

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

DATE FILED: February 25, 2019 4:56 PM

Plaintiff:
PEOPLE OF THE STATE OF COLORADO

v.

Defendant:
ERIC JAMES ST. GEORGE

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Case No. 16CR2509
Division 1

REPORTER'S TRANSCRIPT

The Jury Trial in the above-entitled matter recommenced on February 5, 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

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1 PROCEEDINGS, MONDAY, FEBRUARY 5, 2018, 8:31 A.M.

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

4 THE COURT: So why don't we, as we are waiting
5 for our jurors, go on the record to determine whether or
6 not there's any issues we need to deal with so when our
7 jurors get here, we're ready to go. So this is People v.
8 St. George, 16CR2509.

9 MR. FREEMAN: Good morning, Your Honor. Mike
10 Freeman and Katharine Decker on behalf of the People.

11 MR. ST. GEORGE: Eric St. George representing
12 himself.

13 MR. MENGES: Good morning, Your Honor. Peter
14 Menges as advisory counsel.

15 THE COURT: Okay. Are there any issues we need
16 to take up or we could take up right now to use our time?

17 MR. FREEMAN: Judge, we don't have anything.

18 MR. ST. GEORGE: Your Honor, I just wanted
19 to -- there was the issue about the in limine that was
20 introduced immediately prior to trial. Two of the items
21 on that in limine, we were going to avoid discussion of my
22 education. We didn't want to introduce to the jury that I
23 had one. And during the voir dire, Mr. Freeman, made
24 several mentions regarding the fact that I don't hold a JD
25 and that I'm not -- I don't have a legal education, and so

1 I genuinely feel like that door has been opened.

2 As well, one of the other items on that in
3 limine was the issue of not bringing up the use of force
4 policy of the Lakewood Police Department. Now, during the
5 trial, the -- many of these agents and the sergeant have
6 discussed at length their policies, their procedures,
7 their protocols, and as a result, I think that door has
8 been absolutely opened, and as a result, I have every
9 intention of bringing into trial the use of force policy.

10 THE COURT: Response?

11 MR. FREEMAN: Judge, we already litigated the
12 issue of his education, and the Court's already ruled that
13 the door was not opened. The only purpose for him trying
14 to introduce it would be to bolster his credibility, and
15 it's improper character evidence. As far as the use of
16 force policy, if he wants to and them about it, I don't
17 object.

18 THE COURT: I'm sorry?

19 MR. FREEMAN: I don't object if he wants to ask
20 them about the use of force policy.

21 THE COURT: Okay. With reference to the
22 education, what I had indicated was that I noted that in
23 voir dire, there were questions about whether or not the
24 jury would be concerned or feel that the People were
25 overreaching if they litigated this strictly against

1 Mr. St. George without -- when he did not have a law
2 degree. What I indicated to Mr. St. George when he
3 brought this up again is if he feels that there's a point
4 in time during the questioning of witnesses when it
5 becomes relevant about his education, then he should let
6 me know. And should he choose to testify, we can speak
7 again at that particular point, and that still continues
8 to be my ruling.

9 So with regard to use of force policy, my
10 understanding now is that the People don't object to
11 questioning by Mr. St. George as to the use of force
12 policy.

13 MR. FREEMAN: And I'll qualify that by saying I
14 don't -- I won't object to some questions. If we spend a
15 lot of time on it, I'll start objecting, so we'll just
16 have to see how it goes.

17 THE COURT: All right. When I took notes in the
18 case, I notice that there was some questioning with
19 reference to policy. There was some reference to any
20 policies about when you approach a home, where do you
21 stand, the long breezeway. So I did note there was a
22 question or two regarding that. But, yes, we'll have to
23 deal with specific objections as we go along, but
24 initially, there's no objection to some questioning with
25 regard to use of force.

1 Okay. Anything further that we can discuss?

2 MR. ST. GEORGE: Not at this moment, Your Honor.

3 THE COURT: So let me step out for a minute and
4 see where we are.

5 (Pause in the proceedings.)

6 THE COURT: Okay. So we still have parking and
7 just general security traffic issues, so let's adjourn for
8 ten minutes, and then we'll resume.

9 (A recess was taken.)

10 THE COURT: All right. So we do have our jurors
11 here now?

12 MR. FREEMAN: Judge, do you want Agent Trimmer
13 on the stand?

14 THE COURT: Yes, please.

15 (Pause in the proceedings.)

16 THE COURT: Agent, and you remain sworn.

17 DEVON TRIMMER,
18 having been called as a witness on behalf of the People,
19 being previously duly sworn, testified further as follows:

20 THE COURT: Okay. So we're ready for your jury.
21 We're going to have our jury in now.

22 (The jury entered the courtroom.)

23 THE COURT: Good morning. Everybody can be
24 seated, please.

25 Ladies and gentlemen, I apologize for that mess

1 with parking out there and that long security line. I
2 apologize for the delay. We have Agent Trimmer back on
3 the stand, and we're ready to proceed.

4 MS. DECKER: Thank you, Judge.

5 DIRECT EXAMINATION (Continued)

6 BY MS. DECKER:

7 Q Good morning, Agent Trimmer.

8 A Good morning.

9 Q We left off on Friday with you demonstrating for
10 the jury the sound that you heard of a racking shotgun.
11 Can describe for the jury where you and Sergeant Maines
12 were standing when you heard that sound coming from what
13 you believe to be the defendant's apartment?

14 A So we were on the north side, the back side, of
15 the building, and we were east of the dispatched address
16 where we had looked inside maybe, approximately, 40 feet
17 or so. There were some shrubs nearby, and I believe there
18 was a brick archway behind us. We were kind of standing
19 next to those shrubs, not out quite in the open.

20 Q And had you and Sergeant Maines just moved to
21 that location prior to seeing the defendant come out with
22 just his cell phone?

23 A Yeah. Only a minute or two earlier.

24 Q So I'm having the bailiff approach with 58
25 through 61. Were you able to just look at these photos

1 while we were waiting for the jury?

2 A Yes, ma'am.

3 Q And does 58 through 61 fairly and accurately
4 depict the back of the defendant's apartment complex and
5 his apartment?

6 A Yes, ma'am.

7 MS. DECKER: The People would move to admit 58
8 through 61.

9 MR. ST. GEORGE: Bear with me one moment while I
10 regroup.

11 THE COURT: Sure.

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

13 THE COURT: 58 through 61 are admitted.

14 (People's Exhibits 58 through 61 were admitted
15 into evidence.)

16 MS. DECKER: Permission to publish?

17 THE COURT: Yes.

18 (People's Exhibits 58 was published.)

19 Q (BY MS. DECKER) Agent Trimmer, I'm having you
20 take a look about Exhibits 58 through 61 on the screen.

21 A Okay.

22 Q If you need to step down to explain to the jury
23 where you and Sergeant Maines were standing, you can do
24 so. So in Exhibit 58, explain to the jury what you can
25 see here.

1 A Sorry. So this right back here was the unit we
2 were looking at, and we were standing right over in this
3 area just out of the shot. Previously we had been over
4 here and realized that was not the best area to be
5 standing, behind some of those smaller tree.

6 Q And when you say previously we were standing
7 over here, were you pointing to the right of the picture,
8 behind the tree that we can see?

9 A Yeah. It's somewhere in here. There's several
10 trees. I can't tell you which exact tree it was, but
11 there was one, and there's another one right over here.

12 Q And describe for the jury, when you were first
13 standing there with Sergeant Maines, the lighting.

14 A It was very dark. As you can see just right
15 here how dark it is, and that's even got -- it's lit up a
16 little here. It was almost pitch black.

17 Q Were you able to keep cover behind any sort of
18 bush or tree?

19 A I guess I don't understand the question.

20 Q Were you and Sergeant Maines completely hidden
21 behind a tree, I should say, or was it just dark back
22 there?

23 A It was just dark, and that's why we moved. I
24 realized that it's not like a large oak where I can stand
25 behind it and maybe you won't see me. I definitely stick

1 out behind that tree.

2 Q And at that point, did you believe that the
3 defendant had seen you?

4 A His actions didn't indicate he saw us, but I
5 don't know.

6 Q And when you and Sergeant Maines were standing
7 to the right of this picture initially, did you believe
8 that that was when Agent Brennan's second call had come
9 into the defendant per your dispatch?

10 A I don't know how many calls he made, so I
11 can't -- I know was after the first one, but I don't know
12 if it was after the second or if there had been a third.

13 MS. DECKER: And we can move on to 59.

14 (People's Exhibit 59 was published.)

15 Q (BY MS. DECKER) And is this just a better lit
16 picture of what we have just seen in 58?

17 A It is.

18 Q And can you describe to the jury on this
19 Exhibit 59 where you and Sergeant Maines had initially
20 been standing when the defendant first came out of the
21 back of his apartment.

22 A So you see a little more of the trees in this
23 one. So we were somewhere behind one of these, but I can
24 tell you which one.

25 MS. DECKER: And 60.

1 (People's Exhibit 60 was published.)

2 Q (BY MS. DECKER) Describe what the jury can see
3 in this picture.

4 A So this would be the address we were looking in
5 was that one, and so everything else back here was dark at
6 this time, and then there were initially lights on inside
7 the unit.

8 MS. DECKER: And 61.

9 (People's Exhibit 61 was published.)

10 Q (BY MS. DECKER) And that's the same thing.
11 This is still just the back door and the patio area to
12 that unit?

13 Q In Exhibit 61, was this eventually vantage point
14 that you and Sergeant Maines initially had of the
15 defendant's apartment?

16 A Yes. We walked all the way around. So we
17 walked kind of here and then passed, and then had ended up
18 somewhere over here.

19 Q And you can have a seat.

20 A (The witness complied.)

21 Q So after moving from where we just saw you and
22 Sergeant Maines initially were to the side, the northeast
23 corner of building --

24 A Yes, ma'am.

25 Q After you heard the sound of the racking

1 shotgun, what did you do?

2 A I immediately turned around and began pushing
3 Sergeant Maines around to the complete east side of
4 building. We weren't in a good spot. There was nothing
5 in between us. There was no cover. So I know I talked a
6 little bit on Friday between cover and concealment, and
7 concealment you can shoot through, like bushes. So I
8 pushed him around to get around the corner of that
9 building.

10 Q Once you had pushed Sergeant Maines around to
11 the east side of building, where did you and Sergeant
12 Maines go?

13 A There was a large black truck parked in front of
14 the garage on the east side of building, and we ended up
15 going around that truck. So it would have been on the
16 south side of the truck.

17 Q Once you and Sergeant Maines were on the south
18 side of the truck, can you describe for the jury how the
19 truck was parked?

20 A It was parked nose in with the front of the drug
21 just a couple feet away from the garage door.

22 Q And was this a black Dodge pickup truck?

23 A I don't know what the make and model was. I
24 just know it was a large, black pickup.

25 Q Where were you and Sergeant Maines in relation

1 to this truck?

2 A On the south side, or by the driver's door.

3 Q And the driver's door was parked in towards the
4 garage; is that right?

5 A The nose was parked in towards the garage.

6 Q Once you both were there, did Sergeant Maines
7 ever move from that location?

8 A He did.

9 Q And describe what the plan was with his moving
10 from that location.

11 A Sergeant Maines is on our SWAT team. He asked
12 me to stay there. He was going -- there was another
13 building east of, so he was going to go around the south
14 side of building, take the long way around, get east and
15 get eyes on the north side to see what the male was doing
16 that came out of the unit and what was going on, and he
17 asked me to stay by the truck.

18 Q And once you were staying by the truck, explain
19 for the jury the position you took at that truck.

20 A I was initially behind -- I was kind of by the
21 rear tire at this point, so I could see over the bed of
22 the pickup, and that's where I stayed kind of until I
23 learned a little more.

24 Q You mentioned you learned a little more. How
25 much time had elapsed by the time you were able to learn a

1 little bit more?

2 A It felt like forever. It was probably only a
3 minute or two.

4 Q And did you learn a little bit more through your
5 earpiece what Sergeant Maines was airing?

6 A Yes, ma'am.

7 Q What did Sergeant Maines air?

8 A He aired that there was a male coming in my
9 direction, looked like he was walking fairly fast, and he
10 thought he had a gun with him.

11 Q And once you got that information, what did you
12 do?

13 A I realized I was, again, not in the world's best
14 spot. I didn't know how close the subject was, and the
15 closest way for me to get around the corner of the
16 building was probably a 60-ish-foot sprint. And I'm not
17 as fast as I used to be, so I decided to kind of crouch
18 down behind the truck, and maybe if he did look around, he
19 would be like no one was here and he'd go back into his
20 unit.

21 Q Describe for the jury how you crouched behind
22 that truck.

23 A I played a lot sports growing up, so the best
24 way I can describe it is almost like a catcher's stance in
25 softball or baseball. So I kind of crouched down behind

1 that rear tire of the truck. There was some lights from
2 the garages that the truck was parked next to, and I
3 realized somehow that the lights were casting a shadow,
4 and initially my head was sticking out of the shadow. So
5 I tried to make it so that my shadow stayed concealed
6 within the truck shadow.

7 Q And you mentioned the rear tire. Was it
8 actually the driver's side tire that you were crouching
9 behind?

10 A Yeah, the driver's side.

11 MR. ST. GEORGE: Objection, leading.

12 THE COURT: Overruled.

13 Q (BY MS. DECKER) So was it driver's side tire
14 that you were crouching behind?

15 A The driver's side rear tire.

16 Q And just to be clear, it was the nose that was
17 parked in towards the garage, correct?

18 A Correct.

19 Q And so were you by the front of the car, of the
20 truck?

21 A I was initially at the rear and then eventually
22 moved closer to the front.

23 Q So when you first crouched down, describe when
24 you moved from the rear towards the nose.

25 A It was after a couple seconds, I realized that I

1 didn't know, if the male did come around the corner of the
2 building, which end of the truck he would come around, if
3 he got that far. And so I tried to scoot back a little to
4 give myself, I guess, more space either way. I didn't
5 want to be all the way at the front of the truck, and then
6 we come face-to-face immediately, and the same thing with
7 the rear of the truck, so then I eventually scooted back a
8 little bit.

9 Q And when you scooted back, that was towards the
10 nose of the truck; is that fair?

11 A Correct.

12 Q Describe the lighting once you scooted back
13 towards the nose of the truck, still on the driver's side.

14 A I guess I don't quite understand.

15 Q What was the lighting like in terms of casting a
16 shadow on you at that point?

17 A So my shadow didn't stick out, but it was still
18 very bright, and the shadow was going, I guess, towards
19 the bed of the truck, so I was closer to the front at that
20 point.

21 Q And you mentioned Sergeant Maines had aired to
22 you that he was coming towards you. Was -- was that when
23 you were still at the rear of the truck, or was that after
24 you'd move to the nose of the truck?

25 A That was when I was still closer to the rear of

1 the truck.

2 Q And was it immediate after you learned that he
3 was moving towards you that you moved to the nose of the
4 truck?

5 A Yes.

6 Q Was there any greater protection for you once
7 you moved to the driver's side nose of the truck?

8 A Not that I could think of at that time.

9 Q And was the car -- did you have any
10 consideration of the car engine, or anything like that,
11 that you would be hiding behind?

12 A So we been trained that bullets can go through a
13 vehicle, you know. You'd be surprised how much they can
14 just go through a car door. So the engine block provided
15 me the most cover with the vehicle over the bed of the
16 pickup.

17 Q So was there greater protection for you once you
18 had moved?

19 A Yes, ma'am.

20 Q Once you had moved to the driver's side behind
21 the engine, did you hear anything else, not on the radio,
22 but anything else that would corroborate that someone was
23 moving towards you?

24 A A short time later, I felt like I was in a
25 horror movie. It was really quiet. And then you could

1 hear the crunching. There was some pea gravel on the
2 northeast corner of the building, and you could hear the
3 crunching of someone walking on it, and then all of a
4 sudden you didn't hear anything. So I didn't know if that
5 meant the person walking on the gravel had either gone
6 into the grass, back where they came from, or if they are
7 now on the same slab of concrete I was on.

8 Q After you heard the sound of that gravel
9 crunching, did you hear or see anything else? I'll ask
10 you what you heard or saw next.

11 A I -- I didn't hear or see anything for -- for
12 me, it felt like hours, but I know it was very quick.
13 And the next thing I did see was a male coming around the
14 back side of the back of the pickup with a shotgun.

15 Q Describe what the male looked like.

16 A I -- I didn't get a good look at him. I could
17 pass him on the street and not know him. But I know he
18 was wearing shirt, shorts, and I believe he had sandals
19 on.

20 Q And describe the weapon he was carrying.

21 A A shotgun.

22 Q Once you saw this male come out from the back of
23 the pickup truck, describe his positioning initially.

24 A He was initially walking, I guess, southbound,
25 so just kind of past the truck, but right when he

1 completely came into view of the back of the truck, the
2 gun was at what we call the low ready, so it was kind of
3 down, and then he just immediately squared with his feet,
4 and so we were facing each other, and then he immediately
5 began raising the shotgun.

6 Q What do you mean by the term "squared"?

7 A So his feet were facing my direction, so his
8 whole body was completely facing me.

9 Q How soon after he had been walking and you had
10 seen him did he square towards you?

11 A It was immediate.

12 Q And once he changed the positioning of his feet
13 to be facing directly at you, describe what he did with
14 his shotgun.

15 A The shotgun was already coming up as he was
16 turning around.

17 Q And what did he do next?

18 A He fired a round at me.

19 Q What did you do once he fired a round at you?

20 A I returned fire from my Glock.

21 Q Had you, before he fired a round at you,
22 attempted to move?

23 A I think I had begun to back up to try to put the
24 truck between us. Again, you never want to be shooting at
25 someone or someone shooting at you with nothing in between

1 you, and so I was trying to get that truck there.

2 Q After you had begun backing up to retreat, is
3 that when you shot?

4 A I believe so, but it happened so fast.

5 Q And once you returned fire, what did you do?

6 A I eventually made my way around the front of
7 the truck and ended up kind of on the front passenger
8 side, the back corner of that truck.

9 Q So were you at that time corner or on the side?

10 A I was more at the corner because, again, I did
11 not know which direction the male was going to come, if he
12 was going to come around. I didn't know if he would
13 follow me or if he was going to mirror my actions and pop
14 around the other side to the back of the truck.

15 Q And what did he wind up doing.

16 A He ended up mirroring my actions and came out on
17 the back side of the -- back passenger side of the truck.
18 Excuse me.

19 Q And describe his body positioning once he came
20 mirroring your actions on the back side of the pickup
21 truck.

22 A He, again, just squared straight up to me.

23 Q So, again, his feet immediately pointed towards
24 you?

25 A Yes, ma'am.

1 Q And describe his weapon, what he did as soon as
2 he squared up towards you.

3 A The gun was pointed at me for a second time, and
4 he fired a second round.

5 Q Once he fired his second round, what did you do?

6 A I returned fire, and I again made my way to the
7 front driver's side corner of the truck.

8 Q After you had returned fire, did you have any
9 thought as to whether you had hit him that second time?

10 A They tell you a lot of things happen to your
11 body in a stressful situation, and I remember somehow that
12 I could see that there was -- there was a white garage
13 behind him, and I could see a hole behind him where my
14 bullet had gone through, and I remember I thought, shit, I
15 missed.

16 Q And once you had that thought, what did you do
17 immediately from there?

18 A That's when I made my way around to the front
19 driver's side corner of the truck.

20 Q And, again, were you on the side, front, or
21 right at the corner?

22 A Right at the corner.

23 Q What happened once you had gone to the driver's
24 side corner once again?

25 A He again mirrored me and came out behind the

1 back passenger side of the truck.

2 Q Describe again his body position once he came,
3 again, at the back of truck.

4 A He was still squared up facing me.

5 Q And what did you do at that point?

6 A At that time I fired a third round at the male.

7 Q Once you fired that third round, what happened?

8 A He went behind the truck. I could hear what
9 sounded like racking from the shotgun again, and I didn't
10 know what was going on, if he was reloading, if he was
11 down, or what exactly happened to him.

12 Q Did you hear any further shots?

13 A I did not hear any more.

14 Q You -- did you stay at that driver's side corner
15 for any period of time?

16 A I did for probably 20 to 30 seconds, somewhere
17 in there.

18 Q And after that 20 to 30 seconds, where did you
19 move?

20 A Again, like I had that realization when he was
21 coming that this is not the best spot. I decided to make
22 a break for it, essentially, and I ran to the southeast
23 corner of the building and posted up behind -- there was
24 another brick archway there to the unit, and the brick
25 would give me a little more cover, and I would be able to

1 see him if he did come around.

2 Q I'm showing you 125, 126, 130, and 45. And do
3 you recognize these photos?

4 A Yes, ma'am.

5 Q And do these fairly and accurately depict that
6 black pickup truck that we were just talking about?

7 A Yes, ma'am.

8 MS. DECKER: The People move to admit 125, 126,
9 130 and 45.

10 MR. ST. GEORGE: No objection to 125 nor 126.
11 No objection to 130 nor 145 (sic), Your Honor.

12 THE COURT: And the last one is 45.

13 MS. DECKER: Correct.

14 MR. ST. GEORGE: Is it 45 or 145?

15 THE COURT: 45.

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

17 THE COURT: 125, 126, 130, and 45 are admitted.

18 (People's Exhibits 125, 126, 130 and 45 were
19 admitted into evidence.)

20 MS. DECKER: Permission to publish?

21 THE COURT: Yes.

22 Q (BY MS. DECKER) Agent Trimmer, we'll start with
23 Exhibit 125. And I'm going to have you step down with
24 that pointer again.

25 A Okay.

1 (People's Exhibit 125 was published.)

2 Q (BY MS. DECKER) So if you will start out by
3 explaining to the jury and pointing out where you and
4 Sergeant Maines had been initially hiding when you heard
5 this sound of that wracking shotgun.

6 A So initially we came around this corner, and we
7 ended up kind of staging right here.

8 Q And so when you say you were "staging right
9 here," were you pointing at the rear of the pickup truck
10 or the nose?

11 A We were there -- neither Sergeant Maines nor I
12 are extremely tall people. So we could see over it.
13 Whereas, if you're at the front, it's a little taller and
14 harder to see over it.

15 Q And describe by pointing on this picture the
16 direction Sergeant Maines took to go around the east
17 building -- the building on the east.

18 A So the building on the east is down over here.
19 So he left here and then went around this whole building
20 to get on the back north side over here.

21 Q And once he was doing that, point out for the
22 jury, in relation to this truck, where you remained.

23 A I stayed right around here at that time
24 (indicated).

25 Q And you're pointing toward the rear driver's

1 side tire?

2 A Yes, ma'am.

3 Q Once Sergeant Maines aired to you that he was
4 coming, where did you go?

5 A I crouched down, and I ended up staying right
6 around in here (indicated).

7 Q And you're pointing to the driver's side tire?

8 A Yes, ma'am.

9 Q Can you point out on this picture where there is
10 gravel.

11 A There's gravel right through here. All of this
12 right there is gravel.

13 Q And so for the record, you're pointing towards
14 where that tree is on the right side of the picture?

15 A Yes, ma'am.

16 Q Describe for the jury, when you first saw the
17 defendant, where he was standing.

18 A I was still here, and he came probably right
19 around here (indicated).

20 Q And so essentially where that placard -- yellow
21 placard on the left portion of this picture is?

22 A Yes, ma'am.

23 Q And is that where he also squared at you?

24 A Yes, ma'am.

25 Q And once he squared and shot and you moved,

1 point out where you moved to.

2 A I moved around to the front of the truck, and I
3 ended up right over here at that front corner of the
4 truck.

5 Q And point out for the jury where he -- where you
6 saw him next.

7 A So he ended up just coming straight across this
8 way.

9 Q And you're pointing towards, essentially, that
10 second yellow placard area --

11 A Yes, ma'am.

12 Q -- in the center of this picture?

13 A Yes, ma'am.

14 Q And is that where he squared again and shot?

15 A Yes.

16 Q And were you still in that passenger side corner
17 when you returned fire?

18 A Yes.

19 Q And point out for the jury where you moved next.

20 A I just went back to where I was. So I went from
21 here, back over to the driver's side corner of the
22 vehicle.

23 Q And point out for the jury where you saw him
24 next.

25 A He came back over here, this way.

1 Q And, again, roughly where that left yellow
2 placard was?

3 A Somewhere in there.

4 MS. DECKER: And if we could look at 130.

5 (People's Exhibit 130 was published.)

6 Q (BY MS. DECKER) And is this -- on the right
7 side here, can we see that gravelly area again?

8 A Yes. It's underneath here, just underneath that
9 tall shrub.

10 MS. DECKER: And 45.

11 (People's Exhibit 45 was published.)

12 Q (BY MS. DECKER) And can you describe for the
13 jury what you can see here.

14 A That's where I went around the front of the
15 vehicle. That's about how much space there was between
16 the vehicle and the garage.

17 Q And I'm going to ask you, do you believe it
18 would be helpful to demonstrate distances and body
19 positions by demonstrating that yourself in the courtroom?

20 A Yeah.

21 MS. DECKER: And, Your Honor, I would ask for
22 the assistance of our investigator, Kim Gallerani, in a
23 moment.

24 And you can take down the photo.

25 Q (BY MS. DECKER) So, Agent Trimmer, I'm going to

1 have you demonstrate for the jury, if the court reporter's
2 box here is the truck, can you, on this side, the driver's
3 side of the truck, demonstrate your body position.

4 A I guess, can you say that to me again, just so I
5 make sure I understand where everything is positioned.

6 Q So this is the driver's side of the truck right
7 here. Can you -- and the defendant is standing back
8 here --

9 A Okay. Perfect.

10 Q -- more where I am. Can you describe for the
11 jury and show them your body position that you took before
12 he had arrived around the rear of truck.

13 A Absolutely. So I was down like this, more like
14 a catcher's squat, and then that way, I could still turn
15 and look at the front of the truck and the rear, because I
16 didn't know where he was coming from.

17 Q Describe what you were doing, if anything, with
18 your weapon.

19 A My gun was out, and at this time, it was just
20 kind of -- we call it SUL, but it's pointed down. I
21 didn't have anything to shoot at at that time, but it's
22 much quicker to bring the gun up on target from here than
23 it is to draw it from my holster.

24 Q And so with your hands, without drawing your
25 actual weapon, can you show the jury what you were doing

1 with your handgun.

2 A So my gun was like this (indicated).

3 THE COURT: Are jurors able to see? You can
4 stand up if there's an issue.

5 A So I had it like this, and then I would turn and
6 look up in both directions of the pickup.

7 Q (BY MS. DECKER) Once the defendant rounded that
8 corner, did you do anything different with your weapon
9 initially?

10 A I think it was a moment of shock of he came
11 right out, and then I saw the gun coming up. So as soon
12 as I saw the gun coming up, I brought my gun up on target
13 as well.

14 Q So to be clear, did the defendant's shotgun
15 raise before your handgun raised?

16 A Yes, ma'am.

17 Q And once the defendant raised his shotgun and he
18 shot, is that when you were able to return fire?

19 A Yes, ma'am.

20 Q And if I may have our investigator, Kim
21 Gallerani, resume your position, in the crouching
22 position. If you'll demonstrate for the jury the distance
23 that you recall the defendant being. And if it's back
24 here towards the door, you can demonstrate that for the
25 jury, just how far you recall him being.

1 A He was probably around this far.

2 Q And just for the sake of them being able to see
3 you, if you'll just stand right here next to me and
4 demonstrate for the jury, rounding -- if this podium here,
5 this lectern, is the end of the truck, describe and show
6 the jury how the defendant's body positioning changed once
7 he saw you.

8 A He just came around the truck. It looked to me
9 as if he was just expecting someone to be there. So
10 immediately he took that step and then immediately squared
11 up to face where I was.

12 Q And if we may have that demonstration weapon
13 that Detective Larson will give you.

14 A Okay.

15 THE COURT: And, Counsel, tell the Court about
16 this weapon again.

17 MS. DECKER: Yes, Your Honor. It's rendered
18 completely safe. There is no firing pin. There is no
19 ammunition.

20 Q (BY MS. DECKER) So if you would just
21 demonstrate for the jury, no need to rack or anything of
22 that nature, or pull that trigger, but just with the body
23 positioning that you saw, just demonstrate for the jury
24 once he rounded the truck.

25 A So he just came around, and immediately as he

1 came around, he was already coming up and then pointed at
2 me.

3 Q And then shot?

4 A Yes, ma'am.

5 Q What did he do once he shot at you? Describe
6 that, if you would.

7 A I don't know what he did exactly. I was too
8 worried about getting the truck between me and him.

9 Q Once he rounded to the other side, if you'll
10 just come over here --

11 A Okay.

12 Q -- and demonstrate, with his body positioning,
13 what he did that second time, once he was on the passenger
14 side to have truck.

15 A Again, same thing, just came around and then
16 squared up, and the shotgun immediately came up.

17 Q And did he aim at you again?

18 A Yes, ma'am.

19 Q And once he had fired that second round,
20 describe his body positioning once he came back to the
21 driver's side.

22 A So he came back to the driver's side, and I
23 remember the gun came up, but I don't remember if he fired
24 a third round or not.

25 Q And you can resume your seat.

1 A Okay.

2 Q Once you fired that third round, and I think you
3 said 30 or so seconds had passed and you moved to a
4 different position, describe what happened once you had
5 moved to the southeast corner of the defendant's building.

6 A So I staged at that corner and was looking back
7 where I had come from in case he was going to come back
8 around, essentially.

9 Q Were you hearing anything on the police radio at
10 that point?

11 A I remember Sergeant Maines asked me if I was
12 okay or if I had been hit, and I believe that at one point
13 he had stated something about the subject was down or
14 going back to his unit.

15 Q Did anyone else arrive to that southeast corner
16 where you were?

17 A Shortly after, Agents Alfano and Waller arrived
18 on scene with me.

19 Q And what happened once they arrived where you
20 were?

21 A Once they got there, I did a tactical reload,
22 which is fancy cop speak for, if you shoot all the round
23 in your magazine, it's a combat reload. You drop the
24 magazine that's in there, and you put a fully loaded one
25 in. Tactical reload is where there's maybe a lull and

1 you're in a safe spot, and you're afraid there's going to
2 be more confrontation, you don't know what you'll need.
3 So I took the magazine that still had the remaining
4 bullets in it out of my gun and put in a fully loaded
5 magazine at that time.

6 Q And given that you had only fired three rounds,
7 can you explain to the jury why you do this when there was
8 still more ammunition in your weapon?

9 A When you get into a confrontation, you don't
10 know how many rounds you'll need, and I'd rather err on
11 the side of caution and have a full magazine than to get
12 into another shooting and realize that 15th bullet could
13 have saved my life.

14 Q Once you did this tactical reload, what do you
15 recall happening next?

16 A Shortly after, and I can't remember at this
17 point which came first, a male had called in from the
18 building we were at saying he'd been shot, and there were
19 also three separate gunshots heard over a span of time.

20 Q And had you heard those three separate gunshots
21 before learning that someone was calling from within the
22 apartment airing that he'd been shot?

23 A At this point, it was a while ago, I can't -- I
24 couldn't say for sure right now.

25 Q Do you recall hearing those three separate

1 gunshots coming from inside where the defendant lived?

2 A It was in that direction, but there -- there are
3 probably eight to ten units or so in there. So we weren't
4 exactly sure, but it would have been a coincidence, kind
5 of highly unlikely at that time. So we figured it was his
6 unit, but we didn't know.

7 Q Once you learned that someone was airing that he
8 had been shot, what did you do?

9 A Everyone that arrived on scene kind of wanted to
10 keep me out of anything as much as possible. So I was in
11 the back of like a stack, so there are several agents in
12 front of me, and we were just looking around kind of both
13 corners, both the east side of building and the south, in
14 case the male came back out.

15 Q And did the male come back out, to your
16 knowledge?

17 A He did eventually come out the front door, I
18 believe.

19 Q And could you hear him screaming, or anything
20 like that?

21 A Yes.

22 Q And did you do anything in relation to this male
23 at this point?

24 A I did not.

25 Q Were other officers tending to the male?

1 A Yes, ma'am.

2 Q What could you see from your vantage point?

3 A At that time I couldn't see anything. I did
4 hear, I believe it was Agent Lawcock, get on the radio and
5 say that they had one detained, which is they had one in
6 handcuffs. And shortly after that, several agents were
7 bringing a male -- like carrying a male down the sidewalk
8 area and placed him just on the southeast corner of the
9 building.

10 Q And at that point, could you see any portion of
11 his body?

12 A I could see that there was blood running down
13 this male's legs.

14 Q And did you ever take a look at his face?

15 A No.

16 Q So let's talk about what happened once he
17 was -- was he taken away that you saw?

18 A At that point, no. I asked if they had
19 everything under control, if I could get -- get myself
20 further away from the situation.

21 Q And why did you want to get yourself further
22 away from the situation?

23 A I assumed that was the male that just fired two
24 shotgun rounds at me, and, I mean, if I'm going to be
25 honest, I'm scared of him.

1 Q So did other -- did paramedics arrive on scene
2 to take the suspect to the hospital?

3 A At some point West Metro Fire did arrive on
4 scene.

5 Q Once West Metro Fire arrived on scene, did any
6 other officers arrive on scene to take part in an
7 investigation?

8 A Yes, ma'am.

9 Q And once those other officers arrived on scene,
10 did you partake any further in this investigation
11 yourself?

12 A I didn't do any investigating on my end. I was
13 done. But I did give an interview to the Jefferson County
14 CIRT team, which is the Critical Incident Response Team.

15 Q So let's get into that a little bit. Once the
16 suspect was taken away towards -- to the hospital and you
17 began your cooperation in this investigation, describe
18 what you did.

19 A I -- immediately after I walked away, I had
20 several sergeants just make sure I was okay, and then they
21 essentially -- they designate you a buddy. So Agent
22 Waller took me with him. He drove me back to the police
23 station and just made sure I was okay. Once we got to the
24 station, I'm part of the FOP, or the Fraternal Order of
25 Police, and so they went ahead and called legal counsel

1 for me, and I also met with a psychologist from -- that
2 contracts with our agency.

3 Q And were you then interviewed that early morning
4 about the events that took place that night?

5 A I was.

6 Q And had you been separated from other officers
7 who had also been eye or ear witnesses to the events that
8 happened that early morning?

9 A Yes. I just essentially sat with counsel, and
10 they assigned someone from peer support, just if you want
11 to hug it out or talk about it. Well, not about the
12 incident, but about your feelings, you can do that. But
13 mainly we just played Candy Crush.

14 Q And did you -- once you were back at the police
15 station and you took part in this interview, did they also
16 take pictures of you and your weapon?

17 A Yes, ma'am.

18 MS. DECKER: I'm having the bailiff approach
19 with 10 through 21.

20 Q (BY MS. DECKER) Do you recognize Exhibits 10
21 through 21?

22 A Yes, ma'am.

23 Q Were those pictures taken of you, your weapon
24 and your ammunition the early morning of August 1, 2016?

25 A Yes.

1 MS. DECKER: The People would move to admit 10
2 through 21.

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

4 THE COURT: 10 through 21 are admitted.

5 (People's Exhibits 10 through 21 were admitted
6 into evidence.)

7 MS. DECKER: Permission to publish?

8 THE COURT: Yes.

9 MS. DECKER: If we could publish Exhibit 10.

10 (People's Exhibit 10 was published.)

11 Q (BY MS. DECKER) Agent Trimmer, is this how you
12 looked on that early morning of August 6, 2016?

13 A Yes, ma'am.

14 Q We see you're wearing glasses.

15 A Yes.

16 Q Can you explain, in wearing these corrective
17 glasses, your vision.

18 A My vision is 20/20 with glasses or contacts.

19 Q And are you wearing contacts today?

20 A I am.

21 Q And were you wearing glasses on this night?

22 A I was.

23 Q Any difficulty seeing on this night?

24 A No, ma'am.

25 MS. DECKER: Let's go to Exhibit 11.

1 (People's Exhibit 11 was published.)

2 Q (BY MS. DECKER) Is this the uniform that you
3 were wearing that early morning of August 1, 2016?

4 A It was.

5 Q And is this the uniform that you are wearing
6 today?

7 A Yes. That's just the short-sleeved version.

8 MS. DECKER: Let's keep going Exhibit 12.

9 (People's Exhibit 12 was published.)

10 Q (BY MS. DECKER) Describe what we can see here.

11 A That's just the side view of my uniform with the
12 patches on the arms.

13 Q And those patches, what do those patches show?

14 A It says Lakewood Police.

15 Q And describe on your duty belt, what we can see
16 on your duty belt from this vantage point.

17 A What sticks out to me is this yellow, which is
18 my Taser.

19 Q And are you wearing your earpiece in your right
20 ear here?

21 A Yes, ma'am.

22 MS. DECKER: Exhibit 13.

23 (People's Exhibit 13 was published.)

24 Q (BY MS. DECKER) What can we see here?

25 A That's my duty belt. It's got -- I guess

1 working from the right side of the picture, so my left at
2 that time, it's got my handgun, my handcuff case, my two
3 extra mags, and then my Taser.

4 Q And you have what appears to be, and today as
5 well, a badge on your left chest.

6 A Yes, ma'am.

7 Q What does that show?

8 A That I'm a police agent with the City of
9 Lakewood.

10 Q And are there patches on both of your shoulders?

11 A Yes, ma'am.

12 Q And on your right, is there a name tag?

13 A There is.

14 Q And what does it say?

15 A At that time it said D. Trimmer.

16 Q And are you wearing your police radio as well?

17 A I am.

18 MS. DECKER: Exhibit 14.

19 (People's Exhibit 14 was published.)

20 Q (BY MS. DECKER) What can we see?

21 A That's just the other side view of my uniform.

22 MS. DECKER: 15.

23 (People's Exhibit 15 was published.)

24 A That's the back.

25 Q (BY MS. DECKER) And what can we see here on

1 your duty belt?

2 A Kind of working from my left and the left of the
3 picture around, the back of the gun, handcuff case, and,
4 generally, I've got a mag -- a rifle magazine pouch, which
5 I only put a magazine if I have deployed my rifle, and
6 then my radio is all the way on the right.

7 MS. DECKER: I believe we're up to 16.

8 (People's Exhibit 16 was published.)

9 Q (BY MS. DECKER) What can we see here?

10 A That is my duty weapon. It's a Glock 17, and it
11 has a light mounted just below it, as well as the magazine
12 that had been in the gun.

13 Q And what about that one bullet?

14 A That was the round that was in the chamber.

15 MS. DECKER: 17.

16 (People's Exhibit 17 was published.)

17 Q (BY MS. DECKER) What can we see here?

18 A It is one of my magazines, and then all the
19 rounds that had come out of that magazine.

20 Q And that bullet that's standing up, was that in
21 the chamber?

22 A I would assume so.

23 MS. DECKER: 18.

24 (People's Exhibit 18 was published.)

25 Q (BY MS. DECKER) What can we see here?

1 A I believe that's before they downloaded or took
2 the magazine out of my gun, so it's my gun with the
3 magazine in it and the two spare magazines I carry on my
4 person.

5 Q And so would those two spare magazines have been
6 on your duty belt?

7 A Yes, ma'am.

8 MS. DECKER: 19.

9 (People's Exhibit 19 was published.)

10 Q (BY MS. DECKER) What can we see here?

11 A It's just another angle of my gun.

12 Q And is that a flashlight that we can see also on
13 the left portion of the gun -- or center, I should say?

14 A It is.

15 Q Was your flashlight illuminated during the time
16 that you were holding it at the truck, or was it off?

17 A It was off.

18 MS. DECKER: 20.

19 (People's Exhibit 20 was published.)

20 Q (BY MS. DECKER) What's this?

21 A I believe that's the magazine that came -- or
22 that had originally come out of my gun during the tactical
23 reload and I had placed back into my duty belt. As you
24 can see, there's 14 rounds in the magazine.

25 MS. DECKER: And 21.

1 (People's Exhibit 21 was published.)

2 Q (BY MS. DECKER) And what can we see here?

3 A I'm guessing that's the same magazine and then
4 all the rounds out of the magazine.

5 MS. DECKER: And we can light up the courtroom
6 again and take the pictures off.

7 Q (BY MS. DECKER) You mentioned that once you
8 went back to the station, you met with legal counsel and
9 someone else to see if you were doing okay
10 psychologically?

11 A Yes, ma'am.

12 Q Is this per protocol with the Lakewood Police
13 agency?

14 A Yes, ma'am.

15 Q And a few more questions about -- when you heard
16 that there was someone on the gravel, knowing that that
17 wasn't Sergeant Maines, describe for the jury why you
18 didn't stand up and identify yourself.

19 A At that point, knowing he had a firearm, I
20 didn't have a good -- a good spot. If I stand up, that
21 truck -- kind of all that sticks up for me is kind of my
22 head. That's just saying shoot me right here. So I
23 was -- I was hoping he would just walk away, as we had
24 already called in multiple times to this male, just trying
25 to get him to come out and hear his side of the incident.

1 Q Once you saw the male round the end of the truck
2 the first time, describe for the jury why -- or whether
3 you had time to identify yourself then.

4 A The gun was already coming up, and a round was
5 being fired. It's ideal, you want to identify yourself
6 and say, Lakewood police, drop the weapon, or whatever you
7 can get out at that time. It's not -- it's not required.
8 It's just if you can. I didn't have time. The only
9 response I had was to shoot and hope that he didn't hit me
10 with once of his rounds.

11 Q Without identifying yourself, were you
12 illuminated by any lights that were over you?

13 A There were lights on all the garages behind me,
14 and they were all on. They were the ones that were
15 casting the shadow of the truck to go east.

16 Q And once you had rounded to the other side, did
17 you -- describe for the jury why you didn't identify
18 yourself then.

19 A Because he came back around and immediately it
20 was -- he fired a round at me, and I returned fire. It
21 wasn't as if we stared at each other and, you know, the
22 gun was down, I could say, Lakewood police, drop your
23 weapon. At that point I had to defend myself so hopefully
24 I could go home.

25 Q Same question. Once you went back to the

1 driver's side, describe whether you identified yourself
2 then.

3 A I did not that I can remember.

4 Q You described a little bit for the jury
5 essentially your memory of having this tunnel vision
6 towards that bullet in the garage.

7 A Yeah.

8 Q Are you able to and discern how long, from the
9 time you first saw the defendant, or the suspect, to the
10 time you fired your last round, how long that all took
11 place?

12 A I can't give you a time frame. I'm sure it was
13 very quick, but it felt like years. It just went on
14 forever. So I'm sure it was a maximum of 20 seconds, if
15 that, but it felt like a long time.

16 Q Were his actions immediate in mirroring your
17 movements?

18 A He -- you know, we didn't pop out at the same
19 time, but he -- he came out just a second or so after I
20 had kind of taken a spot up over there. It was very
21 quick.

22 Q And did you view this as aggressive maneuvering?

23 A It did -- I did. Excuse me.

24 Q Just to clarify, you mentioned that once you
25 went back to the police station, there were some protocols

1 in place.

2 A Yes, ma'am.

3 Q Can you explain to the jury why there was an
4 attorney with you during the interview that you
5 participated in with other law enforcement agents?

6 A They just sit there with me. They help
7 determine and try to protect me, in a sense. But they are
8 there to make sure all the steps are followed, that, you
9 know, this report gets done at this time, that I know my
10 training the whole time was we want the interview done. I
11 know it's been several hours, you're tired, it's now 7:00
12 or 8:00 in the morning. Let's get this done and go home
13 and get it over with. So he just, in a way, was kind of
14 my advocate, again, checking on me like everyone else was.

15 Q Did you think you had done something wrong, to
16 be clear?

17 A No, ma'am.

18 Q How did you feel when the defendant was shooting
19 at you?

20 A I felt like I was a rabbit almost, and I think
21 because I was crouching down, and I felt like he was
22 hunting me, because after that first altercation, he just
23 kept coming back.

24 MS. DECKER: Thank you, Judge. No further
25 questions at this time.

1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. ST. GEORGE:

4 Q Agent Trimmer, we're going to go back to
5 the -- go back a little earlier in the evening. When you
6 arrived on scene, it is a gated and fenced community,
7 right?

8 A Yes, sir.

9 Q Did you announce yourself at the gate?

10 A No, sir.

11 Q So I didn't buzz you in, correct?

12 A No, sir.

13 Q And you arrived to the neighborhood on or around
14 10:15 p.m.?

15 A Somewhere in that ballpark.

16 Q Okay. And your first task was to try to find
17 some corroboration of the -- of the statement that was
18 given to you by the reporting party, correct?

19 A Not necessarily. People call in all the time,
20 and they're not always telling the truth.

21 Q Okay. You spoke to a Hannah Delong. Does that
22 sound familiar?

23 A Yes, sir.

24 Q Okay. And that person told you that they had
25 heard a bottle rocket or a car backfire?

1 A That was what they thought they had heard. They
2 had heard a noise.

3 Q A noise. A single one?

4 A Yes.

5 Q Okay. And when you went -- when you went around
6 the back of the apartment, you were able to see through
7 the windows?

8 A Yes, sir.

9 Q They -- the apartment was brightly lit?

10 A Yes, sir.

11 Q And there was no window coverings? There was
12 nothing to obscure you're seeing inside?

13 A I don't know if it was for all the windows, but
14 at least for a couple, there wasn't anything obscuring
15 them.

16 Q Were there any other units that were brightly
17 lit up, or just the one that I was in?

18 A It was just that unit at that time. All the
19 other lights were off.

20 Q Okay. And then you were monitoring your radio,
21 correct?

22 A Yes, sir.

23 Q And so you knew that the agents at the front of
24 the building were making telephone contact?

25 A Yes, sir.

1 Q Okay. And you saw the lights in the apartment
2 go out?

3 A Yes, sir.

4 Q And you saw someone step outside.

5 A Yes, sir.

6 Q And that person was me, correct?

7 A I don't know, sir. I couldn't pick you out of a
8 crowd. I'm sorry.

9 Q Fair enough. The person who stepped out the
10 back then, did you see anything in that person's hands?

11 A I could just see the glow of a cell phone. I
12 couldn't see anything else. It was very dark.

13 Q It was very dark and -- but you said you saw the
14 glow of a cell phone?

15 A Yes, sir.

16 Q But no weapon, right?

17 A Yes, sir, not at that time.

18 Q Okay.

19 A I could only see the one hand.

20 Q And you said that that person stood there for
21 between a minute or two?

22 A Yes, sir.

23 Q And at that time, you said -- you said nothing
24 to that person, correct?

25 A Correct.

1 Q You were privy to the plan to get the person to
2 come outside and then speak to that person, correct?

3 A The initial plan, yeah, to come out the front
4 door.

5 Q Okay. And then you wouldn't necessarily have
6 heard the other end of the telephone where --

7 A No, sir.

8 Q Okay. Fair enough. Now, you saw that person go
9 back inside?

10 A Yes, sir.

11 Q And at that time, you changed your position; is
12 that correct?

13 A Yes, sir.

14 Q You moved from along the fence line to the back
15 of the building?

16 A Yes, sir.

17 Q Okay. And it was still very dark, shadowed
18 area?

19 A It was just all dark in general, especially with
20 the lights of the apartment being turned out.

21 Q It was at that time you heard the door open
22 again?

23 A Yes, sir.

24 Q And when the door opened and I -- that person
25 walked outside, he had a shotgun, right?

1 A I didn't know that at that time.

2 Q But you heard a sound?

3 A I heard it shortly after the male came out, yes.

4 Q Was that sound quite loud?

5 A It was quiet there, so to me, especially that
6 metal on metal sound, it just seemed extremely loud.

7 Q It was louder than the one that we heard
8 earlier, like last -- on Friday, right?

9 A I don't know.

10 Q And that sound, when you heard it, warned you
11 away, and you went around the building?

12 A I was trying to keep from getting in an
13 altercation, so, yes, we went around the building.

14 Q You took cover behind that big black pickup
15 truck, right?

16 A Yes, sir.

17 Q And you were completely concealed from someone
18 who would be coming from the north side of the pickup
19 truck, correct?

20 A Not initially, because, like I said, we were
21 standing there, so you could easily -- you could see us
22 standing there.

23 Q But you did eventually crouch down?

24 A I did eventually crouch down, yes.

25 Q And you were doing that deliberately so as to

1 not be seen, correct?

2 A Yes. I was trying -- I didn't have a good shot
3 if that person -- that sound, the sound of a firearm, is
4 very distinct, and I'm assuming most people are taller
5 than me, should they go to that truck, for me, I would be
6 on my tippy toes trying to shoot over, which isn't the
7 best spot for me.

8 MR. ST. GEORGE: Could we have, what was it,
9 People's -- People's 125. Could we have People's 125 put
10 up.

11 (People's Exhibit 125 was published.)

12 Q (BY MR. ST. GEORGE) All right. So we're back
13 here at the truck again, right?

14 A Yes, sir.

15 Q Now --

16 MR. ST. GEORGE: Is there any way to zoom in on
17 this at all?

18 THE PARALEGAL: A little bit, yeah.

19 MR. ST. GEORGE: Okay.

20 Q (BY MR. ST. GEORGE) Now, can you -- are you
21 able to see that, Agent Trimmer?

22 A I don't -- the picture, yes, but I'm not sure
23 what exactly you're referring to.

24 Q So what I'm going to ask you about is the
25 lighting.

1 A Yes, sir.

2 Q And are you able to see those lights from
3 this -- in this picture?

4 A A little bit. Do you mind if I walk up?

5 Q Not at all.

6 A Okay.

7 Q And do you want your dowel rod so you can point
8 to them?

9 A Yeah. Sorry. I didn't know.

10 Q No, that's quite all right. And, if you could,
11 could you indicate locations of those lights.

12 A There's lights here and a light there.

13 MR. ST. GEORGE: Okay. So let the Court reflect
14 that you've pointed to two lights.

15 Q (BY MR. ST. GEORGE) Those lights, are those
16 single-bulb sconce-type lights?

17 A I don't know. I'm -- I just look at my light
18 bulb when I need a new one and buy that same one at Home
19 Depot.

20 Q Okay. That's fair. Do those look to be like
21 flood lights, or do they look more like decorative lights?

22 A I guess they are just lights to me. I don't
23 really know. I think they had like the part on top, like
24 the metal on top of it, things like that. I --

25 Q Okay.

1 A I'm not good on my light terminology. I'm
2 sorry.

3 Q I apologize. I'm not meaning give you a quiz
4 here on Home Depot. I apologize. All right. So you
5 indicated that you had taken cover behind that -- behind
6 that driver's side rear tire, correct?

7 A Initially, yes, sir.

8 Q Initially. And as this person, me, came around
9 that truck, that was where you were crouched down, behind
10 the that truck, correct?

11 A I eventually scooted back closer to the engine
12 block and that front tire, but initially went down -- I
13 went down there and then had scooted back.

14 Q And will you point again to the place where you
15 initially saw me.

16 A I guess, was the question where I was or where
17 you were?

18 Q Would you point to where you saw me when you
19 initially saw me.

20 A So you were somewhere over in here (indicated).

21 Q Okay. Let the record show that you're pointing
22 to the origin of the blood trail on the ground. Are you
23 able to see that trail of blood there?

24 A I can, sir.

25 Q You can. Okay. And so the area you pointed to

1 is the origin, or where that blood trail begins, correct?

2 A I don't know. I don't know where the blood
3 trail began.

4 Q Okay. So those lights, those are behind you,
5 correct?

6 A Yes, sir.

7 Q So you would be backlit, then, correct?

8 A The lights would be behind me, and the shadow
9 would be in front of me.

10 Q Would you say that the front of you would then
11 be shadowed?

12 A I don't know because I couldn't see it. In all
13 honesty, I couldn't see how the light would be casting for
14 me, so that would be an assumption on my end.

15 Q Okay. But, generally speaking, if the light is
16 behind you and there's a shadow in front of you --

17 A And, again, where I was, I don't know if they
18 were -- because I had moved closer to the front of that
19 vehicle, if it was more kind of on top of me, whereas, if
20 I was here, it would be more in the shadowy area. So,
21 again, without seeing it, I can't tell you definitively
22 one way or the other what you would have seen.

23 Q Okay. That dowel rod that you're holding --

24 A Yes, sir.

25 Q -- would you say that that's a -- can we

1 reasonably use that as like a facsimile of a rifle -- or a
2 shotgun, rather?

3 A Absolutely.

4 Q In your interview, you said that I was not like
5 Elmer Fudd.

6 A I did use those words, yes.

7 Q Would you show the jury what -- how Elmer Fudd
8 carries a gun.

9 A I guess, to me, he goes around like this and
10 just going like that (indicated).

11 MR. ST. GEORGE: Okay. Let the record reflect
12 that Agent Trimmer has demonstrated the gun being parallel
13 to the ground and with the muzzle up.

14 Q (BY MR. ST. GEORGE) You used the term low ready
15 earlier.

16 A Yes, sir.

17 Q Would you please demonstrate to the jury what
18 low ready looks like.

19 A Like this (indicated).

20 MR. ST. GEORGE: Let the record reflect Agent
21 Trimmer is holding the muzzle down and with the weapon
22 across her chest.

23 Q (BY MR. ST. GEORGE) Now, you say that when I
24 came around the back of the truck that I brought the
25 weapon up?

1 A Yes, sir. Do you want me to -- I'm sorry. Do
2 you want me to sit back down, or do you want me to point
3 something else out?

4 Q We're going to point to a couple more things.

5 A Okay. I just wanted to be sure.

6 Q You're fine. Now, the weapon was initially in
7 the low ready, correct?

8 A Yes, sir.

9 Q And then something occurred that it came up. It
10 was not -- the weapon was in the low ready --

11 A Okay.

12 Q -- and then it came up; is that correct?

13 A Yes, sir.

14 Q Okay. And you had your weapon drawn, correct?

15 A Yes. It was in low ready as well, like a SUL
16 position.

17 Q Okay. And when -- when you saw that person with
18 a weapon, did you point that weapon up at that point?

19 A Yes, after that male pointed the gun at me.

20 Q Okay. Now, there was an exchange of gunfire; is
21 that correct?

22 A Yes, sir.

23 Q Your round struck that male, correct?

24 A I -- I don't know.

25 Q You believe that that is the case, though,

1 correct?

2 A I believe at least one or two did, but at that
3 time, I had no idea.

4 Q All right. And could you point to the area
5 where that shotgun round struck the garage door above your
6 head.

7 A I don't know where it struck the garage door. I
8 didn't take a look behind me to see if I had been hit or
9 what had been hit, so I don't know.

10 Q Okay. That's totally reasonable. I can and
11 someone else. You said that you then moved around the
12 front of the truck; is that right?

13 A Yes, sir.

14 Q And you said that I then mirrored your movement;
15 is that correct?

16 A Yes, sir.

17 Q Using your dowel rod, would you please point
18 from the place where you said I was originally, that you
19 saw me, and show that movement on the screen with your
20 dowel rod.

21 A Whose movement? Yours or mine?

22 Q Mine.

23 A Okay. So from here and then just came across
24 this way.

25 MR. ST. GEORGE: Okay. Let the record indicate

1 that we've drawn a line more or less from the -- parallel
2 to the driver's side to the parallel of the passenger's
3 side of the truck.

4 Q (BY MR. ST. GEORGE) Now, Agent Trimmer, looking
5 at that photograph, do you see any blood in between the
6 two points that you just demonstrated?

7 A There's not a pool or anything. I don't know if
8 there's droplets that you can't see in the photo, so I
9 don't -- I don't see any.

10 Q Okay. Now, you said that you've been qualified
11 on a shotgun; is that right?

12 A No, sir. Rifle.

13 Q Only on the rifle?

14 A Yes, sir. I don't carry a shotgun.

15 Q I apologize. I thought you've been qualified on
16 a shotgun.

17 A No. I've only gone trapshooting once in my
18 entire life.

19 Q Okay. In the operation of a shotgun, do you
20 know that when you pump the action of a shotgun that it
21 ejects a cartridge? Are you aware of that.

22 A Vaguely.

23 Q Okay. So could you point on this -- you said
24 that -- first of all, you said that you mirrored -- or
25 that you went around the front of the truck and that I

1 mirrored your movement behind the truck?

2 A Correct, sir.

3 Q And you've shown a line behind the truck where
4 there is no blood on the ground, correct?

5 A As far as I could see.

6 Q Could you please point on that screen to a spent
7 shotgun shell.

8 A I can't pick that out on the picture. I don't
9 know.

10 Q Okay.

11 A I didn't see any of those or collect any of
12 them, and I don't know.

13 Q Give me one moment.

14 A Okay.

15 Q And, actually, if you wish to, you may take a
16 seat for a moment.

17 A Okay.

18 (Pause in the proceedings.)

19 THE COURT: You know, who -- this seems like a
20 great time to take a ten-minute break. So please don't
21 talk about the case. Keep an open mind. We'll have you
22 back in a little -- in about ten minutes.

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

24 (The jury left the courtroom.)

25 THE COURT: Ten minutes.

1 (A recess was taken.)

2 THE COURT: Okay. We're going to bring the jury
3 out.

4 (The jury entered the courtroom.)

5 THE COURT: Okay. Everybody be seated, please.
6 Let's resume.

7 Q (BY MR. ST. GEORGE) All right. So, Agent
8 Trimmer, we left off where you had gone around the front
9 of the truck, and you had said that I mirrored your
10 movement around the back of the truck, correct?

11 A Yes, sir.

12 Q And from this photograph, you're not able to see
13 any shotgun shells on the street, correct?

14 A I couldn't see any, no.

15 Q And when you were on that passenger side of the
16 truck, could you see any damage to the truck or the
17 concrete or anything over there that would indicate that a
18 shot had taken place over on that north -- north side of
19 the truck, passenger side of the truck?

20 A I'm sorry. Could you rephrase that?

21 Q Do you remember seeing any damage that would
22 indicate a shotgun blast to the north side of the truck?

23 A I wasn't looking for damage anywhere. I was
24 more worried about going home. So I didn't see anything
25 either way.

1 Q Okay.

2 MR. ST. GEORGE: Your Honor, I don't have any
3 further questions.

4 THE COURT: Redirect?

5 MS. DECKER: Thank you, Judge.

6 DIRECT EXAMINATION

7 BY MS. DECKER:

8 Q The defendant asked you if you had announced
9 yourself when you were at the gate to this apartment
10 complex.

11 A Yes, ma'am, he did.

12 Q When you --

13 MS. DECKER: And we can take down this picture
14 at this point.

15 Q (BY MR. ST. GEORGE) When you first arrived at
16 the apartment complex, were you still trying to determine
17 the suspect's name?

18 A Yes, ma'am.

19 MS. DECKER: And if we could actually put up
20 Exhibit 33 that's already been entered into evidence.

21 Q (BY MS. DECKER) You mentioned that you were
22 able to, through dispatch, run a license plate number and
23 get a name.

24 A Yes, ma'am.

25 Q Do you see the vehicle in this picture, Exhibit

1 33, that corresponds to that vehicle matching up with the
2 name Eric St. George?

3 A I believe it's the Jeep on the right side of the
4 picture.

5 MS. DECKER: Okay. Thank you. We can take down
6 this picture.

7 Q (BY MS. DECKER) When you and Sergeant Maines
8 were at first standing behind the defendant's apartment,
9 and after the lights went out and he came outside with
10 what you could see to be a cell phone --

11 A Yes, ma'am.

12 Q -- you mentioned that you couldn't see a weapon.
13 Is that fair?

14 A Yes, ma'am.

15 Q Could you see that the defendant was clothed?

16 A No.

17 Q Did you know whether the defendant was wearing
18 pants with pockets?

19 A No, ma'am.

20 Q Did you know whether it was possible that he
21 could be carrying a gun in a pocket?

22 A It could have been. I have no idea what he had
23 on him besides that cell phone.

24 Q And describe for the jury why, at this point,
25 you didn't announce yourself.

1 A Because we didn't know if he had a weapon. He
2 could have had a holster. It could have been in his other
3 hand. I can only tell you that I could see the cell phone
4 in his left hand, and that's the only reason that I could
5 even see that there was someone there.

6 Q You went to the side of the building, the
7 south -- I'm sorry, the northeast corner of that building,
8 and the defendant had just mentioned that with this
9 shotgun sound, he warned you away. My question is, do
10 citizens routinely have the right to tell police when they
11 can or cannot remain --

12 MR. ST. GEORGE: Objection, Your Honor.

13 THE COURT: I'll sustain the objection.

14 Q (BY MS. DECKER) The defendant used the words he
15 warned you away. Do you take the sound of a shotgun
16 racking as a sign that you, as a police officer, should
17 leave?

18 MR. ST. GEORGE: Objection, Your Honor.

19 THE COURT: Overruled.

20 A I'm sorry. What was the last part of that
21 question?

22 Q (BY MS. DECKER) I'll ask the question again.
23 The defense said -- the defendant said he warned you away.
24 As a police officer, when you hear a civilian rack a
25 shotgun, do you leave that scene?

1 A No.

2 Q Why?

3 A Because we're there investigating the allegation
4 of a crime, and at that point, I also take that as threat
5 if he's coming out of the house. It's not like we
6 stumbled upon someone in their garage cleaning a gun or
7 doing something of that nature.

8 Q Are you concerned for your safety as well as the
9 safety of other citizens?

10 A Absolutely.

11 Q The defendant mentioned, or stated, that you
12 were crouching behind that truck so as not to be seen.
13 Were you trying to sneak up on the defendant?

14 A No. I was trying to hide from him.

15 Q So were you trying to stay away from him?

16 A I was.

17 Q Were you trying to get into an altercation or
18 avoid an altercation?

19 A Avoid. That's why we left.

20 Q The defendant had you get down and point out to
21 the jury some of the lighting. I'm going show you
22 People's Exhibits 39 and 38. Does 38 and 39 -- do these
23 fairly accurately depict some of the light fixture in that
24 area?

25 A Yes, ma'am.

1 MS. DECKER: The People move to admit 38 and 39.

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

3 THE COURT: 38 and 39 -- I have 38 and 39

4 admitted.

5 MS. DECKER: Thank you. Permission to then

6 publish.

7 THE COURT: Yes.

8 (People's Exhibit 38 was published.)

9 Q (BY MS. DECKER) In Exhibit 38, do you see, in
10 addition to the two that you pointed out on the sides of
11 the truck with the defendant, a light fixture directly
12 above the truck?

13 A There is one.

14 MS. DECKER: And 39.

15 (People's Exhibit 39 was published.)

16 Q (BY MS. DECKER) Again, do you see that light
17 fixture at the peak of that roof, directly above the
18 truck?

19 A Yes, ma'am.

20 Q So to be clear, were there three light fixtures
21 illuminating that area?

22 A There were.

23 MS. DECKER: We can turn the court lights back
24 on and take off the picture from the screen.

25 Q (BY MS. DECKER) The defendant pointed out to

1 you a blood trail. Did you ever go out to the scene to
2 investigate casings, spent or unspent, trajectories, or
3 blood trails after the shooting?

4 A No, ma'am.

5 Q Were you interviewed while further investigation
6 was going on without you present?

7 A Yes, ma'am.

8 Q And was that interview taken essentially before
9 daylight?

10 A It was right around dawn.

11 Q Did you in any way conform your testimony as to
12 the defendant's locations to where there was blood trail?

13 A No. I didn't even know there was one.

14 Q The defendant said that you were at the low and
15 ready -- or, rather, he was at the low and ready, and then
16 something happened. Is that true, that something
17 happened, other than him just rounding the corner of that
18 truck?

19 A That was what I was going to say happened is he
20 came around the back of the truck and brought a shotgun
21 and pointed it at me.

22 Q So to be clear, did you do anything at that
23 point?

24 A No. No, ma'am.

25 MS. DECKER: Thank you, Judge. I have no

1 further questions.

2 THE COURT: Recross?

3 RECROSS-EXAMINATION

4 BY MR. ST. GEORGE:

5 Q Agent Trimmer, you were just asked if something
6 had happened, right?

7 A Yes.

8 Q And you said no; is that right?

9 A I said just that you came out behind the truck,
10 brought a shotgun, and pointed it at me.

11 Q When you saw that man with the shotgun, did you
12 draw up your weapon at that point?

13 A After you drew yours at me.

14 Q So something happened, then, right?

15 A Which is what I told the DA.

16 MR. ST. GEORGE: No more.

17 THE COURT: Does anyone on the jury have a
18 question for this witness?

19 (No verbal response.)

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

21 (The witness was excused.)

22 MS. DECKER: Your Honor, the People call Agent
23 Chris Alfano.

24 CHRISTOPHER ALFANO,

25 having been called as a witness on behalf of the People,

1 being first duly sworn, testified as follows:

2 THE COURT: Have a seat, please.

3 THE WITNESS: (The witness complied.)

4 DIRECT EXAMINATION

5 BY MS. DECKER:

6 Q Good morning.

7 A Good morning.

8 Q Could you please introduce yourself to the jury.

9 A Sure. My name is Agent Christopher Alfano with
10 the Lakewood Police Department.

11 Q And can you spell your full name.

12 A Sure. Absolutely. My last name is A-l-f-a-n-o.

13 Do you want the first name spelled as well?

14 Q Sure.

15 A Christopher, C-h-r-i-s-t-o-p-h-e-r.

16 Q What do you do for the Lakewood Police
17 Department?

18 A I'm a patrol agent for them.

19 Q What does that mean?

20 A So patrol is kind of a basic function of the
21 police department. I respond to calls, investigate crimes
22 occurring on scene, make proactive traffic stops,
23 contacts, things like that.

24 Q How long have you been working in that capacity?

25 A About five and a half years, ma'am.

1 Q And can you describe for the jury any training
2 and experience you've had working in that role.

3 A Sure. Absolutely. Everything kind of begins
4 with the academy. It's about a six-month-long academy.
5 It teaches you all the basics of the job, from -- anything
6 from driving, firearms training, how to investigate
7 crimes, and things like that. And then a little bit of
8 specialized training. I'm a field training agent. I've
9 attended a course for that. I have attended several
10 firearms courses for shotgun and rifle.
11 I'm currently assigned to the SWAT team and attended a
12 basic SWAT training course as well as ongoing training for
13 that.

14 Q You mentioned some specialized training as it
15 pertains to shotguns and rifles. Can you get into that a
16 little bit more with the jury.

17 A So the training courses are basically 40 hours
18 of training to basically qualify and carry the weapons on
19 duty.

20 Q And do you carry a shotgun and/or a rifle on
21 duty?

22 A I carry a patrol rifle.

23 Q And you also mentioned some specialized training
24 with regard to SWAT. Can you describe that?

25 A Yes, ma'am. Well, absolutely. It is just more

1 advanced training and tactics. More experience and more
2 training with firearms, and things like that.

3 Q I'm going draw your attention to August 1st of
4 2016. Around 12:30 a.m., were you working at that time?

5 A Yes.

6 Q What was your shift?

7 A So at that time, I was working swing shift, so
8 it would be 3:00 p.m. to 1:00 a.m.

9 Q What happened at about 12:30 a.m.?

10 A So about 12:30 a.m., I was in the area of the
11 police department. We get called off duty around 12:30,
12 so I was basically waiting to go home. Monitoring the
13 radio traffic, some agents were contacting a suspect down
14 on West Eastman Place.

15 Q Was that 8139 West Eastman Place in Lakewood,
16 Colorado?

17 A Yes, ma'am.

18 Q Jefferson County?

19 A Yes, ma'am.

20 Q And did you hear anything on the police radio
21 that made it more of a concerning situation?

22 A Yes, absolutely. The agents on scene over there
23 aired over the radio that they had heard the suspect rack
24 a firearm.

25 Q And did you know whether that was Sergeant

1 Maines who had aired that?

2 A It was, yes.

3 Q And at that point, had he requested more
4 officers to assist at the scene?

5 A Yes, absolutely.

6 Q Once you heard that over the police radio, what
7 did you do?

8 A I immediately went to go assist.

9 Q And how long did it take you from the time you
10 heard Sergeant Maines request further assistance to arrive
11 at the scene?

12 A Not very long. Since it was late at night and I
13 was running code down there with the lights and sirens on,
14 I mean, probably five minutes, five to ten minutes,
15 somewhere in there.

16 Q Once you arrived at this apartment complex,
17 where did you go?

18 A So at that point, I basically parked to the
19 south of the building. Sergeant Maines kind of gave us an
20 area to park at. So I then opened the trunk and began
21 retrieving my patrol rifle. At that time I began hearing
22 shots.

23 Q And just, specifically, where did you park, or
24 did you know, in relation to the suspect's building, where
25 you were?

1 A Yeah. So it was to the south.

2 Q And was it directly to the south of the
3 suspect's building, or was it farther south?

4 A So it was a little bit further south. I kind of
5 wish I had a map. But there was a couple buildings in
6 between and kind of like a long have grass kind of walkway
7 area, and we were parked a little bit further to the south
8 of that, so . . .

9 MS. DECKER: And if we could publish People's
10 Exhibit 4 and zoom into the right half of that exhibit.

11 (People's Exhibit 4 was published.)

12 Q (BY MS. DECKER) So looking at the second
13 building in from the right and going down, can you explain
14 to the jury where you parked in relation to that.

15 A May I approach?

16 Q Yes.

17 A Okay.

18 Q And there's a dowel right there beneath the
19 Judge.

20 A Sure. So we entered through here and drove here
21 and then basically were parked right in this area right
22 here, and this is the suspect building.

23 Q So you're pointing to the --

24 A That parking lot.

25 Q -- to the right of the greenway?

1 A Yeah.

2 Q And you can take your seat.

3 A Sure.

4 Q You mentioned that you arrived to the complex
5 with lights and sirens. When did you turn those off?

6 A Yes, ma'am. So, basically, as we were entering
7 that complex, near the front there off the main road, off
8 of Eastman Place, there is a gate, and I basically turned
9 the lights off there.

10 Q And the sirens as well?

11 A Yes, ma'am.

12 Q And once you parked, were there any other
13 officers with you at that point?

14 A Yes.

15 Q Who else?

16 A Yes. You know, I don't remember all of them. I
17 definitely remember that Agent Waller was there as well
18 with me.

19 Q And once you had parked in that location to the
20 right of that greenway, you mention that had you gotten
21 out another weapon.

22 A Yes.

23 Q And what was that weapon?

24 A That was my patrol rifle.

25 Q You mentioned at this point -- were you still

1 parked and by your patrol vehicle when you began to hear
2 shots?

3 A Yes, ma'am.

4 Q And describe the first type of gunshot that you
5 heard.

6 A So, basically, I heard two types of gunshots,
7 basically boom and pops. The first one I really heard was
8 a boom out of that.

9 Q And the second type was a pop?

10 A Right. Correct.

11 Q And do you recall how many there were total?

12 A Five to six shots.

13 Q And when you specify boom and pop, based on your
14 experience with firearms --

15 A Yes.

16 Q -- what type of weapon is consistent with a
17 boom, and what type of weapon is consistent with a pop?

18 A So the boom would be more like a shotgun or
19 rifle, and the pop would be more of a handgun.

20 Q And were you able to discern at that point how
21 many of each you heard, or just to total number?

22 A Just the total number.

23 Q To be clear, the booms, was a boom the first
24 shot that you heard?

25 A Yes.

1 Q Did you hear anything on the police radio at
2 that time, after hearing these boom and pops?

3 A You know, I heard the agents call out that shots
4 were fired, and then they said that the suspect had gone
5 back into his unit.

6 MS. DECKER: And if we could display Exhibit 4
7 again, that right-hand portion.

8 Q (BY MS. DECKER) And if you could explain to the
9 jury where you were when you heard those pops again, and
10 where you went once you heard over the police radio shots
11 fired.

12 A Sure. So we were in this area when the shots
13 began being fired. And not knowing a hundred percent
14 where the shots were going and where they were coming
15 from, we initially kind of took cover on the corner of
16 this building right here. After that, they said the
17 suspect had gone inside, back into the building.

18 I saw Agent Trimmer kind of walking down this
19 side of building near this corner, and I radioed to her
20 and asked her if it was safe to go up to her position.
21 She said yes. So we then basically ran up to the
22 south -- or, yeah, it was the southeast corner of
23 building, right there.

24 Q And just for the record, for the purpose of
25 appeal, you're pointing that you were taking cover on the

1 second row of buildings down, second building in from the
2 right. Is that accurate?

3 A This one initially, here?

4 Q Yes.

5 A Yes. So that's where we took when the shots
6 were initially being fired, yes.

7 Q So once you learned that you could move from
8 that location where you were taking cover, where did you
9 go and in what direction?

10 A We went to the southeast corner of the suspect's
11 building here.

12 Q So did you go through that park area?

13 A Yes. Yeah, basically just ran kind of straight
14 over there.

15 Q And how many officers do you recall were with
16 you at this point?

17 A You know, I definitely remember Agent Waller was
18 there. As far as I can remember, it was him and I running
19 up to that corner.

20 Q And I'll show you People's Exhibit 5.

21 (People's Exhibit 5 was published.)

22 Q (BY MS. DECKER) So when looking at the
23 southeast corner of this building, can you point out to
24 the jury where Agent Trimmer and was and where you went.

25 A Yes. So right here, there's kind of like a

1 little alcove where someone's front door is. So Agent
2 Trimmer had come down here and was over here, and we ran
3 up and met her on that corner there.

4 Q And you can have a seat.

5 A (The witness complied.)

6 Q Once you were with Agent Trimmer, did you learn
7 anything that would impact what you did next?

8 A Yeah. So Agent Trimmer basically advised that
9 she -- she had shot the suspect, that he had come out from
10 the north side of the building. And so at that point, I
11 basically covered down, with the rifle, down that east
12 side of building pointing toward the north, basically, in
13 case he came back around that corner.

14 Q And what happened while you were taking cover of
15 this east side of the building?

16 A Sure. So while we were on that east side, we
17 heard three shots come from within the building, and then
18 the suspect called 911, and 911 aired that information
19 over the radio, basically saying that he claimed that he
20 had been shot. We basically -- or I believe it was
21 Sergeant Maines was the one who aired back to dispatch,
22 basically saying that he can receive medical treatment,
23 but he needs to come out, you know, with his hands ID'd.

24 Q And had dispatch told the suspect that he could
25 come out with his hands and --

1 A As far as I know, yeah.

2 Q And after you heard those three gunshots,
3 explain what you did.

4 A So, I mean, we basically stayed on that corner
5 until I began hearing yelling and information that the
6 suspect was coming out the south side of the building.

7 Q And so from that corner where you had been
8 looking north --

9 A Yes.

10 Q -- did you then essentially look west?

11 A Yeah. So, yep, that's where the yelling was
12 coming from, yeah.

13 Q Describe what you saw once you were able to look
14 west?

15 A So when I looked west, I saw other agents kind
16 of advancing with handguns drawn kind of in toward an
17 alcove on the building, yelling for the suspect to show
18 them his hands.

19 Q And did you do anything to provide cover?

20 A Yeah. So at that point, I believe that I was
21 the only one with a long gun. I basically ran over there
22 to provide long gun cover for them. When we got to that
23 area, the suspect was laying on his back with his hands
24 above his head, and the handgun was on the ground near his
25 head. He was yelling repeatedly, hands up, hands up. At

1 that point we kind of moved forward to take him into
2 custody. With that gun near his head, I didn't want him
3 to get to that gun again, so I basically put my foot on
4 his right arm to keep him from being able to move that,
5 and then basically covered toward the door while agents
6 took him into custody and moved him out.

7 Q I'm going back you up a little bit. You
8 mentioned this term "long gun cover."

9 A Um-hum. Yes.

10 Q What does that mean?

11 A So long gun cover, when I say something like
12 "long gun," it's referring long rifle. Long guns are more
13 accurate and a little more powerful, so they provide just
14 a little bit safer -- more safety for us on scene. So
15 providing long gun cover would be just basically making
16 sure that nobody else comes out of the apartment or no
17 other threats appear, basically covering everybody else.

18 Q And after you were providing this long gun
19 cover, did you ever approach closer to take on a different
20 role?

21 A So, yes, after the suspect was taken into
22 custody. Is that what you're referring to?

23 Q Prior to the suspect being taken into custody,
24 but before protecting yourself from the weapon that he had
25 come out with.

1 A Right. Right. So, I mean, we basically went up
2 there and just kind of approached the male while he was
3 there to take him into custody, and that's when I
4 basically stepped on his arm to make sure he didn't access
5 that weapon.

6 Q So describe for the jury how close this weapon
7 was to his arm.

8 A Very close. Definitely within reach.

9 Q And did you see what kind of weapon it was?

10 A It was a small handgun.

11 Q And was another agent able to move that weapon
12 away from the suspect?

13 A Yes. Yes.

14 Q And who was that; do you remember?

15 A Yeah. Agent Lebsack was able to move that gun
16 away.

17 Q Once Agent Lebsack was able to move this gun
18 away, what did agents there do to take the suspect into
19 custody?

20 A So they rolled him over onto his stomach, placed
21 his hands behind his back and placed him in handcuffs, and
22 then dragged him over to the south and began giving him
23 medical treatment.

24 Q And did you do anything to ensure that you were
25 safe from within the apartment.

1 A Yeah. So after that, as they pulled the suspect
2 further to the south, we retreated back to the south and
3 took cover again until we were ready to approach to
4 apartment.

5 Q And did you ever go and re-approach the
6 apartment?

7 A Yes, ma'am.

8 Q What did yo do you?

9 A So with the shots being fired and everything,
10 and the situation as it was, we wanted to make sure there
11 was nobody else injured inside the apartment or something.
12 So we basically re-approached the apartment and cleared
13 the inside.

14 Q Once you went inside to clear the apartment,
15 describe for the jury what you're clearing it for.

16 A Sure. So we're looking for any other suspects,
17 anybody who might be injured, anybody who might be in
18 further danger from the incident.

19 Q Did you ever go towards the back of the
20 apartment?

21 A Yes.

22 Q And what did you?

23 A So as we cleared kind of the main living room
24 area, near the back patio door, I noticed a pistol grip
25 shotgun on the ground.

1 Q And was that near the back -- was the door open
2 to that back patio?

3 A I honestly don't recall. I may have noted it in
4 my report. May I review?

5 Q If you would like to review your report, if that
6 would help you refresh your memory today.

7 A Sure. So, yes, so the back patio door was ajar,
8 was open.

9 Q And was your role at that point just to clear
10 the apartment to make sure it was safe for officers to be
11 there?

12 A Yes, ma'am.

13 Q But while you were in there just clearing the
14 apartment, did you notice any other damage that would be
15 consistent with gunfire in the apartment?

16 A Yes. So as we were leaving the apartment, I
17 notice a hole in the frame of a closet door, which is
18 right near the front door.

19 Q After clearing the apartment, what did you do?

20 A So at that point, we left the apartment, and I
21 was reassigned to the crime scene security on the north
22 side of the building.

23 Q Describe for the jury what that means.

24 A So, basically, anytime you have an incident like
25 this, there's lots of evidence everywhere, so we just want

1 to make sure that the evidence is not tampered with or
2 destroyed, or anything like that. So crime scene security
3 basically go back and make sure that only appropriate
4 people are supposed to be in there and that the evidence
5 is preserved on scene.

6 Q And is this where you do things like roping
7 things off with crime scene tape?

8 A Yes, ma'am.

9 Q And do you maintain that area so that no
10 neighbors or anyone else tampers with evidence that could
11 be there?

12 A Correct.

13 Q Did you maintain a position on the back side,
14 north side of the building?

15 A I did, yes.

16 Q And while you were in that backyard area, did
17 you notice anything?

18 A I did, yes. The first thing I noticed was a
19 trail of blood basically leading from the back patio east
20 through the grass. I also noticed an empty shell casing
21 just to the north of the patio, and it was a shotgun shell
22 casing.

23 Q And, again, was your primary role just
24 maintaining scene security, or was it to actually
25 investigate blood and casings and things of that nature?

1 A So it was just to maintain the scene security.
2 Those were just things that were easily visible at that
3 time.

4 MS. DECKER: I'm having the bailiff approach
5 with 117 and 118.

6 Q (BY MS. DECKER) I'll ask if you recognize 117
7 and 118.

8 A I do, yes.

9 Q And what do these depict?

10 A So they depict, basically, the north side where
11 I was on crime scene security. The suspect's back patio
12 is over there, and then the, basically, adjacent lawn
13 there.

14 Q And for how long did you maintain crime scene
15 security?

16 A I was there until -- I think I was relieved at
17 5:11 in the morning.

18 Q And did another agent maintain crime scene
19 security after that you?

20 A Yes.

21 MS. DECKER: The People would move to enter 117
22 and 118.

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

24 THE COURT: 117 and 118 are admitted.

25 (People's Exhibits 117 and 118 were admitted

1 into evidence.)

2 MS. DECKER: Permission to publish?

3 THE COURT: Yes.

4 (People's Exhibit 117 was published.)

5 Q (BY MS. DECKER) On Exhibit 117, can you
6 describe for the jury what you saw in terms of blood spots
7 and any sort of shotgun shell?

8 A Sure. May I approach the picture?

9 Q Yes.

10 A So this is the area to the north of the patio
11 here. Right here is the suspect's back patio. You'll see
12 right, basically, at this tree -- and it's probably better
13 in the next picture, the 118, there's a little yellow card
14 right there, which is where I noticed the shotgun shell.
15 It's really hard to see in the grass here, but this is
16 where the blood trail would be found, basically, leading
17 to the east.

18 Q And so just for the record, where the blood
19 trail was, you're pointing to the bottom left towards the
20 upper right corner?

21 A Yes. Yeah. It kind of extends along that path
22 there.

23 (People's Exhibit 118 was published.)

24 Q (BY MS. DECKER) And in Exhibit 118, explain
25 what you see here.

1 A Just a little bit zoomed in. Same thing with
2 the suspect's patio right here, and then you can see where
3 that marker card is, and that's where the shotgun shell
4 was, and then, again, the blood trail would be coming down
5 here (indicated).

6 Q And were you talking about a live round or
7 expended round?

8 A So, yeah, it was an empty shell casing, so it
9 had been expended.

10 Q And you mentioned there were two?

11 A I recall only one shell being over in that area.

12 Q And that was to the immediate north of the
13 suspect's patio?

14 A Yes, ma'am.

15 Q And explain to the jury what -- what the
16 distinction is, the difference is, between an empty one
17 and a not empty one?

18 A So, you know, a not expended shell, or a live
19 shell, is just one that has not been shot. What you will
20 see kind of visually on a shotgun shell, they are kind
21 of -- they are cylindrical in shape, and when they are
22 expended, the top that kind of holds everything in kind of
23 comes out, so they are a little bit longer than they
24 typically would be when they are live.

25 Q And you can have a seat again.

1 A (The witness complied.)

2 Q After you were relieved at, did you say, 5:11 in
3 the morning from crime scene security --

4 A Yes, ma'am.

5 Q -- where did you go, and what did you do?

6 A So at that point, I drove back to the police
7 station and was interviewed by the CIRT team.

8 Q What does that mean?

9 A Critical Incident Response Team. So they are
10 the ones who investigate police-involved shootings.

11 MS. DECKER: Thank you. I have nothing further.

12 THE COURT: Cross-examination?

13 CROSS-EXAMINATION

14 BY MR. ST. GEORGE:

15 Q Agent Alfano, now, you said that you arrived
16 along with Agent Waller. You remembered being with Agent
17 Waller, right?

18 A Correct.

19 Q Would it sound familiar if I said that Agents
20 Frink, Lebsack and Shube were the others that were with
21 you?

22 A You know, I don't remember who arrived on scene.
23 I do remember Agent Lebsack and Agent Frink being around,
24 it seemed like, later on. Like I said, Agent Lebsack was
25 one of ones approaching the door to the south. I don't

1 remember who arrived, frankly, on scene with me at that
2 particular parking lot.

3 Q Okay. And you said that you heard the sound of
4 gunfire while you were at your cars, right?

5 A Correct.

6 Q Okay. And you said you heard a mixture of some
7 pops and booms?

8 A Correct.

9 Q You were monitoring your radio at the time,
10 right?

11 A Yes.

12 Q Okay. And you heard Muller air shots fired?

13 A I heard somebody air shots fired.

14 Q Okay. And then you -- would you have recognized
15 Sergeant Maines's voice?

16 A You know, it's possible. At that particular
17 moment, I wasn't necessarily worried about who was saying
18 what. I mean, shots are getting fired, and we needed to
19 figure out what's going on and respond to that.

20 Q Okay. Did you hear somebody air he's got a
21 shotgun?

22 A I don't recall that.

23 Q Okay. You and the group that were coming up
24 through that greenbelt area, right, none of you were
25 visual witnesses to the gunfire?

1 A That's correct. At least I was not. I don't
2 know if anybody else saw it, but I was not.

3 Q When you made it up to Agent Trimmer, did she
4 tell you, I shot him, I fired three rounds?

5 A Yes.

6 Q Okay. So you were privy to all that information
7 at that point?

8 A Correct.

9 Q And 15 minutes later, you said you were
10 providing assault rifle cover at the front door? Or I
11 think you called it a duty rifle.

12 A I called it long gun rifle.

13 MS. DECKER: Objection, compound, with regard to
14 the time and then what happened.

15 THE COURT: All right. Yes. Could you parse
16 those out, please.

17 MR. ST. GEORGE: Fair enough.

18 Q (BY MR. ST. GEORGE) Was it approximately
19 15 minutes later that you went to the front door area?

20 A I don't recall the time frame.

21 Q And you were providing cover with your rifle?

22 A Yes.

23 Q Okay. And you heard verbal police commands
24 being given at that time?

25 A Yes.

1 Q And you saw the person who was being given those
2 commands responding to those commands?

3 A Yes.

4 Q Complying with those commands?

5 A Yes.

6 MR. ST. GEORGE: Bear with me one motion. Let
7 me see if I have anything further.

8 (Pause in the proceedings.)

9 MR. ST. GEORGE: Thank you, Agent Alfano. No
10 more questions.

11 THE COURT: Redirect?

12 MS. DECKER: Thank you. If I may have one
13 moment.

14 (Pause in the proceedings.)

15 REDIRECT EXAMINATION

16 BY MS. DECKER:

17 Q The defendant asked if you saw the person come
18 out. Can you identify that person in court today?

19 A Yes.

20 Q Where is he, and what is he wearing?

21 A So he's wearing the gray suit and white
22 checkered shirt.

23 Q Is he the person who just questioned you?

24 A Yes.

25 MS. DECKER: The People would ask the record

1 reflect that Agent Alfano has identified the defendant.

2 THE COURT: The record reflects.

3 Q (BY MS. DECKER) The defendant asked you whether
4 he complied with commands. Did he, in fact, not comply
5 with the command to come out empty-handed?

6 A That is correct. He did not comply with that
7 command. He came out with a gun, and it was laying by his
8 head.

9 MR. ST. GEORGE: Objection, Your Honor. When
10 was that command given?

11 THE COURT: I'll overrule the objection.

12 Q (BY MS. DECKER) Did you testify on direct
13 examination that dispatch had told the suspect to come out
14 empty-handed?

15 A So as far as I know, that's what dispatch was
16 directed to tell him.

17 MS. DECKER: Thank you.

18 THE COURT: Recross?

19 MR. ST. GEORGE: I've got nothing further, Your
20 Honor.

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

23 (No verbal response.)

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

25 (The witness was excused.)

1 MR. FREEMAN: Judge, are we ready?

2 THE COURT: Yes.

3 MR. FREEMAN: We'll call Jason Maines.

4 JASON MAINES,

5 having been called as a witness on behalf of the People,

6 being first duly sworn, testified as follows:

7 THE COURT: Have a seat, please.

8 THE WITNESS: (The witness complied.)

9 DIRECT EXAMINATION

10 BY MR. FREEMAN:

11 Q Good morning. Would you please state your full
12 name and spell your last name for us.

13 A I'm Sergeant Jason Maines, M-a-i-n-e-s.

14 Q And how are you employed?

15 A I work for the City of Lakewood as a patrol
16 sergeant.

17 Q For how long have you been a peace officer?

18 A 13 years.

19 Q And how much of that has been spent with
20 Lakewood PD?

21 A All 13 of it.

22 Q How long have you been a sergeant?

23 A About four years now.

24 Q Did you ever work in a patrol capacity?

25 A Yes, I do, and I always have as a sergeant.

1 Q Okay. So was there a time before you were a
2 sergeant when you worked as a patrol agent?

3 A Yes. All of my years at a police department has
4 been in the patrol division.

5 Q And has some of that been as a regular agent and
6 some as a sergeant?

7 A That is correct.

8 Q Do you have any specialized training in firearms
9 or SWAT tactics?

10 A I'm a member of the SWAT team. I've been a
11 member of the SWAT team for about ten years. I was SWAT
12 agent, and then once I was promoted, I became SWAT
13 sergeant. I'm a firearms instructor, and every firearm we
14 carry at the police department, handgun, shotguns, rifle.

15 Q And what does that mean to be a firearms
16 instructor?

17 A I go through special certification, training
18 courses on each different firearm, and then I train the
19 other police officers or new police recruits in how to use
20 those firearms and marksmanship skills, weapons handling,
21 gun safety, things like that.

22 Q Back on July 31st of 2016, were you certified to
23 carry any particular firearms during your duties?

24 A I'm certified to carry a handgun, a rifle and a
25 shotgun.

1 Q What's the difference between a rifle and a
2 shotgun?

3 A A rifle is -- has a rifle barrel. It's usually
4 a much smaller projectile, it's usually a single
5 projectile, that travels at a relatively high rate of
6 speed compared to a shotgun or a handgun. A shotgun
7 usually has a smooth bore on the barrel, and it can shoot
8 a number of different types of projectiles. It can shoot
9 solid projectiles, as in a shotgun slug. It with can shoot
10 multi-projectiles, as in buckshot, or very small
11 projectiles, as in birdshot, which would be, say,
12 something that looks like BBs, and there would be several
13 of those, maybe 30, 40, in a shell, and they shoot all at
14 one time.

15 Q Are there different calibers of shotguns?

16 A There are. Shotguns are measured in gauges, so
17 you have a 12-gauge, a 20-gauge, a 16-gauge. Those are
18 all different versions of shotguns.

19 Q And does that gauge, does that correspond to the
20 diameter of the barrel?

21 A It does.

22 Q And what sort of gauges does -- or did the
23 Lakewood Police Department officers carry back then?

24 A We used 12-gauge shotguns.

25 Q I'm going draw your attention that back to that

1 evening, the evening of July 31st of 2016 into the early
2 morning hours of August 1st. Were you working on that
3 date?

4 A I was.

5 Q And what was your -- what was your shift?

6 A I was working as a patrol sergeant on our Watch
7 4, which is 9:00 p.m. to 7:00 a.m.

8 Q So is it correct to say that you had come on
9 shift at about 9 o'clock on the 31st?

10 A That is correct.

11 Q And you were scheduled to work into the early
12 morning or the next day on August 1st?

13 A That is correct.

14 Q And in a patrol capacity, as a sergeant, were
15 you wearing a uniform that evening similar to the one
16 you're wearing today?

17 A I was. The same -- the same uniform as I have
18 on now.

19 Q And were you driving a marked Lakewood patrol
20 car or something that was unmarked?

21 A I was likely to have been driving a marked
22 patrol car, but I could not say for sure because some of
23 our sergeant cars are unmarked, and I don't know what car
24 I was driving that night.

25 Q Okay. Did you have a partner with you in your

1 vehicle?

2 A No. We have single -- single officers cars.

3 Q What was your general assignment that evening,
4 on the 31st?

5 A As a patrol supervisor, I have a team of agents
6 that work for me on. At that time, working on the
7 midnight shift, we have more of a collective supervision
8 of all the agent that are out, because they're not
9 geographically assigned by patrol team. I was mainly
10 focused on the south sector of the city of Lakewood, which
11 is everything south of 6th Avenue and, basically,
12 everything east of Garrison Street. So I was the assigned
13 patrol supervisor for that area, and I would monitor calls
14 for service and directly supervise agents while they
15 handled those calls for service.

16 Q And when you say "directly supervise," does
17 that mean that you're also present on scene wherever they
18 are?

19 A I'm not always present. There's a lot of them,
20 and there's only a couple of us. So I'll go to the, I
21 guess, more dangerous or maybe more complex calls, as time
22 allows, and when I'm there, I will directly supervise
23 them. So I will stand there and monitor their activities
24 and assist, if needed, and make sure that things are going
25 according to policy and procedure and as planned.

1 Q Now, if you're unable to be physically present
2 when other agents are dealing with something, are you in
3 communication with them, either by radio or cell phone, or
4 both?

5 A I am. Just based on the number of calls that we
6 have and the number of agents that work, we do a lot of
7 supervision via telephone or radio. So they will call us,
8 me for advice, or they will run something by me, or if I
9 hear something on the radio that maybe I think they
10 need -- they might need a little bit of supervision from a
11 distance, I'll call them and talk to them, and we'll talk
12 over a call or what's going on with it.

13 Q Tell us how your radio works.

14 A The --

15 Q How do you speak and communicate with other
16 officers or dispatch? What do you have to do?

17 A You have to press the button on the radio. I'm
18 not wearing one today, but you press the button on the
19 radio, you speak out loud, the microphone picks up your
20 voice and transmits it, and then the receiver has a
21 speaker that your voice is broadcast on, on the other end.

22 Q Now, can you hear other radio traffic that's
23 going on throughout the city, or can you only hear certain
24 channels?

25 A So we have at least three primary patrol

1 channels, and I monitor the one that -- they correspond to
2 the geographic sectors. So I primarily monitor the one
3 that corresponds to the sector that I'm supervising at the
4 time, but the other two channels I can also listen to
5 through a scan function, but the -- the scan function lets
6 you listen to the other channels only when nothing is
7 being broadcast on your channel. So sometimes you'll pick
8 up traffic on the other two channels, and sometimes you
9 won't if somebody is currently talking on the channel that
10 you have it set to.

11 Q Now, do you know -- when you push the button and
12 speak into your radio, do you know if that's recorded?

13 A Yes, it -- as far as I know, it's recorded. It
14 typically is recorded, yes.

15 Q Okay. And your cell phone that you use for
16 work, is that strictly dedicated to work? Do you have a
17 separate personal cell phone?

18 A I do have a separate personal cell phone, and I
19 only use the work cell phone for work purposes.

20 Q Okay. Let me ask you about that night and the
21 weapons that you had. What -- describe for the jury what
22 weapons you had either on your person or in your vehicle
23 that night.

24 A In my vehicle is -- we keep our rifle and
25 shotgun in the vehicle, and then on my person I always

1 carry a handgun.

2 Q And what handgun did you carry that night?

3 A I carry a Glock 34 handgun. It's the same one
4 I've had through most of my career and I still have
5 today.

6 Q And Glock is the manufacturer?

7 A That's correct.

8 Q 34, is that a model number?

9 A That is a model. It's a 9 millimeter handgun.

10 Q 9 millimeter is the ammunition, or size of
11 ammunition that it takes?

12 A That's correct.

13 Q And is that a semi-automatic handgun?

14 A It is.

15 Q Can you briefly describe the difference between
16 a semi-auto and revolver?

17 A Semi-automatic handgun, by the name, it's a
18 self-loading mechanism. So the ammunition sits in a
19 magazine, and inside that magazine, there's a spring that
20 pushes the ammunition up from the bottom. And as the gun
21 is fired, the recoil, or the force, from the firing the
22 gun causes the action to cycle, and as the action cycles,
23 it ejects the spent casing. The bullet, of course, comes
24 us out the barrel, the muzzle of the barrel. The spent
25 casing comes out the ejection port, and the spring pushes

1 up on the next piece of ammunition and the magazine, and
2 as the slide then comes back forward due to another
3 spring, it picks up that piece of ammunition and loads it
4 again into the firearm.

5 Q So you just took about 30 seconds to describe
6 this process. In realtime, how quickly does it actually
7 happen?

8 A In less than a second.

9 Q Okay. And, therefore, how quickly can you fire
10 off rounds from your semi-auto?

11 A You can essentially fire off rounds from a
12 semi-automatic as -- essentially as fast as you can pull
13 the trigger. So the mechanism on the firearm works faster
14 than the human body can cause the finger to pull the
15 trigger, so you can basically shoot as fast as you pull
16 the trigger on a semi-auto.

17 Q And the semi-auto that you were carrying, the
18 Glock 34, you said it was a 9 millimeter, how many rounds
19 in your magazine that were in the gun that night?

20 A There's 17 rounds in that magazine and one in
21 the chamber, so it's a total of 18 rounds in the firearm
22 as I carry it.

23 Q And what part of the gun is the chamber?

24 A The chamber is an extension of the barrel. So
25 it sits just behind the barrel, and that's where the round

1 of ammunition sits and waits to be fired. Once it's
2 fired, the bullet leaves the chamber, enters the barrel,
3 and then leaves the barrel at the front of gun. The
4 casing stays in the chamber until it's pulled out and
5 ejected from the firearm.

6 Q And do you have to have a live round in that
7 chamber for the gun to fire?

8 A Yes.

9 Q Okay. So you carry your weapon on your belt, 17
10 in your magazine and one in the chamber. Do you have
11 extra magazines on your belt?

12 A I do. I carry two extra magazines on my duty
13 belt.

14 Q Okay. So if I'm doing the math right, you've
15 got 52 rounds at your disposal, at least on your person?

16 A That's correct.

17 Q 3 times 17, plus one in the chamber?

18 A Yes.

19 Q Okay. And you said you also had a shotgun and a
20 rifle in your vehicle?

21 A I did.

22 Q Any other weapons on your tool belt, your duty
23 belt?

24 A I carry a -- it's not a weapon, but I carry a
25 less lethal device, which is a Taser.

1 Q Okay. Is that the bright yellow, typically, I
2 think we've seen in some of the other photos of officers?

3 A Yes, it is.

4 Q So drawing your attention back to that evening.
5 At about 10:15, do you recall starting to hear some radio
6 traffic indicating that there was an incident down at the
7 Windsor Apartments on Eastman Place in the city of
8 Lakewood?

9 A Yes, I do.

10 Q Can you describe, what was the first information
11 that you started hearing about some incident down there?

12 A As the call first came out, I was on my duties,
13 listening to and thinking about a number of different
14 things, and more than one call that was going on at the
15 same time in the city. The call comes out, and kind of
16 limited information on the first dispatch, and the
17 original information was something about a party. There
18 was a female calling in. A party in the sense of like a
19 group of -- like a gathering, not a party as an
20 individual. But the information was that there was a
21 party occurring. This female was at that party, and she
22 was claiming to have been shot at. That was the initial
23 information that I remember hearing.

24 Q And do you recall, at least initially, whether
25 there was an indication that that had just occurred or

1 that it occurred some time ago?

2 A At the very first -- I don't know if she said it
3 had just occurred or not, but we quickly understood that
4 the person was calling in and that this occurred about 20
5 minutes ago.

6 Q Okay. And in learning that this incident, this
7 shooting, occurred about 20 minutes prior, does that
8 change Lakewood's approach, or your approach, as to how
9 that's responded to?

10 A It does. You know, if we have a shooting, either
11 what we call in progress, which means it's happening now,
12 or the other term we use is just occurred, which means it
13 happened just in the last couple minute. A shooting
14 that's just occurred, or in progress, usually gets an
15 emergency response with lights and sirens and getting as
16 many officers there as fast as possible, as it could very
17 likely mean that there's someone currently in jeopardy or
18 there's currently lifesaving actions that need to be
19 performed.

20 Q And how does that response change learning that
21 this incident was 20 minutes or more old?

22 A If there's a call that's 20 minutes or more old,
23 especially if it comes with information that the people
24 involved in the incident are no longer co-located, or at
25 the same place, then we change our -- we change our

1 approach to responding to the call.

2 Q Okay. So in this incident, the RP, or reporting
3 party, was it -- did you get information that they were no
4 longer on scene or that they were some distance away?

5 A Yes. I got information that the reporting party
6 was at C-470 and I-25 area, heading back towards Parker, I
7 believe.

8 Q So at that point, are you able to determine that
9 at least that person is no longer in danger?

10 A Yes.

11 Q Did you immediately go and respond to that call
12 personally?

13 A Not immediately. The information started coming
14 in from this reporting party at -- they send -- dispatch
15 gives us the first couple sentences that they hear from a
16 reporting party, just so we, you know, kind of know what's
17 going on, and then they ask further questions and then
18 they continue to give us updated information. So within
19 the first couple minutes, I realized that it doesn't sound
20 like anyone's in current jeopardy, that this reporting
21 party is miles away, and that we are going to be
22 investigating a call that happened about 20 minutes ago.
23 So I didn't immediately go down there.

24 There was another call going on in the city that
25 was of a serious nature as well, and I made sure that we

1 had agents assigned to that -- to the call we're talking
2 about down on Eastman, and I made sure that they were
3 heading there and getting in contact with the RP, but I
4 did not go.

5 Q Do you know which agents initially responded to
6 this call?

7 A Yes. It was Agent Brennan and Agent Trimmer.

8 Q And were you in communication with them as they
9 responded to that call, either by radio or cell phone, or
10 both?

11 A Yes. Initially by radio. I said, hey, you
12 know, get a hold of the RP directly. We like to get ahold
13 of the reporting party directly with a police officer so
14 that we kind of cut out the middle person there with the
15 dispatcher so we can get the information straight from
16 the -- straight from the witness or the victim. So I
17 said, hey, give this RP a call directly and find
18 out -- find out what's going on down there, and,
19 basically, I'll monitor this call, and I'll get back to
20 you once we know a little more.

21 Q And just so we're clear, did you ever personally
22 speak with the RP, the reporting party?

23 A No, I've never -- I've never spoken with the
24 reporting party.

25 Q So if I said Emily Elliott, have you ever spoken

1 to Ms. Elliott?

2 A No. Not that I'm aware of, no.

3 Q Okay. Without telling us what they might have
4 told you, did one of the agents, Brennan or Trimmer,
5 report back to you and sort of summarize what their
6 conversation was with Ms. Elliott, or the RP?

7 A Yes. I mainly spoke with Agent Trimmer. Agent
8 Brennan was -- the way I understand it, Agent Brennan was
9 the person that was on the phone, so I knew that they were
10 together, the two agents were together. So I would call
11 Agent Trimmer and talk to her so that I wasn't
12 interrupting Agent Brennan's attempts to talk to the RP
13 via phone.

14 Q Okay. So, presumably, your understanding was
15 Brennan was talking to the RP, telling things to Trimmer,
16 who is telling things to you?

17 A That is correct.

18 Q And as you're getting more information by the
19 that method, are you asking or are you directing Brennan
20 and Trimmer to do more follow-up or other things to
21 investigate?

22 A Yes. I wanted them to talk to the reporting
23 party. Once they talked to the reporting party, I felt
24 that the reports were credible. And one of the things I
25 look at in initial -- in the initial reporting of calls,

1 sometimes we get reports that turn out to not be credible
2 or to be something totally different than what the
3 reporting party thinks they are. So we quickly try to
4 establish how credible calls for service are or how
5 credible reporting party is, and then we take appropriate
6 kind of action from there.

7 So from what I was getting from the two agents,
8 that sounded like it could be a serious situation, and it
9 sounded like it was a credible situation and
10 legitimate -- a legitimate call for service involving a
11 firearm.

12 Q So what did you ask or direct them to do?

13 A So we were -- it was a busy night, and we didn't
14 have a lot of folks available or a lot of agents available
15 to go down there, but I wanted them to at least get on
16 scene kind of as quickly as possible and set up on the
17 apartment in question and get an eye on the apartment from
18 a safe distance so that we can see if anyone was coming or
19 going from the apartment and kind of get an idea if
20 any -- you know, if there were other people involved or if
21 there were lights on in the apartment, things like that.

22 Q And were you in communication with them as they
23 got down there and were on scene?

24 A Yes. I was off and on in communication, a
25 little bit over the radio, probably mainly by phone. They

1 would call and give me an update, that kind of thing.

2 Q In addition to being in communication with
3 Agents Brennan and Trimmer, are you in communication with
4 anybody else from Lakewood PD about how to approach this
5 situation?

6 A I was. One of my -- one of the other sergeants
7 working that night was Sergeant Muller. He was on duty as
8 well, working a different shift. So we tried to help each
9 other out, listen for calls that are -- seem like they
10 would be manpower intensive, and I did talk to him about
11 this call.

12 Q At some point, did you personally head to the
13 call location?

14 A I did. Probably about -- I would say maybe
15 about 45 minutes after the initial dispatch. I had to go
16 handle another call that -- so I handled the other call,
17 finished that up, and then I headed out to Eastman Place.

18 Q And so if the initial radio traffic started
19 coming in at about 10:15, do you think it was sometime
20 after 11:00 that you got to Eastman Place?

21 A Probably, but I don't know for sure exactly what
22 time I got there.

23 Q Okay. Where did you go when you got into the
24 complex?

25 A So as I was arriving, I knew that the two

1 agents -- I had talked to them, and they said they were in
2 a good, safe location. They had a good observation of the
3 apartment that we were investigating, so they felt fairly
4 comfortable to hold there for just a minute. So I went to
5 one apartment complex east of the Windsor Apartments. I
6 don't remember the name of that apartment complex, but
7 it's an apartment complex east of, and just parked in the
8 parking lot there, well away from anything that might have
9 been going on, while I made some phone calls to a
10 detective, and then I consulted with the other sergeant as
11 well to formulate a plan.

12 MR. FREEMAN: Can we have People's 2? I believe
13 it's been admitted already. Can we have People's 2, up,
14 please.

15 (People's Exhibit 2 was published.)

16 Q (BY MR. FREEMAN) I don't know how well you can
17 see that from where you're seated. If you can see it from
18 where you're seated, can you recognize where the Windsor
19 Apartments are on that diagram? And if you need to walk
20 up to it, feel free.

21 A Yeah, I can walk over there and look at it.

22 Q And there's a pointer right there on the ledge,
23 if you don't mind. What I was getting at is, if you do
24 recognize where the Windsor Apartments are, if you can
25 point out where you think you sort of went next door to

1 the next complex over and waited. If you can. I don't
2 want you to try if you don't recognize what's depicted in
3 the photo.

4 A So here are the Windsor Apartments. The -- it's
5 kind of a large complex. And I remember being right here
6 in this parking lot. So this is one complex east of the
7 Windsors, in this front parking lot right here. I was
8 just trying to be a good distance away from where
9 everything was going on so that -- you know, obviously
10 safety for us, but, you know, we're in marked patrol cars
11 and stuff like that, so we generally park a ways away as
12 we formulate our plans, kind of as a staging area.

13 Q And you mentioned that you're in a marked patrol
14 car. Why does that cause you concern, or why does that
15 make you want to park some distance away?

16 MR. FREEMAN: Thank you, Your Honor.

17 A Depending on the circumstances of the call.
18 Early on in calls, we're not really sure what all the
19 circumstances are until we're able to conduct an
20 investigation. Sometimes criminal suspects don't
21 necessarily want the police there. Sometimes they want to
22 flee from the police. So if you were to park your marked
23 patrol car, say, in front of a suspect's house, or within
24 eye line of a suspect, then that could be an officer
25 safety issue for yourself being in your marked patrol car,

1 or it could also give an indication to a criminal suspect
2 that the police are there, and they might flee. So those
3 are standard kind of police tactics that we employ on
4 almost every call.

5 Q (BY MR. FREEMAN) And when you drove up to that
6 location that you just described on the exhibit, did you
7 drive up with your overhead lights and sirens on?

8 A No. I just drove down there in a regular manner
9 and parked in that parking lot.

10 Q Why not lights and sirens?

11 A Well, we only use lights and sirens when we are
12 needing to clear traffic or warn pedestrians and motorists
13 that we are coming through, not always at a high rate of
14 speed, but it could be a high rate of speed, but to safely
15 proceed through a steady red signal at a light. I was not
16 rushing to this call. I was just responding to this call
17 in a normal manner. I drove there like any other motorist
18 would.

19 Q How long did you remain at the location to the
20 east of this complex?

21 A I probably sat there for 10 or 15 minutes.

22 Q And then what did you do?

23 A So while I was at that complex in the parking
24 lot, Sergeant Muller came down and asked me -- he called
25 me on the phone and asked me if I needed some help. I

1 said, yeah, we need people mainly, but he's an experienced
2 sergeant, so it's nice to have a couple sergeants there to
3 kind of bounce ideas off of. So he comes down, and we
4 meet up in that parking lot, and we're talking about the
5 call. We're talking about maybe a plan to approach the
6 resolution of this call. And at the same time, I'm
7 calling the -- what we call the on-call detective for our
8 Major Crimes Unit.

9 Q And why call the on-call detective?

10 A So in these types of situations where we don't
11 feel that there's -- and we had asked -- I knew that -- or
12 I knew that I had received information that there weren't
13 other people in the apartment. There wasn't currently
14 gunfire going on, or anything like that. So we felt like
15 there wasn't any immediate lifesaving issues there, that
16 we don't need to rush in and kick doors and stuff like
17 that.

18 So we decided to take this as a methodical
19 approach for everyone's safety, and at the same time, I
20 wanted to talk to the detectives that were on call for
21 that Major Crimes Unit just to coordinate with them to
22 make sure that, you know, everything's being done in a
23 reasonable and appropriate manner, and a legal manner, you
24 know. We talked about whether we were going to get a
25 warrant or not, whether we might need the SWAT team or

1 not. You know, there's all kinds of questions that we
2 mull over with the detectives to just make sure that we're
3 all on the same -- all on the same plan and that we're
4 doing a quality investigation from the beginning, if
5 there's time to do that, and in this case there was.

6 Q Taking cautious approach?

7 A Yes.

8 Q At some point did you and Sergeant Muller decide
9 to go into the complex itself and go to where Brennan and
10 Trimmer were?

11 A Yes, we did. After talking to Sergeant Muller,
12 after talking to the agents that were there on scene over
13 at the apartment, and after talking to the detective,
14 formulated a plan. The plan was going to be that Sergeant
15 Muller and I would go over and assist the other two agents
16 that were already on scene. Between the four of us, we
17 were going to what we call set up a containment, or at
18 least observation on the apartment, to see -- to make sure
19 no one leaves the apartment. And then from a safe
20 position, or a relatively safe position, outside of the
21 apartment, we were going call on the phone and try to get
22 the suspect to come out and talk to us in a safe manner.

23 Q Do you recall where you parked in relation to
24 the building where the suspect unit was?

25 A I parked south of where the suspect unit was,

1 but I parked probably two or three large apartment complex
2 buildings south. So I parked well away from the target
3 location, I guess, is what I'm getting at, and then I
4 walked there on foot.

5 Q And did Sergeant Muller park in a similar
6 location as well?

7 A Yes, he did, in a similar location. He could
8 have been parked right next to me. I'm not sure.

9 Q Why park that far away?

10 A Again, for safety concerns. We don't like to
11 just pull up right in front of a location where there
12 might be some type of officer safety issues, so we park
13 away and we walk there.

14 MR. FREEMAN: May we have People's 4 up, please.
15 This has already been admitted.

16 (People's Exhibit 4 was published.)

17 Q (BY MR. FREEMAN) Taking look at People's 4, do
18 you see on People's 4 the approximate location that you
19 parked your patrol vehicle?

20 A You know, I wish I could recall where I parked
21 my patrol vehicle, but I -- I don't. I'm sorry.

22 Q Okay. Do you think it was a building or two to
23 the south?

24 A That's true, yes.

25 Q It would have been out of the field of vision

1 from the building that the suspect unit was in?

2 A Yes.

3 Q When you and Sergeant Muller walked up, did you
4 meet Agent Brennan and Agent Trimmer?

5 A Yes, we did.

6 Q So at that point, there's four uniformed officer
7 on scene?

8 A That is correct.

9 Q And where, roughly, did the four of you sort of
10 gather?

11 A So they were -- they were already -- like I
12 said, they were already there, so we walked up to meet
13 them. They were in front of, which is south of, the
14 target building where Apartment 103 is located. They were
15 in front of that and then kind of on the western end
16 behind a car.

17 Q At that point did you know exactly where the
18 front door was to Unit 103?

19 A Not really. We had -- I remember us having a,
20 you know -- kind of a good guess about which units were
21 which, but it's kind of a confusing facade to the
22 building. It's hard to discern which windows go with
23 which apartment or which doors, and we hadn't gotten
24 close enough to read any door numbers or anything like
25 that.

1 Q And I was going to and you that. Were there
2 indications that there were units where at least part of
3 the living space on the units was on the ground floor and
4 a second floor?

5 A It looked that way from the outside. There was
6 upper windows. But I wasn't -- I wasn't sure what the
7 floor plan of the apartment looked like. I didn't know if
8 it had two floors or not, and to this day, I still don't
9 know. I never went inside.

10 Q And were there also one or more balconies on
11 that south side of building as well? If you recall.

12 A I don't recall. I don't recall the balconies.

13 Q Did you have any concern about those upper
14 windows or knowing which windows belonged to the suspect
15 unit?

16 A Yeah, anytime that you have upstairs windows, or
17 second level windows, they are -- they are an officer
18 safety concern or they are a concern for -- possible
19 suspects could observe your location or see you out there
20 before you're ready to contact them and could flee, or
21 something like that. So we were concerned, and we always
22 want to know kind of which windows belong to the suspect
23 unit, so that way, if we do see someone in that window, is
24 it just a neighbor peering out, or could this possibly be
25 our suspect.

1 Q Did you know when you first arrived whether the
2 unit had a rear exit or not?

3 A When with first arrived, I don't recall knowing
4 that. I'm not real familiar with these apartments, or I
5 wasn't at the time. I think I probably had an assumption
6 that there was a back door, but I didn't know that at the
7 time.

8 Q And did you know what was behind or to the north
9 of the building?

10 A I knew there was a lot of open space to the
11 north of the building, quite a significant field, as you
12 can see in the exhibit that you still have up there.
13 There's a lot of -- there's a lot of open space up there.
14 Other than that, I hadn't been north of those buildings
15 before, so I didn't know at the time.

16 Q What concern, if any, did you have about that
17 open space to the north?

18 A Well, with that size of open space, you know, if
19 someone were to -- if a suspect were to flee, they would
20 flee out maybe a rear exit of their -- of their apartment.
21 They could flee into that open space, and we wouldn't have
22 any containment of that person. And we also try to
23 contain the situation, so we don't know -- we just don't
24 know, are they a danger to the public, or are they going
25 to flee from police, to which -- we try to get containment

1 on the suspect's location.

2 MR. FREEMAN: May we have People's 3 up, please.

3 (People's Exhibit 3 was published.)

4 Q (BY MR. FREEMAN) Taking look at People's 3
5 that's been admitted. Do you recognize that as an aerial
6 photograph of the building in which the suspect unit was
7 located?

8 A I do.

9 Q And are you able, from why you're seated, to
10 generally describe where you met with other agents, you
11 and Sergeant Muller?

12 A I can. So in your picture, north is up, and
13 west is going to be left. So if you look at the southwest
14 corner, which is going to be the left bottom corner of
15 that building you have pictured. Basically straight down
16 from that, on the street in front of that building,
17 there was a car parked there, and we were behind that car.
18 Not a police car. It was just a civilian car.

19 Q Okay. You described discussing with the other
20 officers that there was a plan to try to call the suspect
21 on the phone. Why not just go up and knock on the front
22 door?

23 A Well, we've -- or at least I've found over the
24 years, and it's kind of standard operating procedure, that
25 calls that could have an element of safety risk for -- for

1 the officers mainly, but at the same time, when we are
2 talking about safety risks for officers, it can sometimes
3 equate to safety risks for suspects or innocents that are
4 there as well. We don't like to necessarily walk up and
5 knock on the door of a situation, or a target location,
6 where we've had reports that there might be firearms
7 involved, or anything like that, because by calling them
8 on the phone, asking them to come out, that's
9 our -- that's our practice for these types of calls. That
10 gives us a chance to kind of gauge their -- their level of
11 cooperation or the level of how excited they are, maybe
12 how upset they are. And by asking them to come out with
13 their, you know -- come out with their hands up, that
14 allows some standoff distance. They don't necessarily
15 know exactly where we are. If you knock on the door, they
16 know you're at least right outside the door, and there
17 have been officers that have been injured or killed by --
18 through doors, being shot through doors, and things like
19 that. So that's why we don't those --

20 MR. FREEMAN: Judge, may we have the lights back
21 on.

22 A -- tactics.

23 THE COURT: Yes.

24 MR. FREEMAN: Sorry to keep asking you that.

25 Q (BY MR. FREEMAN) So you just explained why you

1 didn't go knock on the door. Why not yell, Lakewood
2 Police, come outside and talk to us?

3 A You know, we have done that. I mean, yelling is
4 probably a less desirable method, but, you know, we could
5 resort to that in the end. Calling on the phone is
6 usually -- you know, people are used to getting phone
7 calls. You can talk to them on the phone. It's not as
8 confrontational would be the word. If you yell loud
9 enough for someone to hear you inside, it's a very -- it's
10 a very forceful tone. So we like to call folks up and
11 ask -- identify, you know, who we are and ask them to come
12 out. That's kind of our approach to kind of keep things
13 on the -- kind of a calm and professional manner from --
14 at least try to, from the beginning. Plus, you have --
15 you know, it's late at night, or if there's a lot of other
16 citizens and residents, and waking everyone up and
17 everything, it's not always ideal.

18 Q So was a decision made, at least initially, that
19 Agent Brennan would call and try to get the suspect on the
20 phone?

21 A Yes, it was.

22 Q Were you present for his initial attempts to do
23 that?

24 A I was.

25 Q Do you recall if, when he did that, he had his

1 phone on speakerphone or just sort of regular, up to his
2 ear?

3 A You know, I -- I don't know if it was on
4 speakerphone or up to his ear, but I remember that I
5 could -- that I could hear the other -- the other end of
6 that, if that makes sense. Sometimes, even if you have it
7 up to your ear, you can kind of -- especially when it's
8 quiet out. So I could somewhat hear on the other end,
9 yeah.

10 Q Okay. And I was going and that. So at one
11 point, you were able to hear Agent Brennan's half of the
12 conversation and at least some of the whoever he was
13 speaking to?

14 A Some, but not much.

15 Q Were there ever instances where it appeared to
16 you, in listening to Agent Brennan's half, that he was
17 leaving a voicemail message?

18 A Yes. I can't remember exactly how many times or
19 what the order was, but I know that at least one time when
20 he attempted to call, it sounded like the call went to
21 voicemail, and he was -- he was leaving a message,
22 identifying himself at the beginning of the message. And
23 then -- and then he made a phone call that it sounded like
24 someone picked up the phone, an actual person picked up
25 the phone.

1 Q Could you hear any of the specific words that
2 the other person was saying during that call?

3 A No, I couldn't -- I couldn't hear what the other
4 person was saying.

5 Q Could you tell if it was a male or female?

6 A No. I could just tell it wasn't like a
7 voicemail, if that make sense.

8 Q Sure. What was the conversation that you could
9 hear that Agent Brennan was having?

10 A Really the only parts that I heard of what Agent
11 Brennan said is, you know, he said something, essentially,
12 hello, this is the Agent Brennan with the Lakewood Police
13 Department. And about that time, I realized he was
14 talking to a person, and then I decided that we should get
15 motiving, especially since now he was in contact with what
16 could be the suspect.

17 Q And "get moving," where did you go?

18 A Our plan was to leave Agent Brennan and Sergeant
19 Muller basically watching the front, and myself and Agent
20 Trimmer were going to go around the back just to keep
21 observation on the back side of the apartment building,
22 what we thought was likely a back door or rear exit to the
23 apartment, just to make sure that anyone didn't come out
24 and try to flee, anyone didn't come out and try to come
25 around the apartment building and try to flank us, or

1 anything like that. That's why we send people on the back
2 of apartment buildings.

3 MR. FREEMAN: May we have 3 up, please.

4 (People's Exhibit 3 was published.)

5 Q (BY MR. FREEMAN) In taking a look at People's
6 3, so you're describing that you're at roughly the
7 southwest corner of that building. Describe for the jury,
8 if you can, from where you're seated, what direction you
9 go to get to the back.

10 A So we basically went straight north through that
11 side parking lot you can see there that has the stripes,
12 the parking stripes. So we went straight up through that
13 paved area to the grassy area north of the building.

14 Q And you say "we." You and Agent Trimmer?

15 A That's correct.

16 Q Did you have your weapon out at that point?

17 A No.

18 Q Did she?

19 A No.

20 Q How about flashlights?

21 A No.

22 Q Can you describe what the lighting conditions
23 were once you got on that north side?

24 A The lighting on the north side is really tricky,
25 or it was that night. As you can see, that's an accurate

1 representation there with the trees, so there are a number
2 of trees back there, but they're not -- they're not big
3 trees. But in July, they had, you know, leaves on them
4 and plenty of foliage.

5 When you get back there, there's a security
6 light, and I think at the time there was the one rear
7 patio light that was on. The security light is fairly
8 high on the building, so as it shines down on that north
9 lawn area, the light gets blocked by some of the foliage
10 on the trees. So it's like a bright halogen-type security
11 light. So where it wasn't blocked by the trees, you had
12 pretty well-lit grassy areas. Where it was blocked by the
13 trees, there were very dark shadows. And then the further
14 you went north, closer to -- you can see the change in
15 vegetation there, but that's actually -- there's actually
16 a fence there where the vegetation changes and runs along
17 the north side of that lawn area. The closer you got the
18 to that fence, the darker it became because the light was
19 diminishing, the further you got away from the building.

20 Q Now, other than that security light, was there
21 any lights, ambient lights, or things like that, coming
22 from any of the windows at the backs of those units?

23 A There was. Almost all the apartments -- I can't
24 say for sure all the apartments, but I was -- we didn't
25 know exactly which windows or doors went with which

1 apartment on the front. And, to be honest, we didn't know
2 exactly which front door we were even looking at. But as
3 we came around the back, there was -- of course, there's
4 windows all the way along it. We just didn't know which
5 ones go with which unit.

6 So I remember looking -- starting, you know, at
7 the west end and then looking at each window as we
8 progressed to the east, and we could see that most of them
9 had the blinds closed, and you couldn't see through the
10 windows. But towards the center of building, you could
11 see that there was -- the windows to one unit were open,
12 and the blinds were -- I believe the blinds were raised.
13 They were at least to where you can see through them, but
14 I think they were even raised where you can just look
15 through the window itself.

16 Q Describe what you saw in looking into the
17 windows of that unit.

18 A As we came around, there was -- it was like a
19 back porch light that was on, not real bright, just kind
20 of like a single-bulb back porch light. Through
21 the -- through the windows, there was some kind of dim
22 ambient lights on the inside of the apartment. It wasn't
23 well lit like, you know, like if all the lights were on,
24 but there were some ambient light in there. We could see
25 a large fish tank that was illuminated, and then there was

1 kind of soft light as well inside.

2 Q Did you do anything in your communications with
3 Agent Brennan and/or Trimmer, who was there, to try to
4 determine if, based on what you were seeing, that was the
5 correct unit that the RP had described?

6 A Yes, we did. So, you know, we're in radio
7 communication with the agents out front, Agent Brennan,
8 and he had talked to the RP. So I asked him, I said, you
9 know, did anybody say anything about a large aquarium
10 being in the unit? And he indicated that the RP had
11 indicated that there was an aquarium in the suspect's
12 unit, and that RP also said that there was a tent that was
13 set up inside the apartment, and we could see what
14 appeared to be a tent inside.

15 Q Could you see any persons inside that unit?

16 A Right initially, not, but then shortly
17 thereafter, yes, we could.

18 Q So based on your observations of the aquarium
19 and the tent and your communication with Agent Brennan,
20 did you feel that you had now identified this unit from
21 the back side?

22 A Yes, we did.

23 Q And you -- and is there a door that leads out to
24 that back area from that unit?

25 A There is. There's a door that leads onto a very

1 small -- I wouldn't even call it a patio. It's more like,
2 you know, a very small patio, I guess, that leads from the
3 back door and then off into the -- then if you walked out
4 that door, you would walk out onto the grass.

5 Q At some point did you see a person inside that
6 unit?

7 A We did. We were communicating back and forth
8 with the agents up front. They were kind of giving us
9 updates on whether they were on the phone talking to the
10 suspect or not. At one point they indicated that they
11 were on the phone talking to the suspect, and at the same
12 time, I could see through the window that there
13 was -- there was a person inside who appeared to be on a
14 phone. So there was a pretty good indication that I was
15 looking at the person that they were talking to on the
16 phone.

17 Q Just generally describe this person that looked
18 like they were on the phone.

19 A At that time the person had their -- it looked
20 like a male, but that's about all I knew at the time.
21 Kind of medium build, not excessively big or excessively
22 small, looked like an adult male. But that person was
23 kind of leaning over onto like a bar top and was facing
24 away from me, so I couldn't really see exactly what that
25 person looked like.

1 Q Other than what appeared to be a phone, could
2 you see anything in the person's hands?

3 A No, I did not see anything else in their hands.

4 Q Could you see what appeared -- anything around
5 that person or in the apartment at that point that seemed
6 to be a firearm?

7 A No, not at that time. We did not see anything
8 that appeared to be a firearm.

9 Q And, in fact, at one point in the radio
10 communications, did you air that the person appeared to
11 have a phone and not a firearm, at least when you saw him?

12 A I did. I got on the radio and said, you know, I
13 see the person inside the apartment. Looks like they have
14 a phone in their hand. But radio traffic not being always
15 great, Agent Brennan radioed back and asked me a
16 clarifying question, he said, Did you say they a gun in
17 their hand? I said, No, they have a cellar telephone in
18 their hand. So we clarified that.

19 Q What was the next thing that you saw this person
20 do?

21 A You know, they were walking around talking on
22 the phone a little bit, and then at one point, the person
23 walks over and turns off the light that was just outside
24 of the their back door. That was like one small bulb,
25 back porch light.

1 Q Is that the only light that turned off at that
2 point?

3 A No. The interior light -- some of the interior
4 lights went out as well. It got really dark inside.
5 There was like a computer monitor screen that was still
6 on. But it was so dark inside that I really couldn't see
7 inside to see people moving or anything like that.

8 Q Did those lights turning off cause you any
9 concern?

10 A They did. You know, it appeared to me to be at
11 least a reaction to the facts that the police were calling
12 to talk to the suspect. At the time, didn't know exactly
13 what it meant. Some suspects turn off all the lights and
14 kind of pretend they are not there. Some suspects turn
15 off the lights so that you can't see what they're doing.
16 I didn't know what it meant, but it does -- it does cause
17 concern.

18 Q When you were back there and you saw this guy on
19 the phone and you surmised that this was the guy that you
20 wanted to talk to, why not just go up to the back door and
21 knock?

22 A Well, that's a good question. The plan was for
23 us to just kind of observe the back of the building. We
24 were going to ask that person come out of the building.
25 Again, we don't really want to walk up and put ourselves

1 kind of in that jeopardy or force some type of
2 confrontation until we have a -- you know, we don't want
3 to do that at all, but at least until we established some
4 type of -- it seems like they're cooperative, seems like
5 they're, you know -- I guess that kind of thing.

6 So we didn't want to walk up and knock on the
7 door. He was -- the suspect was communicating with the
8 agents out front. We were letting them handle that and
9 letting them give him the instructions on what they wanted
10 him to do.

11 Q Do you recall if the back door to that unit was
12 a solid door or a glass door or some combination?

13 A I think it has -- I thought it had square
14 windows in it, but I wouldn't want to say for sure. I
15 don't remember.

16 Q Okay. Once the lights turned out, what did you
17 and Agent Trimmer do?

18 A So the lights went off, and then all the lights
19 went off all at the same time. And we were -- we didn't
20 really have very good what we call cover, which would be
21 anything that would protect you from, you know, gunfire,
22 or anything like that. We were standing behind a
23 relatively small tree, compared to my size, in the
24 backyard trying to kind of stay in the shadows. Just to
25 maintain observation was really our only goal back there.

1 But all the lights go off, and so we just kind of stayed
2 where we were just to keep observation of the back of the
3 building.

4 Q Now, do you have your weapon out at this point?

5 A No, not at this point.

6 Q What about Agent Trimmer?

7 A No, she does not.

8 Q And just so we're clear, did you have either of
9 your rifles with you at this point?

10 A No. I had left my rifle in my vehicle.

11 Q So you just had the handgun that's on your belt?

12 A That's correct.

13 Q What was the next thing that happened?

14 A So within 30 seconds, and probably a lot shorter
15 than that, but certainly within 30 seconds of the lights
16 going out, we heard the back door open, which was somewhat
17 surprising us to. But the back door opens, and I can
18 see -- I can't see real well, but I can see kind of the
19 outline of a person steps out, maybe half a step to a full
20 step out the back door.

21 Q Did that person ever appear to step off the
22 concrete patio?

23 A No, and they didn't even -- they didn't even
24 take what I would consider kind of normal -- a natural and
25 normal human step away from the door. They just edged out

1 of it enough to quickly glance around. And I remember
2 thinking that, all right, this person is either going to
3 take off running, or they are going to duck right back
4 into their door.

5 Q Why did you think that?

6 A Just the way that -- just the behavior, the way
7 they walked out onto the -- or walked out of the door.
8 Instead of just walking out two or three steps, just a
9 very short step out the back door, very kind of hesitant
10 to -- kind of hesitant to step fully out, I guess, is the
11 behavior, how I interpreted it.

12 Q Were you able to tell at that point if the
13 person had anything in their hands?

14 A No, I was not.

15 Q Could you see the glow of a cell phone or
16 something that you thought was a cell phone on or near the
17 person?

18 A At that time I don't remember that, no.

19 Q Why not speak up and identify yourself at that
20 point?

21 A And that's a good question, and that thought was
22 going through my head. I'm sure Agent Trimmer -- well,
23 it's my experience, since I was the sergeant, she was
24 probably waiting for me to either tell her what to do or
25 to take the lead in what we were going to do, but this

1 really happened in just a couple seconds.

2 So we're kind of surprised the door comes open,
3 we see this person step out, and we -- we -- or are I, I'm
4 assuming Agent Trimmer at the same time, but we just kind
5 of froze there in the dark, just waiting to see what was
6 going to happen, because, like I said, I thought the
7 person was going to run or something like that.

8 And maybe a second or two went by, and about the
9 time we were thinking, you know, what are we doing to do,
10 are we going to turn on our lights, are we going to start
11 yelling at the person, are we going to run up and grab
12 him, you know, whatever. All these thoughts are going
13 through my head. But about the time that I just started
14 thinking about some of those options, they went right back
15 in and shut the door and locked it. So we really didn't
16 have time to do anything like that.

17 Q And did the fact that you didn't know if this
18 person was armed and you didn't have your gun out, did
19 that factor into that decision at all?

20 A Yeah, absolutely. Like I said, we were kind of
21 surprised when the person stepped out the door. It was
22 dark back there, and maybe I should have been a little
23 more prepared for that. But as they stepped out, you
24 know, we didn't have our guns out. I didn't know what was
25 going on. It felt like the safest thing to do was to just

1 be still because I didn't feel that that person could see
2 us at all where we were. And we just stood there, and
3 like I said, it was only for like a second or two, and so
4 we really didn't have much time to formulate a different
5 plan.

6 Q So the person pokes their head out one or two
7 seconds, they shut the door. What happened next?

8 A I heard the -- you know, the distinct sound of a
9 deadbolt being thrown on the door, and it looked.

10 Q What happened next?

11 A Well, Agent Trimmer and I, we didn't even really
12 have to discuss it, but we both basically realized that we
13 weren't in a very good position. So we -- we just both
14 started moving towards the -- towards the building, a
15 little bit towards the east, and got a better position if
16 this person decided to come back out.

17 MR. FREEMAN: And may we have 3 up, please.

18 (People's Exhibit 3 was published.)

19 Q (BY MR. FREEMAN) So looking at what's been
20 admitted as People's Exhibit 3, you're moving to the east,
21 or to the right of the photo?

22 A That's correct.

23 Q And where do you take up the next position?

24 A So if you see where the writing is there, it
25 says Unit, and then it has the numbers after it. If you

1 go directly above that, which is directly north of where
2 the writing is, and then to the right, there is a -- the
3 building kind of juts out right at the end there. So
4 that's essentially the northeast corner of the building,
5 but we were still on the north side of the building, right
6 there about, you know, midway where that jut is.

7 Q And your still together with Agent Trimmer?

8 A Yes.

9 Q And why was that a better position than the one
10 you were at previously?

11 A As we moved to that position, the angle kind of
12 closes down, if that makes sense. So as we move to that
13 position, someone inside the apartment wouldn't be able to
14 see us because the building itself kind of blocks their
15 view from where we are. So we're using the structure of
16 building to kind of obscure the view of anyone that was
17 inside looking out could have had on us. Plus, that
18 same -- that same -- if they can't see us, if they were to
19 try to shoot at us, or something like that, they wouldn't
20 be able to see us to shoot at us. They wouldn't be able
21 to shoot at us. It seemed like a better safety position
22 for us.

23 Q And as you're changing positions, are you
24 radioing that change to Agent Brennan and Sergeant Muller?

25 A Yes. I believe we did, yes.

1 Q What happened once you got to that location?

2 A So we got to that location, and I remember -- I
3 remember Sergeant Muller, I think, aired on the radio
4 something like he says he's coming out the back door. So
5 we -- so I thought, okay, well, he's going to come back
6 out the same door that he had come out earlier.

7 Basically, as he's airing that information, we
8 hear the door open and immediately -- the door opens, and
9 almost immediately I hear the sound of a gun racking. So
10 I would say they were -- the sounds were immediately after
11 one another.

12 Q And the sound of a gun racking, could you tell
13 what type of weapon it was?

14 A You know, it was loud and distinct. At the time
15 it could have -- I remember thinking that either could
16 have been a handgun, or, you know, it could have been a
17 shotgun, but it was very clear that it was a weapon
18 racking. At the time I couldn't be sure, but looking
19 back, it -- it was very clearly a shotgun.

20 Q And what concern, if any, did that cause you
21 when you heard that?

22 A That caused us a lot of concern. So we were
23 standing there. We hear a door open. It's very dark back
24 there. We hear a gun racking, and that's -- you know,
25 that's an indication that someone has a firearm, that they

1 are making it ready for use, and we're assuming that we're
2 probably the targets of that firearm being put
3 into -- being put into a ready condition to where it could
4 be fired, and so we -- we felt that, you know, that person
5 was looking to use the weapon in some manner, and that
6 causes a lot of concern for our safety.

7 Q Did you air that you had heard that sound? Did
8 you air that over the radio?

9 A Yes. And this basically changes kind of the
10 whole kind of direction of this incident. You know, we
11 hear the person racking firearm, and now this becomes an
12 ongoing or a currently evolving, dangerous situation for
13 the officers on scene. So I air on the radio, hey, it
14 sounds like he's got a gun. At the same time, we're
15 moving. So I'm letting everybody know that somebody has a
16 gun, and we're moving to a better position. And also, by
17 airing that to the agents that are on scene, I'm also
18 airing it to basically the entire police department and
19 the dispatchers. And I know from my experience that if I
20 get on the radio and air that our suspect has gun or
21 somebody has gun down here that that's going get a lot of
22 attention. At the same time, I requested -- I think I
23 asked them to send us a lot more cars is the wording I
24 use.

25 Q You described that you made the decision to

1 move. Where did yo you go?

2 A Yeah. We weren't real comfortable where we were
3 there either, so we -- so we decided to move around to the
4 east side of the building. So as you could see on the
5 exhibit, if we're stilling look at that, as you come east
6 and then south, you'll see that there's a space between
7 the building we're looking at and then one more that's
8 mainly off screen to your right. There's a parking area
9 there, and in this picture, you can see that there's one
10 vehicle parked in that parking area facing -- it appears
11 that it's facing west. And about exactly where that car
12 is parked, there was a large pickup truck. So we moved
13 around to the south side of that large pickup truck
14 that's, I think, in the exact same place as that vehicle
15 shown in the picture.

16 MR. FREEMAN: And if we can have People's -- I'm
17 sorry, People's 5 up please.

18 (People's Exhibit 5 was published.)

19 Q (BY MR. FREEMAN) Taking a look at People's 5,
20 is that a little closer-up version of the last one?

21 A Yes, it is. It's just a zoomed-in version of
22 what we had up earlier. But, again, the same -- the only
23 vehicle in the picture there, we were on the south side of
24 a vehicle that was parked in the same position, and that's
25 where we -- the two of us moved to.

1 Q So the vehicle in that photo is parked in the
2 same position. Do you recall that being the only vehicle
3 that was either in the driveways or on the street between
4 those two buildings?

5 A That's the only vehicle I recall being in there.

6 Q And did you and Agent Trimmer position
7 yourselves on the south, or the driver's side of that
8 vehicle?

9 A That's correct.

10 Q What was the lighting like there?

11 A The lighting is pretty good between the
12 vehicles. If I remember correctly, there's a light on
13 both of those buildings that shines down into the parking
14 area there. So the lighting there is much improved over
15 the lighting, basically, on any other side of that
16 building, and certainly better than the lighting that was
17 in the grass area to the north of the building. I would
18 consider it very well lit.

19 Q What did you do once you got to that location?

20 A Well, we were -- we got behind the vehicle. We
21 did a little more talking on the radio, trying to
22 coordinate efforts, as I was serving as primary. There
23 were two sergeants on scene, but it was my call, so I was
24 the primary sergeant on scene. So I'm having to do a lot
25 of the radio traffic coordinating and response from fellow

1 responding officers and, you know, that kind of thing. So
2 doing a little more talking on the radio, and I'm trying
3 to think through, you know, what's the next important
4 steps and what type of moment or actions do I and the
5 other agents on scene need to be taking for the safety of
6 ourselves, the safety of the public, for an effective
7 resolution. So I'm formulating a plan, talking on the
8 radio. That's what I was doing down behind that car
9 there.

10 Q How long do you personally remain in that area
11 next to the driver's side of that vehicle?

12 A Not very long. All these actions that I'm
13 taking minutes to describe here, all of this transpired
14 pretty quickly. It's taking me much longer to explain it
15 than I actually took when it happened. I was there maybe,
16 I would say, a minute at the most. I was probably there
17 for a minute, maybe less.

18 Q During that minute or so, could you see or hear
19 anything to the area to the north?

20 A No, I couldn't see or hear anything to the
21 north. And, again, you know, not hearing something
22 sometimes is giving me some kind of input. So I didn't
23 hear any more doors opening or closing. I didn't hear
24 anything like that. So I was under the assumption that
25 whoever had come out the door with the firearm was still

1 up there, or at least hadn't gone back inside, or at least
2 hadn't gone back inside and closed the door.

3 Q At some point did you make the decision to move
4 somewhere else?

5 A I did. With only four officer there -- and I
6 know that might sound like, you know, a sufficient number
7 of people, but that's not the number of people we would
8 like for a call like this. So with only four officers
9 there, my concern is we don't really want to press this
10 issue right now, but we really need to get containment and
11 observations on the suspect, or whoever is out and moving
12 around.

13 So, you know, obviously we can see the east side
14 of this building because that's where we are. At the time
15 I'm making an assumption that the south side and west side
16 were being covered by Agent Brennan and Sergeant Muller.
17 What I couldn't see, and what caused me the most concern,
18 was the north side of the building, that grassy area that
19 you can see where Agent Trimmer and I had been before. So
20 we couldn't see that at all because the building's in our
21 way. I didn't know if the person was trying to flee or if
22 the person was trying to maneuver on us, or anything like
23 that. So I decided that we needed some observation of
24 that grassy area to the north of building, and I decided
25 to move around. The other building to the east -- there's

1 two buildings in this picture, but you can only see a part
2 of the one to the east. But I took the -- I guess the
3 easiest way to describe it is the long way around that
4 building, with my anticipation of coming up and ending up
5 in that top corner of the building to the right that you
6 can see there. That was my anticipated ending point, so
7 that I could look west along the north side of that
8 building and see what was going on in that grassy area.

9 Q Why go the long way around? Why not just go
10 directly sort of in a diagonal northeast and get to that
11 point much quicker?

12 A That would have been a real safety issue for me.
13 Leaving a position of cover of the vehicle and moving
14 across that open parking lot to try to get to that corner,
15 in my opinion, wouldn't have been a safe move. So moving
16 around the building provides me concealment and cover to
17 where, you know, if a suspect chose to, they could shoot
18 me through the whole apartment building over there. So I
19 move around the building, using the building as cover
20 itself, and then I can approach along the north side.

21 MR. FREEMAN: May we have People 3 up, please?

22 THE COURT: Do you need the lights dimmed?

23 MR. FREEMAN: Probably not, Judge. I think we
24 can do this quickly. Actually, People's 4 is probably the
25 better one.

1 (People's Exhibit 4 was published.)

2 Q (BY MR. FREEMAN) So taking a look at People's
3 4, that cluster of buildings just to the right just above
4 the exhibit sticker, I think those top two -- the one on
5 the left has been identified as the suspect building. Are
6 you describing you went around the one on the right?

7 A That is correct. Do you see those two building
8 up there? You see the kind of squiggly pathway to the
9 left of both of the buildings there. I went to the right
10 of the right building. And those are buildings that are
11 aligned horizontally and not vertically. So I went along
12 the south side of one on the right, came up the east side
13 of the one on the right, and then just had started back
14 west along the north side of the right horizontal building
15 up there.

16 Q So you basically go in a counter-clockwise
17 fashion?

18 A Correct.

19 Q Did you let Trimmer know you were going to do
20 that?

21 A Yes. I talked to Agent Trimmer. I said, hey,
22 you stay here. You've got good cover with this vehicle.
23 Plus, that was a containment position for us so that
24 someone couldn't come through between those building. So
25 I said you stay here. I'm going move around the building.

1 I want to go over to that corner over there. Because we
2 could both see the corner, but I told her how I was going
3 to get there, I was going to go all the way around the
4 building. And she understood what I was going to do.

5 Q Did you walk? Did you run?

6 A I would say I jogged at a 40-year-old pace, I
7 guess, so it was a fast walk, slow jog.

8 Q How long do you think it took to get around to
9 that corner, that northwest corner of that building?

10 A I'd say that probably took me maybe -- maybe two
11 minutes, maybe three.

12 Q And do you still have just your Glock with you,
13 your duty weapon?

14 A Yes.

15 Q What did you see as you came around that
16 building and started heading back towards the west?

17 A So I come up there on the northeast corner of
18 right building now, so I'm on the neighboring building to
19 the east, and I'm all the way up on the northeast corner
20 of it, and I start to -- and now I've slowed to a walk
21 because I have the observation I'm looking for, and I'm
22 trying to discern what I'm looking at. I'm not sure
23 exactly how far that is, but it's -- I don't know, it felt
24 like it was about a hundred yards, maybe, from where I was
25 to where I used to be when I was out back, behind the

1 suspect's apartment.

2 So now I'm looking west through those -- through
3 that grassy area, and there's a few little trees that kind
4 of obstruct your view a little bit. Like I said, the
5 lighting is very blotchy. There was very bright spots and
6 very dark spots back there. So I was trying to figure
7 out, you know, is there something back there, what are
8 they doing, can I see them, how many people are there.
9 Those kinds of questions are going through my head. And
10 I'm trying to look through that kind of poor lighting and
11 what those -- through the vision obstructions of the trees
12 to try to figure out what's going on.

13 Q So you as you're heading west, before you get to
14 the northwest corner of second building, are you seeing
15 anything as you're heading west?

16 A Yes. So I'm probably less -- maybe a third of
17 the way from that far east side of that east building
18 there, and maybe I'm a third of the way in my travels west
19 along that north side. And I can see -- I can see someone
20 moving about back in the north yard there, or in the north
21 lawn area, back where kind of Agent Trimmer and I had been
22 earlier.

23 Q Can you describe this person?

24 A So it -- I could just tell it was an adult-size
25 human at the time. I could see what I thought was maybe

1 some flicker of a cell phone, or something like that, but
2 I couldn't really tell, you know, what was in their hands,
3 couldn't tell how they were dressed or anything like that.
4 I could just see someone moving about in that kind of
5 intermittent lighting up there.

6 Q Could you tell if that person was the same
7 person that you had seen inside the unit on the phone?

8 A I couldn't tell.

9 Q Could you tell if that person had anything in
10 their hands?

11 A At that time I could not.

12 Q What did you do when you saw this person?

13 A So I was on the radio a lot as I was moving
14 across the back of that building, trying to describe to
15 the other agents on scene. You know, I feel highly
16 confident that this is the suspect at this time, although
17 I can't positively ID that person because it's so far away
18 and it's dark. But I'm confident this is our suspect, so
19 I'm relaying that information to the other agents on
20 scene. No one else -- as far as I know, no one else can
21 see this person except for me. So I'm basically just
22 communicating, I was saying, hey, it looks like he's
23 walking away. At first, kind of walking around and
24 milling around slowly within the trees there. And so I
25 was starting to slowly kind of inch my way forward along

1 that building, and I would take a couple steps and stop
2 and watch for a second, and I'd take a couple more steps
3 and watch for a second, and I was relaying what was going
4 on to the other agents on scene.

5 Q And eventually, how far west did you go?

6 A Eventually, I ended up all the way at the
7 corner, but that doesn't happen right away.

8 Q So you're sort of describing you're inching up,
9 you're keeping an eye on this person. What's the next
10 thing that happens?

11 A So I'm watching this person, and at first,
12 they're just kind of milling about back there, so I'm
13 feeling we've got a decent plan going on here. We have
14 all sides of this -- of the being kind of at least under
15 observation. There's that large fence, so I feel like if
16 they try to flee north, they would have to climb the
17 fence, and I would be able to see that or detect that in
18 the their moments, or in the person's movements. So I
19 felt like we had pretty good positioning, and really we're
20 just waiting for more officers to get there so that we can
21 safely make contact with this person.

22 Q So what do you do next?

23 A So I'm watching the person, I'm talking on the
24 radio a little bit, and then the person all of a sudden
25 starts walking pretty much directly at me. So they're

1 walking directly -- or he's walking directly east along
2 the north side of his building, and he starts -- he starts
3 walking, and then it appears to me like he walks a little
4 bit faster, a little bit faster, and then by the time that
5 he's getting towards the east end of his building, which
6 would be directly north of where Agent Trimmer was, or at
7 least where I last saw her. By the time he gets there,
8 he's in that as fast as you can walk, breaking into kind
9 of a jog speed.

10 So I'm airing this on the radio, and I said it
11 looks like he's coming at me. So he's moving east, he's
12 walking, he's walking fast. And, like I said, I'm trying
13 to say this on the radio, but, basically, by the time I
14 say couple words, that's kind of old news, and I'm trying
15 to say it quickly, and all I got out was, Devon, he's
16 coming right at you, which is Agent Trimmer's first name.

17 MR. FREEMAN: If we would have People's 3 up,
18 please.

19 (People's Exhibit 3 was published.)

20 Q (BY MR. FREEMAN) Taking a look at People's 3,
21 can you -- do you think you can go describe with the
22 pointer the route that this person took?

23 A Yes.

24 Q Thank you.

25 A So my position would be over here off screen to

1 the right, but this person, when I first see them, when I
2 first see the suspect, it appears that he is milling about
3 kind of in these trees, this other over here, all right?
4 Agent Trimmer is down here on the south side of this -- of
5 a pickup truck that was parked about right here. So she's
6 right here. At least that's where I left her. Like I
7 said, I'm way over here. But at the time, I wasn't sure
8 if she had moved, but I'm pretty sure she stayed there.

9 So the suspect's milling about over here. I'm
10 talking on the radio a little bit, trying to see what I
11 can see, if I can identify the person to see what they
12 were doing, get some indication of what they're intentions
13 are. And then they just start walking faster and faster
14 and faster kind of directly east. And then as they get
15 close to the corner, you know, the lighting is really good
16 in here and so it kind of fans out a little bit from the
17 building. So as the suspect gets right about here, I can
18 see that he's walking, jogging, right around in there.
19 And then kind of at the last second, it looks like he just
20 makes a very hard right and starts going this way, picking
21 up speed, and that's -- when he's about right here, that's
22 when I say -- when I tell Agent Trimmer he's coming right
23 at you. And then he disappears out of my line of sight,
24 just within a couple steps. Once he gets here, I couldn't
25 see him anymore.

1 Q The area where you initially described this
2 purpose milling about, is that an area -- just so we're
3 clear, is that an area to the west of the back door of the
4 unit you've been describing?

5 A Yes. You know, I think the back door of unit
6 that we were observing, you know, somewhere around in
7 here, I'm not sure exactly where it's in this building,
8 but -- and, like I said, I was looking a long way in some
9 pretty poor lighting. You know, could he have been right
10 here? He could have been, but to the best of my
11 recollection, it appears that he had worked his way over
12 here and was milling about here and then started coming
13 back this direction.

14 Q And as the person rounds that northeast corner
15 of the building and gets into that well-lit area, you said
16 at some point you couldn't see them, but before you lost
17 sight of them, could you see if they had anything in their
18 hands?

19 A You know, of course, now, thinking back, I think
20 I remember seeing a glimpse of something in their hands,
21 but at the time I didn't identify anything in their hands
22 that I could have said. I didn't know for sure if they
23 had a gun or not.

24 Q So you tell Trimmer he's coming your way. You
25 lose sight of him. What's the next thing that you see or

1 hear?

2 A I say he's coming right at you, and then I air
3 that he's moving west, just to let other people know
4 what's going on. I say he's coming right at you, and I'm
5 moving west, and that's when I started kind of jogging
6 this direction, coming towards -- my intended destination,
7 you know -- well, my intended destination was over here to
8 help out Agent Trimmer, but as I get closer and things
9 start to change, my intended destination was right about
10 here (indicated). So I say I'm moving west, and the next
11 thing I hear is a loud kaboom.

12 Q Okay. You can go ahead and have a seat.

13 THE COURT: We're going to stop for the lunch
14 hour at some moment. Is this okay? We can go one or two
15 more questions.

16 MR. FREEMAN: Just a couple more questions,
17 please, Judge.

18 Q (BY MR. FREEMAN) You said "a loud kaboom." Did
19 you recognize the sound?

20 A Yes. It was firearm being discharged, a very
21 large one. It was clearly not a handgun, clearly not a
22 rifle, and it sounded like a shotgun to me.

23 Q And have you been in the presence or in the area
24 where shotguns have been fired before?

25 A I have, extensively.

1 Q Hundreds of times?

2 A Yes.

3 Q And you're pretty familiar with the sound?

4 A Yes, absolutely.

5 Q Any doubt in your mind that the first sound you
6 heard was a shotgun blast?

7 A No.

8 MR. FREEMAN: Judge, this as good time to stop.

9 THE COURT: We will stop here. You may step
10 down.

11 (The witness was excused.)

12 THE COURT: Ladies and gentlemen, we're going
13 stop for the lunch hour. Could you be back at 1 o'clock
14 to that area overlooking the atrium. Please keep an open
15 mind. Don't do any research. Don't speak to anyone about
16 the case.

17 (The jury left the courtroom.)

18 THE COURT: We'll resume at 1 o'clock.

19 (The lunch recess was taken.)

20 THE COURT: If we can have our witness back on
21 the stand, please. We're going to go ahead and bring in
22 our jury.

23 (Pause in the proceedings.)

24 (The jury entered the courtroom.)

25 THE COURT: Welcome back, everybody. Be seated,

1 please.

2 We have our witness on the stand.

3 Q (BY MR. FREEMAN) Sergeant Maines, I think
4 before lunch, we were just getting to the point where you
5 heard the first sound of the shotgun blast, and I think
6 you described that you heard that rather than saw it, or
7 saw the person that did it. Is that accurate?

8 A That is accurate.

9 Q What was the next thing that you saw or heard
10 immediately after that?

11 A So the suspect runs around the corner, I lose
12 sight of him, and then I heard the first shotgun blast
13 immediately followed by probably a total of seven to eight
14 rounds being fired intermixed between shotgun rounds being
15 fired and what sounded like handgun rounds being fired.

16 Q So how many rounds total in this initial set of
17 gunshots do you think you heard?

18 A You know, it was -- it was hard to tell. Best
19 guess would be probably about three rounds from a shotgun,
20 maybe four, and maybe five or six handgun rounds.

21 Q In what order do you think you heard those
22 gunshots?

23 A And they were kind of overlapping and
24 intermixed, so I wouldn't -- I couldn't give much of an
25 order more than the first one I heard was a big -- it

1 sounded like a shotgun, and then, you know, you can very
2 easily tell the difference between a handgun and the
3 shotgun rounds. It was, you know, you get a kaboom, and
4 then you get a bang, bang, bang from a handgun, and then
5 you get a kaboom from a shotgun. So I couldn't really
6 tell you exactly the order or exactly a number either.

7 Q Are you certain that you heard a shotgun blast
8 first?

9 A Yes.

10 Q How long after the initial shotgun blast was it
11 until you heard the next gunshot of any kind?

12 A Almost -- I mean, almost -- I mean, we're
13 talking split seconds here. Almost immediately. It
14 was kaboom, and then maybe a half to a second, something
15 like that, and then everything else kind of came all at
16 the same time.

17 Q What are you doing while you're listening to
18 this?

19 A So I'm not -- I didn't see the person holding a
20 firearm. So all I know is that they ran around the
21 corner, and then the gunfire erupts, and so I start -- now
22 I'm running kind of westbound across the north side of
23 that building that was to the east of that target
24 building. So I'm trying to cover some distance and get
25 there to where I can maybe help something going on there.

1 As I start to approach the corner of the
2 building where the angle is going to start opening up to
3 where I could see what's going on between the two
4 buildings, which is where I last saw Agent Trimmer, the
5 shooting is still going on while I'm kind of running there
6 for a few seconds, and then as I get closer, I just start
7 to slow down, I have my handgun out at this point, and I'm
8 just starting to raise my handgun and just starting to see
9 around the corner, and that's when I see the suspect
10 coming back north from between two buildings.

11 Q Can you describe the suspect? What was he
12 doing?

13 A I can describe what he was doing. He was back-
14 pedaling. He was kind of walking backwards quickly, so
15 like a fast walk backwards, and he was walking north,
16 looking south, and then as I started to bring my gun up,
17 at the same time, his attention shifted from due south
18 to a little more east, towards where I was. And as he is
19 taking a couple steps, and it looks like he's taking a
20 couple steps and maybe even starting to fall at the same
21 time, he's turning and has a shotgun in his hands, and as
22 it gets towards me, it fires, shooting at me or in my
23 direction.

24 Q And what position were you in when he fired at
25 you?

1 A So I was -- I was standing, and I was just
2 coming to a stop from a run, so kind of, you know, three-
3 quarters standing, a little bit of crouch in my knees. I
4 just started to come to a stop as I see the shotgun. I'm
5 not up quite yet to shoot, and I see the shotgun, it goes
6 off, and right next to me is a small bush and a little
7 kind of notch out of the building. And so as the gun goes
8 off, I start moving kind of diving to a kneeling position
9 behind this bush.

10 Q Can you describe to the jury how he held the
11 shotgun when he fired the first shot?

12 A As he was falling, the shotgun was down by his
13 waistline, and he had one hand on, you know, the grip
14 where you would use to pull the trigger, and it appeared
15 he had the other hand on the fore end and was kind of hip
16 shooting it, or shooting it from a lower position. It was
17 pointed in my direction, but it shouldn't shouldered, or
18 up. It was down at the hip and kind of pointed in my
19 direction using his body and his two hands.

20 Q For the record, you sort of indicated with your
21 right hand on the grip, near the trigger, and your left
22 hand sort of out in front of you. Is that to demonstrate
23 how this person held it?

24 A Yes.

25 Q You had your handgun out. Does your handgun

1 have a flashlight on it?

2 A It does.

3 Q And how does is that flashlight work?

4 A So you activate the light manually with your
5 thumb. I activate it with the thumb of my left hand, and
6 I activated it as I was starting to bring the gun up,
7 about the same time the shotgun fired and then I went to a
8 kneeling position.

9 Q Just so we're clear, before the first shot at
10 you, had you illuminated this person with your flashlight?

11 A The light was probably on within a split second
12 of when the shotgun goes bang. So the light was probably
13 on before the shotgun went off, that is correct, but we're
14 talking like tenths of a second. It was almost,
15 essentially, the same time.

16 Q And what is your -- what does this flashlight
17 point at?

18 A The flashlight points anywhere that the gun
19 points. It just basically parallel to the barrel.

20 Q And where was it pointed when the person shot at
21 you?

22 A It was pointed west, pretty much, essentially,
23 towards the suspect.

24 MR. FREEMAN: If I could have the help of the
25 bailiff.

1 Q (By MR. FREEMAN) I'm going to have her hand you
2 22 through 32. If you could just thumb through all those,
3 and let me know when you're done.

4 A I'm finished.

5 Q Do you recognize the person and the items
6 depicted in 22 through 32?

7 A I do.

8 Q Do those photographs accurately depict the way
9 you looked on the night -- the early morning hours, sorry,
10 of August 1st?

11 A They do.

12 Q And do they accurately depict your handgun and
13 the way it looked and the way it was loaded that morning
14 as well?

15 A They do.

16 MR. FREEMAN: Judge, move to introduce
17 People's 22 through 32.

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

19 THE COURT: 22 through 32 are admitted.

20 (People's Exhibits 22 through 32 were admitted
21 into evidence.)

22 MR. FREEMAN: And may I publish?

23 THE COURT: You may.

24 MR. FREEMAN: If we could have just 22 up,
25 please.

1 (People's Exhibit 22 was published.)

2 Q (BY MR. FREEMAN) Looking at 22, does that
3 depict the uniform you were wearing and the items on your
4 duty belt that morning?

5 A Yes, it does.

6 Q And fairly similar to what you are wearing now?

7 A Yes, it is.

8 MR. FREEMAN: If we could go next to
9 People's 27.

10 (People's Exhibit 27 was published.)

11 Q (By MR. FREEMAN) Do you recognize that as the
12 picture of the handgun that you had.

13 A Yes, that is firearm.

14 Q And that sort of cylindrical object below the
15 barrel, in front of the trigger guard, is that your
16 flashlight?

17 A It is.

18 Q And that's the one that you described that you
19 activate with your thumb?

20 A Yes.

21 Q And you said you, in fact, activated it just
22 moments before this person shot at you?

23 A That's correct.

24 Q Had you actually pointed your gun at the person
25 before they shot at you?

1 A No. I hadn't brought it up and, let's say,
2 aimed at the suspect. I was moving west, so the gun was
3 in my hands, it was pointed west, so it was generally
4 oriented in the direction of the suspect. But I
5 wasn't -- I hadn't extended my arm and lined up the sight
6 and pointed it at the person.

7 Q We had Agent Trimmer on earlier, and she
8 described holding her handgun at a low ready, called it a
9 SUL or SUL (pronouncing). Have you heard that term?

10 A I have.

11 Q What does that mean?

12 A It's position SUL, S-U-L. It comes from a
13 Portuguese word that means south, but we basically refer
14 to it as a way to hold your gun to where the firearm is
15 pointed straight down, basically, at the ground just in
16 front of your own feet, and that's one way to carry a
17 firearm, especially when you're in close proximity to
18 other people you might not want to point it at.

19 Q So at the moment that you were fired at the
20 first time, was your weapon in that SUL position or
21 somewhere higher than that?

22 A No, I was -- I had my firearm out in front of
23 me, and I had two hands on it, and it was -- probably the
24 best way to describe it, it was pointed straight ahead,
25 and I can't say exactly, but the most likely thing is it's

1 pointed -- if a bullet had come out of it at the time, it
2 probably would have impacted kind of just in the ground
3 below the suspect's feet. So it wasn't directly pointed
4 at the suspect, but it was kind of angled down a little
5 bit.

6 Q How bright is that flashlight?

7 A It's fairly bright. I don't know exactly what
8 the power output on it is, but it's a fairly bright
9 flashlight.

10 Q Is it a beam, or is it like a flood?

11 A It's more like a -- it's more of a flood style
12 light.

13 Q And this first shot, do you know where it went?

14 A No, I don't. It was pointed in my direction.
15 I'm not sure where the round impacted. I could hear some
16 type of impact either on the vegetation or the building.
17 It sounded like it hit near me, but I don't know exactly
18 where the -- where the round landed on the first shot.

19 MR. FREEMAN: And if I could have the bailiff
20 hand you 49 and 51, please.

21 THE WITNESS: Thank you.

22 Q (BY MR. FREEMAN) Do you recognize the area that
23 is depicted in those photographs?

24 A Yes.

25 Q And do those accurately depict the various parts

1 of the scene where this shooting took place?

2 A Yes, they do.

3 MR. FREEMAN: Judge, move to introduce 49 and
4 51.

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

6 THE COURT: 49 through (sic) 51 are admitted.

7 (People's Exhibits 49 and 51 were admitted into
8 evidence.)

9 MR. FREEMAN: And may we publish.

10 THE COURT: Yes.

11 MR. FREEMAN: Could I have 49 up, please.

12 (People's Exhibit 49 was published.)

13 Q (BY MR. FREEMAN) Taking a look at People 49, is
14 that the same as 49 that's in front of you?

15 A It is.

16 Q And what area are we looking at in the scene in
17 that photograph?

18 A So the bush that you see at the top of the
19 photograph is planted on the west side of the northwest
20 corner of the building that I was behind. Not the
21 suspect's building, but the building that I was behind.

22 Q Okay. Can you see in that photograph the
23 approximate area where you were standing when this first
24 shot was fired?

25 A No, the -- where I was, if this is the west side

1 you're looking at, I was on the north side, so it would be
2 around the corner to the right. There was another bush on
3 the north side there, not that one.

4 Q Okay. Can you see in that photograph the
5 approximate area where the person with the shotgun was
6 standing?

7 A No, the person with the shotgun was standing
8 just off the -- off the picture to the left. They were in
9 the grassy area. You can see that in other exhibit that
10 you had me introduce.

11 MR. FREEMAN: Okay. May we have 51 up, please.

12 (People's Exhibit 51 was published.)

13 A So now you're looking basically from that last
14 bush that we saw in the last picture, now you're looking
15 west and just slightly north, and that's the suspect's
16 building there. So you're looking to the north lawn area
17 to the north of the suspect's building, and then this is
18 the northeast corner of suspect's building. And the
19 suspect, when he had the shotgun and was shooting at me,
20 was -- he was right there. You can see a discoloration in
21 the grass. There was -- I'm trying to think of a better
22 way to describe. You can see that driveway on the left,
23 and then immediately to the right of the driveway, in that
24 glassy area, I believe that's where the suspect was
25 standing when he first shot at me.

1 Q (BY MR. FREEMAN) I'm going to have you go down
2 there in a moment, but just so we're all clear on where
3 we're looking, is the black pickup truck behind which you
4 left Agent Trimmer off on the left of this photograph?

5 A Yes. I believe so, yeah.

6 Q Okay.

7 MR. FREEMAN: I've got to apologize. If we
8 could have 129 brought up to you.

9 THE COURT: 129?

10 MR. FREEMAN: 129.

11 Q (BY MR. FREEMAN) Other than that being during
12 the daytime, does that appear to better depict where you
13 and the defendant were standing? Can you see those points
14 on that photo?

15 A Yes, I can.

16 Q Okay. And does that accurately depict the way
17 the scene looked, other than it being -- that photograph
18 being taken at daytime?

19 A Yes.

20 MR. FREEMAN: Judge, move to introduce 129.

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

22 THE COURT: 129 is admitted.

23 (People's Exhibit 129 was admitted into
24 evidence.)

25 MR. FREEMAN: And may I publish?

1 THE COURT: Yes.

2 (People's Exhibit 129 was published.)

3 Q (BY MR. FREEMAN) All right. So would it help
4 to illustrate your testimony if you use the pointer? Do
5 you mind --

6 A Sure. Yes.

7 Q -- going up there? So this appears to be
8 looking directly northbound?

9 A That's correct. So if you're looking directly
10 north, the suspect's building is over here off the screen
11 to the left. The building that I was behind was off the
12 screen to the right up in this little corner here. I was
13 positioned just around this corner on the north side,
14 almost to it, so I was right there. The suspect, when he
15 fired at me, was right in here, in this grassy area here,
16 just north of that paved driveway area and just west of
17 the little parking lot extension that you see here. So it
18 was right in here, shooting this way towards me.

19 Q And you described sort of being behind or near a
20 bush. Do you see that bush in the photo?

21 A No. You can't see -- you can't see the bush
22 that I was behind in this photo. It's just around the
23 corner as well.

24 Q Okay. Okay. Go ahead and have a seat.

25 THE COURT: Are we still going to review photos?

1 MR. FREEMAN: No. I think we can have the
2 lights on, Judge. Thank you.

3 Q (BY MR. FREEMAN) When the first shot was fired,
4 what did it appear that the person was aiming at? What
5 did it appear to you that he was aiming at?

6 A It appeared that he was aiming at me.

7 Q Were you hit?

8 A No.

9 Q What did you do?

10 A So as the -- as the shotgun fired, like I said,
11 I was kind of diving to my left down behind this bush and
12 kind of taking a position of kind trying to get some
13 concealment or hide myself from the person being able to
14 shoot me. As I landed, then I started to present my
15 firearm now with the intention of shooting the person, and
16 I started to extend it past the bush. Now it's on the
17 right side, and I'm pointing it back towards the suspect.
18 But just as I was coming past the bush and just getting a
19 glimpse of where the suspect was, I've got a very
20 instantaneous glance at the suspect, and at the same time
21 the shotgun was fired right in my direction again.

22 Q Now, what body position were you in when this
23 fired -- when this shotgun was fired the second time?

24 A I was kneeling.

25 Q And did you have your flashlight illuminated at

1 this time?

2 A Yes.

3 Q And what body position was the person with the
4 shotgun in?

5 A So he had since what appears to have fallen, and
6 he had fallen backwards onto -- onto his rear and onto his
7 back. So now he has kind of fallen away from me, his feet
8 are pointed towards me, and he is facing towards me, and
9 he's kind of in a -- kind of a crunch position where he's
10 raising his shoulder and top of his back off the ground
11 and pointing the shotgun kind of parallel to his legs and
12 pointing at me, because his feet and the shotgun were
13 pointed towards me.

14 Q So you described that as soon as you start to
15 lean out, you're sort of reaching forward as if you have a
16 firearm in your right hand. Is that where you had it?

17 A That's true. Yes, I had a firearm in my right
18 hand, and I was bringing the firearm up from the ready
19 position I described earlier up to a position where the
20 sights are in line with what I'm looking at so that I can
21 fire the handgun.

22 Q And you said before you could fire, this person
23 fired at you a second time?

24 A That's correct.

25 Q Describe how they were holding the shotgun on

1 this second shot.

2 A Again, one hand on the grip, one hand on the
3 fore end, and laying back on their lower back and rear and
4 then pointing it just above their own feet towards me.

5 Q Okay. Are they -- do they appear to be aiming,
6 like looking down the barrel, or, again, more shooting
7 from a lower position?

8 A Again, it didn't appear that the shotgun was in
9 his shoulder, but was pointing the shotgun with the two
10 hands towards me, but not up with their eyesight aiming
11 it. I guess that's a distinction. So they were aiming
12 the shotgun, but with the pointing motion of the two arms.

13 Q And do you know where this second shotgun blast
14 went?

15 A It was -- it seemed to be very, very close to me
16 or right at me. I could hear the impact of the
17 projectiles on the vegetation that was -- that was right
18 around me. So it could have either been in the grass that
19 was just to my right, or it sounded like it kind of hit
20 the bush in front of me. None of it hit me, as far as I
21 know, so -- I don't know, it just seemed like it was
22 coming right at me.

23 Q What did you do after the second shot?

24 A So after the second shot goes off, I duck back
25 behind the bush. The bush isn't very effective at

1 stopping firearms. So there's a little notch out of the
2 building as well. It's kind of like an inset. So I duck
3 back into this inset, which provided me a little bit
4 cover. I had seen that the suspect was on the ground, and
5 in my mind, I was thinking that's he's likely been shot
6 and that he has now fallen and has, you know, been shot
7 and he's lying on the ground. In my mind, I was thinking,
8 well, he's laying on the ground, and he's probably
9 incapable of getting up. So I'm thinking, hey, he's
10 landed, I'm just going to let him sit there for a second.
11 I get on the radio, and I say the suspect's down, he's
12 still got the gun, and I say he's shooting right at, as
13 soon as I say "me," another shotgun blast goes off.

14 Q Have you listened to the radio traffic?

15 A I have not.

16 Q Any reason why that second shot or -- yeah, that
17 second shot would not have been heard on the radio traffic
18 recording?

19 A You know, I don't know. I distinctly remember
20 being keyed up, talking on the radio, and it was the last
21 word I was saying, so it might have -- if it's not on
22 there, I might have let go right as it was going off.
23 But, yeah, I remember that keying up on the radio,
24 assuming that it would have been heard on the radio.

25 Q But you weren't hit by any pellets from the

1 second shot?

2 A No, but, again, I could hear them impacting kind
3 of the vegetation around me.

4 Q What did you do after the second shot?

5 A So after that one, I turned off the light and
6 went to what we call a prone position, which is kind of
7 laying down, because the bush was causing me problems. I
8 was behind the bush, leaning out, trying to shoot. It
9 gives me concealment, but there's no protection from
10 getting shot at from this bush. But now I'm going try to
11 lay down and use the building a little bit as cover and
12 shoot underneath the bush, where I was anticipating there
13 not being vegetation that I could -- blocking my view.

14 Q So what did you see when you got into that
15 position and looked back to where you had last seen this
16 person with the shotgun?

17 A So I quickly dropped into the prone position,
18 and I rolled out underneath the bush, and they're gone.
19 The suspect's gone.

20 Q Could you see any sign of him?

21 A No.

22 Q Did you know where they went?

23 A I don't know for sure where they went, but as
24 soon as I look, I don't see anybody there, and then I hear
25 what sounds like a door closing. My assumption was that

1 the person ran back into the apartment and closed the
2 door.

3 Q Now, just speaking about the shotgun blasts at
4 you, you've described two, did you ever hear another one
5 after that?

6 A Yes. There were three. There was the initial
7 one that he shot from the hip as he was kind of turning,
8 the original -- the first shot at me. Then when I tried
9 to come out in a kneeling position beside the bush and
10 shoot, he shot at me again, and I ducked back. I went to
11 talk on the radio, and there was another shot as well, so
12 there -- I'm pretty sure there was three shots towards me
13 altogether.

14 Q And once that -- once you realized that this
15 person was no longer there, what did you do?

16 A I see that he's no longer there. The first
17 thing I do is get on the radio, I asked -- I get on the
18 radio and I say, Devon, are you okay? I was concerned
19 about Agent Trimmer because of the gunfight. And, you
20 know, there was a second where I didn't know if she was
21 going to answer or not. She was shaken, but she got on
22 the radio and said that she was okay. So as soon as I
23 heard that, I got on the radio and started making
24 more -- more coordinating efforts of calling for a SWAT
25 call-out and trying to get an armored vehicle there,

1 trying to give direction to -- I knew there were agents
2 coming on scene. I was trying to give them some direction
3 on where I'd like them to go and what I needed from them.

4 Q Now, were you sure initially that you had not
5 been hit by any pellets?

6 A When I ducked back to talk on the radio, I gave
7 myself a quick check. I remember thinking when
8 that -- when the one went off where I was talking on the
9 radio, I could hear the impacts, and I remember thinking
10 that sounds like birdshot, and that might be a good thing
11 for me. So then I was like trying to check myself just to
12 make sure I hadn't been shot. It sometimes can be a
13 common thing that you can be shot and not know it. So I
14 gave myself a check and didn't see any impacts or blood or
15 anything.

16 Q What is birdshot?

17 A Birdshot is -- I kind of described it earlier.
18 It's a shotgun cartridge full of a number of BBs, you
19 know, 30, 40 BBs in there, very small -- very small BB
20 size pellets. They don't -- they are used for -- it's
21 called birdshot because they are used for hunting small
22 game like birds and rabbits and stuff like that. So they
23 are good for a large area spread, but they don't carry a
24 lot of -- a lot of energy like a buckshot or a slug might.
25 So that was -- I felt that that might be a good thing if

1 he had birdshot loaded in the shotgun.

2 Q If you had been hit?

3 A If I had been hit, correct.

4 Q How did you feel when you were getting shot at?

5 A Um, so, you know, there's a lot of adrenaline
6 going on. You know, I felt like this person was shooting
7 directly at me. There's no doubt that the person was
8 shooting at me, and the person was trying to hit me with
9 the projectiles coming out of the shotgun. You know, I
10 was in fear for my life, in fear for being shot. You
11 know, it's -- I was worried about my coworker, so a lot
12 of -- a lot of feelings going on there, so yeah.

13 Q Did you ever get a shot off?

14 A No.

15 Q And the pictures that we introduced earlier of
16 your gun and the magazines, and things like that, was that
17 to document the fact that you didn't fire any rounds that
18 night?

19 A That's correct.

20 Q And if we could just publish one of those, I
21 want to and you about it.

22 MR. FREEMAN: If we could publish 31, please.

23 (People's Exhibit 31 was published.)

24 Q (BY MR. FREEMAN) Do you recognize the photo of
25 up there? People's 31 is a photograph of your two spare

1 magazines.

2 A I do.

3 Q And can you tell just by looking at that photo
4 that those are both still fully loaded with the 17 rounds
5 that they have the capacity to hold?

6 A Yes.

7 Q How can you tell by looking at that photo?

8 A There's what they call witness holes or
9 indication holes in the back of the magazine, which is
10 what you're looking at here. And each of those -- through
11 those holes, if they were kind of black or dark, that's
12 where a round is not present, and you can tell that -- you
13 can tell that they're full because you can see the shiny
14 metal behind the hole that indicates that there's a
15 cartridge there in front of it.

16 Q So it looks like two sets of eight holes, plus
17 one at the top. Is that how we get to the 17?

18 A Yes. The holes don't actually start counting
19 until you get down to -- I think the top left one is
20 number four.

21 Q Okay.

22 A And then by the way you -- so if you look at the
23 bottom left one, that's number 17.

24 Q Okay.

25 A If that one is full, then, in theory, the rest

1 of them are full.

2 Q Okay. Got it. Once you sort of checked on
3 Agent Trimmer and she responded that she was okay, what
4 did you do?

5 A So I started making those coordinating efforts.
6 I had other agents and sergeants coming on scene to
7 assist. We -- I was anticipating that if the suspect
8 was -- he had used the back door of his apartment twice,
9 in my understanding, so I was anticipating that if he were
10 to come back out again, he was going to come back out the
11 back door again. So I started making -- coordinating
12 efforts to get somebody with Agent Trimmer and to get
13 another sergeant who I know from the SWAT team, I know he
14 carries a rifle with him, to me to make some type of
15 contact team, so if he did come out, we would be prepared.

16 Q So you more or less stayed put where you were?

17 A That's correct.

18 Q And was it Sergeant Fahlsing that came to you?

19 A That is correct.

20 Q And at some point, did you become aware that
21 other patrol agents had arrived on scene as well?

22 A That's correct. You know, I can hear the radio
23 traffic, and so I can kind of fill in the blanks even
24 though I can't see them, that they're coming on scene and
25 taking positions, and they were on the front of building,

1 and things like that.

2 Q At some point while you're maintaining your
3 position there at in the northwest corner of that other
4 building, do you hear what you think are additional
5 gunshots?

6 A I do. You can clearly hear a firearm being
7 discharged. It sounded like it was coming from the -- if
8 not the suspect's apartment, the building that the
9 suspect's apartment was in. There's more than one
10 apartment there. I couldn't tell. But I was making the
11 educated assumption that it was the suspect in there. I
12 could hear several sounded like handgun rounds being
13 fired inside. I'd say maybe, I don't know, three to five
14 maybe.

15 Q And did it sound like they were coming from
16 inside the apartment?

17 A Yes.

18 Q When you're maintaining that position, are you
19 looking around for evidence and things around you, shell
20 casings, things like that?

21 A No, not really.

22 Q At some point while you're maintaining that
23 position, do you get an indication from dispatch that
24 somebody from that unit is calling asking for medical?

25 A That's correct. Dispatch advised me on the

1 radio that someone was calling in saying that they had
2 been in a shooting at the same location where we were, so
3 I was kind of putting that together that the suspect was
4 calling dispatch, and the message that was relayed to me
5 was that they were seeking medical assistance.

6 Q And just so we're clear, as best as you can,
7 describe the chronology of events. So you get these three
8 shots at you. How long after that until you hear what you
9 think are additional gunshots coming from inside the
10 apartment?

11 A Maybe a couple minutes.

12 Q And is it after those additional gunshots that
13 you get word that somebody inside is calling 911 for
14 medical?

15 A I think the medical call came before the
16 gunshots, but I can't say for sure.

17 Q Okay.

18 A I'm sorry.

19 Q That's what I was asking. That's all right. So
20 at some point, there's additional gunshots. There's
21 indication that somebody is calling for medical. Do you
22 get involved in the response to that call for medical?

23 A Well, being the primary sergeant on scene, I was
24 in charge of the scene, so they were -- when dispatch was
25 airing that information, or communicating, they were

1 communicating with me. So they said -- they were saying,
2 hey, Sergeant Maines, somebody is requesting medical
3 assistance in there, so then I'm the person replying to
4 dispatch. I replied with some instructions. I said, you
5 know, have the suspect come out with empty hands, come out
6 the back door, follow instructions, and we'll provide
7 medical assistance, but other than that, we're
8 not -- we're not going up there or going inside to provide
9 medical assistance at this time.

10 Q So you directed dispatch to direct the caller --

11 A That's correct.

12 Q -- to come outside without anything in their
13 hands?

14 A That's correct.

15 Q And what was the next thing that happened?

16 A So Sergeant Fahlsing came up to me. The two of
17 us were there, and we were formulating a plan if this
18 person came out the back door. Then I -- the two of us --
19 or I hear what I know to be police verbal commands coming
20 from the south side of the building, in the front of the
21 suspect's apartment.

22 Q And are you sort of actually hearing that with
23 your naked ear, or are you hearing that over the radio?

24 A No, I'm hearing that with my naked ear.

25 Q And what sort of commands are you hearing being

1 given?

2 A So standard police commands. Show us your
3 hands. Keep your hands up. Get on the ground. That kind
4 of thing.

5 Q And what do you do when you start hearing that?

6 A So at first, Sergeant Fahlsing and I -- there's
7 plenty of qualified agents out front. They have their job
8 to do. We were in the back watching the back door, and we
9 had a position to hold and a job to do. So at first, we
10 just stayed there and let them do their job. And one of
11 the last things we wanted to do was go running into that
12 situation when everybody's kind of pointing their guns at
13 each other.

14 Q So at some point, did you get an indication that
15 they had somebody in custody?

16 A That's correct. So once they said that they
17 have the person in custody, which that means that they
18 have him handcuffed, Sergeant Fahlsing and I decided to
19 move over there. We were two of the sergeants on scene,
20 so we thought we needed to go over there and provide some
21 guidance and direction to what was going on. And we come
22 around the corner, and we see a few agents out in front of
23 the suspect's apartment, and the suspect was laying,
24 basically, on the sidewalk that leads up to his apartment,
25 was on the ground.

1 Q And did the person appear to be in police
2 custody at that point?

3 A He did. He looked like he was handcuffed.

4 Q And did you see any apparent injuries on his
5 person?

6 A Yes. He had injuries to his legs, which
7 appeared to me to be gunshot wounds. There was two other
8 agents that were dealing with the suspect. There were
9 even more cops that were keeping an eye on the door. But
10 two of the agents were dealing with the suspect. One of
11 them was attempting to put some tourniquets on his legs,
12 so I assisted him with that. I ended up putting two
13 tourniquets, one on each leg of the suspect.

14 Q I'm guessing you've been trained to do that?

15 A I have.

16 Q Once the person was cuffed and tourniquets were
17 on, what was done with him?

18 A Well, we still had the apartment to worry about.
19 You know, we never know -- at least in the early stages of
20 an investigation, we don't know if there's more people
21 inside or if there's still a safety risk or anything like
22 that. In addition to that, the fire department and
23 paramedics, we want them to come up and provide treatment
24 to this person. So, you know, they're leery of doing that
25 right in front of a building that had just been -- housed

1 a suspect with a firearm. So we decided to move the
2 suspect to a point where the paramedic could get to him
3 easier.

4 Q Where was the suspect taken?

5 A So we didn't move him too far, but we picked him
6 up and moved him east maybe about 10 yards to the -- just
7 before you get to the parking lot area, and then
8 paramedics were able to pull the ambulance up to that
9 location.

10 Q Were you involved in going inside the unit and
11 clearing it to see if anybody else was in there?

12 A No, I was not.

13 Q Have you, in your career, or in your life, been
14 around people who have been intoxicated?

15 A I have.

16 Q Is that a fairly common occurrence for you in
17 your job?

18 A It is.

19 Q Have you learned to recognize some of the
20 outward symptoms or outward indications that people give
21 off when they've had too much to drink?

22 A I have.

23 Q Did you notice any of those on the suspect that
24 was in custody?

25 A I did. The suspect was clearly intoxicated,

1 either from alcohol or drugs or a combination. I don't
2 know. But he was clearly intoxicated or under the
3 influence, had, you know, incoherent, slurred speech. His
4 sentence structure, his -- the way he was speaking was
5 kind of a -- kind of hard to describe what an intoxicated
6 person sounds like when they talk, but he was clearly
7 intoxicated, from my experience and observation of him
8 that night.

9 Q Okay. And you said there were some slurring of
10 his words?

11 A Yes.

12 Q Are sometimes people sort of thick-tongued, have
13 trouble enunciating?

14 A Yes. And you also see the -- kind of the
15 sentence structure of how they speak, it's kind of
16 incoherent. It's not full sentences as people that aren't
17 intoxicated would speak. So thick-tongued, slurred speech,
18 and the way he was speaking as well was all present.

19 Q In seeing and being that close to the suspect in
20 custody, were you able to identify him as the same person
21 that shot at you?

22 A You know, when the person was shooting at me, I
23 didn't get a chance to look to see their face or anything
24 like that. I remember that -- I remember that when I
25 first saw them, I remember that it looked like the same

1 person, but as far as being able to say those are the
2 exact same faces, I couldn't say that. I didn't get that
3 good of a look at the person until I was there putting the
4 tourniquets on.

5 Q Once this person was given medical treatment and
6 transported, what further role, if any, did you take in
7 the investigation?

8 A I didn't have much. I just walked over to
9 Devon, I just gave her a hug. Didn't really say much to
10 her. There's kind of police protocols for after an
11 officer-involved shooting. So I didn't say much to her.
12 And then I did some coordinating efforts on scene, told
13 some of the agents specific things to do, like start
14 setting up crime scene tape. I gave some others some
15 instructions to go start talking to neighbors to find
16 witnesses, things like that. But my involvement from that
17 point was pretty limited, and in maybe five minutes I -- I
18 was -- I was heading back to the station.

19 Q So you didn't walk around and look for evidence
20 or try and document evidence?

21 A No, I did not.

22 Q You mentioned not wanting or not talking to
23 Agent Trimmer because of police protocol. What do you
24 mean by that?

25 A Well, as with any serious investigation, you

1 know, you have various witnesses or people that are
2 involved. Standard police practice is try to keep them
3 from talking to each other, you know, as much as possible,
4 so you get an isolated perspective from each person. So I
5 didn't discuss what had happened with her.

6 Q So you wanted to have sort of their independent
7 recollection of events when they actually sit down to get
8 formally interviewed?

9 A That's true.

10 Q And did you expect that formal interview process
11 to take place with Agent Trimmer at some point that early
12 morning?

13 A I did.

14 Q In fact, did you participate in that formal
15 interview process as well?

16 A I did. I was interviewed separately.

17 Q Just a couple more questions, Sergeant. Just to
18 be clear, was it your specific instruction to the
19 dispatcher to instruct the person calling 911 to come out
20 the back door?

21 A Yes, I think it was. Yes.

22 Q And why did you want them to come out the back
23 door?

24 A Well, that's where -- excuse me. That's where I
25 was set up. I had observation of it. That's just what

1 came to my mind, to have them -- I was -- I felt like we
2 were ready then. I was bringing the team -- or more
3 officers around to me to be in a position for that. And
4 so since I was making those arrangements for that's where
5 I wanted this group of officers that's where I need to
6 interact with the suspect to be, I was hoping that he
7 could come out that door so we were prepared there,
8 but . . .

9 Q And was it also part of your instructions --
10 part of your instructions to the dispatcher to instruct
11 the caller to come out with nothing in their hands as
12 well?

13 A That's correct. I think I might have said empty
14 hands, or nothing in their hands, something like that, but
15 one of the two.

16 Q And just a couple of more questions. You
17 mentioned birdshot, and you sort of indicated that it was
18 somewhat of a less lethal round than maybe other kinds of
19 12-gauge ammo. Is birdshot still potentially lethal to a
20 human?

21 A It's very lethal. It's exceptionally lethal at
22 close range, and -- yes, especially at the distances we're
23 talking about that night, that could very easily kill you
24 if it hit you.

25 Q And when you say "close range," how close are

1 you talking? What do you consider to be close range?

2 A Well, from where I was to where the person with
3 the shotgun was that was shooting at me, I would say it
4 was under 20 yards. And I saw the pictures, but it seemed
5 like about within 20 yards that night, and it might even
6 have been closer.

7 Q And why, at that rage, would birdshot -- or why
8 could it be exceptionally lethal?

9 A Well, it -- like I say, it loses its energy
10 relatively quickly compared to other ammunition. However,
11 at 20 yards, it still has plenty of energy to penetrate
12 the skin of the human body, and shotgun rounds like
13 birdshot have a spread, and that -- that cone get larger
14 the further out you are. But at 20 yards, that's still a
15 pretty -- a pretty tight spread, which means it's more
16 damaging if it were to hit you. So the closer you are to
17 it, the more damage it would cause if it hit you.

18 MR. FREEMAN: All right. Thank you. I don't
19 have anything else.

20 THE COURT: Cross-examination?

21 CROSS-EXAMINATION

22 BY MR. ST. GEORGE:

23 Q Sergeant Maines, when you -- when you got on
24 scene, you said that you went around the back of the
25 building; is that right?

1 A That is correct.

2 Q And you said you were looking through the
3 windows?

4 A That's correct.

5 Q You could see through the windows quite well?

6 A I wouldn't say quite well, but I could see. It
7 was an unobstructed view. The lighting was moderate
8 inside, but I could see through.

9 Q The blinds were completely drawn up?

10 A That's my recollection is that the blinds -- the
11 blinds were either open or drawn up. I remember the
12 blinds didn't cause us -- or didn't cause me a problem
13 seeing into the apartment.

14 Q And there were lights on inside the apartment?

15 A There was lighting inside the apartment. Like I
16 said, my testimony was moderate or dim kind of lighting,
17 some coming from the aquarium, some coming from a large TV
18 screen or computer screen on the wall, and maybe some
19 other dim lights.

20 Q Were there lights on in any other of the
21 apartments behind that building?

22 A Not that I remember.

23 Q So just that one?

24 A I think so.

25 Q You were monitoring your radio?

1 A I was.

2 Q Did you hear when Sergeant Muller radioed out,
3 we made phone contact with the suspect, he's inside, and
4 we can see him through the windows? Do you recall that?

5 A I don't necessarily recall that broadcast.

6 Q Would you like us to refresh your memory with
7 the -- with the air, or would you take my word for it?

8 A I'll take your word for it, sure.

9 Q Okay. So at that point, the individual inside
10 had been alerted that someone was looking in his windows?

11 A I don't -- I wouldn't draw that conclusion. If
12 the police officer outside was radioing that -- that we
13 see a suspect inside and we can see him through the
14 windows, I don't -- I'm not sure how the suspect would
15 know that we could see him through the windows.

16 Q You knew that calls were being made into the
17 house?

18 A That's true.

19 Q And you saw the man inside holding a cell phone?

20 A I did.

21 Q And the radio traffic that I just mentioned was
22 Sergeant Muller telling you we've told him we can see him
23 through the windows?

24 A I see what you're saying now. That radio
25 traffic that you quoted, I don't think that's -- I don't

1 think that you said that earlier.

2 Q Radio traffic is kind of real short staccato --

3 A Yeah.

4 Q -- right? Is that kind of your --

5 A Yeah. I think that radio traffic you said
6 earlier was Sergeant Muller indicating to the rest of the
7 police officers that -- that we, as the police department,
8 can see him through the windows. I don't think -- from
9 what you said, I didn't hear you say that we advised the
10 suspect we could see him through the windows. I didn't
11 hear that.

12 Q Okay. You couldn't hear the phone conversation
13 that was being had because you were behind the building,
14 they were in front?

15 A That's true.

16 Q Okay. So have you ever been inside of a house
17 where the lights are on and it's dark outside?

18 A I have.

19 Q Are you able to see out of your window in that
20 condition?

21 A Not normally very well, because the glare that's
22 caused by the light reflecting off the dark window, that
23 can be an impediment to seeing out your windows.

24 Q Right. So there's typically a reflection from
25 the light inside reflecting back?

1 A There can be.

2 Q So if you were inside with the lights on and it
3 was dark outside and you wanted to be able to see out of
4 your windows, what would you do?

5 A You could walk up to the window, put your face
6 up to it, or you could -- I think what you're getting at
7 is you could turn the lights off to see out the window.
8 I see where you're going with that. I agree.

9 Q Now, you said that this man -- we're going
10 assume that this man is me.

11 A Okay.

12 Q You said that I came out to the back door. You
13 said that I appeared to be hesitant. Do you remember
14 saying that earlier?

15 A I don't remember saying that, but I agree with
16 that characterization, yes. The person appeared hesitant,
17 yes.

18 Q Didn't want to come walking out into the
19 backyard?

20 A Yes.

21 MR. FREEMAN: Your Honor, I'm going object,
22 calls for speculation.

23 THE COURT: Sustained.

24 Q (BY MR. ST. GEORGE) It was your impression that
25 he didn't want to come walking out into the backyard?

1 MR. FREEMAN: Objection, calls for speculation.

2 THE COURT: Sustained.

3 Q (BY MR. ST. GEORGE) Do you remember airing on
4 the radio when that man came out the back door?

5 A I recall some of my radio traffic. I didn't
6 talk on the radio right when you came out the back door,
7 or right when he came out the back door.

8 MR. FREEMAN: Okay. I'm going and the bailiff
9 to bring you a copy of Defendant's X. Do you have it back
10 here?

11 (Discussion off the record.)

12 THE WITNESS: Thank you.

13 Q (By MR. FREEMAN) This exhibit has already been
14 admitted. Do you recognize this as being a portion of
15 what's called the background chronology, something
16 produced by dispatch?

17 A Yes, I do.

18 Q Okay. And do you see, at 049 hours, where it
19 says, Coming out the back? Coming out the back is an
20 event comment about a third of the way down the page.

21 A Unfortunately, this -- this only goes to
22 0038 hours, I think. I think I might have gotten a
23 different page.

24 Q I said -- did I misspeak? I apologize. It's
25 030 hours.

1 A 030 hours, 49 seconds, it says, Coming out the
2 back. That's correct.

3 Q Okay. And at that time, you aired, at that --
4 Coming out the back. Do you recall make that's air?

5 A It's very likely that I would have aired that.
6 This is -- this isn't a transcript of the radio. These
7 are CAD notes entered by a dispatcher. So the dispatcher
8 listens to the radio traffic and then makes, oftentimes,
9 abbreviated notes, types them into the computer. So this
10 isn't me speaking. This is the dispatcher typing a note
11 and, basically, reflecting the current ongoings of the
12 scene.

13 Q Right. Would it help you if we maybe played
14 this portion of radio traffic to refresh your memory as to
15 what was exactly said?

16 A Sure. Yes.

17 Q Okay.

18 MR. ST. GEORGE: And if you cue up to
19 14 minutes.

20 THE COURT: And do we have this identified?

21 MR. ST. GEORGE: The radio traffic? Yes, Your
22 Honor. It's been admitted as People's -- is it 18 or 17?
23 This is Exhibit 320, Your Honor.

24 THE COURT: Okay. So this is another portion of
25 320?

1 MR. ST. GEORGE: In the interest of moving
2 forward, Your Honor, I'll see if we can't get to this
3 another way, okay?

4 THE COURT: Okay.

5 Q (BY MR. ST. GEORGE) So, Sergeant Maines, do you
6 see this event timestamped at 030 hours, 49 seconds?

7 A I do.

8 Q It says, Coming out the back?

9 A That is correct.

10 Q You see shortly -- shortly thereafter,
11 032 hours, 11 seconds, Went back inside?

12 A That is correct.

13 Q So I came out and then went back inside?

14 A That's correct.

15 Q And those two things are separated by a minute
16 and 22 seconds?

17 A They are on this event chronology, but, again,
18 that's -- that's the dispatcher typing it into a computer,
19 so there's -- there's what happens in reality, then
20 there's my radio traffic, which is not going to be in
21 parallel with reality, if that makes sense, because I'm
22 not going to air -- at the time you're standing on the
23 back patio, I wasn't going to get on the radio and start
24 talking. So some of this is delayed in my transmission of
25 it to dispatch, because I'm just keeping them up-to-date.

1 And then when they type it in, I don't -- I don't know if
2 they waited 30 seconds to type it. I don't know if they
3 typed it in immediately after I aired it. So I'm not
4 trying to be difficult. I just don't know if this time
5 line is an accurate reflection of the time line that
6 actually happened.

7 Q If there was a lag time of someone entering
8 this, that lag time would be consistent on both?

9 A It could be.

10 Q So within reason, perhaps within a couple of
11 seconds? I mean --

12 MR. FREEMAN: Judge, objection, calls for
13 speculation. He has no idea --

14 THE COURT: I'm going sustain the objection.

15 Q (BY MR. ST. GEORGE) Approximately a minute and
16 22 seconds, then?

17 A That's the time between -- the two entries were
18 made on a computer in dispatch. I can't say that that's
19 the time of when it actually -- when those comments were
20 actually happening in realtime.

21 Q Okay. You were saying that the man appeared to
22 be hesitant to come out, and you were -- you were up
23 against the fence, right?

24 A No. We were -- we were towards the fence, but
25 not up against it. We were in the grassy area behind one

1 of small trees.

2 Q The man could not see you? I could not see you?

3 MR. FREEMAN: Objection, calls for speculation.

4 THE COURT: Sustained. Could you rephrase your
5 question.

6 Q (BY MR. ST. GEORGE) Did it appear as though I
7 had seen you?

8 MR. FREEMAN: Objection, calls for speculation.

9 THE COURT: I'll sustain that objection.

10 Q (BY MR. ST. GEORGE) You were doing your best to
11 not be seen?

12 A That's correct.

13 Q Okay. You also said in your -- over the air,
14 you said -- not when -- when you said, He's coming out the
15 back, Muller then airs -- he's 330, right? His call sign
16 is number 330?

17 A I believe so, yes.

18 Q And you're 430?

19 A Yes.

20 Q He airs, 330, 430, are you in contact? Do you
21 remember that?

22 A I don't remember it, but it sounds accurate.

23 Q And then you air back, Not yet. He came out,
24 looked around, went back in real quick, closed the door,
25 locked it. Does that sound accurate?

1 A Yes, that sounds accurate.

2 Q Now, those two timestamps were a minute and
3 22 seconds apart. The timestamps that dispatch put on
4 those radio airs of you saying coming out the back, and
5 not yet, he came out, et cetera, those two things are
6 spaced at a minute and 22 seconds apart, right?

7 A I'll take your word for it, but I'd have to look
8 at this closely.

9 Q Do the math.

10 A Yeah, I mean, that could be.

11 Q Is a minute and 22 seconds real quick?

12 MR. FREEMAN: Objection, calls for speculation.

13 THE COURT: I'm going allow the question because
14 it was characterized as such by this witness.

15 A Again, the timestamps on here are just when the
16 dispatcher entered it, not when it actually happened,
17 so -- but your question, is a minute 22 seconds real
18 quick, that's an isolated question out of context. I
19 think that's relative on what's going on, what's taking a
20 minute and 22 seconds. But I can't draw a parallel
21 between the timestamps on the CAD notes and how long it
22 actually took something to occur in actuality.

23 Q (BY MR. ST. GEORGE) Okay. Do you remember
24 giving an interview the morning of this incident?

25 A I do.

1 Q Do you remember saying, At one point the suspect
2 opens the back door, takes about one step out onto the
3 patio of the back door. We can see him. We're behind
4 this tree. We're in the dark. It doesn't look like he
5 sees us, so I'm thinking he's going to try to sneak away
6 or run for it, or something like that. So we just sit
7 tight. We don't challenge him.

8 MR. FREEMAN: Judge, objection. Is there a
9 question here?

10 THE COURT: Right. You have to --

11 MR. FREEMAN: He's just reading.

12 THE COURT: You have to ask a question. You
13 can't just read statements to him. You can ask him about
14 certain information. You can use it to impeach if you set
15 it up properly.

16 Q (BY MR. ST. GEORGE) The question is going to
17 be, do you remember saying this?

18 A I do.

19 Q And the remainder of that, do you also --

20 THE COURT: You can't just read him his
21 statements like that. You can and him a question and see
22 what he testifies to.

23 Q (BY MR. ST. GEORGE) Okay. So you remember
24 giving this interview, correct?

25 A I do.

1 Q And that interview was given with a detective,
2 correct?

3 A It was an investigator. I believe he worked for
4 the Jefferson County Sheriff's Department. He was part of
5 the Critical Incident Response Team. So I don't know if
6 he was a detective. I'm not sure exactly what his title
7 was, but it was likely he was a detective of some sort in
8 his agency.

9 MR. ST. GEORGE: The defense looks to admit the
10 recording of this interview.

11 MR. FREEMAN: I'm going to object at this point.

12 THE COURT: I'll sustain the objection.

13 (Pause in the proceedings.)

14 MR. MENGES: Give was second, Judge.

15 (Pause in the proceedings.)

16 Q (BY MR. ST. GEORGE) You were waiting for me to
17 get a couple of steps away from the door so that you could
18 grab me. Do you remember that?

19 A Yeah. That sounds accurate, yes.

20 Q So the original plan was to call me and to get
21 me to come outside and talk to me, correct?

22 A That's correct.

23 Q And while you were there in the shadows in the
24 backyard, you saw me come outside, correct?

25 A That's correct.

1 Q And you did not talk to me; is that correct?

2 A That is correct.

3 Q Instead, you were waiting to grab me; is that
4 correct?

5 A I was waiting to see what I were going to do,
6 and if you attempted to flee, we would have grabbed you.
7 That's what I meant by that statement.

8 Q Okay. You heard me come outside. I then went
9 inside, correct?

10 A Yes, you went back inside.

11 Q How long was it until the next time I came back
12 out?

13 A It's difficult to say for sure. Maybe a minute
14 or two.

15 Q Would it have been five or six?

16 A I don't remember it being that long, but I don't
17 want to say it absolutely couldn't, but I remember it
18 being about two minutes.

19 Q Okay. And that's when I came out armed; is that
20 correct?

21 A You know, that -- I didn't see anybody come out
22 at that time because we had repositioned to where I could
23 no longer see the back door. But I hear the door open, I
24 hear a firearm charging. So I could make the assumption
25 that someone came out armed, but I didn't see that.

1 Q At that point you moved around to the east side
2 of the building?

3 A That's correct.

4 Q And took concealment behind the truck?

5 A That's correct.

6 Q And Agent Trimmer was with you at the time?

7 A That is correct.

8 Q And then you left to go around Building 6 and
9 come up on the north side of Building 6, correct?

10 A You know, I'm not sure which number it is, but
11 yes, I left Agent Trimmer around the truck, and I went
12 around the building that sits to the east of where your
13 residence was.

14 Q Do you remember her airing, 642, Sarge, is it
15 all right if I come back with you?

16 A Yes, I do remember her asking that.

17 Q She didn't want to stay behind that truck, did
18 she?

19 A I don't think I can make that characterization
20 of what she wanted or didn't want.

21 Q Okay. So when you were looking long ways down
22 the fence line, you said you saw a human being back there,
23 right?

24 A Yes. I saw a person back there, yes.

25 Q You got on the radio and asked Sergeant Muller

1 and Agent Brennan if it was one of them; is that right?

2 A That sounds right, yes.

3 Q You said you were not able to tell if it was a
4 cop or not?

5 A That's probably accurate, yes.

6 Q And I was wearing light-colored shorts?

7 A I remember you were wearing shorts of some sort,
8 yes.

9 Q A button-down shirt?

10 A I'm sorry. I don't recall what shirt you were
11 wearing.

12 Q Pair of flip-flops?

13 A I don't know.

14 Q But you weren't able to tell if that person was
15 a cop or not?

16 A No, I couldn't.

17 Q It was dark, right?

18 A It was dark.

19 Q How long was it that that person was meandering
20 around in the backyard?

21 A Maybe a minute, maybe two.

22 Q Could it have been six?

23 A I don't think so, but it could have been two
24 minutes.

25 Q You said you could see the glow -- you saw the

1 glow of a cell phone; is that right?

2 A Well, I could see something that I was thinking
3 might be the glow of a cell phone, yes.

4 Q Couldn't tell what it was in his hands?

5 A No. I couldn't even tell it was a cell phone.
6 I could just see a glow, and I was making the assumption
7 that it could be from a screen of a phone.

8 Q Do you know at this point if any other phone
9 calls were being made to person inside -- or that person,
10 rather?

11 A I don't know.

12 Q You radioed that that person was moving
13 eastbound?

14 A That's correct.

15 Q And then that person turned down south between
16 the buildings?

17 A That's correct.

18 Q You were not longer able to see them?

19 A That is correct.

20 Q At that time you were -- you heard the sound of
21 gunfire?

22 A I did.

23 Q And then you came running up to the northwest
24 corner of Building 6?

25 A Yes. If that's Building 6, then, yes, that was

1 the northwest corner.

2 Q You had concealment behind a bush?

3 A Not at first, but I did take concealment behind
4 a bush.

5 Q After hearing the gunfire there, you said you
6 saw that person come running back northbound?

7 A No, that -- the person, you, came back
8 northbound, but you were walking -- kind of walking,
9 stumbling backwards, and you were traveling north but
10 facing south.

11 Q Looking towards the south?

12 A When I very first saw you, you were looking
13 towards the south, and at that very instant, you were
14 turning east and bringing the shotgun up, pointing it
15 towards me. Your body was pointing towards me, and the --
16 the front of your body was pointing towards me, and the
17 shotgun was turning and pointing towards me as well.

18 Q And you -- you came up with your gun, turned on
19 your light, and then that person saw the light?

20 MR. FREEMAN: Objection, calls for speculation.

21 THE COURT: Sustained.

22 Q (BY MR. ST. GEORGE) When you came up with your
23 gun, you turned on the light, correct?

24 A That's true.

25 Q And it was at that time that the person took aim

1 at your light and shot at it?

2 A I don't know what the person was aiming at, but
3 when I turned on the light, the person shot in my
4 direction, yes.

5 Q Light first, then a shot?

6 A I think that's that fair characterization, yes.

7 Q You said the lighting was real good there
8 between the two buildings?

9 A The lighting was pretty good between the two
10 buildings, yes. At least that's my recollection. I
11 haven't been back there at night, but I'm just recalling
12 it from that evening.

13 Q Do you remember what the gun looked like?

14 A I didn't get a real good look at it. I remember
15 it being -- I remember thinking that it was -- looked like
16 a shotgun. It was long. It wasn't a handgun, or it
17 didn't look like, you know, an assault rifle or anything
18 like that. It looked like a shotgun. And at the time, I
19 thought that it had a light-colored kind of wooden stock.
20 That was my recollection from glimpsing it just a very --
21 a couple times, less than a second each.

22 Q A light-colored wood stock?

23 A Yes. That's what I thought at the time.

24 Q What color was the shotgun?

25 A I don't know. Like I said, each time I saw it,

1 it was just for a brief second before it discharged in my
2 direction. I remember seeing a shine off of it. If I
3 recall my interview correctly, which is my recollection to
4 this date, I thought it was like a shinier metal, like a
5 blue shotgun, maybe, that had been worn down. That was my
6 recollection of it. The light was reflecting off of it, I
7 think, is what I said, and that's accurate to what I
8 recall.

9 MR. ST. GEORGE: Can we have People's 87 put up?
10 And this has already been admitted evidence. Can we zoom
11 in at all?

12 THE COURT: Hold on a second. We need to take
13 that down. I don't have 87 admitted.

14 MR. ST. GEORGE: We don't?

15 THE COURT: It is not admitted.

16 MR. ST. GEORGE: We've got it mis-marked, Your
17 Honor. We had it shown as offered and admitted.

18 MR. FREEMAN: I believe it was shown to a
19 witness, but not admitted and not offered.

20 MR. ST. GEORGE: Well, I move to admit it, Your
21 Honor, and I don't offer any objection to it.

22 THE COURT: So the defense is offering -- or
23 asking to admit 87.

24 MR. FREEMAN: No objection, Judge. I think 88
25 is in. It's a similar picture. But no objection.

1 THE COURT: I don't have 88 admitted.

2 MR. ST. GEORGE: How about 89?

3 THE COURT: 89 is not in.

4 MR. FREEMAN: All right. We need to double-
5 check, then. I don't object.

6 THE COURT: Okay. So 87 is now admitted.

7 (People's Exhibit 87 was admitted into
8 evidence.)

9 MR. ST. GEORGE: Can we also offer 89 and bring
10 it in?

11 THE COURT: If you want to have that identified
12 by somebody.

13 MR. FREEMAN: I don't think it's been
14 identified, Judge, so I would object at this point. I
15 think it will come in later.

16 THE COURT: So 87 is admitted.

17 MR. ST. GEORGE: Okay. We're just going to go
18 ahead and use 87.

19 THE COURT: Do we have 87?

20 MR. ST. GEORGE: Yeah. 87 is in.

21 THE COURT: I understand.

22 Can we put up 87, please.

23 (People's Exhibit 87 was published.)

24 Q (BY MR. ST. GEORGE) All right. And, actually,
25 Sergeant Maines, it's probably going to be easier for you

1 to see it if you were closer to it, if you --

2 A Okay. I'll go look at it.

3 Q -- if you prefer.

4 A Sure.

5 Q Does the weapon that you just looked at have a
6 light-wood-colored stock?

7 A No, it does not.

8 Q Is it shiny or reflective?

9 A It's hard to tell in that picture if it would be
10 reflective. It appears black in color. I don't know if
11 it's a reflective surface or not.

12 Q So that one is black?

13 A It looks like it's black in color to me.

14 Q Is it possible that this area between those two
15 buildings was a little darker than we're giving it credit
16 for?

17 A I don't think the lighting was the problem. I
18 think my limited time of viewing it. When I think about,
19 you know, seeing this picture and recalling what my memory
20 is, the light-colored wood stock could have been a forearm
21 of a person holding it, and maybe that's why it looked
22 like a light-colored wood stock. But I don't think the
23 lighting was the problem. That didn't seem to be a
24 problem for me. It's the fact that I only got to see it
25 for split second before it was fired.

1 Q If we played you a clip of the radio traffic,
2 would you recognize the voices on it?

3 MR. ST. GEORGE: Mr. Burnett, would you please
4 play that.

5 MR. BURNETT: Which one?

6 THE COURT: And so this is, again, a portion of
7 320 that you intend to play?

8 MR. ST. GEORGE: I'm sorry, Your Honor?

9 THE COURT: Is this a portion of 320 that you
10 intend to play?

11 MR. ST. GEORGE: Yes, Your Honor.

12 (Pause in the proceedings.)

13 THE COURT: And for the purposes of the record,
14 we'll need some designation of what this is.

15 (Pause in the proceedings.)

16 MR. ST. GEORGE: Thank you for your patience.

17 THE WITNESS: Sure.

18 MR. BURNETT: Your Honor, if we can switch to
19 the defense.

20 THE COURT: Thank you. What are we playing?
21 From where to where?

22 MR. ST. GEORGE: This is going to be -- I don't
23 have timestamps for this. Actually, yes, I do. We're
24 going to play from when dispatch timestamps at 055 hours.
25 In the radio traffic, it's going to be 2858 to 3112. And

1 in realtime, this is going to be 055 hours to 0100.

2 THE WITNESS: Okay.

3 MR. BURNETT: Your Honor, can I try their side,
4 their plug?

5 THE COURT: Sure.

6 Give us a moment, ladies and gentlemen. If you
7 want to stand up and stretch and use this for time to
8 relax a little bit.

9 (Pause in the proceedings.)

10 THE COURT: Okay. I think we're ready there to
11 play from 2858 to 3112 is the offer.

12 (People's Exhibit 320 was published.)

13 Q (BY MR. ST. GEORGE) Thanks again for your
14 patience. So did you recognize the voice in that radio
15 traffic?

16 A I did most of them, yes, including my own.

17 Q 1037, that's Agent Lebsack, correct?

18 A Could have been. I'm sorry, I don't know for
19 sure, but sounds right.

20 Q Okay. And so when we heard when Agent Lebsack
21 said, 1032, I just heard a gunshot?

22 MR. FREEMAN: Objection, assumes facts not in
23 evidence. He said he didn't recognize the voice.

24 THE COURT: I'll sustain that objection.

25 Q (BY MR. ST. GEORGE) You heard someone air that

1 they had heard a gunshot?

2 A That is correct.

3 Q And you repeated, I have one single shot?

4 A Yes, and I heard that shot as well.

5 Q We then heard someone air, Second shot, second
6 shot?

7 A That's correct.

8 Q And then we heard dispatch say, Second shot?

9 A Yes.

10 Q Then we hear a man say, Third shot, third shot,
11 ground floor. Do you remember hearing that?

12 A Yes.

13 Q And then we hear dispatch timestamp it, Third
14 shot, 057?

15 A Yes.

16 Q And then while you're giving directions to, I
17 believe it was cue Gibson and French -- or Gibson-French,
18 rather, we hear the sound of a fourth gunshot audible on
19 the recording; is that correct?

20 MR. FREEMAN: Objection, assumes facts not in
21 evidence.

22 THE COURT: You might want to ask a question.

23 Q (BY MR. ST. GEORGE) Did you hear the sound of a
24 gunshot?

25 A I'm sorry. I don't recall hearing it, and I'd

1 have to listen to it again. I was listening to the voices
2 and what they were saying.

3 Q Okay. We can play it again.

4 (People's Exhibit 320 was published.)

5 Q (BY MR. ST. GEORGE) Sergeant Maines, were you
6 able to recognize that as a gunshot this time?

7 A It sounded consistent with a gunshot, yes.

8 Q And did you say it was a gunshot in that
9 recording?

10 A I could have, yes.

11 Q Did you say, We've got more gunshots?

12 A I don't know if that was me speaking. I
13 remember somebody saying that. I recognize my own voice
14 there a lot. I'm not sure if I'm the person that aired
15 that. But I remember it being said, if that's helps.

16 MR. ST. GEORGE: Bear with me one moment.

17 THE COURT: Okay.

18 (Pause in the proceedings.)

19 Q (BY MR. ST. GEORGE) So, Sergeant Maines, after
20 that first gunshot, you did hear someone say --

21 MR. FREEMAN: Objection. Objection, assumes
22 facts not in evidence. Nobody has testified to hearing
23 four gunshots, Judge.

24 THE COURT: I'll sustain the objection.

25 Q (BY MR. FREEMAN) Okay. Can we play the

1 recording another time?

2 MR. FREEMAN: Objection. It's been played
3 twice. The jury has it. They can decide for themselves.
4 Are we just going to keep playing it until --

5 THE COURT: Okay. Regarding this, I think we've
6 had -- we've played the recording, we've had the
7 testimony, and you're set with the answer. If he is
8 unable to hear it, Mr. St. George, he can't hear it. If
9 it exists, then you'll have to use this with another
10 witness.

11 MR. ST. GEORGE: Okay.

12 Q (BY MR. FREEMAN) Dispatch says, Third shot, at
13 057 hours, correct?

14 A I heard that.

15 Q And then somebody airs that we've get more
16 gunshots after that, correct?

17 A Yes.

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

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MR. FREEMAN:

22 Q Sergeant Maines, just a few more questions about
23 the radio traffic. And I think you clarified -- or may
24 have clarified this on cross, but I just want to make sure
25 it's clear. When you radio events to the dispatcher, it's

1 up to them to decide, what, if anything, to type into the
2 CAD that ends up on part of Defense Exhibit X. Is that
3 accurate?

4 A That is true. I mean, in my experience, the CAD
5 has reflected a small percentage of what's being aired on
6 any given call. Some are more detailed than others.

7 Q So is it accurate to say that the dispatcher who
8 is not on scene decides what's important to air out to the
9 other officers?

10 A Yes. And what to type into the CAD notes, yes.

11 Q And it's also up to the dispatcher when to type
12 that, as far as how quickly after they learn that
13 information. Is that accurate as well?

14 A That is correct. And they -- through my
15 experience in observing them in their job, they have a lot
16 of different things going on. Entering CAD notes is just
17 one of the functions that they're performing up there.

18 Q So they might be multitasking at the time that
19 they are doing that?

20 A Yes, it's highly likely, especially on an in-
21 progress call like this.

22 Q Now, there was mention of this plan, or at least
23 discussion between the four of you initially there, to get
24 the defendant to come outside. Was the plan to get him to
25 come out his front door?

1 A Yes. That was -- that was the plan, yes.

2 Q And was the plan to get him to come out his
3 front door unarmed?

4 A Yes.

5 Q And when he came out the back, were you
6 expecting that?

7 A No, we weren't.

8 Q Now, I want to ask you just a couple questions
9 about the radio calls that we just heard.

10 A Okay.

11 Q Do you know, when that recording was made, if --
12 and if is this doesn't -- if you don't understand this
13 question, let me know. Do you know if the time gaps
14 between radio calls accurately reflects the actual time
15 between those calls, or do you know if it's been removed
16 so we're not hearing, essentially, dead time?

17 A You can -- you can get recordings, as I
18 understand it, most of the time in what we call compress
19 the timeline. So the dead air when no one is saying
20 anything or transmitting on the radio, between
21 transmissions is usually cut out for the sake of being
22 able to listen to -- being able to listen to the radio
23 traffic and compress timelines. So a call that lasted two
24 hours, you had to listen to two hours of radio traffic,
25 but they'll compress the timeline. And it appears to me

1 that this one has been compressed.

2 Q And I was going ask you that. Does the
3 recording that we just heard twice, does it appear that
4 the events happened much quicker than they actually did?

5 A The recording makes it sound like things are
6 happening quicker than they actually happens because the
7 dead air is cut out of the transmission.

8 Q Once the person that was shooting at you sort of
9 disappeared, and I think you said you assumed that they
10 went back into their unit, did you personally hear more
11 gunshots that you thought were coming from inside the
12 unit?

13 A Yes, I did.

14 Q And you might have already testified to this,
15 but just so we're clear, how many do you remember hearing?

16 A I think I said earlier, and I still think that I
17 remember it being somewhere between three and five
18 gunshots.

19 Q So you're not certain how many there were?

20 A I am not. I was trying to talk on the radio,
21 listen to the radio, coordinate things. I remember
22 hearing gunshots come from inside. I'm not exactly sure
23 how many it was.

24 Q You're sort of multitasking as well?

25 A Yes.

1 Q Did you ever hear anybody on the radio,
2 specifically the other officers around the unit, air that
3 they heard a fourth gunshot?

4 A No, I don't recall that.

5 Q And there was one -- there was one statement
6 on -- during the time that the gunshots are being aired
7 that had somebody says they heard or were hearing more
8 gunshots. Did you recognize that voice?

9 A No. They -- no.

10 Q Do you know if that person who said that was
11 discussing or talking about the three that were heard or
12 shots beyond that?

13 A I don't know.

14 MR. ST. GEORGE: Objection, speculation.

15 THE COURT: Sustained.

16 Q (BY MR. ST. GEORGE) So you don't know what that
17 person meant when they said "more gunshots," because you
18 don't even know who the speaker was?

19 A Not that I can recall, no.

20 Q And do you know if who said that was actually
21 hearing things or having other people report to them that
22 they were hearing things?

23 A I don't know.

24 MR. FREEMAN: Okay. All right. Thank you.

25 THE COURT: Recross?

1 RECROSS-EXAMINATION

2 BY MR. ST. GEORGE:

3 Q Sergeant Maines, your call sign is 430, right?

4 A There was a time, yes.

5 Q It's changed, then? It was at the time?

6 A Yes.

7 Q Okay. So when someone says, 430, and then says
8 something, that's you, right?

9 A Yes.

10 Q Okay. Was there any other large gun call going
11 on that night?

12 A Not at the time, no.

13 Q So would your dispatcher be giving most of their
14 attention to what was going on on this call?

15 MR. FREEMAN: Objection, calls for speculation.

16 THE COURT: I'll sustain that.

17 Q (BY MR. ST. GEORGE) And you said that there is
18 a dead air version of the recordings that is maintained?19 A I don't know. I don't know what -- I don't know
20 whether there is or isn't. I don't really work in that
21 area.

22 MR. ST. GEORGE: Okay. Nothing further.

23 THE COURT: Does anyone on the jury have a
24 question for this witness?

25 (Written questions submitted by the jury.)

1 We're going to have to excuse the jury for a
2 minute. Keep an open mind. Don't do any research. Don't
3 speak to anyone about the case. This will just be a
4 minute or two.

5 And you can step down for a moment.

6 THE WITNESS: Thank you.

7 THE COURT: Okay. This will be a very brief
8 break, I think.

9 So we have the first question, how far does a
10 shotgun cartridge travel when ejected from the weapon, if
11 the officer knows. Any objection?

12 MR. FREEMAN: No.

13 MR. MENGES: Hold on one second.

14 (Pause in the proceedings.)

15 MR. ST. GEORGE: Are you addressing me right
16 now, Your Honor?

17 THE COURT: Yes. The district attorney didn't
18 have an objection.

19 MR. ST. GEORGE: Okay. I'm going to object
20 because the officer can't possibly know the specifications
21 of this particular weapon since he doesn't know the model.
22 You know, it would be speculation.

23 THE COURT: All right. The officer did give
24 some testimony about being qualified and the areas
25 of -- he's certainly not qualified as an expert, but in

1 the areas of rifle and shotgun, correct? So your
2 objection is based on the fact that you believe that a
3 cartridge from a shotgun could travel at -- differently
4 with different types of shotguns?

5 MR. ST. GEORGE: That's correct, Your Honor.
6 And I don't think that we've qualified this person as an
7 expert witness on this subject either.

8 THE COURT: Well, no, we haven't, but -- so do
9 the People have any kind of remark on this?

10 MR. FREEMAN: Judge, I think he can give a lay
11 opinion. Lay opinion simply has to be rationally based on
12 his perceptions. He's fired shotguns, he's qualified for
13 shotguns. But it has to be helpful to the jury. So I
14 think if the Court allows it as a lay opinion, it would be
15 proper.

16 THE COURT: What I'm going to do is allow this
17 and say, if you know, how far does a shotgun cartridge
18 travel when ejected from the weapon, and then certainly
19 I'll allow follow-up questions. I don't see this as
20 requiring that much expertise. I don't believe you need
21 somebody who's certified as an expert in shotguns, but
22 without objection, he was able to talk ability his
23 experience.

24 And correct me if I'm wrong. Is this officer
25 certified to carry a shotgun?

1 MR. FREEMAN: He is, Judge.

2 THE COURT: So 4 was, Was it ever considered to
3 use your police cars as cover after learning the exact
4 location of the suspect?

5 MR. FREEMAN: No objection.

6 MR. ST. GEORGE: I wanted to address the last
7 one.

8 THE COURT: Okay.

9 MR. ST. GEORGE: I would further object because
10 a shotgun can variably eject a cartridge. Based on how
11 hard or soft the user pumps the action, that would
12 absolutely make a difference in how far that cartridge
13 traveled, and there's no way whatsoever that this officer
14 can know how hard or not hard I pulled the pump on that
15 action.

16 THE COURT: Okay. And I understand, and I'm
17 going allow you follow-up questions, so you'll be able to
18 and him that.

19 MR. ST. GEORGE: Very well.

20 THE COURT: Was it ever considered to use your
21 police cars as cover after learning the exact location of
22 the suspect?

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

24 MR. FREEMAN: No objection.

25 THE COURT: Is the defendant the person you put

1 tourniquets on in front of the apartment? Did you see a
2 handgun brought out by the suspect?

3 MR. FREEMAN: No objection.

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

5 THE COURT: Okay. We can have the jury back.

6 We can have our witness back on the stand.

7 (The jury entered the courtroom.)

8 THE COURT: Okay. Everybody be seated, please.

9 Sergeant, I have a couple of questions for you
10 from the jury. If you know, how far does a shotgun
11 cartridge travel when ejected from the weapon?

12 THE WITNESS: The cartridge is the portion that
13 is used to contain the projectile that's ejected out of
14 the ejection port, and it will travel -- depending on how
15 hard the shotgun's pumped, it will travel, I'd say -- I'd
16 say about 5 feet. And that's -- that's from a fair amount
17 of experience with instructing shotgun shooters.

18 THE COURT: Okay. Was it ever considered to use
19 your police cars as cover after learning the exact
20 location of the suspect.

21 THE WITNESS: No, that was never considered.
22 No.

23 THE COURT: Is the defendant the person you put
24 tourniquets on in front of the apartment?

25 THE WITNESS: Yeah, the defendant looks like the

1 person. It's been quite a while ago, and I only saw him
2 while I was putting tourniquets on him. I was mainly
3 focused on applying them to his legs, so -- but he appears
4 to be the person that I was putting tourniquets on in
5 front of the residence. But I can't say -- I couldn't say
6 a hundred percent for sure outside of any context.

7 THE COURT: Did you see a handgun brought out by
8 the suspect?

9 THE WITNESS: I did not see any firearms brought
10 out by the suspect. At the end of the altercation, I saw
11 the shotgun that he brought out earlier, but I didn't see
12 any handguns brought out by the suspects at any time.

13 THE COURT: As a result of the jury's questions
14 are there follow-up questions?

15 MR. FREEMAN: Just a couple, Judge.

16 FURTHER DIRECT EXAMINATION

17 BY MR. FREEMAN:

18 Q On that question about the ejection and how far
19 a around will go, you sort of gestured to your right?

20 A Yeah.

21 Q If you're holding the gun sort of vertically how
22 it's supposed to be held, is that the direction it's
23 usually -- they usually go?

24 A That's correct. And that's with the assumption
25 made that the -- that the shotgun is held in a vertical

1 position, as it normally would be fired. Of course, if
2 you shot the shotgun rolled over onto its side, then the
3 shotgun shell could possibly go straight up in the air and
4 come right back down to where it was. So it's hard to
5 tell how far any given cartridge would fly out of a
6 shotgun, depending on how the person was holding it, how
7 hard they were charging the action. It's difficult to
8 say. I would say that the 5 feet is a normal shooting
9 stance, holding it up to your shoulder, working the action
10 fairly vigorously, and with the shotgun oriented in a
11 vertical position so the cartridge will eject to the
12 right -- that's the way the belt -- will eject to the
13 right of where the shooter is standing.

14 Q If the shooter is standing on hard ground, such
15 as asphalt and concrete, do those empty casing have a
16 tendency to bounce, to roll, to move around once they hit
17 the ground?

18 A Yes. They'll bounce, they'll roll. Like
19 anything else, they'll roll, bounce. They'll roll kind of
20 in an arc sometimes. It's hard to tell where a shotgun
21 shell is going land relative to where the shooter was.

22 Q The question about using your patrol vehicle as
23 cover, you said you never considered that. Why not?

24 A That would be -- that would be probably outside
25 of what we trained and outside -- let me back up. Using a

1 patrol car for cover would be -- would be practical under
2 other circumstances, say a traffic stop or something like
3 that, where it's right next to you, or very close. Our
4 patrol cars we had parked a ways away, so to -- we would
5 have had to have gone and gotten them and, I guess, driven
6 them up there to use them for cover, so it just wasn't
7 practical for the situation we were in. And we were use
8 the buildings and the other vehicles that were already
9 present on scene that weren't patrol car as cover from
10 time to time.

11 Q And there was a question about whether you saw a
12 handgun on the suspect. I took that to mean the suspect
13 that came out the front door. Were you present when that
14 suspect came out?

15 A I was not present when the suspect came out. I
16 heard that there was a gun found out front. I did not see
17 that.

18 MR. FREEMAN: Okay. All right. Thank you.

19 THE COURT: Cross-examination?

20 MR. ST. GEORGE: I have no questions, Your
21 Honor.

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

23 THE WITNESS: Thank you, Your Honor.

24 (The witness was excused.)

25 MR. FREEMAN: Do you want another witness,

1 Judge, or do you want to take a break?

2 THE COURT: Yeah, let's take another witness,
3 and we'll break around 3:30.

4 MR. FREEMAN: Judge, at this time we have to
5 call a witness a little bit out of order to accommodate
6 their schedule, so we're going to call Dr.
7 Christopher Zaw-Mon.

8 CHRISTOPHER ZAW-MON, M.D.,
9 having been called as a witness on behalf of the People,
10 being first duly sworn, testified as follows:

11 THE COURT: Have a seat, please.

12 THE WITNESS: (The witness complied.)

13 DIRECT EXAMINATION

14 BY MR. FREEMAN:

15 Q Good afternoon, sir. Would you state your full
16 name and spell your last name for us.

17 A Christopher Zaw-Mon. Last name is spelled
18 Z-a-w, dash, M-o-n.

19 Q And, Mr. Zaw-Mon, how are you employed?

20 A I'm a trauma surgery at St. Anthony's Hospital.

21 Q And for how long have you been so employed?

22 A I have been a trauma surgeon there for 11 years.

23 Q Can you briefly describe what education you have
24 that qualifies you for your job.

25 A Four years of medical school, five years of

1 residency training, and then a year fellowship training in
2 trauma surgery, and then 11 years practicing trauma
3 surgery with the same group at multiple hospitals, but
4 mostly at St. Anthony's Hospital.

5 Q And in that period of time that you just
6 described, have you had the opportunity to treat persons
7 that have come in for gunshot wounds?

8 A Yes. Many.

9 MR. FREEMAN: Judge, at this point I would offer
10 Dr. Zaw-Mon as an expert in medical trauma.

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

12 THE COURT: Ladies and gentlemen, this witness
13 has been qualified as an expert in the area of medical
14 trauma.

15 Q (BY MR. ST. GEORGE) Doctor, I want to take you
16 back to the early morning hours of August 1st of 2016. Do
17 you recall working in your capacity as a trauma surgeon
18 when a patient came in with gunshot wounds by the name of
19 Eric St. George?

20 A Yes, I do.

21 Q And what was your -- what was your roll in
22 treating Mr. St. George as a patient at the hospital?

23 A I was the on-call trauma surgeon, so I
24 responded. All trauma activations I respond to within a
25 couple minutes. I evaluate the patient, make sure that

1 the patient is stabilized. If they're not, then it's my
2 job to stabilize them, basic kind of ABCs, airways,
3 breathing, circulation, evaluate to see if the patient
4 requires surgery, and then also contact any other surgical
5 services or medical services that the patient might need
6 to help with management and care of the patient.

7 Q And who was responsible for sort of the overall
8 care of Mr. St. George?

9 A Primarily me, however, the way that it works at
10 the hospital, we have a 24-hour call. I'm there for
11 24 hours straight, and then we have another physician that
12 comes on board the next day, and I'm not there all the
13 time, so we do share the responsibilities of taking care
14 of the patients, but initially I'm the primary caregiver.

15 Q And as part of that role, did you have direct
16 contact with Mr. St. George?

17 A I did, yes.

18 Q How much, would you estimate? How long do you
19 think you spent with him directly?

20 A Approximately -- you know, I'd have to go back
21 into the notes, but in general, for at least, I'd say,
22 30 minutes in initial evaluation when the patient comes
23 in, examining the patient, making sure that he's stable,
24 evaluating the wounds, and then after that time period,
25 going over all the imaging studies, which is after the

1 initial evaluation of the patient.

2 Q And -- sorry, I just want to grab something
3 here. Can you describe this injury for the jury?

4 A The patient has wounds to his lower extremities
5 below the knee. He had two wounds, I believe it was the
6 left lower extremity, and one wound to the right lower
7 extremity.

8 Q And when you say "lower extremity," could you be
9 a little more specific?

10 A So between the -- below the knee and above the
11 foot on both sides.

12 Q And can you -- are you able to differentiate an
13 entrance wound from an exit wound for a bullet?

14 A Not always. I'm not always able to tell if it's
15 an entrance or an exit wound. Considering that I did not
16 find any other wounds on the right leg, I assumed that the
17 right leg was an entrance wound. The patient did have, on
18 imaging, a bullet that was found in the bone of the right
19 leg, and there were no other wounds that I could find in
20 the right lower extremity, so I assumed that that is --
21 that was an entrance wound. As for the left leg, it's
22 difficult for me to determine which was the entrance or
23 the exit wound.

24 Q And just so we're clear, on the left leg, there
25 was two apparent gunshot wounds?

1 A Correct.

2 Q And you can't say with any certainty which one
3 was the entrance, or where the bullet went in, and which
4 one is the where the bullet went out?

5 A No.

6 Q Okay. Do you know if anything was done the
7 determine the defendant a blood alcohol level at the
8 hospital?

9 A Yes. We did check a blood alcohol level on the
10 patient.

11 Q And do you know what the results of that were?

12 A I don't know the exact number. It was elevated.

13 Q Okay. If I showed you a portion of medical
14 records, do you think that would help you -- help your
15 recollection?

16 A Um-hum.

17 MR. FREEMAN: She's going to show you page 4.

18 A So the blood alcohol level was 294.

19 Q (BY MR. ST. GEORGE) 294. Do you know what the
20 legal limit, at least for, say, drunk driving is in
21 Colorado?

22 A Well, that's -- that's definitely above the
23 legal limit for drunk driving in Colorado.

24 Q Okay. Is the legal limit .08 in Colorado?

25 A Yes, it is. Sorry. That's a different unit of

1 measurement. But with that unit of measurement, that is
2 above the legal limit.

3 Q And I was going and you about that. So if
4 Colorado, at least for DUI purposes, measures blood
5 alcohol in terms of per 100 milliliters of blood, that's
6 how we get the .08, what would a 294 be per hundred
7 milliliters of blood?

8 A You know, I don't -- I don't know the exact -- I
9 just go by the measurements that we have at the hospital.
10 I don't know the exact translation in terms of to the
11 other units.

12 Q Okay. Would it be a .294?

13 A Again, sorry, I don't know the exact change in
14 measurements.

15 Q Okay. As far as for your purposes, somebody
16 with a 294, is that person intoxicated? Can you tell us
17 what that means?

18 A Yeah. So that does -- that translates to the
19 patient being intoxicated, under the influence of alcohol.

20 Q And do you know what time that blood was taken
21 that was tested and found to be a 294?

22 A I don't know the exact time, however, it's
23 usually drawn within the first 10, 15 minutes of the
24 parent's arrival in the emergency room.

25 Q And do you know what time Mr. St. George arrived

1 in the ER?

2 A Not offhand, I do not.

3 Q Would the records, you think, help you?

4 A Sure.

5 Q All right.

6 MR. FREEMAN: Again, sorry. Thank you.

7 (Pause in the proceedings.)

8 A Sorry. There's a lot of notes here. I just
9 want to make sure I have the right time. So he arrived at
10 1:29 in the morning on, it looks like, August 1, 2016.

11 Q (BY MR. FREEMAN) All right. Thank you. Would
12 you mind --

13 MR. FREEMAN: Judge, I'm going to ask the
14 bailiff to hand him 66, 67, 68.

15 Q (BY MR. FREEMAN) Doctor, in taking a look at
16 66, '7 and '8, do you recognize those as photographs of
17 Mr. St. George and his injuries?

18 A Yes.

19 Q And do those appear to accurately reflect the
20 condition of those injuries when you saw them on the early
21 morning of August 1st?

22 A Yes.

23 Q Do those photographs appear to have been taken
24 at the hospital?

25 A They do.

1 MR. FREEMAN: Judge, move to introduce 66, '7
2 and '8.

3 MR. ST. GEORGE: I have no objection, Your
4 Honor.

5 THE COURT: 66, 67 and 68 are admitted.

6 (People's Exhibit was admitted into evidence.)

7 Q (BY MR. FREEMAN) In looking at the injuries
8 depicted on those photographs, can you tell anything about
9 the direction that Mr. St. George would have been facing
10 when he suffered any of those wounds?

11 A No. With gunshot wounds, it's very difficult
12 for me to determine the direction the patient is facing.
13 That's not really my expertise. I can't determine as to
14 where he might have been facing in terms of where those
15 wounds are.

16 Q Can you tell anything about the angle of entry
17 of either of the wounds as far as do they come in
18 relatively horizontal, or do they come in at an upward or
19 a downward angle?

20 A Again, no. I'm not able to determine the angle
21 at which the -- the gunshots -- the trajectory of the
22 bullets and the gunshot wounds. I -- that's not, again,
23 my field of expertise.

24 Q Can you tell, in looking at those, which of
25 those wounds was inflicted first?

1 A No, I cannot.

2 Q Can you tell relatively how close together those
3 gunshots wound were inflicted?

4 A No.

5 Q Would you expect one or both of though wounds to
6 bleed somewhat?

7 A Yeah, I would expect bleeding from, definitely,
8 both of those wounds. He did not have any vascular
9 injury. We did do imaging to evaluate on his main
10 arteries, but considering the -- just the mechanism in
11 terms of any gunshot wound to an extremity, you're going
12 to have a fair amount of bleeding.

13 Q How quickly after suffering those gunshot wounds
14 would you expect him to start bleeding?

15 A Immediately.

16 Q And how much would you expect him to bleed?

17 A It's difficult to say because it depends
18 on -- usually at the time of impact from any of these
19 gunshot wounds, there's going to be immediate bleeding,
20 but the body tends to have defense mechanisms to clot
21 within minutes. So unless he hits a large artery, some
22 patients could have a minimal of only about like 5 cc's of
23 blood. But, again, it depends on how much he's moving and
24 also on how much tissue damage has occurred from the
25 bullet.

1 Q And I think you said in this case no vascular
2 injury, so no arteries were struck?

3 A From what I -- if I could review my notes just
4 to confirm that. Sorry, let me -- so there was injuries
5 to the one of smaller vessels, however, the
6 primary -- there were two arteries that were -- that had
7 good flow to the foot, and, therefore, there was no
8 requirement for any surgical vascular intervention on the
9 patient.

10 Q And did he get -- did he need surgery to repair
11 any of his injuries?

12 A He did have a -- I have to -- we also have the
13 orthopedist see him for -- he did have a fracture, fibular
14 fracture. Let me just review what the orthopedist notes.
15 Yeah, so he had a fibular fracture. He was splinted, and
16 there were no indications for surgical intervention from
17 an orthopedic standpoint. So no requirements of any
18 vascular or orthopedic intervention.

19 Q And the projectile, or the partial projectile,
20 that was in his right leg, was that left in there?

21 A Yes, it was.

22 Q And did you personally get to have a
23 conversation with Mr. St. George and find out how he
24 obtained these injuries?

25 A Primarily -- in general, I didn't ask as to the

1 circumstances. You know, I feel that my job is to just
2 make sure that he doesn't have any other injuries and
3 evaluate the patient's pain and make sure that his pain is
4 controlled, make sure that he doesn't complain of any
5 other injuries that I need to be aware of from a surgical
6 standpoint. I did not, from what I remember, ask him as
7 to the details of how he had the gunshot wounds.

8 Q So you didn't and him how this happened?

9 A No, I did not.

10 Q And do you recall if police were present with
11 him in the ER?

12 A I do not recall.

13 Q You didn't need to know how he got the injuries
14 to treat him?

15 A No.

16 MR. FREEMAN: All right. Thank you.

17 THE COURT: Cross-examination?

18 RE CROSS-EXAMINATION

19 BY MR. ST. GEORGE:

20 Q Dr. Zaw-Mon, the difference between that BAL and
21 that BAC just really comes down to a function of moving a
22 decimal point, doesn't it? It's a matter of metric
23 system. One's over -- it's milliliters over deciliters
24 versus the other one is a fraction; is that not right?

25 A Sorry. Do you mean in terms of the intoxication

1 level, or the fact that there's the presence of alcohol in
2 the blood?

3 Q Those two different units of measure we were
4 talking about, one of them is measured in milliliters per
5 deciliter, and the other one is measured as a percentage.
6 So it just comes down to a function of moving the decimal
7 point, doesn't it?

8 A Well, I'd say it's similar to kind of like
9 Centigrade and Farenheit as to a conversion from one unit
10 to the other unit. And the units that we use in the
11 hospital are specific to, you know, how we evaluate
12 patients and their level of intoxication.

13 Q Okay. With someone with ethanol in their blood,
14 would that make their blood more viscous? Would it flow
15 better?

16 A No, not necessarily. There's no reason that
17 alcohol in blood would cause them to have the blood flow
18 better.

19 Q It would be thinner, though? It would bleed out
20 more?

21 A Not that I can -- I can't see a reason that that
22 would happen with alcohol in blood.

23 Q Okay.

24 A Sometimes you could have patients that are daily
25 users of alcohol, and they have cirrhosis, and that can

1 cause the blood, as you say, to be thin in terms of less
2 ability to clot. But acute intoxication with alcohol
3 shouldn't cause the blood to be thinner, as you put it.

4 Q Okay. To the best of your knowledge, was I
5 being given IV fluids?

6 A Yes, you were.

7 Q Would that make me appear a bit more sober than
8 I was in the hospital?

9 A That shouldn't, no. IV fluid shouldn't cause a
10 patient to be more sober if they have alcohol on board,
11 no.

12 Q It would just rehydrate me, though, wouldn't it?

13 A Correct. Correct.

14 Q And it would help as a blood expander to make
15 sure that --

16 A Absolutely, yes.

17 Q The mixture between ethanol and pain medication,
18 is there a synergistic reaction possible?

19 A Yes. Alcohol and pain medication would --
20 the two would cause for decreased awareness. It can -- I
21 mean, the main thing is that the pain medication is to
22 decrease some of our sensations and our ability to feel
23 pain, and alcohol does that as well.

24 Q Okay. How about confusion or memory loss?
25 Could those two things --

1 A Yes. There can be -- they can act to cause some
2 confusion. Pain medication, it can happen, but it's
3 pretty rare to cause memory loss from pain medication.

4 Q How about if you throw in severe trauma along
5 with it all?

6 A That's -- that can be, yes.

7 MR. ST. GEORGE: Okay. Appreciate your time. I
8 have no more questions.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MR. FREEMAN:

12 Q Just a point of clarification, Doctor. When you
13 talk about pain medications, are you talking about
14 narcotic pain medication such as morphine, Oxycontin,
15 something like that?

16 A Yes. That's usually what we give, narcotic pain
17 medication. I'd have to look at his chart, but we usually
18 will give either morphine or Dilaudid, which is a similar
19 narcotic, for pain medication, and that can cause -- as
20 said earlier, it can cause decreased sensation, decreased
21 awareness. It can cause confusion if there is enough
22 narcotics on board. For the most part, it doesn't cause
23 much in terms of memory loss, from my experience.

24 Q And when you're talking about the possibility of
25 confusion and memory loss, whether it's with alcohol or

1 with alcohol and pain meds, you're talking about narcotic
2 pain meds?

3 A Correct. Narcotics.

4 Q You're not talking aspirin?

5 A Correct.

6 Q So if somebody was only given aspirin, would you
7 expect them to see -- would you expect to see confusion,
8 memory loss, cognitive effects of their cognitive
9 functioning?

10 A No, I would not.

11 MR. FREEMAN: All right. Thank you.

12 THE COURT: Mr. St. George?

13 MR. ST. GEORGE: I have nothing further, Your
14 Honor.

15 THE COURT: Does anyone on the jury have a
16 question for this witness?

17 JUROR 32: I do, but I'm still writing it.

18 THE COURT: All right.

19 (Pause in the proceedings.)

20 THE COURT: Give us just a moment. If you could
21 be in the hallway, we'll be right there.

22 (The jury left the courtroom.)

23 THE COURT: Can you step down for a minute.

24 THE WITNESS: Sure.

25 (The witness was excused.)

1 THE COURT: Okay. So here is the question:
2 What other drugs were tested for in the blood toxicology
3 reports? What were the results, positive or negative?

4 MR. FREEMAN: Judge, I don't believe that this
5 witness has knowledge of that. We do have the
6 toxicologist that's going to be testifying, hopefully
7 today, that will answer those questions. So I would just
8 suggest the Court just say that is something for another
9 witness, something along those lines.

10 MR. ST. GEORGE: I don't know if -- I don't know
11 if he has the knowledge either. I mean, if he does, he
12 can answer, and if he doesn't have the knowledge,
13 then -- I have no objection to the question.

14 THE COURT: So I'm going ask in this case, are
15 you aware or do you know if tests were done for other
16 substances, what other drugs -- if tests were done for
17 other drugs. And if the witness knows, he can say yes,
18 and then I'll and what were the results, and if he knows,
19 he can say it. Otherwise, we'll wait for the next
20 witness. But I'm just going ask if he knows.

21 We'll have you back on the stand.

22 THE WITNESS: (The witness complied.)

23 THE COURT: We'll have our jury back in.

24 (The jury entered the courtroom.)

25 THE COURT: Okay. So everybody be seated.

1 Doctor, do you know if other drugs were tested
2 for toxicology?

3 THE WITNESS: I do not.

4 THE COURT: All right. As a result of the
5 jury's question, do either side have questions?

6 MR. FREEMAN: Not from the People.

7 MR. ST. GEORGE: No, Your Honor.

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

9 Ladies and gentlemen, we're going break for ten
10 minutes. Keep an open mind. Don't talk about the case.
11 Don't do any research. We'll see you back here in ten
12 minutes.

13 (The jury left the courtroom.)

14 THE COURT: Ten minutes.

15 (A recess was taken.)

16 THE COURT: We're going to call our jury.

17 (The jury entered the courtroom.)

18 THE COURT: All right. And as soon as we get
19 into the room, everyone can be seated, please. Be seated,
20 please.

21 You may call your next witness.

22 MS. DECKER: The People call Brian Fox.

23 BRIAN FOX,
24 having been called as a witness on behalf of the People,
25 being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. DECKER:

Q Good afternoon. Please introduce yourself to the jury, and spell your name for the court reporter.

A It's Brian Fox, B-r-i-a-n F-o-x.

Q What do you do for a living?

A I'm physician assist with the orthopedic trauma team at St. Anthony Hospital.

Q What does that mean to be a physician assistant?

A So we're trained to be an extension of the physician when the physician is not available. So we'll do everything that the physician can within the guidelines of the hospital bylaws in the physician's absence.

Q And were you working on August 1st of 2016?

A Yes.

Q And were you working that early morning?

A Yes.

Q Did you come into contact with a man named Eric St. George?

A Yes.

Q Can you describe the nature of that contact and what you were responsible for doing.

A We were called for what is called Level I adult trauma activation. When they call that, it's a general announcement over the hospital intercom, and we respond

1 down to whatever room in the emergency department that it
2 was called out to.

3 Q What did do you once you met with an Eric St.
4 George?

5 A We do an evaluation in conjunction with the
6 general trauma surgery service that's there, and our job
7 is to make sure there's no isolated orthopedic injuries,
8 and if there are any orthopedic injuries, we address those
9 as a team with the general trauma service.

10 Q So were you looking for orthopedic injuries?

11 A Yeah. We're looking for fractures predominantly
12 and some soft tissues injuries, which we'll treat in lieu
13 of the general surgery team.

14 Q Is Eric St. George in the courtroom today?

15 A Yes.

16 Q Can you identify him by where he's seated and
17 something that he's wearing?

18 A He's the gentleman in the black suit with the
19 dark tie.

20 Q And is he to my right, to your left?

21 A He's to my left.

22 Q Did I say it the opposite? To your left?

23 A Yeah, to my left.

24 MS. DECKER: Your Honor, please let the record
25 reflect that the witness has identify the defendant.

1 THE COURT: The record reflects.

2 Q (BY MR. FREEMAN) And when you met with
3 Mr. St. George, we've gotten into a little bit some of his
4 injuries, so I'm going to direct your attention to some of
5 his demeanor with you. Can you describe that for the
6 jury?

7 A When we first -- when I first met him, he was
8 not very cooperative. He didn't want to answer any of the
9 questions we had to ask, and he appeared to be rather
10 intoxicated at the initial assessment. So we asked all
11 the questions that we could to try to get information out
12 of him as to what happened with his injuries and where he
13 was injured, and then circled back around a short time
14 later, and I reviewed things again a second time where he
15 offered up a little bit more information as to what types
16 of medications he may or may not be taking, allergies,
17 where he was injured, what hurt, what didn't hurt.

18 Q You mentioned -- I'm sorry. You mentioned that
19 he didn't want to answer questions that you ask to ask.
20 What were those, per your recollection?

21 A Per my recollection, the initial questions were,
22 you know, what happened? How were you injured? How did
23 you get shot? And those were questions that he didn't
24 want to answer.

25 Q And you mentioned that he appeared to be under

1 the influence?

2 A Yes.

3 Q Can you describe what you observed in that
4 regard.

5 A He smelled of alcohol. He had slurred speech
6 when we saw him, and it was difficult to keep him awake
7 while we were having the initial part of the examination.

8 Q And was defendant on any medications at that
9 time?

10 A None that he admitted to and none that we were
11 aware of.

12 Q And did you administer any types of medications
13 upon contacting him?

14 A No. We don't give any medications directly.

15 Q And in reviewing the medical reports, was he
16 given medications?

17 A None that I was aware of. He arrived directly
18 from the ambulance, so he came directly from the ambulance
19 into that room. So the EMS crew gives a brief handoff,
20 and they didn't mention that he was on any medications
21 from the ambulance, and he hadn't received any yet because
22 we were there right when he showed.

23 Q And then so not giving -- not having medications
24 while in the ambulance, and then you had contact with him
25 as soon as he, essentially, got off the ambulance?

1 A Correct.

2 Q And then did you administer any medications
3 then?

4 A No.

5 Q And was he ever given any morphine or any other
6 narcotic at any point later that morning?

7 A Not in the time frame that I had -- not while I
8 was there with him.

9 Q And what was that time frame?

10 A The evaluation took probably 20 minutes.

11 Q And then after that 20 minutes, was he -- are
12 you aware of when he was first given a narcotic?

13 A It would be in his medical records. It's not
14 something that I have.

15 Q And were you able to review those medical
16 records?

17 A Yes.

18 Q And do you recall that he was first given
19 morphine at 7:40 a.m.?

20 A I believe so.

21 Q And then at 8:42 in the morning?

22 A I believe that's correct.

23 Q And then oxycodone at 11:10 a.m. and 7:28 p.m.
24 on the 1st of August?

25 A I'm not sure if it's the 1st or the 2nd. I'd

1 have to look at the medical record again.

2 MS. DECKER: If I may approach to -- or the
3 bailiff may approach to refresh Mr. Fox's recollection.

4 THE COURT: Yes.

5 A So it was on the 1st of August that he was given
6 the oxycodone.

7 Q (BY MS. DECKER) And that being at 11:10 a.m.,
8 7:28 p.m., and then again on the 2nd of August?

9 A That is correct.

10 Q And he was never given Valium; is that correct?

11 A No. It was ordered, but it was never
12 administered.

13 Q And just to be clear, with regard to morphine,
14 was it ordered that he be given morphine prior to when
15 that was actually administered at 7:40 a.m., but the
16 patient refused?

17 A Yes.

18 MS. DECKER: No further questions.

19 THE COURT: Cross-examination?

20 MR. ST. GEORGE: I have no questions, Your
21 Honor.

22 THE COURT: Does anyone on the jury have a
23 question for this witness?

24 (No verbal response.)

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

1 (The witness was excused.)

2 MS. DECKER: Your Honor, the People call Agent
3 Jeffrey Adams.

4 JEFFREY ADAMS,
5 having been called as a witness on behalf of the People,
6 being first duly sworn, testified as follows:

7 THE COURT: Have a seat, please.

8 THE WITNESS: (The witness complied.)

9 DIRECT EXAMINATION

10 BY MS. DECKER:

11 Q Good afternoon.

12 A Good afternoon.

13 Q Can you please introduce yourself to the jury,
14 and spell your full name.

15 A My name is Agent Adams with the Lakewood Police
16 Department, and my name is J-e-f-f-r-e-y A-d-a-m-s.

17 Q And I'm going you to ask you to slow down for
18 our court reporter, who is sitting right in front of you.
19 Can you explain to the jury what you do for the living.

20 A I'm a Lakewood patrol agent with the Lakewood
21 Police Department.

22 Q How long have you been working in that capacity?

23 A Two years.

24 Q And describe briefly your training and
25 experience in that role.

1 A It involves a six-month police academy and
2 three-month field training where we go out with a senior
3 agent, and they train us in the field, and continue
4 training throughout the year, in-service trainings every
5 year.

6 Q And do you have training and experience in
7 collecting various types of evidence?

8 A I do.

9 Q And, specifically, do you have training and
10 experience in collecting blood samples from suspects?

11 A I do.

12 Q I'm going draw your attention to August 1st of
13 2016, at 6:51 a.m. Were you working at that time?

14 A I was.

15 Q What happened at that time?

16 A I was dispatched to St. Anthony's Hospital to
17 relieve Agent McKalip, who was with an arrestee.

18 Q Was that arrestee, Eric St. George, in
19 Room 3231?

20 A Yes.

21 Q And what did you -- well, when did you go there
22 after receiving this call at 6:51?

23 A I was dispatched at 6:51 and went straight to
24 the hospital.

25 Q Once you got there, did you witness any blood

1 draws of the suspect, Eric St. George?

2 A I did. I witnessed three.

3 Q And were those blood draws taken at 7:01, 7:25
4 and 7:55 in the morning of August 1st?

5 A Yes.

6 Q And were you able to observe these blood draws
7 taken from the suspect, Eric St. George?

8 A Yes.

9 Q And did they appear to be taken appropriately?

10 A Yes. To the best of my knowledge, yes.

11 Q And were they taken been hospital staff there?

12 A They were.

13 Q And I'm showing -- or you have in front of you
14 what's been marked as Exhibit 326, 327 and 328.

15 I'm going draw you to the second, third and fourth pages
16 of each of those exhibits. Do you recognize the second,
17 third and fourth pages of each of those three exhibits
18 that you have?

19 A Yes.

20 Q And what do you recognize -- let's start with
21 the second pages of each of those exhibits we're talking
22 about. Generally, what does the second page of each of
23 those three exhibits represent?

24 A They are copies of the ChemaTox sheet that is
25 inside of a ChemaTox blood kit.

1 Q Describe for the jury what a ChemaTox blood kit
2 is.

3 A It's a -- it's a package that we use that's
4 prepackaged with the paperwork inside, the materials that
5 the phlebotomist, or whoever is drawing the blood, is
6 already inside. It's all in one unit. So we remove it,
7 we take out the parts that the phlebotomist is going to
8 use, give it to them, and we fill out the paperwork, and
9 we seal it and then submit it through the mail.

10 Q So you mentioned that there's a kit that you, as
11 the Lakewood police agent, has?

12 A Yes.

13 Q So did you arrive to the hospital with this kit,
14 or was it there ready for you?

15 A I arrived with three kits.

16 Q And once you arrived with these three kits, what
17 did you do with the contents inside of those kits?

18 A One by one, because they were done at three
19 different times, I removed the foam inside, took the kit
20 out, handed it to the phlebotomist, and filled out the
21 paperwork. And when I see the blood actually drawn from
22 the arm, I note the time, get the phlebotomist's name, and
23 put it all on the paperwork, reseal it immediately, put it
24 back into the container, and then hold onto it until I
25 completed all three.

1 Q And so in looking at the second page of each of
2 these three exhibits, is this what's called a chain of
3 custody form?

4 A Yes, ma'am.

5 Q And what type of information do you write down
6 on the chain of custody form?

7 A The name, the case report number, the name of
8 the person who the blood is being taken from, my name, the
9 name of the person who is taking the blood, the date and
10 time, where it was taken, all that information.

11 Q And do you initial it yourself or sign it
12 yourself with your badge number?

13 A Yes, ma'am.

14 Q And you also note the time of each draw; is that
15 accurate?

16 A Yes, ma'am.

17 Q On these chain of custody forms, do they have a
18 predesignated number at the top?

19 A They do.

20 Q And does that correspond with the box in which
21 you seal the blood that matches this chain of custody
22 form?

23 A Yes.

24 Q And so do you have three different
25 identification numbers for these three different blood

1 samples?

2 A Yes.

3 Q And do each of those identification numbers on
4 the chain of custody forms that you have match numbers on
5 the box top?

6 A Yes.

7 Q So describe for the jury, we're moving now to
8 the box top, page 4, what we're talking about. Page 4 of
9 each of the exhibits. So describe for the jury what
10 page 4 represents.

11 A Page 4 is a photocopy of the actual box itself,
12 the exterior with the markings on it.

13 Q And that corresponds -- do all three of these
14 exhibits that you have represent the blood draws that were
15 taken at 7:01, 7:25 and 7:55 from Eric St. George?

16 A Yes, they do.

17 Q On page 2, I'm going direct your attention to
18 the right bottom half of the page. Is this different from
19 when you actually write on the chain of custody form?

20 A Yes. That section of the form is called the
21 receipt verification. I don't fill out that part of the
22 form. That's for when it's received at the facility, they
23 fill that it out. So when I filled that out, it was
24 blank.

25 Q So to be clear, pages 2, 3 and 4 are what was in

1 your possession and control, except for the bottom right-
2 hand portion of page 2. Is that fair?

3 A Yes, that's correct.

4 Q And is that what the ChemaTox personnel would
5 write once they received the blood for testing?

6 A Yes.

7 Q Is the person whose blood was drawn at thee
8 times for testing in the courtroom today?

9 A Yes.

10 Q Where is he seated, and what is he wearing?

11 A He's seated at the defendant's table wearing
12 gray jacket.

13 Q Any other clarification? Maybe describe his
14 hair, given that I think there's --

15 A It's shoulder length.

16 MS. DECKER: Your Honor, please let the record
17 reflect this witness has identified the defendant.

18 THE COURT: The record reflects.

19 Q (BY MS. DECKER) Once you witnessed the three
20 blood draws to be taken, did you seal them back into their
21 boxes.

22 A Yes, I did.

23 Q What did you do with those three boxes?

24 A Immediately after being relieved from the
25 hospital, I deposited them correctly into the U.S. Post

1 Office box at Oak and Alameda.

2 Q Did you have further contact after the blood was
3 drawn those three times with the defendant?

4 A Very -- I was in the room with him, but it was
5 minimal contact.

6 Q And did you talk to him at all?

7 A I didn't ask him any questions.

8 Q Did you tell him anything?

9 A No. I notified him he was under arrest, per my
10 sergeant. That was -- that was it.

11 Q And to be clear, you were not responsible for
12 testing the contents of what was continues blood; is that
13 right?

14 A Yeah, that's correct. I don't test anything. I
15 just collect it.

16 Q And you just send that to ChemaTox Laboratories
17 for testing?

18 A Yes, ma'am.

19 Q And do you indicate on the chain of custody
20 form, which was page 2 of each exhibit, what type of
21 screens you would like?

22 A Yes.

23 Q Whether that be for drugs -- various types of
24 drugs or alcohol?

25 A Yes, ma'am.

1 Q And did you do that in this case as well?

2 A Yes.

3 Q So pages -- or Exhibits 326, 327 and 328, what
4 you recognize, are these fair and accurate representations
5 of the box tops instructions and chain of custody forms
6 that you had in relation to the three blood draws of Eric
7 St. George?

8 A Yes.

9 MS. DECKER: I have no further questions.

10 MR. ST. GEORGE: I have know questions for Agent
11 Adams.

12 THE COURT: Does anyone on the jury have a
13 question for this witness?

14 (No verbal response.)

15 THE COURT: You may step down.

16 (The witness was excused.)

17 MR. FREEMAN: Judge, we're going to call Agent
18 Lebsack.

19 MATTHEW LEBSACK,
20 having been called as a witness on behalf of the People,
21 being first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. FREEMAN:

24 Q Good afternoon. Would you state your full name
25 and spell it for us.

1 A Sure. It's Matthew Lebsack, L-e-b-s-a-c-k.

2 Q And, Mr. Lebsack, how are you employed?

3 A With the Lakewood Police Department.

4 Q And are you a peace officer?

5 A I am.

6 Q For how long have you been a peace officer?

7 A Four years.

8 Q And how much of that has been spent with

9 Lakewood PD?

10 A The whole time.

11 Q Drawing your attention back to the early morning
12 hours of August 1st of 2016, were you working at that date
13 and time?

14 A I was.

15 Q And what was your assignment?

16 A Patrol.

17 Q And as a patrol deputy, did you wear a uniform
18 similar to the one you're wearing now?

19 A Yes.

20 Q And did you drive a marked Lakewood PD patrol
21 vehicle?

22 A I did.

23 Q And in the early morning hours, were you paying
24 attention to radio traffic, indicating that there was sort
25 of a developing situation at the Windsor Apartments, I

1 think it's 8139 West Eastman Place, in the city of
2 Lakewood?

3 A I was.

4 Q At some point did you go to that location?

5 A I did.

6 Q Do you know about what time you got there?

7 A Maybe around 035 hours, roughly.

8 Q Okay. So that would be 12:35 a.m.?

9 A 12:35 a.m.

10 Q So early morning on the 1st?

11 A Yes.

12 Q Why did you go?

13 A Because I was getting ready to go off-duty, and
14 I was listening to radio traffic, and Sergeant Maines was
15 airing something about somebody with a gun, so, obviously,
16 causes some alarm, so started heading down there.

17 Q And did you have a partner with you in your
18 vehicle?

19 A No, not in my vehicle.

20 Q When you got there, did you go directory into
21 the complex?

22 A I did, yes.

23 Q And do you remember roughly where you parked
24 your vehicle or drove your vehicle?

25 A Yes. Roughly southeast of the apartment

1 complex, maybe 4 -- 450 feet, probably.

2 Q And why park there, as opposed to going right up
3 to where the other officers and Sergeant Maines were
4 located?

5 A Because it was a developing situation with the
6 gun involved, and I didn't want to be a target.

7 Q Did the other officers arrive at about the same
8 time as you?

9 A Yes.

10 Q And at some point, did you all start heading
11 north towards the location of the incident?

12 A Yes.

13 Q Did you go in sort of a group, or did you go as
14 individuals?

15 A As a group.

16 Q After you got there and you got out of your
17 vehicle, did you hear any gunshots?

18 A Yes, I did.

19 Q Where were you when you heard the first
20 gunshots?

21 A Literally, my hand was on that handle, shutting
22 my car door when I heard the gunshots.

23 Q And how many gunshots did you hear?

24 A I heard a total of six.

25 Q And did they sound like they came from the same

1 gun or different guns?

2 A Different guns.

3 Q Describe the first one that you heard.

4 A The first three were from the same weapon.

5 There was a loud shot, and based on my training and
6 experience, it was definitely a shotgun, and then the
7 second three that I heard was from a small-caliber pistol.

8 Q Did you eventually get up to the scene where the
9 shooting took place?

10 A Yes.

11 Q Can you estimate about how far away you were
12 from that scene as you're sitting there with your hand on
13 your door handle hearing those gunshots?

14 A 400 feet, maybe.

15 Q And just so we're clear, are you saying that you
16 heard three shotgun shots first, and then three smaller or
17 quieter shots?

18 A Yes.

19 Q How close together were those shots?

20 A Extremely close.

21 Q And what did you do when you started hearing
22 those?

23 A Running towards the sound.

24 Q Do you sometimes wear ear protection?

25 A At the range.

1 Q Not on this particular night or morning?

2 A No. The only thing I would have had as far as
3 anything that would have been remotely ear protection
4 would be been a little rubber earpiece, and that by no
5 means is ear protection.

6 Q As you started heading north, what happened
7 next? What did you see?

8 A Started going north, making our way towards the
9 sound of the shots. We found Agent Trimmer, who was
10 standing there. We huddled around her, kind of, made sure
11 she was okay, and she did a tactical reload, which is just
12 when you take out the magazine after firing a couple of
13 rounds just to make sure you have a full magazine in your
14 weapon. She was switching magazine out, and we made sure
15 she was okay. And then there was another agent closer to
16 the target house, to the residence. I think it was Agent
17 Frink. So he was by himself, so I moved up near him so
18 that we had somebody with him.

19 Q And what happened once you got up to where Agent
20 Frink was?

21 A Agent Frink was on -- we took cover behind a
22 car, a parked car in front of the residence. Agent Frink
23 was on the front end of car, and I was on the engine block
24 end. And just we took a position of cover there to
25 develop a plan of what we were going to do. And while

1 sitting there, I heard three more gunshots take place
2 inside the residence, and I aired that as they took place
3 each time.

4 Q How could you tell that they were taking place
5 inside the residence?

6 A Because I was probably from here to that wall,
7 so it was pretty close.

8 MR. FREEMAN: Ms. Louis, may we have People's 3
9 up, please.

10 (People's Exhibit 3 was published.)

11 Q (BY MR. FREEMAN) Taking a look at People's 3
12 and what's been identified as the building in which the
13 suspect unit was in, do you recognize this as an aerial
14 photograph of that building?

15 A Yes.

16 Q Would it help your testimony to go up there and
17 point out where you were when you heard this gunshot?

18 A Yes, it does.

19 Q Do you mind? There's a pointer right there on
20 the shelf next to you. Would you grab that?

21 A Sure.

22 Q First of all, if you could point out where you
23 first met up with Agent Trimmer.

24 A I met up with Agent Trimmer, it was either
25 somewhere over here or down here a little farther. I

1 believe it was over here. I moved over here, because
2 right in this area here is where a car was parked, and
3 that's where we took cover, Agent Frink and I, and the
4 residence being there. So we were very close.

5 Q And from that area where you were taking cover
6 by the vehicle, were you able to see the hallway or
7 where -- the area where you thought the front door was
8 located?

9 A Partial. There was a large pine tree in front.
10 Right from the tree -- it's the same tree right there, so
11 it kind of blocked the view. But I could see part of the
12 door and part of hallway, yes.

13 Q And from that location, is that where you were
14 when you heard the three additional gunshots?

15 A Yes.

16 Q And were you able to differentiate those as
17 being handgun fire or shotgun or rifle fire?

18 A Based on my training, I knew they were handguns,
19 or a handgun.

20 Q Handgun. Did it sound like they came from the
21 same gun or different guns?

22 A That's too hard to tell, because they came
23 from -- it sounded like they came from different parts
24 within the apartment, because they had a little muffled --
25 different muffled sound each time.

1 Q Okay. How far apart were these three shots?

2 A Minutes.

3 Q And are you sure that it was just three, or
4 could it have been more than three?

5 A Three, because every time it happened, I aired
6 it, so that way everybody on the outside the perimeter
7 knew that there were shots being fired at whatever.

8 Q Okay. And so you said you aired each shot?

9 A I did.

10 Q Okay. And you said you were able to see some of
11 the front door?

12 A I could see the top portion of the door.

13 Q And at some point, did it come to your attention
14 that someone was calling 911 from that unit asking for
15 medical?

16 A Yeah. I remember dispatch airing something
17 along those lines, yes.

18 Q And at some point, did it come to your attention
19 that that front door was opened?

20 A Yes.

21 Q Did you see it open?

22 A I saw it and heard it.

23 Q Okay. And so you saw it and heard it. What did
24 you hear?

25 A Well, I could just hear the door handle, and I

1 even aired the door is opening, and I saw the door open.
2 The top half of it swing open.

3 Q What happened when the door swung open?

4 A I saw a glimpse of dark-colored hair come out
5 and disappear, and from there, I started giving verbal
6 commands.

7 Q And what were the verbal commands that you gave
8 up?

9 A Hands up, show your hands, just repeated them
10 over and over loudly, and then I started moving towards
11 that hallway.

12 Q Was that the only time that that front door
13 opened -- was it the only time, when this person came out?

14 A Yes.

15 Q When this person came out, did you hear any
16 additional gunshots?

17 A After he was out?

18 Q After the door opened.

19 A No. No.

20 Q The person, did they comply with the commands?

21 A Yes.

22 Q From where you were situated, could you tell if
23 the person had anything in their hands?

24 A Initially, when they came out, all I could see
25 was dark hair, and then as they moved up, I saw around the

1 corner -- I saw a gun on the ground a short distance from
2 his hands.

3 Q Did you see how that gun got to that location?

4 A I didn't see how it got there. It was there.

5 Q Okay. Once that person came out, were they
6 taken into custody?

7 A They were.

8 Q Did you participate in that?

9 A Agent Frink took him -- took the person into
10 custody and drug him to the front of the house so he could
11 be treated by West Metro, and I covered Agent Frink
12 because we didn't clear the apartment yet. We had no idea
13 if there was anybody else inside. So I was more or less
14 security for the door to make sure nothing -- no one else
15 came out. Again, we had no idea if anybody else was in
16 there.

17 Q Did you ever go in the unit yourself to clear
18 it?

19 A Yes, I did.

20 Q And when did you do that in relation to when the
21 person was arrested?

22 A The person taken into custody, pulled out into
23 the front. West Metro got him, took him away. We got
24 more people on scene, and then we went inside and cleared
25 it quickly, and came back out.

1 Q I'm sorry. I left you up there. You can go
2 ahead and have your seat. Probably been sitting all day.

3 When you went to clear it, was there anybody
4 else inside the unit?

5 A No.

6 Q Did you see any evidence of what appeared to be
7 bullet strikes in the unit either on the floor, the walls,
8 the ceiling?

9 A I remember seeing one in the ceiling, but I
10 couldn't exactly tell you where it was, though. I don't
11 recall that part.

12 Q Was any part of your purpose in going into the
13 apartment to document evidence?

14 A No. Just to clear it and make sure there's no
15 other people inside.

16 Q Did you see any firearms in the --

17 A Yes.

18 Q What did you see?

19 A I saw a shotgun and blood.

20 Q And was that that near the back of the
21 residence?

22 A It was. Patio door.

23 Q When you noticed the gun on the ground near the
24 suspect, did you do anything to move it or secure it?

25 A Yes. I kicked the gun away because it was still

1 too close for comfort for me, so I did push it away with
2 my foot. And then once he was secured, then we moved back
3 a little bit until we could get more people up to the area
4 to get an entry team to clear it. I grabbed the gun
5 because I didn't want to leave the gun up in an area where
6 somebody could still be inside, brought the gun back and I
7 laid it near the pine tree that I was talking about
8 earlier.

9 Q Did you do anything to inspect the gun and see
10 if it was loaded, or things like that?

11 A No. I picked it up and took it up a little
12 closer -- and little farther away and set it back down on
13 the ground.

14 Q And after the suspect was taken into custody,
15 did you participate in a neighborhood canvas to try to
16 knock on doors to see if there was any neighbors that were
17 witnesses?

18 A Yes.

19 Q Without tell us what she might have told you,
20 was one of witnesses that you documented a Rebecca Gibson?

21 A Yes.

22 Q Do you recall, in your interview, indicating
23 that the person that came out had something in their hand,
24 and couldn't tell what?

25 A With Rebecca?

1 Q I'm sorry?

2 A With Rebecca?

3 Q No. No. Your interview, when you were
4 interviewed as part of the investigation in this case.

5 A Correct. Yeah.

6 Q Okay. And is that accurate that --

7 A Yes.

8 Q Other than the gun on the ground, when you could
9 actually get up to and see the suspect, did you see any
10 other objects --

11 A No.

12 Q -- in their hands or near them?

13 A No.

14 MR. FREEMAN: All right. Thank you.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. ST. GEORGE:

18 Q Agent Lebsack, when you arrived, did you arrive
19 along with Shube, Frink, Waller and Alfano?

20 A That sounds correct. There was several of us.

21 Q Okay. And you parked along with them?

22 A Yes.

23 Q And when you started hearing gunshots, you say
24 you hit the lock button and closed the door, right, at
25 that same moment you started hearing gunshots?

1 A Yeah. My hand was on the handle on the door
2 right as the gunshot was going off.

3 Q So you were at the car when you heard gunshot?

4 A Yes.

5 Q Did you hear Muller air, Shots fired?

6 A I don't recall.

7 Q Okay. Did you hear Sergeant Maines air, He's
8 got a shotgun?

9 A Yes.

10 Q You did hear that?

11 A Yes.

12 Q When you advanced up to Trimmer, did she tell
13 you, He shot, and I returned three times?

14 A She got -- when I've got to her, we asked her
15 what happened. She said, He shot at me. I shot back, and
16 I think I hit him.

17 Q Okay. And you said that you heard three shotgun
18 rounds and then three rounds from a pistol?

19 A Correct.

20 Q Okay. And then 15 minutes later -- I'm sorry.
21 Was it 15 minutes later that you were in front of the
22 house and you were -- you had taken position behind a car?

23 A Could have been ballpark, yes. Without looking
24 at that call transcript, I couldn't tell you exactly
25 15 minutes, but ballpark, probably.

1 Q And you say you heard shots inside the house?

2 A Yes.

3 Q And they sounded muffled to you?

4 A Yes, because they were indoors. Yes.

5 Q Okay. And you aired those over --

6 A I did.

7 Q -- your radio, right?

8 A I did.

9 Q Your call sign is 1037, right?

10 A That night, probably. I don't know what my call
11 sign was that night.

12 Q Do you guys rotate them?

13 A Yes.

14 Q Oh, okay.

15 A Given how long ago it was, I've had many call
16 signs, so I don't know what it was that night.

17 Q Fair enough. When you heard the first gunshot,
18 did you air, I just a heard a gunshot?

19 A Yes.

20 Q And when you heard the second gunshot, did you
21 air, Second shot, second shot?

22 A Yes.

23 Q Did dispatch repeat you?

24 A I don't remember. I don't recall.

25 Q When you heard a third gunshot, did you air,

1 Third shot, third shot, ground floor?

2 A Yes.

3 Q And did dispatch timestamp you 057 hours?

4 A I would assume they did. I hope so.

5 Q Okay. Did you hear the radio traffic shortly
6 thereafter when Sergeant Maines says, We've got more
7 gunshots?

8 A I don't recall.

9 Q You don't recall that. If I were to play the
10 radio traffic, would you recognize the voices on that
11 radio traffic?

12 A Probably. I'd give it a shot.

13 Q Okay. Let's do it.

14 (People's Exhibit 320 was published.)

15 Q (BY MR. ST. GEORGE) Do you recognize that man's
16 voice?

17 A Sergeant Maines.

18 Q Thank you.

19 (People's Exhibit 320 was published.)

20 Q So, Agent Lebsack, 430, that was Sergeant Maines
21 that night, right?

22 A Correct.

23 Q And did you hear him say -- after you had said,
24 Third shot, did you then hear him say, We've got more
25 gunshots?

1 A Yes.

2 Q So did it sound to you like there was a fourth
3 gunshot?

4 MR. FREEMAN: Objection, calls for speculation.

5 A No. Sounds like --

6 MR. FREEMAN: Objection. Don't answer.

7 THE COURT: Okay. I'm going allow the witness
8 to answer if he heard a fourth gunshot on what was played.

9 A I did not hear a fourth gunshot. Given how
10 close I was, Sergeant Maines was just repeating that I was
11 airing there were more shots fired.

12 Q (BY MR. ST. GEORGE) When I exited the front
13 door, you gave me immediate police commands, correct?

14 A Correct.

15 Q And I complied with those commands?

16 A Correct. You kept repeating the commands.

17 Q I repeated them over and over, didn't I?

18 A You did.

19 Q You knew that I heard you?

20 A Correct.

21 Q And then you aired that I was detained at 0100?

22 A I believe that was me, yes.

23 Q After all of this, you did a canvas of the
24 neighborhood, right?

25 A Of the neighbors right near your apartment. I

1 wouldn't say the neighborhood. I would say your very
2 close neighbors.

3 Q You spoke to a Rebecca Gibson?

4 A Yes.

5 Q Did you put in your report that she had --

6 MR. FREEMAN: Objection. Sounds like hearsay is
7 coming.

8 THE COURT: Right. You couldn't ask him what
9 she said.

10 (Pause in the proceedings.)

11 Q (BY MR. ST. GEORGE) So you did speak to Rebecca
12 Gibson?

13 A Correct.

14 MR. ST. GEORGE: Okay. I have no further
15 questions.

16 THE COURT: Redirect?

17 MR. FREEMAN: I don't have anything else, Judge.

18 THE COURT: Does anyone on the jury have a
19 question for this witness?

20 (No verbal response.)

21 THE COURT: You may step down.

22 THE WITNESS: Thank you.

23 (The witness was excused.)

24 MS. DECKER: The People call Dawn Carlstrom.

25 //

1 DAWN CARLSTROM,
2 having been called as a witness on behalf of the People,
3 being first duly sworn, testified as follows:

4 THE COURT: Have a seat, please.

5 THE WITNESS: (The witness complied.)

6 DIRECT EXAMINATION

7 BY MS. DECKER:

8 Q Good afternoon.

9 A Good afternoon.

10 Q Would you please introduce yourself to the jury,
11 and spell your name for the court reporter.

12 A My name is Dawn Carlstrom, C-a-r-l-s-t-r-o-m.

13 Q What's your occupation?

14 A I'm a forensic toxicology analyst.

15 Q What does that mean?

16 A Well, in my case, it means I test blood and
17 other bodily fluids for the presence of drug and alcohol.

18 Q And who do you do that for?

19 A I work for ChemaTox Laboratory in Boulder,
20 Colorado.

21 Q And what is ChemaTox Laboratory, and what's its
22 aim, and what does it do?

23 A We have different areas of ChemaTox. We have
24 more of a clinical, and then we have the forensic. And
25 the forensic is -- essentially, that's why I'm here. And

1 then the clinical does different tests for private parties
2 and so forth.

3 Q And can you just describe the term "forensic"
4 for us.

5 A Forensics basically is taking sciences and
6 helping law enforcement and, say, in medicolegal
7 investigations, and where I come in as a forensic
8 toxicology analyst is toxicology is one of sciences that I
9 provide toward helping with legal questions when solving
10 cases.

11 Q And so did you just state your title as a
12 forensic toxicology analyst? Is that your title, or do
13 you carry a different title?

14 A Forensic toxicology analyst.

15 Q Can you describe the subject matter of your
16 specialty.

17 A Could you be more specific?

18 Q Describe for the jury your training and
19 experience in what you do.

20 A I have a bachelor of science degree from
21 Michigan State University for forensic science. For
22 approximately 20 years after that, I worked in the
23 environmental field, because Michigan had a hiring freeze,
24 which was a real bummer. And during that process of
25 working in the environmental field, I was able to utilize

1 different types of instrumentation, the types that we
2 actually use in forensics.

3 So eventually my family moved out here. I got
4 hired at ChemaTox. And at that point, ChemaTox is really
5 good at training above and beyond. I was sent to a couple
6 different courses, Borkenstein courses, to gain knowledge
7 on the effect of alcohol and highway safety and the also
8 the effect of drugs of human performance and behavior. We
9 also attend different meetings on yearly or biyearly
10 basis, meetings involving society and forensic toxicology.
11 There are also forensic and other types of meetings that
12 we go to as well.

13 Q How long have you been practicing in this field?

14 A I've been with ChemaTox since December of 2013.

15 Q And you mentioned that ChemaTox is good at going
16 above and beyond in continuing your education?

17 A Yes.

18 Q And describe for the jury what you do on a daily
19 basis.

20 A Well, today was spent here in court. When I'm
21 not in court, I test samples and I prepare for cases,
22 basically.

23 Q When you say you test samples, describe how you
24 go about doing that?

25 A Well, it depends on the sample. In this case it

1 was -- I did the alcohol testing. So we utilize certain
2 types of instrumentation for alcohol testing. I also test
3 other types of drugs as well, cocaine, amphetamines, that
4 sort of thing, and we use different types of
5 instrumentation for that.

6 Q So you mentioned testing for drugs or alcohol.
7 Do you also render opinions?

8 A Yes.

9 Q And do you write reports on that?

10 A A lot of opinion letters.

11 Q Is that what you're saying, in this case you did
12 that?

13 A Yes.

14 Q And you mentioned that today you've spent in
15 this courthouse waiting testify?

16 A Correct.

17 Q Have you testified in cases prior to today?

18 A I have.

19 Q And have you testified as an expert in your
20 field?

21 A I have.

22 MS. DECKER: Your Honor, at this time the People
23 tender Dawn Carlstrom as an expert witness in the field of
24 blood analysis and forensic toxicology.

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

1 THE COURT: Ladies and gentlemen, the witness is
2 qualified as an expert in the areas of blood analysis and
3 forensic toxicology.

4 Q (BY MS. DECKER) Can you estimate how many blood
5 samples you have actually tested?

6 A For alcohol specifically, I've tested over
7 12,000.

8 Q And for something other than alcohol or for the
9 presence of drugs?

10 A Somewhere in the neighborhood of 1,500 to 2,000.

11 Q Can you describe the method of analysis you use
12 when testing blood samples.

13 A What types of samples? For what?

14 Q For the presence of alcohol first, and then if
15 you would go on and explain for the presence of drugs.

16 A For alcohol specifically, we utilize something
17 called a heated headspace/gas chromatography/flame-
18 ionization detection. There are three things in there.
19 Alcohol is volatile, which means it's very light, and it
20 dissipates. So what we do is we actually prepare a
21 sample, and we put it in a special type of vial, put it on
22 the heated headspace auto sampler, where if alcohol is in
23 there, it will volatilize. That vapor is removed, put
24 into the gas chromatograph. There it undergoes what's
25 known as separation, and that will go into the flame-

1 ionization detector where basically it is burnt, which
2 ionizes it, and that signal is compared to the other
3 calibration.

4 As far as the other types of drugs I analyze or
5 check for, I use something called LC tandem mass spec, and
6 I also use GC-mass spec.

7 Q Are these methods -- without getting into what
8 that means for the drugs, are these methods approved by
9 the Colorado Department of Public Health?

10 A Yes.

11 Q And has your lab, ChemaTox Laboratory, been
12 certified by the Colorado Department of Public Health to
13 conduct these alcohol and drug tests on blood samples?

14 A Yes.

15 Q And was it so certified in 2016, and
16 specifically the month of August?

17 A Yes, it was.

18 Q So I'd like to talk about your involvement in
19 this case. Did you get a request to test three blood
20 samples with regard to this case?

21 A Yes, we did.

22 Q And did you get three, actually, draws sent to
23 your laboratory that you then tested?

24 A We had three blood kits submitted.

25 Q And you in front of you Exhibits 326, 327 and

1 328.

2 A Yes.

3 Q And do you recognize these three packets?

4 A Yes, I do.

5 Q And what do you recognize these three packets to
6 be?

7 A Well, the top is basically a report which is
8 generated once we have results. The other attached forms
9 are a submission form, which basically gives the
10 information on the defendant. It also has like time of
11 draw, and that sort of thing. Also, what's interesting
12 about each individual kit is it has something called a
13 seal number, and those are individualized for each kit
14 that we receive. So those are also on the submission form
15 and on what is called a box top. And all that helps us
16 reference where the blood sample actually came from.

17 Q And you mentioned "on the submission form." Is
18 that also what's called a chain of custody form?

19 A Yes.

20 Q And on the box top, is that what you receive
21 when you first get it in the mail?

22 A It's a copy of the actual blood kit, the box
23 itself.

24 Q And you mentioned that there's a seal number
25 both on the chain of custody, which you call submission

1 form, as well as the box top?

2 A Yes.

3 Q And do those correspond with one another?

4 A Let check them all here one moment. Yes, they
5 do.

6 Q And then do you place this seal number on a
7 report that you prepare after testing the blood samples
8 that correspond to those numbers?

9 A Well, what ChemaTox does is we actually assign
10 it also a unique six-digit identifier, in addition to the
11 number that is assigned to the kit. So the seals -- or
12 the ChemaTox numbers are printed out as these samples are
13 logged in, and they are hermetically transferred to the
14 report itself.

15 Q And can you tell whose blood these draws relate
16 to?

17 A Yes.

18 Q And who is that person?

19 A Eric St. George.

20 Q So did you receive these documents in that box
21 with the blood vials?

22 A Yes, we did.

23 Q And so once you received these three blood
24 vials, what did you do?

25 A Well, I am not the one who actually receives the

1 samples. We actually have people that will do that. They
2 will basically take the samples and check to make sure all
3 the pertinent information is on the submission form,
4 request for analysis, chain of custody, whatever you want
5 to refer to it as, and they'll make sure that there is
6 plenty of blood for test, make sure everything is filled
7 out as it should be, if there are points of continuity in
8 the chain of custody, and they will enter this information
9 into the database itself.

10 From there, the samples are refrigerated, and
11 when it's time for me to actually do the samples, I'll
12 print out a list, and they will open the refrigerator and
13 retrieve them and run them.

14 Q And do you do anything to ensure that the seals
15 are, intact?

16 A That would be the first people that get to the
17 samples.

18 Q And if something were tampered with or appeared
19 out of the ordinary, would that be noted on page 2 of
20 these exhibits, on the bottom right-hand section --

21 A Yeah.

22 Q -- in the chain of custody submission form?

23 A Right. Yes, there's an area for receipt
24 verification. There would be notes there.

25 Q And, specifically, there would be notes that say

1 this is odd or something that's out of character, correct,
2 if the seals were not intact?

3 A Yes.

4 Q And was there any sign of tampering with any of
5 these seals?

6 A None that was noted.

7 Q Was the equipment working properly when you
8 tested these three vials of blood?

9 A Yes.

10 Q And when you tested the first sample, did you do
11 more than just a blood alcohol test?

12 A I personally did not do more than just a blood
13 alcohol test, but there was a drug screen done on it by
14 another individual.

15 Q And is it characteristic that when there are
16 three blood draws done that, on the 11-panel screen, the
17 drug analysis is done first?

18 A Yes.

19 Q And did you do that -- your agency do that in
20 this case?

21 A Yes, we did.

22 Q Are these three Exhibits, 326, 327 and 328, fair
23 and accurate representations of what you received in the
24 mail, marked down on the chain of custody or the
25 submission form, and then the results?

1 A Yes, they are.

2 MS. DECKER: The People move to admit 326, 327
3 and 328.

4 MR. ST. GEORGE: I have no objection, Your
5 Honor.

6 THE COURT: 326, 327 and 328 are admitted.

7 (People's Exhibit 326 through 328 were admitted
8 into evidence.)

9 Q (BY MS. DECKER) Can you explain for the jury,
10 or tell the jury, the -- with regard to blood alcohol
11 levels, what the blood alcohol levels were with regard to
12 the first, second and third blood draws.

13 A The first blood draw was .139 grams of alcohol
14 per hundred milliliters of blood. The second one
15 was .125 grams of alcohol per hundred milliliters of
16 blood. The third was .118 grams of alcohol per hundred
17 milliliters of blood.

18 Q And based on what you just relayed with regard
19 to the blood alcohol results, it appears that they're
20 going down. Were these samples taken at different times?

21 A Yes, they were.

22 Q And can you explain to the jury what times they
23 were taken at?

24 A Let's see. They were approximately a half hour
25 apart. The collection for the first one was 7:01 in the

1 morning, the second was 7:25 in the morning, and the third
2 draw was 7:55 in the morning.

3 Q And are these results expressed in grams of
4 alcohol per 100 milliliters of blood?

5 A Yes, they are.

6 Q I'm going to draw your attention to the first
7 blood draw, which corresponds to the vial taken at
8 7:01 a.m. Is that the vial for which the drugs were
9 tested for?

10 A Yes, it is.

11 Q And can you describe for the jury the results
12 there.

13 A The drug screen tested out as none detected, and
14 then alcohol, of course, was detected at .139.

15 Q So would that be consistent with no narcotics
16 being in the person's system at 7:01 a.m.?

17 A Yes, that we test for.

18 Q I'd like to talk about how you're able to
19 determine someone's blood alcohol level at a time prior to
20 a blood draw. Can you describe for the jury how you're
21 able to do that?

22 A Basically, alcohol undergoes something called
23 absorption, distribution, metabolism and elimination.
24 Now, the absorption portion, I can take a drink, it can
25 vary, 50 minutes to an hour. Once the alcohol is fully

1 absorbed, the liver actually goes through the elimination
2 process at a fairly consistent rate, which is what is
3 known as zero order kinetics. What that means, various
4 research has shown, that on average, an individual will
5 eliminate alcohol at anywhere from .01 to .02 grams of
6 alcohol per hour.

7 So if you think of it kind of like a bathtub
8 full of water, you can pull the drain, and no matter how
9 much water is in bathtub, it will drain at a constant
10 rate. And that's somewhat what alcohol will do at in the
11 body. So, in theory, if you know an individual is fully
12 absorbed and they are eliminating alcohol, you can take a
13 point of time, assuming that they were fully absorbed and
14 eliminating and time passed, and you can go back,
15 utilizing either results from what is known as a felony
16 draw or an average of .015, and estimate what the alcohol
17 would be at the time of a specific incident.

18 Q Is that called an extrapolation?

19 A Yes.

20 Q And were you able to perform an extrapolation to
21 determine Eric St. George's blood alcohol level at a
22 certain point in time?

23 A Yes.

24 Q Describe for the jury how you were able to do
25 that in terms of the materials you relied upon.

1 A Well, we have these requests for analysis,
2 submission forms, so we had -- and I also had police
3 reports and all as well. So I was told to extrapolate
4 back to a certain time. So what we do is we have the
5 three blood draws, we have the times of the blood draws.
6 This kind of gets complicated without writing it all down.
7 I apologize for that. So it helps when you have like
8 three blood draws, because you can see the intervals
9 between each. In this particular case, it looked like
10 there may have been an IV in between, so the intervals
11 were different from what I would expect. However, between
12 the first and the third is what we used. So we have a
13 range between the first and third blood draw, and then you
14 have hours, an hour between the first and the third blood
15 draw. So you have that blood draw amount, you have the
16 time amount. So you divide the time into the blood draw,
17 and you get an average elimination rate. In this case, it
18 was like a .023, I believe.

19 So then you have that .023. You determine the
20 first blood draw -- the difference between the first blood
21 draw and the time of incident, the reference point, so you
22 get an hours amount from that. You multiply that point
23 times the elimination rate that was calculated. This is
24 kind of complicated. I apologize. So you a value that,
25 in theory, was eliminated in that time frame.

1 You have the first blood draw, in this
2 case .139. You have something called acceptable variance,
3 which is what the lab has determined it could -- a range
4 that the blood is probably by within. In this case, the
5 accepted variance is .007. So you have .132 and .146.
6 You take that amount that you calculated with the hours,
7 and you'd add that to each -- each portion of that range,
8 and then you get an amount from there. And it's usually
9 only done to two significant figures, because it is an
10 estimation. It realizes upon accurate information given
11 at the time. It assumes that the defendant was fully
12 absorbed at that time as well.

13 Q Were you able to discern a specific blood
14 alcohol content level at a specific time on August 1st of
15 2016 that you extrapolated back to?

16 A Yes.

17 Q And what was that blood alcohol level, and what
18 was that specific time that you extrapolated back to?

19 A I would need a copy of the retrograde in order
20 to --

21 Q And would you need a copy of your report?

22 A Just the retrograde extrapolation would be fine.
23 I also have my own copy, if that helps.

24 Q And do you recall that being a .28 to .29?

25 A Yes.

1 Q Can you explain to the jury the effects of
2 alcohol on the body generally, the seven stages?

3 A Basically, a researcher by the name of Kurt
4 Dubowski came up with a nice little chart that we forensic
5 people like to reference, and what he did is he did
6 research on individuals at various stages of alcohol
7 intoxication. So it starts anywhere from subclinical all
8 the way up to coma and then death.

9 Basically, alcohol is central nervous system
10 depressant. The more you drink, the slower your body
11 produces -- or reacts in general. It usually starts with
12 emotional, emotional impairment, anything from euphoria to
13 feeling kind of relaxed, all the way down -- up to
14 emotional instability, loss of critical judgment, all the
15 way to respiratory effects and death. So that is
16 basically what that chart encompasses, the whole thing.
17 You start out with the emotional impairment, and then you
18 start out having the physical impairment as you become --
19 as your BAC rises.

20 Q You mentioned that the defendant, Eric St.
21 George, was at a .28 to .29. And was that at 12:44 a.m.?
22 If you need a copy, I can grab it.

23 MS. DECKER: If I may have the bailiff approach.

24 A Thank you. Do you have my retrograde, or can I
25 pull that out in my notes?

1 Q (BY MS. DECKER) You can refer to your notes if
2 that helps you.

3 THE WITNESS: Is that all right, Your Honor?

4 THE COURT: Yes.

5 A Okay. The incident that I -- or the time that I
6 used to calculate the retrograde is 12:44 a.m.

7 Q (BY MS. DECKER) And so describe -- you
8 mentioned there are various stage of intoxication. Can
9 you describe the stage that you believe the defendant to
10 have been at, at 12:44 a.m.?

11 A Well, the stages overlap. So in this particular
12 case, it would be confusion and stupor at .27 to .29.
13 Confusion has to do with the mental confusion, exaggerated
14 emotional state. You would expect slurring of speech,
15 difficulty walking, so forth. Whereas, the stupor is even
16 more influence in that nature. Somebody could --
17 basically, it involves a lot of confusion. They are not
18 real sure where they're at, what's going on, and it gets
19 worse as the BAC rises.

20 Q And can there ever be downgraded effects in
21 individuals, and can you describe what that means?

22 A Well, there's some individuals that they don't
23 always show all the things listed in terms of the chart
24 that I reference on occasion. There are individuals that
25 are more -- their bodies have developed tolerance to

1 alcohol consumption. So, okay, fine, maybe they won't be
2 staggering as much, but there will still be some types of
3 impairment. So you may not notice all of things.

4 Q With regard to the stages of intoxication, how
5 would the .28 or .29 differ from the .139 from that first
6 vial?

7 A Well, just the level of impairment. The .139 is
8 more in the excitement stage, so you would have emotional
9 instability, lack of critical judgment, impaired
10 perception, memory, comprehension. You would have some
11 staggering and so forth. You go up from there, the mental
12 impairment was greater. You would have somebody that has
13 difficulty walking, difficulty with cognitive functions,
14 psychomotor functions. Again, it just gets worse as you
15 go.

16 Q And I'm going draw your attention to
17 Exhibit 326, the drug screens. Can you explain for the
18 jury what drugs these test for.

19 A We do a standard 11 panel, which is -- would you
20 like me to read them off.

21 Q Yes.

22 A All right. Barbiturates, benzodiazepines,
23 cannabis, carisoprodol, cocaine metabolites, fentanyl,
24 methamphetamine, MDMA, opiates, oxycodone, tramadol and
25 Zolpidem. Those are the 11 types of classes of drugs that

1 we look for. Like, for instance, cocaine metabolite could
2 be cocaine, it could be co-ethylene, which is when you
3 have alcohol and cocaine, it could be a metabolite with
4 benzo and ethylene.

5 So it will just give you the basics, and from
6 there, we actually have confirmation testing, so if
7 anything does test positive on the mass spec, either
8 LCM-SMS or GCMS.

9 Q (BY MS. DECKER) You mentioned oxycodone is
10 clearly listed. Any other narcotics like morphine or
11 Valium that aren't listed under the drug name but that
12 this would detect?

13 A Opiates, for instance, you can find a morphine,
14 codeine, hydrocodone, hydromorphone would trigger the
15 opiate if it were high enough in the system.

16 Q And does Valium go under that title as opiates
17 as well?

18 A Yes, it does. It can. Well, let me -- yes, I
19 think so. I don't know. I get confused whether it's
20 hydrocodone or oxycodone. It either under the opiates or
21 the oxy's.

22 Q And the legal limit being a .084 for being drunk
23 while driving, can you explain for the jury if you can say
24 how many drinks it takes to get there, or if it depends on
25 the person.

1 A Depends on the person, their weight. Say a
2 190-pound guy. Basically, each drink will raise the blood
3 level .02 per hours. So a .08 would be four drinks, for
4 instance. A .228 would be, say, 14 drinks at 190 pounds.

5 MS. DECKER: I have no further questions.

6 THE COURT: Cross-examination?

7 MR. ST. GEORGE: I have no questions for
8 Ms. Carlstrom.

9 THE COURT: Does anyone on the jury have a
10 question for this witness?

11 (No verbal response.)

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

13 (The witness was excused.)

14 THE COURT: So we're going break for the
15 evening. Ladies and gentlemen, let's be here at 8:30.
16 Hopefully our parking will be a little easier tomorrow.
17 There was another big jury being picked for a two-week
18 trial, so there were lot of other jurors here, and we have
19 docket. So I'm hoping parking will be better for you.

20 I think we might get a little bit of snow. I
21 don't think it's supposed to be enough, but, of course,
22 you can all check in to see if there's any kind of delay.
23 That rarely, if ever, happens. So we expect you to be
24 here at 8:30, and we'll resume right away.

25 Please keep an open mind. Don't talk about the

1 case. Don't do any research.

2 (The jury left the courtroom.)

3 THE COURT: Okay. If everybody can be here
4 about 8:20. I am beginning to look for jury instructions.
5 I do have a set from the People.

6 And, Mr. St. George, I'm going to be looking for
7 your set. So I don't know if you've started your jury
8 instructions, Mr. St. George.

9 MR. ST. GEORGE: So, Your Honor, I actually
10 intended to have those typed up and prepared for you, but
11 we've run into an issue I've had quite a few times here in
12 the past. The jail's computers don't seem to function
13 very well. None were available, as they were all down.
14 And so I do have -- my jury instructions are primarily
15 straight from the COLJI.

16 THE COURT: Okay.

17 MR. ST. GEORGE: And I -- and then I have one
18 other additional jury instruction, if need be. I mean, I
19 just --

20 MR. MENGES: Judge, if he just gives you the
21 COLJI instruction number, do you have the current COLJI --

22 THE COURT: You can give us a list of numbers.

23 MR. ST. GEORGE: Okay. You're satisfied with
24 that?

25 THE COURT: That's fine. At least we can get an

1 idea of what you're going to be asking the Court for.

2 MR. ST. GEORGE: At the very worst, I'll
3 handwrite if I simply can't get to a computer, which it
4 may be the case.

5 THE COURT: Okay.

6 MR. FREEMAN: And, Judge, we may be able to
7 generate them as well. I think the main things we're
8 looking for as early as possible are, A, a theory of the
9 case -- proposed theory of the case instruction, and also
10 whether he's going to ask for any lessers.

11 THE COURT: I'm sorry. You were looking for
12 theory of the case and --

13 MR. FREEMAN: Theory of the case and whether
14 he's going to ask for any lessers. If there are certain
15 instructions that he wants us to pull, we might be able to
16 do that. We, obviously, pull them all the time.

17 THE COURT: Okay. And then I have -- you gave
18 me any number of defenses, and I'm not sure which ones you
19 want to use, so -- and the impact on certain of the
20 elements of intent would trigger a lot of other
21 instructions, so that's why you have to get them to me.

22 Okay. We'll see everyone back here tomorrow
23 around 8:20.

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

25 (The proceedings concluded at 5:02 p.m.)

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 17th day of
8 February, 2019.
9

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11 

12 RICHAEAL M. SILVIA
13 Registered Professional Reporter
14 Certified Realtime Reporter
15 Colorado Realtime Certified Reporter
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*This is an electronically signed transcript.