messages. So there's no objection to any message, is that
11 my understanding, so we don't have to excuse the jury
12 again? Because we talked about six calls.

13 MR. FREEMAN: No, there's just two. Two that
14 were voicemails.

15 THE COURT: Okay. So two voicemails. All
16 right. Let's bring the jury in.

17 MR. FREEMAN: Judge, can I -- before we do that,
18 can I take a real quick restroom break?

19 THE COURT: Yes. Let's take a couple minutes.
20 Everybody take a couple minutes.

21 (A recess was taken.)

22 THE COURT: Okay. Are we ready to go?

23 MR. FREEMAN: The People are ready.

24 MR. ST. GEORGE: I'm ready, Your Honor. I
25 apologize.

1 THE COURT: Okay.

2 (The jury entered the courtroom.)

3 THE COURT: All right. Thank you. Be seated,
4 everyone.

5 MR. FREEMAN: May I resume, Your Honor?

6 THE COURT: You may.

7 Q (BY MR. FREEMAN) Agent Brennan, just before the
8 break, I think we were talking about Exhibit 344 in front
9 of you. Do you recognize Exhibit 344?

10 A Yes.

11 Q And do you recognize that exhibit to contain the
12 recordings of the two voicemails you left for the suspect
13 back on the night of July 31st of 2016?

14 A Yes.

15 Q Have you had a chance to listen to the two
16 recordings on that CD?

17 A Yes.

18 Q And do you recognize those as complete and
19 accurate recordings of the voicemail -- voicemail that you
20 left that evening?

21 A Yes.

22 Q And how is it that you are able to recognize
23 that CD as one that you've listened to?

24 A I signed it with my name.

25 Q And do you recall when you did that?

1 A Today.

2 Q Today?

3 MR. FREEMAN: Judge, at this time I would ask to
4 introduce 344.

5 THE COURT: 344 is admitted.

6 (People's Exhibit 344 was admitted into
7 evidence.)

8 MR. FREEMAN: And may we publish it?

9 THE COURT: Yes.

10 (People's Exhibit 344 was published.)

11 Q (BY MR. FREEMAN) Do you recognize both of those
12 calls as being recordings of your voice?

13 A Yes.

14 Q And that number you gave, is that the Lakewood
15 non-emergency dispatch number?

16 A That's correct.

17 Q As you sit here now, do you have any way of
18 knowing whether or not the person in possession of that
19 phone that you left those messages on ever listened to
20 those messages?

21 A No.

22 Q All right.

23 MR. FREEMAN: Thank you. I don't have anything
24 else.

25 THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. ST. GEORGE:

Q Agent Brennan, can we quickly do some cleanup on the time line and discuss the times of those telephone calls that you made?

A I don't know what you mean by "cleanup."

Q We're just going to talk about what time those telephone calls that you made were made to me.

A Yes.

Q Okay. And that first call that you made was at 12:17 a.m., does that sound right to you?

A I don't know the exact time of the calls. I did not have that in my report. So unless I see a documentation with what time I called, I wouldn't know.

Q Okay. But it sounds probably right, 12:17?

A I really don't know.

Q Okay. And then you said -- you did say, however, that your second phone call occurred immediately thereafter or shortly thereafter?

A Shortly. Shortly sometime thereafter.

Q And the same for your third then, right?

A I believe so.

Q You made, one, two, three phone calls? The first phone call went to voicemail. That was one of these recordings that we just heard?

1 A That's correct. The first one, I believe.

2 Q The second phone call, I did pick up, you said?

3 A Yes.

4 Q Okay. And you said that my responses to you
5 during that call were, "What? What?"

6 A I believe you said "what" two to three times and
7 then "no."

8 Q And then "no." I've got a -- do you recall
9 having an interview after -- during the CIRT
10 investigation, that you met with one of those
11 investigators and you gave a -- you gave an interview?

12 A Yes.

13 Q Okay. And do you remember making an
14 illustration during that?

15 A Yes. I drew a diagram.

16 Q You did?

17 A Uh-hum.

18 Q I've got Defendant's 5.

19 MR. FREEMAN: It's an S.

20 THE REPORTER: No. I'm sorry. You need to use
21 letters.

22 MR. ST. GEORGE: I'm sorry?

23 THE REPORTER: You need to use letters.

24 THE COURT: It's Defendant's S.

25 MR. ST. GEORGE: I'm sorry. It's Defendant's S.

1 THE COURT: Defendant's S.

2 Q (BY MR. ST. GEORGE) And, Agent Brennan, does
3 that look familiar to you now?

4 A Just give me a moment to look at it real quick.

5 Q Sure.

6 (Pause in the proceedings.)

7 A Yes, this looks familiar.

8 Q (BY MR. ST. GEORGE) Okay, good. And that's
9 your signature on that, right?

10 A That's correct.

11 Q Excellent. I see --

12 MR. ST. GEORGE: Actually, Your Honor, can we
13 publish, and put this up on the TV for everyone to see?

14 MR. FREEMAN: It hasn't been admitted yet.

15 THE COURT: We would need to admit it, and then
16 do you have it so that it can be?

17 MR. ST. GEORGE: Yes, we do have it. I
18 apologize for skipping that step. So could we please
19 admit Defendant's S.

20 MR. FREEMAN: If I could voir dire on it, Judge.

21 THE COURT: Surely.

22 VOIR DIRE EXAMINATION

23 BY MR. FREEMAN:

24 Q Agent Brennan, do you recognize Defendant's S as
25 a diagram that you drew during your CIRT interview?

1 A Yeah. I drew it at the very end of the
2 interview.

3 Q And, again, a CIRT is an acronym, Critical
4 Incident Response Team. Is that a multi-agency?

5 MR. ST. GEORGE: Your Honor, I object.

6 MR. FREEMAN: What's the legal basis for the
7 objection?

8 THE COURT: Okay. We're going to get to that.

9 MR. ST. GEORGE: Your Honor, could we just limit
10 the voir dire to showing that this is an authentic
11 illustration made by Deputy Brennan -- or, I'm sorry,
12 Agent Brennan?

13 MR. FREEMAN: I was trying to get to it.

14 THE COURT: Okay. I think that's where we're
15 going, and I will not permit it if we're not going as to
16 the foundation as to whether or not it should be admitted.

17 MR. ST. GEORGE: Thank you, Your Honor.

18 Q (BY MR. FREEMAN) So as part of that interview,
19 did you draw all of this yourself?

20 A Yes.

21 Q And what information did you use to draw what's
22 on here?

23 A My memory.

24 Q Okay. As far as -- it looks like towards the
25 top of the diagram you've got sort of an arrow that goes

1 up to the right that says "suspect"?

2 A Uh-hum.

3 Q Was that to indicate a certain -- a suspect's
4 path?

5 MR. ST. GEORGE: Your Honor, objection.

6 THE COURT: And you're going to be able to
7 cross-examine. Right now we're just looking at whether or
8 not this should be admitted.

9 MR. FREEMAN: Okay. And I'm -- I'm directing my
10 questions towards that, Your Honor.

11 THE COURT: Well, I think we're beyond that
12 right now.

13 MR. FREEMAN: Okay. Can I ask him?

14 THE COURT: About -- well, during
15 cross-examination.

16 MR. FREEMAN: Okay.

17 Q (BY MR. FREEMAN) So is everything on here based
18 upon your personal observations?

19 A No.

20 Q Okay. Is there information on here that you got
21 from Ms. Elliott?

22 A Yes.

23 Q Is there information on here that you got from
24 other officers?

25 A Yes.

1 MR. FREEMAN: All right. Judge, with those
2 clarifications, I don't have an objection to this exhibit.

3 THE COURT: S is admitted.

4 (Defendant's Exhibit S was admitted into
5 evidence.)

6 MR. ST. GEORGE: Thank you, Agent Brennan.

7 CROSS-EXAMINATION (Continued)

8 BY MR. ST. GEORGE:

9 Q On the illustration, I see that you've drawn a
10 series of Xs with some -- oh, first, can we get this up on
11 the board so that everyone can follow along?

12 THE COURT: So you want to publish it?

13 MR. ST. GEORGE: Yes, Your Honor, thank you.

14 THE COURT: And you may publish.

15 (Defendant's Exhibit S was published.)

16 Q (BY MR. ST. GEORGE) Okay. So now what we're
17 looking at here, Agent Brennan, is a series of Xs that you
18 have labeled with the word "phone"; is that right?

19 A There's two Xs with "phone" written underneath,
20 that's correct.

21 Q Okay. And then some lines kind of that go over
22 to another pair of Xs and then another pair of Xs?

23 A That's correct.

24 Q Okay. And this illustration is demonstrative of
25 where you were standing when you made phone calls; is that

1 correct?

2 A So those two Xs show where I made the phone
3 calls. The lines show our movements. And then the next
4 Xs show where we stayed for a little bit. And then the
5 line shows movement again. And the final resting spot on
6 the left-hand side, if you're looking at it, is where we
7 took cover behind the vehicle. That box on the far
8 left-hand side is indicative of the vehicle.

9 Q Okay. And we'll come back to this. I have a
10 couple of other questions first.

11 MR. ST. GEORGE: Your Honor, we could probably
12 have the lights back up.

13 Q (BY MR. ST. GEORGE) You said earlier when you
14 came to the scene that you did drive a marked police
15 vehicle?

16 A Yes.

17 Q And tell us again, where was it that your parked
18 that vehicle?

19 A It was on the south side of the buildings that
20 were south of where the --

21 Q Perhaps we should put People's 3 back up, or
22 People's -- how about we put People's 4 back up real quick
23 so that way I can have you point that place out for us?

24 THE COURT: So you're asking the prosecution to
25 put People's 4 up?

1 MR. ST. GEORGE: Yes, Your Honor.

2 (People's Exhibit 4 was published.)

3 Q (BY MR. ST. GEORGE) Okay. And if you don't
4 mind doing so, would you indicate where you parked those
5 cars again? Or your car, rather?

6 A As I said earlier, I parked approximately in
7 this area.

8 Q Okay. Thank you.

9 A Would you like me to stay up here or go back?

10 Q No, you can take the stand again.

11 Now, that parking space that you parked in,
12 that's not visible from Building 7, is it?

13 A Not that I recall.

14 Q Okay. So when placed your call to me and I
15 answered, you said I said, "What? What?" and then "No,"
16 correct?

17 A I said you said "what" two to three times after
18 I repeated myself, and then you said "no" after I asked if
19 you understood.

20 Q Okay. And then you said there was a space of
21 time where you felt like the phone had been put down?

22 A Yes.

23 Q Okay. And there was no -- no sound or anything.
24 That's what gave you the impression it had been set down?

25 A Yeah, I -- obviously, I didn't -- I couldn't see

1 that so I don't know if you set the phone down or not, but
2 that's what it seemed like to me, nobody was responding.
3 It was all quiet.

4 Q Okay. And you said that you could not see that
5 I had walked away from the phone?

6 A No.

7 Q When I walked out the front door and I looked
8 outside --

9 MR. FREEMAN: Objection, Judge. Assumes facts
10 not in evidence. We have no testimony from anybody that
11 he walked out.

12 THE COURT: I am thinking, Mr. St. George, that
13 I do not have the information as of yet about when and how
14 you walked out the door.

15 MR. ST. GEORGE: Okay.

16 Q (BY MR. ST. GEORGE) Where you were standing
17 when you were making those phone calls, were you able to
18 see the front door?

19 A As I said earlier, we could look down the
20 hallway around the corner we were standing on. His door
21 was on the far right side. We could partially see the
22 door.

23 Q And that was the entire time that you were
24 standing there?

25 A I believe so. Either myself or Sergeant Muller,

1 when we were making the phone calls, we were on that
2 corner.

3 Q Would a police vehicle have been visible from
4 that front door?

5 A No.

6 Q Okay. So when you got to the scene, it was your
7 instructions from Sergeant Fahlsing to find evidence to
8 try to corroborate what you had -- the report that you had
9 gotten from dispatch, correct?

10 A I have never spoken with Sergeant Fahlsing.

11 Q But you had orders that came from someone to try
12 to find some evidence to corroborate the call, correct?

13 A That's correct. We -- I had called a
14 supervisor -- as I said earlier, I couldn't remember if it
15 was Sergeant Maines or Sergeant Muller -- to give them an
16 update on what was going on, and they told us to go to the
17 scene to see if we could find anything.

18 Q And you found no bullet casings in the road at
19 that time?

20 A That's correct.

21 Q You found no damage from bullets to vehicles or
22 other surroundings at that time?

23 A That's correct.

24 Q You radioed to dispatch. You asked a question,
25 you said: Do we have any calls of shots heard in the

1 area? Do you recall making that?

2 A No.

3 Q Do you remember dispatch telling you that there
4 were no calls from the area reporting gunshots?

5 A Yeah, I believe I said that earlier, that there
6 with are no other calls for shots heard.

7 Q Okay. So the readily available evidence was
8 non-corroborative of the report that you had?

9 A Well, we only had one side of the story. And as
10 we had talked about earlier, shell casings would not
11 automatically be in the area, given that we didn't know
12 what type of firearm it was, not to mention people can
13 pick them up.

14 Q Okay. So you didn't have any -- you did not
15 consider that the report could perhaps be a false one
16 then?

17 A That's always something that we consider, but we
18 always do our due diligence to prove that.

19 Q And like any reasonable person, you would
20 attempt to verify a report given over the telephone by a
21 stranger, right?

22 A Can you rephrase that, please?

23 Q Sure. You would also attempt to verify a report
24 that was given to you by a stranger on the telephone,
25 right?

1 A I believe every report that we ever take is
2 verified. And it's usually given by a stranger over the
3 phone.

4 Q Okay. The original report, you took that call,
5 that was transferred to you at 10:17 p.m., right?

6 A I do not know what time I had that call
7 transferred to me, but that time line would make sense.

8 Q Okay. And the first attempt at contacting me
9 was made at 12:17 a.m., correct?

10 A As I said earlier, I don't have the records
11 indicating that phone call, so I really don't know.

12 Q Bear with me one moment.

13 A Okay.

14 (Pause in the proceedings.)

15 Q (BY MR. ST. GEORGE) Appreciate you giving me
16 that break.

17 A That's fine.

18 Q Are you willing to suggest that -- or willing to
19 agree that 10:17 p.m., for when you received her call,
20 being transferred to your phone, and 12:17 a.m., when you
21 made your first attempt to call me, sound reasonably close
22 to the accurate times?

23 A It could be. But like -- as I stated to you
24 before, I don't know.

25 Q Okay. That being the case, it was, more or

1 less, two full hours after the call from Ms. Elliott that
2 you first attempted to contact me, right?

3 A Assuming that that time line is correct, then,
4 yes.

5 Q Okay. And in your opinion, would an ordinary
6 person think that that might be a bit suspicious?

7 MR. FREEMAN: Judge, objection. Calls for
8 speculation.

9 THE COURT: Sustained.

10 Q (BY MR. ST. GEORGE) When you call me, your
11 caller ID is blocked, and it comes up "unknown" on
12 people's phones when you call them, right, when you call
13 anyone, on that phone?

14 A Yes.

15 Q Okay. You say that when I picked up the phone,
16 that I sounded like I was drowsy and intoxicated, right?
17 That was your assessment of --

18 A Yes.

19 Q Okay. As if perhaps you might have woken me up?

20 A Yeah, I believe I said that in my CIRT
21 interview.

22 Q You did. And you told me: We know you're
23 inside. We saw you through your windows.

24 You said that in your CIRT interview as well,
25 correct?

1 A No. Not that I know of. I don't remember ever
2 saying that.

3 Q It's possible that may have been your sergeant,
4 Muller, that said that.

5 MR. ST. GEORGE: Excuse me.

6 (Pause in the proceedings.)

7 Q (BY MR. ST. GEORGE) Outside the front door
8 where you and your sergeant, Muller, were standing while
9 making these phone calls, did anyone ever shout out:
10 Lakewood Police?

11 A No.

12 Q Did anyone ever say: We're over here, Mr. St.
13 George. We need to talk to you?

14 A No.

15 Q And the plan that was created was to get me to
16 come outside and to talk with me; is that right?

17 A That is correct I believe Sergeant Muller asked
18 you multiple times to come outside with nothing in your
19 hands.

20 Q But that didn't happen, right?

21 A You did not come out to us, no.

22 Q Again, looking back to your illustration, your
23 Xs show that you were out in the street when you were
24 making those phone calls. Is that relatively correct?

25 A No.

1 Q We saw the picture of the breezeway. There's a
2 large conifer tree in front of that breezeway, right?

3 A Yes.

4 Q That would make it difficult to see to the door,
5 wouldn't it?

6 A Yes.

7 Q Okay. And vice versa? Seems reasonable?

8 A It would make it difficult for someone to see
9 out in the street, is that what you're asking?

10 Q And for you to see the door itself.

11 A That's correct. But I was not behind the
12 conifer tree, as I just said. I was not standing in the
13 street when I made those phone calls. This illustration
14 is hand-drawn. It's not to scale.

15 Q Okay. Bear with me one moment.

16 (Pause in the proceedings.)

17 THE COURT: Redirect?

18 MR. ST. GEORGE: No, Your Honor. Just bear with
19 me one second. I'm consulting counsel.

20 THE COURT: Okay. I understand.

21 MR. ST. GEORGE: No more questions for now, Your
22 Honor.

23 THE COURT: Redirect?

24 ///

25

REDIRECT EXAMINATION

BY MR. FREEMAN:

Q Just a few more questions, excuse me, Agent Brennan.

Just so we're clear, I want to clarify some of those questions about where you were standing and your observations -- well, both you were making the calls attempting to contact the suspect and Sergeant Muller was doing that. I think you described being just around the corner from this hallway leading up to the suspect's front door?

A That's correct.

Q Were you able to see the front door?

A Yeah. As I said earlier, as we're peeking around the corner down the hallway, because it is so important to know if somebody is going to come out or not. So as -- I believe as I'm making the phone calls, Sergeant Muller is watching the door. As he's making the phone calls, I had eyes on the door the entire time. So we were right around the corner. We were not standing in the street behind the conifer tree.

Q In the time that you were watching the front door, did you ever see it open?

A No.

Q Did you ever hear it open?

1 A No.

2 Q In the time that you were on the phone and
3 Sergeant Muller was watching the door, did he ever
4 indicate to you that he had seen it open or heard it open?

5 A No.

6 Q And defendant asked you if you ever shouted from
7 that position at the end of the hallway, if you ever
8 shouted towards his front door that you were out there.
9 Why didn't you do that?

10 A It's basically more of the same. I mean, we
11 want to try to control the situation. We want to try to
12 allow somebody to come out to us. We never want to go and
13 force entry into a place that we don't know what's on the
14 other side.

15 Not saying that we would in that situation, but
16 it's always easier to make a telephone contact where we
17 don't necessarily know exactly where you are. You can
18 say: Can you come outside? Have nothing in your hands.

19 Sometimes we'll even say: Open the door. Come
20 out with your hands first.

21 Because hands are what hold weapons. So we
22 know, if somebody is walking out like this (indicated),
23 they have nothing in their hands, and then that would be
24 when we make verbal contact and say: Okay. Now walk
25 towards us. We would go from there.

1 But it's important, when we have somebody coming
2 out of a building, that they don't exactly know where
3 everybody's at.

4 Q Is that especially important in an investigation
5 of a call involving discharge of a firearm?

6 A Yes.

7 Q And last topic, if we could have the Defendant's
8 Exhibit back up. And I'm sorry, what number was that?

9 MR. MENGES: S.

10 MR. FREEMAN: S, letter S. If we could have
11 that back up.

12 (Defendant's Exhibit S was published.)

13 Q (BY MR. FREEMAN) It might be a little bit hard
14 to see. Do you have a copy of it in front of you?

15 A I do.

16 Q Okay. Towards the top, it looks like there's a
17 line that goes up a little bit and then makes a hard right
18 turn, sort of on the top of the diagram, and it says
19 "suspect"?

20 MR. ST. GEORGE: Beyond the scope, Your Honor,
21 if we could discuss this.

22 MR. FREEMAN: Judge, he introduced it.

23 THE COURT: We introduced the document, so it
24 can be questioned on. I'll overrule.

25 Q (BY MR. FREEMAN) A line that goes up a little

1 bit and then to the right with an arrow a that says
2 "suspect"?

3 A Yes.

4 Q And what was that meant to indicate?

5 A That was meant to indicate the defendant's
6 movement prior to the shooting.

7 Q And I think you already testified you never saw
8 him come out of that part of the unit?

9 A That's correct.

10 Q So is that information that you were aware of
11 because another --

12 A Just based on everything that happened, where I
13 heard the shots happening, where his back door was, and
14 based on Sergeant Maines yelling that he was coming at
15 Devon Trimmer fast, that's how I put that together.

16 Q Okay. And then right almost in the middle of
17 the diagram, it looks like there's maybe some parking
18 stalls and then it says "escort." What was that meant to
19 indicate?

20 A So those -- can I go point it out?

21 Q Sure. If it will help, yeah.

22 A So earlier, when we introduced the aerial
23 photographs of the handicap parking spots, that's what
24 these -- these are the same parking spots. And this
25 illustration is just based on what Emily had told me.

1 She told me that when she was approximately a
2 quarter of the way to the car -- or when the defendant was
3 a quarter of the way to the car, that he fired a shot in
4 air. So that's what this X represents. So shot up here.

5 She told me she was parked somewhere around that
6 handicap spot. She said when the defendant was three-
7 quarters of the way to the vehicle, he had leveled a shot
8 towards her. And so shot in the air, leveled shot,
9 approximately a quarter of the way to the car,
10 approximately three-quarters of the way to the car, and
11 "escort" was Ms. Emily.

12 Q And her description to that -- of those events
13 to you was over the phone?

14 A Yeah. She never -- she did not return to speak
15 with me.

16 Q Okay.

17 MR. FREEMAN: All right. Thank you, that's all
18 I have.

19 THE COURT: Did you want to use this also?

20 MR. ST. GEORGE: Yeah, you can leave that up,
21 thank you. But you don't need to dim the lights.

22 THE COURT: I'll leave the lights.

23 MR. ST. GEORGE: That's fine.

24 ///

25 ///

1 RECROSS-EXAMINATION

2 BY MR. ST. GEORGE:

3 Q Just one more question. So Ms. Elliott, when
4 she talked to you, she gave you the impression that that
5 is where those alleged shots occurred, right?

6 A Yeah. She had told me where she was parked, and
7 that she was unable to communicate distances away from her
8 vehicle. So she initially told me a shot was fired a
9 quarter of the way from the vehicle and three-quarters of
10 way to the vehicle.

11 When I asked for clarification later on another
12 phone call, she told me, basically at a walking pace, five
13 seconds from her car and three seconds from her car with a
14 brisk walk.

15 Q I remember reading that as well. And that was
16 the area that you searched for shell casings, right?

17 A That he was the area that we looked for shell
18 casings, yes.

19 Q And you didn't find any?

20 A We did not find any.

21 MR. ST. GEORGE: No more questions.

22 THE COURT: Does anyone on the jury have a
23 question for this witness?

24 (No verbal response.)

25 THE COURT: I'm going to have to excuse the jury

1 for just a moment.

2 (The jury left the courtroom.)

3 JURY QUESTIONS

4 (The witness was excused.)

5 THE COURT: Okay. So here's the question: Is
6 it Lakewood's policy or procedure -- Lakewood PD's policy
7 or procedure to approach a possibly dangerous situation
8 with no lights or sirens, and then -- as well as parking
9 out of sight of location? In other words, is this
10 something that is simply taught and followed by the
11 department, or is there written policies?

12 MR. FREEMAN: I don't have an objection.

13 MR. ST. GEORGE: Nor do I. No objection, Your
14 Honor.

15 THE COURT: Okay.

16 (Pause in the proceedings.)

17 (The jury entered the courtroom.)

18 THE COURT: Everybody be seated, please. Agent,
19 I have a question for you from the jury.

20 Is it Lakewood Police Department's policy or
21 procedure to approach a possibly dangerous situation with
22 no lights or sirens, as well as parking out of sight of
23 the location?

24 And there's a clarification here: In other
25 words, is this something that is simply taught and

1 followed by the department, or is there or are there
2 written policies?

3 THE WITNESS: I'm not aware of any written
4 policies that say that we must park a certain distance
5 away. It's just simply taught in the academy. It's not
6 only Lakewood but every police agency that attends our
7 academy. Somewhere between 10 and 15 of West Metro, west
8 side of Denver, police agencies. And that's something
9 that's thought nationwide.

10 Anytime we respond to a call, with never park in
11 front of it. There's a chance, if somebody's confused or
12 gets lost, that, yeah, they drive by the house. But it's
13 standard operating procedure to park down the street and
14 not have lights and sirens on to give away positions.

15 Obviously in some high-stress situations if
16 you're responding to something absolutely outlandish, like
17 an active shooter, they may forget to turn off their
18 lights and sirens as they're pulling in.

19 But in terms of a call like this, it's standard
20 procedure for us to park away where the suspect does not
21 see us and then to approach quietly for the same reasons.

22 THE COURT: As a result of the jury's questions,
23 do either side have follow-up questions?

24 MR. FREEMAN: Not for the People, Judge.

25 MR. ST. GEORGE: Nor myself. Thank you, Your

1 Honor.

2 THE COURT: Thank you. You may step down.

3 (The witness was excused.)

4 THE COURT: You may call your next witness.

5 MS. DECKER: The People call Sergeant Nathan
6 Muller.

7 SERGEANT NATHAN MULLER,
8 having been called as a witness on behalf of the People,
9 being first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. DECKER:

12 Q Good afternoon.

13 A Good afternoon.

14 Q Will you please state your full name for our
15 court reporter and introduce yourself to the jury?

16 A My name is Nathan Muller, M-u-l-l-e-r.

17 Q Sergeant Muller, what do you do for a living?

18 A I'm a police sergeant in the City of Lakewood.

19 Q And what does that mean to be a police sergeant?

20 A I have a group of agents that I supervise. And
21 our city is cut up between north and south, 6th Avenue
22 being the border. So south of 6th Avenue.

23 Q And what do you do to supervise these agents?

24 A I go on various calls of theirs, approve
25 reports, answer phone calls, and just make sure that what

1 they're doing is legal and within our policy and
2 procedures, making sure that they're safe.

3 Q For how long have you been working in law
4 enforcement?

5 A March '99 is when I've got hired. So coming up
6 on, gosh, 19 years.

7 Q And for how long have you been working in the
8 capacity as a sergeant?

9 A Since 2013.

10 Q And can you describe for the jury generally your
11 training and experience both as a sergeant and working in
12 law enforcement?

13 A Sure. There was a police academy that I
14 attended, and then after that I got my experience on the
15 streets. Going back from my academy days on the things
16 that we were taught, basic law, officer safety, handgun,
17 those sorts of things.

18 As a sergeant it's leadership classes, incident
19 command. There's a varied degree of incident command
20 classes that I took. And then I also assist with the
21 officer safety portion of the academy and vehicle stops.

22 Q You said the term "incident command." Can you
23 explain what that is?

24 A Absolutely. It's command and control of any
25 incident. And an incident doesn't have to be a mass

1 casualty incident. It can be a small incident, as a DV.
2 Just managing agents, putting agents where they need to be
3 and running that.

4 Q You mentioned another term that the jury might
5 not be familiar with. DV, what's that mean?

6 A Domestic violence.

7 Q You also talked about training and experience in
8 officer safety. Can you explain that a little bit more?

9 A Absolutely. I'm part of the officer safety
10 team. I'm not one of the main instructors, but I do
11 assist with the classes. I do help instruct. And then
12 the vehicle stops class, in regards to officer safety, I
13 do teach that.

14 Q I'm going to draw your attention to July 31st of
15 2016. How were you working that day or that evening?

16 A As a police sergeant, City of Lakewood.

17 Q And were you working a particular shift?

18 A Yes. It's called Watch 3, which is 3 p.m. to 1
19 in the morning.

20 Q And were you assigned to be supervising a
21 certain number of agents?

22 A Correct.

23 Q And how many agents were you supervising that
24 evening, roughly?

25 A Specifically assigned seven, but in Lakewood

1 there's watches that overlap each other. So it could be
2 upward to 15.

3 Q So describe for the jury what you were doing
4 when you began your shift on July 31st.

5 A If my memory serves me right, it was just
6 starting off as admin work, paperwork of some sorts.
7 After that, hitting the streets, as we call it. Leaving
8 the station, getting in a patrol car, driving around.
9 Answering different calls for service. Answering, you
10 know, telephone calls and that sort of thing.

11 Q Did you ever get notified of anything at around
12 10 p.m.?

13 A Yes.

14 Q And how did you become notified?

15 A Via dispatch.

16 Q And what does that mean?

17 A The in-car radio that communicates back and
18 forth with our dispatch center.

19 Q So at around 10 p.m. you were in your patrol
20 car?

21 A Yes, ma'am.

22 Q Do you recall where you were at around 10 p.m?

23 A I do remember I was near Hampden. Maybe Estes,
24 Garrison area.

25 Q And when you got this dispatch call, do you call

1 it an alert tone?

2 A Yes, ma'am.

3 Q What does that mean?

4 A Be a varied thing, but it's basically three
5 short beeps that get your attention that something serious
6 is going on in the city.

7 Q And once you got that alert tone from dispatch,
8 what did you learn?

9 A That an RP, meaning reporting party, someone who
10 contacted Lakewood Police Department, had stated that she
11 had been shot at by an individual at the Windsor
12 townhomes.

13 Q What did you do based on that information?

14 A Based on that information, and listening to --
15 the call was about a half-hour old. I did not respond to
16 the initial call, no.

17 Q What did you do instead of responding? Did you
18 stay apprised of what was going on at the Windsor
19 apartment complex?

20 A Correct.

21 Q And how did you do that?

22 A Just listening to the radio. I was not assigned
23 to that call.

24 Q Do you know whether someone else -- or other
25 people were assigned to that call?

1 A I do remember, yes.

2 Q And who were those people?

3 A Agent Trimmer, Agent Brennan, and then Sergeant
4 Maines.

5 Q And how is it that someone gets assigned to
6 respond when you receive this dispatch call?

7 A Dispatch or someone volunteers to handle a call.
8 Something of this nature, I don't know exactly. I'm sure
9 they was dispatched to, which means assigned this call.

10 Q And were you staying apprised once these two or
11 three agents were arriving to that scene of what was going
12 on?

13 A To the scene itself? Not particularly, no. I
14 was handling calls throughout my day. But I was listening
15 to the radio.

16 Q And in listening to that radio, did you become
17 aware of anything that was going on in the complex?

18 A I knew that -- that two agents were making
19 contact with the reporting party, or victim, and Jason
20 Maines -- Sergeant Maines had needed some assistance. So
21 I either called him via cell phone or on the radio and
22 asked if I could help.

23 Q And you received this alert tone at around
24 10 p.m. Had other officers also heard that same alert
25 tone? Was this on the radio?

1 A Yes, it was on the radio. When they do that, it
2 takes up all three radio channels, which means our -- our
3 city is cut up into north, like I said, south, and then
4 into the west. So all of the stations get the alert tone.

5 Q Did you ever respond yourself to that area, that
6 Windsor apartment complex?

7 A For the initial call?

8 Q At any time that day.

9 A Yes. After, yes.

10 Q And what I'd like to get at is why and when you
11 responded to that complex.

12 A Sergeant Maines, I asked him if he needed some
13 assistance, and he said yes.

14 Q Do you recall after 10 p.m. at around what time
15 you spoke with Sergeant Maines to determine that you would
16 also be arriving to that location, roughly?

17 A 10:30. Sometime afterwards.

18 Q And was the address 8139 West Eastman Place?

19 A Yes, ma'am.

20 Q And Building 7, Unit 103?

21 A Yes.

22 Q And is that in Jefferson County, Colorado?

23 A Yes.

24 Q Lakewood?

25 A Yes, ma'am. State of Colorado.

1 Q Having spoken with Sergeant Maines at about
2 10:30 to arrive, how long after 10:30 would you say you
3 arrived at that time that complex?

4 A We met up at the northwest corner of Eastman and
5 Wadsworth, and he was on the telephone making some
6 arrangement with the agents there, getting background
7 information from his people, contacting the major crimes
8 team on-call detective. So I would have to guess 15
9 minutes or so.

10 Q And when you say, "We met up," are you talking
11 about you and Sergeant Maines meeting up?

12 A Yes. Car to car.

13 MS. DECKER: And if we could project that image,
14 that expanded out. I believe it's People's 2.

15 (People's Exhibit 2 was published.)

16 Q (BY MS. DECKER) If you would just see if you
17 recognize in People's 2 -- or 1, where you and Sergeant
18 Maines met up.

19 (People's Exhibit 1 was published.)

20 Q (BY MS. DECKER) And if you need to step down,
21 you can step down to get a better view of it.

22 A Sure.

23 THE COURT: There's also a pointer there.

24 THE WITNESS: Yes, ma'am. Thank you. So this
25 being Wadsworth running north to south, with this being

1 255 or Hampden Avenue. This area here, this intersection
2 is Eastman. So somewhere in this general vicinity.

3 Q (BY MS. DECKER) And for the record, the witness
4 is pointing above the exhibit sticker, towards the top
5 portion of the photo.

6 Thank you. And you can have your seat.

7 A Thank you.

8 Q So this is now around 10:45 in the evening when
9 you and Sergeant Maines meet up in this location?

10 A Approximately, sure.

11 Q And you described to the jury that you're parked
12 nose to nose; is that right?

13 A Car to car, which means both driver's sides are
14 next to each other.

15 Q And describe for the jury what you and Sergeant
16 Maines were doing at this point.

17 A Sergeant Maines was talking to Agent Trimmer and
18 Brennan about the case and the information they had
19 learned during their investigation. He had received a
20 name of a possible suspect, and researching that through
21 his computer, and then after that he had made the decision
22 to call the on-call major crimes detective at that time to
23 get some input.

24 Q And was the name of that suspect Eric St.
25 George?

1 A Correct.

2 Q So once you and Sergeant Maines had this
3 discussion and he was talking with those on scene at the
4 time, what did you and Sergeant Maines do from that
5 location that you just pointed out?

6 A From that location we drove over to the target
7 location, the Windsor apartments.

8 Q And once you arrived at the Windsor apartments,
9 did you have to drive any special way into the apartment
10 complex?

11 A It seemed very confusing to get in there, so we
12 looped around. Just seemed like a, you know, curving
13 road, and we parked just south of the target location.

14 Q And when you arrived to that location, were you
15 and Sergeant Maines in separate patrol cars?

16 A Yes, ma'am.

17 Q Did you drive up -- was it still a little bit
18 after 10:45, would you say?

19 A It could be, yes.

20 Q Did you drive up with lights and sirens?

21 A Absolutely not.

22 Q You said "absolutely not." Can you explain for
23 the jury why you absolutely didn't drive up lights and
24 sirens?

25 A The original call was a gun call. And with my

1 training and experience, knowing that a possible gun is
2 involved in some type of call, we're using surprise to our
3 advantage. We don't want to give away our positions.

4 We don't know what's going on. We have no idea
5 if someone is outside, waiting for us in the apartment,
6 nothing. So being stealthy is really a key to our
7 approach.

8 Q Once you arrived to the Windsor apartment
9 complex, you mentioned you parked to the south of the
10 suspect's address?

11 A Correct.

12 MS. DECKER: If we could project Exhibit 3.

13 (People's Exhibit 3 was published.)

14 Q (BY MS. DECKER) If it's depicted on this
15 picture, can you point out where you parked or if it's
16 farther south?

17 A It's farther south.

18 MS. DECKER: If we could project Exhibit 4.

19 (People's Exhibit 4 was published.)

20 Q (BY MS. DECKER) And if you need to step down to
21 point out where you parked and if you saw where Sergeant
22 Maines parked?

23 THE WITNESS: Permission to step down?

24 THE COURT: Yes.

25 THE WITNESS: Thank you.

1 A And where is the target location on the map now?

2 Q (BY MS. DECKER) And if you look to the top
3 rightof the -- top right.

4 A Okay.

5 Q The second building.

6 A That one there?

7 Q Yes. Did you park in relation to there?

8 A So there's a little parking area right here,
9 which is south of whatever building number this.

10 Q So are you pointing to a building directly south
11 but on the right-hand side of the suspect building?

12 A Correct.

13 Q Okay. Thank you. And is that where Sergeant
14 Maines also parked?

15 A Correct.

16 Q You can probably remain standing there.

17 Once you and Sergeant Maines parked to that
18 building to the south of the suspect's location, what did
19 you do once you arrived there?

20 A Hindsight being 20/20, we walked directly up
21 this road. Not knowing that the suspect's location was
22 here, we walked up this road. And then there was a --
23 call it a white truck, where we met the other two agents.

24 Q You mentioned hindsight being 20/20. Why would
25 you say that that was a bad thing to do?

1 A Well, and we call it a fatal funnel. Basically,
2 we're downwind or downstream of the target location. And
3 not knowing anything what's going on, they have a clear
4 line of sight to us walking straight up towards the
5 building.

6 Q Is it fair to say that there were several fatal
7 funnels not only in between these two buildings but also
8 the breezeway of the defendant's apartment itself?

9 A Yes, ma'am.

10 Q So once you arrived --

11 MS. DECKER: Let's project to People's
12 Exhibit 3.

13 (People's Exhibit 3 was published.)

14 Q (BY MS. DECKER) Now, looking at the suspect's
15 building, once you and Sergeant Maines arrived essentially
16 to the front of that building and yet not knowing it, did
17 you mention that you then walked our left or to the west?

18 A Yes, ma'am.

19 Q And point out for the jury where you went.

20 A Came up this little street, I don't know if it's
21 marked or named, and walked to the left or to the west and
22 met up right about here. I believe we called it the white
23 truck. There was a white car that was parked there,
24 couldn't tell you what side of the road, but that's where
25 we met up with the other two agents.

1 Q And that being Agents Brennan and Trimmer?

2 A Yes, ma'am.

3 Q Once the four of you were on the southwest side
4 of the suspect's building, what did you do from there?

5 A We just talked about the game plan that we had
6 was to have containment on the residence, to make a
7 telephone call in, see if someone would come out.

8 And then Sergeant Maines had learned -- I don't
9 know if we had spoken about it at the corner of Eastman
10 and Wadsworth, but there was information that there was a
11 fish tank inside the residence, that the victim had told
12 him that there was a fish tank inside. So his idea and
13 thought was to go back -- back of the residence here and
14 get some information.

15 Q So at that point, after the four of you had
16 decided to contain the residence and Sergeant Maines
17 decided to get information on the fish tank being inside,
18 did he go gather that information?

19 A Yes. Last time I saw him, he swooped behind the
20 corner of this building and relayed information and came
21 back and said that this was the correct location, it was
22 the fish tank.

23 Q So while Sergeant Maines walked to the back of
24 the building, were you and the other two still on the
25 southwest side of this building?

1 A Correct.

2 Q You also mentioned that you -- the game plan was
3 to have containment on the residence. Can you explain for
4 the jury what that term means, to have containment on the
5 residence?

6 A Correct. If you're going to do containment on
7 the side of a building, there's a lot of things to think
8 about, some considerations.

9 You have the south, the north, and the east.
10 With this unit, we only had containment which was the
11 north and south. Basically what we're trying to do is
12 surround it to get an eye on both locations to see what's
13 going on if someone comes out, someone goes in, but we're
14 supposed to have containment and keep anybody from
15 leaving.

16 Q And you mentioned to keep anyone from leaving.
17 Was it in any way for officer safety concerns?

18 A Yes.

19 Q And can you explain why containing on all sides
20 would be for officer safety as well?

21 A Something like this, a call with a gun, I really
22 don't know the great details about it, Sergeant Maines
23 did. But I knew that a weapon was used earlier, or
24 alleged to be used earlier.

25 We want to keep eyes on the building or on the

1 unit to make sure that someone doesn't come out, come
2 around and ambush you us, or that an innocent bystander is
3 walking their dog or doing whatever, doesn't try to go to
4 the apartment in and out.

5 Or if the individual has party guests or other
6 people in there, trying to keep them out, maybe
7 interviewing them at a later date -- or a later time. I
8 apologize.

9 Q And it seems that as you and Sergeant Maines had
10 walked through this roadway and fatal funnel, as you
11 called it, you were not familiar with this building?

12 A No.

13 Q Were you familiar with the layout of these
14 apartments and whether they had two stories or anything
15 like that?

16 A No.

17 Q Or where the garage was located on the front or
18 back?

19 A No.

20 Q Once Sergeant Maines returned to you, how much
21 time had elapsed by the time he had gone back to confirm
22 he had eyes on what he believed to be the suspect's
23 apartment?

24 A Maybe five minutes. It was short.

25 Q And once Sergeant Maines returned to the three

1 of you on the southwest corner of this building, what did
2 you four do from there?

3 A We decided it would be best, to have
4 containment, to have Sergeant Maines and Agent Trimmer go
5 onto the back side of the house -- or apartment. Myself
6 and Agent Brennan would take the front.

7 Q So once you made that decision, what did you do?

8 A We split up and moved.

9 Q Where did you go?

10 A I went to the front of the house with the
11 breezeway area with Agent Brennan.

12 Q And would you just point out for the jury where
13 you went?

14 A (Indicated). The white truck is approximately
15 in this area. I do remember a large tree of some sort
16 right here. So this would be the breezeway.

17 Q And you pointed to the center area in between
18 those two trees indicating that that was the breezeway?

19 A Yes.

20 Q Were you standing behind those two trees in some
21 way or behind just the breezeway itself in between the
22 trees?

23 A If you can think about this being a hallway and
24 this area here right in the front being a concrete
25 step-type deal, we were -- positioned ourselves by the

1 wall on the concrete between the shrubbery.

2 Q And describe for the jury why you positioned
3 yourself there.

4 A Like I said before, it was a gun call. I don't
5 know the particulars of the case. I just know there was
6 an alleged firearm and there were shots being fired.

7 Something of that nature, I'm not just going
8 walk up to the door. I'm not going the walk down the
9 hallway. There's nowhere for me to get concealment or
10 cover on that. So I want to find myself somewhere where I
11 can make myself small, get concealment and/or cover, and
12 try to make communication from there.

13 Q So describe for the jury what you were
14 concealing behind.

15 A A brick wall, best way to describe it.

16 Q Was it essentially the angle of the wall that
17 came out of that breezeway?

18 A Correct.

19 Q And was Agent Brennan there with you?

20 A Correct.

21 Q How close in proximity were you and Agent
22 Brennan to one another?

23 A Two to three feet.

24 Q And at this time were you wearing a police
25 radio?

1 A Correct.

2 Q And did you have your earpiece in?

3 A Yes.

4 Q Were you in radio contact with those behind the
5 building, Agents Trimmer and Sergeant Brennan -- I'm
6 sorry, Sergeant Maines?

7 A Yes, ma'am.

8 Q And at this point, had you learned where they
9 were going and where they had arrived?

10 A I knew they were in the back of the target
11 location, which was to the east of the breezeway. But in
12 their exact locations in the back, I did not know where
13 they were. But they could -- I'm sorry. But they could
14 see -- the fish tank was the reference point.

15 Q And so that's what they aired that they could
16 know see?

17 A That's an assumption, knowing Sergeant Maines as
18 I do, that he knew that that was the target location. It
19 would be somewhere within that area.

20 Q So once you and Agent Brennan were standing
21 behind this wall, did you have a visual of what you
22 believed to be the defendant's apartment?

23 A Yes.

24 Q And describe for the jury how you maintained
25 that visual wall also remaining concealed.

1 A It's unfortunate that you do have to stick your
2 head out and take a peek around to see the doorways. So
3 if this is a wall, you just kind of canter your body to
4 take a quick peek.

5 Q So when you and Sergeant Brennan were standing
6 there, did you do anything to try and make contact with
7 the defendant?

8 A I did, yes.

9 Q Describe for the jury -- did Agent Brennan also
10 try and make contact with the defendant?

11 A Yes, ma'am.

12 Q Did Agent Brennan place any phone calls that you
13 were able to hear --

14 A Yes, ma'am.

15 Q -- to the defendant?

16 And you can probably take a seat at this point,
17 and then you may have you step down again.

18 A (The witness complied.)

19 Q Did you hear Agent Brennan leave voicemails on
20 what was the defendant's purported cell phone number?

21 A Correct.

22 Q And how many calls did you hear him make?

23 A I heard him make a total of two.

24 Q Did you hear him identify himself as Lakewood
25 Police?

1 A Correct.

2 Q And did he say anything to you after that second
3 call was made that affected what you did?

4 A He left a voicemail message with the dispatch
5 number.

6 Q And did you have any indication that the suspect
7 was going to come out of the home?

8 A No, he was not.

9 Q Was Agent Brennan successful in making contact
10 with the defendant to get him to come out?

11 A He made verbal contact one time, and, no, it was
12 not successful.

13 Q So to be clear, you heard two voicemails and one
14 verbal contact?

15 A I heard one verbal and one voicemail. That's
16 what I recall.

17 Q Once he finished those -- the voicemail, phone
18 contact and voicemail, did you in any way attempt to
19 contact Eric St. George?

20 A Yes, ma'am.

21 Q And describe for the jury how you did that.

22 A Eric Brennan, Agent Brennan had provided me with
23 a telephone number, and I used my department-issued phone
24 and made a telephone call.

25 Q And why did you decide, after Agent Brennan had

1 placed three calls, that you would try as well?

2 A It's been my experience maybe a different voice,
3 a different person can try to get a better result. So
4 that's why I called.

5 Q And was that at 865-280-3742?

6 A That number sounds correct.

7 Q How many times did you call?

8 A Recollection of my phone saying three times.

9 Q And do you recall those specific times?

10 A I do.

11 Q And what were those specific times?

12 A 24 minutes after midnight, 30 minutes after
13 midnight, 34 minutes after midnight.

14 Q Could it have been 32 minutes after midnight?

15 A It could have been.

16 Q And were you able, after this incident, to look
17 at your phone to verify those exact times?

18 A Well after, correct.

19 Q And did you speak with him each of those times?

20 A I did.

21 Q And to be clear, this is now after midnight,
22 meaning it's August 1st of 2016 at this point?

23 A Yes, ma'am.

24 Q When you made contact with the defendant the
25 first time on the phone, can you describe for the jury

1 what you said to introduce yourself?

2 A I said: I'm Sergeant Nathan Muller with the
3 Lakewood Police Department. And the response was: Hello
4 -- or, I'm sorry, response was -- when it rang, he picked
5 up and said hello, and I said: This is Sergeant Nathan
6 Muller with the Lakewood Police Department. I apologize.

7 Q And did he say anything in response or did you
8 continue?

9 A I continued.

10 Q And what did you say next?

11 A I said: We are here to talk about an incident
12 involving a female that may or may not have happened out
13 in the parking lot.

14 Q And how did he respond?

15 A In disbelief. Not -- saying nothing happened,
16 nothing occurred, really don't know what you're talking
17 about. But it was disbelief that I was even calling.

18 Q How did that conversation continue from there?

19 A You know, I don't remember the exacts of the
20 conversation, but I was trying to explain that we're here,
21 we're outside, we'd like to get your side of the story
22 about an incident that was reported to have happened to a
23 female out in the parking lot. And it was just: Why are
24 you fucking with me? I don't -- it's all disbelief.
25 Everything I was telling him, he wasn't -- wasn't

1 believing that I was the police or wasn't believing that
2 something occurred because he denied that nothing happened
3 outside.

4 Q And do you recall how long this first
5 conversation lasted?

6 A Maybe a minute or two. I mean, it was a short
7 conversation.

8 Q And did you notice anything else about the sound
9 of his voice?

10 A Yeah, really -- it was like a thick tongue, like
11 a swollen tongue, and slurred. And he wasn't tracking
12 what I was saying. We're here to talk about something,
13 the response would be really slow. Just didn't seem like
14 he was tracking or understanding what I was saying.

15 Q And having worked in law enforcement since, I
16 think, 1999 --

17 A Yes, ma'am.

18 Q -- do you have training and experience
19 interacting with those who are under the influence of
20 alcohol?

21 A Alcohol and narcotics, yes, ma'am.

22 Q And did some of these signs that you just
23 mentioned seem consistent with someone who was under the
24 influence of alcohol?

25 A Yes, ma'am.

1 Q And as for the second call, can you describe
2 that for the jury?

3 A I called again and I said: I'm Nathan Muller
4 with the Lakewood Police Department. It was very similar.
5 We're just -- you know, we're here to figure out what is
6 going on. It was disbelief, not really believing who I
7 was. Nothing occurred, you know, why are you fucking with
8 me? That was something that stuck out in my mind.

9 Not understanding that I was who I was saying I
10 was and just -- I don't understand why -- I'm putting
11 words in his mouth, but it just came across as I don't
12 understand why you're here. Nothing happened. I don't
13 know who you are.

14 Q And in hearing this response, how did you
15 explain further why you were there?

16 A Via the radio, the earpiece up here, during one
17 of the two conversations, I believe it was the second one,
18 there was information that was relayed from Sergeant
19 Maines that he had come out to the back and either locked
20 or closed a sliding door.

21 So I relayed that, saying: We know that you
22 just closed the sliding door -- or locked it or closed it.
23 And the response was paranoia, like: You're watching me.
24 And just what I recall is kind of how the conversation
25 went. It was very disbelief.

1 Q And was that what you believe to be around the
2 second phone call?

3 A Yes, ma'am.

4 Q And the third phone call, describe for the jury,
5 again, how that phone call went

6 A I came across, saying, you know, we're just
7 trying to figure out what's going on. This might not even
8 be a big deal. You know, we can be out of here quickly.
9 We just need to get your side of the story.

10 Again, it was thick-tongued, slurred. And it
11 was agitated. Not angry, not upset, but best way I could
12 say was annoyed, is the best word I can use, that you're
13 calling me. But it wasn't screaming, it wasn't yelling.
14 It was just annoyed, because I already told you, you're
15 not who you say you are. I don't believe it's going on.

16 Q You mentioned he was saying things like, you're
17 not who you say you ar. Did you do anything to help the
18 defendant verify that you were, in fact, Lakewood Police?

19 A Correct. I said: You can call. You can get
20 patched into my cell phone from dispatch.

21 And what that means is you can call dispatch,
22 and they can transfer you to my cell phone and we can have
23 a conversation. We do that periodically to folks that
24 don't believe who we say we are to verify who we are.

25 They'll call into dispatch. Dispatch will say:

1 Lakewood 911. I'm here to talk to Sergeant Muller, Nathan
2 Muller, and they'll patch that call in to you.

3 Q And did he ever indicate that he recalled, based
4 on any of the prior phone conversations you had with him,
5 who you were?

6 A At one time he called me by my first name,
7 Nathan, and I believe that was the third phone call, and I
8 remember no one calls me Nathan. Even though I address
9 myself as Nathan Muller with the Lakewood Police
10 Department, I found that to be -- interesting is the right
11 way to say it.

12 Q And had you, in those previous two phone calls,
13 or at least one of those two previous phone calls,
14 identified yourself as Nathan Muller with the Lakewood
15 Police Department?

16 A All three times, I identified myself. First
17 time I believe it was Sergeant Nathan Muller with the
18 Lakewood Police Department.

19 Q And all three teems, to be clear, did you
20 identify yourself as Lakewood Police?

21 A Correct.

22 Q Do you recall whether he said something that was
23 more concerning than simply not -- just not abiding by
24 your request to come outside?

25 A Correct. He said: I have something for you.

1 Q Or did he say: I have something for you in my
2 hand, or something of that nature?

3 A Something of that nature.

4 Q And just to clarify, is this still -- is this on
5 your third phone conversation?

6 A I believe it's the second one.

7 Q And I may have gotten that phone number -- is it
8 (303) 472-8075? Is that possibly the phone number that
9 you called?

10 A That's my telephone number, my Lakewood-issued
11 cell phone.

12 Q And when you called from that phone number that
13 I just mentioned, the other one being what you recall
14 potentially to be the defendant's, but would you remember
15 that today off the top of your head?

16 A The defendant's phone number?

17 Q Yes.

18 A No, I wouldn't. I know it started with an 8.

19 Q Would your phone number come up as blocked or
20 unavailable or do you know?

21 A It comes up a blocked -- unavailable or
22 restricted, one of those.

23 Q Once he said something like: I have something
24 for you, how did you take that?

25 A I took it in a threatening manner, with

1 everything that happened in the past, the original
2 allegations, that there was a gun call, shots had been
3 fired. I took that as a threat towards me.

4 And I remember getting -- going off the phone,
5 covering it, and telling Agent Brennan, you know, exactly
6 that he's got something in his hand for us, to relay that
7 information.

8 Q And so you -- did he say something like he did
9 have something for you in his hands?

10 A Uh-hum.

11 Q You said that you took this as something that
12 was threatening. Can you relay for the jury whether or
13 not this was in response to something you had said and his
14 tone of voice?

15 A I don't remember if it was in response to
16 anything we talked about. It was the same conversation
17 that we had already discussed is: We're here to figure
18 out what's going on, your side of the story.

19 And I can't tell you what happened prior to
20 that. His tone, again, was not angry. It was more
21 disbelief, but -- and agitated.

22 Q And in those phone calls, were you asking him
23 repeatedly to come out with nothing in his hands?

24 A After he said that -- you know, come out with
25 nothing in your hands, correct.

1 Q Once you hear that, you said that you whispered
2 to Agent Brennan that he's making this type of threat.

3 A Correct.

4 Q Did you have one more subsequent phone call that
5 you can recall with the defendant, or were the phone calls
6 completed with him?

7 A I believe that was the -- it was either the
8 second or third phone call. But I only made three, if
9 that's what you're asking.

10 Q And when he made this threatening comment, it
11 could have been the second or the third, you just don't
12 remember?

13 A Yes, ma'am.

14 Q And once you told that to Agent Brennan, did you
15 want that to be relayed to those who were in the back of
16 the defendant's building?

17 A Absolutely.

18 Q Once you got off the phone -- how did the
19 conversations all three of these times end?

20 A Either he hung up or we were disconnected, one
21 of the two.

22 Q Once the phone conversation ended the third
23 time, what did you and Agent Brennan do?

24 A We heard Sergeant Maines get on the radio, the
25 lights went out, and he's racking a shotgun.

1 Q And when you heard Sergeant Maines say the
2 lights went out, were you still positioned where you were
3 with Agent Brennan?

4 A Correct. We never made it to the back of the
5 building at all.

6 Q And did you hear Sergeant Maines say those
7 things, all the lights went out and that he could hear a
8 shotgun being racked, and he's outside?

9 A Yes.

10 Q Once you heard Sergeant Maines air on your radio
11 that a shotgun had been racked, what did you do?

12 A We fell back to a position by that big tree that
13 I showed on one of the exhibits. It's a big pine-looking
14 tree, it's really wide, and trying to get -- I would call
15 it more concealment than cover because the tree is not
16 going to provide you -- the pine tree itself is not going
17 to provide you cover. Creating distance.

18 Q And was that the tree that was directly in front
19 of the breezeway?

20 A Correct.

21 Q And once you -- did both you and Agent Brennan
22 position yourself behind that tree?

23 A Correct.

24 Q And can you describe, essentially, what you were
25 able to see from that vantage point, if anything?

1 A Absolutely. Agent Brennan had a better -- he
2 was in a position to see the front door better than myself
3 just by the way we were sitting. And at that one point
4 during all this I looked over to my east, or which would
5 be to my right, and saw the silhouette of Sergeant Maines
6 walking towards the next building over, walking away or
7 towards it.

8 Q And to be clear, could you see Sergeant Brennan
9 walking east on that roadway around the building that was
10 to the east of the defendant's building?

11 A Yes. Sergeant Maines was walking away, and I
12 knew it just because of his silhouette. You mean --
13 Sergeant Maines and Agent Trimmer, they definitely have a
14 different silhouette.

15 Q At this point, were you clear on what the plan
16 was? The four of you had made that first initial plan,
17 you had made those calls, and now Agent Trimmer and
18 Sergeant Maines were clearly moving.

19 Was that made clear to you at this point, or
20 were you all acting as you deemed appropriate?

21 A Acting as we deemed appropriate. In fact, at
22 one point during the conversations, and -- just the
23 general conversation between myself and Agent Brennan, I
24 said: If this goes wrong or something goes bad, we're
25 going to retreat to the white truck. We'll have the west

1 side and the south side of the building.

2 It was just a premonition. We talk about, in
3 incident command, it's a fumble, fumble point or fumble
4 plan. You just have to have -- if something goes wrong,
5 you have to have a plan. Sergeant Brennan and I had
6 spoken about if something was wrong.

7 But at that point, when Agent Trimmer and
8 Sergeant Maines were moving, it was all independently, and
9 acting accordingly.

10 Q And that if something went wrong, you mentioned
11 you'd have a view of the west and the south, essentially
12 not covering the north and east two sides of the building?

13 A Correct.

14 Q So once you could see Sergeant Maines walking
15 east around that building next door, were you able to see
16 anyone coming out the front of the defendant's apartment?

17 A No one came out the front, no.

18 Q Once you saw -- did you see Sergeant Maines go
19 somewhere or disappear?

20 A Disappeared behind the building.

21 Q And once Sergeant Maines disappeared, what did
22 you hear or do or see next?

23 A I distinctively heard two -- from my training
24 and experiences, two shotgun blasts, and myself and Agent
25 Brennan then ran towards the sound of gunfire, towards the

1 east side of the building.

2 Q You mentioned two shotgun blasts that you
3 recognized from your training and experience. Can you
4 explain to the jury how you can recognize and distinguish
5 a shotgun blast and how it's different from another type
6 of blast or fire from a different type of weapon?

7 A Absolutely. During my training at the Lakewood
8 Police academy, and we have in-service training three
9 times a year, and I also have less legal training, we use
10 the shotgun or less legal, which is an orange shotgun. So
11 I personally used it. You hear that loud bang. You know
12 when it's a shotgun. So I'm familiar with what a shotgun
13 sounds like, plus at ranges.

14 Q And you just mentioned that the plan was if
15 something goes -- if things goes south, the plan was to
16 retreat to that white truck, and yet you and Agent Brennan
17 moved in the opposite direction towards the gunfire?

18 A Correct.

19 Q Can you explain to the jury why you did that
20 instead of retreating toward that truck?

21 A To be honest with you, I didn't know what was
22 going on. This wasn't making sense. The defendant was
23 contained inside the apartment, to the best of our
24 knowledge, in the front -- I'm speaking for myself -- and
25 now somehow the defendant or a person was outside.

1 I didn't know if Sergeant Maines had been shot,
2 Agent Trimmer had been shot, or the gentleman himself had
3 been shot -- or I should say person had been shot, needing
4 medical aid.

5 That's what we're trained to do. We're trained
6 to run towards the gunfire, and that's what we did.

7 Q You mentioned you heard these two shotgun
8 blasts. Did you hear any additional gunfire that didn't
9 seem to come from a shotgun?

10 A Correct. I heard two or three bangs or pops,
11 which is definitely consistent with a handgun. I go to
12 the range three times a year. I fire my handgun. I know
13 what it sounds like. It sounded like a handgun. It was
14 definitely distinctive from a shotgun blast.

15 Q And this sound of a handgun, did it sound
16 similar to the handgun that you would have with you?

17 A Yes.

18 Q And how many of those handgun shots do you
19 recall hearing?

20 A I recall hearing two to three. I remember
21 hearing boom, boom, pop, pop, pop.

22 Q And after hearing what you believe to be five
23 shots, did you -- what did you hear after that?

24 A I heard Agent Trimmer's voice. I don't know
25 what she said, but I just heard it. I heard Sergeant

1 Maines's voice. I just heard it, so I knew they were
2 okay. Didn't know if they had been shot, but they were
3 alive.

4 Now, at the corner of this building, my line of
5 sight is I can't see a thing. I can see, it looks like,
6 garages on the other side, but I can't see anything that's
7 going on.

8 Then I hear Sergeant Maines say -- or then I
9 hear one more shot, one more shotgun blast, consistent
10 with the first two I heard, and he's running back towards
11 the apartment.

12 MS. DECKER: And if we could project Exhibit 3.

13 (People's Exhibit 3 was published.)

14 Q (BY MS. DECKER) So to be clear, were you and
15 Agent Brennan now stationed away from the breezeway and on
16 the southeast corner of the suspect's building?

17 A Can I go up and --

18 Q Yes.

19 A We retreated back here, like I had mentioned,
20 heard the distinctive, in my opinion, shotgun blasts, ran
21 towards the east and right around this area (indicated).

22 Q And you were pointing to the southeast corner of
23 that building; is that accurate?

24 A Correct.

25 Q And so from that vantage point, can you just

1 draw a line essentially marking the angle at which you
2 could not see any more, if that question makes sense to
3 you?

4 A Yes. What is below the pointer stick is
5 probably the area that I could see. Everything above it,
6 I had no idea what was going on.

7 Q And after you heard the next shotgun blast after
8 the two first shotgun blasts and Sergeant Maines aired:
9 He's going back inside, what did you and Agent Brennan do?

10 A We run back towards the white truck, towards the
11 plan that we had.

12 Q And once there, did you hear anything else?

13 A While running here, Agent Brennan, I lost him at
14 the front. I believe he covered the front. I go back to
15 this dumpster that was that white truck area. And while
16 I'm there, I'm radioing that we need more help.

17 I look over, and it's one of the greatest things
18 I ever saw. 20, looks like, police officers just showed
19 up. It was the four of us, and for some reason now
20 there's 20 Lakewood police officers standing there with
21 me. As we're on the side here, I hear a volley of shots
22 coming in from the apartment or condo.

23 Q And you said a volley of shots. Did you
24 recognize whether these were handgun-type or any other
25 type of gun versus a shotgun type?

1 A I believe I heard one shotgun and the rest were
2 handgun.

3 Q And were you aware whether Sergeant Maines had
4 called in reinforcement officers or called in any certain
5 code to have these reinforcements there even just right
6 after this happened?

7 A I remember myself yelling, "Shots fired" on the
8 radio. Sergeant Maines had said, "Shots fired." So
9 that's the big indicator for everybody in the city to come
10 help.

11 Q And you can have your seat again, thank you.

12 A (The witness complied.)

13 Q And do you recall being -- after all of this,
14 speaking to other investigators with different agencies as
15 a part of the investigation, given that this was a
16 shooting involving an officer?

17 A Correct.

18 Q And as a part of that, did you indicate to them
19 that you heard handgun shots coming from inside?

20 A Yes.

21 Q Versus a shotgun, just to be clear, coming from
22 the inside?

23 A Correct.

24 Q And did you learn whether or not the suspect had
25 been shot?

1 A Yes.

2 Q How did you learn that?

3 A On scene.

4 Q And was that when you had gone back to that
5 white truck area?

6 A Correct.

7 Q And after you went to that white truck area and
8 saw this -- all of Lakewood or police arriving to the
9 scene, what did you do, if anything, to participate in the
10 investigation? Or was that the end of your investigation?

11 A After the individual was placed into custody and
12 placed in the ambulance, I took more of a supervisory
13 role, assisting another sergeant that came down, Todd
14 Fahlsing, who is more or less what we call the incident
15 commander now, since Sergeant Maines and I were involved,
16 assisting him with getting certain agents tasked to do
17 different various items, tasks to do.

18 Q And what types of tasks were those that you were
19 assigning at this point?

20 A Scene security, getting the involved agents
21 involved in the actual shooting separated and moved to the
22 station for the interview.

23 Peer support called me if anybody needed any,
24 you know, emotional or mental help right away. That is my
25 duty. And then after that, once the scene was secure,

1 detectives from the CIRT team, or critical incident team,
2 had come down. I gave a briefing of what I recall
3 occurred. And then after that, I drove myself to the
4 police station, the Lakewood police station.

5 Q Did you give that briefing to other officers who
6 had arrived on scene -- at the scene of where this took
7 place?

8 A Meaning after -- after it was done?

9 Q Yes.

10 A Correct.

11 Q And you mentioned first scene security. Can you
12 explain what that means, after this crime had already
13 taken place, what you were doing?

14 A Correct. Giving agent direction to tape off
15 with the yellow crime scene tape that most people see on
16 the news, tape off the area, the involved area. And then
17 I went around the back after the incident was done, and
18 that was the first time I had gotten a glimpse of what the
19 back looked like. I made sure that there was an agent
20 posted there to make sure that no one entered the
21 dwelling.

22 Q And why is it important to leave the scene the
23 way it was, to keep the integrity of that scene?

24 A Just that, keep the integrity of it. When
25 investigators come down to document the scene itself, is

1 this is how it was. This is its true form.

2 Q Did you ever see the suspect come out of that
3 apartment?

4 A I did not.

5 Q And you mentioned that your role after he was
6 transported to the hospital was to separate and move those
7 individuals who were involved in this to the station?

8 A Correct.

9 Q Can you explain why keeping them separated and
10 then moved to the station was important?

11 A To keep their recollection of what occurred
12 pure, not to get it tainted, not to have anybody else put
13 something in their mind of what may have occurred.

14 It's kind of interesting. When you hear
15 something so many times, your mind picks it up and, in my
16 personal, experiences it to be the truth, and it's not.
17 So the best thing we do is we separate folks for their
18 interview to make it as pure as we can.

19 Q And so, for example, would that be the number
20 and the type of gunshot blasts that each person would have
21 heard?

22 A Correct.

23 Q And would that be to separate them so that they
24 don't taint one another's memory?

25 A Correct.

1 Q You were at the front of the suspect's building.
2 Did you ever tell the suspect which door to come out of?

3 A No.

4 Q You just made it clear to come out with nothing
5 in your hands?

6 A Correct.

7 Q And he had said he had something for you in his
8 hands?

9 A Correct.

10 MS. DECKER: Thank you. No further questions.

11 THE COURT: Cross-examination.

12 MR. ST. GEORGE: Your Honor, I need to ask for a
13 break in order to queue up some exhibits.

14 THE COURT: Ladies and gentlemen, we'll excuse
15 you for about ten minutes. Please don't talk about the
16 case, keep an open mind, don't do any investigations.

17 (The jury left the courtroom.)

18 THE COURT: You may step down.

19 THE WITNESS: Thank you, ma'am.

20 (The witness was excused.)

21 (A recess was taken.)

22 THE COURT: We're going to bring in the jury.
23 We're going to have to not break for a very long time to
24 get exhibits together for witnesses.

25 MR. MENGES: It just came up with the testimony.

1 (Pause in the proceedings.)

2 (The jury entered the courtroom.)

3 THE COURT: Be seated, everyone.

4 Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. ST. GEORGE:

7 Q All right. Sarge, what I want to do first is
8 start with an exhibit. This is going to be Defendant's X.
9 This is a sheet that comes from the background time
10 chronology. Are you familiar with that? That's something
11 that your dispatch publishes that they create?

12 A Yes, sir.

13 Q Okay. And Sergeant Muller, that looks familiar
14 to you and you recognize that as being part of the
15 chronology?

16 A Yes, sir.

17 Q And, all right.

18 MR. ST. GEORGE: Can I -- I'd like to admit this
19 into evidence as Defendant's X.

20 MS. DECKER: Your Honor, I'd ask for further
21 foundation.

22 THE COURT: Can we have a little more about the
23 document, the date?

24 MR. ST. GEORGE: Sure.

25 Q (BY MR. ST. GEORGE) Sergeant Muller, on -- so

1 the background time chronology, this is something that's
2 created by your dispatcher at the police station; is that
3 correct?

4 A Yes, sir.

5 Q Okay. And essentially what it is, is it's a
6 tool that stamps the time for specific events throughout,
7 for example, in this case, the evening of July 31st and
8 morning of August 1st?

9 A Yes, sir.

10 Q Okay. And so looking at it now, it looks
11 familiar to you. You see -- for example, you see the
12 event at 030 hours. And it says: Event comment: Coming
13 out the back?

14 A Correct. Yes, sir.

15 Q And to you, you recognize that as being an event
16 that occurred during this night that we've been talking
17 about. And so you recognize this -- this page of the
18 chronology as being from that night?

19 A Yes, sir.

20 Q Okay.

21 MR. ST. GEORGE: And I'd like to admit this into
22 evidence as Defendant's X, then.

23 MS. DECKER: The People have no objection.

24 MR. ST. GEORGE: Thank you.

25 THE COURT: X is admitted.

1 (Defendant's Exhibit X was admitted into
2 evidence.)

3 Q (BY MR. ST. GEORGE) All right. Now, Sergeant
4 Muller, you're about to get your fourth stripe on your
5 sleeve, aren't you?

6 A Very close, yes, sir, 20 years.

7 Q Congratulations.

8 A Thank you, sir.

9 Q And 20 years, nearly, would make you a very
10 experienced law enforcement officer, correct?

11 A Yes, sir.

12 Q And I'd even say you're probably very good at
13 your job, right?

14 A I would like to say so, yes, sir.

15 Q When you arrived at my neighborhood, did you
16 notice that it was a gated and fenced neighborhood?

17 A Yes.

18 Q And did you announce yourself at the gate?

19 A Did I? No, sir.

20 Q And so I did not buzz you through the gate by
21 opening the gate with my telephone, right?

22 A Not to my knowledge, no, sir.

23 Q Okay. And that night you weren't driving a
24 marked squad car. You had your silver unmarked, right?

25 A Yes, sir. Normally I take out a silver unmarked

1 car, so -- without knowing, but that is normally my MO,
2 yes.

3 Q Cool. And we've long since discussed that you
4 did not knock on my front door, right?

5 A No, sir, I didn't -- no, sir, Agent Brennan or
6 myself did not.

7 Q Okay. And you were with Agent Brennan when he
8 made his call, right?

9 A Yes, sir.

10 Q And did you hear him refer to himself as Agent
11 Brennan?

12 A Yes.

13 Q You did? And "agent," a lot of folks might
14 associate that to a real estate agent or an agent with the
15 FBI. To your knowledge, is there any other police
16 department here in the state of Colorado that uses this
17 term for a police officer?

18 A Local, no, just federal.

19 Q Okay. To someone who is not familiar with the
20 Lakewood Police Department as agents, do you think it
21 might sound strange or fake?

22 MS. DECKER: Objection, speculation.

23 THE COURT: Sustained.

24 Q (BY MR. ST. GEORGE) Out in front of Building 7
25 there were no marked police vehicles, correct?

1 A No, sir, there was not.

2 Q And there were no red or blue flashing lights?

3 A No, sir, there was not.

4 Q And at no time do you recall yourself or anyone
5 else shouting out: Lakewood police. We're over here. We
6 need to talk to you?

7 A Verbally, you mean?

8 Q Correct, verbally.

9 A No, sir, we did not do that. No, sir.

10 Q Okay. Now, let's go back to that chronology
11 that I placed in front of you, and we're also going to
12 reference back to the radio traffic.

13 I'm going play a portion of the radio traffic
14 so -- because I could ask you right away if you remember
15 making certain airs -- or saying certain things on the
16 radio, and I know this was a long timing, and so I'm
17 anticipating that you may not remember what was said.

18 A Correct, yes, sir.

19 Q Okay. And so it would be agreeable that I play
20 this portion of the radio traffic so that would refresh
21 your memory?

22 A Yes, sir.

23 Q Okay.

24 MR. ST. GEORGE: Mr. Burnett, if you could,
25 please.

1 THE COURT: What are we doing now?

2 MR. ST. GEORGE: We're going to play a portion
3 of this radio traffic. This is from People's --

4 MR. FREEMAN: Judge, this was
5 exhibit -- admitted as an exhibit. We've already -- the
6 only part we've heard so far was Ms. Elliot's 911 call.
7 But after her call, on that exhibit, is radio traffic.

8 THE COURT: All right. So this is -- so this is
9 Exhibit --

10 MR. ST. GEORGE: This is People's Exhibit 320,
11 Your Honor.

12 THE COURT: 320.

13 MR. FREEMAN: And I think it might be up here on
14 the table. We should play the actual exhibit.

15 MR. BURNETT: I have the same copy pulled up.

16 MS. DECKER: That's fine.

17 MR. BURNETT: If you could switch to my side,
18 Your Honor?

19 THE COURT: So we're going to be using what you
20 got in discovery, which coincides with 320?

21 MR. BURNETT: Yes.

22 MR. ST. GEORGE: That's right, Your Honor.

23 (People's Exhibit 320 was published.)

24 Q (BY MR. ST. GEORGE) So, Sergeant Muller, did
25 you recognize that as the radio traffic from that evening?

1 A Yes.

2 Q Okay. And we heard Agent Trimmer saying:
3 Trying to call the subject and have him come out. Did we
4 hear that?

5 A I heard her voice, but I did not hear what she
6 said, but I'll take that as yes.

7 Q Okay. And we heard you -- you are 330, correct?

8 A Yes, sir, I am.

9 Q Okay. And Maines is 430?

10 A Yes, sir.

11 Q All right. And we heard you say: We made phone
12 contact with the suspect, and he's inside, and we can see
13 him through the window. Says he doesn't want to talk to
14 us and hung up the phone. We're going to be trying him
15 back?

16 A Uh-hum.

17 Q And you recognized that as your voice?

18 A Sounded like Agent Brennan. I could be wrong.

19 Q Okay.

20 A I could be wrong. But that's what was said,
21 yes, sir.

22 Q Okay. And then we heard dispatch time stamp
23 that at 025 hours?

24 A I don't recall, but I take your word, yes, sir,
25 I don't remember the time that was played.

1 Q Okay. And -- all right. And so at this point,
2 Maines is in the backyard, and you know that he's able to
3 see through the windows?

4 A Yes, sir.

5 Q And you remember speaking with Brad With, the
6 interviewer? Do you recall that interview?

7 A Yes, sir.

8 Q And do you remember telling him that you had
9 said on the telephone in your phone call to me that I
10 could be seen through my windows?

11 A I do recall that, yes.

12 Q Okay. And that was during that first phone call
13 that you made to me where you made contact with me?

14 A Sounds right, yes.

15 Q Okay. And so at that point, I've been told that
16 someone is in the backyard, and they can see me through my
17 windows, correct?

18 A Correct.

19 Q All right. And I'm going to have you reference
20 your exhibit that you've got sitting there in front of
21 you.

22 A Okay.

23 Q You'll see where Maines airs: Coming out the
24 back. And do you see that being time stamped as 12:30 and
25 49 seconds in the morning, or probably 030 hours?

1 A Correct. I guess first 003049. Then Comment:
2 Coming out the back.

3 Q Okay. And then on the radio traffic, we heard
4 you air: 330, 430, are you in contact?

5 A Uh-hum.

6 Q Do you remember saying that?

7 A I do remember -- I don't remember saying that.
8 I remember hearing it.

9 Q So your heard it, fair enough. And then
10 at -- then we hear Sergeant Maines air: Not yet. He came
11 out, looked around, went back in real quick, closed the
12 door, locked it.

13 Do you remember hearing that?

14 A Yes.

15 Q Okay. And then on your exhibit that you've got
16 there in your hands, you probably see a time stamp of
17 032 hours. Does that -- does that look right?

18 A Yeah. 0032, 11 seconds.

19 Q Okay. And that's the time stamp for "going back
20 in," right?

21 A Correct. That's the time stamp for radio
22 traffic.

23 Q Right. Okay. So would you agree that there's a
24 minute and 22 seconds between those two timestamps?

25 A Yes.

1 Q And during that minute and 22 seconds, you did
2 radio to Sergeant Maines: Are you coming out -- or are
3 you in contact?

4 A I remember hearing that, yes.

5 Q Yeah. So Sergeant Maines didn't forget the plan
6 to make contact; is that correct?

7 A I can't speak for him, but that was the plan.

8 Q And during that minute and 22 seconds, he did
9 not make contact; is that correct?

10 A I do not know from the radio traffic. And from
11 everything I know, contact was not made. But I was not in
12 back, sir, so I don't know specifically.

13 Q I understand. Farther down through the radio
14 traffic, do you remember hearing Brennan say: He's being
15 threatening on the phone and saying he's got something in
16 his hands?

17 A I do remember hearing that, yes, sir.

18 Q That came after the event that we just
19 discussed, the minute and 22 seconds, where the door was
20 opened and Sergeant Maines was not making contact.

21 A Could I ask a question of which time that was on
22 Exhibit X?

23 Q On Exhibit X it's 032 hours. In the radio
24 traffic it was, two, three, four, five chirps after?

25 A Okay. So I take your word on it, yes, sir.

1 Q So there was -- that threatening on the phone,
2 that came in your second telephone contact that you made
3 to me, correct?

4 A If my memory is correct, yes.

5 Q So it wasn't made prior?

6 A No, sir.

7 Q So after a minute and 22 seconds of being in the
8 backyard with the door open, that's when a threat was made
9 over the telephone to you?

10 MS. DECKER: I'm going to object to compound and
11 also facts not in evidence, as this witness was not behind
12 the defendant's apartment.

13 THE COURT: Sustained.

14 Q (BY MR. ST. GEORGE) Sergeant Muller?

15 A Yes, sir.

16 Q If someone told you they were going to do
17 something and they didn't, would you trust that person?

18 MS. DECKER: I'm going to object to argument,
19 speculation.

20 THE COURT: Sustained.

21 Q (BY MR. ST. GEORGE) Could a reasonable person
22 conclude --

23 MS. DECKER: I'm going object now to argument
24 and speculation.

25 THE COURT: Sustained.

1 Q (BY MR. ST. GEORGE) You said that you wouldn't
2 have described me as being angry, upset, or unsettled.
3 Or, rather, you said, not angry but unsettled or upset.
4 That's how you would describe my tone of voice?

5 A Correct, a little irritated, but yes.

6 Q So it doesn't sound like I've lost my cool on
7 the telephone?

8 A "Cool" meaning swearing, yelling, screaming, no,
9 sir.

10 Q Okay. And that tone, that changed after that,
11 that phone call, that sixth phone call, or, rather, your
12 second phone call. That's when you got -- I'm
13 compounding. I apologize.

14 It was your sixth call -- your third, the sixth
15 overall?

16 A Yes, sir.

17 Q Wherein there was a threat?

18 A Correct.

19 Q But not prior?

20 A No, sir.

21 Q You led a briefing later on that morning at
22 3:43 a.m. Do you recall that briefing?

23 A I did a few. Are you talking about the large
24 CIRT team briefing, sir?

25 Q Probably, yes.

1 A Yes, sir. I don't know the time, but I'll take
2 your word on it, sir.

3 Q And in that briefing, you told everyone that
4 will I did not believe that you were the police; is that
5 right?

6 A Correct. Yes, sir.

7 Q In fact, you used the word "disbelief" quite a
8 few times in describing the conversations that we had?

9 A Yes, sir.

10 Q You outrightly said that I did not believe that
11 you were the police.

12 A I felt that you didn't think I was the police,
13 yes, sir.

14 Q Now, I understand that you were not behind the
15 building. You were in the front of the building, out on
16 the southwest corner. White truck area I think you were
17 calling it, right?

18 A Southwest side, yes, sir, after the initial
19 shot, sir.

20 Q That was after shots?

21 A Yes, sir.

22 Q Whereabouts do you think you were standing
23 before shots during the time that Maines was out in the
24 backyard while you were having that radio traffic
25 conversation with him?

1 A Breezeway area, sir.

2 Q Okay. And when I exited out the back door, did
3 you ever hear any police commands?

4 A No, sir.

5 Q Did you ever hear anyone say anything regarding
6 being police?

7 A No, sir.

8 Q Did you hear any sounds at all?

9 A No, sir.

10 Q You said that you thought that I might be
11 paranoid, like someone was watching me?

12 A Correct.

13 Q Do you recall saying that your friends could see
14 me through the windows?

15 A Yes, sir.

16 Q So -- so there was someone watching me, right?

17 A Yes, sir.

18 Q It was your friends, right?

19 A Two agents, Sergeant Maines and Devon Trimmer in
20 the back. Where they were standing or their vantage point
21 to see you, I don't know, but there were two agents back
22 there.

23 Q And Sergeant, do we typically use the term
24 "friends" to describe agents of a police department?

25 A I have.

1 Q Well, true, they are probably are your friends.

2 A They are my friends, yes, sir.

3 Q Yes. But do you think that using the term "my
4 friends" on the telephone with someone that you're trying
5 to communicate that we are the police, that could be
6 potentially confusing?

7 A In my world, no. But for you, I don't know what
8 you were thinking. But I've done that before, yes.

9 Q Okay.

10 A There's always -- there's always a chance.

11 Q And now when I came out that back door the
12 second time, were you able to hear the racking of a
13 shotgun?

14 A No, sir.

15 Q But from the radio traffic, did you hear someone
16 air that a shotgun had been racked?

17 A Yes, sir.

18 Q At that time did you hear anyone scream out:
19 Stop. Lakewood police?

20 A No, sir.

21 Q Did you hear anyone shout out: Drop your
22 weapon?

23 A No, sir.

24 Q Did you hear any sounds whatsoever from the
25 backyard?

1 A No, sir.

2 Q And no more phone calls were made to me after
3 that, right?

4 A After my last one?

5 Q Right.

6 A To the best of my knowledge, no.

7 Q So whoever was in that backyard, they reasonably
8 ran away, right?

9 MS. DECKER: Object to speculation.

10 THE COURT: Sustained.

11 Q (BY MR. ST. GEORGE) There was no one in the
12 backyard who shouted to me when I came out with that
13 shotgun, right?

14 A I did not. You asked a question if I heard
15 anybody back there. No, sir, I did not hear anybody back
16 there.

17 Q Okay. Generally speaking, when someone racks a
18 shotgun, a policeman doesn't get scared and run away; is
19 that correct?

20 MS. DECKER: Your Honor, I'm going object to
21 speculation again.

22 THE COURT: Sustained.

23 Q (BY MR. ST. GEORGE) Sergeant Muller, if you
24 heard the racking of a shotgun, would you run away or
25 would you shout?

1 A I would first look for cover and concealment and
2 then shout.

3 Q Okay. I think we're getting close. Can you
4 bear with me for one minute?

5 A Whatever you need, Mr. St. George.

6 MR. ST. GEORGE: Thank you.

7 (Pause in the proceedings.)

8 Q (BY MR. ST. GEORGE) So we're going to rewind
9 just a little bit, okay?

10 A Yes, sir.

11 Q Not too far though. After the 025 hours time
12 stamp, there was more radio traffic, and we heard -- we
13 heard Maines say: Now we can't see him inside. Do you
14 remember hearing that?

15 A I remember hearing it after hearing it on the
16 audio.

17 Q Fair enough. And did you hear Maines say: He's
18 sitting on -- He's in the kitchen sitting down on the
19 floor. He's looking at his computer screen, it's mounted
20 on the wall, with a phone in his hand?

21 Do you remember hearing that?

22 A Yes, sir.

23 Q And did you hear Brennan -- he's number 948,
24 right?

25 A I don't know their numbers, but male or female

1 voice, that will help me out.

2 Q Brennan is 948. I'm cheating.

3 A I take your word, yes, sir.

4 Q Okay. And so Brennan says: Did you say he has
5 a gun in his hand? Do you recall hearing that?

6 A Yes, sir.

7 Q And then Maines says: No. Cell phone.
8 Cellular telephone. Do you remember hearing that?

9 A Yes, sir.

10 Q Okay. So there was not a gun in my hands?

11 A At that time, with that radio transmission, no,
12 no, sir.

13 MR. ST. GEORGE: Thank you so much.

14 THE WITNESS: Thank you, sir.

15 MR. ST. GEORGE: No further.

16 THE COURT: Redirect?

17 MS. DECKER: Briefly, Judge.

18 DIRECT EXAMINATION

19 BY MS. DECKER:

20 Q The defendant was talking about Defense Exhibit
21 X?

22 A Yes.

23 Q Is this a portion of what we typically refer to
24 as a CAD report?

25 A Yes.

1 Q Can you explain to the jury what a CAD report
2 is?

3 A CAD report is -- there's various codes that
4 dispatch has that means certain things. On calls like
5 this, if we would say, "The house is orange," they would
6 time stamp "The house is orange" at 0030.

7 So what they're doing is they're making a record
8 of things we say on the scene so I can go back later and
9 say, oh, yes, this was said, this wasn't said. So they're
10 making a record.

11 Sometimes things get missed and they don't get
12 added, but pretty good, accurate record of what was said
13 on the radio.

14 Q And who is generating this CAD report?

15 A A dispatcher.

16 Q Is a dispatcher generating the CAD report in
17 realtime or based on a recording?

18 A It's -- it could be in realtime or it could be
19 there's a lag, because I don't know the procedures of it.
20 But normally it's done as it's said.

21 Q And this dispatcher, is that a dispatcher who's
22 not on scene?

23 A Correct.

24 Q Who's at a computer at the police station?

25 A Yes.

1 Q And is that dispatcher able to hear and listen
2 to all the radio traffic that you on scene -- let's just
3 take you to the early morning of August 1, 2016. Are they
4 able to hear everything that's being radioed that you can
5 hear?

6 A Yes.

7 Q Is that dispatcher understanding the context or
8 writing down what that dispatcher can hear and understand
9 contemporaneous?

10 A Yes.

11 Q So on this Exhibit X, is it fair to say that
12 there are only two of the six total phone calls recorded
13 by this dispatcher on this CAD report? And I'll refer you
14 to 002545.

15 A Correct.

16 Q And is that, this fourth call total, the second
17 call by you? Or the -- one of the calls by you?

18 A One of the calls.

19 Q And as for 0036: Male is saying he has
20 something in his hands, is that your conversation with the
21 defendant?

22 A It's my conversation, yes, with the defendant.

23 Q So on just this Exhibit X, we don't have all six
24 of those phone calls?

25 A Correct.

1 Q And is there a more complete CAD report with
2 many, many pages that was generated from this evening?

3 A Yes.

4 Q And on this simply just people -- Defense
5 Exhibit X, are there a number of unreadable codes to a
6 layperson?

7 A Correct.

8 Q Is, in fact, the majority of this page
9 unreadable to a layperson?

10 A Correct.

11 Q Defense -- the defendant asked you how you got
12 into his apartment complex. You had told the jury it was
13 roundabout. How did you get in that front door? Was it
14 opened?

15 A Memory serves me right, Sergeant Maines either
16 had a code, got a code, and got us in.

17 Q The defendant asked you about how Agent Brennan
18 identified himself. Did he identified himself as Agent
19 Brennan with the FBI, Agent Brennan, the realtor, or Agent
20 Brennan with the Lakewood Police Department?

21 A Agent Brennan with the Lakewood Police
22 Department.

23 Q You and Agent Brennan have discussed that you
24 placed six phone calls to the defendant. Can you explain
25 why you didn't shout at his front door?

1 A The distance. There was quite a bit of
2 distance, 15 feet, 20 feet. I mean, it was a walkway.
3 And for him to -- in my opinion, to hear exactly what we
4 wanted, it would have been lost. So I felt the phone
5 would have been a better means of communication.

6 Q And had the phone proven successful when the
7 defendant chose to answer it?

8 A Correct.

9 Q To be clear, it was after midnight?

10 A Yes.

11 Q This was a populated area, would you say, with
12 others in the complex?

13 A Yes.

14 Q If you had shouted, would that cause you concern
15 for others' safety if the defendant were to come out?

16 A Absolutely.

17 Q If other neighbors were to come out to find out
18 what the ruckus was?

19 A Correct.

20 Q And why would that be something you wouldn't
21 want to do, to shout to wake up all the neighbors?

22 A One thing -- once neighbors get introduced or
23 citizens get introduced into a plan, I am responsible now
24 for their safety.

25 If I could keep those neighbors or citizens in

1 this building sheltered in place, meaning in their
2 building, I don't have to worry about them.

3 Once I introduce screaming, yelling, people
4 coming out wondering what's going on, I've created --
5 basically, what I've done is I've brought liability to
6 myself and the department for bringing an unknown person
7 into a dangerous situation.

8 Q The defendant talked to you about how he sounded
9 on the phone, and you said irritated, disbelief. Would
10 you say paranoid?

11 A Correct.

12 Q Can you explain that?

13 A The statement, after coming to the door, just
14 disbelief: Are you watching me? And I took that as just
15 paranoid. We're out there, my friends are out there, but
16 he just didn't believe it was happening.

17 Q And the defendant asked you about this
18 terminology that you used with him, "friends." Were you
19 trying to be conversational -- conversational and not
20 scary to the defendant?

21 A Correct.

22 Q Were you using a conversational and friendly
23 tone of voice?

24 A I was.

25 Q And can you describe for the jury whether your

1 voice was elevated or basically how you're speaking today?

2 A It was pretty constant on the phone, just as I'm
3 speaking today, just having a telephone conversation.

4 That's the goal.

5 Q And were you just asking him for essentially his
6 side of the story?

7 A Correct.

8 Q The defendant asked you about the fact that you
9 didn't hear police commands or identification of police in
10 the back of the complex when the defendant left his
11 apartment from the back the first time. Did that surprise
12 you?

13 A No.

14 Q Why?

15 A A lot of space separates us. You've got a
16 breezeway, a building, and then the backyard. Normally,
17 day-to-day life, I don't know if I would have heard
18 anything going on in the backyard. So it wasn't
19 surprising to me.

20 Q And not only the distance where maybe you
21 wouldn't be able to hear that, but not yelling and
22 identifying themselves as police directly behind the
23 apartment when he comes out. Would that surprise you?

24 A No.

25 Q Why?

1 A Again, the distance. I'm focused on phone
2 calls, I'm focused on keeping my partner alive. I'm
3 focused on someone else coming out the front door.

4 I'm not really focused on anything going on in
5 the back. It's already been covered, meaning by Sergeant
6 Maines and Agent Trimmer.

7 Q Would you expect Agent Trimmer and Sergeant
8 Maines to identify themselves if they're directly behind
9 the defendant's complex without protective cover?

10 A Without protective cover? No.

11 Q Why?

12 A They need to protect themselves and find cover
13 and concealment. That should be the number one priority.

14 Q Is that what you were getting at when the
15 defendant essentially asked you what you would do in that
16 situation?

17 A Yes.

18 Q So even if someone comes out with just a cell
19 phone the first time, and then with a loaded and racked
20 shotgun the second time, would you expect, based on your
21 training and experience, an officer to identify him- or
22 herself as police at that point?

23 A At that point -- with the shotgun or the cell
24 phone? Or just in general?

25 Q In general, without protective cover.

1 A No.

2 Q Had the defendant, in fact, disobeyed your
3 requests by coming out two times with something in his
4 hands, first a cell phone, and then a loaded and racked
5 shotgun?

6 A Correct.

7 MS. DECKER: Judge, I have nothing further.

8 THE COURT: Recross?

9 RE CROSS-EXAMINATION

10 BY MR. ST. GEORGE:

11 Q Sergeant Muller?

12 A Yes, sir.

13 Q The phone conversation that you and I had --

14 A Yes, sir.

15 Q -- the object of that call was to get me to come
16 outside to talk; is that correct?

17 A Correct.

18 Q And by exiting out the back door, where you said
19 your friends were, would you say that I substantially
20 complied with your request?

21 A Correct.

22 Q And if Trimmer and Maines were back there, and
23 they were seeking cover or maintaining cover, how would I
24 ever see them to talk to them?

25 MS. DECKER: Objection, speculation.

1 THE COURT: I'm going allow the question to be
2 answered.

3 A One more time, the question, sir.

4 Q (BY MR. ST. GEORGE) So what I asked was, if
5 Trimmer and Maines were back there, and I was going
6 outside to talk to them, and they remained in cover and
7 they were not visible, how would I ever know to talk to
8 them?

9 A I wouldn't know, sir. You wouldn't.

10 Q Neither would I.

11 MR. ST. GEORGE: I don't think I have another
12 question.

13 THE COURT: Does anyone on the jury have a
14 question for this witness?

15 (No verbal response.)

16 THE COURT: Thank you. You may step down.

17 THE WITNESS: Thank you, ma'am.

18 (The witness was excused.)

19 THE COURT: You may call your next witness.

20 MS. DECKER: Your Honor, I would just ask the
21 Court to instruct the defendant not to testify and strike
22 the comment "Neither would I." He will have his chance if
23 he chooses to testify.

24 THE COURT: I will strike that.

25 MR. FREEMAN: Thank you, Judge.

1 MS. DECKER: The People at this time call Agent
2 Trimmer.

3 AGENT DEVON (TRIMMER) MEYERS,
4 having been called as a witness on behalf of the People,
5 being first duly sworn, testified as follows:

6 THE COURT: Have a seat, please.

7 THE WITNESS: (The witness complied.)

8 DIRECT EXAMINATION

9 BY MS. DECKER:

10 Q Good afternoon.

11 A Hi.

12 Q Will you please introduce yourself to the jury
13 and spell your full name for our court reporter?

14 A I'm Agent Devon Meyers, D-e-v-o-n M-e-y-e-r-s.

15 Q And did you go by a different name as of very
16 recently?

17 A Yes.

18 Q And what was your name prior to Agent Meyers?

19 A Trimmer was my last name.

20 Q And is that spelled T-r-i-m-m-e-r?

21 A Correct.

22 Q And when did you change your name?

23 A I think it was around July of 2017.

24 Q For the purposes of this trial, do you mind if
25 you we refer to you as Agent Trimmer?

1 A No. It's completely fine.

2 Q Tell the jury what you do for a living.

3 A I work as a police officer in the City of
4 Lakewood, and I'm currently on patrol. Right now I work
5 for 10 a.m. to 10 p.m.

6 Q How long have you been working for the City of
7 Lakewood as a patrol agent?

8 A Four and a half years.

9 Q And can you describe for the jury the training
10 and experience you have in that capacity?

11 A You go through -- well, they put you through,
12 like, a six-month regional academy. If you pass that,
13 then you go on to four months of field training. And top
14 of that we have yearly training, such as -- we call it
15 in-service training, but classes like anti-biased
16 policing. I've gone through CIT, or crisis intervention
17 training. I go through quarterly ranges, and I'm rifle
18 certified as well.

19 Q And what are quarterly ranges?

20 A Um, essentially our range staff puts us through
21 different drills. We have to pass a qualification each
22 year.

23 We did have a standard of having a hundred
24 percent. I don't know if that's changed exactly. And we
25 do other drills, whether it's working with barricades to

1 simulate cover and concealment or just accuracy drills or
2 things to hopefully make me better.

3 Q And when you say "cover and concealment," what
4 does that refer to?

5 A So when you're behind cover, it's something that
6 should stop a bullet. Concealment just kind of hides you
7 from view, but if someone shot at you, it's going to go
8 through that.

9 Q So, for example, would a wall be cover and a
10 bush be concealment?

11 A Depends on the wall, but a wall could be cover
12 and a bush would be concealment.

13 Q And what type of training do you have in that
14 regard, for covering and concealment, as it pertains to
15 weapons?

16 A Just the range training kind of going over it.
17 Some of it, in a way, is common sense, but you understand
18 that bullets are going to go through branches of trees and
19 things like that, whereas if you're behind a brick wall,
20 it should stop that.

21 Q And this seems to be a subset of officer safety
22 training. Have you been trained in officer safety in any
23 way?

24 A Yes. They do that in the academy, and then we
25 kind of go through -- are given what they call our

1 in-service training, so our yearly trainings.

2 We do a lot of -- I guess, more cop speak, is
3 like simulation rounds, essentially. They're kind of
4 glorified paint ball rounds, but they hurt. So we do
5 that.

6 And then I'm also a role-player for our academy.
7 So I'll go back, and I think it's a good refresher. So I
8 do that around twice a year, once for each academy.

9 Q You mentioned that you're also rifle certified.
10 What does that mean?

11 A So I took a 40-hour class, and then again I go
12 to quarterly trainings so that I am able to carry a rifle
13 on duty.

14 Q And when did you get that?

15 A Oh, goodness. I believe that was around May of
16 2016. I may be off on the date.

17 Q So is that shortly before the incident that
18 you're here for today?

19 A I believe so, ma'am.

20 Q And in addition to rifle training, do you have
21 any other weapons-type training to become a police
22 officer when you are a police officer?

23 A I mean, just the handgun, I went through the
24 rifle. And then in our arrest control program, it's a lot
25 of the hands on, as well as if you carry what they call an

1 ASP, which is like a collapsible or expandable baton, or
2 if you carry what they call a straight stick. It's
3 essentially just a wooden baton.

4 Q And as a police officer, can you explain to the
5 jury the types of weapons that you carry?

6 A I currently carry my handgun. My rifle is in my
7 patrol vehicle. I have an ASP on my belt. And then I
8 guess if you classify a Taser as well, we do go through
9 yearly Taser training. I carry that on my belt as well.

10 Q And what kind of handgun? Can you describe that
11 for the jury?

12 A It's a Glock 17.

13 Q And what type of ammunition?

14 A 9-millimeter.

15 Q And can you describe for the jury how you
16 maintain that weapon on your person and whether you keep
17 any additional ammunition on you?

18 A So I carry a total of 52 rounds. I carry three
19 magazines. Each magazine contains 17 rounds. And then I
20 also have one round in the chamber of my gun.

21 Q And is this how you always maintain and carry
22 your handgun?

23 A Yes, ma'am.

24 Q And is this policy and procedure how all
25 Lakewood agents carry their handguns?

1 A Yes, ma'am.

2 Q I'm going draw your attention to the evening of
3 July 31st of 2016. Can you describe for the jury in what
4 capacity you were working that evening?

5 A So that night I was working what we call our
6 Watch 4 shifts, essentially our night shifts. I was
7 working from 9 p.m. to 7 a.m., and I was working what we
8 call our southeast sector.

9 My call for the night was 642, but I still
10 respond anywhere in the city. So south of 6th Avenue
11 between Sheridan and Garrison.

12 Q And what were you doing as you entered into your
13 shift, the beginning of your shift, what types of work?

14 A So initially we sit through roll call, just kind
15 of anything that's happened since we were last on they
16 kind of brief us on.

17 And then Agent Brennan and I had been on one
18 call prior in the night, and it was an elderly lady that
19 called and heard a noise in her backyard and just wanted
20 us to make sure that there was nothing back there, and
21 there wasn't.

22 Q And so once you cleared that call, did you get
23 another call for service?

24 A I did.

25 Q And was that at 9:45, approximately?

1 A Somewhere in there, yes.

2 Q And at 9:45, when you received this dispatch
3 call, can you explain to the jury the type of call and
4 information you received and how you responded?

5 A Dispatch had aired it was a weapons-type call,
6 and the RP, or kind of the short speak for reporting
7 party, her name was Emily, had said that she had -- I
8 think they described it as a party, had gone to a party,
9 and she had been touched inappropriately. And when she
10 was leaving, a gun had been fired at her.

11 Q And did you get any information about the
12 suspect's name, meaning the person who fired the gun?

13 A I believe she had given that his name was Eric,
14 but that's all we knew.

15 Q And through dispatch are they able to often run
16 various information to try and get a suspect's full name?

17 A They can. Somehow they go through databases. I
18 don't know if they look at tax or just past contacts, but
19 somehow they came up with a name as well.

20 Q And could knowing that it is someone's birthday
21 be enough of an identifier to positively get the full name
22 of the person?

23 A It can be. It would be a major coincidence of
24 you had two similar name and date of birth.

25 Q So did you get the name Eric St. George through

1 dispatch when you arrived to the scene?

2 A I think it was actually before we got on scene,
3 yeah, dispatch provided that.

4 Q So you had mentioned before you got on scene.
5 Explain for the jury at 9:45 who you were with and what
6 you were doing when this dispatch call that you just
7 described came out.

8 A So initially when it came out, I was by myself
9 in my patrol vehicle, but I was dispatched with Agent
10 Brennan -- I believe we were the only two clear at that
11 point -- down to this call.

12 And just because -- anytime that there's a
13 weapon, even if someone claims whether it's there or not,
14 we like to take extra precautions. So Agent Brennan and I
15 parked in a parking lot on the northwest corner of
16 Wadsworth and Eastman, just kind of maybe a half mile away
17 from the address given.

18 Q So once you and Agent Brennan met up at that
19 corner, how soon after 9:45 was that, would you estimate?

20 A I remember I had been at Alameda and Pierce. So
21 it probably took me around five -- five to ten minutes to
22 get there.

23 Q So it's a little bit before 10?

24 A Probably somewhere in there.

25 Q What was Agent Brennan's role and what was your

1 role as it was determined in investigating this call?

2 A So, again, like I had mentioned earlier, my call
3 sign was 642. The address we were dispatched to was in
4 Beat 9. I was assigned Beat 6. It's the first number of
5 your call sign.

6 So Agent Brennan went ahead and called Emily,
7 the reporting party, because dispatch had advised she was
8 now in Parker. She wasn't anywhere nearby for us to meet
9 up and talk with her. So he talked to her, and eventually
10 I would relay this information to my sergeant.

11 Q And was there a reason why there were two of you
12 investigating this call?

13 A I mean, the nature of police work is sometimes
14 things -- things aren't super safe. So we go pretty much
15 to every call with two people. The kind of calls we might
16 not go with two people are traffic accidents or an area
17 check that's two hours old for maybe a barking dog or
18 something like that, kind of the lower priority stress
19 calls.

20 Q And once you were with Agent Brennan, a little
21 bit -- or around 10 p.m., you mentioned his role was to
22 get more information?

23 A Yes, ma'am.

24 Q And can you describe the information that he was
25 able to receive that impacted what you did.

1 A So he eventually relayed that when he spoke to
2 Emily, she said that she worked as, I believe, an escort
3 for a company called Denver Ladies.

4 She had gone there, essentially was hired to be,
5 like, a private dancer. She began dancing when she said
6 that this male named Eric touched her vagina. She said
7 no.

8 MR. ST. GEORGE: Objection, hearsay.

9 THE COURT: I'm going to allow limited testimony
10 and then as a conduit to the next question.

11 Q (BY MS. DECKER) And I'll specify. What did you
12 learn from Agent Brennan about what Emily Elliott told him
13 that impacted where you went?

14 A So essentially she had stated that this man,
15 Eric, had fired a gun in that air and also fired a round
16 at her. So with that in mind, there's a possible firearm
17 in play, which always kind of takes it up a notch.
18 Whether it was or wasn't is something we determine down
19 the road.

20 So at that time I notified Sergeant Maines of
21 what was going on. I later updated Sergeant Fahlsing,
22 because another high priority call had come out with a
23 gun, I think, around 1st and Harlan.

24 So we drove to the area and parked, I believe it
25 was just a little south of the address given by

1 dispatch -- you don't want to park directly in front of
2 it -- and looked for shell casings in the area and tried
3 to knock on any doors where people may have been awake,
4 neighbors, to see if they had heard anything to
5 corroborate that.

6 Q So I'm going back you up to when you said that
7 whenever there's a call regarding firearms, it takes it up
8 a notch.

9 A Uh-hum.

10 Q Explain what you mean by that it takes it up a
11 notch in terms of an investigation.

12 A For me it's just a safety and security thing.
13 We get calls routinely with firearms. Whether it ends up
14 being a BB gun or it wasn't there or it was there, we
15 always have to treat it as if there is a real firearm in
16 play. Because at the end of day I want to go home, and I
17 want to make sure everyone else does as well.

18 Q And when you say "everyone else," do you mean
19 not even law enforcement --

20 A Yes, ma'am.

21 Q -- but even potential suspects?

22 A Yes, ma'am.

23 Q You mentioned that it takes it up a notch. Is
24 that why you called Sergeant Maines or got sergeants
25 involved with this particular call?

1 A Absolutely.

2 Q You talked about how from this intersection you
3 and Agent Brennan then responded to the address. Was that
4 the address 8139 West Eastman Place, Number 103, that
5 Emily Elliott had given Agent Brennan?

6 A Yes, ma'am.

7 MS. DECKER: And if I could project an image
8 that's already been introduced into evidence, and we'll
9 play -- project, rather, People's Exhibit 4.

10 (People's Exhibit 4 was published.)

11 MS. DECKER: And if we could zoom in, Kirsten,
12 to the right half of this exhibit.

13 Q (BY MS. DECKER) So Agent Trimmer, if you could
14 explain for the jury or just -- if you can verbally
15 explain, or if you need to step down to show, where you
16 and Agent Brennan parked when we're looking at -- in
17 respect the suspect's apartment building, the second one
18 to the left from the top?

19 A Do you mind if I step down?

20 Q No, not at all.

21 THE COURT: There's a wooden pointer.

22 THE WITNESS: Thank you.

23 A So we entered through the main entrance here.
24 We ended up parking -- there's, like, a visitor parking
25 there. Since we didn't want to park directly in front

1 of -- we knew it was around this area, but we didn't know
2 which unit it was. So we park, and that way we're not
3 broadcasting, hey, we're here, and if someone doesn't like
4 us, they could either ambush us or it could go south.

5 Q (BY MS. DECKER) So there are two buildings
6 below the suspect's. Are you pointing to the building on
7 that right-hand side?

8 A Right here, there's that little parking lot
9 right there. It's where we parked our vehicles.

10 Q So below that building on the right-hand side
11 but directly below the suspect's?

12 A Yes, ma'am.

13 Q And you can take your seat again.

14 A (The witness complied.)

15 Q I will likely have you moving back and forth.

16 A Okay.

17 Q Did you and Agent Brennan arrive with lights and
18 sirens?

19 A No, ma'am.

20 Q And why not?

21 A Lights and sirens is what we call Code 3. So
22 fancy talk --

23 MR. ST. GEORGE: Objection, cumulative.

24 THE COURT: Overruled.

25 Q (BY MS. DECKER) You can explain.

1 A It's fancy cop speak for an emergency. So this
2 call is cold. There's no one in imminent danger. You
3 know, no one has an injury that needs tended to
4 immediately. So we need to get there safely. Because
5 when you drive lights and sirens, there's a chance that
6 people don't hear you or see you and then you get in a car
7 wreck.

8 Q And you mentioned that you spoke with Sergeant
9 Maines. Did you also speak with Sergeant Fahlsing?

10 A Yes, ma'am.

11 Q And in going to this area -- you seemed to have
12 some familiarity with this area; is that true?

13 A Yes, ma'am.

14 Q So when you have this address in mind, did you
15 seem to know what building it was before you even got
16 there?

17 A No. I knew the townhome complex. I've actually
18 had a friend or two that has lived there. It's a pretty
19 quiet area. But I couldn't tell you the buildings.

20 Q And so after you had parked, describe where you
21 and Agent Brennan walked to.

22 A So essentially we walked north between those two
23 buildings towards the address that we had been given, and
24 then Agent Brennan had received a description of where
25 the -- Emily had claimed that the male had fired a gun in

1 the air and then at her. So we were looking for -- to see
2 if we could find any casings on the ground.

3 And I began knocking on neighboring buildings'
4 doors to see if they heard anything that could corroborate
5 either a disturbance or loud noises around that time.

6 Q And at this point, since you had been meeting
7 with Agent Brennan around 10 p.m., how soon after 10 p.m.
8 was it when you first arrived there, would you say?

9 A I'm not sure. Probably at least another half an
10 hour to an hour, somewhere in there. By the time we were
11 talking to her and then calling sergeants and then they
12 would have us call her back and then driving over there
13 and walking, it was pretty time-consuming.

14 Q So could have been 10:30 or 11?

15 A Yeah, somewhere in there.

16 Q Were you able to get any further information
17 from any neighbors?

18 A I was only able to make contact with one unit.

19 Q And any information that was notable to you in
20 that conversation?

21 A A female stated that she had heard what she
22 thought was either a car backfiring or a bottle rocket go
23 off around the time that Emily claimed that she had been
24 there.

25 Q And did you observe any shell casings in the

1 area that you were looking for shell casings?

2 A I wasn't able to find any.

3 Q Describe the lighting in that area that you were
4 looking for a shell casing.

5 A Overall, it was fairly dark. There were some
6 lights between garages, but where we were looking there
7 was maybe one streetlight. I know we had our flashlights
8 out. And it was -- felt like we were looking for a needle
9 in a haystack.

10 MS. DECKER: I'm going publish Exhibit 3.

11 (Plaintiff's Exhibit 3 was published.)

12 Q (BY MS. DECKER) And on Exhibit 3, if you could
13 point out where you and Agent Brennan were looking. And
14 you might not even have to step down if you can describe
15 it, but you're welcome to step down.

16 A It's -- actually there's -- kind of down and to
17 the right from the building, there are those four or five
18 parking spaces, it appears. And that is where Emily had
19 relayed to Agent Brennan that she had been. So we looked
20 anywhere from about the center of the building to those
21 parking spaces.

22 MS. DECKER: And if we may have the bailiff
23 approach with several exhibits.

24 THE COURT: Surely.

25 MS. DECKER: And these are Exhibits 33 through

1 43.

2 Q (BY MS. DECKER) And if you'll take a look at
3 those. And do these exhibits fairly and accurately
4 represent this complex as you remember it that night and
5 morning of August 1, 2016, the night of July 31, 2016?

6 A Yes, ma'am, they do.

7 MS. DECKER: The People would move to enter 33
8 through 43.

9 THE COURT: Any objection?

10 MR. ST. GEORGE: Your Honor, can I see 33? I
11 don't have one in my binder.

12 No objection to 33. I'll look at the rest right
13 quickly. You said 33 through?

14 MS. DECKER: 43.

15 MR. ST. GEORGE: 43.

16 Your Honor, I have no objection.

17 THE COURT: 33 through 43 are admitted.

18 (People's Exhibits 33 through 43 were admitted
19 into evidence.)

20 MS. DECKER: And the People would request to
21 publish.

22 THE COURT: You may.

23 MS. DECKER: And I'll go with 33 through 37. So
24 if we can start at 33.

25 (People's Exhibit 33 was published.)

1 Q (BY MS. DECKER) Agent Trimmer, I'm just going
2 to have you orient the jury to --

3 THE COURT: I'm sorry. You'll let me know if
4 you need lights dimmed?

5 Q (BY MS. DECKER) And you can step down, if you
6 like, and grab that pointer. I'm going to have you orient
7 the jury to this area.

8 JUROR: Can we dim the lights, please?

9 THE COURT: Surely.

10 Q (BY MS. DECKER) Can you describe for the jury
11 what we can see in Exhibit 33?

12 A So this is the main building -- or the address.
13 So 8139 refers to this whole building, and then Unit 103,
14 I believe, was right behind here. So it would be kind of
15 the front of his apartment or condo. I'm not sure how
16 they phrase them here.

17 Q And is there what looks like a conifer-type tree
18 directly underneath that Building Number 7, 8139 sign?

19 A Yes, ma'am.

20 Q And is that in front of, essentially, a
21 breezeway behind there that has the suspect's door?

22 A Yes, ma'am.

23 Q And so to be clear, it's not just the door to
24 the right or the left that we can see in this picture?

25 A There's actually a hallway. And I don't know if

1 there's just one door or if there's multiple. We didn't
2 go down the hallway.

3 Q And so we can see street in front of this white
4 car. Can you describe for the jury in reference to this
5 street where you and Agent Brennan were looking for spent
6 shell casings?

7 A Essentially, we started kind of right behind
8 this vehicle and then moved our way eastward toward those
9 parking lot spaces.

10 Q And at this point, were you sure where the
11 defendant lived?

12 A We weren't entirely sure.

13 MS. DECKER: I'm going Exhibit 34.

14 (People's Exhibit 34 was published.)

15 Q (BY MS. DECKER) And so can you describe where
16 this is?

17 A So this is just further east or to the right of
18 that breezeway area.

19 Q So is this essentially the roadway going towards
20 that parking area that we can see on the aerial photo?

21 A Yes, ma'am.

22 MS. DECKER: And Exhibit 35.

23 (People's Exhibit 35 was published.)

24 A So that's the -- Building 8139 would be right
25 here. So this would be the east side of the building.

1 And then this is kind of the parking spaces between. So
2 the parking spaces in question that we were specifically
3 looking at were just, I guess, closer to me. It was more
4 this way.

5 Q (BY MS. DECKER) So they're off the picture.

6 A Correct, ma'am.

7 Q Towards where you're standing.

8 A Yes, ma'am.

9 MS. DECKER: And Exhibit 36.

10 (People's Exhibit 36 was published.)

11 Q (BY MS. DECKER) And what can you see in
12 Exhibit 36?

13 A It's essentially still the same view. This is
14 still Building 8139. And I'm not sure what building
15 number that is, but the parking spaces in question would
16 have been down here still.

17 Q And is this black truck a truck that we could
18 also see the back of in Exhibit 35?

19 A I believe so, yes.

20 Q And we'll get to the other pictures in a little
21 bit. So I'll have you take your seat.

22 THE COURT: Ms. Decker, we're going to be
23 stopping in a few minutes.

24 MS. DECKER: Thank you.

25 THE COURT: So we'll just want to pick an

1 appropriate spot.

2 MS. DECKER: Thank you.

3 Q (BY MS. DECKER) So once you and Agent Brennan
4 had been -- how long had you been looking for basically
5 evidence to corroborate what Emily Elliott had told
6 dispatch and Agent Brennan?

7 A I would say approximately a half-hour we were
8 either -- looking for casings. I did most of the
9 neighborhood canvass, so knocking on doors, trying to find
10 anyone to either corroborate or disprove that while Agent
11 Brennan did a lot of relaying on the phone with sergeants
12 and other investigations personnel.

13 Q And after that half an hour where it was just
14 the two of you, Agent Brennan and yourself, did anyone
15 else arrive on scene?

16 A A short time later agents -- or agents -- excuse
17 me -- Sergeants Maines and Muller arrived on scene.

18 Q And once Sergeants Muller and Maines arrived,
19 what did you all do?

20 A Well, we -- Agent Brennan and I had been
21 waiting. We had been waiting on the southwest corner of
22 the building.

23 So when the sergeants came, we all met up at
24 that southwest corner and just reiterated what we had
25 learned and what we had so far to make sure that everyone

1 had all the information and was on the same page.

2 Q Once you essentially debriefed with the two
3 sergeants who had arrived, did you all make a plan as to
4 what you would do?

5 A Sergeant Maines came up with the plan. He
6 initially went around the back side or the north side of
7 the building to try to see if we could locate if there was
8 any back door to the unit because we made contact, if
9 someone tried to slip out.

10 And after a short while he came back. And we
11 had been given a description that the unit in question had
12 an aquarium and a large tent in the living room, which we
13 located.

14 Q Once Sergeant Maines had returned to where the
15 three of you were on the southwest corner of that
16 building, what was decided at that point?

17 A At that time Sergeant Maines wanted me to go
18 with him. Eventually we wanted to stage on the northeast
19 corner of the building while Sergeant Muller and Agent
20 Brennan stayed on the southwest corner of the building.

21 Q Had you at that point verified through the car
22 that was parked in the front of this unit, that there was
23 an Eric St. George who lived in the unit?

24 A Yes. While Agent Brennan and I had been
25 waiting, we walked down kind of that street, and I had

1 dispatched run, I believe it was, three different license
2 plate. There was a Jeep there. It had a Florida tag,
3 BKHC07, and dispatch let me know that that registered to
4 an Eric St. George.

5 Q So once it was determined that you and Sergeant
6 Maines would go to -- did you say the northeast corner of
7 the building?

8 A Yes, ma'am.

9 Q And the other two would remain in the southwest,
10 describe what you and Sergeant Maines did from there.

11 A So essentially there's a fence on the north side
12 of this building, and it backs up to open space. It's
13 very dark back there, so we went along the fence line and
14 eventually stopped just northeast of the unit.

15 I could see all the light were on inside, the
16 blinds were up. You could see the aquarium and the tent
17 in the living room. While Sergeant Muller and Agent
18 Brennan were going to try to make a phone call and see if
19 the male named Eric would come out.

20 Q Where were you standing first when you went into
21 the back of the defendant's apartment?

22 A Initially we were standing behind some very
23 small trees.

24 Q And were you and Sergeant Maines -- how close in
25 proximity were the two of you?

1 A We were probably just a couple feet apart. We
2 were well within earshot of each other.

3 Q Were you able to get a clear view inside of that
4 apartment?

5 A As clear as I could. I mean, it has panes, and
6 I'm a pretty short person, so I couldn't, like, directly
7 see in like I was looking straight in the window, but you
8 could see in and see some of the things around the
9 apartment.

10 Q Could you see any -- a person in there at that
11 time or any other identifying characteristics?

12 A I could see what appeared to be a white male. I
13 could only see the top half of his head. He appeared to
14 have short dark hair. I couldn't make anything else out
15 because the rest of him was either behind part of the pane
16 or back behind the kitchen counter.

17 Q And once you and Sergeant Maines were able to
18 take a view inside of that complex, were you still in
19 radio communication with the other two who were in front?

20 A Yes, ma'am.

21 Q And were you being notified of what those phone
22 conversations, if any, entailed?

23 A Yes. I don't know which, if it was Agent
24 Brennan or Sergeant Muller, one of them had gotten on the
25 radio and said -- you know, I know they tried to call once

1 or twice and there was no answer, so a voicemail had been
2 left. And at one time they had been on the phone and the
3 male hung up with them.

4 Q And at any point did you see a male come out of
5 that back door?

6 A All the lights turned off in apartment after
7 that was aired, and shortly after a male came out the back
8 door with a cell phone in his hand.

9 Q What did you do?

10 A We stayed there. It wasn't -- hiding behind a
11 tree that's much smaller than me isn't the best place to
12 give commands for someone that may or may not have a
13 firearm on them. So we stayed there and hoped that, I
14 guess, nothing else would help happen, kind of held our
15 breath.

16 Q After -- how long did you have to hold your
17 breath, essentially?

18 A I think he was only outside for a minute or two.
19 It wasn't extremely long.

20 Q And could you see the cell phone in his hand?

21 A I could see -- the only time we could see him
22 was that there was a glow from his cell phone. It was so
23 dark back there.

24 Q Once he went back inside what did you do?

25 A Realized that that was not the best place to be

1 standing and we moved, I guess, more to the -- closer to
2 the building a little further east and stood near some
3 shrubs. And I believe behind us was, like, a brick
4 archway. So we were probably 40 feet or so east of that
5 back door.

6 Q And once you got to this side of the building,
7 what did you hear?

8 A Not long after the male, he'd gone back inside,
9 during that time we could see he appeared to be on and off
10 the phone. At least he was putting it up to his ear. He
11 came out, and it sounded like there was a firearm being
12 racked.

13 Q Can you describe that sound for a jury -- for
14 the jury?

15 A I'm not -- I'm not a gun person. I'm not that
16 person can that can tell you everything about them. I
17 only carry a gun because I went through a police academy.
18 But after going through the police academy rifle training,
19 metal on metal makes a very distinct sound, and it's kind
20 of like -- to me like you hear a car door shut, like I
21 know it's a car door.

22 You just can't explain it. And I'd rather err
23 on the side of caution, and I began pushing Sergeant
24 Maines around the east side of the building.

25 Q And have you been able today listen to the sound

1 of the shotgun racking?

2 A Yes, ma'am.

3 Q And is it with this demonstration weapon that
4 Detective Larson has right here? Is it with this
5 demonstration weapon?

6 A Yes, ma'am. It was in a case.

7 Q And is this a fair and accurate representation
8 of the sound that you heard?

9 A Yes.

10 Q Okay. If you wouldn't mind -- I'll need your
11 help, since I can't handle this weapon. If you would
12 please approach with this demonstration weapon.

13 And to be clear, this is a safe weapon, as
14 you've checked earlier; is that fair?

15 A Yes, ma'am.

16 Q And it has no ammunition?

17 A There was no ammunition in it.

18 Q It has no firing pin?

19 A Not that I know of, but I didn't see that. I
20 couldn't pick that out with the gun, I'm sorry.

21 Q And if it is a fair and accurate representation
22 of what you heard, if you would please share with the
23 jury, by racking this weapon, what you heard.

24 A Yes, ma'am (indicated).

25 MS. DECKER: Your Honor, I think we end there

1 for the day.

2 THE COURT: You may step down.

3 (The witness was excused.)

4 THE COURT: Ladies and gentlemen, we're stopped
5 for the weekend. So I'm going ask you, please keep an
6 open mind. Please don't do any research. Don't drive
7 past any addresses, don't go online and look anything up,
8 any words, any phrases, anything like that. Don't talk
9 about the case in any way you can imagine. Just don't
10 talk about the case. We'll begin again 8:30 Monday
11 morning. Thanks very much.

12 (The jury left the courtroom.)

13 THE COURT: Okay. We we're going to begin again
14 Monday morning. Let's be here by 8:20.

15 MR. MENGES: 8:20 on Monday, Your Honor?

16 THE COURT: Yes.

17 MR. MENGES: Thank you.

18 MR. FREEMAN: Mr. Menges, can I see you for a
19 second too.

20 MR. MENGES: Yes.

21 (The proceedings concluded at 5:03 p.m.)

22

23

24

25

1 REPORTER'S CERTIFICATE

2
3 The above and foregoing is a true and accurate
4 transcription of my stenotype notes taken in my capacity
5 as the Court Reporter for the First Judicial District
6 Court, County of Jefferson, State of Colorado.

7 Dated at Golden, Colorado this 16th day of
8 February, 2019.
9

10
11 

12 RICHAEAL M. SILVIA
13 Registered Professional Reporter
14 Certified Realtime Reporter
15 Colorado Realtime Certified Reporter
16
17
18
19
20
21
22
23
24
25

*This is an electronically signed transcript.