

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

DATE FILED: February 25, 2019 5:07 PM

Plaintiff:
PEOPLE OF THE STATE OF COLORADO

^FOR COURT USE ONLY^

v.

Defendant:
ERIC JAMES ST. GEORGE

Case No. 16CR2509
Division 1

REPORTER'S TRANSCRIPT

The Jury Trial in the above-entitled matter recommenced on February 6, 2018, before THE HONORABLE LILY OEFFLER, Judge of the District Court.

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

A P P E A R A N C E S

For the People:

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

For the Defendant:

ERIC ST. GEORGE, PRO SE

For the Defendant (Advisory Counsel):

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

I N D E X

	WITNESSES	PAGE
	For the People:	
	ERIC YINGLING	
	DIRECT EXAMINATION BY MR. FREEMAN	16
	CROSS-EXAMINATION BY MR. ST. GEORGE	29
	REDIRECT EXAMINATION BY MR. FREEMAN	30
	DAVID WALLER	
	DIRECT EXAMINATION BY MS. DECKER	31
	CROSS-EXAMINATION BY MR. ST. GEORGE	42
	REDIRECT EXAMINATION BY MS. DECKER	44
	JEFFREY DELGADILLO	
	DIRECT EXAMINATION BY MR. FREEMAN	46
	CROSS-EXAMINATION BY MR. ST. GEORGE	65
	REDIRECT EXAMINATION BY MR. FREEMAN	68
	RECROSS-EXAMINATION BY MR. ST. GEORGE	70
	GORDON LAWCOCK	
	DIRECT EXAMINATION BY MS. DECKER	71
	CROSS-EXAMINATION BY MR. ST. GEORGE	82
	REDIRECT EXAMINATION BY MS. DECKER	83
	KERI POKORNY	
	DIRECT EXAMINATION BY MS. DECKER	85
	CROSS-EXAMINATION BY MR. ST. GEORGE	99
	SHARON POKORNY	
	DIRECT EXAMINATION BY MS. DECKER	101
	CROSS-EXAMINATION BY MR. ST. GEORGE	112
	REDIRECT EXAMINATION BY MS. DECKER	115
	DEBBIE MALMSBERRY	
	DIRECT EXAMINATION BY MR. FREEMAN	119
	DANIEL SHUBE	
	DIRECT EXAMINATION BY MS. DECKER	129
	CROSS-EXAMINATION BY MR. ST. GEORGE	149
	REDIRECT EXAMINATION BY MS. DECKER	152
	REBECCA GIBSON	
	DIRECT EXAMINATION BY MR. FREEMAN	155
	CROSS-EXAMINATION BY MR. ST. GEORGE	170

I N D E X

WITNESSES	PAGE
For the People:	
TODD FAHLSING	
DIRECT EXAMINATION BY MR. FREEMAN	172
MICHAEL BERUMEN	
DIRECT EXAMINATION BY MS. DECKER	186
PATRICK LONE	
DIRECT EXAMINATION BY MS. DECKER	192
TIMOTHY GIDEON	
DIRECT EXAMINATION BY MR. FREEMAN	205
CROSS-EXAMINATION BY MR. ST. GEORGE	260
REDIRECT EXAMINATION BY MR. FREEMAN	275
RE CROSS-EXAMINATION BY MR. ST. GEORGE	276
FURTHER REDIRECT EXAMINATION BY MR. FREEMAN	278
FURTHER RE CROSS-EXAMINATION BY MR. ST. GEORGE	281
JASON FRINK	
DIRECT EXAMINATION BY MS. DECKER	284
CROSS-EXAMINATION BY MR. ST. GEORGE	297
REDIRECT EXAMINATION BY MS. DECKER	301
DARREN MAURER	
DIRECT EXAMINATION BY MR. FREEMAN	303

E X H I B I T S

People's Exhibits:
NUMBER

DESCRIPTION

PAGE

1		
2	People's Exhibits:	
3	7 Diagram of interior of apartment	215
	100 Photograph	235
4	101 Photograph	235
	102 Photograph	235
5	103 Photograph	235
	109 Photograph	219
6	110 Photograph	219
	111 Photograph	219
7	113 Photograph	219
	114 Photograph	219
8	116 Photograph	219
	126 Photograph	270
9	127 Photograph	270
	231 Photograph	230
10	232 Photograph	230
	236 Photograph	226
11	237 Photograph	226
	238 Photograph	226
12	239 Photograph	226
	240 Photograph	226
13	241 Photograph	226
	242 Photograph	231
14	243 Photograph	231
	244 Photograph	231
15	245 Photograph	235
	246 Photograph	235
16	265 Photograph	242
	266 Photograph	242
17	267 Photograph	242
	268 Photograph	242
18	269 Photograph	242
	270 Photograph	242
19	271 Photograph	242
	272 Photograph	242
20	273 Photograph	242
	274 Photograph	242
21	276 Photograph	242
	278 Photograph	250
22	279 Photograph	250
	281 Photograph	250
23	282 Photograph	250
	283 Photograph	250
24	284 Photograph	250
25	285 Photograph	250

E X H I B I T S

People's Exhibits:
NUMBER

DESCRIPTION

PAGE

286	Photograph	250
287	Photograph	250
288	Photograph	250
289	Photograph	250
290	Photograph	250
291	Photograph	250

1 PROCEEDINGS, TUESDAY, FEBRUARY 6, 2018, 8:28 A.M.

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

4 THE COURT: People v. Eric St. George, 16CR2509.

5 MR. FREEMAN: Mike Freeman and Katharine Decker
6 on behalf of the People.

7 MR. ST. GEORGE: Eric St. George, on behalf of
8 himself.

9 MR. MENGES: Peter Menges appearing as advisory
10 counsel.

11 MR. FREEMAN: Judge, one of our anticipated
12 witnesses that we probably would have called today is
13 Lakewood Agent Ryan McKalip. He was on our witness list.
14 I just learned last night that he is no longer with
15 Lakewood PD, and he has actually moved to the state of
16 Indiana. I don't have a great explanation to the Court as
17 to why I just learned that last night, but there's been a
18 breakdown in communications. Usually we get notified much
19 earlier when a witness that we send a subpoena to is no
20 longer with an agency.

21 A couple weeks ago, Mr. Menges did send me a
22 list of witnesses that the defendant wanted to call in his
23 case, and I had indicated if any of those witnesses were
24 witnesses that we intended to call --

25 THE COURT: Hold on. Okay. Go ahead.

1 MR. FREEMAN: -- that we intend today call that
2 there was no need for them to subpoena them because we
3 would either call them ourselves or make sure they were
4 here, and Agent McKalip was one of those witnesses. So in
5 light of the fact that he is in Indiana, it would probably
6 cost over a thousand dollars just to get him in here in
7 such short notice, I don't think we intend to call him at
8 this point.

9 If the defendant wants to call him, obviously,
10 it's complicated a little bit, we would be willing to have
11 him testify via phone or Skype. We have communicated with
12 him, and he's willing to do that. He's willing to come
13 here as well, obviously, if somebody pays for it.

14 So I just wanted to put that out there and let
15 the Court know and the defendant know as soon as we knew
16 the situation of what was going on. And if the Court
17 wants to see his report, I'm happy to --

18 THE COURT: Could you show many me his report?

19 MR. FREEMAN: Sure.

20 THE COURT: And then since this is new to
21 Mr. St. George, I'll give you some time to think about it.

22 And so with this news, you're not going to call
23 him?

24 MR. FREEMAN: We're not planning on flying him
25 out, Judge, so no, we're not going to call him.

1 THE COURT: Okay. Give me a moment.

2 (Pause in the proceedings.)

3 THE COURT: Okay. I have read through this
4 report. And, Mr. St. George, I'm not going to ask you
5 what you want to do right now. I'm going to give you some
6 time to talk.

7 MR. ST. GEORGE: Thank you, Judge.

8 (Pause in the proceedings.)

9 THE COURT: So I'm going on the record to let
10 people know that early this morning, Juror Number 18, who
11 is sitting in Seat 3, contacted our division and said that
12 he was very ill and could not make it in. He has a
13 stomach virus that wasn't allowing him to leave his home.
14 So he is not going to appear today, which would leave us
15 with 12 jurors.

16 MR. FREEMAN: Okay.

17 MR. ST. GEORGE: I don't agree to this, Judge.

18 THE COURT: Okay. I don't really think there's
19 anything to agree to at the time. This juror couldn't
20 make it in today. He was unable to leave his home, so he
21 cannot be here, and as such, we're going to have to just
22 proceed -- that's why we select an alternate, so we're
23 going to go ahead and proceed with the trial with the 12
24 jurors.

25 MR. FREEMAN: So, Judge, is that juror, then,

1 Number 18, going to be dismissed?

2 THE COURT: He is dismissed. He just indicated
3 that he could not leave his house.

4 MR. FREEMAN: Okay. And that's what I assumed.
5 I just wanted the record to be clear.

6 THE COURT: So he is dismissed, and we're
7 proceeding with the 12. We have all our jurors.

8 Mr. St. George, have you reached a decision with
9 regard to Agent McKalip, or former Agent McKalip?

10 MR. ST. GEORGE: Your Honor, I anticipate that I
11 will be able to get the information that I need from other
12 officers, but I'd like to reserve the right to call him at
13 a later time. And if, necessary, we can use Skype, or
14 whatever technology is necessary. I don't think it's
15 right that we fly him out on a last-minute deal. Skype
16 will be satisfactory.

17 THE COURT: Okay. And you'll keep the DA
18 informed as to -- so he can contact him and let him know
19 to be available at a particular time. Okay.

20 MR. ST. GEORGE: And, Your Honor, I may have
21 another concern here in a moment. Bear with me just one
22 second, please.

23 (Pause in the proceedings.)

24 THE COURT: Okay.

25 MR. ST. GEORGE: All right. Your Honor, I

1 understand that the People intend to call Eric Yingling
2 today, and I just wanted to make sure that we don't run
3 down some slippery slope of 403 evidence. If necessary,
4 I'd like to file an in limine as to regards to some of
5 this that's on the supplemental report filed by Jeffrey
6 Larson. If the -- if the People could just simply tell us
7 what it is they intend to elicit from Mr. Yingling.

8 THE COURT: What are you concerned about? Know
9 that I don't get the report, so I don't know what the
10 concern is.

11 MR. ST. GEORGE: Okay, Your Honor. Yeah, I
12 understand. So there's some -- there's some text message
13 traffic back and forth between Mr. Yingling and I from
14 that night, and there's only --

15 THE COURT: So text messages between you and
16 Mr. Yingling?

17 MR. ST. GEORGE: Right. And I can understand
18 that one of those text messages may be regarded as
19 relevant. The remainder is not. And it would -- it would
20 definitely fall under the categorization of 403. And so
21 if the People intend to use that type of -- those
22 messages, I would want to file an in limine.

23 THE COURT: Well, this is the time because we
24 need to talk about it now.

25 MR. ST. GEORGE: Let's do it, then.

1 THE COURT: Because if they're going to call him
2 today -- is that -- would you be calling this witness
3 today?

4 MR. FREEMAN: Yeah. Actually, we were going to
5 call him at 8:30, Judge. And this should have been
6 brought up a long time ago because he's our next witness.
7 I have the exhibit ready. I don't have time to edit it.
8 So this should have been brought up a long time ago.

9 THE COURT: Okay. So what are we talking about?

10 MR. FREEMAN: Well, if I could approach?

11 THE COURT: Yeah.

12 MR. FREEMAN: It's People's 323. And if Court
13 will look at the bottom, there's a series of texts back
14 and forth and the defendant and Mr. Yingling. I don't
15 think why everything is in there twice. It's just the way
16 it downloaded from the defendant's phone. But that's the
17 exhibit that we're prepared to show Mr. Yingling today.

18 (Pause in the proceedings.)

19 THE COURT: Okay. So I've taken a look. What
20 are you talking about here, Mr. St. George? What is it
21 that you're objecting to on this?

22 MR. ST. GEORGE: Your Honor, I want to make sure
23 you're not planning on eliciting the statement, You're a
24 nigger, go fuck yourself, in front of the jury. I think
25 that would be more prejudicial than probative. It's not

1 relevant, and it would fall under the category of 403.
2 The only statement made in here that would potentially
3 bear some relevance would be the, I know my neighbor said
4 something about a gun, but I was hanging out with you. I
5 would object to any other portion of this text message
6 traffic.

7 THE COURT: Did you -- did you need this?

8 MR. FREEMAN: Your Honor, just to put this in
9 context, as the Court -- I don't know if you can tell,
10 these were texts that the defendant's alleged to have sent
11 after the incident with Ms. Elliott at a time when the
12 defendant walked to a nearby bar and continued drinking
13 alcohol and was trying to get -- first trying to get
14 Mr. Yingling to call him, and at one point they actually
15 spoke on the phone, and Mr. Yingling says that the
16 defendant invited him down to the Rusty Bucket, the bar,
17 to have drinks. Mr. Yingling declined. He told the
18 police that the defendant sounded very intoxicated at that
19 point, but then there was continued texts.

20 And it is clear from these texts, in conjunction
21 with the phone calls, that the defendant was very
22 frustrated with Mr. Yingling, that he wouldn't come down
23 and that he wouldn't drink with him. And then also,
24 towards the bottom, when the defendant says, I know my
25 neighbor said something about a gun, but I was hanging out

1 with you, that's not true. Mr. Yingling never hung out,
2 was never face-to-face in person with the defendant that
3 night.

4 It's extremely important to the People that the
5 jury understand that this is an attempt by the defendant
6 to create an alibi, or false alibi, for his whereabouts at
7 the time of the shooting with Ms. Elliott.

8 THE COURT: Can I see it one more time?

9 MR. FREEMAN: Sure. It's the second to last
10 take. He's saying my neighbor said something about a gun,
11 but I was hanging out with you, and he's trying to create
12 a false alibi with Mr. Yingling, when, in fact, they
13 weren't hanging out together. He's expressing frustration
14 with Mr. Yingling for not coming down and not drinking
15 with him.

16 So it shows, I think, a few thing. One is level
17 of intoxication, it shows his mental state that night, and
18 it shows his frustration that Mr. Yingling is not
19 cooperating with his efforts to create a false alibi.

20 THE COURT: Okay. So the statement that's being
21 objected to specifically, You're a nigger, go fuck
22 yourself, your rendition of this, or your belief, is that
23 this is when Mr. Yingling is saying he's not going to
24 come?

25 MR. ST. GEORGE: Correct.

1 THE COURT: All right. This is late,
2 Mr. St. George, in bringing this to the Court's attention.
3 What I'm going to ask in this case is that You're a,
4 blank, You're a nigger, be redacted, the word "nigger,"
5 but the rest of it remains so that they know he's called
6 him a name, and the remainder is the same.

7 And so can that redaction be done?

8 MR. FREEMAN: And so the Court just wants the
9 N-word that's in there twice to be removed?

10 THE COURT: Yes. Yes. I'm going find that that
11 is overly prejudicial, albeit I understand that the theory
12 of the People is that this was said to Mr. Yingling
13 because he was not coming. But reading it within a
14 context, the word is so inflammatory, I'll go ahead and
15 ask that the N-word be redacted. The remainder of it is
16 relevant and admissible.

17 MR. FREEMAN: And, Judge, I think we can
18 probably do that in a few minutes. I'll also want to
19 speak with Mr. Yingling and let him know not to volunteer
20 that phrase and that I won't ask him about that particular
21 phrase.

22 Does the Court -- since this is likely to be
23 admitted as an exhibit, does the Court want to give any
24 limiting instruction to the jury to not speculate what was
25 removed, or just leave it as it is?

1 THE COURT: I would tend to leave it as it is,
2 unless there's a specific request for an instruction.

3 MR. FREEMAN: I'm not going to imply or infer to
4 the jury what was removed. So, I don't know, I'll leave
5 it up to defendant.

6 MR. ST. GEORGE: Yeah, I don't think an
7 instruction will be necessary, Your Honor. I'm pretty
8 sure the jury will understand that it was some sort of
9 foul language.

10 THE COURT: Okay. So we'll give them a minute
11 to redact. We have all our jurors that are coming in
12 today here.

13 (Pause in the proceedings.)

14 THE COURT: We're bringing in this jury.

15 (The jury entered the courtroom.)

16 THE COURT: Everybody can be seated as soon as
17 we get into the courtroom.

18 We lost one of our jurors overnight. I need
19 everyone to stay healthy. We are going to do jumping
20 jacks during the trial and drink gallons of orange juice.

21 All right. We're ready to start.

22 MR. FREEMAN: Judge, we're going to call Eric
23 Yingling.

24 ERIC YINGLING,
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 MR. FREEMAN:

6 Q Good morning, sir. Would you please state your
7 full name and spell your last name for us.

8 A Eric Paul Yingling, Y-i-n-g-l-i-n-g.

9 Q And, Mr. Yingling, without telling us your date
10 of birth, can you tell us how old you are?

11 A 32.

12 Q Without telling us your address, can you tell us
13 what city you live in?

14 A Lakewood.

15 Q Generally, what do you do for a living?

16 A Information technology-related activity.

17 Q Do you know Eric St. George?

18 A I do.

19 Q Do you see him in court today?

20 A Yes, I do.

21 Q Okay. Took you a little bit. Does he look
22 different than the last time you saw him?

23 A He does.

24 Q Can you point him out to us, tell us where he's
25 sitting and what he's wearing?

1 A He's wearing a suit, shoulder length hair.

2 Q You said "shoulder length hair"?

3 A Yes.

4 MR. FREEMAN: Judge, may the record reflect he's
5 identified the defendant.

6 THE COURT: The record reflect it.

7 Q (BY MR. FREEMAN) For how long have you know --
8 I'm going call him the defendant from now on. How long
9 have you known the defendant?

10 A Probably close to four and a half years now.

11 Q Back on July 31 of 2016, how would you describe
12 your relationship with him back then?

13 A Coworkers and friends.

14 Q And you say "friends." Did you sometimes
15 socialize with him?

16 A Yes.

17 Q Was that a common thing or just an occasional
18 thing?

19 A I'm not sure what your definition of that would
20 be, but I would probably say common.

21 Q Okay. How often would you say? Once a week?
22 More than that?

23 A Yeah, that sounds about right.

24 Q Okay. Did you have a cell phone back then?

25 A I did.

1 Q Did you know him to have a cell phone?

2 A Yes.

3 Q Did you have his phone number and contact info
4 in your phone?

5 A I do.

6 Q And, to your knowledge, did he have your info in
7 his phone?

8 A Yes.

9 Q Do you have the same phone number now as you did
10 back then?

11 A I still do.

12 Q Can you tell the jury what your phone number is?

13 A (720) 563-7311.

14 Q Off the top of your head, do you know the
15 defendant's?

16 A I do not.

17 Q Do you know if it was a different area code,
18 sort of not a Colorado area code?

19 A I don't remember.

20 Q Okay. Did you also -- or do you also know a
21 friend of the defendant named Troy Loftus?

22 A Yes.

23 Q And back on July 31st, what, if any,
24 relationship did you have with Mr. Loftus?

25 A I had met him, I want to say, once or twice, but

1 other than that, I didn't know him very well.

2 Q Did you know him also to be a friend of the
3 defendant?

4 A Yes.

5 Q Did you have Mr. Loftus's contact info in your
6 phone?

7 A I do not believe I did at that time, no.

8 Q Do you know if he had yours?

9 A He did get it, but I don't know exactly when.

10 Q Okay. On July 31 of 2016, do you know if that
11 was a significant date for the defendant? Did you know
12 that that was his birthday?

13 A Yes.

14 Q Did you see him on his birthday?

15 A I don't believe I did.

16 Q Did you communicate with him on his birthday?

17 A Yes.

18 Q And when I say "communicate," did you speak to
19 him on the phone?

20 A On the phone and via text message.

21 Q So both?

22 A Yes.

23 Q Do you know about what time you communicated
24 with him?

25 A In the evening, I want to say around 10:00 p.m.

1 Q Okay. And what was that first method of
2 communication? Was it a phone call? Was it a text?

3 A I don't remember what was first.

4 Q Okay. Okay. What was the conversation, or what
5 was the communication about?

6 A Asking to hang out originally, and then after
7 that -- a lot of it was slurred very heavily, so I don't
8 remember precisely any more what was said.

9 Q Okay.

10 A But I remember basically leaving at go to sleep,
11 and then we'll talk tomorrow.

12 Q Okay. And just so we're clear, was he asking
13 you to hang out with him, or were you asking him to hang
14 out with you?

15 A He was asking me to hang out with him, but I was
16 already close to going to sleep.

17 Q So you were kind of winding down for the night?

18 A Correct.

19 Q And this was about 10 o'clock?

20 A Right around there, yes.

21 Q And so this sounds like a phone call because you
22 described him slurring his words.

23 A Yes.

24 Q Did he sound intoxicated to you?

25 A He did, yes.

1 Q Okay. Significantly intoxicated?

2 A Yes.

3 Q And did you say that to him? Did you -- was
4 part of your conversation was you were telling him he was
5 too drunk?

6 A I don't remember exactly.

7 Q Okay. Did he tell you where he was or where he
8 wanted you to come meet him?

9 A Yes, at a bar called The Rusty Bucket.

10 Q And do you know where that is?

11 A I do.

12 Q Where is it located?

13 A Very close to Wadsworth and Hampden
14 intersection.

15 Q Were you familiar with where the defendant was
16 living back then?

17 A Yes.

18 Q And is that Rusty Bucket bar, is it roughly
19 walking distance from his unit?

20 A It could be.

21 Q You didn't go to The Rusty Bucket?

22 A No, I did not.

23 Q In the phone call conversation that you had with
24 the defendant, did he say anything about having some sort
25 of conflict or incident earlier in the night?

1 A He did, but I don't recall a lot of it besides
2 the text messages.

3 Q Okay. Do you recall being interviewed by a
4 Detective Jeff Larson from the Lakewood Police Department?

5 A Yes.

6 Q And do you remember when that was?

7 A Would have been soon after. I don't know if it
8 was the next day or the day after.

9 Q Okay. And would you say that these events, and
10 specifically your conversations that you had with the
11 defendant, were considerably fresher in your mind back
12 then than they are now?

13 A Absolutely.

14 Q When you spoke to Detective Larson, did you have
15 some idea of the allegations against the defendant?

16 A I knew something had happened, but not -- just
17 because other people had tried to contact me, but not -- I
18 really didn't know what had happened in detail.

19 Q Did you know that he was in trouble with the
20 police?

21 A I knew he was in trouble, yes.

22 Q And did you know that Detective Larson was a
23 police officer?

24 A Yes. He identified himself.

25 Q Were you as honest as you could be with

1 Detective Larson?

2 A Yes.

3 Q And did you tell him everything that you could
4 remember about your conversation with the defendant?

5 A Yes.

6 Q Just so we're clear, as you sit here now, you
7 don't have a great recollection of that part of the
8 conversation with the defendant?

9 A I do not, no.

10 Q Do you think it would refresh your memory to see
11 the transcript of the recorded interview that you did with
12 Detective Larson?

13 A Sure.

14 Q So starting -- I can't walk up there. There she
15 is. She's right behind me.

16 So at Bates stamp 1617, and I would say it's
17 about line 121. If you could read that to yourself
18 starting at, I think, line 121, I said, and read maybe
19 down to the bottom of that page, and see if that helps you
20 remember.

21 A (The witness complied.) Okay.

22 Q Does that help you remember what the defendant
23 said in the conversation about that?

24 A To be honest, I don't -- it doesn't help me
25 remember, but if I told that to the detective, that's what

1 I recall at that time as truthful.

2 Q Okay. And did you tell the detective that the
3 defendant said, Oh, I popped off -- I'm going pop off a
4 round, or I popped off a round?

5 A Yes.

6 Q And did he say that he was popping off a round
7 at a slut or a whore?

8 A I don't remember.

9 Q Okay.

10 MR. FREEMAN: I apologize.

11 Q (BY MR. FREEMAN) If you want to go to maybe
12 line 100 and see if that refreshes your memory.

13 A Okay.

14 Q Does that help you remember how he phrased that?
15 Did he say that he popped off a round at a slut or a
16 whore?

17 A Like I said before, if I told the detective, I
18 believe it to be true at the time. I don't remember
19 anymore, though. I can't recall that conversation.

20 Q Do you think at the time that you had that
21 conversation with Detective Larson that that conversation
22 was fresh in your mind?

23 A Absolutely.

24 Q And do you think that what you told him was
25 accurate at the time as far as what you recalled?

1 A Yes.

2 Q Do you recall telling Detective Larson that at
3 one point, the defendant stated that he popped off a few
4 rounds at a hooker, and he needed to get out of there?

5 A I don't recall it, but --

6 Q Okay.

7 A -- if it's there, then yes.

8 Q And you don't recall --

9 MR. ST. GEORGE: Your Honor, I'm going to have
10 to object to that. I don't see that in the report.

11 MR. FREEMAN: So his objection is discovery?

12 THE COURT: The objection, I think, is
13 discovery. Where --

14 MR. ST. GEORGE: The objection is
15 mischaracterization.

16 MR. FREEMAN: It's Bates stamp page 286, right
17 in the middle of the page. It's in quotes.

18 THE COURT: And what does it say?

19 MR. FREEMAN: Quote, Eric had admitted he,
20 quote, popped off a few rounds at a hooker, and I need to
21 get out of here.

22 THE COURT: Overruled.

23 Q (BY MR. FREEMAN) Now, were there a series of
24 texts back and forth between you and the defendant?

25 A Yes, there was.

1 Q And were the texts sort of mixed in with your
2 phone conversations?

3 A No, they were not.

4 Q What happened first?

5 A I -- the phone call was first, and the text was
6 after.

7 Q Okay. And was there only one phone call?

8 A Yes, I believe so.

9 Q Okay. And at times, did he text you and you
10 texted him back?

11 A After the phone call?

12 Q Right.

13 A Yes, I believe so.

14 MR. FREEMAN: Okay. If I could have 323 brought
15 up there.

16 Q (BY MR. FREEMAN) If you could take a look at
17 People's 323. And, specifically, I think it is the bottom
18 half. On the left-hand column, there's indications of
19 texts to you and from you, between the defendant. In
20 looking at those, does that accurately document the texts
21 back and forth between you and the defendant that evening?

22 A Yes.

23 Q When I say "accurately," it looks like almost
24 all of them are in there twice, and I think that's just
25 something that happened with the download. But did you

1 actually type everything twice and send it twice when you
2 responded?

3 A No, I did not.

4 Q And when he sent texts to you, he didn't send
5 things twice, did he?

6 A No.

7 Q So other than that, is it fair and accurate?

8 A Yes, it looks like it.

9 Q Okay. So you said the phone call was first, and
10 then afterwards, it looks like he sent a text to you at
11 10:20. Look at line 5. At 10:20 hours and 40 seconds, he
12 sent a text to you that says just the word "Dick." Do you
13 recall that?

14 A Yes. Well, yeah, I see it.

15 Q And then the next one, at line 7, at 10:18 p.m.,
16 he texted to you the words "Now for real." Do you see
17 that?

18 A Yes.

19 Q And then at line 9, he sent a text to you at
20 10:18 and 15 seconds saying, Call me?

21 A Okay.

22 Q Is that right?

23 A Yes.

24 Q Did you call him after that?

25 A I don't remember.

1 Q And then at line 11, at 10:18, he sent a text
2 that said, You awake, dot, dot, dot, I can't go home?

3 A Yes.

4 Q And then it looks like, finally, at 10:23, you
5 respond -- and that's at Number 4, and it says, Go to bed,
6 dumb-ass?

7 A Yes.

8 Q And then it looks like at 10:24, he responds and
9 says, Go fuck yourself?

10 A Yes.

11 Q And then it looks like at 10:25, you respond and
12 you say, But making some dump story up, already slurring
13 all your speech by 10, question mark. Retarded, period.

14 A Yes.

15 Q Is that your response?

16 A Correct.

17 Q And then it looks like right about the same
18 time, did you send a text that said, Give me heads-up, we
19 can go out tomorrow for your 40th, you faggot?

20 A Correct.

21 Q And then at 10:28, he sent you a text that said,
22 I know, period. My neighbor said something about a gun,
23 but I was hanging out with you?

24 A Yes.

25 Q He wasn't hanging out with you when he sent that

1 text, was he?

2 A No.

3 Q And, in fact, you didn't see him at all that
4 night, did you?

5 A No, I did not.

6 MR. FREEMAN: All right. Thank you.

7 Judge, I won't move -- I think there's some more
8 texts on there that haven't been authenticated so I'm not
9 going to move at this point for introduction of that.

10 THE COURT: All right. Cross-examination?

11 MR. ST. GEORGE: Bear with me one moment, Your
12 Honor.

13 (Pause in the proceedings.)

14 CROSS-EXAMINATION

15 BY MR. ST. GEORGE:

16 Q Eric, is the dialogue that you and I had, the
17 text messages, the foul language, is that sort of
18 customary as far as the way you and I talk to one
19 another?

20 A Yes, I would say so.

21 Q And you did not say, He popped off a few rounds
22 at a whore. You never said that, correct?

23 A I don't remember. If they have it recorded in a
24 conversation, then --

25 MR. ST. GEORGE: That's all, Your Honor.

1 THE COURT: Redirect?

2 MR. FREEMAN: I don't have any questions, Judge.

3 MS. DECKER: One minute.

4 MR. FREEMAN: Sorry.

5 (Pause in the proceedings.)

6 MR. FREEMAN: Actually, Judge, after conferring,
7 I might have a couple more questions.

8 REDIRECT EXAMINATION

9 BY MR. FREEMAN:

10 Q Mr. Yingling, I asked you earlier if you knew
11 Troy Loftus. Do you recall, after this night, having a
12 conversation with Mr. Loftus?

13 A I know I spoke with him, but I don't remember
14 the exact time line.

15 Q Okay. If it would have been about the events of
16 this evening, would it have been after the evening?

17 A Yeah, of course.

18 Q Okay. And did you call him, or did he call you?

19 A He called me.

20 Q Okay. And in your conversation with him, did
21 you discuss with him about your conversation with the
22 defendant that night?

23 A I most likely did.

24 Q And did you tell Mr. Loftus that the defendant
25 told you that he popped off a few rounds at a hooker, and

1 I need to get out of here?

2 A I don't remember.

3 Q You don't recall that?

4 A No.

5 MR. FREEMAN: Okay. All right. Thank you.

6 THE COURT: Recross?

7 MR. ST. GEORGE: I've got nothing further, Your
8 Honor.

9 THE COURT: Does anyone on the jury have a
10 question for this witness?

11 (No verbal response.)

12 THE COURT: You may step down.

13 (The witness was excused.)

14 MS. DECKER: The People would call Agent David
15 Waller.

16 DAVID WALLER,
17 having been called as a witness on behalf of the People,
18 being first duly sworn, testified as follows:

19 THE COURT: Have a seat, please.

20 THE WITNESS: (The witness complied.)

21 DIRECT EXAMINATION

22 BY MS. DECKER:

23 Q Good morning.

24 A Good morning.

25 Q Would you please introduce yourself to the jury,

1 and spell your name.

2 A Officer David Waller, W-a-l-l-e-r.

3 Q And what do you do for a living?

4 A Aurora Police Department.

5 Q How long have you been with the Aurora Police
6 Department?

7 A Two years.

8 Q Were you working with the Lakewood Police
9 Department prior to working with the Aurora Police
10 Department?

11 A I was.

12 Q And how long did you work for the Lakewood
13 Police Department?

14 A About seven years.

15 Q And describe for the jury your training and
16 experience in law enforcement.

17 A Training at the police academy, day-to-day
18 street work, doing investigations and proactive crime.

19 Q And prior to working in law enforcement, did you
20 have any other type of law enforcement-type training?

21 A No.

22 Q I'm going to draw your attention to August 1st
23 of 2016. Were you working for the Lakewood Police
24 Department at that time?

25 A I was.

1 Q In what capacity?

2 A As a patrol officer.

3 Q And what was your shift?

4 A I worked swing shift, 3:00 to 3:00 -- I'm sorry.

5 Yeah, 3:00 to 3:00.

6 Q 3:00 p.m. to 3:00 a.m.?

7 A 3:00 p.m. to 1:00 a.m., I believe, a ten-hour
8 shift.

9 Q And on August 1st of 2016, what happened at
10 12:25 a.m.?

11 A There was a disturbance call down at about
12 Jewell and Ammons.

13 Q And once you learned of this disturbance call,
14 what did you do?

15 A Myself and other officers responded to the
16 scene.

17 Q Where had you been when you received this
18 disturbance call?

19 A Prior, we were close to the station, about
20 Alameda and Ammons.

21 Q And did you hear a Code 1 over the radio?

22 A At one point, I believe so, yes.

23 Q And was this involving two sergeants and two
24 police agents with Lakewood?

25 A Yes.

1 Q So at 12:28 a.m., after the 12:25 call, what did
2 you do?

3 A I responded to the scene and helped the sergeant
4 set up a tactical plan.

5 Q At 12:28 a.m., had Sergeant Maines aired over
6 the radio that the suspect had walked out to the backyard?

7 A Yes.

8 Q And had some sort of weapon?

9 A Yes.

10 Q Was it at that point that you and some other
11 agents decided to go assist at that scene?

12 A We did.

13 Q And had Maines at that point, Sergeant Maines,
14 requested more police cars --

15 A Yes.

16 Q -- and police agents to arrive?

17 A Yes.

18 Q So how far away, at 12:28 when Sergeant Maines
19 requested assistance, were you from that location on West
20 Eastman Place?

21 A I believe maybe a hundred yards away.

22 Q And describe for the jury how you approached
23 into this complex.

24 A We approached from the south moving north on
25 foot.

1 Q And was this through some sort of park or a
2 greenbelt in the middle of some buildings?

3 A Yeah, through a grassy area.

4 Q And who were you with at that time?

5 A I believe I was with Agent Barefoot, Agent
6 Alfano, Agent Frink, as I recall.

7 Q And so do you recall there being about five
8 agents with you?

9 A I believe.

10 Q What did you take with you, if anything?

11 A I believe we had a couple medical kit, and some
12 other agents had long rifles.

13 Q And why did you grab medical kits?

14 A We heard shots fired.

15 Q Is that customary, if shots are fired, to bring
16 a medical kit with you in case there is injury?

17 A Yes.

18 Q So at 12:28, being, I think you said, a hundred
19 yards away --

20 A Approximately.

21 Q -- how long did it take you to arrive to where
22 the scene was?

23 A A few seconds.

24 Q And what did you see?

25 A When I arrived on scene, I saw Agent Trimmer

1 standing in an alcove by a brick entrance to another
2 apartment, and at that time, that's all I could see.

3 Q And what did you hear at that time?

4 A I mean --

5 Q Did you hear a shotgun blast?

6 A Prior to getting all the way up there, we did.

7 Q And did you hear that shotgun blast when you
8 were getting your medical bag out of your car?

9 A Yes.

10 Q So can you describe for the jury -- you
11 mentioned you've been in law enforcement for quite some
12 time -- how you're able to distinguish the sound of
13 gunfire from being from a handgun versus as shotgun.

14 A Through my training, I've used both handguns,
15 shotgun and rifles.

16 Q And how many did you hear from a shotgun?

17 A Approximately three.

18 Q And did you ever hear any handgun blasts
19 prior -- and we're, again, talking prior to your arrival
20 at that scene.

21 A I don't recall, no.

22 Q Once you heard that shotgun blast, when you were
23 still at your car grabbing that medical bag, what did you
24 do?

25 A We immediately started running on foot towards

1 the sounds.

2 Q And you mentioned it just took you some seconds
3 to get to Agent Trimmer on the southeast corner of
4 building?

5 A Yes.

6 Q Did you hear any radio traffic as you were
7 moving towards that building?

8 A I don't recall.

9 Q Did you hear a sergeant ask Agent Trimmer if she
10 was okay, and she said she was okay?

11 A Yes.

12 Q Once you got to the southeast corner of the
13 building and saw Agent Trimmer, what did you and other
14 officers do with regard to Agent Trimmer?

15 A We moved her to a better, safer location and had
16 her reload her magazine.

17 Q And how was she?

18 A She was visibly upset.

19 Q And when you say "visibly upset," what does that
20 look like?

21 A She appeared to have some tremors in her hands.

22 Q Did she tell you what had happened?

23 A Yes.

24 Q What?

25 A She stated a man came out and shot at her, and

1 she shot back.

2 Q And did she specify that she had fired three
3 rounds from her service weapon?

4 A Yes.

5 Q And that she believes she hit him twice and
6 missed once?

7 A Yes.

8 Q And to be clear, she did not have a shotgun. Is
9 that accurate?

10 A Correct.

11 Q And you did not hear sounds of a handgun when
12 you heard the, potentially, three shotgun sounds?

13 A I did not.

14 Q After you helped her reload her weapon, what did
15 you do?

16 A We kept her in a safe spot, and then we set up
17 front and rear guards.

18 Q What was that last part?

19 A We set up front and rear guards around where we
20 were to protect ourselves and her.

21 Q And what does that mean?

22 A There's one person facing east, one person
23 facing south, and myself and another officer were there
24 just to protect the area so we wouldn't get surprised.

25 Q At this point, were you still in that southeast

1 alcove with Agent Trimmer, or had you moved from that
2 location?

3 A No, we were still there.

4 Q And once you were still positioned in that
5 southeast corner of building with other agents, did you
6 hear anything else?

7 A We heard sounds coming from inside what sounded
8 like an apartment.

9 Q And how much time had elapsed from that time
10 when you were had arrived to assist Agent Trimmer?

11 A Just a minute or so.

12 Q And that's when you heard sounds from inside the
13 apartment?

14 A Yes.

15 Q Prior to the sounds from inside the apartment,
16 did you hear any additional shotgun blasts outside?

17 A I did not.

18 Q After hearing what sounded -- the sounds from
19 within the apartment, what did you hear next?

20 A Just radio traffic on other officers coming into
21 the area.

22 Q And were you aware of whether the suspect had
23 ever come out of the apartment?

24 A I did not.

25 Q Did you hear any officers yelling to a potential

1 suspect to show us your hands?

2 A Later, yes.

3 Q And so describe for the jury what happened
4 between that moment later, when you heard officers yelling
5 show us your hands, and what had happened -- the interval
6 between you standing there keeping cover on the southeast
7 corner of that building until that time when officers were
8 yelling show us your hands.

9 A More officers were responding lights and sirens,
10 and over the radio, people were coordinating a tactical
11 plan for a perimeter to safeguard everyone to try to find
12 the suspect.

13 Q When you heard those second gun sounds from
14 inside of the building, how much time had elapsed before
15 you heard officers yell show us your hands?

16 A Probably another five minutes.

17 Q Were you a part of taking the suspect into
18 custody, or were you still keeping that southeast position
19 on that building?

20 A I was still on the building.

21 Q What happened once the suspect was taken into
22 custody?

23 A Myself and Agent Trimmer moved to a new
24 location.

25 Q Where was that location?

1 A It was further west.

2 Q And why did you take her farther to the west?

3 A They were moving the suspect to an ambulance.

4 Q And did you move her farther west to keep her
5 away from the suspect, or for any additional reason?

6 A Just for safeguarding all around.

7 Q Were you able to see the suspect yourself?

8 A No.

9 Q What did you do after the suspect was taken away
10 from that scene in the ambulance?

11 A I stayed on the scene with Agent Trimmer, and we
12 just coordinated what we were going to do next from there.

13 Q And after making that coordinated effort, did
14 you take her to the police station?

15 A I did.

16 Q At what time did you do that?

17 A Well, I couldn't tell you the exact time.

18 Q Well, in relation to when the suspect was taken
19 away in the ambulance, maybe it's easier to distinguish in
20 terms of minutes or so.

21 A Once he was taken away to the ambulance,
22 approximately 15, 20 minutes, she was moved to the station
23 with me.

24 Q What happened once you arrived at the Lakewood
25 Police Department with Agent Trimmer?

1 A We stayed in one of the conference rooms while
2 we waited for other people to come for interviews and
3 assistance and that sort.

4 Q And did you ever discuss the incident any
5 further than her initially telling you, when you arrived
6 to the southeast corner of that building, that she had
7 fired those three rounds?

8 A No.

9 MS. DECKER: I have no further questions right
10 now. Thank you.

11 THE COURT: Cross-examination?

12 CROSS-EXAMINATION

13 BY MR. ST. GEORGE:

14 Q You're with Aurora now. Shall I call you
15 Officer Waller?

16 A That's fine.

17 Q Okay. Officer Waller, when you arrived on
18 scene, you came along with Alfano, Frink, Lebsack and
19 Shube, right?

20 A I believe so.

21 Q And you were at your cars when you heard the
22 sounds of gunfire?

23 A Yes.

24 Q And you didn't hear any handgun fire at all?

25 A I did not.

1 Q Okay. And you advanced up to the southeast
2 corner of Building 7, along with the rest of the guys?

3 A Correct.

4 Q Okay. And when you arrived and you met up with
5 Agent Devon Trimmer, she told you she had shot three off?

6 A Yes.

7 Q And later, was it approximately 15 minutes later
8 you started to hear sounds from somewhere else?

9 A I'm not sure how long.

10 Q Those three -- those sounds that you heard
11 later, you said you heard three to five shotgun blasts
12 that came from inside the building?

13 A No. I heard three to five sounds that sounded
14 like gunfire.

15 Q You didn't -- you didn't -- you didn't tell
16 someone that they sounded like three to five more shotgun
17 blasts?

18 A I don't recall.

19 Q You did hear between three to five loud noises
20 that you characterized as some sort of gunshot?

21 A Yes.

22 Q And you might have characterized them as shotgun
23 blasts in the past?

24 A It's possible.

25 Q Okay. So you weren't sure precisely what it

1 was?

2 A I don't recall right now.

3 Q All right. And you had heard -- you were
4 monitoring your radio, correct?

5 A Correct.

6 Q And you had heard someone air shots fired --

7 A Yes.

8 Q -- earlier?

9 A Yes.

10 Q And shortly thereafter, did you hear someone say
11 he's got a shotgun?

12 A I don't recall.

13 Q Okay.

14 MR. ST. GEORGE: Thank you, Officer Waller. I
15 have nothing further.

16 THE COURT: Redirect?

17 MS. DECKER: Thank you.

18 REDIRECT EXAMINATION

19 BY MS. DECKER:

20 Q You mentioned you didn't hear handgun fire, but
21 Agent Trimmer told you she had fired her handgun three
22 times?

23 A Yes.

24 Q And you didn't hear any additional shotgun
25 rounds as you -- after those first three as you were

1 running towards Agent Trimmer's location, right?

2 A Correct.

3 Q And with regard to these three to five
4 additional shotgun blasts that you heard sometime after
5 arriving at Agent Trimmer's location, those were not from
6 inside the building per what you said before, but, as you
7 described, three to five more shotgun blasts in several
8 different directions. Do you remember saying that?

9 A Yes.

10 MS. DECKER: Nothing further.

11 THE COURT: Recross?

12 MR. ST. GEORGE: Nothing further, Your Honor.

13 THE COURT: Does anyone on the jury have a
14 question for this witness?

15 (No verbal response.)

16 THE COURT: You may step down.

17 (The witness was excused.)

18 MR. FREEMAN: Judge, at this point we would like
19 to call Troy Loftus. We hear he's in the courtroom.
20 Mr. Loftus.

21 THE COURT: Is Mr. Loftus here?

22 MR. FREEMAN: You're not Mr. Loftus? I'm sorry.
23 I thought he was in the courtroom, Judge.

24 MR. ST. GEORGE: Your Honor, I'm going to have
25 to object to the calling of Mr. Loftus. He was present in

1 the courtroom with us on Thursday and Friday, and I'm
2 pretty sure he's been released from his subpoena.

3 MR. FREEMAN: Well, in any event, he's not in
4 here, so we're not going to call him right now. I thought
5 he was here. We'll call a different witness.

6 THE COURT: All right.

7 MR. FREEMAN: We'll call Jeff Delgadillo.

8 JEFFREY DELGADILLO,
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 morning, sir. Would state your full name
16 and spell your last name fur us.

17 A Jeffrey Alan Delgadillo, D-e-l-g-a-d-i-l-l-o.

18 Q And, Mr. Delgadillo, without telling us your
19 date of birth is, can you tell us how old you are?

20 A I am 43.

21 Q And, just generally, what do you do for a
22 living?

23 A I'm a cyber security consultant.

24 Q Have you ever lived at the Windsor Apartments?

25 A Yes.

1 Q Do you still live there?

2 A No.

3 Q Back on July 31st of 2016, did you live there?

4 A Yes.

5 Q On that date, so we're talking about a year and

6 a half ago, roughly how long had you been living there?

7 A The better part of four years.

8 Q And can you tell us what unit number you're in?

9 A 7-105.

10 Q Is that ground floor unit?

11 A Yes.

12 Q And is that building, I think it's known as

13 Building 7?

14 A Correct, Building 7, 105.

15 Q Back on July 31, 2016. Did you know your

16 neighbor in Unit 103?

17 A No.

18 Q If I said the name Eric St. George, was that a

19 familiar name to you back then?

20 A Not at the time.

21 Q Do you know if that unit that you're in, did it

22 share a wall with Unit 103?

23 A I believe my bedroom shared a common wall.

24 Q And to access your unit via the front door, how

25 would you do that? What part of the building?

1 A It would be on the Bear Creek greenbelt side,
2 the north side.

3 Q Okay.

4 MR. FREEMAN: If we could have, maybe,
5 People's 3 up.

6 (People's Exhibit 3 was published.)

7 Q (BY MR. FREEMAN) Mr. Delgadillo, taking look at
8 People's 3 up on the screen, do you recognize that as an
9 aerial view of the building?

10 A Yes.

11 Q And is that -- looking at that, can you
12 generally describe to the jury what the main entrance or,
13 the front entrance, was to your unit?

14 A Yes. You can actually see in the picture
15 that -- that truck is my truck on the east side, which is
16 the driveway side, and you would circle the northeast
17 corner and come to my front door, to the first ground
18 floor door, facing north.

19 Q So your door faces north towards a greenbelt?

20 A Yes.

21 Q And is there sort of a brick archway to your
22 entrance?

23 A Yes.

24 Q And it may not be real clear in that photograph,
25 but what color is your -- was your vehicle back then?

1 A At that time it was like a goldish two-tone.

2 Q Okay. Is that the only vehicle you owned back
3 then?

4 A At that time -- well, outside of motorcycles,
5 yes.

6 Q Okay. And so if you're --

7 A Actually, I'd like to make a correction. I
8 forgot I did get a new truck. It was black truck. Same
9 style, but it was black.

10 Q Okay.

11 A This is the old truck in the Google video -- or
12 Google picture.

13 Q Okay. And I was going to ask, on July 31 of
14 2016, did you own a large black Dodge Ram pickup?

15 A Yep. I just purchased it.

16 Q Was in the same spot that that vehicle is
17 depicted in that picture?

18 A Exact same spot.

19 Q Okay. And it was fairly new?

20 A It was brand new, yeah.

21 Q Brand new. So if your main entrance is off that
22 northeast corner, is there a second entrance or like a
23 patio?

24 A Yes. There is a patio that -- it's a very small
25 patio that faces north as well, just a little bit further

1 west from the front door.

2 Q So if your bedroom shares a wall with Unit 103,
3 is your patio just next door to 103 as well?

4 A The bedroom is closest to 103. But my patio is
5 off to the right.

6 Q Okay. And does your bedroom have windows?

7 A Yes, ma'am.

8 Q Where do those windows look out to?

9 A The greenbelt north.

10 Q Look to the north side there?

11 A Yes.

12 Q Are you -- do you have any familiarity with
13 guns?

14 A Yes.

15 Q Can you describe that to the jury?

16 A I've been an active shooter and firearm
17 enthusiast probably since age 15.

18 MR. FREEMAN: Judge, may we have the lights back
19 on, please?

20 THE COURT: Yes.

21 Q (BY MR. FREEMAN) So a recreational shooter?

22 A Recreational shooting.

23 Q So you have familiarity with handguns?

24 A Yes.

25 Q Do you have a familiarity with shotguns?

1 A Yes.

2 Q And when I say "familiarity," have you fired
3 shotguns?

4 A Yes.

5 Q Have you fired 12-gauge shotguns?

6 A Yes.

7 Q Have you done that often?

8 A Yes.

9 Q Are you familiar with the sounds that handguns
10 and shotguns make?

11 A Yes.

12 Q And do you, in fact, own some of those kinds of
13 weapons?

14 A I do.

15 Q I want to draw your attention back to the
16 evening of July 31st of 2016. Do you recall if you were
17 home that evening?

18 A I was.

19 Q Do you recall what time you got home?

20 A I got home from work around 9:00, I believe.

21 Q 9:00 p.m.?

22 A P.m.

23 Q Okay. When you got home, did you go straight
24 into your unit?

25 A I did.

1 Q Did you notice anything going on either that you
2 saw or you heard that was sort of out of the ordinary?

3 A Not at the time.

4 Q So you went into your unit, and then what do you
5 do?

6 A I sat down at my desk, worked for a short period
7 of time, e-mailed, things of that nature, and then went to
8 bed.

9 Q At what time do you think you went to bed?

10 A It's hard to say, but I would say around 11:00.

11 Q At some point, and prior to going to bed, did
12 you hear any noises coming from any of the neighboring
13 units that you thought was unusual?

14 A No.

15 Q Can you normally hear much of what's going on in
16 your neighbor's unit?

17 A Yes.

18 Q At some point after you went to bed, were you
19 awakened?

20 A I was.

21 Q Do you know about what time that was?

22 A Not specifically, but I would say around
23 midnight.

24 Q And what was it that woke you up?

25 A Two loud pops, and I sat up and I was like what

1 was that, and that's what woke me.

2 Q Okay. This is July 31st. Do you know if you
3 were sleeping with your windows open or not?

4 A They were closed.

5 Q They were closed. Okay. And patio door closed,
6 probably, as well?

7 A Closed as well, yes.

8 Q So you said you sat up. What did you do?

9 A I sat there, I was like was that what I thought
10 it was, and then I heard a loud bang after that, and that
11 is what I thought was.

12 Q And what did you do after you heard the pops and
13 the bang?

14 A I got out of bed, went other to my bedroom
15 window, which faces north. The blinds were closed, but I
16 opened them up and looked out the blinds, and that's when
17 I saw a man running through the space between the
18 apartments and the fence of the greenbelt.

19 Q Okay. Describe how this man was running.

20 A He was running kind of slumped over, turning
21 around like this (indicated), and had a shotgun in his
22 hand.

23 Q And you sort of demonstrated. Just so we're
24 clear, was the person sort of moving in one direction but
25 turned the other direction, like behind him?

1 A Yes. He was running west and then turned over
2 his left shoulder.

3 Q Okay.

4 MR. FREEMAN: And if we could have People's 3 up
5 again, please, Ms. Louis.

6 (People's Exhibit 3 was published.)

7 Q (BY MR. FREEMAN) So you say "west," that would
8 be to the left of the picture?

9 A Correct.

10 Q And facing back somewhat towards the east?

11 A Yes.

12 Q And did you see anything in the person's hands?

13 A Yes. A pistol grip shotgun.

14 Q Can you describe this person? Male, female?

15 A Male, white or Hispanic. Wasn't sure exactly on
16 age.

17 Q How about clothing?

18 A From what I remember, it was shorts and, I
19 believe, a button-up, collared shirt. It's hard to say.

20 Q Could you they if the person had anything on
21 their feet, any sort of footwear?

22 A For the brief second I looked at them, no.

23 Q Did you recognize this person as somebody you
24 had seen before?

25 A No.

1 Q How is the person holding the pistol grip
2 shotgun?

3 A It would be right hand on the grip, left hand on
4 the pump, facing this way.

5 Q Okay. Is the -- so the person is moving west
6 but sort of got their body facing to the east. What
7 direction is the person looking?

8 A Well, their chest is facing south toward bedroom
9 window, and they are looking east.

10 Q Okay. So their chest is sort of facing toward
11 you in the window?

12 A Correct.

13 Q What happened next?

14 A The person fired one round out of the shotgun.

15 Q Describe how they fired that round.

16 A It would have been over there way, low on the
17 hip.

18 Q Okay. So they didn't raise it up to eye level?

19 A No.

20 Q They fired from the hip?

21 A Correct.

22 Q And the -- can you tell what they were shooting
23 at, or what they appeared to be shooting at?

24 A No. Just saw the muzzle flash and heard the
25 bang, and then closed the blinds.

1 Q And they are pointing it roughly back towards
2 the east?

3 A The east.

4 Q What happened next?

5 A I closed the blinds, and after recognizing what
6 I saw, went to my nightstand, grabbed my pistol, went to
7 the center of my apartment, called 911.

8 Q And when you called 911, did you speak to a
9 dispatcher?

10 A I did.

11 Q Did you tell them what you had heard?

12 A Yes.

13 Q Do you know for about how long you were on the
14 phone with 911?

15 A Just a few minutes.

16 Q Okay. So you talked to them for a little while?

17 A Yeah, a few minutes.

18 Q Okay.

19 A They took a statement.

20 Q Did you see that -- the male that was heading
21 westbound, did you see where they went?

22 A Well, as soon as I saw the shotgun blast, I
23 closed the blinds.

24 Q Okay.

25 A But he was running west.

1 Q Okay. And when you were in the your apartment
2 and on the phone with 911, did you hear anything else?

3 A No. No.

4 Q And you said you were on the phone for a few
5 minutes?

6 A Correct.

7 Q And just so we're clear, during the time that
8 you were on the phone with 911, did you hear any more
9 sounds that you thought might be gunshots?

10 A No.

11 Q The part of your apartment that you said you
12 were sort of having this call in, is that a part of your
13 apartment that is near that common wall to Unit 103, or
14 was it more to the east?

15 A It's more to the east.

16 Q Is that a part of your apartment that you're
17 less apt to hear what's going on in Unit 103?

18 A Yes. It's an interior hallway with walls on
19 each side.

20 Q Okay. At some point after -- either while
21 you're on the phone with 911 or after you finished that
22 call, do you hear commotion out front on the south side of
23 building?

24 A No, not on the south side.

25 Q So you don't hear what sounds like officers

1 yelling, or things like that?

2 A No. There's another apartment and several
3 garages that you can see between my apartment and the
4 south side road.

5 Q Okay. And just so we're clear, you can't access
6 your unit -- or back then, you couldn't access your unit
7 from the south side of this building?

8 A No.

9 Q Okay. So both of your -- both of your entrances
10 that you described are on the north side?

11 A Correct.

12 Q And in that southeast corner of the building,
13 that's somebody else's unit, or units?

14 A Correct.

15 Q Okay. I want to go back to the sounds that woke
16 you up. You said you were awakened by what you thought were
17 a couple of pops?

18 A Correct.

19 Q What did you think those were?

20 A Well, initially, I thought they were handgun
21 sounds, reports, but wasn't sure based on the acoustics
22 and being outside, my windows closed. They can often
23 sound like fireworks. So I waited, and then I heard a
24 loud boom, and I recognized that.

25 Q Okay. Could you tell generally where it sounded

1 like the pops were coming from?

2 A It it's difficult to say because of acoustics,
3 again, and whatnot, but the east.

4 Q East of your unit?

5 A Yes. I would say by my garage where that truck
6 is.

7 Q Can you say with any certainty whether those
8 initial sounds were a handgun or shotgun?

9 A If I had to, I would say they were handguns.

10 Q And the next one you described actually seeing
11 go off was the shotgun?

12 A Well, I heard another bang, and I recognized it
13 as a different sound from a handgun. It's typically a big
14 barrel-type weapon. And then the second one that I
15 actually visually saw was when he moved around.

16 Q Okay. You didn't hear -- or did you hear any
17 other sounds that evening that you thought were shotguns
18 being fired, or a shotgun being fired?

19 A No.

20 Q Now, do you recall that morning or that evening
21 and then after this incident being contacted by several
22 officers to be interviewed?

23 A Yes. That night, I gave the statement in my
24 garage to an officer, and then I was contacted later as
25 well. I can't remember if it was the next day or day

1 after.

2 Q Okay. That first officer, was that an officer
3 in a uniform?

4 A Yes.

5 Q And do you remember that officer's name?

6 A I do not.

7 Q If I said Agent Gordon Lawcock, does that ring
8 any bells?

9 A It's possible, yes.

10 Q Do you recall the events being fresher in your
11 mind back then than they are today?

12 A I would assume so.

13 Q And you knew you were talking to an officer?

14 A Yes.

15 Q And were you trying to be as truthful and
16 complete as you could when you spoke to that officer?

17 A Absolutely.

18 Q Do you recall telling that officer that you were
19 sleeping when you heard what you thought was numerous
20 shots from a shotgun? Do you recall saying that?

21 A I don't recall exactly, but it would make sense.

22 Q Okay. Do you recall a little bit later that
23 morning, at 3:02 a.m., having an interview with a plain
24 clothed officer, a Mike Roemer?

25 A I don't remember it being that early. It's

1 possible. I remember it being later into the morning.

2 Q Do you remember speaking to a plain clothed
3 officer?

4 A Yes.

5 Q And same kind of questions. Did you try to be
6 as complete and honest as you could with him?

7 A Yes.

8 Q And then you had another interview with myself,
9 co-counsel and our Investigator, Kim Gallerani. Do you
10 remember coming to the DA's office?

11 A No.

12 Q Or it might have been over the phone.

13 A It was over the phone.

14 Q I think it was over the phone. And do you
15 remember speaking with us over the phone about this
16 incident?

17 A Yes.

18 Q And do you remember telling us that you heard
19 one to two hollow booms followed by several pops?

20 A Um, I remember the conversation, yes.

21 Q Okay. Do you remember saying that?

22 A Yes.

23 Q And then do you remember saying that you weren't
24 sure if you heard the pops or the hollow booms first?

25 A First.

1 Q And by "hollow booms," did you mean a shotgun
2 blast?

3 A What I would think is a shotgun blast, yes, sir.

4 Q Okay. And that interview with us, that was on
5 August 1st of 2017, so like exactly a year later, after
6 the incident?

7 A (The witness nodded head.)

8 Q Okay. The person that you saw with the pistol
9 grip shotgun, I think you said initially they were
10 running?

11 A Yes.

12 Q How fast were they running?

13 A Yeah, not a full run, more of a staggered,
14 hunched-over gait.

15 Q Could you see any injuries on that person?

16 A No.

17 Q Did they appear to be injured or in some sort of
18 distress?

19 A Yes.

20 Q Why do you say that?

21 A The hunched over appearance and grunting or
22 moaning-type sounds.

23 Q Now, that black pickup truck, the new one that
24 was parked out there that evening, did you ever inspect it
25 for any sort of damage?

1 A I did, the next day.

2 Q Was there any damage to it?

3 A No.

4 Q No pellets or anything hit it, as far as you can
5 tell?

6 A Correct.

7 MR. FREEMAN: If I have the bailiff bring 59 and
8 60 to you.

9 Q (BY MR. FREEMAN) Sir, if you could take a look
10 at those, and let me know if you recognize those as
11 photographs of the area sort of around your front door and
12 bedroom window.

13 A Yes, I do.

14 Q Do those accurately depict the way those parts
15 of your yard and area look back on that night?

16 A Yes.

17 MR. FREEMAN: Judge, I'd move to introduce 59
18 and 60.

19 THE COURT: I have 59 and 60 as marked in.

20 MR. FREEMAN: Okay. Sorry. And may we publish
21 59, please.

22 (People's Exhibit 59 was published.)

23 Q (BY MR. FREEMAN) Taking a look at 59 that's in
24 front of you, does that appear to be the same as 59 that's
25 up on the screen?

1 A Yes.

2 Q And what are we looking at in this photograph?
3 What do you recognize?

4 A The entryway to my front door and the yard
5 between the building and the fence.

6 Q And is this basically on the north side of
7 Building 7 looking to the west?

8 A Correct.

9 Q And where is the entryway to your unit?

10 A If you follow the crime scene tape right behind
11 the bush on the left, that would go right to my front
12 door.

13 Q Okay. And can you see, in either that
14 photograph or the next one, your bedroom window?

15 A Yes.

16 Q And is it 60 that you're looking at?

17 A I'm looking at 60, correct.

18 MR. FREEMAN: If we could have 60 up, please Ms.
19 Louis.

20 (People's Exhibit 60 was published.)

21 A Lawn furniture and my bedroom window and the
22 patio.

23 Q (BY MR. FREEMAN) So that first patio on the
24 left was that yours?

25 A Correct.

1 Q And then the next patio that's got sort of a
2 stainless steel barbecue, I think, is that the one for
3 103?

4 A I believe so, yes.

5 Q Can you see in that photograph the bedroom
6 window that you were looking out of?

7 A Yes.

8 Q And could you point that out to the jury.

9 A It's directly above the bush and the lawn -- or
10 the patio furniture, the chair.

11 Q Okay. And where was the person with the pistol
12 grip shotgun?

13 A Directly to the north, between those two bushes,
14 from my patio, facing west.

15 Q Were they on the gravel?

16 A No. I would think they were about halfway
17 between the bush and the tree.

18 Q Okay. Halfway between the bush and the tree.
19 So on the grass?

20 A Yes.

21 MR. FREEMAN: All right. Thank you, sir.

22 (Pause in the proceedings.)

23 CROSS-EXAMINATION

24 BY MR. ST. GEORGE:

25 Q Do you prefer Mr. Delgadillo or Jeff?

1 MR. FREEMAN: Judge, I'm going object. We're in
2 a courtroom. Can we refer to last names?

3 THE COURT: From now on, but at this point, it's
4 fine.

5 Q (BY MR. FREEMAN) All right. Mr. Delgadillo,
6 you said there was no damage to your truck. You inspected
7 it, right?

8 A Yes.

9 Q And when you heard gunfire, had you heard any
10 sounds at all prior to that?

11 A No gunfire sounds.

12 Q Had you heard any shouting?

13 A No.

14 Q Had you heard any yells?

15 A No.

16 Q Had you heard anyone saying Lakewood police?

17 A No.

18 Q Did you hear no sounds, no talking at all?

19 A Outside of my apartment, no.

20 Q Okay. And you said you're a recreational
21 shooter, right?

22 A Yes.

23 Q The sound of a handgun and a shotgun are
24 distinct, correct?

25 A Correct.

1 Q And you believe today that the sound that you
2 heard first was the pop of a handgun?

3 A Possibly, yes.

4 Q When you saw that man and you're looking out
5 your bedroom window, you described him as -- did he look
6 scared or something?

7 A It was too difficult to tell.

8 Q You heard moaning and groaning, though?

9 A Um-hum.

10 Q You saw that that man was wearing shorts?

11 A I believe so, yes.

12 Q A button-up, plaid shirt?

13 A A button-up shirt of some type.

14 Q No hat?

15 A Not that I recall.

16 Q He may have been white or Hispanic?

17 A Correct.

18 Q You said not as -- quite as tall as you?

19 A It was difficult because the person was slumped
20 over, but yes, I would say not as tall as me.

21 Q How tall are you?

22 A I'm 6' 1."

23 Q I'm 5 foot 9. So you're relatively observant?

24 A Fairly.

25 Q So when you heard this gunfire go off, you

1 called 911?

2 A After I observed the person running and shooting
3 the shotgun one time, I grabbed my pistol off the
4 nightstand and went into the middle of the apartment and
5 called 911.

6 Q Did 911 tell you that police were already on the
7 scene?

8 A Yes.

9 Q Did you know that prior?

10 A No.

11 MR. ST. GEORGE: Thank you, Mr. Delgadillo. I
12 have no further.

13 REDIRECT EXAMINATION

14 BY MR. FREEMAN:

15 Q Mr. Delgadillo, this might seem like an obvious
16 question, but do you know if you were awakened by the very
17 first gunshot that occurred that evening?

18 A No.

19 Q So there might have been gunshots before you
20 actually sort of came back to consciousness and started
21 registering what was happening?

22 A Yes.

23 MR. FREEMAN: All right. Thank you.

24 THE COURT: Recross?

25 MR. ST. GEORGE: Nothing further.

1 THE COURT: Does anyone on the jury have a
2 question for this witness?

3 JUROR 32: Yeah, just finishing up writing.

4 THE COURT: Surely.

5 (Pause in the proceedings.)

6 THE COURT: I'm going to have to excuse the jury
7 for a minute. Keep an open mind. Don't do any research.
8 We'll be back in just a minute.

9 (The jury left the courtroom.)

10 THE COURT: Okay. And you can step down for
11 just a moment, and then we'll have you right back.

12 (The witness was excused.)

13 THE COURT: And I just have to excuse the
14 witness for a second.

15 MR. FREEMAN: Okay. If you can either step
16 outside or in that conference room. Sorry.

17 THE COURT: Okay. So the question from the
18 jury, two parts: Did you have the TV or stereo on that
19 night while you slept, and did you -- or do you consider
20 yourself a heavy or a light sleeper. Any objection?

21 MR. FREEMAN: No objection.

22 MR. ST. GEORGE: None, Your Honor.

23 THE COURT: All right. We'll have the witness
24 back on the stand, and then we're going to have the jury
25 back out.

1 (Pause in the proceedings.)

2 THE COURT: Sorry for the back and forth.

3 THE WITNESS: No problem.

4 (Pause in the proceedings.)

5 (The jury entered the courtroom.)

6 THE COURT: Everybody can be seat.

7 Sir, I have a couple of questions for you from
8 the jury. Did you have the TV or stereo on that night
9 while you were asleep?

10 THE WITNESS: No.

11 THE COURT: Do you consider yourself a heavy
12 sleeper or a light sleeper?

13 THE WITNESS: Um, I don't know how to answer
14 that.

15 THE COURT: As a result of the jury's questions,
16 do either side have questions?

17 MR. FREEMAN: Not for the People, Judge.

18 RECROSS-EXAMINATION

19 BY MR. ST. GEORGE:

20 Q Mr. Delgadillo, you were just kind of laying
21 down for bed at the time?

22 A I believe I was asleep, but I hadn't been asleep
23 long.

24 MR. ST. GEORGE: Okay. No more.

25 THE COURT: Thanks so much. You may step down.

1 (The witness was excused.)

2 MS. DECKER: The People call Agent Gordon
3 Lawcock.

4 GORDON LAWCOCK,
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.) Thank
9 you.

10 DIRECT EXAMINATION

11 BY MS. DECKER:

12 Q Good morning.

13 A Good morning.

14 Q Would you please introduce yourself to the jury
15 and spell your name.

16 A Yes. My name is Agent Lawcock with the Lakewood
17 Police Department. My name is spelled L-a-w-c-o-c-k.

18 Q What do you do for the living?

19 A I am an officer with the Lakewood Police
20 Department.

21 Q What do you do there?

22 A I'm a patrol agent assigned to the patrol
23 division.

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

25 A Just over five years.

1 Q And do you have training and experience you
2 could briefly explain to the jury?

3 A Yes. I first started out attending the Lakewood
4 Police Academy, which is a -- excuse me, approximately six
5 months in length, and there I meet the State standards for
6 a police officer. From there, I spend approximately four
7 months working one-on-one with a field trainer that will
8 evaluate me to see if I perform satisfactory.

9 Q I'm going to draw your attention to August 1st
10 of 2016. Were you working in a patrol capacity that
11 evening into the early morning?

12 A Yes, I was.

13 Q And by evening, I mean July 31st into the early
14 morning of August 1st.

15 A Yes.

16 Q And what happened in the early morning hours?
17 Did you hear anything over the police radio?

18 A Yes. At approximately 12:44 in the morning, I
19 heard an officer say over the radio that shots were fired
20 at the area of about Eastman and Wadsworth.

21 Q Was that 8139 West Eastman Place?

22 A It was.

23 Q And did you respond to that location after
24 hearing this car at 12:44 a.m.?

25 A Yes, I did.

1 Q Where were you when you heard this call?

2 A I was at the Colorado Mills mall.

3 Q So how far away were you at the Colorado Mills
4 mall in terms of location and how long it took you to get
5 there?

6 A Approximately ten minutes.

7 Q Once you arrived, was that at about 12:54 in the
8 morning, then?

9 A Approximately, yes.

10 Q What happened once you arrived at the apartment
11 complex?

12 A Once I was there, I parked at the gate of the
13 apartment complex on the south and proceeded to walk up to
14 that apartment building, which was north of there.

15 Q So did you walk directly north on foot?

16 A Yes.

17 Q Were you with any other agent at that time?

18 A Yes. I was with Agent Gibson-French and Agent
19 Nguyen.

20 Q And once you -- as you were walking up to the
21 apartment complex, what were you doing?

22 A At the time I was trying to listen to radio
23 traffic to see where the other agents were and to learn
24 more about the situation.

25 Q And were you able to learn anything as you were

1 walking north towards the apartment complex?

2 A I was able to get more directions of where I was
3 going, as I wasn't quite familiar with the layout of the
4 apartment complex.

5 Q And after getting that information, as you were
6 walking, where did you go?

7 A I started to go north and a little bit to the
8 west.

9 Q Once you walked through this -- was it sort of a
10 greenbelt area?

11 A Yes.

12 Q Once you walked to the north and towards the
13 west, where did you wind up?

14 A I was at the southeast corner of 8139 West
15 Eastman Place.

16 Q Was there anyone else there once you arrived?

17 A Yes. I met with Agent Trimmer and Agent Alfano,
18 who were already there when I arrived.

19 Q What happened once you arrived to their
20 location?

21 A Moments after getting there, on the south side
22 of the building, there was an open air vestibule that will
23 lead into the front doors of numerous apartments, and I
24 heard other agents giving verbal commands to a male who
25 was yelling, but I could not tell what the male was

1 saying.

2 Q At that time, when you heard a male yelling and
3 other officers giving verbal commands, did you hear any
4 gunshots at that time, or did you hear gunshots prior to
5 that?

6 A Prior to that.

7 Q So describe for the jury when you heard gunshots
8 after arriving on scene, but prior to when officers were
9 giving commands and this person was yelling.

10 A After getting out of my vehicle and walking up
11 to that 8139 West Eastman Place, it was in between that
12 time I heard three to four gunshots in the direction of
13 8139 West Eastman Place.

14 Q And could you tell whether they were inside or
15 outside or what type of weapon?

16 A I could not.

17 Q And how much time had elapsed from the time you
18 heard those gunshots as you were walking to the
19 time -- the time you heard officers yelling at a suspect
20 and a suspect also yelling?

21 A Approximately one minute.

22 Q So is it fair to say that the last gunshot you
23 heard was approximately one minute prior to all that
24 yelling?

25 A Correct.

1 Q Once you heard the yelling of the alleged
2 suspect and the officers, what did you do next?

3 A At that point other agents and I approached that
4 vestibule.

5 Q And how did you approach?

6 A At that point we were -- had our guns drawn, and
7 we were walking from the east side of building to the west
8 side.

9 Q Once you approached this vestibule, what did you
10 see within the vestibule?

11 A I saw a male laying on the ground with his hands
12 upward.

13 Q And could you hear what he was saying or
14 yelling?

15 A At the time I could not.

16 Q What was his body positioning there in the
17 vestibule?

18 A As I mentioned, he was laying on the ground, and
19 his hands were up. At the time he appeared to be
20 cooperating with the other agents, who were able to
21 handcuff him.

22 Q Did you see any other weapons on the ground at
23 that time?

24 A I do not recall.

25 Q And did you see that this male was injured?

1 A Yes. I noticed that on both his left and right
2 calf, there appeared to be wounds consistent with a
3 gunshot wound, and there was blood coming out of his leg.

4 Q What did you do once this person was placed into
5 handcuffs?

6 A The doors to the nearby apartments were shut, so
7 there was concern there could be someone else inside with
8 a weapon, so I assisted by taking him out -- he was
9 handcuffed, and I pulled him out of the vestibule and
10 around the corner, away from the area that could have had
11 danger.

12 Q You mentioned you pulled him out and around the
13 corner. In which direction did you pull him?

14 A I believe it was to the west.

15 Q And after he was in this location outside of
16 this vestibule area, what did you do?

17 A At that point I noticed that he was bleeding,
18 and I was concerned for his well-being. So I applied what
19 I commonly refer to as tourniquets around both legs, and
20 the purpose of those is to help stop blood loss in order
21 to save someone's life.

22 Q And describe for the jury how you applied these
23 tourniquets and how you know how to apply a tourniquet.

24 A That is something that I've received extensive
25 training on through the Lakewood Police Department. What

1 it is is it would be a piece of fabric, usually nylon with
2 Velcro, that could go around someone's extremity, such as
3 their arm or their leg, and you would tighten that to
4 apply pressure to stop the blood loss.

5 Q And so where did you apply these tourniquets on
6 the suspect?

7 A On both his left and right leg close to his
8 groin.

9 Q And do you have tourniquets or that type of
10 material on you, or how did you have it to do that?

11 A Yes. I had one on me that night, and another
12 agent nearby had one that I was able to take from him to
13 use.

14 Q And once you applied these tourniquets, did you
15 inform that to dispatch?

16 A Yes.

17 Q And was that at 1:02 a.m.?

18 A It was.

19 Q And do you recognize the man that you applied
20 niece tourniquets to from the courtroom today?

21 A I yes, I do.

22 Q Can you identify him by where he's sitting and
23 what he's wearing?

24 A Yes. He standing directly to your right in a
25 dark-colored suit with a light blue undershirt.

1 MS. DECKER: Please let the record reflect,
2 Judge, that this witness has identified the defendant.

3 THE COURT: The record reflects.

4 Q (BY MS. DECKER) After you applied these
5 tourniquets, what was going on with the other agents on
6 scene?

7 A To my knowledge, they were doing a protective
8 sweep of the apartment, meaning they were entering the
9 apartment for the purpose of making sure no one else was
10 in there.

11 Q And did you do anything else with the defendant
12 after applying these tourniquets?

13 A Yes. While agents were searching the apartment,
14 they requested the male be moved farther away from the
15 apartments, so at that time I moved him several more feet,
16 and then I searched him to see if there were any weapons.

17 Q And you said you searched him. Did he have
18 pockets on any of his clothing?

19 A Yes.

20 Q Describe to the jury what he was wearing.

21 A Yes. He was wearing a light-colored button-up
22 shirt, as well as gray cargo shorts.

23 Q And when you say "cargo shorts," does that mean
24 they have more than just the two side pockets?

25 A Correct. There were also pockets down just

1 below -- or, I'm sorry, just above his knees.

2 Q And so describe exactly where you, then, moved
3 him after checking him for anything else.

4 A Farther west approximately 20 feet.

5 Q Did anyone arrive to take him to the hospital?

6 A Yes. Paramedics were requested at that time.
7 They loaded him up into a stretcher, and I assisted with
8 that, and he was transported to St. Anthony's Hospital for
9 medical treatment.

10 Q Based on your contact with the defendant as you
11 applied the tourniquets and moved him several times, what
12 was his demeanor?

13 A He was yelling, several times complained of
14 pain. At one point, no agents were addressing him, and he
15 made the spontaneous statement of, quote, I shot. After
16 hearing that, I did not respond, and I did not hear any
17 other agents respond to what he was saying.

18 Q And with this statement, I shot, was that made
19 in a calm tone of voice, or was he yelling that loudly?

20 A No, he was yelling that loudly.

21 Q Were you the only officer standing by him, or
22 were there other officers?

23 A Agent McKalip was nearby at that time.

24 Q And once the paramedics arrived to take the
25 defendant away, what did you do after he had left?

1 A At that point I was directed to assist by
2 setting up crime scene tape to ensure no one would enter
3 and disturb any physical evidence.

4 Q And in addition to putting up crime scene tape
5 to preserve the scene, were you able to speak to any
6 potential eye or ear witnesses?

7 A Yes.

8 Q And did that include some neighbors?

9 A Yes, it did.

10 Q Were you able to make contact with a neighbor
11 named Jeffrey Delgadillo?

12 A I was.

13 Q And how soon after the defendant had left the
14 scene did you make that contact?

15 A I would estimate about 20 minutes.

16 Q And how did you make that contact?

17 A He was outside his unit, which was in the active
18 crime scene, so I went in his garage and proceeded to ask
19 him if he witnessed anything that occurred.

20 Q And did he tell you that he heard numerous shots
21 from what he believed was a shotgun?

22 A Yes. He said he heard that between 12:30 a.m.
23 and 1:00 a.m.

24 Q And was that when he was sleeping in his
25 bedroom?

1 A Yes.

2 Q And did he ever mention hearing any handgun
3 fire?

4 A No, he did not.

5 Q After you spoke with Jeffrey Delgadillo, what
6 did you do next?

7 A After that, I was placed on the position for the
8 crime scene to ensure that no one would enter without
9 being logged in the crime scene.

10 Q And after maintaining the crime scene, did you
11 have any further involvement?

12 A Not to my knowledge. Or, I'm sorry, not to my
13 recollection.

14 Q And once you were able to leave the scene, were
15 other officers able to relieve you of your duties in
16 maintaining and preserving the crime scene?

17 A Yes.

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

19 THE COURT: Cross-examination?

20 CROSS-EXAMINATION

21 BY MR. ST. GEORGE:

22 Q Agent Lawcock, you said that as you were
23 approaching, you heard three to four gunshots?

24 A Yes, that's correct.

25 Q And when you arrived into the breezeway, I

1 think -- what did you call it?

2 A I called it a vestibule.

3 Q A vestibule. When you got to the vestibule, you
4 said that the man that you saw was cooperating?

5 A Yes.

6 Q He had his hands up?

7 A Yes.

8 Q He was responding to commands that were being
9 given to him?

10 A Yes, he was.

11 Q He was able to be cuffed without any issue?

12 A I was not the one cuffed him, but I did not
13 observe any issues.

14 Q No fights back or anything?

15 A Again, I wasn't the one handcuffing him, so I
16 can't tell if he was pulling away or tensing up.

17 MR. ST. GEORGE: Thank you. No more questions.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MS. DECKER:

21 Q When you heard those three to four gunshots when
22 you were walking north towards the scene, were you also
23 listening your police radio?

24 A I was.

25 Q When you heard any of these gunshots, did you

1 ever hear on the police radio that someone was coming out
2 of the suspect's apartment?

3 A I do not recall.

4 Q Okay. Thank you. Is that something that you
5 would have noted if that was something that you would have
6 heard?

7 A Yes, I would have.

8 Q And you did not note that?

9 A Correct.

10 MS. DECKER: Thank you.

11 THE COURT: Recross?

12 MR. ST. GEORGE: No further.

13 THE COURT: Does anyone on the jury have a
14 question for this witness?

15 (No verbal response.)

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

17 THE WITNESS: Thank you, ma'am.

18 (The witness was excused.)

19 MR. FREEMAN: Ready for another witness, Judge?

20 THE COURT: Let's have one more.

21 KERI POKORNY,

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

24 THE COURT: Have a seat, please.

25 THE WITNESS: (The witness complied.)

1 DIRECT EXAMINATION

2 BY MS. DECKER:

3 Q Good morning.

4 A Good morning.

5 Q Would you please introduce yourself to the
6 Court, and spell your full name.

7 A My name is Keri Pokorny, K-e-r-i P-o-k-o-r-n-y.

8 Q And what do you do for a living?

9 A I work at Porter Hospital as a phlebotomist.

10 Q As a phlebotomist?

11 A Um-hum.

12 Q And where do you live?

13 A I live at 1660 South Garrison Street in
14 Lakewood.

15 Q And where did you live on August 1st of 2016?

16 A In Windsor Apartments.

17 Q And, specifically, what apartment building and
18 number?

19 A 8117 West Eastman, 4-205.

20 Q And that was Building 4, Apartment 205?

21 A Um-hum.

22 Q Who did you live with at that time, August 1st
23 of 2016?

24 A My mother and my children.

25 Q And what's your mom's name?

1 A Sharon.

2 Q And is her last name also Ms. Pokorny?

3 A Yes.

4 Q And how long have you lived in the Windsor
5 apartment complex in that specific residence?

6 A Two years.

7 Q I'm going to put up what's already been admitted
8 as Exhibit 2.

9 (People's Exhibit 2 was published.)

10 Q (BY MS. DECKER) And, Ms. Pokorny, if you could
11 recognize --

12 MS. DECKER: If we zoom -- actually, let's go to
13 Exhibit 3.

14 (People's Exhibit 3 was published.)

15 Q (BY MS. DECKER) Do you see your apartment
16 building on this exhibit?

17 A Um.

18 Q And we can get a more zoomed-out shot of the
19 apartment complex, if you need it. Would that be easier?

20 A Those parking spots on the bottom right-hand
21 corner, the -- my building, I believe, is to the right of
22 that.

23 MS. DECKER: So let's go to Exhibit 2 and just
24 zoom in on the Windsor Apartments.

25 (People's Exhibit 2 was published.)

1 Q (BY MS. DECKER) Okay. So when we zoom in on
2 the Windsor apartment complex, can you specify -- and if
3 it's easier to get down and point to what your apartment
4 building is, you can do that. There's a pointer right
5 underneath the Judge.

6 A Like up there?

7 Q Yeah.

8 THE COURT: Yeah, there's -- there's a stick
9 pointer right there.

10 A Like right here (indicated). Nope. Back here
11 (indicated).

12 Q (BY MS. DECKER) Okay. And then we'll go to
13 Exhibit 4. And you may be able to see it more clearly
14 there as well. So on the right-hand portion of the page,
15 if we can zoom in on the right half, are you able to
16 distinguish where your apartment was from this picture?

17 A Yes, ma'am. Right here (indicated).

18 Q And so you're pointing, on the second row of
19 buildings down, second one in from the right; is that
20 accurate?

21 A It's right on the corner.

22 Q On the northeast corner of that greenbelt?

23 A Yes.

24 Q Okay. All right. You can take your seat.

25 A (The witness complied.)

1 Q And once you get back to your seat, I'll ask
2 you, when did you move from that apartment?

3 A When I did move from there?

4 Q Uh-hum.

5 A Last October.

6 Q So I'm going to draw your attention to the night
7 of July 31st into the morning of August 1st of 2016. What
8 was your work shift around that time? What time would you
9 typically come home from work?

10 A I get off at 8:30, so I usually get home around
11 9:00.

12 Q So on July 31st of 2016, do you recall when you
13 got home from work?

14 A Like 9:00, 9:15.

15 Q Once you got home, what did you do?

16 A Went upstairs, saw my children, talked to my
17 mom, and then I went downstairs shortly after that to go
18 outside to smoke a cigarette.

19 Q And did you work Monday through Friday, or did
20 you also work on weekends?

21 A I work Sunday through Thursday.

22 Q So on this day, was it a Sunday that you worked?

23 A I believe so.

24 Q And so once you got home and sort of got settled
25 in, did you ever go outside?

1 A I did.

2 Q And for what purpose?

3 A To smoke a cigarette.

4 Q And was that at around 9:30 in the evening?

5 A Yes.

6 Q And did you notice anything that you -- that was
7 unusual or that struck your attention?

8 A Yeah. There's like five parking spots like
9 right outside the front door, and I just had noticed a car
10 that I had never seen there before.

11 Q Do you remember what it looked like?

12 A It was silver or gray. It was -- it looked
13 like -- like a Jetta or a BMW, like an older style, with
14 black rims.

15 Q And just to be clear, let's put up Exhibit 3
16 again, and then I think you'll be able to see that parking
17 area. Is that right above the exhibit sticker?

18 A Yes.

19 Q And so where were you standing in relation to
20 the parking area?

21 A Just two spots over.

22 Q Off the picture to the right?

23 A Um-hum.

24 Q Okay.

25 MS. DECKER: We can take down the picture.

1 Thanks.

2 Q (BY MS. DECKER) And so did you notice it
3 because it wasn't a car that usually parked there, didn't
4 appear to be one of your neighbors?

5 A It was nice.

6 Q Okay. And after smoking your cigarette, what
7 did you do?

8 A I went upstairs to lay down with my son.

9 Q And was that at around 10:00 p.m.?

10 A Um-hum.

11 Q And once you were lying down in bed with your
12 son, did you hear anything from outside?

13 A I did. I heard a woman's voice talking.

14 Q And what did that woman's demeanor sound to be
15 like?

16 A She -- they don't -- she wasn't arguing or
17 yelling. She was just talking very loud.

18 Q And did she appear to be talking to someone
19 else?

20 A Um-hum.

21 Q And who did she appear to be talking to?

22 A I don't know.

23 Q Did you tell an officer later that early morning
24 of August 1st that you could hear some girls, or what
25 sounded like some girls talking outside?

1 A I mean, it sounded like she was having a
2 conversation with somebody.

3 Q And did it sound like she was talking to another
4 woman?

5 A Um-hum.

6 Q Did you see this woman who you heard talking, or
7 did you just hear her?

8 A I just heard her.

9 Q After hearing her talking -- and it didn't sound
10 like she was arguing or fighting; is that right?

11 A No, she wasn't.

12 Q After you were able to hear her just talking to
13 what sounded like another woman, what did you hear next?

14 A A loud boom.

15 Q And did you hear this woman say anything in
16 reaction to that boom?

17 A Oh, my God, he has a gun.

18 Q What did you do at this point?

19 A I laid there. I heard -- I heard a door shut on
20 a car, and then I heard the car sped away.

21 Q Were you able to see any of this that you've
22 just described?

23 A No.

24 Q So we've talked about that parking area. Did it
25 sound like that the car was leaving that parking area?

1 A Um-hum.

2 Q When you heard this woman's voice sound like she
3 was talking to another woman, was it at or near that
4 parking area?

5 A Yes.

6 Q And so after you heard this car take off, what
7 did you do?

8 A I got up and looked out the window.

9 Q And so how soon after the car sounded like it
10 left did you get up to the window to look?

11 A A few seconds.

12 Q Did you see anything outside your window?

13 A I did. I saw the outline of a male walking in
14 the middle of the road, walking west.

15 Q And so would that be, if we're looking at that
16 picture, to the left?

17 A Um-hum.

18 Q And did you see what he was wearing?

19 A Just boxers or shorts.

20 Q So just his underwear boxer shorts?

21 A Yes.

22 Q So no shirt?

23 A No.

24 Q Just describe for the jury exactly your vantage
25 point from that window of yours.

1 A What do you mean?

2 Q How you were able to see out that window, what
3 you were able to see.

4 A So my window -- so it's on the second floor, so
5 it's a bird's-eye view, so you can see down. I can see
6 down into where he was walking.

7 Q And so could you see down onto that street area?

8 A Um-hum.

9 MR. FREEMAN: And if we could put up Exhibit 3.

10 (People's Exhibit 3 was published.)

11 Q (BY MS. DECKER) And so on Exhibit 3, were you
12 able to also see that parking area to the right, or just
13 directly onto the street?

14 A Just more onto the street.

15 MS. DECKER: Okay. Thank you. We can take that
16 down.

17 Q (BY MS. DECKER) And what was the distance
18 between you and you this man that you could see walking to
19 the left, or to the west?

20 A He was probably at like the last parking spot in
21 that -- it was like five.

22 Q What was the lighting like?

23 A It was dark. Just the streetlights.

24 Q And do you remember what this man looked like?

25 A No.

1 Q And could you see his hands?

2 A No.

3 Q So you couldn't see his hands. Could you see,
4 was there anything in his hands?

5 A No.

6 Q At this point, did you call 911?

7 A No.

8 Q And explain to the jury why you didn't.

9 A Because around the time of the year it was, I
10 hear fireworks all the time over there, and when I did
11 hear that and they did take off, when I was watching him
12 walk, it wasn't somebody that was walking fast or running.
13 It was somebody that was walking very slow. So it made me
14 feel like it wasn't a gunshot that I heard.

15 Q And you mentioned that you saw this man walking
16 slowly in his underwear. Did he appear to be stumbling?

17 A No.

18 Q Staggering?

19 A No. Just slow.

20 Q Just a slow walk. And did you hear anything
21 concerning after he was walking west?

22 A No.

23 Q So I'm going draw your attention to a couple of
24 hours later into maybe the early morning of August 1st.
25 Had you fallen asleep by that early morning?

1 A Yes.

2 Q And did you wake up to the sound of anything?

3 A My mom woke me up and asked me if I heard that,
4 the gunshot.

5 Q I'm sorry. I didn't mean to interrupt you.
6 Your mom woke you up and asked you if you had heard --

7 A Gunshots.

8 Q And had you heard gunshots prior to your mom
9 waking up?

10 A Something woke me up, but I wasn't sure what it
11 was, and then she came into my room, so . . .

12 Q And after she came into your room and asked you
13 if you had heard gunshots, did you hear anything else
14 coming from the outside?

15 A No.

16 Q What did you do after she had come into your
17 room asking you if you had heard those gunshots?

18 A I looked out the window again.

19 Q And what could you see out you window?

20 A Like six or seven police officers walking
21 quietly across the street.

22 Q And could you hear the officers at any point,
23 after you could see them, start yelling anything?

24 A They weren't yelling at first. They were quiet.

25 Q And for how long were they quiet when you could

1 see them?

2 A Maybe five, ten minutes, maybe.

3 Q And then you mentioned there was a time that
4 they were not quiet anymore?

5 A Yeah. I don't -- I can't remember. It was a
6 long time. It was quiet for a while, and then I heard
7 drop your weapon, drop your weapon, and then I heard
8 another gunshot.

9 Q And did you see anything else across the way at
10 the neighbor's apartment building?

11 A Not at that time, no.

12 Q And how soon after this point did you see
13 anything from that building?

14 A I didn't see anything until after I heard that
15 gunshot, the last gunshot.

16 Q And did you see anyone that the officers were
17 bringing onto grass?

18 A Yes, I did.

19 Q A grassy area?

20 A Um-hum.

21 Q What did you see with regard to that?

22 A I just saw them carry him across into this
23 little grassy area across the street, and then there was
24 some commotion, and then the ambulance and the fire truck
25 showed up.

1 Q Do you remember talking to officers about this
2 on that early morning, about what you had heard?

3 A Yes.

4 Q And what you had seen?

5 A Yes.

6 Q And do you remember telling officers that you
7 heard a gunshot and then officers yelling drop your
8 weapon?

9 A Maybe.

10 Q Okay. And it's been over a year?

11 A Yes.

12 Q In the middle of this night, would you describe
13 yourself as highly alert or sleepy?

14 A Um, a little sleepy, and then totally awake.

15 Q And then totally awake?

16 A Yeah.

17 Q How many gunshots do you recall hearing in
18 total?

19 A Maybe four or five.

20 Q And when you say "four or five," are you
21 counting the sound that you heard prior to going to bed?

22 A Yes.

23 Q And the next round of gunshots, are you counting
24 any that your mom heard or just ones that you heard?

25 A It's so blurry. 'Cause there -- she heard

1 shots, and then I heard shots, and then I heard drop your
2 weapon, and then I heard another shot, and then it was
3 done.

4 Q You mentioned that you were able to see, for
5 about five or ten minutes, officers outside being quiet
6 outside of your complex, or your building. Were they on
7 that --

8 MS. DECKER: If we could put up Exhibit 3.

9 (People's Exhibit 3 was published.)

10 Q (BY MS. DECKER) Were they on this street that
11 was to the north of your building?

12 A Yes, and then they were in that greenbelt area
13 as well.

14 Q Okay. And were you able to look out to the
15 north and also to the east from your window?

16 A Um-hum.

17 Q Were you looking out of just one window or two
18 windows?

19 A I was looking out my bedroom window at first,
20 and then I looked out another window that looks down onto
21 the greenbelt, and then that's when I saw the other police
22 officers over there.

23 Q And were those police officers moving north?

24 A Um-hum.

25 Q And the police officers that you could see

1 outside of your north-facing bedroom window, where were
2 they?

3 A They were going west.

4 Q How could you tell that these were police
5 officers?

6 A Because you can see the outlines of them and
7 their guns.

8 Q And could you see any identifying
9 characteristics of them being police officers?

10 A You could tell they were police officers.

11 Q And you had mentioned that even on that parking
12 area, at least the lighting was bad, but you were still
13 able to determine from your vantage point?

14 A Yes.

15 Q And you were able to determine from your vantage
16 point both that the people to the east, on the greenbelt,
17 as well as to the people to the north were officers?

18 A Um-hum, yes.

19 MS. DECKER: Thank you, Judge.

20 THE COURT: Cross-examination?

21 CROSS-EXAMINATION

22 BY MR. ST. GEORGE:

23 Q Ms. Pokorny, you said you were a little sleepy
24 after midnight?

25 A Yeah.

1 Q You weren't a little sleepy in between 9:30,
2 10 o'clock, though, right, when you're out having your
3 smoke?

4 A No.

5 Q You said you could hear girls talking?

6 A I could hear a girl talking, yeah.

7 Q And then you heard one loud boom?

8 A Yes.

9 Q Later that night, you said you saw police in the
10 street?

11 A Yes.

12 Q They were standing up?

13 A Yes.

14 Q So you could see their outline?

15 A Um-hum.

16 Q You're apartment is up high, looks down?

17 A Um-hum.

18 Q And there was a big group of them?

19 A Yes.

20 Q So it was pretty obvious they were police?

21 A Yes.

22 MR. ST. GEORGE: I have no further. Thank you.

23 THE COURT: Any redirect?

24 MS. DECKER: No, Your Honor.

25 THE COURT: Does anyone on the jury have a

1 question for this witness?

2 (No verbal response.)

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

4 (The witness was excused.)

5 THE COURT: Ladies and gentlemen, we're going to

6 take about a ten-minute break. Please keep an open mind.

7 Don't talk about the case. Don't do any investigation.

8 Thank you.

9 (The jury left the courtroom.)

10 THE COURT: Ten minutes.

11 (A recess was taken.)

12 (The jury entered the courtroom.)

13 THE COURT: Everybody be seated, please.

14 You can call your next witness.

15 MS. DECKER: The People call Sharon Pokorny.

16 SHARON POKORNY,

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

18 being first duly sworn, testified as follows:

19 THE COURT: Have a seat, please.

20 THE WITNESS: (The witness complied.)

21 THE COURT: And you're going to look right at
22 the attorney there.

23 DIRECT EXAMINATION

24 BY MS. DECKER:

25 Q Good morning, Ms. Pokorny.

1 A Good morning. How are you?

2 Q I'm good. How are you?

3 A Good.

4 Q Will you please introduce yourself to our jury,
5 and spell your full name for our court reporter, who is
6 sitting in front of you.

7 A My name is Sharon Pokorny, and it's
8 P-o-k-o-r-n-y.

9 Q Ms. Pokorny, where do you live?

10 A Right now, I live at 8117 West Eastman, in the
11 Windsor Apartments in Lakewood. At the time of this, I
12 was living at 8117 West Eastman. Now I live at 8163. So
13 I've moved since then.

14 Q Do you still live within the Windsor Apartments?

15 A I do.

16 Q And how far away did you move from where you
17 used to live?

18 A Maybe a block. It's just in the next section.

19 Q So on August 1st of 2016, were you at 8117 West
20 Eastman Place, Building 4, Number 205?

21 A Yes.

22 Q And who were you living with at that time?

23 A My daughter was living with me at that time.

24 Q And what's your daughter's name?

25 A Keri Pokorny.

1 Q Was she living there with any of her children as
2 well?

3 A Yes.

4 Q How many?

5 A Two grandchildren.

6 Q And for how long have you lived within the
7 Windsor apartment complex?

8 A Three and a half years now.

9 Q And was this apartment that you lived in on
10 August 1st of 2016 the first apartment you lived in there?

11 A Yes.

12 Q I'm going draw your attention to the night of
13 July 31st into the early morning of August 1st of 2016.
14 Were you home that evening?

15 A Yes.

16 Q What happened after your daughter, Keri, got
17 home from work?

18 A Well, at about 10 o'clock, we were all getting
19 ready for bed, and I heard, I thought it was fireworks,
20 but now come to realize it was gunshots. That was about
21 10:00, and we were all getting ready for bed. And then I
22 woke up again around 1:00 to go to the restroom, and on my
23 way back to my bed is when I heard more shots, about four
24 or five.

25 Q So I'm going to ask you a few more questions

1 about that. The first sound that you heard at around
2 10:00 p.m., could you tell where it was coming from?

3 A Not exactly. It sounded like it was coming
4 from -- well, outside my bedroom window, which faced west,
5 and I'm right off the main street in that back section.

6 Q So I'll show you Exhibit 3 that you're going to
7 see on this screen.

8 (People's Exhibit 3 was published.)

9 Q (BY MS. DECKER) Can you see that parking area
10 to the north of that exhibit sticker, that orange exhibit
11 sticker on the bottom right?

12 A Um-hum.

13 Q So in relation to that parking area, where was
14 your bedroom window?

15 A Well, my bedroom sits at the back of this unit.
16 So I look out over the courtyard.

17 MS. DECKER: So if we can put up Exhibit 4.

18 (People's Exhibit 4 was published.)

19 Q (BY MS. DECKER) Is this the Windsor apartment
20 complex? And I'll draw your attention to the right half
21 of the screen.

22 A UmOhum.

23 Q Do you see that greenbelt on the right half of
24 the screen?

25 A Um-hum.

1 MS. DECKER: And can we zoom in on just the
2 Windsor Apartments there.

3 Q (BY MS. DECKER) And so in looking at it more
4 closely, were you the second row down, third one in from
5 the right? Is that your building?

6 A Second row down. I'm on the outside of that
7 main street, so that street. And then there's apartments
8 across from me. And then beyond that is the open space.

9 Q And so I'll just have you get down and point to
10 your bedroom window and where that was. So there's a
11 pointer right beneath the Judge. And you can just get
12 down off the witness stand and just approach that screen
13 and point to the jury where your bedroom was, and if you
14 can see that parking area to the north of that greenbelt,
15 where it was in relation to that parking area.

16 A It would be right in this area (indicated). My
17 bedroom is back here.

18 Q Okay. And so when you look at the parking area,
19 are you looking to the northwest or to the northeast?

20 A Okay. This is the parking area.

21 Q Yeah. And then point to the corner of the
22 building that your building was in.

23 A Back here.

24 Q And so that's the second building in from the
25 right?

1 A Yes.

2 Q Okay. And on the northwest of the second
3 building in from the right?

4 A Um-hum.

5 Q Okay. And is that where you were living on
6 August 1st of 2016?

7 A Yes.

8 Q And while you're up there, point out where you
9 live now, if it's on this exhibit.

10 A It's probably not, because it would be down here
11 into the next section, so more down this way (indicated).

12 Q Okay. And you can take your seat again.

13 A Okay.

14 Q And so when you heard what you thought was
15 fireworks, you said that was around 10:00 p.m. Are you
16 familiar with the sound of gunfire? Do you have much
17 experience with --

18 A No, I don't.

19 Q So after hearing what you heard was the sound of
20 fireworks, did you call 911?

21 A No, I didn't. I went to check on my daughter
22 and the grandkids first. And by the time I did
23 that -- well, not the first time, 'cause I thought that
24 was fireworks, so it was the second time that I got up and
25 went to check on my grandchildren and my daughter.

1 Q And the first time, did you hear the sound of
2 fireworks coming from what seemed like that parking area
3 that you just pointed out?

4 A Um-hum.

5 Q And after hearing that first shot, did you just
6 go to bed -- or that sound of fireworks, did you just go
7 to bed?

8 A I did, because I thought it was fireworks. It
9 was just one shot.

10 Q And you mentioned that you had gotten up in the
11 middle off the night at around 1:00 in the morning to go
12 to the bathroom?

13 A Um-hum.

14 Q Describe to the jury what you heard at that
15 point.

16 A On my way back to bed, I heard about four or
17 five shots, and I knew that was gunshots.

18 Q So did that sound different from the sound you
19 had heard?

20 A Not different, just because there was more, it
21 made me realize that's what it was.

22 Q And describe whether these were loud or faint.

23 A Loud.

24 Q Were you able to tell where they were coming
25 from?

1 A Not exactly. I just -- it just sounded like it
2 was coming from around that courtyard area and, you know,
3 beside my apartment, down in that area.

4 Q When you say "that courtyard area," there is
5 that greenbelt that we're talking about. Is that what
6 you're referring to?

7 A It's not the greenbelt. Like between the
8 apartment buildings, there's a courtyard with trees, and
9 then there's another section of apartments. So it sounded
10 like it was in that vicinity, toward the street.

11 Q So in looking at where your bedroom was, can you
12 describe for the jury, by just looking at this picture,
13 where it sounded like these shots were coming from, when
14 you say "a courtyard"?

15 A Well, that courtyard between my building and the
16 next building, and it sounded like they were
17 coming -- well, just outside my window, closer to the
18 street.

19 Q And so is this courtyard close to this parking
20 area that we were just talking about?

21 A Um-hum.

22 Q So did it sound like they were coming from
23 roughly the same place that your heard --

24 A Yes.

25 Q -- what you thought were fireworks?

1 A Yes.

2 Q And how many of those did you hear?

3 A The second time?

4 Q Yeah.

5 A I think it was four or five.

6 Q At this point, do you -- were you able to look
7 out your window and see anything?

8 A I did try to look out my window, but the
9 courtyard has a lot of trees, and so it's kind of dark.
10 But there is a light on the apartment building next to
11 mine, there was a little outside light, and I could see
12 shadows of someone -- well, probably two or three people
13 walking across this breezeway from the -- across to the
14 next apartment building, toward the street.

15 Q And when you say "the next apartment building,"
16 which apartment building are you talking about?

17 A The one directly across from me. Like there's
18 another section of apartment buildings right across on the
19 other side of, you know, that greenway between our
20 apartment buildings.

21 Q Okay. So you're saying directly across was
22 where you could see people milling about?

23 A Um-hum.

24 Q And is that where there was this courtyard area
25 and a tree, or various trees?

1 A Um-hum.

2 Q And what were the people doing?

3 A All I could do is see movement walking through
4 this breezeway toward that street.

5 Q And how clearly could you see them?

6 A Not clearly.

7 Q What was the lighting like?

8 A It was pretty dim. Like I say, there was
9 outside lighting on that building, so there was a little
10 bit of light, but it was dark, so -- and with the tree and
11 all, it was hard to see.

12 Q For how long were you looking out the window to
13 see people in the courtyard area?

14 A Just for a couple of minutes.

15 Q And after looking -- were you looking out the
16 window for a couple of minutes before you went to check on
17 you daughter and grandkids?

18 A I did.

19 Q Once you went to check on your daughter and your
20 grandkids, what did you do?

21 A I just went to see if they were okay, because
22 these gunshots were closer to where they were. They were
23 in the bedroom at the front of the apartment, and they had
24 the windows open, so I just wanted to make sure everybody
25 was okay. And by now, you know, we heard someone say get

1 your hands up, so we saw, you know, that there was police.

2 Q So you mentioned that you heard three to four
3 gunshots at around 1:00 when you went to the bathroom?

4 A Um-hum.

5 Q And then you looked out your window for a few
6 minutes; is that right?

7 A A couple of minutes, yeah.

8 Q And I'm just trying to get the time line here.

9 A Um-hum.

10 Q And then you went into your daughter's bedroom?

11 A Um-hum.

12 Q And did you hear any additional gunfire after
13 that three to four at 1:00 a.m. or so?

14 A No.

15 Q And so around the time that you heard police say
16 get your hands up, did you hear any additional gunfire?

17 A No.

18 Q At the time that you heard police say get your
19 hands up, could you hear that any male was screaming?

20 A Um-hum.

21 Q What did that sound like?

22 A It just sounded like he was screaming and
23 hollering and had been shot. I think he said something
24 like my knee, or my leg, or something like that.

25 Q And could you tell whether there were police

1 outside of your window?

2 A Um-hum. It looked like there was at this point,
3 yeah.

4 Q And how could you tell they were police?

5 A We kind of looked outside to see. My daughter's
6 windows were open.

7 Q And was this before they were yelling commands?

8 A Um-hum.

9 Q And you could tell that they were police even
10 before they were yelling commands at the male?

11 A Well, they -- yeah, it looked like they had,
12 yeah, you know, their uniforms.

13 MS. DECKER: Thank you. I have no further
14 questions.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. ST. GEORGE:

18 Q Ms. Pokorny, you said earlier in the evening,
19 around -- between 9:30 and 10:00, you heard one loud
20 sound?

21 A Um-hum.

22 Q And your apartment looks down on the street
23 area?

24 A It doesn't really look down on the street area.
25 It looks more into the courtyard. I can't see much of the

1 street area, just a little bit.

2 Q Were you aware of any police presence prior to
3 hearing all the screaming?

4 A Screaming? Okay. So now you're talking about
5 later?

6 Q Later in the evening.

7 A Yeah, I heard voices, but I couldn't really hear
8 what they were saying.

9 Q Okay.

10 A I mean, I was aware there was activity going on.

11 Q And you said you knew they were police?

12 A When I got to my daughter's bedroom, when we
13 looked out the window.

14 Q They were all standing up and walking? The
15 policemen that you saw, they were standing up and walking?

16 A Um-hum.

17 Q So you could see their uniforms?

18 A Um-hum.

19 Q And there was a group of them?

20 A Yeah, there was more -- yeah, there was more
21 than one. One, two, three -- yeah, there were several.

22 MR. ST. GEORGE: I've got nothing further.

23 Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: Any redirect?

1 MS. DECKER: If I may have a moment?

2 (Pause in the proceedings.)

3 MS. DECKER: No, Your Honor.

4 THE COURT: Does anyone on the jury have a
5 question for this witness?

6 Could you step down for a moment, please, and
7 head out for a second.

8 THE WITNESS: Go out?

9 THE COURT: Yes.

10 And we'll excuse the jury for a second.

11 (The jury left the courtroom.)

12 THE COURT: Mr. Freeman, do you want to let her
13 know that she has to stay?

14 MR. FREEMAN: Sure.

15 (The jury left the courtroom.)

16 THE COURT: Okay. So the question is, when you
17 saw people walking through the courtyard, could you tell
18 they were policemen? Any objection?

19 MS. DECKER: No.

20 MR. ST. GEORGE: None, Your Honor.

21 THE COURT: Okay. I'm going to have the jury
22 back, and we'll have our witness back on the stand.

23 (The witness entered the courtroom.)

24 THE COURT: Sorry to have you step down and come
25 back. We have a couple more questions for you.

1 (The jury entered the courtroom.)

2 THE COURT: Okay. Everybody be seated, please.

3 So, ma'am, I do have a question for you from the
4 jury. So this would be later on in the evening, when you
5 saw people walking through the courtyard, could you tell
6 they were policemen?

7 THE WITNESS: No, not at that point. And they
8 weren't walking through the courtyard. It was really
9 close to the apartment building and kind of through a
10 breezeway, toward the street. And, no, I could not at
11 that point tell.

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

14 REDIRECT EXAMINATION

15 BY MS. DECKER:

16 Q So, Ms. Pokorny, you mentioned earlier that you
17 were able to tell that there were police officers outside
18 based on the look of their uniform. When were you able to
19 get a look at these people and see their uniform?

20 A When I went into my daughter's room to check on
21 them, and the window was open, and that's when we looked
22 out and we heard -- you know, we heard voices and we
23 looked out and we saw policemen.

24 Q And so I'm going just rewind. When you were
25 looking out a different window, was that your bedroom

1 window?

2 A Yes.

3 Q And what were you able to see these people
4 doing?

5 A As I say, they were walking through this
6 breezeway area next to the apartment building, kind of
7 through a breezeway area, so I couldn't really see clearly
8 what they were wearing. I just saw movement and people,
9 and I heard voices.

10 Q And throughout this trial, we've been
11 referencing a breezeway to talk about the area that you
12 sometimes go in in these buildings, and there are doors on
13 the sides for apartments. Are you referring to the same
14 type of area as a breezeway, or, in your terms, is a
15 breezeway different?

16 A What it is is the apartment building front
17 entrance has kind of an opening toward the outside, and
18 there's an area where people can walk through, you know,
19 because there's sidewalks that go back to other
20 apartments. So kind of back in the area close to the
21 building, but, you know, there's an opening so that I
22 could see them crossing through.

23 Q Were -- was your view obstructed at first?

24 A Yeah. As I said, there's a lot of trees out
25 there, so it's not real clear, but at one point, I could

1 see moment, you know, going through this area.

2 Q And so when you're still at your bedroom window,
3 at this point, was your view obstructed by trees and other
4 foliage?

5 A No, not when I saw that movement, but I couldn't
6 see real clearly.

7 Q And how far away was this movement from you?

8 A Across this courtyard. I don't know how far
9 that is to the next apartment building, so . . .

10 Q And then when you went to your daughter's room
11 to look again, was that when you were able to see clearly
12 that it was police officers?

13 A Yes.

14 Q And describe to the jury how that vantage point
15 is different that you were then able to then see that.

16 A Well, this bedroom is in the front of my
17 apartment, and it's right off the street, and they had
18 their windows open. So I could see -- we could all see as
19 we looked out the window. We heard the voices, and we
20 heard the police, and we looked out and we saw them right
21 down below the apartment. My apartment's on the second
22 level. So, you know, by looking out her bedroom onto the
23 street, we could see.

24 Q And you said you could see. Could you see
25 clearly identifiable characteristics of police officers'

1 uniforms, for example patches, badges, duty belts, things
2 like that?

3 A Um-hum.

4 Q Is that a yes?

5 A Yes.

6 Q Anything else that sticks out in your mind that
7 made it clear to you that these were police officers,
8 based on what you saw?

9 A No.

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

12 MR. ST. GEORGE: I have nothing further, Your
13 Honor.

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

15 THE WITNESS: Thank you.

16 (The witness was excused.)

17 MR. FREEMAN: Your Honor, we'll call Debbie
18 Malmsberry.

19 THE COURT: Do you want to come forward, please.

20 DEBBIE MALMSBERRY,

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

23 THE COURT: Have a seat, please.

24 THE WITNESS: (The witness complied.)

25 ///

1 DIRECT EXAMINATION

2 BY MR. FREEMAN:

3 Q Good morning. Would you please state your full
4 name, and spell your last name for us.5 A My name is Debra Malmsberry,
6 M-a-l-m-s-b-e-r-r-y.7 Q And, Ms. Malmsberry, without telling us your
8 date of birth, can you tell us how old you are?

9 A I'm 30 years old.

10 Q I want to draw your attention back to the late
11 evening hours of July 31st of 2016 into the early morning
12 of August 1, 2016. Can you tell us where you were living
13 back then?

14 A I was living in the Windsor apartment building.

15 Q And on that date, how long had you been living
16 there?

17 A Six months.

18 Q And what was your unit number?

19 A I was Building 8, Number 204.

20 Q And is that a ground floor unit, second floor
21 unit?

22 A It's a second floor unit.

23 Q Is the unit all contained, at least the living
24 space, on the second floor?

25 A Yes.

1 Q Back on that date, did you live there alone, or
2 did you live there with someone?

3 A I lived with my brother.

4 Q Back on that date, did you know one of your
5 neighbors named Eric St. George?

6 A Not personally.

7 Q If I show you an aerial photograph of the
8 apartments, do you think you could point out which
9 building was yours?

10 A Yes.

11 Q Or try.

12 MR. FREEMAN: Let's maybe try 3.

13 (People's Exhibit 3 was published.)

14 Q (BY MR. FREEMAN) If that's Building 7, what's
15 been identified as Building 7 on People's 3, and then
16 there's a couple of buildings there below it to the south,
17 was one of those your building, or were you in a different
18 building?

19 A I believe it's the lower left building.

20 Q Lower left building. And in what part of that
21 building was your unit located?

22 A The top floor, on the right side, in the back
23 there right below that driveway.

24 Q So top floor, right side, you said by the
25 driveway?

1 A Um-hum.

2 Q And are you on the north end there, or are you
3 more in the middle?

4 A I'm on the end, the end unit.

5 Q Okay. So if north is to the top, east is to the
6 right. If I said northeast corner of that building, is
7 that accurate?

8 A Yes.

9 Q And do you have windows that look out to the
10 north on that street in Building 7?

11 A Yes. My bedroom window.

12 Q This was July 31st. Do you recall if your
13 windows were open or not on that evening?

14 A They were not.

15 Q Do you recall what time you got home on the
16 evening of July 31st?

17 A Early evening.

18 Q Best estimate, what time would that have been?

19 A 5 o'clock.

20 Q And did you remain home?

21 A Yes.

22 Q At some point, did you see or hear anything
23 outside your unit that caught your attention?

24 A I heard gunshots in the early morning.

25 Q And you say "early morning." Are we talking

1 after midnight?

2 A I believe shortly after midnight.

3 Q Were you awakened by the gunshots, or were you
4 already awake?

5 A I was awakened by them.

6 Q And this might seem like dumb question, but do
7 you know if you were awakened by the first gunshot, or
8 could you have slept through some gunshots before you woke
9 up?

10 A I remember one or two before I realized what it
11 was --

12 Q Okay.

13 A -- and then I heard a few more.

14 Q Okay. Are you a gun person?

15 A A little bit.

16 Q Would you be able to tell the difference between
17 a handgun being fired and a shotgun being fired?

18 A Yes.

19 Q Okay. Could you tell the jury what you thought
20 you heard in that regard?

21 A There were two different pistols, at least two.

22 Q And "pistols," you mean handguns?

23 A Handguns, yes.

24 Q And why do you say two different pistols?

25 A Because the first one sounded different than the

1 second one.

2 Q Okay. And different how?

3 A Just the pitch of it.

4 Q Okay. Have you ever been around a shotgun being
5 fired?

6 A Yes.

7 Q Do you think you'd recognize the sound of a
8 shotgun being fired?

9 A Yes.

10 Q Did you hear any sounds that night that you
11 thought were a shotgun?

12 A No.

13 Q How many shots in total do you think you heard?

14 A I believe five or six, and then there was a
15 final one that was several minutes later.

16 Q Okay. And I'll ask you about that in a little
17 bit. The five or six that you heard, how close together
18 were they?

19 A I believe there was one or two at first, and
20 then just a brief pause, and a few more.

21 Q And where did it sound like they were coming
22 from?

23 A From the northeast. I looked out the window,
24 and it was exactly the northeast in the corner.

25 MR. FREEMAN: If we could have People's 3 back

1 up.

2 (People's Exhibit 3 was published.)

3 Q (BY MR. FREEMAN) Taking a look at People's 3,
4 can you describe for the jury where it sounded like they
5 were coming from?

6 A The north -- clear to the right, that alleyway
7 there.

8 Q Okay. So --

9 A Where it dead ends, that corner.

10 Q There's that sort of orange exhibit sticker, and
11 then just above that, there's sort of a guest parking
12 area.

13 A Um-hum.

14 Q And then are you talking about the strip of
15 asphalt above that?

16 A Yes.

17 Q Is that where it sounded like the shots were
18 coming from?

19 A Yes.

20 Q Other than gunshots, could you hear anything
21 else? Did you hear any words spoken?

22 A Muffled yelling.

23 Q Do you remember what was said?

24 A I don't recall exactly.

25 Q After those -- you heard those gunshots, did you

1 look out your window?

2 A Yes.

3 Q What did you see?

4 A Officers hunched behind a parked SUV with their
5 guns drawn.

6 Q And where was the SUV located?

7 A That -- the lower right building, directly
8 across the street from that.

9 Q I'm sorry to ask you to do this. Do you mind
10 going up there and pointing it out? There's a pointer
11 right there on the shelf. Do you mind pointing out where
12 this SUV was that these officers were behind?

13 A It was right here (indicated).

14 MR. FREEMAN: Okay. For the record, Judge,
15 she's indicating an area south of the -- what's been
16 identified as Building 7, towards the east side.

17 Q (BY MR. FREEMAN) And if you could point out,
18 while you're up there, where your bedroom was located.

19 A Right here (indicated).

20 Q So northeast corner of that left building. And
21 you can go ahead and have a seat. I don't want to keep
22 you up there.

23 A (The witness complied.)

24 Q So you looked out your window, and how many
25 officers were behind that vehicle?

1 A Two that I could tell.

2 Q How could you tell they were officers?

3 A I could see their reflective badges.

4 Q Did you see any other identifying marks on them
5 that let you know they were officers?

6 A They were fully -- wearing dark clothing, head
7 to toe, like an officer's uniform.

8 Q Okay. And you saw their badges?

9 A Yes, the shoulder ones.

10 Q The patches?

11 A The patches.

12 Q And what happened after you looked out and saw
13 that?

14 A I saw more officers moving into the area,
15 surrounding the building.

16 Q How many more do you think showed up?

17 A At least a dozen. I'm not sure.

18 Q Did you continue watching out your window?

19 A For a minute, yeah.

20 Q And what did you see?

21 A I saw another officer yelling, and that was
22 about it.

23 Q Do you remember what they were yelling?

24 A I don't know the exact words he was saying. It
25 was muffled.

1 Q Like police-type commands?

2 A Police-type commands, yes. It might have been
3 hands up, something of that sort.

4 Q Some sort of orders to somebody?

5 A Yeah.

6 Q Could you see who they were yelling at?

7 A No.

8 Q Did you ever see a person come out of that
9 building and get taken into custody?

10 A I saw someone get taken into custody.

11 Q You said earlier that after this first group of,
12 I think you said, five to six gunshots, later you thought
13 you heard another gunshot.

14 A Um-hum.

15 Q When did you hear that one?

16 A Maybe 30 minutes later, after all the other
17 officers came surrounding the building.

18 Q So I want to make sure and get this order right.
19 So you're awoken by what you think are five to six
20 gunshots. You look out the window. Do you look out the
21 window immediately after the gunshots?

22 A Yeah, after the first few.

23 Q And you see what you recognize to be officers
24 behind an SUV?

25 A Um-hum.

1 Q Is that a yes? She's got to take that down.

2 A Yes.

3 Q When do you hear the next gunshot, this one
4 that's later?

5 A Roughly 30 minutes.

6 Q Okay. When do you hear that gunshot in relation
7 to the police commands to the person? Is it before that?
8 Is it after that? Is it during?

9 A Yes, it was after the yelling, after the police
10 commands.

11 Q So you hear police giving commands to someone,
12 then you think your heard a gunshot?

13 A Yes.

14 Q And then what's the next thing that happened?

15 A And then I heard screaming, and I then saw
16 officers taking someone into custody.

17 Q And what was the next thing that you saw or
18 heard?

19 A That was it. They were sitting on the sidewalk,
20 and then shortly after that, I had a knock on my door,
21 so . . .

22 Q And was that an officer?

23 A Yes.

24 Q Prior to that last gunshot, did you ever hear
25 what you thought were any more gunshots or sounds that you

1 associated with gunfire?

2 A No, not that I know of.

3 MR. FREEMAN: Thank you. I don't have anything
4 else. He might.

5 THE COURT: Cross-examination?

6 MR. ST. GEORGE: I have no questions, Your
7 Honor.

8 THE COURT: Does anyone on the jury have any
9 questions for this witness?

10 (No verbal response.)

11 THE COURT: You may step down.

12 (The witness was excused.)

13 MS. DECKER: The People call Agent Daniel Shube.

14 DANIEL SHUBE,

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

17 THE COURT: Have a seat, please.

18 THE WITNESS: (The witness complied.)

19 DIRECT EXAMINATION

20 BY MS. DECKER:

21 Q Good morning.

22 A Good morning.

23 Q Will you please introduce yourself to the jury,
24 and spell your full name.

25 A Agent Daniel Shube, Lakewood Police Department,

1 S-h-u-b-e.

2 Q What do you do for the Lakewood Police
3 Department?

4 A I'm an agent in the patrol division.

5 Q And what does that mean?

6 A I work -- drive a marked patrol car around,
7 respond to emergency calls for service, do proactive
8 patrols, so then just the initial -- the initial response
9 to calls.

10 Q We see that you're wearing plain clothes today.
11 Do you often wear a police uniform?

12 A When I'm working, yes, ma'am.

13 Q And so are you off-duty today?

14 A Yes, I am.

15 Q And this police uniform, is it the same as what
16 we would have seen with other Lakewood Police Department
17 agents?

18 A Yes. It's the navy blue uniform with the two
19 patches and a badge on the chest.

20 Q Can you describe for the jury the type of
21 training and experience you have in law enforcement.

22 A Yes. I attended the Adams County Sheriff's
23 Office basic academy, which meets the standard
24 requirements set forth by the State of Colorado. I then
25 attended initially just an in-house training with the

1 Northglenn Police Department when I worked there, and then
2 again an in-house training with the Lakewood Police
3 Department when I was hired, and I also do a minimum of
4 40 hours of ongoing training every year. It usually ends
5 up being about a hundred hours in various different
6 fields, from firearms to arrest control to updates on the
7 new laws and regulations.

8 Q And so for how long have you been working in law
9 enforcement?

10 A Six years.

11 Q And is that also how long you've been working at
12 Lakewood, or do you have any other agency experience?

13 A No. I've been at Lakewood for a little over two
14 years, and then prior to that, I worked at the Northglenn
15 Police Department.

16 Q And then you mentioned that you have specific
17 training in firearms. What does that entail?

18 A You're required -- the State sets forth a
19 requirement, certain number of hours in your basic
20 academy, and then each year, you're required to perform a
21 certain number of hours and qualify a certain number of
22 times in order to keep up-to-date and remain proficient.

23 So every year, we qualify two or three times at
24 a minimum, and then if it's not a qualification, you're
25 just doing another range practice that's usually around

1 two hours long, and that's probably four times a year that
2 you do that.

3 Q So based on this training and experience that
4 you have, are you familiar that different sounds that
5 different weapons make?

6 A Yes, I am.

7 Q And so, for example, the difference in sound
8 between a shotgun firing and a handgun firing?

9 A Yes.

10 Q I'm going draw your attention to July 31st of
11 2016. Were you working that evening into the early
12 morning of August 1, 2016?

13 A Yes, I was.

14 Q What was your role that night?

15 A I was working patrol in the south sector of the
16 city, so everything south of 6th Avenue in the city of
17 Lakewood.

18 Q What happened at 10:12 in the evening?

19 A At approximately 10:12, other agents were
20 dispatched to a call regarding a female who said that she
21 was at a party. She called the Lakewood Police Department
22 and said that a male, who she thought was named Eric, had
23 fired a gun up in the air and then also at her. And
24 I -- other agents responded there, so I just heard the
25 initial -- originally just heard the initial dispatch call

1 that was down there.

2 Q And so did you get -- did you hear on this
3 dispatch call the address to which other agents were being
4 dispatched to?

5 A Yes, I did.

6 Q And was that 8139 West Eastman Place?

7 A Yes, it was, and I believe it was Apartment 103
8 specifically.

9 Q In Building 7?

10 A That's correct.

11 Q And, again, Lakewood, Colorado, Jefferson
12 County?

13 A Yes.

14 Q And so you did not respond after hearing this
15 dispatch call at 10:12; is that right?

16 A Not initially. I believe I was on a separate
17 call or handling something else at that time, and there
18 were other agents that originally went.

19 Q You said, "Not initially." Was there a time
20 later that evening that you did respond to that address?

21 A Yes.

22 Q Was that at about 12:36 a.m.?

23 A Yes, it was.

24 Q What happened at that time?

25 A At 12:36, the officers that were originally

1 dispatched to the call requested that more officers come
2 to the scene to assist them. They had been able to
3 establish phone communication with the male inside that
4 apartment, and he had made a comment about having
5 something in his hands. They were struggling a little bit
6 to communicate with him and get clear information, but due
7 to those comments, they became concerned that things may
8 escalate, so they wanted additional officers on scene to
9 assist.

10 Q So to be clear, at this point, at around 12:36
11 a.m., the dispatch was not that there were additional
12 shots fired, just that they were in communication with a
13 suspect who said he had something in his hands?

14 A Correct.

15 Q Did you respond at that time, once you got this
16 call at 12:36?

17 A Yes, I did.

18 Q And how long did it take for you to respond to
19 this residence?

20 A I was at the police department in my car when
21 it -- when they asked for it, and I went straight down
22 there. I was going pretty quick. It probably took me
23 three minutes.

24 Q While you were on your way, during this three
25 minutes, were you still able to listen to police radio in

1 your car?

2 A Yes, I was.

3 Q And what did you hear?

4 A When I was probably halfway there, the officers
5 that were on scene said that the male -- or a male came
6 out of that apartment, he racked a gun, and then went back
7 inside.

8 Q How soon after you got this information did you
9 arrive at the scene? Was it about a minute and a half?

10 A Minute and a half, two minutes, yes.

11 Q Once you got to this apartment complex, where
12 did you park?

13 A Just inside the entrance, so south of the
14 building.

15 Q Do you think you would recognize it if you saw a
16 map of the complex?

17 A Yes.

18 Q Okay.

19 MS. DECKER: Can we put up Exhibit 4?

20 (People's Exhibit 4 was published.)

21 MS. DECKER: And zoom into the Windsor apartment
22 complex on just the right side.

23 Q (BY MS. DECKER) And so looking at the south
24 entryway, can you point out, by stating, if it's easy to
25 state, or if you need to get down and show the jury, where

1 you parked.

2 A So there's -- right down the center, I think
3 there's a pool straight in, and then there's -- just north
4 of it, there's a long kind of grassy area. And I was just
5 looking at the picture. I was just to -- there's a -- I
6 don't know if that's parking access, or something, but
7 there's a roadway just to the right of that grassy area.
8 I was parked right in there.

9 Q And so are you talking to the north of the pool?

10 A Yes, to the northeast of the pool.

11 Q And so is that -- there's a building to the
12 right of the pool. Do you see that building directly to
13 the right, or east, of the pool?

14 A I see -- yeah, it looks like a row of buildings.

15 Q And so in relation to the building, to the
16 immediate east or right of that pool, were you to the
17 north of that building?

18 A Yes.

19 Q Okay. Thank you.

20 MS. DECKER: We can take the picture off the
21 screen.

22 Q (BY MS. DECKER) Once you parked at that
23 location, what did you do?

24 A At that time the only additional information
25 that we had was that the male had walked out and had

1 racked a gun. At the same time, other agents were
2 arriving on scene with me, so we all started walking south
3 towards the building, because that's where the other
4 agents still were that were originally there. And so I
5 just started walking on foot. I've got my rifle out of
6 car and started approaching the building.

7 Q And so were you actually approaching north from
8 the south? If you need to look at that picture again --

9 A I was going -- yes, from the south, going north.

10 Q Okay. And were you walking through that green
11 area, that greenbelt area?

12 A That was my plan. I -- right as I started to
13 get into that area, I moved back to the side of a building
14 under an entryway.

15 MS. DECKER: So let's put up Exhibit 4 again,
16 zoomed in on the right half of the screen.

17 (People's Exhibit 4 was published.)

18 Q (BY MS. DECKER) So if you'll just explain to
19 the jury where you walked in relation to where you parked.

20 A So I started walking north, and then right at
21 the corner of that building that we originally pointed
22 out, that southern corner, I went into that.

23 Q I'm going to have you step down with that dowel
24 that's beneath the Judge and point out for the jury where
25 you walked.

1 A I came in right here, and I was in this little
2 parking area, and then I went down, I believe, to the
3 corner here, this -- this corner, because I remember
4 coming across the concrete here, and I was at that corner
5 unit. There's an entryway. If you look super close, you
6 can kind of see the shadow, and I went under there, and
7 it's covered, and there's brick pillars on the sides.

8 Q So for how long were you on the southwest corner
9 of this building?

10 A I'd estimate -- it felt like a long time, but
11 I'd say it's no more than 30 seconds.

12 Q What were you doing while you were at the
13 southwest corner of that building that you just pointed
14 out?

15 A I was waiting for additional agents to get up to
16 my location so we could move in together.

17 Q Did you say it was 30 seconds that you were
18 there? I may have made that up.

19 A It felt like a long time, but I estimated
20 30 seconds.

21 Q And once other officers arrived with you at that
22 southwest corner of the building that you just pointed
23 out, what happened at that point?

24 A We moved together up to where Agent Trimmer and
25 Sergeant Maines and the other agents on scene were.

1 Q So now describe for the jury where you were
2 going with these other agents from that southwest location
3 of that building you just pointed out to the suspect
4 building in the top left corner of picture.

5 A We went through the -- kind of ran, using the
6 pillars on a lot of the corner units, so we used some of
7 these as cover, and moved up through the field, ultimately
8 to -- I ultimately went to the driveway access road there.

9 Q When you say that driveway access road, are you
10 talking about in between the two buildings on the top?

11 A Yes.

12 Q That area?

13 A The dead-end driveway access. I think it's just
14 access to the garages.

15 Q And at that point, did you see Agent Trimmer on
16 the southeast corner of that top left building?

17 A Yes.

18 Q So you can have your seat again.

19 A (The witness complied.)

20 Q Did you retrieve from your patrol car, when you
21 got out of your patrol car, any additional weapons than --
22 other than the weapons that you carry on you duty belt?

23 A I did get my that patrol rifle.

24 Q Why did you do that?

25 A I'm comfortable with it, with the weapon system,

1 and also given the fact that there was knowledge that
2 shots had already been fired, and there was a weapon that
3 agents heard being racked on scene, I'd rather have,
4 hopefully, have a leg up on whatever weapon -- weapon
5 system the suspect might have. In addition, it provides
6 more long-range coverage, so I can be further away and
7 still provide people coverage on an area.

8 Q When you were about 200 feet to the southeast of
9 the suspect apartment, the one that we can see in the top
10 left of this exhibit, did you hear anything?

11 A Yes.

12 Q And what did you hear?

13 A At that time I was walking with the other agent,
14 and I heard several shots being fired from the area of the
15 suspect's apartment.

16 Q And, specifically, did you hear what appeared to
17 sound like three shotgun rounds?

18 A Yes. It sounded -- initially, it sounded like
19 three shotgun rounds, there was a pause, and then it
20 sounded -- three pistol rounds in rapid succession.

21 Q And so to be clear, of the -- was that total of
22 six rounds that you fired?

23 A I didn't fire.

24 Q I'm sorry. That's you heard?

25 A Yes.

1 Q And the first round that you heard, was that a
2 shotgun?

3 A Yes.

4 Q Did this all -- did these six gunshots that you
5 heard -- how many seconds in total did they last? Was it
6 rather quick?

7 A Yes.

8 Q And so how many seconds, if you had to estimate,
9 would you estimate that those six gunshots lasted?

10 A I'd estimate 10 to -- I'd say 15 to 20 seconds.

11 Q After you heard the last shot, did you hear
12 anything on police radio?

13 A I aired on my radio, I aired shots fired. I
14 know somebody else also did. I didn't know who it was.
15 And then at that time, I kind of was more focused on
16 trying to maintain cover and get up to where they were
17 and make sure everyone was okay. There was also --
18 several people were asking Agent Trimmer if she was okay,
19 and I heard people asking that on the radio.

20 Q And you said that first you tried to maintain
21 cover. Where was that?

22 A I was using the -- initially those pillars, I
23 think it was brick pillars, and parts of building, and
24 then I was just moving back and forth between those as I
25 moved up toward that building.

1 Q And these brick pillars you were using for
2 cover, was that on a neighboring apartment building?

3 A Yes --

4 Q And which building in this picture was that?

5 A -- initially. The -- so the one to the right of
6 that grassy area.

7 Q So below the suspect building, but to the
8 right --

9 A Yes, below. So there's two directly below and
10 then two to the right, so that, I guess, middle right one.

11 Q And after taking protective cover there
12 for -- how long were you there before you moved to that
13 location?

14 A Brief periods of time, initially
15 waiting -- initially, I was waiting until the shots
16 stopped and trying to get a better idea of where things
17 were coming from and orient myself. And so initially,
18 once I heard a pause in the gunfire, I moved.

19 Q And where did you go?

20 A Toward -- up to Agent Trimmer.

21 Q Once you had joined Agent Trimmer, were there
22 other officers also there with you?

23 A Yes, several.

24 Q Did you move to a different location?

25 A I went to the far -- well, the southeast side of

1 that top left building, and I was there for a brief period
2 of time and then moved to the southwest side.

3 Q And so to be clear, the southeast side is where
4 Agent Trimmer and the other officers were?

5 A Correct.

6 Q And then you moved after how long to the
7 southwest side of the suspect building?

8 A It was maybe two minutes.

9 Q And what was your purpose in moving to the
10 southwest side?

11 A At the time there was no one on the southwest
12 side that had a rifle, so -- and there were people on the
13 southeast side. So to be able to provide coverage with a
14 rifle on the southwest side, I went over there.

15 Q After getting to the southwest corner of that
16 building, what did you hear?

17 A There were still attempts to make communication
18 with the suspect, and then a dispatcher aired on the radio
19 that there was a male who was calling into dispatch, and
20 he said he was shot.

21 Q And did you hear that over your police radio?

22 A Yes, I did.

23 Q Did you hear anything else in that area at
24 that -- close to that time?

25 A After the -- after that call was received, I

1 heard gunshots coming from inside that apartment.

2 Q And what was the sound of these gunshots in
3 terms of the sound of what weapon they were coming from?

4 A There were -- there were two shots that I
5 initially heard that sounded like they were coming from a
6 pistol, and there was another shot fired after that that,
7 when I heard it, I thought was coming from a rifle.

8 Q And how far apart were these three shots?

9 A The first two were probably 10 to 15 seconds
10 apart, and then the -- there was a pause for several
11 seconds, and then a third one.

12 Q Did you say "a pause for several seconds"?

13 A Yes.

14 Q And do you remember writing a report in this
15 case?

16 A Yes, I do.

17 Q And was this close to the incident?

18 A It was later that morning, yes.

19 Q And so would it be fair to say that the first
20 two, from what you could recall that night, were
21 30 seconds apart, and the third was about 10 to 15 seconds
22 after?

23 A I messed up. Yes, that sounds more correct.

24 Q And was it the final round that you heard that
25 sounded like a different type of weapon?

1 A It definitely sounded different. I thought it
2 was -- like I said, I thought it was coming from a rifle,
3 but it was -- either what it was hitting or -- to me, it
4 was definitely different, a different noise.

5 Q And so from within inside the apartment, how
6 many shots did you hear?

7 A I heard three shots from inside that apartment.

8 Q And so after you heard that third shot, what did
9 you do?

10 A I still maintained -- at this time we had
11 established teams, basically, surrounding the building,
12 and there was a team of officers that were specifically
13 assigned as an arrest team, so they were the ones that if
14 they were able to get the suspect come out, they would go
15 contact him and try to take him into custody. So I was
16 still part of that team on that southwest side, so I just
17 maintain my position there and didn't move from there.

18 Q So what could you see from that southwest
19 corner?

20 A I could see -- so that roadway directly below
21 that building there, directly south of, I could see
22 straight all the way down there, I could see straight up
23 into the little driveway access area, and then I could,
24 obviously, see -- looking down, I could see north of me.

25 Q And so when you say north of you, are you

1 talking about that driveway access that you mentioned?

2 A I'm sorry. I meant south of me.

3 Q Okay. So you could see that green area to the
4 south of you?

5 A Yes, so I can see that. So I was kind of -- I
6 don't know what that is, but it looks like there's a
7 little -- right on that southwest corner, there's
8 something that's a different color than the pavement
9 there, and that's kind of where we were. So I had a
10 visual, basically, down those apartment buildings, up to
11 small, little black -- blacktop area, behind me.
12 Basically, everything except for the far back of the
13 building and the far east side where I originally was.

14 Q And so it looks like it might be a dumpster on
15 the left side. Were you standing close to that?

16 A Yes. There were cars parked all along it, but
17 we were right -- right in next to it.

18 Q And could you see any sort of courtyard area
19 directly in the center, in front of the suspect building?
20 Did you have a vantage point to a tree and --

21 A Yes. So there were cars in front, and then it's
22 kind of a -- I guess you could call it a courtyard.
23 There's a little grassy area, and it goes underneath into
24 the access into the apartment.

25 Q And could see into the underneath access to the

1 apartments area?

2 A No.

3 Q And so as you kept cover on the southwest corner
4 of building, what could you see other officers do?

5 A I could see the officers that were -- that
6 arrest team, and they were -- I believe they were behind
7 cars right in the center, directly in front of the
8 building, and I saw them start moving towards -- from --
9 looking at the picture, going from left to right, so west
10 to east, towards that breezeway/entryway into the center
11 of the building.

12 Q What could you hear as officers were approaching
13 that breezeway?

14 A They were giving commands to someone, and then I
15 heard on my radio, they aired that they had a male in
16 custody.

17 Q How long after you heard that round of the
18 firearm from within the apartment was it that officers
19 were approaching and yelling at the male?

20 A It was -- at maximum, it was a minute.

21 Q So, fair, about a minute?

22 A Yes.

23 Q And so given that you couldn't see into this
24 breezeway, what was the next thing that you saw next come
25 out of the breezeway?

1 A From my -- from my view, I kind of had a hard
2 time seeing because they were -- the male came -- they
3 were walking up the sidewalk area west to east, and I saw
4 what looked like someone down on the ground there. But
5 there were so many officer in front of me, it was kind of
6 blocked, and I couldn't initially verify that.

7 Q And were you able to eventually verify what was
8 going on and that an arrest was taking place?

9 A Yes. After they said one was in custody, and it
10 was confirmed by -- assumed that it was safe to walk up
11 towards there, and so I approached them and was able to
12 see that they did have a male in handcuffs.

13 Q And what role did you take after the male was in
14 handcuffs and the scene was deemed to be now safe?

15 A I performed what's called an area or
16 neighborhood canvas, so basically talking to people in the
17 area and checking to see what the they heard, if he saw
18 anything, and everything like that. And I also assisted
19 with -- the supervisors have a like dry erase -- it's a
20 laminated paper that they use for their incident command,
21 and so I went over that and I marked down all the
22 apartments -- just a list of all the apartments that
23 people talked to so we could ensure that everybody was
24 spoken to.

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

1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. ST. GEORGE:

4 Q Agent Shube, you were working overtime that
5 night?

6 A No, I wasn't.

7 Q I may have been mistaken on that, then. Were
8 you at the station monitoring your radio?

9 A Yes, I was. And now that you say it, I guess at
10 that time I was still on graveyards, so I would have been
11 working an overtime shift.

12 Q Okay. Thank you. And you were following along
13 with the -- what you referred to as the developing
14 situation down south?

15 A Correct.

16 Q Okay. And while you were listening to the
17 radio, it sounded as though the person was being
18 cooperative at first?

19 A Which person are you --

20 Q The suspect that they -- that those agents that
21 were down south that they were dealing with.

22 A Okay.

23 Q It sounded as those that person was being
24 cooperative?

25 A No. They -- I mean, it was -- from the radio

1 transmissions, they said that they were in phone contact
2 and that he had something in his hands, and he wasn't
3 coming outside. So the way I look at it is the reason
4 you're in phone contact is because they're not being
5 cooperative and they are not coming outside to talk to you
6 in person. If they were being cooperative, they would
7 come outside and speak to us.

8 (Pause in the proceedings.)

9 Q (BY MR. ST. GEORGE) Do you recall giving a
10 recorded statement early that morning?

11 A Vaguely, yes.

12 Q Okay. And at that time, would you say that your
13 memory was a little fresher?

14 A Yes.

15 Q Okay. And did you tell them, I believe it
16 was -- was talking to him on the phone, and it sounded,
17 kind of from what I got, that he was being cooperative
18 when they initially talked to him, and then he
19 started -- he became uncooperative, um, at some point?

20 A To be honest with you, I do not recall hardly
21 anything from that interview. I've never seen it. I've
22 never -- it's tough for me to say and go back that far
23 exactly what was said. So I'd have to look at the
24 transcript and try and see, but I can't tell you exactly
25 what was said.

1 Q Okay. You had been working overtime?

2 A It was an overtime shift. So it was a ten-hour
3 shift, just on my day off.

4 Q Okay. You arrived along with Waller, Lebsack,
5 Frink and Alfano, right?

6 A I remember Alfano, arriving with him, and I
7 remember Lebsack getting there right around the same time,
8 but I can't recall if he -- to my recollection, it was
9 Agent Alfano and I that initially went up, but they were
10 all there in the same general time frame as we were
11 setting everything up.

12 Q And you heard the sound of gunfire from your
13 position at the cars, correct?

14 A We had left our cars, and we started approaching
15 the apartment.

16 Q The later incident at the front door --

17 A Okay.

18 Q -- after the gunshots were heard inside the
19 building, you moved up to the front door at that point?

20 A No. After -- after they aired that someone was
21 in custody. But prior to that, we were holding our
22 position. Each team had an assigned duty, and so to avoid
23 officer safety risks, and things like that, with crossfire
24 situations, we -- I maintained my position on that until
25 they said that they had a male in custody.

1 Q Okay. And you heard police commands were being
2 shouted?

3 A Yes, that's correct.

4 Q And the person who they were shouting to was
5 complying with those commands?

6 A I would -- yeah, I would assume so. He was
7 taken into custody, so . . .

8 Q Okay.

9 MR. ST. GEORGE: I have nothing further. Thank
10 you.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MS. DECKER:

14 Q The defendant emphasized more than once that you
15 were working an overtime shift. What does that mean?

16 A So anytime we work anything outside of our
17 40 hours, whether it be after your original shift or -- we
18 have minimum staffing requirements, so there has to be a
19 certain number of agents that work each shift, and they'll
20 offer overtime shifts that you can sign up for if it's
21 your day off, as long as it doesn't -- there's certain
22 maximum hours you can work in a certain period. So it was
23 my day off. I came in, I worked, that would have been a
24 3:00 p.m. to 1:00 a.m. shift on my day off. So it's not
25 in addition to my normal shift. It was just a day off

1 that I picked up some extra hours.

2 Q So to be clear, were you rested when you took on
3 this shift?

4 A Yeah. And that's part of the policy. There's a
5 certain number of hours you can work in a 24-hour period.
6 You can't exceed 16 hours, for example, in a row. So
7 there's all sorts of policies in place to ensure that
8 that's in place, and those were all there.

9 Q And the defendant asked you about the level of
10 cooperation, stating the suspect was being cooperative.
11 Were you privy to what was going on when officers were on
12 scene, through the police radio, and their making contact
13 with the suspect?

14 A Are you referring to -- the initial report, I
15 believe, was Agent Brennan, when he said he was in phone
16 contact and requested additional officers?

17 Q Yes.

18 A No, that -- I got the information that -- there
19 was very little information that I got other than what was
20 aired about the male coming out and racking a gun, that he
21 was in phone contact, said he had something in his hands.
22 But as far as the full extent and detail of that
23 conversation, I didn't get what they were talking about.

24 Q Okay. And you were in contact with agents,
25 though, at the scene to know that the suspect was becoming

1 more uncooperative?

2 A Yes.

3 Q And was that because, as you stated, he was not
4 coming outside, which was the reason for the phone
5 contact?

6 A Yeah. We had our initial report that there was
7 an allegation of a crime, so we were trying to
8 establish -- trying to talk to him and figure out what was
9 going on. And his -- I consider his unwillingness and
10 refusing to come outside to speak with us about that as
11 uncooperative.

12 Q And is coming out upon police request with a
13 weapon cooperative?

14 A No.

15 Q And is coming out with a weapon and then racking
16 that weapon cooperative?

17 A Not at all.

18 MS. DECKER: I have no further questions.

19 MR. ST. GEORGE: I have 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 THE COURT: So we're going to break right now
2 for the lunch hour. Please keep an open mind. Don't
3 discuss the case. Don't do any research. We'll see you
4 back at the area overlooking the atrium on the fifth floor
5 at 1 o'clock. Thanks very much.

6 (The jury left the courtroom.)

7 THE COURT: 1 o'clock.

8 (The lunch recess was taken.)

9 THE COURT: Let's bring out the jury.

10 (Pause in the proceedings.)

11 (The jury entered the courtroom.)

12 THE COURT: Good afternoon, everyone. We're
13 ready to resume with witnesses, and everybody can be
14 seated, please.

15 MR. FREEMAN: Judge, we're going to call Rebecca
16 Gibson.

17 REBECCA GIBSON,
18 having been called as a witness on behalf of the People,
19 being first duly sworn, testified as follows:

20 THE COURT: Have a seat, please.

21 THE WITNESS: (The witness complied.)

22 DIRECT EXAMINATION

23 BY MR. FREEMAN:

24 Q Good afternoon. Would you please state your
25 full name, and spell your last name for us.

1 A Rebecca Jean Gibson, G-i-b-s-o-n.

2 Q Ms. Gibson, I want to draw your attention back
3 to July 6 -- I'm sorry, July 31st of 2016. Can you tell
4 us where you were living back then?

5 A I lived at the Windsor Apartments, 8139 West
6 Eastman Place, Apartment 7-202.

7 Q So the 7-202, does that mean you were in
8 Building 7?

9 A Yes.

10 Q And 202, is that a second floor unit?

11 A It is second floor, yes.

12 Q And back on that date, about how long had you
13 been living there?

14 A Almost three years. I had moved in at the end
15 of September 2013.

16 Q Okay. And did you live there alone or with
17 someone?

18 A I lived alone.

19 Q Was the living space in your unit all contained
20 on second floor?

21 A Except for the stairwell. The front door was on
22 the ground level, and also the garage was on the ground.

23 Q Okay. But like kitchen, bedroom --

24 A Yes.

25 Q -- living room, second floor?

1 A Um-hum.

2 MR. FREEMAN: If we could have People's 3 up, I
3 think.

4 (People's Exhibit 3 was published.)

5 Q (BY MR. FREEMAN) Take a look at the TV screen.
6 Can you see that okay from where you're seated?

7 A Not that well.

8 Q Okay.

9 A I can get up.

10 Q If you need to. That building that's right sort
11 in middle there has been described as Building 7. Do you
12 recognize this, or do you need to get closer?

13 A I'll get closer.

14 THE COURT: There's a stick right there.

15 Q (BY MR. FREEMAN) There's a pointer right there,
16 since you're on your way.

17 A Okay. So this is my unit right here
18 (indicated), and that's the door, and then you go up an
19 inside stairwell, and then I look out on the greenbelt
20 there. My garage is right there (indicated).

21 Q Okay. And just so we're clear, it looks like
22 there's two lighter-colored concrete driveways, and you're
23 pointing to the left driveway?

24 A This is mine.

25 Q Okay. And that's the entrance to your garage?

1 A Yes, right here (indicated).

2 Q And the door that leads to your stairs that go
3 up, is that right next to the garage?

4 A Right here, yes.

5 Q And then just a little bit more to the right of
6 that, is there a hallway or a breezeway that leads to
7 ground floor units?

8 A Yeah, it's kind of a breezeway.

9 Q So you don't have to walk into that breezeway to
10 get to your front door, do you?

11 A No.

12 Q And your unit, do you have windows -- or did you
13 have windows that faced both on the north and the south?

14 A I had a window right here (indicated). It was
15 very tiny. I really couldn't get to it because it was on
16 the landing off the stairwell.

17 Q Okay.

18 A It was kind of like a storage area. And I don't
19 think, even if I would have stepped on my -- or been on my
20 tippy toes, I could have seen out of it.

21 Q Okay. Was that the only window that faced
22 south?

23 A Yes.

24 Q And did you have windows that faced north?

25 A I did. I had two living room window. What is

1 this? Anyway, one here, and then there was a fireplace,
2 and then one on the other side, and then two similar
3 windows in the bedroom.

4 Q Okay. And do those windows look out to the
5 north in that green area and then the open space behind?

6 A Um-hum.

7 Q Okay. You can go ahead and have a seat. Thank
8 you.

9 A (The witness complied.)

10 Q Do you recall being home on the evening of
11 July 31, 2016?

12 A Yes.

13 Q Do you recall about what time you got home?

14 A I was just home all day.

15 Q Home all day?

16 A Um-hum.

17 Q Okay. And what part of the house do you
18 remember spending most of your time in?

19 A In the living room.

20 Q And what direction do those -- are there windows
21 that face out?

22 A Yes, to the north.

23 Q To the north. At some point during the evening,
24 did you hear or see anything that caught your attention?

25 A The only thing, it probably was about 7 o'clock

1 in the evening, and I heard a noise. It sounded like
2 something hit my front door. It was just one bang, and I
3 didn't know what it was, and I didn't go out to look.

4 Q Okay. And you said "about 7 o'clock." How
5 certain are you of the time?

6 A Somewhat certain.

7 Q Were you awake --

8 A Yes.

9 Q -- when that happened?

10 A Yes.

11 Q Okay. And you said you didn't go out to
12 investigate?

13 A Hum-um.

14 Q And you didn't call 911 or anything?

15 A (The witness shook head.)

16 Q Is that a no? She's got to take that down.

17 A No.

18 Q Do you remember about what time you went to bed
19 that evening?

20 A I went to bed, I would say, between 10:00 and
21 11:30.

22 Q And is your bedroom -- is it on the north side
23 of that building?

24 A Yes.

25 Q And you have windows that face out from your

1 bedroom to the north side?

2 A Yes.

3 Q After -- sometime after you went to bed, were
4 you awakened by something?

5 A Yes. First, let me say that I had
6 moved -- previously, I had moved my bed into the dining
7 room, because my neighbors on the west side of me were
8 play music and making noise, and so I was having trouble
9 sleeping. So I had moved my bed into the dining room so I
10 could shut the bedroom door so I couldn't hear them. So,
11 anyway, I was sleeping in the dining room, but I was woken
12 about -- it was after midnight.

13 Q And what was it that woke you up?

14 A I heard gravel, somebody -- I heard like
15 somebody stepping onto the gravel.

16 Q And do you recall on this evening whether you
17 had any windows in your unit open or not?

18 A I had all four of them open.

19 Q And those are the windows that face out to the
20 north?

21 A Yes.

22 Q Are you aware, on that north side of the
23 building, if there's any sort of gravel pathways or
24 landscaping?

25 A Around the building, there's a strip of gravel

1 right up next to the building. It's probably, I would
2 say, 2 1/2 feet wide, and it goes all the way around the
3 building. And then there's grass, which I would say is
4 about 20, 25 feet to an iron fence, which is about 6 feet
5 tall, and then there's the Bear Creek greenbelt.

6 Q And you heard what you thought was someone
7 walking on the gravel?

8 A Yes.

9 Q And that was loud enough to wake you up?

10 A Yes. In fact, that was kind of my plan. I had
11 planned that in order for me to go to sleep and be able to
12 sleep with the windows open, I thought, well, if I ever
13 heard anything, I would hear the gravel rustling, and then
14 I could just, you know, get up and shut the windows.

15 Q Okay.

16 A So . . .

17 Q What happened after you heard the sound of what
18 you thought was someone walking in the gravel?

19 A I wanted to get up and shut the windows, but I
20 heard like some chatter or talking. And so it was going
21 from that one living room window on the east side, and the
22 noise kind of traveled across toward my porch, and then I
23 kind of heard it come back. I wanted it to stop so I
24 could get up and shut the windows, and I didn't -- the
25 reason I didn't get up is I didn't want to be seen.

1 Q Okay. The chatter you heard, was it -- did it
2 sound like a person speaking?

3 A Yes. I didn't know what they were saying. I
4 couldn't hear what they were saying.

5 Q Could you tell if it was a male or female voice?

6 A It was a male voice.

7 Q And could you tell if the person -- anything
8 about how they sounded? Did they sound angry, happy --

9 A I don't know.

10 Q -- anything?

11 A I don't know.

12 Q And you couldn't hear the words --

13 A No.

14 Q -- that they were saying?

15 A Hum-um.

16 Q Did you only hear one voice?

17 A At that time I wasn't sure.

18 Q Okay. What was the next thing that happened?

19 A The next thing that happened was I waited, and
20 then I decided I'd get up. So I got up, and I was
21 actually really scared to look out the window because I
22 didn't want to be seen, because I didn't know what was out
23 there. So I saw -- I went over to that living room window
24 on the east side, and I saw a person standing there with a
25 smartphone. I could see the face of a smartphone, and

1 there was some talking. And there was a lot of tree
2 branches, and so I couldn't really see that well.

3 Q Okay. And did you see what you thought was the
4 glow of a smartphone?

5 A Um-hum. Like the -- I could see like the face
6 of a smartphone, you know, with the little apps.

7 Q And did you hear anything that the person said
8 at that point?

9 A Something about call me back, something like
10 that.

11 Q Do you remember telling an officer that the
12 person said, Call me back, man?

13 A (The witness nodded head.)

14 Q Is that yes? You're nodding.

15 A Yes. Sorry.

16 Q Okay. What did you hear or see after that?

17 A After that, I remember I backed up, and then
18 there were six gunshots.

19 Q Are you certain there were six?

20 A You know, I wasn't actually counting. I would
21 say there was definitely five or six.

22 Q Okay.

23 A Five or six.

24 Q Did they sound like they came from the same gun
25 or different guns?

1 A The same gun.

2 Q And did they sound like -- were they close
3 together, or was there spaces?

4 A Oh, very close, very close. One right after the
5 other.

6 Q Did you ever hear what sounded like more than
7 one weapon, either because it sounded different or they
8 were firing at the same time?

9 A To me, it sounded like one weapon, and the pops
10 were very, very close together.

11 Q So you're describing what you think is one
12 weapon and five or six shots?

13 A Um-hum.

14 Q Is that a yes?

15 A Yes. Sorry.

16 Q That's all right. Do you know much about
17 firearms?

18 A No.

19 Q Okay. And would you -- do you think you would
20 be able to recognize the difference between a handgun and
21 a rifle or a shotgun being fired?

22 A Just hearing it?

23 Q Yes.

24 A Probably not, no.

25 Q Okay. What did you do after you heard those

1 five or six gunshots in rapid succession?

2 A I turned around, grabbed my phone, went into the
3 bathroom and called 911.

4 Q And did you speak to a dispatcher?

5 A Yes.

6 Q And do you know how long you spoke to the
7 dispatcher?

8 A It was about 19 minutes.

9 Q And that's pretty specific. How do you recall
10 that it was that long?

11 A I remember after I've got off the phone with
12 911, I looked at the time it took --

13 Q Okay.

14 A -- on the phone.

15 Q And you stayed with the dispatcher that whole
16 time?

17 A Um-hum.

18 Q Did you tell them what you heard?

19 A Um-hum.

20 Q Is that a yes?

21 A Yes.

22 Q As you were on the phone with the dispatcher,
23 did you hear other sounds that caught your attention?

24 A Um, after those six initial shots, there were --
25 later there was -- I think there was four more.

1 Q And did you --

2 A About ten minutes later.

3 Q About ten minutes later?

4 A Um-hum.

5 Q Where did it sound like those were coming from?

6 A Those were not on the north side. Those were, I
7 would say, in that breezeway, or I heard them on the other
8 side of my stairwell.

9 Q So are you referring to the south side of the
10 building, or below you?

11 A I'll show you.

12 Q All right. Thank you.

13 A Okay. So my stairwell is right here, and like
14 my bathroom is, you know, right here. So that's where I
15 was standing. So I was hearing these shots. I was
16 hearing noise over here.

17 Q And so you're indicating that your bathroom is
18 roughly in the middle of that building?

19 A It's about right -- I would say about right
20 there (indicated).

21 Q About a little bit on the south side. And where
22 in relation to you, or where you were standing, do you
23 think the shots were occurring?

24 A Right here. This is like -- if this is my
25 stairwell inside, I was hearing them on the other side of

1 the stairwell, so it would have been in here (indicated).

2 Q Did they sound like they were occurring on the
3 same level of the building as you, or below you?

4 A That, I can't say.

5 Q Okay. And are you certain that you heard four?

6 A Pretty certain, yes.

7 Q When you were on the phone with the dispatcher
8 and you heard each of those shots, did you describe
9 hearing those to the dispatcher?

10 A I told him that I heard them.

11 Q Okay. And did you tell them as you heard each
12 one?

13 A Yes.

14 Q Have you had a chance to listen to that 911
15 call?

16 A Yes.

17 Q Did that sort of refresh your memory as to what
18 happened that night?

19 A Yeah.

20 Q Okay. Were you able to listen to that today?

21 A Yes.

22 Q You can go ahead and have your seat again. I
23 appreciate you going up there.

24 A (The witness complied.)

25 Q The additional four gunshots that you think you

1 heard, did it sound like they were coming from inside of
2 the unit or from outside?

3 A I would say that the first three, I don't know.
4 The last one was right outside my front door.

5 Q And what did you see or hear after that?

6 A I just heard a bunch of noise. 911 had told me
7 that there were police around in the area, so . . .

8 Q Okay. What sort of noise did you hear?

9 A I just heard a bunch of scuffling and --

10 Q Did you hear any voices?

11 A Probably, yes.

12 Q Okay. Did you ever go out front on the south
13 side to see what was going on?

14 A No. No, I did not go out.

15 Q Did you ever look out?

16 A No. Nope.

17 Q Okay.

18 A Not until a policemen came and knocked on my
19 door a couple hours later, and then I went downstairs and
20 asked who was at the door, and they said it was the
21 police, and that's the only time I went out.

22 Q Okay. Was this a pretty scary incident?

23 A It was terrifying. I was terrified.

24 Q Okay. Did you -- did you know your downstairs
25 neighbor back then from Unit 103?

1 A Um, not on a personal level, no.

2 Q Okay. If I said the name Mr. St. George, is
3 that familiar?

4 A I didn't know his name.

5 Q Okay. The person that you saw that you think
6 was outside on the phone, did you recognize him as
7 somebody you knew?

8 A I didn't know who it was.

9 MR. FREEMAN: Okay. All right. Thank you.

10 THE COURT: Cross-examination?

11 CROSS-EXAMINATION

12 BY MR. ST. GEORGE:

13 Q Ms. Gibson, that person who was in the backyard,
14 you said you heard them saying, Call me back, man?

15 A (The witness nodded head.)

16 Q And you saw the glow of the phone, and they were
17 saying -- talking to their phone and saying that?

18 A (The witness nodded head.)

19 Q And that's yes? I see you're nodding your head.

20 A Yeah. They were -- the person was facing east,
21 so I couldn't see their face.

22 Q Okay. And you said when you heard the sounds of
23 gunfire, you then went to your telephone?

24 A Um-hum.

25 Q Picked up and called 911?

1 A Um-hum.

2 Q And you did that because you didn't know there
3 were police around?

4 A I did it because I was scared to death.

5 Q Prior to the gunfire, did you hear anything that
6 would have indicated that there were police?

7 A No.

8 Q So you never heard anything like hands up, or
9 drop a weapon, or anything like that?

10 A No.

11 Q Okay. And, Ms. Gibson, when you heard those
12 additional shots that came after, the ones that you say
13 sounded like they were inside, or the other ones, did
14 you -- you were on the telephone with 911 while that was
15 occurring?

16 A Yes.

17 Q You were. And did you tell the dispatcher every
18 time you heard what you believed to be a gunshot?

19 A Yes.

20 Q You said, There's another one?

21 A Yes.

22 Q And you did that four times, right?

23 A Yes.

24 Q Okay.

25 MR. ST. GEORGE: Let me just check with my

1 counsel.

2 (Pause in the proceedings.)

3 MR. ST. GEORGE: Thank you so much. I have no
4 further.

5 THE COURT: Redirect?

6 MR. FREEMAN: I don't have anything else, Judge.

7 THE COURT: Does anyone on the jury have a
8 question for this witness?

9 (No verbal response.)

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

11 THE WITNESS: Thank you.

12 (The witness was excused.)

13 MR. FREEMAN: Judge, we're going to call Todd
14 Fahlsing.

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

18 THE COURT: Have a seat, please.

19 THE WITNESS: (The witness complied.) Thank
20 you.

21 DIRECT EXAMINATION

22 BY MR. FREEMAN:

23 Q Good afternoon. Would you please state your
24 full name, and spell your last name for us.

25 A It's Todd Fahlsing, F-a-h-l-s-i-n-g.

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

2 A I'm a sergeant with the City of Lakewood.

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

4 A Just about 17 1/2 years.

5 Q How much of that has been spent with Lakewood

6 PD?

7 A All 17 1/2 years.

8 Q And how long as a sergeant?

9 A Since January of 2012.

10 Q What is your current assignment?

11 A I'm currently assigned to the drug task force.

12 I'm a detective sergeant with the West Metro Drug Task

13 Force.

14 Q And how long have you had that assignment?

15 A Since January of last year.

16 Q I want to draw your attention back to the early
17 morning of August 1st of 2016. Were you working on that
18 date and time?

19 A That's correct.

20 Q And what was your assignment?

21 A So I was a night shift sergeant working the
22 north sector of the city. That's anything north of 6th
23 Avenue.

24 Q And in that role that evening, were you in sort
25 of a standard issue Lakewood Police uniform?

1 A That's correct.

2 Q And did you have a marked patrol car or some
3 other type of vehicle?

4 A I had a marked patrol car, and I was, yes,
5 wearing a full, normal patrol uniform.

6 Q And did you have a partner with you in your
7 vehicle?

8 A No. I was a single-man car.

9 Q What time did you start your shift that night?

10 A 9 o'clock that night.

11 Q So 9 o'clock on the 31st?

12 A No, on the 30th.

13 Q On the 30th. Okay. And --

14 A So I work 9 o'clock at night and then until
15 7 o'clock the following morning.

16 Q Okay. I want to make sure we get our dates
17 right. So we're talking about the last day of July and
18 first day of August?

19 A So the incident took place on the 31st, but my
20 shift actually started on the 30th.

21 Q Okay.

22 A Because once you roll past midnight, then it
23 moves to the 31st, so . . .

24 Q So the incident we're been hearing described was
25 happening on the evening of the 31st into the morning of

1 August 1st. Are you still working?

2 A Yes. Yeah. My shift starts whatever day that
3 was, the 9 o'clock that night, and then rolls into the
4 morning of the -- 7 o'clock the following morning.

5 Q Okay. So you had been working since 9 o'clock
6 p.m. the previous evening?

7 A Yeah, that night.

8 Q And had you been monitoring radio traffic prior
9 to midnight?

10 A That's correct.

11 Q And did you hear about a developing incident
12 down at the Windsor Apartments, 8139 West Eastman Place,
13 city of Lakewood?

14 A That's correct.

15 Q And at some point did you become concerned about
16 what you were hearing on the radio?

17 A Yes. There was radio traffic, and,
18 additionally, Agent Trimmer had called me because Sergeant
19 Maines was busy on another call and asked for some
20 guidance. So that was when I first started becoming aware
21 of the call, and then I started to hear radio traffic that
22 made me start to pay more attention to the call that was
23 down there. That was outside of my area.

24 Q Do you know about what time it was you spoke to
25 Agent Trimmer?

1 A I do not. It was probably either right before
2 midnight or shortly thereafter.

3 Q And in sort of advising her as to what to do,
4 you were covering for Sergeant Maines, who was busy with
5 other things at that point?

6 A Yeah. He was on another call and wasn't able to
7 talk to her to continue the consultation.

8 Q At some point did you personally decide to go to
9 the location?

10 A That's correct, about 30 minutes after midnight.

11 Q And why did you decide to head there yourself?

12 A Because there was radio communication
13 traffic -- or radio traffic about hearing a gun being
14 charged, or what we call racked, which means it would be
15 like chambering a round in the gun, and they could see him
16 moving around, so I decided it was time to go down there
17 to assist.

18 Q And about how long do you think it took you to
19 get there?

20 A I initially started to go down that direction by
21 stopping at the police department. Back then, I was still
22 a member of the SWAT team, and so I was going to go get
23 some additional SWAT equipment to help on the call. So my
24 initial -- I was initially responding there until the
25 shots fired call came out, and then I bypassed the station

1 and went directly to the scene.

2 Q And going to the scene, did you go quickly, or
3 did you go like a normal speed?

4 A I went emergent, lights and sirens.

5 Q And did you have any trouble getting into the
6 complex once you got to the gate?

7 A So we initially had somebody that had got there
8 a little bit before me who had asked for the gate code to
9 open the gate. Once that was achieved, I had that officer
10 specifically stay there to keep the gate open so that any
11 additional units and the fire department, anyone else that
12 needed to come down, there wouldn't have to and for a gate
13 code.

14 Q So you were able to proceed directly through the
15 gate. Where did you go?

16 A So I was unfamiliar with the complex, so I went
17 down toward the middle of it and saw some agents hiding
18 behind a car and figured out I was in the right spot and
19 pulled behind the building where I couldn't see what I
20 guessed was the target apartment, so I had a safe area to
21 get out of my car and grab some gear.

22 Q And why not just drive to the target apartment,
23 or building?

24 A Because I didn't know exactly where everyone was
25 at, and I didn't want to -- I knew that there had already

1 been gunfire exchanged, and I didn't want to interject
2 myself unsafely into that scenario.

3 Q After you heard the initial call of shots fired,
4 how long do you think it took you to get to the scene?

5 A Maybe five minutes-ish, from roughly Ohio and
6 Wadsworth area, straight down Wadsworth to Eastman.

7 Q Once you arrived at the scene, are you in
8 communication over the radio with the other agents and
9 sergeants that are already there?

10 A So at that point, I'm just listening to people
11 talking and where they're going. I wasn't there, so I
12 didn't want to interject myself on the radio. I was just
13 listening them to figure out where I needed to go.

14 Q And once you got there, where did you decide to
15 go?

16 A So when I've got there, I initially knew that
17 Sergeant Maines was still by himself on kind of the
18 northeast portion, so I had initially run to the west to
19 get some face time with the people that were over there,
20 and then I looped all the way back around various
21 buildings to get over to -- get over with Sergeant
22 Maines.

23 Q And how is it that you were able to find him?
24 How did you know where he was?

25 A Some of it was just running along buildings and

1 looking at building numbers and trying to stay in a safe
2 direction.

3 Q Did you eventually find Sergeant Maines?

4 A Yes, I did.

5 Q And was he alone when you got to him?

6 A Yes, he was alone.

7 Q And what did you do once you got to where he
8 was?

9 A So Sergeant Maines then pointed out the
10 direction of, in a rough area, where the target apartment
11 that we were looking at was located, so I had some idea of
12 where I needed to orientate and what I needed to watch
13 for.

14 Q And what did you hear going on once you got to
15 where Sergeant Maines was located?

16 A So when I initially got out of my car, I grabbed
17 some various SWAT-type gear. I didn't put a SWAT vest on,
18 but I did grab a SWAT helmet that has my electronic ear
19 probe attached to the helmet. So I initially got there,
20 those were cupped down, and I heard a call of -- either a
21 call on the radio and/or Sergeant Maines say that there
22 was more gunfire from inside the house, which I couldn't
23 hear because of my electronic ear probe, so I had to uncup
24 my ears so I could hear a couple more gunshots from inside
25 the apartment.

1 Q And how could you tell that they were coming
2 from inside the unit?

3 A Just because of the muffled sound. They weren't
4 outside. It wasn't the sharp crack of gunfire that was
5 close. It's more of a -- you could just tell it was
6 either really far away or inside of an enclosed area based
7 upon the sound.

8 Q And how many of those sounds did you hear?

9 A Probably, in total, two or three.

10 Q And did they sound like they came from the same
11 weapon or a different weapons?

12 A They sounded like they came from a smaller
13 caliber from that same direction that I was orientated.

14 Q And what happened after that?

15 A Then there was 911 call that was received, and
16 the caller had stated that he had been shot and he needed
17 medical attention. We directed the 911 dispatcher to give
18 instructions to come out with empty hands.

19 Q And was that come out a particular part of the
20 unit, or just come out?

21 A I think it was out the front door, but I
22 couldn't say specifically.

23 Q But they were told to come out without anything
24 in their hands?

25 A That's correct.

1 Q Did you hear some commotion on the south side of
2 building after that?

3 A So after a couple minutes, we could start to
4 hear agents give very loud and distinct verbal commands
5 that was coming from the south -- the south side of
6 building, and then they radioed that they were in contact
7 and that they were taking him into custody.

8 Q And did you go to where that was taking place?

9 A So once they said that they had him in custody,
10 Sergeant Maines and I made our way toward the front door,
11 so it would have been on the east side of the -- of that
12 building and then around to the south where the front door
13 was.

14 MR. FREEMAN: Could we have People's 3 up,
15 please.

16 (People's Exhibit 3 was published.)

17 Q (BY MR. FREEMAN) In taking a look at what's
18 been admitted as People's 3, do you recognize this as the
19 building which was the suspect unit that the suspect came
20 out of?

21 A That's correct.

22 Q Can you see in this photograph roughly where you
23 and Sergeant Maines were when you heard the additional
24 gunshots?

25 A Yes.

1 Q Do you want to go point, or can you describe it
2 from where you're seated?

3 A I could do either one.

4 Q If you feel --

5 A I'll go point.

6 Q There's a pointer right there, if you want.

7 A So I initially parked down here in this area.

8 There's a parking lot that you can't see. When I made my

9 way around, it was all the way around this building, and

10 right about there, there's like a green like one of those

11 little metal utility boxes. I shouldn't say "little." It

12 was probably 3 or 4 feet square, about 3 1/2 feet tall.

13 That's right there, and that's where Sergeant Maines and I

14 were at. Once we heard the call that he was in custody,

15 we made our way from there up over to right here, where

16 they had him proned out and handcuffed (indicated).

17 Q So by the time you got to where that commotion
18 was going on, he was already -- is it in the grassy area
19 just south of the southeast corner?

20 A It is, yeah, somewhere in this little area right
21 in there (indicated).

22 Q And was the person already cuffed?

23 A Yes.

24 Q Did you see any apparent injuries to the person?

25 A Yes, to his -- do you want me to sit back down,

1 or --

2 Q Yeah. I think you can sit down. I don't think
3 you need to be up there.

4 A (The witness complied.) Yes, both of his legs
5 were bloody, and he was laying on his back, and there was
6 an agent who was putting a tourniquet on the left leg. I
7 had rubber gloves on at that point, and I could see that
8 the right leg was bloody as well, and I couldn't tell if
9 it was blood from the left leg injury that had gotten
10 moved over to the right, or if there was a separate
11 injury, and so I did a sweep down the leg, and I found a
12 second gunshot wound to the right shin area.

13 Q So what did you do when you found that?

14 A I told the agent who was putting the tourniquet
15 on the left leg to put a tourniquet on the right leg.

16 Q Did the agent do that, or did you help him or
17 anything?

18 A I did not help him, and there was plenty of
19 people there, and they rendered aid.

20 Q After doing that, did you take part in clearing
21 the units that the person come out of?

22 A Yes. So he was moved a little bit -- a ways
23 away from the door to have a safer work area. And then
24 Agent Frink, Agent Lebsack, and a couple others, we made
25 our way to the front door, made announcements, and then

1 entered the apartment to make it safe.

2 Q And did you find anybody inside?

3 A No. There was on one inside. There were no
4 other suspects, no one hiding and no one that needed
5 medical attention.

6 Q Is that all you were looking for?

7 A That's correct.

8 Q Were you there to document evidence or document
9 the scene?

10 A No.

11 Q How long do you think you spent in there?

12 A Maybe three to five minutes. We initially made
13 our way through and did an initial sweep or clearance of
14 it. And then those of us who were in there -- if I had
15 been in the garage, clearing the garage, I would have
16 somebody else come in there just to have a fresh set of
17 eyes to make sure I didn't miss something. Once we had
18 done that, then we all made our way out.

19 Q Do you remember anything catching your attention
20 in the three to five minutes that you were in there?

21 A There was a shotgun on the ground. There was a
22 pistol on the ground. There was a couple empty like spent
23 pistol cartridges, or empty casings. There was some blood
24 and some bullet holes.

25 Q And when you were going through the apartment

1 clearing it, did you do your best not to move or disturb
2 the scene any more than you had to to check closets and
3 things for people?

4 A Yeah, we did not. Yeah, if it was big enough
5 for someone to hide in, it got opened and checked to make
6 sure no one was hiding in it, and nothing else was
7 touched.

8 MR. FREEMAN: All right. Thank you.

9 THE COURT: Cross-examination?

10 MR. ST. GEORGE: I have no questions, Your
11 Honor.

12 THE COURT: Does anyone on the jury have a
13 question for this witness?

14 (No verbal response.)

15 THE COURT: Thank you, you may step down.

16 THE WITNESS: Thank you.

17 (The witness was excused.)

18 MS. DECKER: The People call Mike Berumen.

19 MICHAEL BERUMEN,
20 having been called as a witness on behalf of the People,
21 being first duly sworn, testified as follows:

22 THE COURT: Have a seat, please.

23 THE WITNESS: (The witness complied.)

24 ///

25 ///

DIRECT EXAMINATION

BY MS. DECKER:

Q Good afternoon.

A Good afternoon.

Q Will you please introduce yourself to the jury, and spell your name for our court reporter.

A I am Michael Berumen, B-e-r-u-m-e-n.

Q What do you do for a living?

A Firefighter/paramedic with West Metro Fire.

Q What training and experience do you have working as a paramedic?

A So far I've been with the fire department for 11 years. I've been a paramedic for eight. I've been an EMT for 18. So quite a bit.

Q And what does it mean to be an EMT?

A An EMT is the basic medical technician, and then we go up into intermediate and paramedic, which is, in our profession, the top, without being a doctor or a P.A., or something like that.

Q Were you working on August 1st of 2016?

A I was.

Q In what capacity? As an EMT or paramedic?

A I was a paramedic.

Q And did you receive a call that early morning after midnight on August 1st of 2016?

1 A Yes, ma'am.

2 Q And what did you do in response to that call?

3 A We loaded up into our ambulance and headed out
4 to the call off Eastman. And we initially staged, because
5 it was a report of gunshot wounds, so we don't -- we don't
6 enter the scene unless we are cleared in by the police
7 department.

8 Q And so you mentioned you initially staged
9 somewhere away from the suspect building; is that fair?

10 A Correct. Yes. So we don't -- so we don't take
11 any kind of gunshots or -- we're close enough to the scene
12 so we can respond promptly, but not to be in the way of
13 potential harm.

14 Q Are you in communication with any law
15 enforcement to know when it is safe for you to approach
16 the scene?

17 A Either verbal, physical or through our dispatch.
18 Sometimes they'll let us know with their flashlights, or
19 one of them will come over. I'm not positive on which one
20 this was, if it was through dispatch or not.

21 Q At some point after midnight, once you arrived
22 at the scene, were you notified that it was safe to
23 approach and assist someone who needed your attention?

24 A Yes, ma'am.

25 Q Once you did that and made that approach, who

1 did you meet?

2 A I met Mr. St. George.

3 Q Is that an Eric St. George?

4 A Yes.

5 Q And where was he, and what was happening with
6 him?

7 A He was -- initially, he was on -- he was in
8 front of like an apartment/townhouse complex, he was on
9 the grass, where he had sustained two gunshot wounds, one
10 on each calf, and he was -- he'd already had tourniquets
11 applied prior to us getting there.

12 Q And once you saw him with the tourniquets
13 applied, was he lying down on the ground at this point?

14 A Yes. I have that he was on his back on the
15 ground.

16 Q And once you saw him on the back -- on his back
17 on the ground, what did you do?

18 A We started to assess, got his blood pressure,
19 saw if the tourniquets were appropriately applied, whether
20 it was stopping the bleeding, and assess -- effectively
21 assessed him and prepared him to be transported to the
22 hospital.

23 Q And did the tourniquets appear to be properly
24 applied to his legs?

25 A Yes. There was minimal bleeding from -- from

1 after -- from what we saw.

2 Q Once you did that initial assessment, while
3 still outside of the apartment building, did you then
4 transport Eric St. George?

5 A Yes.

6 Q And was that to a certain hospital?

7 A To St. Anthony's Hospital, which is a Level I
8 trauma center.

9 Q During the ambulance ride to the hospital, how
10 much time did you have with Eric St. George --

11 A Um.

12 Q -- approximately, would you estimate?

13 A Less than 20 minutes, roughly.

14 Q And were you trying to get any information from
15 him to help you assist him?

16 A Yeah. We get all basic medical information,
17 whether they've taken any medications, whether they are
18 allergic to things, whether they've taken any kinds of
19 drugs or alcohol, any -- any problems with their physical
20 health that we can ascertain at that point.

21 Q And you mentioned drugs or alcohol. Is that
22 information you try and get from a patient?

23 A Yes.

24 Q And did you get that information from Eric St.
25 George?

1 A Yes. I wrote down in my report that the patient
2 stated he had an abundant amount of -- excuse me, an
3 abundant amount of alcohol.

4 Q And did you notice anything -- note anything
5 about Mr. St. George's demeanor?

6 A He was -- he was pretty agitated. I guess I
7 kind of expected that since he had been shot.

8 Q And what about cooperativeness? Did you note
9 anything about whether he was cooperative or
10 uncooperative?

11 A He -- yeah, I have that he was cooperative with
12 us, meaning he'll answer questions, but he wasn't real
13 forthcoming with information.

14 Q And when you wrote your report, did you, in
15 fact, write, Barriers to patient care, uncooperative?

16 A Um.

17 Q If you need me to approach, I can.

18 A Let's see. Yeah, if you don't mind. I
19 apologize.

20 MS. DECKER: Okay. If I may have the bailiff
21 approach.

22 Q (By MS. DECKER) And it's highlighted there, if
23 you can take a look.

24 A Okay. Okay. Yes, that would be correct.

25 Q So correct to say he was uncooperative, and that

1 was a barrier to patient care?

2 A Correct.

3 Q Is Eric St. George in the courtroom today?

4 A I believe so.

5 Q And can you identify him by something that he's
6 wearing and where he is sitting.

7 A I -- I would assume that's this gentleman right
8 here (indicated). It's been over a year since I've seen
9 this gentleman for about 20 minutes.

10 Q Okay. And for the record, is he to your left,
11 to my right?

12 A Correct.

13 Q In the light blue shirt?

14 A Yes, ma'am. Sorry.

15 MS. DECKER: Your Honor, the People would ask
16 that the record reflect that the witness has identified
17 the defendant.

18 THE COURT: The record reflects the
19 identification given by the witness.

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

21 MR. ST. GEORGE: I have no questions, Your
22 Honor.

23 THE COURT: Does anyone on the jury have a
24 question for this witness?

25 (No verbal response.)

1 THE COURT: You may step down.

2 THE WITNESS: Thank you.

3 (The witness was excused.)

4 MS. DECKER: The People call Agent Patrick Lone.

5 PATRICK LONE,

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

7 being first duly sworn, testified as follows:

8 THE COURT: Have a seat, please.

9 THE WITNESS: (The witness complied.)

10 DIRECT EXAMINATION

11 BY MS. DECKER:

12 Q Good afternoon.

13 A Hi.

14 Q Will you please introduce yourself to the jury,
15 and spell your name for the court reporter.

16 A My name is Agent Patrick Lone. Last name is
17 L-o-n-e.

18 Q And what do you do for a living?

19 A I'm a police officer with the City of Lakewood.

20 Q And do you work in any special capacity with the
21 City of Lakewood?

22 A I am a -- I've been assigned to the K-9 unit for
23 the better part of 15 years now.

24 Q A what are your responsibilities as a part of
25 did the K-9 unit?

1 A I do pretty much the same as everybody else in
2 the police department as far as the patrol function goes.
3 I respond to calls for service. Our assignment, obviously
4 we have a partner that's a dog, so we will generally
5 respond to any call that's urgent or some of your higher-
6 impact calls where a dog might be useful.

7 Q And we can see that your uniform looks somewhat
8 different than the standard blue uniform we've seen. Can
9 you explain why?

10 A Yes, ma'am. We are assigned to the K-9 unit,
11 but as a function of the K-9, we are also assigned to
12 SWAT. So a couple years -- well, five or six years ago,
13 they said that the green uniforms were effective for the
14 SWAT program and for our safety and the safety of others,
15 so they changed the K-9 uniform to green as well.

16 Q I'm going to draw your attention to August 1st
17 of 2016. In what capacity were you working that early
18 morning, after midnight?

19 A My normal, scheduled shift on patrol as a K-9
20 handler.

21 Q And did you receive any sort of dispatch call at
22 12:44 a.m.?

23 A I did not get dispatched to it. I heard the
24 nature of the call and responded accordingly.

25 Q And so if you could just explain to the jury the

1 distinction between receiving a dispatch call and simply
2 hearing something and making a decision to respond to a
3 location.

4 A We -- as we go through our normal shift, ten-
5 hour shift at night, we have three dispatch channels at
6 Lakewood, and part of my function and my assignment is to
7 listen to all three channels for any calls that might be
8 felony crimes, violent crimes, calls that require one of
9 us to respond. In this instance, just the nature of the
10 call, instead of having dispatch actually call my call
11 sign and send me to the call, I just responded.

12 Q And that call at 12:44 a.m., was that a shots
13 fired call?

14 A Yes, ma'am.

15 Q What does that mean?

16 A That means that we have a credible witness,
17 whether it be a police officer or somebody who lives in
18 the area, who confirms to us that somebody has fired a
19 weapon.

20 Q And to be clear, is that a police officer saying
21 that that just happened, so it's emergent, versus it had
22 happened several hours prior?

23 A That means it's most likely still ongoing.

24 Q So after hearing this on the police radio at
25 12:44 a.m., you mentioned that you then decided to respond

1 to that scene?

2 A Yes, ma'am.

3 Q Was that at 8139 West Eastman Place?

4 A Yes, ma'am.

5 Q And while you were en route, did you hear
6 Sergeant Maines air any information?

7 A Sergeant Maines -- I'd have to look at my
8 report, if there's a quote in there, but, in essence,
9 Sergeant Maines is airing that the suspect is walking
10 around on the north side of the apartment building, he was
11 at firing rounds and was caring a shotgun.

12 Q And would it be fair to say that you heard him
13 air that shots were being fired, and a male was walking
14 around the rear, the north grass area of the apartment
15 with a shotgun?

16 A Yes, ma'am.

17 Q Once you arrived at that scene, where did you
18 go?

19 A When I arrived -- during my response down there,
20 I was not able to actually pull up a map in my car and see
21 the specific building. I knew the complex and I knew
22 where the entrances were for that -- or entrance for that
23 complex was, so I went just to that front entrance and
24 stopped my car right inside the gate until I could
25 determine -- get my bearings where everything was going

1 on.

2 Q At what time would you say you arrived at that
3 gate if you first heard this information at 12:44 a.m.?

4 A My response time from where I generally am in
5 the city, within five or six minutes at the most.

6 Q Did you receive any information once you were at
7 the gate as to where to go?

8 A Once I got to the gate, there were a few agents,
9 and I believe Sergeant Fahlsing was still near the front
10 area, and he basically said he needed me to work my way
11 north and join other agents that were actually directly
12 north of where I stopped my car.

13 Q And once you had that information, what did you
14 do, and where did you go?

15 A I got out of my car. I could hear gunfire, so I
16 left my K-9 in the car and began working my way past
17 the -- I don't know if it's a fitness center or a common
18 area for the residence of that complex, started working my
19 way north through the greenbelt that separates the
20 buildings and just worked my way towards the sound of the
21 gunfire.

22 Q And how many gunshots did you hear when
23 you -- after you had gotten out of your car?

24 A I did not count. Several.

25 Q And were you going towards Building 6, and did

1 you hear the gunshots to the west of Building 6?

2 A I did. I knew that the building we were working
3 was on the north end of the complex, and Building 6, I
4 believe, was provided to me by Sergeant Fahlsing, but I'm
5 not positive.

6 Q And once you heard these gunshots, do you recall
7 how spaced they were in between each other?

8 A Some of them were lumped together as not quite
9 rapid fire, but shooting somewhat repetitiously, and then
10 there was a gap, and then there were more.

11 Q And did you ever arrive at what you believed to
12 be the suspect's building?

13 A Yes.

14 Q Is that where you heard that gunfire coming
15 from?

16 A That general area, yes, ma'am.

17 Q And once you arrived at what you believed to be
18 the suspect's building, was that Building 7?

19 A Yes.

20 Q And what did you see going on once you arrived?

21 A I saw, stacked up on the south side of
22 Building 7, were three or four of our agents, basically
23 using the wall as a sort of cover, and they were walking
24 towards the -- a breezeway that we eventually entered that
25 breezeway.

1 Q So to begin, did you see these three to four
2 agents taking cover on the southeast corner of building?

3 A Yes. There's a driveway or a parking lot to the
4 east of the building, and then there's a corner that leads
5 towards the breezeway, and they were right between the
6 corner of the building and that breezeway.

7 Q You mentioned this breezeway. Were you able to
8 see into this breezeway?

9 A Not at that point, no.

10 Q When were you able to see into the breezeway?

11 A Once I got up to the team that was working their
12 way west along that wall towards the breezeway, once we
13 were able to round that corner, then I was able to see in
14 the breezeway.

15 Q And you mentioned "that corner." Can you be
16 more specific as to what corner you're talking about?

17 A Yes. The corner that is on the east end of
18 breezeway, which is on the south side of the building.
19 It's only one apartment width from the parking lot to the
20 breezeway.

21 Q So if we're looking into the breezeway, it would
22 be on the right side, that right-hand corner if we're
23 looking directly into the breezeway?

24 A Looking directly into the breezeway, what are
25 you asking? The corner that I'm talking about, yes,

1 ma'am, it's on the right.

2 Q Okay. And so did you approach that right side
3 corner to have breezeway, or we'll call it the southeast
4 corner of the breezeway, with other officers?

5 A Yes, ma'am.

6 Q And once you and other officers approached that
7 corner, were you able to see into the breezeway?

8 A Yes, ma'am.

9 Q And what did you see?

10 A I saw a male laying face down at the end of the
11 breezeway. There was a door on the left and a door on the
12 right, and that male was laying down face down, and there
13 was a handgun in front of him.

14 Q And how far away was the handgun in front of
15 him?

16 A I would say probably about 5 or 6 feet from him.

17 Q And was he in front of Apartment 103?

18 A Yes, ma'am.

19 Q And seeing the handgun in front of him so close
20 to him, did you do anything as a protective measure?

21 A I did. As -- as the agents that I was working
22 with, as they started to approach the male, I went in
23 front of them and put myself between the male suspect and
24 the handgun.

25 Q And what did you do after putting yourself

1 between the handgun and the male?

2 A I held the suspect at gunpoint until he was
3 taken into custody.

4 Q Were other officers working on cuffing him?

5 A Yes, ma'am.

6 Q And once handcuffs were applied, what happened?

7 A There was a brief pause because it was a crime
8 scene, but, basically, I had them remove the suspect from
9 in front of that doorway because that doorway is not safe
10 and not secure at that point. So I had them take him out
11 of the breezeway, out towards the sidewalk.

12 Q You mentioned the doorway is not safe and not
13 secure. Can you explain that to the jury?

14 A Yes, ma'am. Where the suspect -- the door
15 that -- the door to Apartment Number 103, essentially, is
16 where we believe the suspect came out of. Since we have
17 not been able to enter that apartment and make sure
18 there's no other victims or suspects ready to be hurt, or
19 hurt us, or they're already hurt, it's not safe, it's not
20 secure for us to start processing crime scene in front of
21 that door.

22 Q So did you direct other officers to move the
23 suspect to a different location?

24 A Yes, ma'am. I had them just move him out of the
25 that entire breezeway and out towards the sidewalk or out

1 towards the driveway street that was on the south side of
2 the building.

3 Q Once they were able to remove him, what did you
4 do?

5 A Once we got him out of the way, I had other
6 officers join me, and we made several announcements into
7 the apartment, looking for any response from any further
8 suspects or victims. We didn't get any response from
9 anybody, so we entered that apartment and cleared it of
10 anybody else that might be inside.

11 Q And you use this term that you cleared the
12 apartment. Was your primary role to ensure that it was
13 safe and, as you mentioned before, there were no other
14 suspects or anything of danger to you or anyone else in
15 there?

16 A Right. We call it a protective sweep.
17 Essentially what we're looking for is any victims or any
18 suspects that could still be inside that are hurt or
19 wanting to hurt us.

20 Q And while you were clearing the apartment, did
21 you notice anything immediately?

22 A Immediately I noticed that there was a
23 significant amount of blood on the -- there's a hallway
24 when you enter the apartment. There was a significant
25 amount of blood on the floor and the walls of that

1 entryway.

2 Q Did you notice any weapons in the apartment?

3 A Once I started working through the apartment, I
4 can't remember where specifically, I saw there was a
5 shotgun that had rounds in the side saddle of the shotgun,
6 and a rifle was against the wall, I believe in the
7 bedroom.

8 Q And was this shotgun on the living room floor
9 near the back patio door?

10 A Yes. As you turn left, there's a -- yes.

11 Q And can you explain to the jury what it means to
12 have live rounds on the side saddle of a shotgun?

13 A Yes. So the shotgun itself has a storage rack
14 on the side of it near the barrel of the gun, and rounds
15 can be put in that -- it's called a side saddle, and
16 rounds can be put in there so that when you run out of
17 rounds in a shotgun, you don't have to dig this pockets or
18 go look for ammunition. It's right next to the barrel of
19 the gun. And they are commonly used to store rounds to
20 reload your gun when you're out of rounds.

21 Q Once you noticed some of these things, but
22 primarily just cleared the apartment for any other danger,
23 did you go back out the front entrance to Unit 103?

24 A I did.

25 Q And explain to the jury what you did once you

1 exited the apartment and what you noticed.

2 A Once we made sure it was safe, we then leave an
3 agent on the back door to make sure nobody can come in
4 from the back door or the front door. When I came back
5 out, my primary job at that point was to secure the scene
6 until a supervisor showed up and make sure nothing gets
7 disturbed. Right away I noticed that the handgun that I
8 put myself in front of, between the suspect and the
9 handgun, was no longer there.

10 Q And did you then see it on a sidewalk under a
11 bush?

12 A Yes. As I walked out and started walking out of
13 the breezeway to make sure the suspect was being dealt
14 with medically, or however he needed to be dealt with, I
15 saw the handgun that I initially saw in the breezeway was
16 now at the end of that breezeway under a bush next the
17 sidewalk.

18 Q And did you ever go to the east side of Building
19 7 and to the north side of Building 7?

20 A Yes, ma'am.

21 Q And did you notice any sort of blood trail?

22 A Yes. Leading to -- or away from the back door
23 on the north side of the building, that is -- there's a
24 door there that leads out to a patio that then leads on to
25 the grass greenbelt area, and there was a significant

1 amount of blood in the grass out there.

2 Q And did you see that from the back patio door of
3 the Apartment 103, then going east --

4 A Yes, ma'am.

5 Q -- on the grass?

6 A Yes, ma'am.

7 Q And did you -- in that same area, did you see
8 any spent shotgun shells on the ground?

9 A I did.

10 Q And did you see any trajectory damage at that
11 time?

12 A Not in that immediate area. As I walked from
13 the patio to the east to that same driveway park --
14 parking lot area to the east of Apartment 103, I could see
15 a garage door to the neighboring unit, I believe it would
16 be in Building 6, there was a significant round through
17 garage door.

18 Q And that garage door, do you recall there being
19 a black Dodge pickup truck across from that garage door?

20 A Yes, ma'am.

21 Q And was this impact on the garage door in
22 Building 6-206, was that, essentially, nearly parallel to
23 where that black truck was; do you recall?

24 A Yes. The black truck was a little bit farther
25 south than this garage door and across the . . .

1 MS. DECKER: Thank you. I have no further
2 questions.

3 THE COURT: Cross-examination?

4 MR. ST. GEORGE: I have no questions for Agent
5 Lone.

6 THE COURT: Does anyone on the jury have a
7 question for this witness?

8 (No verbal response.)

9 THE COURT: You may step down.

10 (The witness was excused.)

11 MR. FREEMAN: Can we just a have a moment,
12 Judge?

13 THE COURT: Yes.

14 (Pause in the proceedings.)

15 MR. FREEMAN: Judge, we're going call Timothy
16 Gideon.

17 TIMOTHY GIDEON,
18 having been called as a witness on behalf of the People,
19 being first duly sworn, testified as follows:

20 THE COURT: Have a seat, please.

21 THE WITNESS: (The witness complied.)

22 DIRECT EXAMINATION

23 BY MR. FREEMAN:

24 Q Good afternoon. Would you please state your
25 full name, and spell your last name for us.

1 A It's Timothy Gideon, G-i-d-e-o-n.

2 Q And, Mr. Gideon, how are you employed?

3 A I'm a detective with the crime scene
4 investigation unit with the Arvada Police Department.

5 Q For how long have been a peace officer?

6 A For about ten years.

7 Q And how much of that has been spent with Arvada
8 PD?

9 A The entire time, sir.

10 Q And how long have you been a detective?

11 A For about three years now.

12 Q And you mentioned you were a detective for the
13 CSI unit. Can you tell the jury what that means?

14 A So we process crime scenes, whether that's a
15 vehicle, a house, a person.

16 Q And do you have some sort of oversight capacity
17 as a detective for that unit?

18 A We do. When there is a critical incident, then
19 there is a unit called the critical incident response
20 team. It's made up of the county, and agents or officers
21 from any of the various organizations come together and
22 they conduct oversight for different shootings or serious
23 incidents in order to prove that there's no biases, so
24 that there's a clear investigation.

25 Q And can you briefly describe to the jury any

1 formal education you have that -- as a CSI, or crime scene
2 investigator?

3 A So I have about 800 hours of crime scene
4 investigations, blood stain pattern analysis, shooting
5 reconstruction, arson investigations. I have taken all --
6 several classes throughout the years and as well as
7 academy courses.

8 Q And do you hold any certifications in the
9 capacity as a crime scene investigator?

10 A I do. I have a crime scene investigation and
11 crime scene analyst.

12 Q And have you ever testified in court before as a
13 CSI?

14 A I have.

15 Q Have you ever been designated as an expert
16 before?

17 A I have.

18 MR. FREEMAN: And, Judge, at this point I would
19 offer Detective Gideon as an expert in crime scene
20 investigation.

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

22 THE COURT: Ladies and gentlemen, this witness
23 has been qualified as an expert in crime scene
24 investigation.

25 Q (BY MR. FREEMAN) You mentioned sometimes being

1 asked to help other agencies with investigations. I want
2 to draw your attention back to the early morning of
3 August 1st of 2016. Did you get such a request on that
4 date and time?

5 A Yes, sir, I did.

6 Q And do you know about what time you learned of
7 the incident in Lakewood?

8 A It was about 3:30 in the morning.

9 Q And did you go to the scene at some point after
10 receiving that notification?

11 A I did, yes, sir.

12 Q And do you know about what time you got there?

13 A Roughly around 4:00 a.m.

14 Q Still dark outside?

15 A It was.

16 Q What was going on, just generally speaking, at
17 the scene when you got there?

18 A At that point the scene was going secured. They
19 were putting up the crime scene tape and ensuring that no
20 one was coming and going and getting inside the scene to
21 manipulate evidence in any way.

22 Q Without telling us what anybody told you, did
23 you get sort of a generalized briefing about what was
24 alleged to have occurred?

25 A I did.

1 Q And did that allow you to sort of start helping
2 to process this scene?

3 A It did.

4 Q Were you doing the scene processing alone, or
5 were you doing it with anybody else?

6 A No, at that point I was tasked with oversight,
7 so I was to watch everyone. But Lakewood CSI had not
8 arrived yet, and I knew that we needed to get some
9 documentation done before the lighting changed, so I began
10 taking photographs myself with supervisors from different
11 agencies monitoring.

12 Q And what part of the scene did you start
13 photographing first?

14 A So at this point, it was the outside, so it was
15 the buildings and the parking lots.

16 Q What's the purpose of doing that?

17 A That's to document -- to accurately represent
18 the scene in its current condition as close as possible.

19 Q And when you're taking pictures of the scene and
20 trying to document it, are you moving anything around in
21 the scene or just taking pictures as it appears when you
22 got there?

23 A As it appears. We don't move anything. We
24 leave it where it is.

25 Q Did you personally get involved in the

1 collection of evidence at that scene?

2 A I did.

3 Q And we'll talk a little bit about that later.

4 Did you see areas of possible bullet strikes on the
5 outside of building?

6 A I did.

7 MR. FREEMAN: And if we could have People's 3
8 up, please.

9 (People's Exhibit 3 was published.)

10 Q (BY MR. FREEMAN) If you could take a look at
11 this screen. This has been identified as the Building
12 Number 7 in which the suspect was living and on the east
13 side of which the shooting took place. In looking at
14 this, does it look familiar to you?

15 A Yes, sir, it does.

16 Q And you -- if you can, from where you're seated,
17 can you describe for the jury where you first started
18 taking photographs?

19 A I began at the T intersection, so around the
20 bottom of the photograph near the middle, and then worked
21 my way to the right where that roadway leads to the
22 driveways to the north, up on the right side and then up
23 towards the top. So where there's the single vehicle
24 that's a white vehicle left in driveway, I photographed
25 that area.

1 Q The darker portion on that exhibit, are those
2 asphalt areas?

3 A They are.

4 Q And were any vehicles besides police vehicles
5 allowed to drive on those once the scene was secured?

6 A No, they were not.

7 Q And what about pedestrians, non-law enforcement
8 pedestrians, like residents? Were they allowed to sort of
9 wander about?

10 A No, they weren't.

11 Q Is it fair to say that everything that's
12 depicted in that photo was sort of under police control at
13 that time?

14 A It was, yes, sir.

15 Q So you started taking pictures, I think, on the
16 south side of the building, and then you worked, you said,
17 to the east?

18 A Correct, to the east and northeast.

19 Q And so it's dark. Do you have anything to
20 illuminate when you're taking pictures, or is it just a
21 flash on the camera?

22 A It's just a flash on the camera and flashlight.

23 Q Do you remember what kind of camera you were
24 using?

25 A It's a Nikon D80.

1 Q And once you took pictures on the east side
2 there, where did you go to from there?

3 A I went to the north along that was asphalt
4 between the buildings and then to the north side of
5 building.

6 Q And as you're walking between the buildings and
7 on the north side, do you see items on the ground or on
8 the walls that are catching your attention?

9 A I did.

10 Q And are you talking pictures of those items?

11 A I was.

12 Q And, again, are you moving any items before or
13 after you take pictures?

14 A No, I was not.

15 Q Is it just documenting things in place?

16 A Correct.

17 Q Did you see any areas that appeared to be recent
18 blood?

19 A I did.

20 Q And could you just state generally where you
21 first saw those.

22 A The majority of the area, there was some on the
23 asphalt between the two buildings, and there was some on
24 the grass on the north side of building.

25 Q And where you saw those, did you make efforts to

1 not step on those and walk around those?

2 A Yes, sir.

3 Q Did you see -- what did you see on the north
4 side of building?

5 A On the north side, it was very dark, and there
6 were shotgun shells on the ground.

7 Q And when you say shotgun shells, are you talking
8 about live, unspent rounds, or are you talking about
9 empty, spent casing?

10 A So there were both. There were fired and
11 unfired.

12 Q And at that time, did you count those or just
13 take pictures?

14 A Just photographed.

15 Q And what else did you see on that north side?

16 A There was a unit about the middle of the
17 building on the north side that had blood on the concrete
18 leading into the unit on its little patio.

19 Q And did you take some photographs of that to
20 document that condition?

21 A I did.

22 Q Did you go into the unit at that time?

23 A At that time, no, sir.

24 Q What did you do after you documented the back
25 side of that building?

1 A Then I believe I went around to the east side,
2 and then returned back to the south side.

3 Q And what did you do next?

4 A After taking photographs, once Lakewood CSI
5 arrived, then I turned over the processing to them.

6 Q Do you recall specifically who arrived from
7 Lakewood to take that over?

8 A It was Victoria Parker, Sheri Shimamoto and
9 Julia Rossi.

10 Q And what was your role at that point?

11 A At that point it was oversight to ensure that
12 they were doing things properly and ethically.

13 Q And as far as you could tell, were they?

14 A They were.

15 Q And what did you do or what did they do as you
16 were watching them?

17 A So they again documented, so they repeated the
18 same procedures that I did, and they noted where items
19 were with diagrams, and they used a FARO 3D imaging device
20 to scan and map the scene.

21 Q Did you help them do their job?

22 A At points.

23 Q At some point did you go inside the unit?

24 A I did.

25 Q Can you just describe the unit, just in general

1 terms?

2 A So it's a single-level unit. When you walk in,
3 the front door faces to the west. When you walk in,
4 there's a little entryway and hallway. On one side of the
5 hallway, there's a door that leads into the garage, and
6 then down the hallway, there's a bathroom on the
7 right-hand, and then there is a bedroom, and then there is
8 a combination kitchen and living room space at the back of
9 the unit. When in the back of the unit where that living
10 room is, there's a door, and that loads out to the patio
11 that I had observed earlier with the bloodstaining on the
12 concrete.

13 Q I'm going have you handed People's 7. In taking
14 look at People's 7, do you recognize that as a diagram or
15 layout of that unit?

16 A I do.

17 Q Does it depict the way that unit was laid out
18 and orientated on that early morning?

19 A It does.

20 MR. FREEMAN: Judge, the People would move to
21 introduce People's 7.

22 THE COURT: Any objection?

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

24 THE COURT: 7's admitted.

25 (People's Exhibit 7 was admitted into evidence.)

1 MR. FREEMAN: Okay. May we publish?

2 THE COURT: You may.

3 (People's Exhibit 7 was published.)

4 Q (BY MR. FREEMAN) Taking a look at the TV
5 screen, does that appear to be the same as People's 7
6 that's in front of you?

7 A It does.

8 Q And it is oriented correctly as far as north,
9 south, east, west?

10 A That's correct, yes, sir.

11 Q So it is it fair to say that you have to walk
12 north down a hallway, or breezeway, to the front door, but
13 the front door actually faces to say west?

14 A That's correct, it does.

15 Q And then once you're inside the front door, it
16 looks like you indicated that the garage is to the right?

17 A Correct.

18 Q And there's a living room roughly your first
19 passageway to the left?

20 A Correct.

21 Q And if you continue straight through the front
22 door, it looks like there's another garage?

23 A Yes, sir.

24 Q And that garage in the top right corner would be
25 the one for this unit?

1 A That's correct.

2 Q Okay. And then there's a bedroom off in the
3 upper left corner?

4 A Yes, sir.

5 Q And where is the kitchen located in this unit?

6 A It's located just to the right of the living
7 room.

8 Q And, actually, now that I look at this, it's
9 actually on its side, isn't it?

10 A It is on its side. North is to the left.

11 Q North is to the left. Okay. Confused myself.
12 So the open space behind this building to the north is
13 actually on the left of this diagram?

14 A That's correct.

15 Q Got it. When you were inside the unit, were you
16 wearing gloves or anything to make sure that you didn't
17 contaminate the unit with your fingerprints, DNA, things
18 like that?

19 A That's correct, yes, sir.

20 Q Were the other CSIs from Lakewood doing the same
21 thing?

22 A They were.

23 Q And did you see things on the ground that you
24 had to avoid at times when you're walking through the
25 unit?

1 A Yes, sir.

2 Q What sorts of things did you observe?

3 A There was blood, and there were spent casings.

4 Q And did you document those items, or did
5 somebody document those items with photographs?

6 A Yes.

7 Q Now, on this particular diagram, there appears
8 to be some things notated and sort of a legend at the
9 bottom. Is this something that you created?

10 A This is not, no.

11 Q Let's back up to when you first entered the
12 unit, did you walk down that breezeway to the front door?

13 A I did, yes, sir.

14 Q And what, if anything, did you notice walking
15 down that breezeway?

16 A So under the tree there was a gun, and then
17 there were -- there was bloodstaining, and then there was
18 what I would refer to as a defect in the ceiling.

19 MR. FREEMAN: I'm going to have you hand him 109
20 through 111, 113, 114 and 116.

21 Q (BY MR. FREEMAN) If you could take a moment to
22 look at those, and let us know when you're done.

23 A (The witness complied.) Yes, sir.

24 Q Do you recognize what is depicted in those
25 photographs?

1 A I do.

2 Q What is depicted.

3 A This is the breezeway leading up to the unit.

4 Q And do those photographs accurately depict the
5 way that part of the unit looked when you saw it in the
6 early morning of August 1st?

7 A They do.

8 MR. FREEMAN: Judge, move to introduce 109
9 through 111, 113, 114 and 116.

10 THE COURT: Any objection?

11 MR. ST. GEORGE: I have no objection to the
12 first three. No objection to any of them, Your Honor.

13 THE COURT: So 109 through 111, 113, 114 and 116
14 are admitted.

15 (People's Exhibits 109 through 111, 113, 114 and
16 116 were admitted into evidence.)

17 MR. FREEMAN: Thank you. And may we publish.

18 THE COURT: You may.

19 MR. FREEMAN: Can we have 109 up, please.

20 (People's Exhibit 109 was published.)

21 Q (BY MR. FREEMAN) What is depicted in 109?

22 A This is the actual front door to the unit.

23 Q And it looks like there's something right on the
24 ground at the base of that door. Do you recall what that
25 was?

1 A I don't specifically recall.

2 Q Did you notice anything --

3 MR. FREEMAN: The lights, Judge. Could we have
4 the lights?

5 Q (BY MR. FREEMAN) Did you notice anything,
6 apparent bullet defects, on or near that door?

7 A I did.

8 Q And what did you notice, and where was it?

9 A It was directly above. So in the ceiling,
10 there's an alcove that covers this little walkway, and
11 there's a defect up in the ceiling.

12 Q And is that depicted in any of the other
13 photographs?

14 A It is.

15 Q There's one photograph that kind of shows the
16 hallway. Can you tell me which one that is?

17 A It's 116.

18 MR. FREEMAN: Can we have 116 up please.

19 (People's Exhibit 116 was published.)

20 Q (BY MR. FREEMAN) In looking at 116, is the door
21 to the suspect unit the one on the right?

22 A It is, sir.

23 Q Where is that bullet defect in the ceiling in
24 relation to that door?

25 A It's roughly about the middle of the ceiling

1 there, sir.

2 Q And is there an exhibit that depicts that bullet
3 defect?

4 A There is. It's 113.

5 MR. FREEMAN: Could I have 113 up, please.

6 (People's Exhibit 113 was published.)

7 Q (BY MR. FREEMAN) Now, that looks like a pretty
8 big hole. What are we looking at in are 113?

9 A So that is when the defect was cut out of the
10 ceiling in order to retrieve the bullet itself.

11 Q Okay. And I was going to ask you about that.
12 Once you observed that bullet defect, was there some
13 effort to retrieve the projectile that went through that?

14 A Yes, sir, there was.

15 Q And explain to the jury how you went about doing
16 that.

17 A So we got out a ladder and a reciprocating saw
18 and cut a very large hole, preserving the bullet defect
19 itself, and then removed the insulation and climbed up in
20 there to see what we could do. But we didn't make that
21 large of a hole, so we were only able to look with a
22 flashlight and peer through until we could see what kind
23 of damage was completed.

24 Q And it looks like at the bottom of that
25 photograph, is that the top of the ladder that we see?

1 A Yes, it is.

2 Q So the hole in this is not the bullet defect.

3 It's a cutout?

4 A That's correct.

5 Q I think it's 114 that shows the bullet defect in
6 the cutout piece?

7 A It is 114.

8 MR. FREEMAN: If we could have 114 up.

9 (People's Exhibit 114 was published.)

10 Q (BY MR. FREEMAN) So is this a picture of the
11 cutout part?

12 A It is, yes, sir.

13 Q And in the middle off that, is that the apparent
14 bullet defect?

15 A It is, yes.

16 Q Were you able to retrieve that projectile?

17 A We were not.

18 Q Why not?

19 A It was in the actual roof structure for the
20 building. It had penetrated the beams, and we felt as
21 though it would not be a wise move to destroy the
22 structural integrity of the roof.

23 Q So you were unable to locate that projectile
24 without doing significant property damage. Is that fair
25 to say?

1 A Yes, sir.

2 Q Any other apparent bullets strikes outside that
3 apartment door?

4 A No, sir.

5 Q What about inside the apartment?

6 A Yes, sir, there were.

7 Q What did you see?

8 A As soon as you enter the unit, when the door
9 opens, there's a closet that's right behind the door.
10 There was a defect in there that continued into the closet
11 itself. There was a defect in the hallway right across
12 from the bathroom that was in the crown molding right at
13 the ceiling level. There was one in the bathroom itself,
14 in the ceiling right next to the vent hood. And that was
15 it.

16 MR. FREEMAN: If we could go back to People's 7.
17 (People's Exhibit 7 was published.)

18 Q (BY MR. FREEMAN) Were these three bullet
19 defects inside the unit, were they given letter
20 designations to sort of keep them -- keep track of them
21 in photographs and things?

22 A Yes, sir.

23 Q And if you wouldn't mind, could you take the
24 pointer and walk up to the screen, and point out,
25 generally speaking, on People's 7 where each of the bullet

1 defects were.

2 A Yes, sir. So one was right here behind the
3 door, one was right here in the ceiling, and then one was
4 on this wall right about here.

5 Q And the first one that you described just inside
6 the front door, was that the one into the closet?

7 A Yes, sir, it was. It went this direction.

8 Q And what letter designation is that one given?

9 A I don't recall the letters, sir.

10 Q Okay. And the next one was into the ceiling of
11 the bathroom?

12 A Yes, sir.

13 Q And you said the next one was into the crown
14 molding in the hallway?

15 A Yes, sir.

16 Q You can go ahead and have your seat.

17 A (The witness complied.)

18 Q Let's talk about the first one that you
19 described, the one that's in that closet just inside the
20 front door. Was there any effort to determine the angle
21 of trajectory of that bullet?

22 A I don't know whether they completed the
23 collection of that or not, sir.

24 Q Did you try to find that projectile?

25 A We did.

1 Q And were you able to find that projectile?

2 A Yes, sir.

3 Q And describe how you went about doing that.

4 A So once we saw the hole on the outside of the
5 door, the door was opened, and then items were we removed,
6 and it was shown that it actually hit the wall behind that
7 and penetrated inside of the wall. So we went to the
8 bottom of the wall itself, cut a small little viewing
9 window, so basically just about a 6-by-6 piece of drywall
10 out of there, and we were able to see that the bullet had
11 fallen down and was sitting on the base of -- within the
12 cavity of the wall itself.

13 Q So that bullet was collected?

14 A Yes, sir.

15 MR. FREEMAN: If I could have 236 to 241 brought
16 to you.

17 Q (BY MR. FREEMAN) If you could take a look at
18 those photos, and let me know when you're done.

19 A (The witness complied.) Yes, sir.

20 Q And do you recognize those photographs as
21 depicting that bullet strike that you just described?

22 A Yes, sir, I do.

23 Q And do they accurately depict the way that part
24 of the unit looked?

25 A They do.

1 MR. FREEMAN: Judge, I would move to introduce
2 236 do 241.

3 MR. ST. GEORGE: We have no objection, Your
4 Honor.

5 THE COURT: 236 through 241 are admitted.

6 (People's Exhibits 236 through 241 were admitted
7 into evidence.)

8 MR. FREEMAN: And may we publish?

9 THE COURT: Yes.

10 MR. FREEMAN: If we could have 236 up, please.

11 (People's Exhibit 236 was published.)

12 Q (BY MR. FREEMAN) Can you tell the jury what
13 we're looking at in People's 236?

14 A So this is the impact into the door. It's
15 labeled A, and a trajectory rod has been inserted into the
16 opening to give an approximate angle of entry.

17 Q And I was going to ask you, what is a trajectory
18 rod, and how is it being used on this occasion?

19 A So a trajectory rod is a straight device that is
20 not bowed or flexible so that it can give you a guideline
21 as to how a bullet traveled. So those are photographed
22 first, and then the rod is inserted into there, and this
23 shows that it was an upward and inward angle.

24 Q And this door that we're looking at, this is not
25 the front door, this is the closet door inside the front

1 door?

2 A That's correct.

3 Q And?

4 MR. FREEMAN: And if we could go to 237, please.

5 (People's Exhibit 237 was published.)

6 Q (BY MR. FREEMAN) What is depicted in 237?

7 A So this is the door partway open with the rod
8 through there so that you can see the angle of how it's
9 going upward.

10 Q Now, is the rod simply pushed through the hole
11 that was made by the projectile. Do you have to force the
12 rod through? How does that work?

13 A So we use a smaller rod than the caliber of the
14 gun, so that way it does not damage the edges of the hole.
15 It is just the right size to fit in there so that it will
16 stay in there and doesn't wobbling about.

17 Q Once the trajectory rod was used to show the
18 angle of the bullet through the door, was there further
19 effort to determine where the bullet went after passing
20 through the door?

21 A Yes, sir.

22 Q Showing you People's 23. Tell the jury what
23 we're look at in this photograph.

24 A So it actually impacted into the drywall just
25 above the shelf there in the closet, and that's where

1 it's, again, marked with a letter A.

2 Q And did that hole seem to correspond with the
3 trajectory rod that was put through the door?

4 A Yes, sir, it did.

5 Q And then what further efforts were made to try
6 to locate that projectile that had gone into the drywall?

7 A So prior to cutting a hole in the wall, we went
8 to the unit above. It's actually their garage. So when
9 you go back to the diagram, the garage that's right behind
10 the closet is the neighbor's unit. So we went in there to
11 see if it passed through the wall and hit someone or hit
12 anything. We went in there, saw that it didn't actually
13 penetrate the wall. So we came back into here and cut out
14 a viewing window in the top and then another one in the
15 bottom.

16 MR. FREEMAN: And if we could have 241 up,
17 please.

18 (People's Exhibit 241 was published.)

19 Q (BY MR. FREEMAN) Is this a picture of the
20 viewing window cut in the drywall above the shelf?

21 A It is.

22 Q And based upon that, were you able to tell if
23 the bullet appeared to travel any farther through the
24 wall?

25 A We were.

1 Q And what did you determine?

2 A We determined that it did not pass through the
3 wall. It was still inside the wall cavity.

4 Q And was there belief at that point that the
5 bullet may have dropped straight down into that -- through
6 that hollow wall to the ground?

7 A Yes, sir.

8 Q And was there an effort made to determine that
9 that was, in fact, the case?

10 A There was.

11 Q I'm going hand you 231 and 232. Let us know if
12 you recognize what's depicted in this photograph.

13 A I do.

14 Q What is that?

15 A That's the lower viewing window and the
16 recovered bullet.

17 Q When you say "lower viewing window," is it
18 basically directly below the one that we just looked at
19 above the shelf?

20 A It is.

21 Q And do those accurately depict the way that
22 viewing window looked and what they found?

23 A They do.

24 MR. FREEMAN: Judge, I move to admit 231 and 232
25 into evidence.

1 MR. ST. GEORGE: No objection.

2 THE COURT: 231 and 232 are admitted.

3 (People's Exhibits 231 and 232 were admitted
4 into evidence.)

5 MR. FREEMAN: And may we publish?

6 THE COURT: Yes.

7 MR. FREEMAN: Can we have 231 up, please.

8 (People's Exhibit 231 was published.)

9 Q (BY MR. FREEMAN) And what's depicted in that
10 photograph?

11 A That's the viewing window.

12 MR. FREEMAN: And if we can have 232.

13 Q (BY MR. FREEMAN) Can you see the projectile in
14 that photograph that was collected?

15 A I can, yes, sir.

16 Q Are you able to point that out where you're
17 seated, or is it better to go up to the screen?

18 A It would be better if I go up, sir.

19 Q Yeah, if you don't mind, I'd appreciate it.

20 A Right here just to the right of the viewing
21 window (indicated).

22 Q And that item was collected?

23 A Yes, sir, it was.

24 Q The next one that I think was designated -- I
25 know you talked about the one in the bathroom next, but

1 I'm going to show you what's been marked as 242 through
2 244. Would you mind taking a look at those. I think
3 those have been designated as bullet strike B. Let me
4 know if you recognize what is depicted in those three
5 photographs.

6 A Yes, sir, I do.

7 Q And what is that?

8 A This is the strike in the hallway.

9 Q The one you described in some sort crown
10 molding?

11 A Yes, sir.

12 Q Do those photograph accurately depict the way
13 that bullet strike looked?

14 A Yes, sir, it does.

15 MR. FREEMAN: Judge, we would move 242 through
16 244 into evidence.

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

18 THE COURT: 242 through 244 are admitted.

19 (People's Exhibits 242 through 244 were admitted
20 into evidence.)

21 MR. FREEMAN: May we publish?

22 THE COURT: Yes.

23 Q (BY MR. FREEMAN) 242 up please?

24 (People's Exhibit 242 was published.)

25 Q (BY MR. FREEMAN) Tell us what we're looking at

1 in that photograph.

2 A So if you look above the letter B in this crown
3 molding, there's a strike that is in there that is
4 oriented from the bottom right of your picture to the top
5 left. So it would be from the north side of unit towards
6 the south.

7 Q And it looks like there was some sort of doorway
8 or passageway on the left side of the photograph. Do you
9 know what that leads to or what that is?

10 A Yes. That's directly inside the front door. If
11 you are looking at the picture and you swing to your left,
12 the closet is there to your left, and the doorway is
13 directly in front of you.

14 Q Okay. And this one was designated bullet strike
15 B?

16 A Correct.

17 Q Was there an effort made to determine the
18 directionality that that bullet went in that crown
19 molding?

20 A Well, a trajectory rod would not fit into this
21 defect due to the type of wood it was. It's a composite
22 material, so I wouldn't hold together. So the -- but you
23 can determine from looking at the impact itself as to the
24 direction that it came from, but no rods were inserted
25 into it.

1 MR. FREEMAN: And if we could go to 243, please.

2 (People's Exhibit 243 was published.)

3 Q (BY MR. FREEMAN) Is that a closer photo of that
4 same defect?

5 A It is.

6 Q And what is it about this defect, or the shape
7 of it, that allows you to get some idea of the
8 directionality?

9 A So it's the feathering. When an item -- when
10 the bullet goes through an item, it leaves a feathering
11 behind. It's almost like a wake, if you're familiar boats
12 and how they leave a wake behind them as they travel
13 through. The same thing with bullets as they travel
14 through a soft material. They spread out, and they leave
15 to a direction to the left on this. It started at the
16 surface and then penetrated inside of the wood material.
17 So you can see that it started on the right and ended on
18 the left.

19 Q And, again, in this picture, the front door
20 would be towards -- somewhat towards the left?

21 A Yes, sir.

22 Q Any other information about this particular
23 bullet strike?

24 A So the crown molding was then removed to try to
25 recover the bullet, however, it went into the floor joist

1 for the second unit. So, again, that was not cut out and
2 retrieved.

3 Q And was that for similar reason, because it
4 would have caused too much property damage?

5 A Yes, sir.

6 MR. FREEMAN: And if we could have the next
7 photo, 244, up.

8 (People's Exhibit 244 was published.)

9 Q (BY MR. FREEMAN) Does that show that area of
10 crown molding removed?

11 A Yes, sir, it does.

12 Q And I think you described that at this point,
13 you decided that you couldn't retrieve this projectile.

14 A Yes, sir.

15 Q Okay. Let's go to the one in the bathroom. I
16 know you described that one second, but I think it's been
17 designated as C. If I could have you handed by the
18 bailiff, I think it's 245, 246 and 100 through 103. If
19 you could take a look at those photos, and let me know
20 when you're done.

21 A (The witness complied.) Yes, sir.

22 Q Do you recognize what's depicted in those
23 photographs?

24 A I do.

25 Q What is that?

1 A It's another bullet strike in ceiling of
2 bathroom, as well as a casing on the floor.

3 Q And do those accurately depict the way that part
4 of unit looked on that morning?

5 A They do.

6 MR. FREEMAN: Judge, moving into evidence 245,
7 246, 100 to 103.

8 MR. ST. GEORGE: We have no objections, Your
9 Honor.

10 THE COURT: 245, 246, 100 through 103 are
11 admitted.

12 (People's Exhibits 245, 246 and 100 through 103
13 were admitted into evidence.)

14 MR. FREEMAN: And if we may publish -- can we
15 publish?

16 THE COURT: Yes.

17 MR. FREEMAN: Can we have 100 up, please.

18 (People's Exhibit 100 was published.)

19 MR. FREEMAN: Actually, let's go to 101.

20 (People's Exhibit 101 was published.)

21 Q (BY MR. FREEMAN) Taking a look at 101, can you
22 describe what's depicted in that photograph?

23 A So in the photo, you're facing to the south.
24 The wall in front of you is where the sink is, a toilet to
25 your left, and the doorway into the bathroom is to your

1 right. The -- where you see the vent, if you look to the
2 right of the vent just below the right corner, that's
3 where the defect is that goes up into the ceiling.

4 MR. FREEMAN: And if we could have the next
5 photo up, please. 102, I think it is.

6 (People's Exhibit 102 was published.)

7 Q (BY MR. FREEMAN) Can you see the defect in that
8 area in this photograph?

9 A Yes, you can. It's just to the lower right
10 corner of vent.

11 MR. FREEMAN: And if we could have 103 up,
12 please.

13 (People's Exhibit 103 was published.)

14 Q (BY MR. FREEMAN) Again, a closer-up version of
15 that same defect?

16 A Yes, sir.

17 Q Were there efforts made to try to recover that
18 projectile?

19 A There were.

20 Q Would you describe that to the jury.

21 A So when it went through the ceiling, it struck
22 some of the ductwork. And then when I struck the
23 ductwork, it traveled along the ductwork in an unknown
24 direction. We're not sure where it went, but in the
25 interest of not destroying the unit and removing all off

1 ceiling, we did not attempt to recover that.

2 Q So once it went through the ceiling, can't
3 really say where it went other than it took a turn
4 somewhere?

5 A Yes, sir.

6 Q So this one was not recovered?

7 A It was not, no.

8 MR. FREEMAN: And if we could have 100 back up
9 again.

10 (People's Exhibit 100 was published.)

11 Q (BY MR. FREEMAN) What are we looking at in
12 People's 100?

13 A So this is a fired casing.

14 Q And where was that located?

15 A This is just inside of the bathroom door.

16 Q And where was that in relation to the defect in
17 the ceiling?

18 A So it's down and to the right. What you're
19 looking at on the left-hand side is the cabinet for the
20 sink.

21 Q Was that the only expended bullet casing in the
22 bathroom?

23 A No. There was another one, sir.

24 Q And where was that other one located?

25 A It was back by the toilet to the left.

1 Q And were those collected?

2 A They were.

3 Q Besides these three apparent bullet defects
4 inside the apartment, did you see any other areas that
5 appeared to be a bullet strike or a bullet defect in the
6 apartment?

7 A Inside the apartment, no, sir.

8 Q And I think you said earlier that you didn't
9 personally gather any of the evidence inside the unit?

10 A That's correct, sir.

11 Q Did you do some inspection on the outside of
12 building?

13 A I did.

14 MR. FREEMAN: And, Judge, may we have the lights
15 back on.

16 If we could have People's 3 up, please.

17 (People's Exhibit 3 was published.)

18 Q (BY MR. FREEMAN) In looking at People's 3, can
19 you describe for the jury, did you go in between that
20 building and the building directly to the east?

21 A I did.

22 Q And did you see any areas there that appeared to
23 be bullet strikes or pellet strikes?

24 A I did.

25 Q And did you also see any expended casings?

1 A I did.

2 Q And let's start with the expended casings. On
3 the left side of that sort of driveway, there appears to
4 be a vehicle. Was there a vehicle there that morning?

5 A There was, yes, sir.

6 Q Can you describe, just general terms, that
7 vehicle?

8 A I was a pickup truck parked in the same spot.

9 Q Did you inspect the truck for any apparent
10 bullet damage?

11 A I did.

12 Q Did you see any?

13 A I didn't see any.

14 Q Around the truck, did you see any expended
15 casings?

16 A I did.

17 Q And how many?

18 A There were three casings.

19 Q And just generally speaking, can you tell us
20 where they were?

21 A One was in front of the truck up by the garage,
22 and then there was one on each side of the truck.

23 Q And did you collect those?

24 A I did not.

25 Q Did you photograph those?

1 A I did initially, yes, sir.

2 Q Okay. Did you inspect those to determine what
3 caliber they were, or anything like that?

4 A Yes, sir.

5 Q And what caliber were they?

6 A They were all 9-millimeter.

7 Q How were you able to determine that?

8 A On the end of each casing is what's called a
9 headstamp, and that's a marking of a manufacturer, and it
10 tells you the make, the size and the model.

11 Q And, generally speaking, where did you find
12 those three shell casings?

13 A They were on the driveway surfaces in the
14 cracks.

15 Q Do you recall if that driveway surface where the
16 vehicle was parked, was it flat or was it was angled?

17 A It was a slope.

18 Q Were the shell casings found in cracks or sort
19 of concrete lines?

20 A Yes, sir, they were.

21 Q Do those tend to roll if they are on a surface
22 that's something other than flat?

23 A Yes, sir, they do.

24 Q In that area, with the pickup truck, did you
25 look -- did you inspect that garage area for any apparent

1 bullet or pellet strikes?

2 A I did, sir.

3 Q Can you describe what you saw.

4 A So there were two independent areas of strike to
5 the garage in front of the truck. There was one on the
6 left and one above.

7 Q And when sue say "two independent areas," why do
8 you say that?

9 A Because of the impact areas. So when shotgun
10 pellets are fired, they come out in a cluster. Sometimes
11 they're irregular, sometimes they are regular. But these
12 two clusters were very regular and grouped together and
13 traveled in different directions.

14 MR. FREEMAN: I'm going ask that the bailiff
15 hand you People's 265 through 274 and 276.

16 Q (BY MR. FREEMAN) And I'll ask you to take a
17 look at those.

18 A (The witness complied.) Yes, sir.

19 Q Do you recognize what is depicted in that set of
20 photographs?

21 A I do, sir.

22 Q And is that various photographs of the bullet
23 strikes on the garage that you were just describing?

24 A Yes, sir, they are.

25 Q Do they accurately depict the way those areas

1 looked when you saw them on the morning of the 1st?

2 A Yes, sir.

3 MR. FREEMAN: Judge, move to introduce 265
4 through 274 and 276.

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

6 THE COURT: 265 through 274 plus 276 are
7 admitted.

8 (People's Exhibits 265 through 274 and 276 were
9 admitted into evidence.)

10 MR. FREEMAN: And may we publish?

11 THE COURT: Yes.

12 MR. FREEMAN: If we could have 265 up, please.

13 (People's Exhibit 265 was published.)

14 Q (BY MR. FREEMAN) Can you describe what we're
15 looking at in 265?

16 A Yes. So that's the truck that was parked in the
17 driveway. If you look in the middle of the photo, there's
18 a column of brick with a downspout from the gutters. At
19 the garage door that is to the left, if you look at the
20 top right corner of that, there's a cluster of impact from
21 one impact sight, and if you go above that to where the
22 gutter is at and it connects to the garage on the
23 left-hand of side of that gutter is a secondary impact
24 strike.

25 Q And was the lower one given a sticker, a Number

1 1 sticker, and then the higher one a Number 2?

2 A Yes, sir, it was.

3 Q And was there any effort -- or was that meant to
4 indicate the order in which those were shot?

5 A No, sir, it was not.

6 Q Just the order that they were designated for
7 your purposes?

8 A Yes, sir.

9 Q And that pickup truck to the right, can you tell
10 what that object is directly above the pickup truck, sort
11 of sticking out from the wall?

12 A The that's a light.

13 Q And this is obviously taken in that the daytime?

14 A Yes, sir.

15 MR. FREEMAN: If we could go to People's 266.

16 (People's Exhibit 266 was published.)

17 Q (BY MR. FREEMAN) Is that a closer-up version of
18 those Strikes 1 and 2?

19 A Yes, sir, it is.

20 Q And Strike Number 1, does it appear to be mostly
21 contained in that upper right corner of garage door?

22 A Yes, sir, it is.

23 Q Can you tell, based upon that pellet pattern,
24 what kind of ammo was used?

25 A It's a birdshot from a shotgun shell.

1 Q Do you know how many pellets are in a birdshot
2 shell?

3 A They vary from make and manufacturer. Between
4 300 and 700 pellets.

5 Q Can you tell from that pattern roughly the angle
6 that the person was standing that fired that shotgun?

7 A Yes, sir. The rough angle, from this estimate
8 for this impact site Number 1, is about 90 degrees, so
9 straight on.

10 Q So roughly perpendicular to that garage?

11 A Yes, sir, it is.

12 Q Can you tell anything about the approximate
13 distance that the person was standing from that garage
14 when they fired a shotgun?

15 A No, sir. Without having the actual shotgun and
16 using the same ammunition and conducting tests, I wouldn't
17 be able to tell the exact distance.

18 MR. FREEMAN: If we could have 267 up, please.

19 (People's Exhibit 267 was published.)

20 Q (BY MR. FREEMAN) Is 267 yet a closer version of
21 that same pellet cluster?

22 A Yes, sir, it is.

23 Q And does this photograph accurately show the way
24 that looked?

25 A Yes, sir, it does.

1 MR. FREEMAN: And 268, please.

2 (People's Exhibit 268 was published.)

3 Q (BY MR. FREEMAN) And, again, a little bit
4 closer?

5 A Yes, sir.

6 MR. FREEMAN: If we could go to 269.

7 (People's Exhibit 269 was published.)

8 Q (BY MR. FREEMAN) What are we looking at in 269?

9 A So this is Impact Number 2. If you look on the
10 building itself, as well as the gutter and downspout,
11 you'll be able to see the impacts that are coming from the
12 right side to the left side.

13 Q And does it appear that there were pellet
14 impacts to the gutter and also the siding of the garage
15 itself?

16 A Yes, sir, it does.

17 Q I don't know how well the jury can see it from
18 this photograph, but does there appear to be a void on the
19 left side there next to the gutter?

20 A Yes, sir, there is.

21 Q And can you explain what that means?

22 A So it is basically a silhouetting. So if you
23 ever look at a shadow, when the sun's passing over it, it
24 will shadow or shade off an area so that you won't be able
25 to see it. That's exactly what happened in this

1 circumstances. When the pellets were fired from the right
2 to the left side, because of the angle and how the
3 structure is built here where the gutter sticks out from
4 the building, it prevented those pellet from striking, so,
5 therefore, you couldn't put yourself back in that position
6 until you can line up those pellets to where they match
7 each other.

8 Q We might be able to see it better --

9 MR. FREEMAN: Can we have 269 up. Or is that
10 269?

11 THE WITNESS: That's 269.

12 MR. FREEMAN: Could we have 270, maybe.

13 (People's Exhibit 270 was published.)

14 Q (BY MR. FREEMAN) I don't know if you can see it
15 better in that what one. Maybe 271.

16 (People's Exhibit 271 was published.)

17 Q (BY MR. FREEMAN) Would you mind just walking up
18 with the pointer and pointing out that void or that
19 silhouette.

20 A Yes, sir. So if you look right along here, you
21 can actually see the outline of the gutter and the roof
22 line where there's no impacts inside, but there are
23 impacts outside of it.

24 Q And what does that void or silhouette allow you
25 to conclude about the angle that the person was standing

1 in relation to that garage when they fired the shotgun?

2 A That they would have had to have been along the
3 north end of that parking lot and to the north edge of
4 that driveway.

5 MR. FREEMAN: And if we could go back to
6 People's 3, please.

7 (People's Exhibit 3 was published.)

8 MR. FREEMAN: Actually, there might be a closer
9 one. Maybe 5.

10 (People's Exhibit 5 was published.)

11 Q (BY MR. FREEMAN) Is that better?

12 A Yes, sir.

13 Q Can you point to the general area -- well, let
14 me ask, how did you determine the general area where the
15 person with the shotgun would have been standing to have
16 fired that second round?

17 A So we went out to the furthest points possible,
18 so we went out into the grass area and then viewed back to
19 where the impact site is, which is roughly right about
20 here (indicated). And by walking out here, you can do
21 just like a sun dial and walk yourself across until those
22 impact sites line up, and at that point it brings you to
23 an approximate area of down here near this drain in the
24 concrete.

25 Q And you're indicating an area on the exhibit

1 towards the north end there by that, I guess it's concrete
2 instead of asphalt?

3 A Yes, sir.

4 Q Anything about that pattern that tells you the
5 distance that the person was standing from where those
6 pellet impacts occurred?

7 A Well, it was not spread out across the entire
8 building but contained to about 18 to 24 inches.

9 MR. FREEMAN: And if we could have People's 272
10 up, please.

11 (People's Exhibit 272 was published.)

12 Q (BY MR. FREEMAN) Can you tell us what we're
13 looking at in 272?

14 A This is the angle that we stood at and were able
15 to view the lineup between the gutter line and the impact
16 and the silhouetting.

17 Q Just so we're clear, this appears to be the
18 angle in which the person was standing in relation to the
19 pickup truck when that second round was fired?

20 A Yes, sir, it is.

21 Q Is this photograph -- or let me rephrase. Is
22 the distance that camera is from the vehicle, is it meant
23 to depict the approximate distance that the person was
24 holding the gun?

25 A No, sir, it's not.

1 Q So not distance but angle?

2 A Yes, sir.

3 Q Okay. You can go ahead and have a seat.

4 A (The witness complied.)

5 Q Did you also inspect the east side, the building
6 to the east of this building, for any apparent bullet
7 strikes or pellet damage?

8 A Yes, sir, I did.

9 MR. FREEMAN: And if we could go back to
10 People's 3, please.

11 (People's Exhibit 3 was published.)

12 Q (BY MR. FREEMAN) And I'm talking about that
13 building we can barely see in the far right if People's 3.

14 A Yes, sir.

15 Q Did you see any apparent bullet damage or pellet
16 strike damage in that building?

17 A I did.

18 Q Can you describe what you saw.

19 A So across the upper floor of that building,
20 above the garages, it's the residential units above there.
21 There's windows, and I saw peppering of what appeared to
22 be birdshot in the siding.

23 Q And did you see that from the ground?

24 A I did.

25 Q Did you make any effort to get up there and

1 inspect it from a closer perspective?

2 A I did.

3 MR. FREEMAN: And if I could have you handed
4 some exhibits. Thank you. 278 and '9 and 281 through
5 291.

6 Q (BY MR. FREEMAN) If you could take a look at
7 those, and let me know when you're done.

8 A (The witness complied.) Yes, sir.

9 Q And what do those photos depict?

10 A This is the upper floor of that east unit, sir.

11 Q And do those photographs appear to depict the
12 pellet damage to that part of the building?

13 A Yes, sir, they do.

14 MR. FREEMAN: And, Judge, at this point I would
15 move 278 and '9, 281 through 291 into evidence.

16 MR. ST. GEORGE: No objections.

17 THE COURT: 278 and 279, 281 through 291 are
18 admitted.

19 (People's Exhibits 278, 279 and 281 through 291
20 were admitted into evidence.)

21 Q (BY MR. FREEMAN) It looks like there's some
22 stickers next to some of those bullet defects or pellet
23 defects. Were they given a designation so they could sort
24 of be kept track of?

25 A Yes, sir, they were.

1 MR. FREEMAN: And may I publish those, Judge.

2 THE COURT: Yes.

3 MR. FREEMAN: If we could have 278 up, please.

4 (People's Exhibit 278 was published.)

5 Q (BY MR. FREEMAN) Can you describe for the jury
6 what we're looking at from the photograph.

7 A So this is the second story. You're facing to
8 the east, and this is the unit to the east side of that
9 driveway. If you can see the little stickers, there's two
10 of them between the windows, one below the window to the
11 right and then there's one above that small window to the
12 right.

13 MR. FREEMAN: And if we could have 279, please.

14 Q (BY MR. FREEMAN) What are we looking at in this
15 photograph?

16 A So this is moving slightly to the right, to the
17 south. And what you can see here is, again, that
18 shadowing effect where that corner of that building
19 extends out, and so you weren't able to see one additional
20 strike that that's between the -- there may actually be
21 two -- two strikes between that small window and the
22 building where I extends outward.

23 MR. FREEMAN: And if we could have 281, please.

24 (People's Exhibit 281 was published.)

25 Q (BY MR. FREEMAN) What are we look at in 281?

1 A This is a close-up of those two strikes to the
2 left and one above the window.

3 Q And those numbers, those stickers, those were
4 put there by law enforcement?

5 A Yes, sir.

6 Q Okay.

7 MR. FREEMAN: And if we could get 282, please.
8 (People's Exhibit 282 was published.)

9 Q (BY MR. FREEMAN) What are we looking at in this
10 photograph?

11 A These are the windows that you looked at the
12 first time, and it's just looking at an angle facing to
13 the north.

14 MR. FREEMAN: And 282 -- no, 283.

15 (People's Exhibit 283 was published.)

16 Q (BY MR. FREEMAN) What are we looking at in 283?

17 A This is a close-up of one of the impacts.

18 Q And where was this impact located?

19 A This one was between the two large windows.
20 It's the one on the left.

21 MR. FREEMAN: If we could go back, I think it
22 was on 280. I'm sorry. 278.

23 (People's Exhibit 278 was published.)

24 Q (BY MR. FREEMAN) Do you see that one that was
25 designated Number 4? Is that the one to the right of the

1 window on the left?

2 A That's correct.

3 Q Okay. So -- and if we could go to 284, Number
4 5. If we would go back to 278. Is that to the left of
5 the window on the right?

6 A It is.

7 Q And what number is below that window on the
8 right?

9 A That is 6.

10 MR. FREEMAN: If you can go back to 282, please.
11 (People's Exhibit 282 was published.)

12 Q (BY MR. FREEMAN) Is that the sticker right
13 there sort of in the middle, Number 6, just below that
14 window?

15 A Yes, sir, it is.

16 MR. FREEMAN: And if we can go back to 279.
17 (People's Exhibit 279 was published.)

18 Q (BY MR. FREEMAN) If you're looking at 279, can
19 you see the stickers for Strikes 6, 7 -- I'm sorry, 7, 8
20 and 9?

21 A Yes, sir.

22 Q And can you tell the jury where those are?

23 A So the one on the top left, to the left of the
24 small window, is 7, and then just below that and to the
25 right is the 8, and then above the small window is the 9.

1 MR. FREEMAN: And if we could go to 286.

2 (People's Exhibit 286 was published.)

3 Q (BY MR. FREEMAN) Is that close-up of that
4 pellet strike?

5 A Yes, sir.

6 MR. FREEMAN: And 287, please.

7 (People's Exhibit 287 was published.)

8 Q (BY MR. FREEMAN) Is that a close-up of 8?

9 A Yes, sir.

10 MR. FREEMAN: And 288.

11 (People's Exhibit 288 was published.)

12 Q (BY MR. FREEMAN) Is that a close-up of 9?

13 A Yes, sir.

14 Q Was there any effort to retrieve those pellets?

15 A Yes, sir, there was.

16 Q And was that successful?

17 A It was not.

18 Q Why not?

19 A Because when they struck, some of them
20 fragmented and then disappeared.

21 Q You weren't able to gather those?

22 A No, sir.

23 MR. FREEMAN: If we could have 289 up, please.

24 (People's Exhibit 289 was published.)

25 Q (BY MR. FREEMAN) What are we looking at in 289?

1 A This is the lower portion of that same garage
2 unit, and it's where the strikes struck the eave prior to
3 that roof.

4 Q In looking at the bullet patterns that we saw on
5 the other side of the garage, the two clusters, 1 and 2,
6 and how close those were together compared to these, are
7 you able to come to any conclusions about the sort of
8 cause of all these bullet -- pellet strikes being so
9 spread out?

10 A Yes, sir.

11 Q And what is your opinion or conclusion about
12 that?

13 A That they would have to be twice the distance,
14 at least, of the other strikes in order to make this far
15 of a spread.

16 Q And would this -- this spread and these pellets
17 be consistent a person quite a distance to the east on the
18 north side of that building?

19 A No, sir.

20 MR. FREEMAN: Let's go back to People's 3, if we
21 can.

22 (People's Exhibit 3 was published.)

23 Q (BY MR. FREEMAN) Based upon the location of
24 those bullet strikes, can you see on this photograph
25 where -- the approximate location where you think the

1 person would have been standing that fired the shotgun
2 that caused those pellet strikes?

3 A Yes, sir.

4 Q Could you go down -- would you mind going down
5 and pointing it out to the jury.

6 A So it would have to be to the northwest corner
7 of this driveway here in order to strike the side of this
8 building. Anywhere inside of this roadway here would be
9 too close and would keep the spread much closer together.

10 Q So on the north side of that building?

11 A Yes, sir.

12 Q Somewhere by the northwest corner?

13 A Correct, sir.

14 Q Okay. Can you tell if all of those pellet
15 strikes came from a single shot or more than one shot?

16 A I cannot, sir.

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

19 A (The witness complied.)

20 Q Was there any effort by you or any of the other
21 officers to determine if any of the pellets that struck
22 that building to the east went through the windows or the
23 window screens on those windows?

24 A We did.

25 Q And what did you determine?

1 A That they struck the windows but did not pass
2 through.

3 Q Was there also what appeared to be a bullet
4 strike or defect in one of the garages on that side of the
5 building?

6 A Yes, sir, there was.

7 Q And can you describe that?

8 A So it was an irregular shape opening in the
9 garage door, not a typical, perfectly round circle or
10 elliptical shape. It was a torn, jagged opening. That
11 was the first garage unit that's at the far north end of
12 the east building.

13 Q And was there any effort to determine if that
14 was, in fact, a bullet and where it went?

15 A Yes, sir, there was.

16 Q And what did you do, or what was done in that
17 regard?

18 A So the owners were contacted, of the garage
19 unit. We were able to open up the door, go inside and
20 inspect the interior of the garage.

21 Q And did you find a bullet defect somewhere in
22 garage?

23 A Yes, sir, we did.

24 Q And where was that?

25 A It was at the far east end of the garage along

1 the back wall. The drywall and the boxes had been struck.

2 Q And were you able to recover that projectile?

3 A Later on, yes, sir.

4 Q And was it determined that that bullet actually
5 passed through the garage and into somebody's living unit?

6 A Yes, sir, it did.

7 Q And was that projectile eventually collected?

8 A Yes, sir, it was.

9 (Pause in the proceedings.)

10 MR. FREEMAN: All right. Thank you. That's all
11 I've got.

12 THE COURT: All right. Let's stop here for the
13 afternoon break. You may step down.

14 THE WITNESS: Yes, ma'am.

15 (The witness was excused.)

16 THE COURT: So please keep an open mind. Don't
17 do any investigation. Don't talk about the case with
18 anyone. And we'll see you back here in ten.

19 (The jury left the courtroom.)

20 THE COURT: For the DA, are we back on track?
21 We've been moving pretty swiftly this afternoon.

22 MR. FREEMAN: Yeah. I was looking. I think we
23 are, Judge.

24 MR. ST. GEORGE: Your Honor, may I remind the
25 Court that my advisory counsel does need to be leaving

1 promptly at 5 o'clock.

2 THE COURT: I know that.

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

4 MR. MENGES: Judge, do you think we are going to
5 go early tomorrow?

6 THE COURT: My guess is we'll start at
7 8 o'clock.

8 MR. ST. GEORGE: All right. So what time would
9 we have to be here?

10 THE COURT: A couple minutes before 8:00.

11 MR. MENGES: As long as we're ready by 8:00.
12 Okay. That's fine. And then we're not going to go past
13 5:30 at the worst tomorrow?

14 THE COURT: 5:30 would be the latest. But
15 should this jury be deliberating later on Friday, yes.

16 MR. MENGES: On Friday?

17 THE COURT: Yes. Tomorrow is fine. Just giving
18 you a heads-up on Friday.

19 MR. MENGES: That's fine.

20 (A recess was taken.)

21 THE COURT: All right. We're going to resume.
22 Can we have our witness on the stand, please. We're going
23 to bring in the jury.

24 (Pause in the proceedings.)

25 (The jury entered the courtroom.)

1 THE COURT: Everybody please be seated. And we
2 are ready for cross-examination.

3 MR. ST. GEORGE: We'll start with -- do you mind
4 if we put up People's 3.

5 (People's Exhibit 3 was published.)

6 CROSS-EXAMINATION

7 BY MR. ST. GEORGE:

8 Q All right. Detective Gideon, you found two
9 shotgun impacts above and -- if you were standing to the
10 rear of the pickup truck, they are above and to the left
11 of the pickup truck, correct?

12 A Yes, sir.

13 Q Okay. One of them struck the garage door,
14 correct?

15 A Correct.

16 Q And the other one struck directly above the
17 garage door, the eave and the roof?

18 A That's correct.

19 Q Okay. And you stated that one the one that
20 struck the garage door struck it perpendicularly?

21 A Yes, sir.

22 Q And you were able to determine a trajectory
23 based on that information, correct?

24 A Yes, sir.

25 Q Okay. If you -- actually, this is probably not

1 the easiest one.

2 MR. FREEMAN: Can we put up People's 125. It
3 may be an easier view.

4 (People's Exhibit 125 was published.)

5 Q (BY MR. ST. GEORGE) So looking at this
6 photograph, would you be able to, with the dowel rod,
7 place it on the screen showing approximately that
8 trajectory?

9 A Yes, sir. So the impact site is right about
10 here, and it would be somewhere in the vicinity of this
11 side of the truck.

12 Q And would you mind sort of placing that about --
13 your said it was perpendicular, correct?

14 A It's approximately perpendicular. So I can't
15 say an exact location.

16 Q Okay. Approximating a 90-degree angle, could
17 you show us where that would go?

18 A If it was exactly --

19 Q If it were a 90-degree angle.

20 A If it were a 90-degree angle, I would be
21 approximately here.

22 MR. ST. GEORGE: Okay. Now, could we also put
23 up People's 3 again.

24 (People's Exhibit 3 was published.)

25 Q (BY MR. ST. GEORGE) The one that struck

1 directly above, you stated that the area of origin was
2 near that drain and the north end of the drive?

3 A Yes, sir.

4 Q Could you do the same with the dowel rod again,
5 showing an approximate --

6 A So it would be about like that (indicated).

7 Q Okay. And so by showing that, you're stating
8 that the shot -- the origin was approximately up there
9 near that drain, correct?

10 A It would be somewhere along that area, yes, sir.

11 Q Okay. And you roughly determined the range
12 based on the spread of the pellets, correct?

13 A I can't determine the range on that, no, sir.

14 Q Not with any exact. Okay. Very well.

15 MR. ST. GEORGE: Could we possibly place
16 People's 125 back up again.

17 (People's Exhibit 125 was published.)

18 Q (BY MR. ST. GEORGE) Now, you're experienced
19 with blood spatter and bloodstain analysis, correct?

20 A Yes, sir.

21 Q And are you able to see on this photograph where
22 the bloodstain is?

23 A I believe it's right here around this placard at
24 the bottom. I can't read the number on there.

25 Q Okay. And are you able to see the remainder of

1 the trail with any --

2 A Not on this picture, no, sir.

3 Q If I gave you a better version of the
4 photograph, would it help?

5 A It would help.

6 Q Okay.

7 MR. ST. GEORGE: I will just have the bailiff
8 bring you -- and perhaps some lighting as well.

9 THE COURT: What number, exhibit number, please?

10 MR. ST. GEORGE: That's People 125, the same as
11 was up on the screen a moment ago. I just gave him a hard
12 copy of it to see.

13 Q (BY MR. ST. GEORGE) Now, Detective Gideon,
14 looking at that, are you better able to see the trail?

15 A I can see a little bit of it.

16 Q Okay. Would you be able to trace that trail?

17 A On the paper?

18 Q On the paper, and then on the screen for the
19 rest of us?

20 A Okay.

21 MR. FREEMAN: Judge, I'm going object. At this
22 point, he hasn't been designated as a bloodstain pattern
23 expert, and I don't think he's done any analysis.

24 MR. ST. GEORGE: Okay.

25 Q (BY MR. ST. GEORGE) Detective Gideon, do you

1 have 80 total hours of bloodstain pattern analysis that
2 you've done?

3 A I do.

4 Q You do. And have you ever been qualified as an
5 expert in bloodstain analysis in the past?

6 A I have not.

7 Q Okay. Are you qualified to be an expert on this
8 subject?

9 MR. FREEMAN: Yeah, I'm going to object, Judge.
10 I think that's a decision for the Court to make.

11 THE COURT: Yeah. If you want to lay some
12 foundation for me, and then we'll reach that decision.

13 MR. ST. GEORGE: Okay, Your Honor.

14 Q (BY MR. ST. GEORGE) Did you take a course,
15 40 hours long, called Bloodstain Pattern Analysis I?

16 A I did.

17 Q And did you do that approximately in 2012?

18 A I believe so, yes, sir.

19 Q Okay. And did you take a course entitled
20 Bloodstain Pattern Analysis II?

21 A I did.

22 Q And that was also 40 hours?

23 A Yes, sir.

24 Q And you did that in 2013?

25 A Approximately, yes, sir.

1 Q Okay. And so you've got a total of 80 hours
2 cumulative of bloodstain pattern analysis?

3 A Yes, sir.

4 MR. ST. GEORGE: Okay. The defense offers
5 Detective Gideon as an expert in bloodstain analysis.

6 MR. FREEMAN: Judge, at this point I'm going
7 object. I think we need to make a record outside the
8 presence of the jury.

9 THE COURT: I'm going excuse our jurors right
10 now for a moment. Please keep an open mind. Don't do any
11 research. Don't talk about the case, please.

12 (The jury left the courtroom.)

13 THE COURT: You can step down.

14 THE WITNESS: Yes, ma'am.

15 (The witness was excused.)

16 THE COURT: I'll hear the objection.

17 MR. FREEMAN: Judge, I don't believe that we
18 endorsed Detective Gideon as a bloodstain pattern expert.
19 We endorsed him as a crime scene expert, and that's what
20 the Court found him qualified as. I know that he has some
21 references to bloodstain pattern analysis. My concern is
22 that I don't believe the defendant qualified him or
23 endorsed -- I'm sorry, didn't endorse him as a bloodstain
24 expert, so I had no idea that he was going to go in this
25 direction. I think it's unfair to the People. I think

1 it's particularly unfair because I think the path that
2 he's trying to head down, he's going to try to ask
3 Detective Gideon various bloodstain opinions, and I don't
4 think, number one, Detective Gideon is prepared for it,
5 and, number two, I don't think he has sufficient
6 information to be able to render opinions. So for the
7 lack of endorsement and lack of notice to the People, I
8 would object.

9 THE COURT: Response?

10 MR. ST. GEORGE: Your Honor, I was going to say
11 that pursuant to Rule of Evidence 703 that the Court does
12 have wide latitude when it comes to bringing upon an
13 expert and judging an expert, and so I would ask that the
14 Court rule in favor that this witness be qualified as a
15 bloodstain expert.

16 THE COURT: Okay. So did you designate him as
17 one of your witnesses as a bloodstain expert in any way?
18 Did you give anybody any notice or heads-up about this?

19 MR. ST. GEORGE: I would say this falls under
20 the crime scene analysis, and that is what Detective
21 Gideon was on scene to do.

22 THE COURT: Crime scene analysis. And do we
23 have in this case, in discovery, a blood spatter analysis?

24 MR. FREEMAN: No.

25 MR. ST. GEORGE: No, Your Honor.

1 THE COURT: So regarding that, what would be the
2 discovery you're relying on in this case, and how could
3 anyone be prepared for this if he didn't undertake any
4 kind of blood analysis here?

5 MR. ST. GEORGE: Well, the photographs were
6 absolutely included in discovery, and Detective Gideon's
7 curriculum vitae was included in evidence and in discovery
8 as well, so . . .

9 THE COURT: I'm sure that there's a lot of crime
10 scene processing that this detective would be able to
11 opine on if he undertook an investigation into it.

12 Let's have the witness on the stand. I'm going
13 voir dire him to see if he did any kind of an analysis
14 that would be productive in this case to present for the
15 jury.

16 (The witness entered the courtroom.)

17 THE COURT: So, Detective, I wanted to ask you a
18 couple of questions. In your -- in your investigation at
19 this scene, did you do a bloodstain analysis?

20 THE WITNESS: I did not.

21 THE COURT: Did you document in any way -- well,
22 did you document blood trails?

23 THE WITNESS: I would have to refer to my
24 report. I don't believe I did, ma'am.

25 THE COURT: And did you use any of the

1 technology that's used sometimes with regard to
2 bloodstains?

3 THE WITNESS: No, ma'am.

4 THE COURT: So, Mr. St. George, even if I
5 permitted this witness to testify under the umbrella that
6 he is qualified as a crime scene expert, other than
7 perhaps saying where he saw some blood or didn't see some
8 blood -- I heard, you know, that there may be blood at a
9 particular placard, or whatever -- what is it that you
10 would be having him testify to for the jury?

11 MR. ST. GEORGE: Your Honor, all I intend to ask
12 Detective Gideon to testify to would be the path of the
13 bloodstain. And in his report, he did state, Along the
14 midpoint of the parking lot, there appears to be
15 bloodstaining with a blood trail appearing to lead to the
16 north and west. This trail was intermittent and was
17 observed to follow back to the suspect's unit along the
18 north greenbelt.

19 THE COURT: Okay. I would allow him to testify
20 as to what he observed about the bloodstain, and I think
21 the auspices of crime scene analyst is fine with that. It
22 was included in his report, and he can say -- he can
23 document, just as anyone else at the scene, seeing what
24 appears to be a blood pathway. A path of bloodstain, you
25 said, midpoint in the parking lot, trail that was

1 intermittent. I would allow him to testify to his report.

2 MR. FREEMAN: And, Judge, we have no objection
3 to that. I don't think that that requires him to be
4 qualified as an expert if he's testifying what he
5 observed.

6 THE COURT: Yeah, if that is what you're going
7 and him, then I'm fine with that, and then let's bring the
8 jury back in, and we don't need any specific qualification
9 other than crime scene analyst because he's documenting
10 what he observed.

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

12 (Pause in the proceedings.)

13 (The jury entered the courtroom.)

14 THE COURT: Everybody be seated, please. Let's
15 resume cross-examination.

16 Q (BY MR. ST. GEORGE) And, Detective Gideon, I've
17 got two additional photographs. These are, what,
18 People's 126 and 127. They've not been admitted yet.

19 THE COURT: 126 and 127.

20 Q (BY MR. ST. GEORGE) And, Detective Gideon, do
21 those accurately represent what you saw on that day?

22 A They do.

23 MR. ST. GEORGE: The defense asks to admit
24 People's 126 and 127.

25 MR. FREEMAN: No objection.

1 THE COURT: 126 and 127 are admitted.

2 (People's Exhibits 126 and 127 were admitted
3 into evidence.)

4 Q (BY MR. ST. GEORGE) And using those photographs
5 that you have, would you be able to draw a path that would
6 slow the direction of the bloodstain?

7 A I couldn't show you directionality, but I could
8 show you the path area.

9 Q Okay. Would you -- if we put that picture,
10 People's 125, back up on the screen, if you don't mind
11 doing that with the dowel rod so we may all see it.

12 THE COURT: So wait a minute. Which number are
13 we at now?

14 MR. ST. GEORGE: This is People's 125. It's an
15 overhead view of the street, and it also shows the
16 bloodstain. This image has been admitted.

17 (People's Exhibit 125 was published.)

18 Q (BY MR. ST. GEORGE) And, Detective Gideon, if
19 you could, using the dowel rod, just show us all the path
20 of that bloodstain.

21 A So there's staining here, and then there's
22 staining that runs along here along the concrete.

23 Q And then where does it go from there?

24 A I can't see it in any of the photos. That's as
25 far as I can see.

1 Q Okay. Detective Gideon, I'll have you maybe
2 look back at the one photo numbered 127. And does the
3 path look to go from where you were just pointing on the
4 curb up to that drain and then to the grass?

5 A All I can see is up to the first placard. I
6 don't see anything beyond that.

7 Q Okay. Detective Gideon, if we're looking
8 directly behind the truck, do you see any blood that
9 is -- that goes from that parallel -- that perpendicular
10 line that you showed as the trajectory of the shotgun
11 shot that then moves up and to the -- what would be that
12 be? -- northeast corner of the truck? Is there any blood
13 in that area?

14 A I see where I pointed out, where the placard is
15 in the middle of the asphalt, there is a stain there in
16 the middle of the road there, on this side near the
17 concrete where the placard is, and then there is along the
18 concrete that runs parallel along the roadway.

19 Q So you're saying that if we're looking this
20 photograph, the placard, it's on the -- nearly the middle
21 to have screen, I believe it's actually Placard Number 5,
22 and -- so you see blood that goes from Placard Number 5 to
23 the curb?

24 A Yes, sir.

25 Q Do you see any blood that goes from Placard

1 Number 5 up to and advancing to the truck?

2 A I see a little bit of staining, but I don't see
3 a directionality to it. I can't see. If there's another
4 photo, I could say.

5 (Pause in the proceedings.)

6 MR. ST. GEORGE: Have you offered or admitted
7 204, 209 and 210?

8 THE COURT: I don't have 204 --

9 MR. FREEMAN: No.

10 THE COURT: -- through 209 admitted, and I don't
11 have 210.

12 (Pause in the proceedings.)

13 Q (BY MR. ST. GEORGE) Detective Gideon, are you
14 aware of a ricochet mark in the middle of the street?

15 A I'm aware of a ricochet mark.

16 Q And do those placards there in the street
17 approximate where the ricochet was?

18 A There are placards that were applied to it,
19 however, I don't know if it is the ones in the middle of
20 the street or the ones down by the concrete by the
21 driveway.

22 Q Okay.

23 (Pause in the proceedings.)

24 Q (BY MR. ST. GEORGE) Detective Gideon, are you
25 aware of any shotgun shells that were found in the street?

1 A I am.

2 Q And do you know where those were located?

3 A There were a few of them. I can't say
4 specifically where they were. I'd have to see some
5 photos.

6 Q Okay. If I were to provide you with an
7 illustration that was developed by Victoria Parker, would
8 that help?

9 A I've never seen the illustration before.

10 Q Okay. If I were to offer you this, would it
11 help to refresh your memory?

12 A I don't know. I've never seen it before.

13 Q Okay. What do you say we give it a try, then.

14 THE BAILIFF: Exhibit 6.

15 A Okay.

16 Q (BY MR. ST. GEORGE) And does that help you
17 remember where the shotgun shells were found?

18 A It does.

19 MR. ST. GEORGE: Okay. Could we put People's 3
20 up.

21 MR. FREEMAN: Judge, I don't think it's been
22 admitted yet.

23 THE COURT: 3 is in.

24 MR. FREEMAN: 3 is in. I'm sorry. 3 is in.

25 (People's Exhibit 3 was published.)

1 Q (BY MR. ST. GEORGE) And, Detective Gideon,
2 would you please show us where those shotgun shells were
3 found in the street.

4 A The two that were in the street, I believe 4 is
5 right around here, and 7 is right up about here
6 (indicated).

7 Q So up on the north end of street, then?

8 A Yes, sir.

9 Q Okay. Thank you. And did you -- Detective
10 Gideon, did you collect the shot -- the bullet casings
11 that were found inside the house?

12 A I didn't do any of the collection, sir.

13 Q But you did look at them?

14 A I did, yes, sir.

15 Q Were you able to determine the brand of those
16 bullets or those casings?

17 A I didn't look at the brand, sir.

18 Q Okay. Were they all brass in color?

19 A I don't recall, sir.

20 (Pause in the proceedings.)

21 MR. ST. GEORGE: There will be nothing further,
22 Detective Gideon.

23 THE COURT: Redirect?

24 ///

25 ///

REDIRECT EXAMINATION

BY MR. FREEMAN:

Q Just a couple of questions, Detective. There was some questions by the defendant about shotgun shells in the street, and I want to make sure we're all on the same page. When we talk about shotgun shells, were they live, unfired rounds, or were they spent, empty casings from a fired round?

A I'd have to refer to Exhibit 6, sir.

Q Okay. And without referring Exhibit 6, do you have any independent recollection of which it was?

A I don't recall.

Q Okay. I'm going to ask Ms. Parker, I think, whose name is on that diagram. Is that accurate?

A Yes, sir, it is.

Q We'll ask her that question. There was some questions about an apparent blood trail opposite the pickup truck, roughly opposite the pickup truck. Do you recall those questions?

A Yes, sir, I do.

Q And I think you described them as roughly going in a north to south or south to north direction; is that accurate?

A Yes, sir.

Q Can you tell in what direction the person was

1 moving when they were bleeding?

2 A In this case -- can you? Yes. Can I in this
3 circumstance? No, I cannot.

4 MR. FREEMAN: Okay. All right. Thank you.

5 RECROSS-EXAMINATION

6 BY MR. ST. GEORGE:

7 Q Detective Gideon, could you clarify for us why
8 you're not able to do that for us, the directionality?

9 A I'd have to see photographs of the stains up
10 close and have a scale with it in order to tell what
11 direction, whether they're going to the right or whether
12 they're going to the left.

13 MR. ST. GEORGE: Okay. Thank you.

14 THE COURT: Does anyone on the jury have a
15 question for this witness?

16 Okay. We're going to excuse the jury. Please
17 keep an open mind. Don't talk about the case. Don't do
18 any investigation.

19 You can step down.

20 THE WITNESS: Yes, ma'am.

21 (The witness was excused.)

22 (The jury left the courtroom.)

23 THE COURT: So this is going to be the question.
24 Okay. So regarding the shotgun shots above the black
25 truck outside Building 7, was the trajectory determined by

1 a certain way of holding a shotgun, that is, by the waist
2 or held by holding it against the shoulder? Would holding
3 a shotgun differently change the place where it is assumed
4 the shooter would be standing?

5 And I could ask this witness -- I am not certain
6 that this witness could do all of this, but I would ask
7 him if it was possible to do all this.

8 MR. FREEMAN: Yes, Judge, I don't have an
9 objection.

10 THE COURT: Does the defense have an objection?

11 MR. ST. GEORGE: No, we don't object.

12 THE COURT: Okay. And I'll have the witness on
13 the stand. And just for the spectators, please, if you
14 could sit -- it's distracting for the jury to keep
15 standing, please. If you need to stretch your legs, you
16 need to go outside.

17 (Pause in the proceedings.)

18 (The jury entered the courtroom.)

19 THE COURT: Everybody can be seated, please.

20 Okay. Detective, if you're able to do this, or
21 respond to these questions, these are the questions:
22 Regarding the shotgun shots above the black truck outside
23 Building 7, was the trajectory determined by a certain way
24 of holding shotgun, that is, by the waist or held by
25 holding against the shoulder?

1 THE WITNESS: It was not used with a shotgun.
2 It was used with line of sight, looking through the
3 camera, and being able to see it that way.

4 THE COURT: Would holding a shotgun differently
5 change the place where it is assumed the shooter would be
6 standing?

7 THE WITNESS: Yes, it would. If I could expand
8 upon that, it would change the distance, but it would not
9 change the angle. So the angle would remain is same,
10 but -- so I wouldn't change from side to side, but it
11 couldn't change from up and down.

12 THE COURT: As a result of the jury's questions,
13 do either side have questions?

14 MR. FREEMAN: Yes, Judge.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. FREEMAN:

17 Q If you could elaborate or explain that last
18 answer. How would the person firing a shotgun lower, say
19 from the hip, versus higher, even with their eyesight, how
20 would that change that trajectory?

21 A Well, if they were to fire it from lower, they
22 would have to worry about the clearance of the truck. In
23 order to get it up above the truck, they would have to aim
24 it higher, and if they did, then it could possibly leave
25 the building. If it was held up higher, then it could

1 theoretically strike the building without striking the
2 truck as well. What that exact position is, we would have
3 to have testing in order to determine what that position
4 would be.

5 Q And what sort of testing would you have to do?

6 A Well, we would have to have the exact firearm,
7 the exact ammunition, and then develop a similar
8 circumstance with the same distances, and then firing that
9 same ammunition until we get the same pattern grouping
10 would tell us the distance away, and it, as well, would
11 change our positioning with how we held the weapon.

12 Q So you'd almost have to build a mockup scene
13 with a similar height vehicle, and then keep trial and
14 error until you sort of match the patterns?

15 A Yes, sir.

16 Q Is that practical? Is that feasible?

17 A It's -- really it's not.

18 Q And just so we're clear, based upon the patterns
19 that you saw in the garage and the information you have
20 about the things at the scene that you observed, are you
21 able to give an opinion about how the person might have
22 been holding the shotgun when each of those rounds were
23 fired?

24 A I could say what's not possible.

25 Q And what's not possible?

1 A To hold it below your waist and to point it up
2 or to hold it above your head would not be probable.

3 Q I just wanted to ask you a couple more questions
4 about that angle.

5 MR. FREEMAN: If we could have 126 up, please.

6 (People's Exhibit 126 was published.)

7 Q (BY MR. FREEMAN) And I think you described on
8 126 the approximate location that the person would have
9 been standing for the first shot, you said more or less
10 perpendicular to the garage?

11 A Yes, sir.

12 Q Are you able to describe for the jury the
13 closest point and the farthest point that you think that
14 person would have been standing?

15 A No, I could not say the closest or furthest. I
16 could answer left to right.

17 Q And for the other shot that was fired, the
18 higher one that was from the angle to the right, same kind
19 of question. You were able to determine the left to right
20 angle, but can you determine how -- the closest and
21 farthest points that that person would have been standing
22 when they fired?

23 A Not without test-firing weapons, sir.

24 MR. FREEMAN: All right. Thank you.

25 THE COURT: Recross?

1 FURTHER RECROSS-EXAMINATION

2 BY MR. ST. GEORGE:

3 Q Now, Detective Gideon, on this shot that
4 originated from up near the drain, the north end of the
5 drive --

6 A Yes, sir.

7 Q -- now, you're not able to determine range,
8 necessarily, by the spread of that pattern, correct?

9 A Correct, sir.

10 Q Okay. You testified to that earlier. However,
11 in this case --12 MR. FREEMAN: Judge, I'm going object. This is
13 beyond the scope of the juror's question. He's talking
14 about, I believe, the patterns on the opposite building
15 now.16 THE COURT: So we are talking about the shotgun
17 shots above the black truck outside Building 7.18 MR. FREEMAN: And I believe the defendant's
19 asking about the --20 MR. ST. GEORGE: I'm asking about the shotgun
21 impacts that are --

22 MR. FREEMAN: On the opposite building.

23 MR. ST. GEORGE: -- on the truck.

24 THE COURT: Above the truck?

25 MR. ST. GEORGE: Above the truck.

1 MR. FREEMAN: Okay. All right.

2 THE COURT: I'll allow that.

3 MR. ST. GEORGE: Sorry for that.

4 Q (BY MR. ST. GEORGE) So the one that came --
5 the one that originated up near the drain --

6 MR. FREEMAN: Judge, I'm going object. Assumes
7 facts not in evidence. That hasn't been testified to.

8 MR. ST. GEORGE: He's testified to --

9 THE COURT: I'm going allow the question.

10 Q (BY MR. ST. GEORGE) You had the advantage of
11 that shadow, correct? The shadow lined up when you looked
12 at it, correct?

13 A Are you talking the silhouette on the --

14 Q The silhouette on the upper shot.

15 A Yes, sir.

16 Q So you were able to line up where the eave, the
17 gutter and the roof line matched with the wall behind,
18 correct?

19 A Yes, sir.

20 Q And so that was a -- you were able to determine
21 pretty accurately with that particular shot because of
22 the -- the circumstances surrounding it?

23 A Yes, sir.

24 Q Okay. Now, the prosecutor asked about the
25 practicality of conducting the tests that would determine

1 these things, right?

2 A Yes, sir.

3 Q And you said it would have been necessary to
4 have what things to do that, to conduct that test?

5 A I would need the same weapon, the same
6 ammunition, and then I would have to conduct the tests
7 repeatedly until we receive the same results.

8 Q And the shotgun was collected from the scene,
9 right?

10 A Yes, sir.

11 Q So it was available?

12 A It was, yes, sir.

13 Q And we knew the brand of ammunition that was in
14 it, correct?

15 A Yes, sir.

16 Q Okay. And we had FARO scans of the area?

17 A Yes, sir.

18 MR. ST. GEORGE: I have nothing further. Thank
19 you.

20 THE COURT: You may step down.

21 (The witness was excused.)

22 MS. DECKER: The People call Agent Jason Frink.

23 THE COURT: Come forward and raise your right
24 hand.

25 JASON FRINK,

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

3 THE COURT: Have a seat.

4 THE WITNESS: (The witness complied.)

5 DIRECT EXAMINATION

6 BY MS. DECKER:

7 Q Good afternoon.

8 A Good afternoon.

9 Q Will you introduce yourself to the jury, and
10 spell your name for the court recorder.

11 A I'm Agent Jason Frink. Last name is F-r-i-n-k.
12 And I work for the Lakewood Police Department as a police
13 agent.

14 Q What do you do as a police agent?

15 A I'm currently in patrol.

16 Q And how long have you been working in that
17 capacity?

18 A Since July 6, 2015.

19 Q And did you work in any law enforcement capacity
20 prior to Lakewood?

21 A No, I did not.

22 Q I'm going to draw your attention to August 1st
23 of 2016. Were you working patrol that night into the
24 early morning of August 1st?

25 A Yes, I was.

1 Q And what happened at 12:25 in the morning of
2 August 1?

3 A I responded to 8139 West Eastman Place to assist
4 agents that were already on scene with an unknown
5 situation.

6 Q And can you explain to the jury how you became
7 notified of the situation at 12:25 in the morning.

8 A So I was scanning radio traffic, and I heard
9 agents on scene stated that they had an uncooperative male
10 who possibly had a handgun, or a gun, with him. Shortly
11 after that, as I started to drive that way, one of the
12 agents on scene stated that somebody racked a gun. At
13 that point I started driving emergent to the crime scene.

14 Q And so does that driving emergent mean with
15 lights and sirens at this point?

16 A Yes.

17 Q And did you pick up the pace in your patrol car?

18 A I did, yes.

19 Q And once you arrived to this apartment complex,
20 was it the Windsor Apartments?

21 A It was, yes.

22 Q Where did you go once you arrived to the
23 complex?

24 A It's a gated apartment complex, so I was there
25 with Agent Alfano, Agent Shube, Agent Waller and Agent

1 Lebsack. And Agent Alfano opened the front gate, and we
2 all drove into the complex and parked our cars and got out
3 of the cars and staged, which is something you do on kind
4 of high intensity calls. You stage before you go into the
5 scenes, so . . .

6 Q And did you stage in a southeastern portion of
7 the complex?

8 A Yes, which is near the entrance to the
9 community.

10 Q While you were staging there, did you hear
11 anything?

12 A Yeah. I heard gunshots. I heard what sounded
13 like shotgun blasts to me. I believe there was one loud
14 shotgun blast followed by two other shotgun blasts almost
15 simultaneously after the last two blasts. It sounded like
16 three handgun shots went off.

17 Q And so is it accurate that the first three were
18 louder than the second three?

19 A Yes.

20 Q And did you hear a total of six?

21 A Yes.

22 Q You heard -- or how long between each of the
23 shots, or can you make that estimate?

24 A I know that there was one initial shot, and then
25 the rest of the shots were grouped together. So I would

1 say a few seconds.

2 Q A few seconds for the first three, or a few
3 seconds encompassing all?

4 A So the first shot, that was a few seconds, and
5 the relatively six shots were together in succession.

6 Q And could you be sure that it was exactly six
7 shots that you heard, or is that an approximation?

8 A That would be an approximation. That's the best
9 of my recollection, as far as I remember.

10 Q After hearing this round of gunfire, what did
11 you do?

12 A Myself and the other agents basically kind of
13 formed a tactical formation and just started running to
14 where we thought we heard the gunshots coming from.

15 Q Where did you run to, and where did you wind up?

16 A We ended up -- we ran through the grassy like
17 courtyard area. We ended up on the southeast corner of
18 the very furthest northwest building of the complex.

19 Q So is that Building 7 that you were on the
20 southeast corner of?

21 A Yes.

22 Q And did you see Agent Trimmer there?

23 A I did, yes. One thing I really remember that's
24 very lodged in my memory is she was kind of visually
25 shaking, and that's when I new something serious had

1 happened. A couple of the gunfire that I heard kind of
2 made the intensity go up for everybody.

3 Q Was that prior to her ever saying anything to
4 you?

5 A She didn't say anything to myself. I think
6 Agent Alfano and Agent Waller kind of went to her, and at
7 that point, I didn't know if there was other threats or
8 what was going on, and so I kind of had my gun out and was
9 looking for other threats.

10 Q And you made some sort of a motion. Can you
11 describe for the jury how you were able to see Agent
12 Trimmer visible by the shaking?

13 A She -- I think her hand was shaking, and what I
14 recall is an adrenaline dump just happened, or some other
15 kind of critical situation. It really kind of stuck in my
16 memory, that specific action that she was making.

17 Q And when you said her hand was shaking, was she
18 holding a handgun at that time where she was shaking it,
19 or was it just that you saw --

20 A I don't recall, to be honest. I just remember
21 her whole body was kind of tense or shaking.

22 Q And once Agents Alfano and Waller were with
23 Agent Trimmer, what did you do?

24 A Like I said, I was looking for additional
25 threats, and I saw Agent Brennan, who was also in front

1 of, I guess, on the south side of Building 7, kind of mid-
2 way in the building, and he -- it looked like he was
3 standing kind of looking at an apartment. So I started
4 running towards him, still not quite knowing what was
5 going on, but I made my way to him just to help him out,
6 if he needed any help.

7 Q And did you learn anything through radio traffic
8 regarding where you were?

9 A Yeah. So as I was running, I heard somebody
10 over the radio say whoever that is running, you're right
11 in front of the target house, so that's when I kind of
12 took cover behind a car immediately, which ended up being
13 in front of the target house, so . . .

14 Q And would that be customary to warn someone
15 who's new to the scene what the target --

16 A Yes.

17 Q And why is that?

18 A Officer safety. Obviously, we heard gunfire, we
19 heard radio traffic, but we weren't aware of the whole
20 extent of what was going on, who they established contact
21 with, who they haven't established contact with. So it
22 was just radio traffic just to contribute to my safety.

23 Q You mentioned once you got this information as
24 you were running to the rest along the south side of
25 Building 7, you took cover?

1 A Yes.

2 Q Where did you take cover?

3 A I believe there was a car that was parked in
4 front of the target location, so I got behind the car and
5 crouched down, still with my gun out, and kind of kept my
6 eyes on the target.

7 Q And do you remember that car being a white
8 sedan?

9 A I believe so, yes.

10 Q Did Agent Lebsack ever come to your location?

11 A Yes. So eventually he ran over and joined me,
12 and we kind of sat there and crouched for a little bit.
13 And I think he ended up moving to another sedan that was
14 parked west of our location, and then Agent McKalip, I
15 believe, came to where I was.

16 Q And so he moved, was that to a gray car --

17 A Yes.

18 Q -- out to the west in a driveway?

19 A Yes.

20 Q So how long did you stay behind this white sedan
21 taking cover?

22 A I would say probably a minute and a half or two
23 minutes. Not too long. And I noticed that there was a
24 window to the building that we were looking at, it kind of
25 was over where we were crouched down, and I'm a rather

1 large person, and so I thought I opened myself up to
2 potential threat. I didn't know if that window belonged
3 to the apartment or not. So I changed my position to a
4 large tree that was just south of where the white sedan
5 was.

6 Q And was that providing you more cover and
7 concealment?

8 A It was, yeah, and I was able to keep my eyes on
9 what I perceived as a possible threat with the window, and
10 I was able to cover the other than agents that were on
11 scene.

12 Q Did you mention earlier very briefly that Agent
13 McKalip had also joined you after Agent Lebsack had left
14 to go behind --

15 A Yeah, he was behind the white car. I think
16 eventually, I remember, Agent Lebsack joined Agent McKalip
17 behind the white car.

18 Q And you testified earlier that Agent Lebsack had
19 gone behind the gray car.

20 A Right.

21 Q Is that where Agent McKalip then joined Agent
22 Lebsack?

23 A I believe they both went back to the white car,
24 but I know they were both behind the same car together.

25 Q And when you say "the white car," is that the

1 one that you were saying you initially --

2 A Yes. Yes.

3 Q And so then were you covering them from the tree
4 behind them?

5 A Yes.

6 Q Once you got to a place of greater safety at
7 that tree, did you hear anything else?

8 A Yeah. I heard a -- what sounded like a handgun
9 round going off inside the house, and it was rather
10 muffled, which made me believe it was like a smaller
11 caliber handgun.

12 Q And shortly after hearing that handgun sounding
13 like it came from the target house, did you hear anything
14 else?

15 A Yeah. There were two more shots, also sounded
16 like a handgun, but they were slightly louder, so . . .

17 Q And shortly after hearing those additional two
18 shots, did you hear anything?

19 A Yeah, so in a situation like that, you're really
20 focused on what's going on, and I heard what sounded like
21 the front door opening. And then immediately after that,
22 I heard -- I'm not quite sure who was yelling get your
23 hands up, get your hands up, so I knew that somebody was
24 coming out of the apartment.

25 Q What was the number of seconds between the time

1 you heard the sound of the front door opening to the time
2 you heard agents yelling get your hands up?

3 A I would say it was almost immediate.

4 Q So not even a second?

5 A Yeah.

6 Q And when you heard that first shot that sounded
7 muffled, like it was from a handgun inside the apartment,
8 how many seconds would you estimate elapsed between that
9 first shot and the second shot?

10 A Um, I -- it wasn't long. Maybe 10, 15,
11 30 seconds, somewhere around there. In situations like
12 that, everything's either moving really quick or really
13 slow, because it's very intense, so it's hard for me to
14 say an exact time.

15 Q And the same question, given the difficulty,
16 between the second and third shot.

17 A The second and third shot, they were pretty
18 close together, so much closer. Maybe a couple seconds.

19 Q And the third shot and the sound of the front
20 door opening.

21 A That, it would be hard for me to estimate, but
22 would say it was a couple of minutes, maybe less. Like I
23 say, it's very -- the time frame, because of the intensity
24 of the situation, is hard to say, but I know there was a
25 little bit of a delay.

1 Q Once your heard agents yelling get your hands
2 up, were you able to see anything?

3 A Yeah. Then I ran from behind the tree to help
4 them. I saw a male in the front, I guess, yeah,
5 entranceway that was bleeding. The door was still open, I
6 believe, and there was a handgun near where the male was
7 laying.

8 Q And how close to the male would you estimate?

9 A A few feet.

10 Q Once you saw this male and the handgun, did you
11 see other agents doing anything?

12 A Yeah. So I moved up, and I think -- I'm not
13 quite sure who was there at the time because I was focused
14 on the door, but eventually I know Agent Lebsack and
15 McKalip were both there, and other agents joined us, and
16 they dragged the suspect away from the door. I kept my
17 eyes on the door to cover it in case there was any
18 additional crisis. It's something we're trained to do.
19 And also, my body was kind of in the way of the door to
20 provide cover for them that were, at this point, taking
21 somebody into custody and providing aid. So they dragged
22 the suspect kind of out of the entranceway to a safer
23 location, and I believe at that point, they put
24 tourniquets on, and I know we called the fire department
25 to help with medical aid.

1 Q Were you able to see the suspect's demeanor when
2 you approached that breezeway?

3 A He was very frantic, and I remember he just kept
4 saying hands up in kind of a high-pitched voice, just
5 hands up, hands up, hands up, over and over again as he
6 was being taken into custody, as he was being dragged.

7 Q And so was he yelling hands up from the time
8 officers were approaching him through the time that he was
9 being taken away?

10 A To the best of my recollection, yes.

11 Q And was that in a loud tone of voice?

12 A It was a frantic, high-pitched voice. Not quiet
13 but not super loud.

14 Q So you mentioned that you kept cover of that
15 front door?

16 A Yes.

17 Q For how long did you do that?

18 A So I kept cover on the door. Other people moved
19 up until I was joined by other agents, and then I believe
20 Sergeant Fahlsing was there at that point, and we made the
21 decision to clear. It's a protective sweep, basically, of
22 the apartment to make sure there wasn't anybody else that
23 was a threat in there, so then I helped perform the
24 protective sweep.

25 Q And did you find anything that was a threat

1 inside that apartment?

2 A We did not, no. We cleared the apartment. I
3 remember there was blood in the apartment. I remember a
4 tent being set up in the apartment. I think there was a
5 shotgun near the rear door, and also a large amount of
6 blood. But, no, no additional threats.

7 Q And that blood, was it near the back door and in
8 the grass --

9 A Yes.

10 Q -- behind the apartment?

11 A Yes. And then after we did the protective
12 sweep, I immediately left the apartment and went to the
13 backyard, or back common area of the apartment, and just
14 acted as scene security?

15 Q And did you also see a spent shotgun shell
16 casing in the grass?

17 A Yes, there was, outside of the back door, I
18 think kind of near the porch area.

19 Q But to be clear, your responsibility, along with
20 Sergeant Fahlsing, wasn't to do a crime scene analysis of
21 the scene. It was simply to clear the scene for any
22 threats?

23 A Yes. So it was very quick, and I was
24 immediately, I guess you would say, ordered by Sergeant
25 Fahlsing just to go to the back and act as scene security.

1 So it was just checking for threats. Didn't see anything.
2 Clear. Cleared out. So . . .

3 Q And for how long did you maintain scene
4 security?

5 A Until 5:11 in the morning, so roughly five
6 hours.

7 Q And then at that point, are you customarily and
8 were you relieved so that the scene remained secure for
9 any investigation?

10 A Yeah, so then at that point another agent
11 relieved me, and I went to the station. I was off duty,
12 so . . .

13 MS. DECKER: Thank you, Judge. I have nothing
14 further.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. ST. GEORGE:

18 Q Agent Frink, you were at your car when you heard
19 the gunfire, right?

20 A Near the car. We were staging, so I believe at
21 that point, we were on the corner of a different building
22 getting ready to move in.

23 Q Okay. And when you moved up, did you move up to
24 where Agent Trimmer was located?

25 A Yes.

1 Q And did she tell you that -- that she had fired
2 her gun three times?

3 A She -- like I mentioned before, I don't believe
4 she said anything to me. I didn't have any communication
5 with her that I remember.

6 Q And later on at the front door, you said you
7 heard a handgun inside, right?

8 A It sounded -- what sounded like a handgun, yes.
9 While I was behind the tree, not while it I was at the
10 front door. Yes.

11 Q Okay. And you thought that was inconsistent
12 because you thought that the target had a shotgun, right?

13 A Um, I wouldn't say I thought it was
14 inconsistent, no. I recognized it as handgun fire.

15 Q When I exited in the breezeway, I did so
16 voluntarily?

17 A I suppose. The suspect came out -- came out
18 and, yes, was compliant at that point.

19 Q Okay. And that was my next question. By the
20 time you moved up, I was already on the ground, correct?

21 A Yes.

22 Q And complying with the orders that were being
23 given?

24 A I know that you kept saying hands up, hands up,
25 and then were taken into custody, so . . .

1 Q Okay. The gun was out of my hands by the time
2 you came up?

3 A I never saw the gun in your hand, so . . .

4 Q And I had one of my hands underneath me. Do you
5 remember that?

6 A I don't recall that specifically. I think I was
7 more focused on the door and possible threats that could
8 be there.

9 Q Well, Get your other hand out from underneath
10 your body. Do you remember saying that?

11 A Me saying that?

12 Q Uh-hum.

13 A I don't recall saying that, no.

14 Q Okay. Do you remember giving an interview to
15 Investigator Gallerani and Detective Alberti later that
16 morning?

17 A I do recall the interview, yes.

18 Q Okay. In that interview, did you tell them that
19 you told me to get your hand -- get your other hand out
20 from underneath your body?

21 A I don't recall.

22 Q You don't remember?

23 A No.

24 MR. ST. GEORGE: I'm going to ask the bailiff to
25 bring your statement up and show him this highlighted

1 area.

2 THE WITNESS: Okay.

3 Q (BY MR. ST. GEORGE) It was 18 months ago, so I
4 understand.

5 A Yeah.

6 Q Does it seem a little more familiar now?

7 A Um, I don't recall specifically saying that, but
8 it looks like I did, yeah.

9 Q Okay. And when you said that, I did take my
10 hand out from underneath my body, right?

11 A According to what I just said, yes.

12 Q And you said you thought it was crazy because it
13 was so loud?

14 A I think it was very hectic, yeah, at that point.

15 Q So despite all that loudness, I heard you when
16 you said get your hand out from underneath your body, and
17 I complied, correct?

18 A Yes, according to the statement.

19 Q You were involved in clearing the house, right?

20 A Yes.

21 Q And found a couple of things you thought were
22 weird in there, too, right?

23 A Yeah. I remember seeing a tent in there that
24 was set up in the living room, and blood, of course.

25 Q Aside from the tent drying, did you remember

1 seeing an outdoor backpack drying out in the shower?

2 A Yeah, I believe do I remember seeing a backpack
3 in the shower, yes.

4 Q And when you first saw it, did it kind of look
5 like there was somebody in the shower?

6 A I believe when you're in that kind of situation,
7 you're looking for anything and expecting to find
8 something, I guess you could say. So, yeah, it was kind
9 of odd that there was a backpack in the shower, which
10 startled me.

11 Q So when you were clearing the house, that was,
12 as you just said, startling?

13 A Yes.

14 MR. ST. GEORGE: Okay. Thank you, Agent Frink.
15 I have nothing more.

16 THE COURT: Redirect?

17 MS. DECKER: Thank you.

18 REDIRECT EXAMINATION

19 BY MS. DECKER:

20 Q You said that this -- you found this backpack
21 startling. Did you shoot at it?

22 A No.

23 Q Why?

24 A I mean, like I said, you don't expect to find a
25 backpack in the shower. You just expect to find people.

1 When you see an object in there, it kind of startles you,
2 but then you comprehend that it's not a person, so it
3 wasn't a threat, so there was no point to using force.

4 Q So was it pretty immediate you recognized it was
5 just a backpack?

6 A Yes.

7 Q The defendant asked you about when he exited the
8 breezeway, stating he came out voluntarily. Was it your
9 understanding that he had called 911 for assistance?

10 A I believe that there was radio traffic that
11 somebody had called 911, and it was possibly the suspect,
12 yes.

13 Q And when officers directed him to come out, that
14 was to come out without a weapon?

15 A I'm not sure on that, but I would --

16 Q Is that customary?

17 A I'd say that that's standard protocol is to make
18 sure you come out with your hands up and no weapons in
19 your hands.

20 Q And with regard to the order of hands up, when
21 the defendant came out, were officers immediately yelling
22 hands up?

23 A Um, I think they said, yeah, get your hands up.

24 Q And it was then that the defendant still had his
25 hand behind his back, correct?

1 A I believe so, according to the interview that I
2 gave, yes.

3 Q And so by then yelling hands up, then him coming
4 out and putting his hand behind his back, that would not
5 be compliance; is that accurate?

6 A That is accurate, yes.

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

8 THE COURT: Recross?

9 MR. ST. GEORGE: Nothing further.

10 THE COURT: Does anyone on the jury have a
11 question for this witness?

12 (No verbal response.)

13 THE COURT: Thank you, you may step down.

14 THE WITNESS: Thanks.

15 (The witness was excused.)

16 MR. FREEMAN: Judge, we'll call Agent Darren
17 Maurer.

18 DARREN MAURER,
19 having been called as a witness on behalf of the People,
20 being first duly sworn, testified as follows:

21 THE COURT: Have a seat, please.

22 THE WITNESS: (The witness complied.)

23 DIRECT EXAMINATION

24 BY MR. FREEMAN:

25 Q Good afternoon. Would you please state your

1 full name and spell your last name for us.

2 A My name is Agent Darren Maurer. My last name is
3 M-a-u-r-e-r.

4 Q And, Mr. Maurer, how are you employed?

5 A I'm a police officer for the City of Lakewood.

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

7 A Just a little over 21 years.

8 Q And how much of that has been spent with
9 Lakewood PD?

10 A All of it.

11 Q What is your current assignment?

12 A I'm patrol.

13 Q Patrol. I want draw your attention back to the
14 early morning hours of August 1st of 2016. Did you get a
15 call about 1:45 in the morning regarding an officer-
16 involved shooting around 8139 West Eastman Place in the
17 city of Lakewood?

18 A I did.

19 Q And were you asked to help with the
20 investigation of that incident?

21 A Yes.

22 Q And where did you go?

23 A I met Sergeant Ebeling at the police department,
24 and then we all went down to the address.

25 Q And do you know about what time you got there?

1 A I don't.

2 Q Were police securing the scene when you got
3 there?

4 A It was secured.

5 Q Without telling us what anybody told you, did
6 you get a general briefing of the series of events that
7 led to that?

8 A A general briefing, yes.

9 Q And was one of the things that you were tasked
10 to do was to go into the suspect's unit and search for
11 weapons?

12 A With the crime lab, yes.

13 Q And, specifically, I want to focus on your
14 search for firearms and firearms-related things. Did you
15 do that search?

16 A I did.

17 Q And do you know, did anyone help you with that
18 task?

19 A I know that from the Lakewood crime lab, there
20 was Victoria Parker and Julia Rossi.

21 Q And was one of your jobs to document any
22 firearms and firearms-related things inside that unit?

23 A I would take notes. They did a more thorough
24 job with makes, models, et cetera.

25 Q As part of your role, did you try to determine

1 if any weapons that you came across were loaded?

2 A Yes.

3 Q And so let me ask you about your -- your search
4 of the residence. Do you remember what part of the
5 residence you started in?

6 A I would say the back like patio door.

7 Q Okay. I'll find my diagram.

8 MR. FREEMAN: If we could have People's 7 up,
9 please.

10 (People's Exhibit 7 was published.)

11 Q (BY MR. FREEMAN) In taking a look at
12 People's 7, other than it sort of being oriented on its
13 side, so north is to the left, do you recognize that as
14 the layout of the unit?

15 A May I get closer?

16 Q Sure, yeah. If you need to get closer, that's
17 fine. If you could maybe grab that pointer while you're
18 on the way up there, right behind you, I might have you
19 point some things out.

20 A (The witness complied.) Okay. It looks like
21 the apartment, yes.

22 Q So what area of the apartment did you begin your
23 search in?

24 A We came in through here.

25 Q So you came in the back door from the north

1 side?

2 A Yes.

3 Q Did you observe any firearms once you entered
4 the house?

5 A Yes.

6 Q What did you see?

7 A A pistol grip shotgun laying on the living room
8 floor.

9 Q And was there some blood around that item?

10 A Yes.

11 Q Did you handle that item?

12 A After it was photographed, yes.

13 Q And were you wearing gloves when you handled
14 that?

15 A Yes.

16 Q Did you try to determine if that item still had
17 any live rounds in it or not?

18 A Yes.

19 Q And did it?

20 A I didn't document it. I don't know for sure.

21 Q Okay.

22 A I have to look at the photographs.

23 Q Was that item collected?

24 A Yes.

25 Q Did you see any other firearms in the unit?

1 A The entire unit, or just this living room area?

2 Q Well, in the living room. Let's start there.

3 A No other firearms in the living room area.

4 Q Where did your search proceed after that?

5 A Into the bedroom.

6 Q And what, if any, firearms did you see in

7 bedroom?

8 MR. ST. GEORGE: Your Honor, can I pause you

9 right here? I have a concern that there may be an

10 objection coming up that may require the jury to be

11 excused.

12 THE COURT: Well, okay. Let's see where we're

13 going, and then I'll make a decision.

14 Q (BY MR. FREEMAN) What firearms, if any, did you
15 observe in the bedroom?

16 A Leaning against the wall to the north of the bed
17 in the bedroom was a .22 rifle.

18 Q And did do you anything to determine if that
19 weapon had ammunition in it or not?

20 A Yes.

21 Q And did it?

22 A It had some rounds in the magazine.

23 Q Did it have a round in the chamber?

24 A No.

25 Q Did you see any other firearms in that bedroom?

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

2 THE COURT: All right. Ladies and gentlemen,
3 I'm going to ask that you step out for a moment. Please
4 keep an open mind. Don't do any research. Don't talk to
5 anyone about the case, please.

6 (The jury left the courtroom.)

7 THE COURT: And you can step down while we
8 discuss this for a minute.

9 THE WITNESS: I can step out?

10 THE COURT: Yeah.

11 (The witness was excused.)

12 THE COURT: Okay. What is your objection?

13 MR. ST. GEORGE: Your Honor, if we're going to
14 discuss my entire ownership of firearms, I have a feeling
15 that this is going to be more prejudice to the jury than
16 it is probative, and it's not relevant to this case, as
17 none of those other firearms were used in this incident,
18 and so they have no bearing on this incident.

19 THE COURT: So I'm not aware. So you're telling
20 me there are other firearms in the bedroom?

21 MR. ST. GEORGE: There is an additional firearm
22 in the bedroom that was part of this incident. If
23 the prosecution restrains their questions to that
24 particular firearm --

25 THE COURT: Okay. Okay. So what you're telling

1 me, though, the question is, there's other firearms in
2 your bedroom not associated with this case?

3 MR. ST. GEORGE: And there are other firearms
4 that are not of my ownership that I was storing for a
5 friend. And that's where I think that we have the
6 potential for more prejudice than probative value. One of
7 those was a .308 hunting rifle. The other one was an
8 AR-15 assault rifle with a suppressor. And I have a
9 sneaking suspicion as to where the -- where the
10 prosecution intends to go with this.

11 THE COURT: Response?

12 MR. FREEMAN: Judge, according to the report, in
13 the defendant's unit, they found that shotgun that's been
14 described. They found the .22 caliber rifle, which the
15 witness just described. They also found the .308, what
16 the defendant describes as a hunting rifle. They found a
17 Glock 19 handgun that was loaded. They found an AR-15 in
18 a black case that was loaded. They found another AR-15
19 that was not loaded, but there was magazines and ammo for
20 that weapon as well. And they also found a .22 caliber
21 revolver handgun. They found a small Beretta .22
22 semi-auto handgun. They found a Smith & Wesson
23 9-millimeter semiautomatic handgun, and they found a .380
24 semi-auto Taurus Curve handgun.

25 And the reason that these are all relevant, it's

1 not the issue of whether the defendant owned these weapons
2 or not. They were all in his possession. They were all
3 either loaded or there was ammunition present for those.
4 And he had a large choice to make when he decided to go
5 outside and confront the officers as to what weapon to
6 take, and he chose an extremely lethal weapon that was the
7 most useful for a close combat situation, taking a pistol
8 grip shotgun. And that selection and that choice that he
9 in deciding on that particular gun, to the exclusion of
10 others, goes to the after deliberation element, and it
11 goes to the intent to kill element. And so it's relevant
12 that he had all those choices to make, and he made the
13 choices that he did make in this particular case.

14 MR. ST. GEORGE: So, Your Honor, I would say
15 that Mr. Freeman's categorization of a pistol grip shotgun
16 loaded with birdshot as the most lethal of the choices
17 would be wrong, for one. And that's absolutely colored
18 by, you know, his own impression or opinion. Furthermore,
19 that the rest of the weapons were located inside the
20 closet, in soft cases. They do not belong to me, and I
21 was storing them for a friend. Now, the -- there are
22 three other handguns that were referenced. Now, those are
23 all mine. They do belong to me. All of my weapons that I
24 own are legally owned. I have receipts for them.

25 You know, I think that the entire intention of

1 listing off this long list of weaponry is strictly for the
2 purpose prejudicing the jury to me, to try to color me as
3 a Second Amendment pro-gun nut. And so I would say that
4 these -- where he is heading is absolutely lacking in
5 relevance and lacks probative value.

6 MR. FREEMAN: And, Judge, I think, to respond,
7 if the defendant wants to testify that he thinks he chose
8 a less lethal weapon for the circumstances or that these
9 weapons don't belong -- some of these don't belong to him,
10 that's certainly, I think, within his realm to testify
11 those things, but it doesn't change the fact that he had
12 access to all of these weapons, and he made a specific
13 choice on this night. And it's certainly argument, if he
14 wants to argue that he made a less lethal choice, and I'm
15 going to make an argument that he made a more lethal
16 choice. I think the parties are free to argue that. But
17 it doesn't anything to do with relevance, and it doesn't
18 have anything to do with prejudice either.

19 I think it's also important to note that the
20 Court has yet to hear anything, and the jury has yet to
21 hear anything, about which weapons were tested and
22 actually matched up to the various casings that were
23 spread both inside and outside his unit and how we
24 determined that three of the defendant's weapons were the
25 ones that were fired that night.

1 THE COURT: Which weapons were fired?

2 MR. FREEMAN: The 12-gauge shotgun, the Ruger
3 handgun that he came out the front door with, and the
4 Taurus handgun that was up in his closet.

5 THE COURT: Okay. I'm going to take a look at
6 this. I'm going take a look at this with reference to the
7 theory that's been provided to the Court with regard to
8 the possibility of the self-defense instruction. So this
9 will take me a few minutes, and then I'll come back, and
10 I'll look for some cases.

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

12 (A recess was taken.)

13 THE COURT: Okay. Let's go back on the record.
14 All right. Well, here's the situation. This issue was
15 not brought to my attention before this time. I'm
16 learning now that there was a number of weapons in the
17 home. I have heard an objection saying that prejudice
18 outweighs probative value, and the district attorney has
19 provided me with the theory that this was -- or
20 Mr. St. George was able to choose amongst the weapons that
21 were there, and they were all either loaded or capable of
22 being loaded because there was bullets, et cetera, there.
23 I need to take a look at this issue in detail.
24 I can see relevance and to the fact that a certain weapon
25 was selected from other weapons, and certainly the fact

1 that there was shooting and three weapons were used -- and
2 that's what I'm learning right now, and that was in an
3 offer of proof -- three weapons were, at least, used is
4 significant. So I need to take a look, and then I need to
5 consider whether or not this would be admissible, whether
6 it would be admissible now or, perhaps, admissible
7 depending on the choice of defense. So certainly when I
8 look at objective reasonableness standards, with the
9 situation surrounding the defendant at that time and
10 certain defenses which could be used, they may, indeed --
11 it may, indeed, become relevant at that time.

12 So I'm going bring the jury back. We're going
13 break. I'm going to ask everybody to take a look at this.
14 Be here at 8:00. I think we're not going to be able to
15 have the jury until 8:30, because we'll hash this out.
16 Please be on time. I'm going to have the jury be back
17 here. Because, Mr. Menges, you have to take off today.

18 MR. ST. GEORGE: Thank you, Judge.

19 MR. FREEMAN: And, Judge, I would ask the Court,
20 when it does that reflection and consideration, to
21 consider the definition of after deliberation, which goes
22 to two of the charges.

23 THE COURT: I will. And you can -- you can
24 provide me with anything else you'd like right now.

25 MR. FREEMAN: Well, just that the definition

1 says that the decision to commit the act was made after
2 the exercise of reflection and judgment concerning the
3 act, and so that's what we think this --

4 THE COURT: Okay.

5 MR. FREEMAN: -- goes to.

6 (The jury entered the courtroom.)

7 THE COURT: All right. Everyone be seated,
8 please.

9 Ladies and gentlemen, we've hit an issue we need
10 to discuss at length. Rather than have you sit around and
11 waiting for us to make this decision, we're going to
12 excuse you this evening and have you back at 8:30 tomorrow
13 morning. We have witnesses set at 8:30 tomorrow morning,
14 so we'll be able to begin right away.

15 Please keep an open mind. Don't discuss the
16 case. Don't do any research. 8:30 at that area
17 overlooking the atrium. Thanks so much.

18 MR. ST. GEORGE: Your Honor, can we stay on the
19 record just one moment longer?

20 THE COURT: Just wait.

21 MR. ST. GEORGE: Thank you. Sorry.

22 (The jury left the courtroom.)

23 THE COURT: Okay. What did you want to tell me?

24 MR. ST. GEORGE: Your Honor, I was also -- while
25 you're reflecting on this subject, I would like to remind

1 the Court that Mr. Freeman is not a weapons's expert, and
2 his conclusion regarding these weapons is outrightly
3 wrong. And I'm not -- actually, I can't testify as an
4 weapons expert right this moment. So I will just -- if
5 you're -- if it's necessary to do some research into what
6 these weapons are, their uses, et cetera, and weigh that
7 as the Court -- you know, when you're making judgment on
8 this, I would and you to do so.

9 THE COURT: Okay. I'm not going to hinge --
10 certainly the Court doesn't go ahead and do its own
11 investigation. I rely on testimony and evidence. So my
12 expectation would be that I would hear something like that
13 from the People, and then certainly you can rebut it with
14 whatever you'd like to do regarding that.

15 So I'm going to go ahead and -- as I said, I'm
16 going to go ahead and look to see if I can find any case
17 law. What I have right now is the objection is based on
18 prejudice and the probative value is overridden by the
19 prejudice, so that's the nature of the objection.

20 Certainly, when the Court looks at this, much of the
21 evidence that comes into cases is prejudicial because
22 certainly that's what the prosecution seeks to do to
23 convict somebody.

24 So that isn't necessarily the whole decision by
25 the Court, so I have to look at how much I can cleanse

1 something and maintain the actual case as is, and so there
2 was no argument that there was -- there were these weapons
3 in there. So that's what I'm looking at, and that's what
4 I'm hearing right now.

5 The district attorney talked about the selection
6 of a particular weapon, and then also the obligation to
7 prove after deliberation, which means not only
8 intentionally but also that the decision to commit the act
9 has been made after the exercise of reflection and
10 judgment concerning the act. An act committed after
11 deliberation is never one which has been committed in a
12 hasty or impulsive manner. So there's also intentionally
13 and with intent, when his conscious objective is to cause
14 the specific result proscribed by the statute defining the
15 offense.

16 So that's what I've got to take a look at. I'm
17 also going to look, because my thought is that this may
18 come up to the Court again should the Court not permit it
19 at one time, as to whether or not this weighs into a
20 choice of defenses in the case. So I'm going look at
21 those things. I'll invite anyone to provide me with any
22 law that they have, and then I'll rule tomorrow, and we'll
23 continue with the trial.

24 Thanks very much. So we will begin at 8:00.

25 (The proceedings adjourned at 4:57 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 18th day of
8 February, 2019.
9

10
11 

12 RICHAEAL M. SILVIA
13 Registered Professional Reporter
14 Certified Realtime Reporter
15 Colorado Realtime Certified Reporter
16
17
18
19
20
21
22
23
24
25

*This is an electronically signed transcript.