

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

DATE FILED: February 25, 2019 5:12 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 7, 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.

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1 PROCEEDINGS, WEDNESDAY, FEBRUARY 7, 2018, 8:05 A.M.

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

4 THE COURT: So I'm calling People v. St. George.
5 We're here for argument with regard to the issue of guns
6 at the home that were found during the search.

7 And, Mr. Freeman, could you tell me
8 specifically, since I'm not privy to the discovery in this
9 and we had a listing of them last night, tell me
10 specifically what guns are alleged to have been involved
11 in the incident and then what other guns were found in
12 that home.

13 MR. FREEMAN: Judge, I'm just looking for the
14 report. So the three that were actually fired, one was a
15 Mossberg pistol grip 12-gauge shotgun. We've heard a lot
16 of testimony about that. One was a Taurus Curve.

17 THE COURT: Okay. We haven't heard that yet.

18 MR. FREEMAN: I don't believe we've heard about
19 that specific gun. It's a .380 semi-automatic handgun,
20 and that was found by Agent Maurer, who was on the stand
21 yesterday, during his search.

22 THE COURT: Okay.

23 MR. FREEMAN: There was one casing out in the
24 street that matched that gun that was near where
25 Ms. Elliott was parked, consistent with where she said he

1 was standing when he fired. And then there was a Ruger
2 .380 semi-automatic handgun that the defendant,
3 apparently, came of the door with when he submitted to
4 arrest. That was fired four times, once into the
5 breezeway ceiling, and we had testimony about that
6 yesterday from Detective Gideon, and then three times in
7 the apartment, and we had testimony about those three
8 bullet strikes yesterday as well. And then the four
9 casings that match that gun were found in the apartment
10 somewhat near the locations where the bullet strikes were.

11 THE COURT: Okay. Then what else do we have in
12 the house?

13 MR. FREEMAN: We've heard testimony, I think,
14 from Detective -- I'm sorry, from Agent Maurer that there
15 was a .22 rifle leaning up against the wall in the
16 bedroom, and I think that's in -- you can see that in
17 pictures that have already been admitted. It's right next
18 to the defendant's bed where he was with Ms. Elliott for a
19 period of time.

20 Also in the house, they found a Springfield 308
21 rifle that was loaded. They found a Glock 19 handgun that
22 was loaded. They found two AR-15s. One was loaded. One
23 was not loaded, but there was magazines and ammo nearby
24 for that weapon. And then they also found a .22 caliber
25 revolver handgun that was not loaded. They found a

1 Beretta .22 caliber semi-automatic handgun that was
2 loaded, and they found a Smith and Wesson 9-millimeter
3 semi-automatic handgun that was loaded, and then the
4 Taurus Curve that we already talked about that was loaded.

5 THE COURT: Okay. So this is your objection,
6 Mr. St. George, so I'll hear from you, if you have
7 anything further you want to tell me.

8 MR. ST. GEORGE: I think I expressed everything
9 I needed to yesterday. And let me just make sure I confer
10 with counsel.

11 (Discussion off the record.)

12 MR. ST. GEORGE: Yeah. Okay. Your Honor, I'll
13 just reiterate from yesterday that this -- these
14 additional weapons are not relevant, as they weren't used
15 in this incident. Furthermore, I believe that they'll be
16 more prejudicial -- introducing that these guns were there
17 would be more prejudicial than it would be probative, and,
18 furthermore, that I think this might be treading into 403
19 territory -- I'm sorry, Your Honor, 404, I meant to say.
20 You understood. Thank you.

21 THE COURT: I'll hear from the People.

22 MR. FREEMAN: Judge, we do not plan to argue or
23 imply to the jury that the defendant is some sort of
24 Second Amendment gun nut, or something along those lines.
25 But I think we are entitled to -- in arguing the after

1 deliberation element of the first-degree attempted murder
2 charges as to Sergeant Maines and Agent Trimmer, I think
3 we should be entitled to explain to the jury that his
4 choices that he made in relation to the firearms he had
5 available and what he chose to take out there and confront
6 the officers with showed that there had been some exercise
7 of reflection and judgment concerning the act, and that's
8 what after deliberation talks about.

9 And so I think part of that -- it's
10 always -- that's something, I think, we also have to show
11 circumstantially, the decision-making process that
12 somebody goes through concerning the act alleged. And I
13 think that's part of it for us is that he had several
14 weapons to choose from, and each of those weapons sort of
15 had a different, you know, purpose, or at least sort of an
16 initial purpose, and he made that exercise and reflection
17 from all of those weapons and chose certain ones for what
18 we believe are certain reasons.

19 And he's certainly entitled to challenge those
20 reason, both in cross-examination by his own testimony,
21 but that's argument, and I think the jury's entitled to
22 hear our theory of the case, that he chose those weapons
23 to be exclusion of others for certain reasons, and that
24 that showed some exercise and reflection in judgment
25 concerning the acts to show the act of deliberation.

1 So I think, for those reasons, it's extremely
2 relevant to us, it's important to us and our theory of the
3 case, and really the only prejudice to the defendant is
4 the incriminating nature of it.

5 THE COURT: Okay. So what I did here is just
6 look initially at what Mr. St. George was saying. He's
7 saying not relevant. He's telling me he objects to the
8 introduction of the guns, saying probative value is
9 outweighed by the prejudice, and now he's saying that this
10 may be 404 type of evidence, or he alluded to that this
11 morning. He indicated yesterday that he is concerned that
12 this number of guns would cause the jurors to believe
13 he -- and I believe the phrase was Second Amendment kind
14 of a nut, or something like that.

15 Okay. So I take a look at the issue and how and
16 why it was included. So, initially, we have the
17 allegations in the case from the People's perspective. We
18 have the allegation that the defendant went ahead and,
19 knowing there were police officers outside, shot at police
20 officers and then also shot at a dancer/escort that came
21 to his home, and did that purpose fully and knowingly.

22 So, initially, I would note here that we are in
23 a situation where it is my understanding, from the review
24 of what has been submitted to the Court and what was said
25 in openings, along with some of the testimony, that,

1 Mr. St. George, you intend to use self-defense?

2 MR. ST. GEORGE: That's correct, Your Honor.

3 THE COURT: Okay. All right. So when I look at
4 this, the first thing I look at is the evidence itself,
5 and in this case, we are looking at evidence or items
6 found at the home. The home is the site of the incident,
7 both inside and outside. There was allegations of
8 shooting both inside and outside of the home. Parts of it
9 occurred inside, parts of it occurred outside.

10 So in taking a look, initially, I would say that
11 we are not hinging on activity that is illegal in this
12 case. It is not my understanding that any of these guns
13 are illegal in any fashion. And I'm clarifying that. Is
14 that accurate?

15 MR. FREEMAN: I believe that's correct, Judge.

16 THE COURT: All right. And there's no
17 allegation or information or testimony that would hint or
18 in any way ascribe illegality to these weapons.

19 MR. FREEMAN: I don't believe so, Judge. And
20 the defendant, in his wallet, had a concealed weapons
21 permit from Florida. I haven't done the research. I
22 think it's valid here. But we certainly didn't charge him
23 with any allegations of --

24 THE COURT: And no witness is going to allude to
25 any sort of illegality?

1 MR. FREEMAN: No, I don't believe so.

2 THE COURT: Okay. All right. So I start out
3 looking at legal activity here, that is, gun ownership,
4 and so I'm looking at it from that perspective. Is this
5 something that is novel or un-introduced to the jury?

6 What I took a look at initially was voir dire,
7 and I was able to review my notes with regard to
8 Mr. St. George's voir dire on this gun ownership issue,
9 and he did voir dire at length with regard to how the jury
10 felt about gun ownership. When I took a look at notes, I
11 noted that he specifically asked jurors who owned guns,
12 who didn't own guns. The people raised their hands. He
13 talked to them, the non-gun owners, the gun owners, what
14 their issues were, whether or not they could be fair and
15 impartial if there is evidence that there is gun
16 ownership. He moved beyond that into whether or not
17 someone can defend themselves with guns. He went into
18 intoxication with guns. So guns were discussed at length.
19 The Second Amendment was discussed. And so in that
20 respect, there was -- and Mr. St. George had a great deal
21 of opportunity to explore the jurors' feelings with regard
22 to guns and had that information when he selected the
23 jury.

24 There were no challenges for cause based on
25 that. The challenge for cause that I could see was after

1 he asked people if they could be fair and impartial with
2 regard to the questions regarding the allegations of sex
3 assault, and there was an individual that said "I think,"
4 and then we moved on from there. Correct me if I'm wrong,
5 but that is what my notes reflect.

6 Okay. So the People say that the defendant,
7 yesterday and today -- that the elements of the crime
8 requires selection of a certain gun and that that is
9 something that the jury should be able to see. Three guns
10 were selected from the guns that were present in the home,
11 and that that's relevant, and I'm not going to reiterate
12 their information.

13 Okay. I don't have any testimony at this point
14 as to the lethality of specific weapons, and as such, I
15 can't make a ruling based on lethality. I'm not certain
16 that's going to come out. I'm not certain what's going to
17 happen there, but that is not the Court's question here.

18 So I'm looking at in the from a -- first, just
19 an evidential issue. And in taking a look, the Court
20 looked at any number of cases with self-defense and other
21 items, and what other items were admitted or what other
22 items were not admitted.

23 And I'm going cite specifically to Kaufman v.
24 People. This was a Supreme Court case, 202 P.3d 542. And
25 in that case, Justice Mullarkey was taking a look at the

1 other evidence. And there was no argument in this case
2 that this was part of the *res gestae* or the crime scene,
3 or anything like that. These were items that were
4 separate and apart. And so they looked at them under what
5 defendant alluded to is a 404(b) analysis, I think is what
6 he's talking about with the Court. And so there were a
7 significant number of issues they looked at in the case.
8 This involved a knife by the defendant in the case. So in
9 this case -- and the defendant was carrying a knife, and
10 the incident occurred at a different site, not at his
11 home.

12 Okay. So they looked at whether or not training
13 in knives should come in, a class on self-defense laws
14 should come in, reading materials in martial arts, a
15 newspaper drawing, the defendant's religious beliefs, and
16 a collection of knives. And so probably the closest item
17 in this case, it was knives, machete and brass knuckles,
18 and certainly there are illegalities associated,
19 potentially, with machete and brass knuckles, so that's
20 looked at a little differently than just knives, and some
21 knives can be illegal, depending, and the Court didn't
22 look at it in that way.

23 And what the Court did there say, just because
24 he collected knives didn't mean that he knew how to use
25 knives or was more experienced with the use of knives and

1 intended to cause serious bodily injury with knives. And
2 that was the argument of the People in the case. They
3 said it was someone who owns a bowling ball. Someone who
4 owns a bowling ball probably knows how to bowl, and
5 someone who owns knives probably knows how to use knives.
6 That was the argument.

7 The Court did distinguish in this case by saying
8 that none of these weapons were on his person at the time
9 of the accident, and none of these weapons were at the
10 scene. He had a pocketknife, as I recall, in his pocket.
11 So the fact -- and none of the knives were similar in any
12 way to the knife that he had, or at least -- now, I should
13 say that training with knives came in. So a number of
14 these things came in, a number of these things didn't come
15 in, as the Court picked their way through the analysis.

16 So when I looked at this, I thought the analyses
17 were helpful because the Court looked at it under sort of
18 a 404(b) analysis. This is what it was chosen to regard
19 it as. So I looked at this under 404(b), along with
20 relevance and along with prejudice outweighs -- albeit the
21 404 argument came up today.

22 In looking at this, this is somewhat different
23 than the Kaufman case in that there was nothing illegal
24 about any part of this. The Court really didn't deal with
25 the machete and brass knuckles. The Court dealt with the

1 collection of knives, which I'm assuming it wasn't illegal
2 in any way, bu by putting the machete and brass knuckles
3 away, there's nothing illegal about having guns in the
4 home, and that issue was explored with the jurors. And
5 certainly Mr. St. George had the information from the
6 jurors as to what they thought about possessing weapons,
7 using weapons, and, in fact, he went through each -- or
8 almost each juror, a number of jurors, as to owning guns,
9 and some of them said we have guns, we own guns, plural.

10 Then I'm looking at the selection of the
11 particular weapons, and there is some relevance in that
12 amongst the weapons in the home, certain weapons were
13 selected. I'm not sure how much that persuades the Court,
14 although certainly somebody selecting a particular weapon
15 does have some relevance to intent what specific intent,
16 et cetera.

17 What I am -- and what I was struck by was
18 Mr. St. George's designation of self-defense as a defense.
19 And he did -- he has told me now that he's going forward,
20 he did designate this as a defense, he the did talk to the
21 jury about use of a weapon, et cetera, and how you can use
22 weapons, even with intoxication, all of that. And some of
23 the questioning has been directed, certainly, towards the
24 idea of self-defense with unknown assailants, as to the
25 police officers.

1 So then I look at it in these terms, and I look
2 at it in this manner: These guns weren't in a storage
3 locker someplace away from the scene where, at that point
4 in time, the Court would say, no, these have no relevance
5 at all. These guns were away. They were in a storage
6 locker. The mere fact that he owned any number of guns
7 or, as Mr. St. George has told the Court, stores guns for
8 other people, in any case, these were not available to
9 him, and the mere fact that he owns guns means nothing.

10 In this case, though, we are in somewhat of a
11 different situation because three different weapons were
12 used in this case. Not one that Mr. St. George had, but
13 the allegation is that three different weapons were used
14 in the case, or carried or held by Mr. St. George that
15 night. So we are in a different type of situation. These
16 guns were in the home, and the home is part of what this
17 Court would characterize as the crime scene, whether it be
18 assault, attempted murder or self-defense. In any case,
19 it would be a crime scene, the home and outside of the
20 home, and I look at it in that respect.

21 I also took -- and so they are part of the *res*
22 *gestae* of the scene. Now, *res gestae* doesn't necessarily
23 come in, and I look at *res gestae* under 404 also. So I'm
24 looking at the use of deadly physical force, and I'm
25 assuming that this is what Mr. St. George is asking the

1 Court for, and in that, a defendant is legally authorized
2 to use deadly physical force upon another person without
3 first retreating if he used that deadly force in order to
4 defend himself. I don't hear a defense of others. I do
5 have a separate defense of property, and I'm going to
6 incorporate that in, but that requires the same or a
7 similar type of analysis. He used that deadly physical
8 force in order to defend himself from what he reasonably
9 believed to be the use or imminent use of unlawful
10 physical force by that other person, and he reasonably
11 believed a lesser degree of force was inadequate. And in
12 this case, we have guns used, so they're generally
13 construed as deadly force. He had a reasonable grounds to
14 believe, and did believe, that he was in imminent danger
15 of being killed or of receiving great bodily injury, and
16 he didn't -- and then there's he didn't provoke the use of
17 the unlawful physical force, he wasn't the original
18 aggressor, et cetera.

19 So I have these statements in here that -- in 1,
20 2 and 3, about the reasonable belief, reasonable belief,
21 reasonable belief, reasonable ground to belief, reasonably
22 believed and reasonably believed. So I can't divorce
23 Mr. St. George from his surroundings at that time.
24 Mr. St. George selected and chose to use three distinct
25 weapons amongst a number of weapons that were there. He

1 also, in this case, was in a situation and was in an
2 environment with, perhaps, I think it's seven other
3 weapons that weren't used.

4 Is that accurate?

5 MR. FREEMAN: I didn't count, but that sounds
6 right.

7 THE COURT: I have the Springfield, the Glock,
8 two AR-15s, the Beretta, the Smith and Wesson and the
9 .22 caliber revolver. I think that's seven.

10 In any case, he was in an environment then with
11 ten guns of various different types, and so it is
12 reasonable for the jury to have that information as to how
13 this was perceived, how the defense is perceived within
14 that environment, because certainly your environment and
15 what is available to you and the ability to defend
16 yourself becomes relevant with a self-defense defense.

17 Standards of reasonableness will be defined to
18 the jury. The jury will have to make a decision within
19 the context. The context here are that there were, I
20 believe, seven loaded weapons and three weapons that had
21 ammunition available and that Mr. St. George was in that
22 situation when these incidents occurred. So regarding
23 this, these are not illegal, so this is not like bringing
24 in the fact that, say, for instance, there was cocaine in
25 the house. Unless that somehow was connected to

1 Mr. St. George's self-induced intoxication defense, the
2 Court would not permit that. That is not what we're
3 talking about here. But we are talking about use of guns
4 to defend when the guns are at hand. They are not put
5 away. This is not a gun collection that's maybe up on the
6 wall and affixed to the wall and these guns can't be used.
7 These guns, as I understand, are readily available.

8 Are these gun in safes?

9 MR. FREEMAN: I think the rifles were in cases.

10 THE COURT: In a gun safe?

11 MR. FREEMAN: I don't believe any were in a
12 safe, Your Honor.

13 THE COURT: All right. So these guns are
14 readily available. What I'm hearing is the only barrier
15 might be a gun case. They are not mounted on a wall.
16 They are not a collection. These are ready and available
17 and could be used by the defendant. They are -- as I
18 said, they are not illegal. The issue of guns, ownership
19 of guns, more than one gun, concealed carry, all of that
20 was brought before the Court by Mr. St. George, so this
21 isn't a novel -- these -- or the guns, as I said, were
22 part of his environment when he chose the actions he
23 chose. He selected three from the guns that were
24 available.

25 So in this case, Mr. St. George has introduced

1 the subject of guns, the subject of the Second Amendment.
2 We've even had one or two jurors say they support the
3 Second Amendment. So the idea that someone possessing
4 guns would be a Second Amendment nut, the Second Amendment
5 is the Second Amendment to our Constitution, and, as such,
6 it is a right guaranteed to everyone. It was explored by
7 the defendant during his voir dire. These were part of
8 the environment. These were all available to the
9 defendant. He selected guns, which may go to the elements
10 of intent. I haven't heard all of the evidence in this
11 case, certainly the requirements that -- of what the
12 prosecution is required to produce as part of their proof,
13 and also are significant in a self-defense defense.

14 So I'm going overrule the objection, and I'll
15 permit the use -- or the fact that guns -- other guns were
16 found in the home. This can't be argued that, number one,
17 because defendant had guns, he is in some way some kind of
18 person that is going to just use every gun in the house
19 and attack, as the -- these can only be used for
20 appropriate purposes to prove the specific intent or to
21 prove whatever is brought out -- or disprove whatever is
22 brought out by the defendant in this case, and they're
23 relevant.

24 But, as you said, Mr. Freeman, no argument that
25 this person is a Second Amendment devotee and, as such, is

1 guilty because he has guns.

2 MR. FREEMAN: Understood, Judge. We won't make
3 any character arguments about the guns.

4 THE COURT: All right. So do we have our jurors
5 here?

6 THE BAILIFF: We do.

7 THE COURT: Are we ready with our witness?
8 So I've overruled the objection.

9 MR. MENGES: I'm just going to the restroom.

10 (Pause in the proceedings.)

11 THE COURT: Remember at the -- I think we might
12 have different copies mixed into the evidence and copies
13 going to the jury, right? Because Mr. St. George has
14 copies of photographs. Could we see that what is going to
15 the jury are just the copies that were actually admitted?

16 (Discussion off the record.)

17 THE COURT: So take a look at 127 in the
18 admitted documents. 127 is in. Mr. St. George put his
19 copy of 127 in. If we all agree -- let's go on the
20 record. If we all agree, can we put the DA's copy of 127
21 into evidence and give Mr. St. George his copy of 127 back
22 so he has a copy of it?

23 MR. FREEMAN: That's fine. We agree to that.

24 THE COURT: Okay. So that's what we're going to
25 do. We'll give Mr. St. George back his copy, and the

1 People's copy of 127 will go to the jury. Okay.

2 Everybody fine with this?

3 MR. FREEMAN: Yes, Your Honor.

4 THE COURT: Mr. St. George?

5 MR. ST. GEORGE: We're fine, Your Honor.

6 THE COURT: This is what you want?

7 MR. ST. GEORGE: Yes, Your Honor. Thank you.

8 THE COURT: Okay. All right. So we have our

9 witness on the stand. He remains sworn from yesterday.

10 We'll have the jury.

11 (Pause in the proceedings.)

12 (The jury entered the courtroom.)

13 THE COURT: Good morning, ladies and gentlemen.

14 Be seated. Everyone be seated, and we're ready to resume

15 with our witness on the stand.

16 AGENT DARREN MAURER,

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

18 being previously duly sworn, testified further as follows:

19 MR. FREEMAN: Thank you, Your Honor.

20 DIRECT EXAMINATION (CONTINUED)

21 BY MR. FREEMAN:

22 Q Agent Maurer, I think yesterday when we left
23 off, we were at the point when you were in the suspect
24 unit sort of searching for and documenting any firearms
25 that you located. Do you recall that?

1 A Yes.

2 Q And I think we had gotten to the point where you
3 were in the bedroom of the unit, and you were describing a
4 .22 rifle with a scope that was leaning up against the
5 wall sort of in the corner of the room.

6 A Yes.

7 Q And did you check that weapon to see if it was
8 loaded?

9 A I did.

10 Q And was it loaded?

11 A There was not a round in the chamber, but there
12 were seven rounds in the magazine that was inserted into
13 that rifle.

14 Q And for that type of weapon, what would you have
15 to do to put a round from the magazine into the chamber to
16 get it ready to fire?

17 A Pull back the bolt and let it slide forward to
18 pick up the round.

19 Q What was done with that weapon?

20 A The crime lab ultimately booked it in as
21 evidence.

22 Q And I think you have People's 7 in front of you,
23 which I think has been admitted.

24 MR. FREEMAN: People's 7, may we have that up?

25 (People's Exhibit 7 was published.)

1 Q (BY MR. FREEMAN) Taking a look at People's 7 up
2 on the big screen, is that the same as what's in front of
3 you?

4 A Yes, sir.

5 Q Can you describe, if you can, from where you're
6 seated the approximate area of that .22 rifle, where it
7 was located?

8 A If you look at the number 18, the entrance going
9 into the bedroom, going directly across that bedroom
10 against that wall.

11 Q Okay. So towards the top of the exhibit?

12 A Yes.

13 Q Okay. Did you also find one or more firearm in
14 a closet in the room?

15 A I did.

16 Q And can you describe what you found in the
17 closet?

18 A Well, there was a black case that had a 308
19 Springfield rifle in it.

20 Q You say "black case." Like a long, hard case?

21 A Yeah, a hard case to hold long guns.

22 Q And was that case locked or anything?

23 A It was closed, but you could open it with the
24 locking mechanisms, but it wasn't -- it didn't require a
25 key or a combination.

1 Q You say that was a 308 rifle?

2 A Yes.

3 Q Is that like a hunting-type rifle?

4 A Yes.

5 Q And was that loaded?

6 A No round in the chamber, but there was rounds in
7 the magazine.

8 Q And similar to the .22 rifle, what would you
9 have to have to get that weapon ready to fire?

10 A Cycle the gun to where the bullet face would
11 pick up a round in the magazine and insert it into the
12 chamber.

13 Q Also in that same black case, was there a Glock
14 handgun?

15 A There was.

16 Q And was that a Model 19?

17 A Yes.

18 Q And was that a 9-millimeter semi-automatic
19 handgun?

20 A Yes.

21 Q Was that weapon loaded?

22 A Again, not one in the chamber, but there was
23 rounds in the magazine.

24 Q And what would you have to do to make that
25 weapon ready to fire?

1 A Pull the slide back, let the slide go forward,
2 and have the bullet face pick up a round from the magazine
3 to put it into the chamber.

4 Q How long does that take?

5 A Split second.

6 Q From that same black case, was there an AR-15
7 sort of rifle?

8 A Yes.

9 Q What sort of weapon was that?

10 A It's a semi-automatic rifle that some people
11 refer to assault rifles.

12 Q And was that weapon loaded?

13 A There was not a round in the chamber, however,
14 there were some rounds in the magazine that were inserted
15 into the rifle.

16 Q And were there 31 rounds in the magazine?

17 A Yes.

18 Q And what would you have to do to make that
19 weapon ready to fire?

20 A Pull back the bolt and let the bolt slide
21 forward, picking up a round, put it in the magazine. And
22 insert it into the chamber.

23 Q Was there also a soft green long gun case in
24 that area?

25 A In the closet, yes.

1 Q And was there a weapon inside of that soft green
2 case?

3 A There was.

4 Q And what kind of weapon was that?

5 A Rock River AR-15.

6 Q AR-15, like the other assault-type rifle?

7 A Similar, yes.

8 Q Was that weapon loaded?

9 A If I remember correctly, there was no round in
10 the magazine -- I'm sorry, no round in the chamber. I
11 don't believe a magazine was inserted either.

12 Q Do you have your report with you?

13 A I do.

14 Q Would it refresh your memory to look at your
15 report?

16 A It would.

17 Q Why don't you go ahead and do that to make sure
18 it refreshes your memory.

19 A (Witness complied.) Okay.

20 MR. FREEMAN: Judge, may we have the lights back
21 on?

22 THE COURT: Yes.

23 MR. FREEMAN: Thank you.

24 Q (BY MR. FREEMAN) So in looking at your report,
25 does that refresh your memory as to whether that weapon

1 was loaded or not?

2 A No, it was not loaded.

3 Q So no round in the chamber, no magazine in the
4 magazine well?

5 A Correct.

6 Q Were there magazines for that weapon and
7 ammunition for that weapon in that area?

8 A Contained within that soft gun case, yes.

9 Q So in the same area where you found the gun, you
10 found ammo and a magazine, or one or more magazines?

11 A Yes.

12 Q Did you also find an older, probably more
13 decorative, .22 caliber revolver handgun?

14 A In the closet?

15 Q I think on your report, it says near the front
16 of a safe.

17 A Yes. It was also in the closet.

18 Q Okay. And was this weapon locked? Did you have
19 to do anything to access this weapon?

20 A No.

21 Q Was that .22 caliber revolver -- was that
22 loaded?

23 A No.

24 Q Did you also find a Beretta .22 caliber
25 semi-automatic handgun?

1 A Yes.

2 Q And was that in a lockbox?

3 A I described it as a lockbox. It was near the
4 safe, yes.

5 Q Was that box locked?

6 A No.

7 Q Was that weapon loaded?

8 A There was a round in the chamber and also rounds
9 in the magazine.

10 Q And did you also find a Smith and Wesson
11 9-millimeter semi-automatic handgun in that lockbox?

12 A Yes.

13 Q And was that weapon loaded?

14 A It had a round in the chamber as well as rounds
15 in the magazine.

16 Q And, lastly, did you find a Taurus brand, model
17 Curve, .380 semi-automatic handgun?

18 A Yes.

19 Q Where was that found?

20 A Above the safe in a basket with some socks.

21 Q And was that weapon in any sort of holster, or
22 anything like that?

23 A No.

24 Q Just in a basket of socks?

25 A It was in a basket of socks, yes.

1 Q Was that weapon loaded?

2 A It had a round in the chamber, as well as rounds
3 in the magazine.

4 Q Did you count how many rounds in the magazine?

5 A I did not.

6 Q Okay. And where was that -- that was in the
7 closet. Is that in the closet of the bedroom?

8 A Yes.

9 Q So were all of these firearms that you just
10 described found in the single bedroom of the residence,
11 except for the shotgun?

12 A Correct.

13 Q What was done with all of these firearms?

14 A I was there assisting the crime lab, so
15 they -- after I assisted make the weapons safe, they
16 photographed the scene and ended up booking them in as
17 evidence.

18 Q And what does that mean to make the weapons
19 safe?

20 A Take the bullets out of the gun.

21 Q Okay. So unload them?

22 A Unload them.

23 Q So once you did that, you turned those items
24 over to the crime lab, and they took care of the
25 collecting and the booking?

1 A Correct.

2 MR. FREEMAN: All right. That's all I've got.

3 Thank you.

4 THE COURT: Cross-examination?

5 MR. ST. GEORGE: I have no questions, Your

6 Honor.

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 was excused.)

12 MS. DECKER: The People call Adam Carr.

13 ADAM CARR,

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

15 being first duly sworn, testified as follows:

16 THE COURT: Have a seat, please.

17 THE WITNESS: (The witness complied.)

18 DIRECT EXAMINATION

19 BY MS. DECKER:

20 Q Good morning.

21 A Good morning.

22 Q Would you please introduce yourself to the jury,
23 and spell your last name.

24 A My name is Adam Carr, C-a-r-r.

25 Q And what do you do for work?

1 A I'm a bartender.

2 Q Where do you bartend?

3 A The Rusty Bucket, Wadsworth and Hampden.

4 Q Can you tell the jury the exact address of The
5 Rusty Bucket?

6 A 3355 South Wadsworth.

7 Q And if I showed you a picture of that area, do
8 you think you'd be able to recognize where, approximately,
9 it is?

10 A Absolutely.

11 Q Okay.

12 MS. DECKER: If we could publish People's
13 Exhibit 1 on the screen.

14 (People's Exhibit 1 was published.)

15 Q (BY MS. DECKER) And, Mr. Carr, if it would be
16 helpful for you to get down off the witness stand and
17 approach with that's pointer that's beneath the Judge, and
18 point to where The Rusty Bucket is on this map, if you can
19 find it.

20 A The Rusty Bucket is right here (indicated).

21 Q Is it where there's that yellow pin that says
22 Rusty Bucket?

23 A Yes, ma'am.

24 Q All right. And you can take your seat. Thank
25 you?

1 A (The witness complied.)

2 Q And for how long have you been working at The
3 Rusty Bucket?

4 A Six years, approximately.

5 Q And what's your typical shift?

6 A Usually Friday through Monday nights, 5:00 p.m.
7 until 2:00 p.m. -- or 2:00 a.m., sorry.

8 Q What time does The Rusty Bucket usually close?

9 A Usually closes at 2:00 a.m. Fridays and
10 Saturdays, and we've been closing at midnight from Sunday
11 through Thursday.

12 Q I'm going to talk to you about the evening of
13 July 31st of 2016. Do you remember working that evening
14 as a bartender?

15 A Yes, ma'am.

16 Q Was it a busy night that night, or pretty light?

17 A No, it was slow.

18 Q And was your shift from 5:00 p.m. to 11:30 that
19 night?

20 A It was supposed to be 5:00 to midnight, and I
21 ended up shutting it down a little bit early, around 11:00
22 that evening.

23 Q Do you remember a person named Eric St. George
24 coming into the bar?

25 A Yes.

1 Q Have you met Eric St. George before?

2 A Yes.

3 Q Describe for the jury when you had him before
4 and the nature of your contacts.

5 A He had come into the bar. He had -- first time
6 he came in, he moved from Florida, I found out, probably
7 about a year or so before, said that he tinted windows,
8 said that he, you know, just came here, and seemed like a,
9 you know, pretty good guy. Asked if we -- you know,
10 talked a little bit, being a bartender. He asked if we
11 could go play golf and hang out. And I said, yeah, we
12 could do that sometime. We just never got together to do
13 that. We never did anything outside the bar itself.

14 Q Would you say you had met him about four times
15 within that year that you'd met him?

16 A Approximately, yeah, four times he came in.

17 Q And do you remember him coming into the bar that
18 night?

19 A Yes.

20 Q And describe how he was acting when he came in.

21 A He wasn't his normal, chipper self. He seemed
22 that he was a little -- a little out of it. It seemed
23 like he was bummed about something. I asked him what
24 was going on. He just said he was having a bad day, and
25 it was his birthday. So I bought him a shot for his

1 birthday, and we just hung out for a little bit. It
2 was more or less just him and I at the bar that night,
3 so . . .

4 Q What time did he come in?

5 A I'd say approximately probably 9:45, 10 o'clock
6 that night.

7 Q And you said you bought him a shot. What kind
8 of shot did you buy him?

9 A Whiskey. I believe it was Jameson.

10 Q How long was he in the bar -- was he sitting at
11 the bar talking to you?

12 A Yes. Yes.

13 Q And for how long was he there?

14 A Maybe a little over an hour.

15 Q Was he on his phone when he was at the bar?

16 A Yes. He was on his phone constantly.

17 Q What was he doing on his phone? Could you see?

18 A Texting, Facebooking. I don't really know.

19 Q And did he ever ask you anything with regard to
20 being Facebook friends that night?

21 A Yes. Yeah, he asked me if I was on Facebook,
22 and we wound up friending on Facebook that evening.

23 Q And was that how you were able to learn his last
24 name of St. George, whereas before you had only known him
25 as Eric?

1 A Yes. I mean, I had seen his name, you know, his
2 last name on credit cards, but it just never hit me until
3 Facebook friends.

4 Q You mentioned that you bought him a shot of
5 whiskey, and you believe that to be Jameson. What else
6 did he drink while he was at the bar?

7 A He had two beers and another shot.

8 Q And what kind of beers, and what kind of shot?

9 A Bud Light and another Jameson, I believe.

10 Q What time would you say he left the bar?

11 A I shut it down around 11:00, and I think he left
12 probably about five minutes after -- five or ten minutes
13 after I locked the doors. So ten after 11:00.

14 Q Five to ten minutes after 11:00? Is that what
15 you're saying?

16 A Yeah.

17 Q And did you see where he went?

18 A No. He was just walking across the parking lot
19 back towards his house, as far as I knew.

20 Q So did you know where he lived, in what
21 direction?

22 A Yes.

23 Q And what direction from The Rusty Bucket?

24 A He would have been northwest.

25 Q And so did you see him get into a car, or was he

1 just on foot?

2 A He was just on foot.

3 Q Is he in the courtroom today?

4 A Yes.

5 Q And can you please identify something that he's
6 wearing and where he's sitting.

7 A Orange and blue tie, sitting right there
8 (indicated).

9 MS. DECKER: Your Honor, please let the record
10 reflect this witness has identified the defendant.

11 THE COURT: The record does reflect.

12 Q (BY MS. DECKER) You talked initially how he
13 seemed bummed about something, not his normal, chipper
14 self. Do you remember speaking with investigators about
15 this case and stating that he seemed distraught that
16 night?

17 A Yes.

18 Q And is that still true of what you remember?

19 A Yes, from what I remember.

20 Q Thank you.

21 MS. DECKER: Nothing further, Judge.

22 THE COURT: Cross-examination?

23 CROSS-EXAMINATION

24 BY MR. ST. GEORGE:

25 Q Mr. Carr, would you describe The Rusty Bucket as

1 like a friendly neighborhood bar?

2 A Absolutely.

3 Q And does your kitchen serve really tasty chicken
4 wings?

5 A Yes, they do.

6 Q Do they serve cold beer as well?

7 A Yes, sir.

8 Q And do I come in and have those things pretty
9 often?

10 A Fairly often.

11 Q And as a bartender, you have a sympathetic ear,
12 someone that someone could talk to?

13 A Yes, sir.

14 MR. ST. GEORGE: I have no further questions.
15 Thank you.

16 (Pause in the proceedings.)

17 REDIRECT EXAMINATION

18 BY MS. DECKER:

19 Q The defendant just asked you about having a
20 sympathetic ear, as a bartender. Did he tell you about
21 shooting at an escort that night?

22 A No, ma'am.

23 MS. DECKER: Nothing further.

24 THE COURT: Anything?

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

1 THE COURT: Are there any questions from the
2 jury?

3 (No verbal response.)

4 THE COURT: You may step down.

5 (The witness was excused.)

6 MR. FREEMAN: Judge, we'll call Janet Bal.

7 JANET BAL,

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

10 THE COURT: Have a seat, please.

11 THE WITNESS: (The witness complied.)

12 DIRECT EXAMINATION

13 BY MR. FREEMAN:

14 Q Good morning. Would you please state your full
15 name, and spell your last name for us.

16 A Janet Bal, B-a-l.

17 Q And, Ms. Bal, without telling us your date of
18 birth, can you tell us how old you are?

19 A 60.

20 Q I'm going to draw your attention back to
21 July 31st of 2016. Can you tell us where you were living
22 back then?

23 A At 181 -- 8119 West Eastman Place, Unit 6-206,
24 Lakewood.

25 Q And back on that date, about how long had you

1 been living that the address?

2 A Four years.

3 Q Did you live there by yourself or with anyone
4 else?

5 A By myself.

6 Q And that particular unit, was it a ground floor
7 unit, second floor unit?

8 A It's a second floor unit.

9 Q And is it Building 6?

10 A Yes.

11 MR. FREEMAN: If we could have People's 4 up,
12 please.

13 (People's Exhibit 4 was published.)

14 MR. FREEMAN: And if we could focus on the right
15 side.

16 Q (BY MR. FREEMAN) Ms. Bal, taking a look at
17 People's Exhibit 4, what's been identified as an aerial
18 photograph, I believe, of the area of the Windsor
19 Apartments where your building was located. Do you
20 recognize that as an aerial photograph of that area?

21 A Yes.

22 Q And that building in the far upper left-hand
23 corner has been identified as Building 7. Does that -- is
24 that accurate to you?

25 A Yes.

1 Q Do you see your building near Building 7?

2 A Yes. It's the one right across on the right.

3 Q So if north is towards the top and east is
4 towards the right, is your building directly east?

5 A Yes.

6 Q You said it's the second floor unit. Do you
7 have windows that look out of your unit to the outside?

8 A Yes.

9 Q And on what side of your units are those
10 windows?

11 A The west and the north side.

12 Q And what can you see, just generally speaking,
13 if you look out to the west?

14 A The Building 7 across the way.

15 Q Okay. And if you look out to the north, do you
16 see sort of that open space out there?

17 A Correct.

18 Q On that evening that we were talking about
19 July 31st of 2016, do you remember if you had any of those
20 windows open?

21 A Yes, I did.

22 Q And how is it that you remember they were open?

23 A It was a pretty warm day, and I don't normally
24 put the air on unless it's really hot. That, and if I
25 didn't have them closed, the windows would have been

1 broken from that night because I had pellets come in
2 through my bedroom window.

3 Q Okay. And we'll get to that a little bit.

4 MR. FREEMAN: Judge, may we have the lights back
5 on, please?

6 THE COURT: Yes.

7 MR. FREEMAN: Thank you.

8 Q (BY MR. FREEMAN) Do you remember what time you
9 got home that evening?

10 A I was home all day.

11 Q And did you stay inside your unit all day?

12 A Most of the day, yes.

13 Q Earlier in the evening, after about 9:00, in
14 between about 9:00 or 10:00, did you hear any commotion
15 outside that caught your attention?

16 A I heard what I thought was a car backfiring, so
17 I looked out the window in my bedroom, which faces the
18 west, and saw a car racing out of the unit and a gentleman
19 running between the two buildings.

20 Q Can you describe the car?

21 A I can't. I don't remember.

22 Q Which direction was it going?

23 A East.

24 MR. FREEMAN: Can we have People's 3.

25 (People's Exhibit 3 was published.)

1 Q (BY MR. FREEMAN) Taking a look at People's 3,
2 if that's been identified as Building 7, does that allow
3 you to describe where this vehicle was and which direction
4 it was going?

5 A The vehicle seemed to be parked right in front.
6 See where those cars are to the right, on the bottom?

7 Q That sort of parking area just above the
8 sticker?

9 A Yes. Correct.

10 Q Okay.

11 A That's where the car was parked, or that's where
12 it was coming out of, and then it backed up and just sped
13 out of the -- I mean, it really was going. She -- whoever
14 was in there was trying to get out of the complex fast.

15 Q What direction did the vehicle go?

16 A The vehicle went -- went east.

17 Q Went east, to the right?

18 A To the right.

19 Q Okay. And the person, you said, running between
20 the buildings, did you recognize them as somebody that you
21 know?

22 A I did not, no.

23 Q Back then, did you know one of your neighbors in
24 Building 7 by the name of Eric St. George?

25 A I did not.

1 Q You said you thought you heard a backfire. Are
2 you a person that's familiar with guns?

3 A No.

4 Q Was that unusual at this time of year, being
5 sort of late July, to hear fireworks and things like that?

6 A I mean, it caught my attention. It was very
7 loud, and it was not normal.

8 Q And did you call the police when you heard that?

9 A No, I didn't.

10 Q Because you thought it was a backfire?

11 A I just thought it was a backfire.

12 Q Do you know about what time this occurred?

13 A I honestly don't remember.

14 Q Was it dark outside?

15 A No, it was still light.

16 Q Still light. Okay. And later that evening, did
17 you hear or see something else that caught your attention?

18 A Yeah. It woke me up. A whole bunch of gunfire
19 going off right between the two buildings, and I just hit
20 the floor and went into the living room.

21 Q You said you were asleep. Do you know what time
22 you went to bed that night?

23 A About 10:30.

24 Q And do you know what time this was that you were
25 woken up?

1 A I think it was between 11:00 and 11:30.

2 Q Do you remember looking at a clock, or anything
3 like that?

4 A I don't.

5 Q So just sometime after you were asleep, you were
6 awakened?

7 A Right.

8 Q And your -- the room that you were sleeping in,
9 was that your bedroom?

10 A Correct.

11 Q What direction do those windows face out to?

12 A West.

13 Q And so you've got windows that face out to
14 that -- sort of where the garages are in --

15 A Yes.

16 Q -- between the buildings?

17 A Correct.

18 Q And I think you said those windows were open?

19 A Correct.

20 Q Were there screens on the windows?

21 A Correct.

22 Q And what -- can you describe the sounds that
23 woke your up?

24 A Just a lot of pop, pop, pop, and then I heard
25 something hit the side of the building. It sounded like

1 hail. And then I just hit the floor, and after that, I
2 don't remember.

3 Q Okay. And were you injured?

4 A No.

5 Q You described earlier that some pellets came
6 into your room?

7 A Correct.

8 Q How do you know that?

9 A Because the night after all this happened, I
10 went to bed, and I looked up and there were pellets stuck
11 in my ceiling in my bedroom.

12 Q Did you ever try to remove those or call the
13 police to come try to collect those?

14 A I called the police department, and then the
15 maintenance from the complex came out and took them out.

16 Q Okay. Did they fix your screen or replace your
17 scene?

18 A Not yet, no.

19 Q Okay.

20 A The pellets were small, so there's just little
21 holes in it.

22 Q Do you know how many came in?

23 A I think there were three holes in the screen.

24 Q Earlier, when you described the sounds, I think
25 you said "pop, pop, pop," were there three, or were you

1 just trying to describe the sound?

2 A I don't know how many there were. I was woken,
3 and then I just -- I knew it was gunfire, and that was it.

4 Q Okay. Did they sound like they came from the
5 same gun or different guns?

6 A They were different. They were different.

7 Q Okay. How did they sound different?

8 A Well, the pop, pop, and then you heard like a
9 blast. It was weird.

10 Q Okay. Have you ever been around -- so you're
11 not a gun person. Have you ever been around guns that are
12 being fired?

13 A No.

14 Q Can you tell us how many you heard of each
15 sound?

16 A I couldn't.

17 Q Can you tell us which sounds you heard first?

18 A No.

19 Q Let me just back up a little bit. The man that
20 you saw out your window earlier when you heard what you
21 thought was a backfire, you said he was running between
22 the buildings. What direction was he going?

23 A He was in front of Building 6, and he ran toward
24 Building 7, in front of that building.

25 Q And do you remember what that person was

1 wearing?

2 A Shorts or a bathing suit.

3 Q And did they have a shirt on?

4 A No.

5 Q Did they appear to have anything on their feet?

6 A No.

7 Q So you hear these -- you hear these pops and
8 booms, you're not sure how many of each, and you're not
9 sure which one happened first. Can you tell us how much
10 time elapsed between the first and the last? Was this
11 quick, or was this a long?

12 A No, it was -- it seemed pretty quick, maybe five
13 minutes, ten minutes, maybe.

14 Q Okay. I'm assuming you were not looking at your
15 watch, but was it -- did the sounds begin and end, at
16 least the ones right outside your window, fairly quickly?

17 A Yes.

18 Q And you said you hit the floor. So you didn't
19 look out the window immediately?

20 A No.

21 Q Did you -- did you hear voices outside your
22 window at or after the sounds stopped?

23 A The only voices I heard were later on in the
24 night where somebody was yelling you shot me, you shot me,
25 I need an ambulance, and that's the only thing I heard.

1 Q Now, at some point after the shots and the
2 pellets entered your bedroom, did you look out that
3 bedroom?

4 A After everything was quiet, I went back into the
5 bedroom and looked out the window, and I saw a female
6 police officer behind the black truck that was parked by
7 one of the units in Building 7.

8 Q And there appears to be a vehicle on the exhibit
9 up there that's been described as being in the same spot
10 as the black pickup truck was that night. Do you
11 recognize that as being the same spot?

12 A Yes.

13 Q And on which side of vehicle did you see this
14 female officer?

15 A She was on the south side.

16 Q What was she doing?

17 A She was just kneeling down behind the truck.

18 Q How could you tell she was a police officer?

19 A A uniform.

20 Q What did you see in her uniform that gave her
21 away?

22 A There was stuff around her waist, and she had a
23 gun in her hand.

24 Q And do you recall being interviewed by the
25 police in this case?

1 A Yes.

2 Q And, specifically, I believe it was Alan
3 Stephens from Arvada PD. Do you recall telling him that
4 you also saw her badge?

5 A No.

6 Q I have the report.

7 A I may have. I don't remember.

8 Q Have you seen the report that you wrote of your
9 statement?

10 A Yes.

11 Q When is the last time you saw it?

12 A Yesterday.

13 Q Did that refresh your recollection as to what
14 you told Agent Stephens?

15 A I may have seen the badge. She was moving
16 around, so I don't remember off the top of my head,
17 though.

18 Q Okay. So you've seen the report. Did you see
19 where it says that you say you saw the badge?

20 A Yes.

21 Q As you sit here now, you don't recall?

22 A I don't recall.

23 Q It's been a year and a half?

24 A Yes.

25 Q All right. At some point after you looked out

1 and saw this female police officer behind the truck, did
2 you see other people that you recognized as officers?

3 A When I was in the living room, I looked out of
4 the living room window which faces the park, and I saw an
5 officer there.

6 Q And what was he doing?

7 A He was just standing there.

8 Q How did you recognize that that was an officer?

9 A Well, he had a helmet on and body armor.

10 Q Body armor. Would you mind walking up to the
11 screen with that pointer right there and just pointing out
12 roughly where your bedroom window is located.

13 A Well, it's back here. My bedroom is here
14 (indicated).

15 Q Okay. So you're indicating roughly what I would
16 say is the northwest corner of that building?

17 A Right.

18 Q And where was the female officer?

19 A Right here.

20 Q You're indicating on the south side of that
21 vehicle.

22 You can go ahead and have a seat.

23 A (The witness complied.)

24 MR. FREEMAN: So, Your Honor, I'm going to have
25 the witness handed 278, 279 and 282. I think they've all

1 been admitted. I'm sorry. Again, 278, 279 and 282.

2 May we have 282 up, please.

3 (People's Exhibit 282 was published.)

4 Q (BY MR. FREEMAN) Ms. Bal, taking a look at 282
5 on that little sticker, that orange sticker, does that
6 appear to be the same as is up on the screen?

7 A Yes.

8 Q Do you recognize that, what is depicted in that
9 photo?

10 A Those are my bedroom windows.

11 Q Are those the windows you indicated were open?

12 A Yep.

13 Q And on which one of those windows did the
14 pellets come through?

15 A The right-hand side one.

16 Q So the one closest to the camera?

17 A Right.

18 MR. FREEMAN: And if we could have 278 up,
19 please.

20 (People's Exhibit 278 was published.)

21 Q (BY MR. FREEMAN) Is that those same windows
22 just from a different angle?

23 A Correct.

24 Q And you're saying the window on the right is the
25 one at which the pellets entered?

1 A Correct.

2 MR. FREEMAN: All right. Thank you. I don't
3 have anything else.

4 THE COURT: All right. Cross-examination?

5 CROSS-EXAMINATION

6 BY MR. ST. GEORGE:

7 Q Ms. Bal, you said that earlier in the evening,
8 you had heard a loud noise in the parking lot.

9 A Yes.

10 Q And you believed it to be a car backfiring at
11 the time?

12 A Correct.

13 Q And it was one single loud noise?

14 A That's all I heard.

15 Q You did not hear two loud noises?

16 A (The witness shook head.)

17 Q Prior to all that ruckus down, did you ever hear
18 any other sounds? Did you ever hear anyone talking?

19 A That day?

20 Q Yeah -- no, I'm sorry. That's night --

21 A Night.

22 Q -- leading up to when you heard all that
23 gunfire.

24 A Okay. No, huh-uh.

25 Q You never heard anyone talking?

1 A No.

2 Q Did you ever hear anyone shouting?

3 A No.

4 Q Did you ever hear anything along the lines of
5 Lakewood Police?

6 A No.

7 Q You didn't hear any sounds like that?

8 A No.

9 Q Drop your weapon?

10 A No.

11 Q Did you ever hear any like sirens or anything
12 else that would indicate that there were police in the
13 area?

14 A No, because I -- after -- after I hit the floor
15 and went into the living room, I called 911, and they said
16 the police were already on scene, so I had no idea they
17 were even there.

18 Q Okay. So you called 911 because you didn't know
19 they were cops?

20 A Correct.

21 Q When you were looking down, you said you saw a
22 female officer behind a truck. Did you immediately know
23 that was a police officer?

24 A Yes.

25 Q Going back to -- you mentioned you had

1 given -- you had spoken to an interviewer. Do you
2 remember telling that person, on first glance, that you
3 didn't know that that was a police officer?

4 A No.

5 Q If I read you a portion of it, would you
6 recognize your words?

7 A I might.

8 MR. FREEMAN: Judge, I'm going to object to him
9 reading from a report. It's hearsay.

10 THE COURT: Okay.

11 MR. MENGES: It's impeachment.

12 MR. ST. GEORGE: It's impeachment. Thanks.

13 THE COURT: So you can ask her if she had said
14 this before, and if you want to have her draw her
15 attention to something, you can do that by handing it to
16 the bailiff.

17 MR. ST. GEORGE: Okay.

18 (Pause in the proceedings.)

19 MR. FREEMAN: Judge, if I could have which
20 report counsel is referring to.

21 THE COURT: Mr. St. George?

22 MR. ST. GEORGE: This would be the interview
23 that she gave with, I believe, Alan Stephens.

24 MR. FREEMAN: Stephens?

25 MR. ST. GEORGE: Yes. And you would have to go

1 to the transcript of the audio recording. I believe he
2 was carrying a recording device.

3 THE COURT: Okay. But just the interview with
4 Mr. Stephens. Do you have a Bates number, or something
5 like that? Do you know where this is?

6 MR. ST. GEORGE: I think we have the audio for
7 sure, Your Honor.

8 THE COURT: I'm not concerned about the audio.
9 I'm just concerned about the report.

10 Do the People know what this is?

11 MR. FREEMAN: I've heard the audio, yes, Judge.

12 THE COURT: Okay. Go ahead.

13 Q (BY MR. ST. GEORGE) So that interview -- that
14 interviewer, he asked you, Okay. How did you know they
15 were cops? Do you remember him asking that question?

16 A It's a long time ago, and that was a very
17 upsetting night, so . . .

18 Q I understand. Your answer to that question,
19 Well, at first I didn't. She was standing -- sitting
20 behind the truck over there with a gun drawn, and when she
21 turned, I thought I saw a badge or something.

22 A Okay.

23 Q Does that sound possibly familiar?

24 A Yes.

25 Q It does?

1 MR. FREEMAN: Judge, objection. Motion to
2 strike counsel's commentary on the witness's testimony.

3 THE COURT: Right. Let's just ask a question
4 and receive an answer, please.

5 MR. ST. GEORGE: Absolutely, Your Honor.

6 Q (BY MR. ST. GEORGE) You said that there were
7 pellets that came inside your window, and that window
8 had -- it was a single-hung sash, so there's a bottom
9 piece that slides up, and there's a top piece?

10 A Yes.

11 Q And that top piece was not broken?

12 A No.

13 MR. ST. GEORGE: I have nothing further. Thank
14 you.

15 THE COURT: Redirect?

16 REDIRECT EXAMINATION

17 BY MR. FREEMAN:

18 Q Just a couple more questions, Ms. Bal. You said
19 that you called 911, and you were informed by the
20 dispatcher that police were on scene?

21 A Yes.

22 Q And did you believe them?

23 A Yes.

24 Q So at that point, you were confident that police
25 were there because you had been told police were outside?

1 A Well, as soon as I got off the phone is when I
2 looked out the window to the back of the apartment and saw
3 the officer there.

4 Q So you were told police were there. You also
5 looked out your window and recognized police based upon
6 their uniforms, badges, guns, all those things?

7 A Correct.

8 Q And it was light enough to see those people?

9 A Yes.

10 Q He asked you if you were -- if you immediately
11 recognized the female as a cop, and you said yes. Were
12 you sober that night?

13 A Yes.

14 MR. FREEMAN: Thank you.

15 THE COURT: Recross?

16 RE CROSS-EXAMINATION

17 BY MR. ST. GEORGE:

18 Q And, Ms. Bal, when you looked out your window
19 after you had called 911, did you see multiple officers
20 out there?

21 A Just one.

22 Q Just the one.

23 MR. ST. GEORGE: Okay. No more questions.

24 THE COURT: Does anyone on the jury have a
25 question for this witness?

1 (No verbal response.)

2 THE COURT: You may step down.

3 (The witness was excused.)

4 THE COURT: And we're calling?

5 MR. FREEMAN: Victoria Parker. I'm sorry,

6 Judge.

7 VICTORIA PARKER,
8 having been called as a witness on behalf of the People,
9 being first duly sworn, testified as follows:

10 THE COURT: Have a seat, please.

11 THE WITNESS: (The witness complied.)

12 DIRECT EXAMINATION

13 BY MR. FREEMAN:

14 Q Good morning. It's still morning. Would you
15 please state your full name, and spell it for us.

16 A Victoria Parker, P-a-r-k-e-r.

17 Q Ms. Parker, how are you employed?

18 A I am employed by the Lakewood Police Department.

19 Q And what do you do for Lakewood PD?

20 A I'm a senior crime scene analyst.

21 Q And as a senior crime scene analyst, are you a
22 peace officer?

23 A I am not.

24 Q So you're a civilian employee?

25 A That is correct.

1 Q You don't carry a gun? You don't arrest people?

2 A Correct.

3 Q Can you briefly describe what your duties are as
4 a senior crime scene analyst.

5 A I am tasked with responding to major crime
6 scenes to document, identify and preserve physical
7 evidence, called upon to testify, provide expert
8 testimony. I do training for my department for the
9 civilians and sworn crime scene investigators. That's
10 basically it.

11 Q How long have you been a crime scene analyst?

12 A I've been employed with the Lakewood Police
13 Department for nine years. I began as a crime scene
14 analyst at that time. I was promoted to a senior crime
15 scene analyst six years ago, and prior to that, I worked
16 for the Albuquerque Police Department for four and a half
17 years.

18 Q Can you briefly describe any formal education
19 that you have that qualifies you for your job.

20 A I have a bachelor's degree in forensic science
21 and master's degree in forensic science.

22 Q Can you describe your experience as a crime
23 scene analyst, how many crime scenes or how many times
24 you've testified, if you have any idea.

25 A I've -- I have personally investigated over

1 3,000 violent crimes and 2,000 property crimes in my
2 career.

3 Q And I'm assuming you've testified many times as
4 well?

5 A Yes. I've testified several times as a lay
6 witness and approximately five times as an expert.

7 Q And what areas of expertise have you been
8 allowed to testify?

9 A I have been qualified as an expert in bloodstain
10 pattern analysis, crime scene reconstruction, crime scene
11 analysis.

12 Q And do you hold any certifications relevant to
13 your job?

14 A Yes. I am certified by the International
15 Association for Identification at the senior level of
16 crime scene analysis.

17 Q I want to draw your attention back to the early
18 morning hours of August 1st of 2016, at about 1:30 a.m.
19 Did you get a call at home to assist with the processing
20 and documentation of a crime scene?

21 A Yes, I did.

22 Q And were you asked -- or were you informed that
23 that crime scene was at 8139 West Eastman Place, in the
24 City of Lakewood?

25 A Yes.

1 Q And where did you go first once you got that
2 call and that request?

3 A I responded directly to Eastman Place.

4 Q And there did you meet with Sergeant Muller,
5 Sergeant Fahlsing and Detective Marquez?

6 A Yes, that's correct.

7 Q And without telling us what they said, did they
8 give you a briefing of at least the information that they
9 had at that point about what had occurred prior to your
10 arrival?

11 A Yes, they did.

12 Q And based on that briefing, did you sort of make
13 a determination about what to do first?

14 A Yes.

15 Q And what did you do first?

16 A Primarily I requested the assistance of my
17 coworkers to respond to the scene, and then I was directed
18 to the station to assist with the processing of officers
19 involved.

20 THE COURT: Mr. Freeman, before we go any
21 further, are we going to have a qualification?

22 MR. FREEMAN: Yeah. I'll offer her as an expert
23 in crime scene analysis, Judge.

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

25 THE COURT: Ladies and gentlemen, this witness

1 has been qualified as an expert in the area of crime scene
2 analysis.

3 Q (BY MR. FREEMAN) And what was the purpose for
4 you going to the station?

5 A I was directly requested to process Agent
6 Trimmer and Sergeant Maines.

7 Q Let me back up a little bit. As part of the
8 information that you were given in the briefing by
9 Sergeant Muller, Falsing and Detective Marquez, was it
10 indicated to you that Agent Trimmer had fired her weapon
11 during the incident?

12 A Yes.

13 Q And did that cause certain protocols to be put
14 into place?

15 A Yes.

16 Q And is one of those protocols known as the CIRT
17 process, Critical Incident Response Team?

18 A That is correct, yes.

19 Q And did that fact change what you did or how you
20 did it?

21 A Not necessarily, no.

22 Q You said you went to the station to process
23 Agent Trimmer and Sergeant Maines. What does that mean?

24 A The process during an officer-involved shooting,
25 when an officer discharges their weapon on duty, is to

1 process their firearms and to document their condition, to
2 show what type of clothing they're wearing, if they're a
3 uniformed police officer, undercover or a detective, and
4 to account for any and all spent casings that could be on
5 scene, and correlate our crime scene with the statements
6 made by our agents involved.

7 Q And why is it important to document what they're
8 wearing and their appearance?

9 A Well, mainly to show what they're wearing, if
10 they're a sworn law enforcement agent who's on patrol at
11 the time, to show that they're wearing their full duty
12 outfit. Also, to document any injuries if they've become
13 injured in the exchange. If -- in this case, had one of
14 our officers been injured, we would have responded to the
15 hospital to do the processing there. In this case, there
16 were no injuries, but we document the condition
17 nonetheless to show the presence, or lack thereof, of
18 injuries. If they were a detective, we would document
19 what condition they were in, just to correlate any witness
20 statements to that clothing item.

21 MR. FREEMAN: And if we could have People's 11
22 up, please.

23 (People's Exhibit 11 was published.)

24 Q (BY MR. FREEMAN) Take a look at 11. Is this a
25 photograph of Agent Trimmer that you took that morning?

1 A Yes, it is.

2 Q And the other photographs, I think, that were
3 admitted, a side view of her and from the back, are those
4 all photographs that you took?

5 A Yes, they are.

6 MR. FREEMAN: And if we may have 22 up, please.

7 (People's Exhibit 22 was published.)

8 Q (BY MR. FREEMAN) Do you recognize 22 as a
9 photograph of Sergeant Maines that you took as well?

10 A Yes, I do.

11 Q And same question. We've seen pictures, I
12 think, of side views of him, and the back. Did you take
13 all those?

14 A Yes, I did.

15 Q Now, you talked about documenting their weapons.
16 Why is that important? Why do you do that?

17 A Well, as a crime scene investigator, it's
18 important for me to understand the information available
19 regarding the case. It's important for me to know how
20 many casings I'm looking for, how many impacts I'm looking
21 for, and what the condition of those weapons are. So we
22 take photographs, and we document those weapons so that we
23 know if anything is missing and if there is a correlation
24 on scene to those missing items.

25 Q And is it your experience that at times, if you

1 have an expended casing or an expended bullet and your
2 have a suspected weapon, that not you but somebody from a
3 different lab might be able to compare those and determine
4 if it came from that weapon?

5 A Yes.

6 Q So is that important, as well, to have the
7 particular weapon that was believed to have been fired for
8 comparison to any later projectiles or casings that are
9 found at the scene?

10 A Yes.

11 Q And in processing Agent Trimmer's weapon, I
12 think I asked you earlier, that you had some information
13 in briefing that she had actually fired her weapon?

14 A That is correct, yes.

15 Q And did you do anything to document the number
16 of live rounds that she had left both in her weapon and on
17 her belt?

18 A Yes, I did.

19 Q And I think we had an exhibit on that that was
20 admitted. Let me find it.

21 MR. FREEMAN: If we could have 16 up, please.

22 (People's Exhibit 16 was published.)

23 Q (BY MR. FREEMAN) I think this has been
24 identified by her as a photograph of her weapon and the
25 magazine from her weapon. Do you recognize this as a

1 photograph you took?

2 A Yes, it is.

3 Q And it looks like there's a magazine there with
4 at least one round coming out the top, and then there's a
5 loose round. Was that a round that was in the chamber of
6 that weapon?

7 A Yes. As you're viewing --

8 THE COURT: And wait one second. Just to
9 clarify, has 16 been admitted?

10 THE REPORTER: Yes.

11 THE COURT: Okay. Let's continue. I'm sorry.

12 A As you're viewing the photograph, the live round
13 of ammunition that is placed on the paper directly above
14 the magazine, that live round of ammunition came from the
15 chamber of this weapon. The magazine below that live
16 round of ammunition is the magazine that was seated within
17 the weapon.

18 Q (BY MR. FREEMAN) And just for folks who might
19 not be familiar with a semi-automatic handgun, that
20 magazine goes in the handle part?

21 A Yes, that is correct.

22 MR. FREEMAN: And if we could have 17 up,
23 please.

24 (People's Exhibit 17 was published.)

25 Q (BY MR. FREEMAN) Is 17 a photograph of the live

1 rounds from that magazine from the previous picture?

2 A Yes, that's correct.

3 Q Plus, the one that's sitting there standing up
4 at the top, is that the one from the chamber?

5 A That's correct.

6 Q Do you recall how many rounds that was, without
7 having to count, real quick?

8 A Yes. Actually, the weapon that was -- that you
9 saw in the previous photograph was loaded with one live
10 round of ammunition and a full magazine of a capacity of
11 17 live rounds.

12 Q So that weapon had the ability, at least at the
13 time that you inspected, to fire 18 rounds?

14 A That is correct.

15 Q 17 in the mag, one in the chamber?

16 A That is correct.

17 MR. FREEMAN: If we could have 18 up, please.

18 (People's Exhibit 18 was published.)

19 Q (BY MR. FREEMAN) And I believe 18 was
20 identified by Agent Trimmer as the weapon and the two
21 spare magazines?

22 A That is correct.

23 Q And is this a picture that you took as well?

24 A Yes, it is.

25 Q Did you count the rounds in the spare magazine?

1 A Yes.

2 MR. FREEMAN: And if we could have 20 up,
3 please.

4 (People's Exhibit 20 was published.)

5 Q (BY MR. FREEMAN) Do you recognize 20 as a
6 photograph of one of those spare magazines?

7 A Yes.

8 Q And did you count the rounds that were remaining
9 in this magazine?

10 A Yes.

11 Q Is this a 17-round capacity mag as well?

12 A Yes.

13 Q Can you tell by looking at this picture how many
14 live rounds were still in that magazine?

15 A Yes, you can.

16 Q How do you tell?

17 A There are viewing windows along the side. You
18 see the little silver dots. They are appear empty. The
19 bottom portion of it appears empty, remain -- with the 14
20 rounds. If you get closer into the photograph, you can
21 see the chambers are actually numbered 1 through 17.

22 Q It looks like on the left column, the bottom two
23 are empty, and then on the right column, the bottom one is
24 empty. Is that what we're looking at?

25 A Yes.

1 MR. FREEMAN: And if we could have 21 up,
2 please.

3 (People's Exhibit 21 was published.)

4 Q (BY MR. FREEMAN) Do you recognize 21 as a
5 photograph of those rounds now taken out of that magazine?

6 A Yes.

7 Q And there were 14?

8 A That is correct, yes.

9 Q And the other spare magazine that she had, was
10 that fully loaded with 17 rounds?

11 A Yes, it was.

12 Q And did you also inspect Sergeant Maines'
13 firearm?

14 A Yes, I did.

15 Q And during your briefing, did you ever get an
16 indication from anyone that he had fired at any time
17 during the incident?

18 A I was told no.

19 Q And in documenting his weapon and his magazines,
20 was there any indication that he had fired or was missing
21 any rounds?

22 A Absolutely not.

23 Q So was his weapon loaded with a magazine with
24 17, plus one in the chamber?

25 A Yes, it was.

1 Q And then two spare magazines of fully loaded 17
2 rounds?

3 A That is correct, yes.

4 Q So after -- after you documented their
5 appearance and their weapons, was it part of your job to
6 interview them?

7 A No.

8 Q That's somebody else's role?

9 A That is correct.

10 Q What did you do after that?

11 A I responded back to Eastman Place to begin
12 processing.

13 Q You're informed, I'm guessing, that you had a
14 potential crime scene both outdoors and indoors?

15 A That is correct.

16 Q What did you do first?

17 A We began with the outdoor portion of the crime
18 scene, as we did not have a search warrant for the
19 interior portion.

20 Q How do you go about processing the outside?
21 What do you do first?

22 A The first thing that we do are overall
23 photographs of the condition of the scene. We do a
24 preliminary search, walk through, make sure we understand
25 the scope of what we're looking at. We photograph

1 everything. We use what is called a FARO 3D scanner that
2 will take measurements, precise measurements, of the
3 surroundings of our scene. We then identify items of
4 evidence for collection with evidence placards or
5 stickers, and we mark those items so that that FARO
6 scanner can see those items more precisely with the laser.

7 Q So you say "we." Who were you working with at
8 this point?

9 A My entire team was on scene, so it was me, my
10 supervisor Pat Bohan, Crime Scene Analyst Amy Laabs, Crime
11 Scene Analyst Julia Rossi and Senior Crime Scene Analyst
12 Sheri Shimamoto.

13 Q And was Detective Tim Gideon from the Arvada PD
14 there as well?

15 A Yes, he was.

16 Q Are you doing anything to make sure that you
17 don't accidentally step on evidence, kick evidence,
18 contaminate evidence, with your own footprints,
19 fingerprints, DNA?

20 A Yes. We use -- we are also prepared for those
21 situations. We wear glove and booties where necessary.

22 Q Is it dark when you get to the scene?

23 A Yes, it is.

24 Q Are you using anything to illuminate the scene
25 so you can find stuff?

1 A Yes. We use flashlights and lighting.

2 Q What sorts of additional lighting besides
3 flashlight do you have?

4 A We have a set of exterior lights that we use,
5 primarily when we're use the FARO scanner.

6 Q And are the police in control of this scene at
7 this point?

8 A Yes.

9 Q Is it sort of taped off with police tape?

10 A Yes. And barricaded with their vehicles.

11 Q And is anybody that's not law enforcement being
12 allowed in or out of the scene?

13 A No. I believe in the early morning hours, we
14 did allow a few people to leave for work, but they were
15 escorted through the scene with officers.

16 Q You mentioned the FARO scanner a couple of
17 times. Can you explain a little bit more about what kind
18 of tool that is and how you use it?

19 A Yes. The FARO 3D scanner is a laser scanner.
20 It rotates in a 360-degree, up and down and around. It
21 collects precise measurements of all things surrounding it
22 into a cloud-point data. We then upload that into
23 software to create a three-dimensional diagram, accurate
24 representation of the area in which we're searching.

25 Q And you mentioned putting placards in the scene,

1 and then the FARO kind of measures those as well. What
2 are placards? What are they used for?

3 A The tent black cards you'll see in the
4 photographs coming up. They are large yellow or white
5 markers. When you're looking at a photograph or when the
6 FARO scanner is scanning, there's just a larger way to
7 draw your eye into an area of interest. They're usually
8 numbered 1 through a hundred or A through Z, depending on
9 which type of item we're marking.

10 Q With a numbered placards, are you putting them
11 down in the crime scene to try to approximate or determine
12 an order in which items have been deposited on the scene,
13 or is it just in the order of the items as you find them,
14 or is there a particular order to it?

15 A The order is just the order that we find it.
16 It's in no way a representation in which they were
17 deposited in the scene.

18 Q And just going back to the FARO scanner, once
19 that is used to sort of digitally scan the scene and, I
20 think you said, get exact measurements, what's done with
21 all that data?

22 A It comes out at raw data. We then put it into a
23 program called SCENE. And SCENE creates a viewable
24 three-dimensional diagram of the area incorporating all of
25 that raw material, including photographs.

1 Q And from that raw FARO data, are you able to
2 make diagrams, photographs, even videos of a crime scene?

3 A Yes.

4 Q So you described walking through the scene,
5 taking overall photographs, using the FARO. What did you
6 do next?

7 A Once we're done with all of the documentation of
8 all of the area, we do a secondary search to look for
9 anything we may have over looked. Anything that is found
10 after the preliminary, we put additional placards down and
11 rescan and rephotograph again. Then we begin evidence
12 collection.

13 Q And describe that evidence collection part.

14 A We -- generally we package items separately. In
15 this case, I collected the majority of the evidence. Some
16 of my coworkers helped with some of the other evidence
17 collection. On the roof of 8119 in particular, Officer
18 Gideon and my supervisor got onto the roof and collected
19 the pellets there. But generally we work in a team. Two
20 of us will peel off, one of us with the camera, one of us
21 with the evidence packaging. We'll take some close-up
22 photographs like what you saw of the guns in the previous
23 exhibits. We'll take additional photographs, and then we
24 package those items and bring them back to the lab to seal
25 and submit to our evidence unit.

1 Q I'm going to have you handed People's 6. Do you
2 recognize People's 6?

3 A I do.

4 Q And what is People's 6?

5 A This is a bird's-eye-view diagram that I created
6 of the exterior crime scene.

7 Q And is that the area to the east of the building
8 in which the suspect unit was located?

9 A That is correct.

10 Q And it appears that sprinkled throughout the
11 scenes, there's various numbers. What do those correspond
12 to?

13 A The numbers on the diagram that I'm looking at
14 correspond to the tent evidence placards that I mentioned
15 earlier in my testimony.

16 Q And then I think on the left side, there's sort
17 of what I could call a legend corresponding with those
18 numbers. Is that something that you created?

19 A Yes, it is.

20 Q And does that diagram accurately depict the
21 locations of those placards and what is next to each
22 placard?

23 A Yes.

24 MR. FREEMAN: Judge, I would move People's 6
25 into evidence.

1 THE COURT: Any objection?

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

3 THE COURT: 6 is admitted.

4 (People's Exhibit 6 was admitted into evidence.)

5 MR. FREEMAN: And may we publish it?

6 THE COURT: You may.

7 (People's Exhibit 6 was published.)

8 MR. FREEMAN: Your Honor, may I borrow the
9 Court's laser pointer?

10 THE BAILIFF: Yes.

11 THE COURT: Mr. Freeman, be careful. It tends
12 to reflect --

13 MR. FREEMAN: Yeah, I know.

14 Q (BY MR. FREEMAN) So I know that might be a
15 little small, and might be a little hard to read, but
16 we're going to try to go through it, and with the
17 photographs as well. So if I you could just describe for
18 us the scene as you worked your way through it. Where did
19 you start?

20 A We started in the driveway area between
21 Buildings 8139 and 8119. On the diagram displayed on the
22 screen, you'll see two large boxes that have the numbers
23 8139 and 8119 written within them. Those are just a box
24 to represent that those are homes there. Those buildings
25 were not in that configuration, so don't be confused by

1 the shape. That was just to represent a building and a
2 building.

3 And then you can see right next to 8139 is a
4 vehicle that is a black pickup truck, and then there are
5 green areas along the top of the screen as you view it.
6 That is the back side of Buildings 8139 and 8119, which
7 were enclosed by a metal fence which opened into an
8 additional green space. So we referred to that area as
9 the back side of the buildings. And then there's two
10 smaller squares of green space near the center of your
11 screen. Those are small patches of grass with trees. And
12 then there's a street near the bottom of your diagram
13 there. You can see one evidence number in the center of
14 that, and then there are some parking spaces directly at
15 the bottom of your screen. So that would be the opposite
16 side of the area where the crime scene we were -- where we
17 were focused.

18 Q So down here, these are the parking spaces?

19 A That is correct.

20 Q And this area here in the middle, is that
21 asphalt?

22 A Yes.

23 Q And are the driveways where the vehicle is
24 parked on opposite sides, are those concrete?

25 A That is correct, yes.

1 Q Okay. I'm going to work from the bottom up
2 through the top with the photographs sort of in a counter-
3 clockwise motion.

4 A Okay.

5 Q So that first one down here, I think you sort of
6 described it, is that Number 27?

7 A That is correct, yes.

8 Q And do you recall what Number 27 was?

9 A Number 27 is a spent .380 Hornady casing.

10 Q And you say "Hornady." Is that that brand?

11 A That is correct, yes.

12 Q That's the manufacturer of that ammunition?

13 A Correct.

14 Q And just so we're clear in our terminology, what
15 do you mean by spent casing?

16 A The spent casing is the bottom portion of a live
17 round of ammunition which is ejected during the firing of
18 a weapon.

19 Q And how could you tell that this was a Hornady
20 brand .380 spent casing?

21 A The information for most ammunition is imprinted
22 in the seat of the casing. This particular information is
23 inscribed on the bottom of this casing.

24 Q And if I could have the bailiff hand you 198
25 through 202. In looking at those photographs, do they

1 depict an area where Placard Number 27 was located?

2 A Yes, they do.

3 MR. FREEMAN: And, Judge, at this point I would
4 move 198 to 202 into evidence.

5 MR. ST. GEORGE: I have no objection, Your
6 Honor.

7 THE COURT: 198 through 202 are admitted.

8 (People's Exhibit 198 through 202 were admitted
9 into evidence.)

10 MR. FREEMAN: And may we publish?

11 THE COURT: Yes.

12 MR. FREEMAN: So if we could have 198 up,
13 please.

14 (People's Exhibit 198 was published.)

15 Q (BY MR. FREEMAN) And it's a little bit dark,
16 Ms. Parker. Looking at that placard here, you can't
17 really see it, but is that Placard 27?

18 A Yes, it is.

19 MR. FREEMAN: And if we could go back to the
20 previous exhibit, People's 6.

21 (People's Exhibit 6 was published.)

22 Q (BY MR. FREEMAN) Is that placard right there?

23 A Yes, it is.

24 Q Just to the north of that westernmost parking
25 space?

1 A Correct. Yes.

2 MR. FREEMAN: And if we could have 27 up,
3 please. I'm sorry, 199 up, please.

4 (People's Exhibit 199 was published.)

5 Q (BY MR. FREEMAN) Is that a photograph of the
6 placard itself?

7 A Yes, it is.

8 Q And is the spent casing underneath it?

9 A Yes, it is.

10 MR. FREEMAN: And if we could have 200, please.

11 (People's Exhibit 200 was published.)

12 Q (BY MR. FREEMAN) It looks like there's
13 something silver underneath it. Is that the casing?

14 A Yes, it is.

15 MR. FREEMAN: And may we have 201 up, please.

16 (People's Exhibit 201 was published.)

17 Q (BY MR. FREEMAN) Is that a better shot of that
18 casing?

19 A Yes.

20 MR. FREEMAN: And may we have 202 up, please.

21 (People's Exhibit 202 was published.)

22 Q (BY MR. FREEMAN) What are we looking at in
23 People's 202?

24 A This is base of that casing. You can see the
25 writing on the bottom that's branding and labeling the

1 caliber of that weapon.

2 Q So does it say Hornady, H-o-r-n-a-d-y? That's
3 the manufacturer. And does it say .380 auto?

4 A Yes.

5 Q That's the caliber of ammunition?

6 A Correct.

7 Q And it looks like right in the middle, just
8 slightly up and to the left of the middle, there's sort of
9 dent. Do you see that?

10 A Yes.

11 Q Do you know what that means?

12 A That is a firing pin mark.

13 Q And is that further indication this is an
14 expended casing?

15 A That is correct.

16 Q Going back, if we may, to 201.

17 (People's Exhibit 201 was published.)

18 Q (BY MR. FREEMAN) Do you recall if this casing
19 appeared to be damaged at all when you collected it?

20 A Yes, it was damaged.

21 Q And what sort of damage did it have?

22 A You can see in this photograph that the body of
23 the casing does not look completely cylindrical. It
24 appears to have been squished by something.

25 Q And what would that indicate to you?

1 A It was either stepped on or driven over.

2 Q And in your experience, is this common or
3 uncommon?

4 A Very common.

5 Q And is this the kind of thing that can happen
6 before police arrive and sort of take over a scene?

7 A Absolutely, yes.

8 Q Have you ever had an experience where casings
9 that were fired and deposited at a scene were
10 inadvertently removed from a scene by a vehicle?

11 A Yes.

12 Q How does that happen?

13 A Obviously, casings can be small. It's possible
14 for them to become lodged not only in the tire tread of
15 vehicles, but also in boots. Firemen and patrol wear very
16 heavily lugged boots, and it's very common for debris or
17 evidence items, not only casings but bullets and small
18 fragments, to be removed from the scene when they're
19 stepped on.

20 Q And has it been your experience at times that
21 items like this are sometimes kicked and moved from the
22 original position accidentally as well?

23 A Very much so, yes.

24 Q You sort of document the scene as you find it?

25 A That is correct, yes.

1 Q If I could have the bailiff hand you
2 People's 299. Do you recognize 299?

3 A I do.

4 Q What is People's 299?

5 A People's Exhibit 299 is the item that you see in
6 photograph Exhibit 201. It's the Hornady .380 spent
7 casing plus the evidence packaging that I packaged it in
8 when I collected it.

9 Q How is it that you're able to recognize that as
10 the item that you collected and designated as Placard 27?

11 A When I collect an item, I enter it into our
12 property evidence section, which gives it a unique barcode
13 item. The barcode item is only for this item. It bears
14 my name and a description of the item. On the back side
15 of the evidence is my signature and badge number for the
16 department. As you can see, with an item like this, for
17 court, they are then taken out of the packaging by the
18 detectives and placed in plastic so that the jury may be
19 able to see the items a little easier than through the
20 paper bags.

21 Q And is there other writing on there that is not
22 yours?

23 A Yes, there is.

24 Q And do you recognize any of that writing?

25 A I do.

1 Q And what is it?

2 A There is an additional barcode affixed to the
3 item, and that is for from the Colorado Bureau of
4 Investigation. When an item leaves our property unit and
5 goes to either the Jefferson County regional lab or to the
6 Colorado Bureau of Investigations, they create a new item
7 number, they open our bag, and they reseal the item with
8 their own evidence tape and signatures as well.

9 MR. FREEMAN: Judge, at this time I would move
10 299 into evidence.

11 MR. ST. GEORGE: No objection.

12 THE COURT: 299 is admitted.

13 (People's Exhibit 299 was admitted into
14 evidence.)

15 MR. FREEMAN: If we could go back to People's 6.

16 (People's Exhibit 6 was published.)

17 Q (BY MR. FREEMAN) In that -- you described those
18 two sort of green squares towards the bottom as grassy
19 areas. The one on the left, were there items near there
20 that you collected?

21 A Yes, there were.

22 Q And was one of those items designated by a
23 placard as Number 23?

24 A Yes.

25 Q And I don't know how well the jury can see it,

1 but we're talking about this area right here (indicated)?

2 A That is correct. If you look within the green
3 square on the left-hand side, in the bottom left-hand
4 corner of the green square is where you will find that
5 evidence item.

6 Q And what was designated -- or what was item
7 Placard 23?

8 A That is going to be the plastic wad from a
9 shotgun shell.

10 Q Now, what is a plastic wad from a shotgun shell?

11 A A live round of ammunition from a shotgun is
12 usually comprised of the plastic outer casing. It has an
13 interior plastic wad. Generally it's plastic, depending
14 on the type of ammunition. And then the balls, or
15 whatever type of ammunition you have within that shotgun,
16 are then seated within that wadding. And then a lot of
17 times there's either a plastic or a cardboard plug on the
18 bottom or top ends of the ammunition. So it's all seated
19 within one larger, and then there's the smaller components
20 within. And in this particular case, it's the interior
21 plastic shell that we're talking about.

22 Q Now, as a CSI, or a crime scene analyst, do you
23 have sort of an understanding, or basic understanding, of
24 how a shotgun fires?

25 A Yes.

1 Q This plastic wadding, is this something that
2 comes out the barrel with the pellets or the ammo, or is
3 this something that's ejected out the side when the
4 shotgun is pumped?

5 A No, this item does travel down the barrel with
6 the pellets. It's purpose is to keep the pellets together
7 so that when they leave the barrel of the firearm, they
8 are able to disperse. If it didn't have that, the
9 barrel -- it would be metal on metal, and they would not
10 be able to travel as far. So it's part of the dynamic of
11 how the ammunition works with the firearm.

12 Q And in your experience, approximately how far
13 from the weapon does the wadding travel?

14 A It depends on the type of ammunition, and it
15 depends on the wadding, it depends on the firearm.
16 There's a lot of variables. They're plastic, and they're
17 very small, so they can go farther than the metal. They
18 can go -- they can stop before the metal. It just really
19 depends on the ammunition.

20 Q And just so we're clear, you're not able to give
21 any sort of opinion about how far away the person would
22 have been when they fired the shotgun based upon where you
23 find the wadding?

24 A Absolutely not, not without test firing the
25 firearm with that particular ammunition.

1 Q I'm going to have you handed 186 through 188.

2 And if you can take a look at those three photographs, and
3 tell us if you recognize what is depicted in those.

4 A Yes.

5 Q And what is depicted in those three photographs?

6 A These are photographs of the evidence item
7 Number 23, the plastic wad that we just spoke of.

8 Q And do these photographs accurately depict the
9 way that that plastic wad looked when you found it?

10 A Yes.

11 MR. FREEMAN: Judge, move 186 through 188 into
12 evidence.

13 MR. ST. GEORGE: No objections, Your Honor.

14 THE COURT: 186 through 188 are admitted.

15 (People's Exhibits 186 through 188 were
16 admitted into evidence.)

17 MR. FREEMAN: And may we publish?

18 THE COURT: You may.

19 MR. FREEMAN: 286, please.

20 (People's Exhibit 286 was published.)

21 Q (BY MR. FREEMAN) Taking a look at 186, is this
22 what you designated by Placard 123 next to the shotgun
23 wadding?

24 A Yep.

25 MR. FREEMAN: And if we could take a look at

1 People's 188.

2 (People's Exhibit 188 was published.)

3 Q (BY MR. FREEMAN) Is that item sort of right
4 smack-dab in the middle of that photograph, is that that
5 plastic wadding?

6 A Yes, that's correct.

7 Q And is that an item that you collected?

8 A Yes.

9 MR. FREEMAN: Judge, we would like to add this
10 to our Exhibit list. 356.

11 Q (BY MR. FREEMAN) Ms. Parker, I'm having you
12 handed 356.

13 MR. MENGES: Can we see it?

14 Q (BY MR. FREEMAN) Do you recognize that as the
15 plastic wadding that you designated with Placard 23?

16 A Yes, I do.

17 Q And is it in the same or similar condition today
18 as when you collected it back in the early morning of
19 August 1st of 2016?

20 A Yes, it is.

21 MR. FREEMAN: Judge, we move 356 into evidence.

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

23 THE COURT: 356 is admitted.

24 (People's Exhibit 356 was admitted into
25 evidence.)

1 Q (BY MR. FREEMAN) If we could go back to
2 People's 6.

3 (People's Exhibit 6 was published.)

4 Q (BY MR. FREEMAN) And it's a little difficult to
5 see, but also in that same sort of green square area, was
6 there another item that you designated as item 24?

7 A Yes, there is.

8 Q What is item 24?

9 A Item 24 is an additional plastic wad, similar to
10 the previous item, and that is located in that left
11 square, green square, in the top right-hand corner.

12 Q And if I could have the bailiff hand you 189
13 through 191. Let us know if you recognize those
14 photographs of that item that you just described.

15 A I do.

16 Q And is this -- in your experience, when someone
17 fires a shotgun, do only one of these plastic waddings
18 come out per round fired?

19 A That is correct, yes.

20 Q Would this indicate an additional round?

21 A Correct.

22 Q And do those photographs accurately depict where
23 that item was found and what it looked like when you
24 collected it?

25 A Yes, it does.

1 MR. FREEMAN: Judge, move to introduce 189
2 through 191.

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

4 THE COURT: 189 through 191 are admitted.

5 (People's Exhibits 189 through 191 were admitted
6 into evidence.)

7 MR. FREEMAN: And may we publish?

8 THE COURT: You may.

9 MR. FREEMAN: And if we could have 190 up,
10 please.

11 (People's Exhibit 190 was published.)

12 Q (BY MR. FREEMAN) Can you see the wadding in
13 that photograph?

14 A Yes.

15 Q Are you able to describe it from where you're
16 seated?

17 A Yes. It is just going to be a little bit below
18 the center. It's actually on the concrete, not on the
19 green. So it is on the driveway portion. So if you look
20 a couple of inches above the grassy area, there's kind of
21 a line that goes across the concrete. It is right
22 in -- above -- excuse me. It's right above that line.

23 Q Is it the item that's pretty much right in the
24 middle of that photo?

25 A Yes.

1 Q Just so we understand what we're looking at, is
2 this camera facing roughly northbound?

3 A Correct. Yes.

4 Q And if the camera were to pan up a tiny bit,
5 would we see that black pickup truck?

6 A That is correct.

7 Q And on that right edge of the photograph, is
8 that where the asphalt starts?

9 A The gutter and then the asphalt is a little bit
10 beyond, yes.

11 MR. FREEMAN: Okay. And can we have 191 up,
12 please.

13 (People's Exhibit 191 was published.)

14 Q (BY MR. FREEMAN) Is that a close-up view of
15 that shotgun wadding?

16 A Yes, it is.

17 MR. FREEMAN: If we could go back to People's 6,
18 please.

19 (People's Exhibit 6 was published.)

20 Q (BY MR. FREEMAN) Did you inspect the area
21 around the pickup truck for bullet casings, shotgun
22 wadding, things like that?

23 A Yes, we did.

24 Q And what did you find around the pickup truck?

25 A We found three spent casings surrounding the

1 pickup truck.

2 Q And spent casing indicating that it was -- there
3 was no longer a bullet. These were not live ammo?

4 A Correct.

5 Q Did you look at the vehicle itself for any
6 damage?

7 A Yes, we did.

8 Q Did you find any damage to the vehicle?

9 A No damage at all.

10 Q Did you look in the bed of the truck to see if
11 there was anything in the bed of the truck with
12 evidentiary value?

13 A Yes.

14 Q Anything?

15 A No.

16 Q Did you look underneath the truck?

17 A Yes.

18 Q So the three casings that you found, were they
19 designated on your -- on your diagram as 1, 2 and 3?

20 A Yes, that's correct.

21 Q And, again, just so we're clear, by designating
22 them 1, 2 and 3, you were not making a determination in
23 which order they were fired or deposited on the scene?

24 A That is correct.

25 Q Can you describe -- obviously, the exhibit

1 appears to be flat. Is that -- that area where the pickup
2 truck was, was that flat or was it sloped?

3 A It was a sloped driveway.

4 Q And does that create any issues for something
5 round like a shell casing?

6 A Yes.

7 Q What issues does that create?

8 A It's very common on a sloped driveway like that
9 to have some movement or rolling of round items, namely,
10 casings.

11 Q So the areas where you found casings, you don't
12 know if that's where it actually hit the ground after
13 being ejected from the gun, do you?

14 A That is correct.

15 Q Number 1 -- if I could have the bailiff hand
16 you -- I'm going to have her hand you 131 through 139. Go
17 ahead and take a look at all of those, and let me know
18 when you're done.

19 A (The witness complied.) Yes.

20 Q Do you recognize what is depicted in 131 through
21 139?

22 A I do.

23 Q And what is that?

24 A These are photographs of Casings 1 through 3, as
25 designated with Evidence Placards 1 through 3.

1 Q And do those photographs accurately depict the
2 location of those casings where you found them, and it
3 looks like daytime, so we're talking about daytime on the
4 1st?

5 A Yes.

6 MR. FREEMAN: Judge, move to introduce 131
7 through 139.

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

9 THE COURT: 131 through 139 are admitted.

10 (People's Exhibits 131 through 139 were admitted
11 into evidence.)

12 MR. FREEMAN: And may we publish?

13 THE COURT: You may.

14 THE WITNESS: And just for clarification, this
15 is daytime, so it was not on the 1st. This was -- oh, no,
16 I'm sorry, it was on the 1st. My apologies. I take that
17 back.

18 MR. FREEMAN: Okay. Can we have 131 up, please.

19 (People's Exhibit 131 was published.)

20 Q (BY MR. FREEMAN) Tell us what we're looking at
21 in People's 131.

22 A Excuse me. Sorry, I have a little cold. This
23 is a photograph facing west from the roadway onto that
24 driveway. So you're looking at Building 8139, the garage
25 units, and this is about centrally located of those garage

1 units, you can see a pillar and a flag. The pickup truck
2 would be positioned to the right of this photograph, and
3 you can see a Number 1 tent evidence placard near the
4 bottom center of the photograph.

5 Q And is that placard at or near one of those
6 expended casings?

7 A This tent placard is positioned directly over
8 one spent casing.

9 Q And it appears that that's a dividing line in
10 the concrete. Is that where you found the casing?

11 A That is correct, yes.

12 Q If we could go to 132, please.

13 (People's Exhibit 132 was published.)

14 Q (BY MR. FREEMAN) And is that a photograph of
15 Placard 1 over the casing in the crack of the concrete?

16 A Yes, it is.

17 MR. FREEMAN: And if we could have 133, please.

18 (People's Exhibit 133 was published.)

19 Q (BY MR. FREEMAN) Is that a photograph of the
20 casing itself?

21 A Yes, it is.

22 Q Did this one appear damaged at all, like it had
23 been run over and stepped on?

24 A No.

25 MR. FREEMAN: And if we could go to 134, please.

1 (People's Exhibit 134 was published.)

2 Q (BY MR. FREEMAN) What is depicted in 134?

3 A This is a headstamp of evidence item Number 1, a
4 Winchester Luger 9-millimeter spent casing.

5 Q And this one looks like it has a dent right in
6 the middle. Do you believe it to be a firing pen
7 indentation?

8 A Yes, it is.

9 Q And do you have other information that's off the
10 bottom of this?

11 A That is correct.

12 MR. FREEMAN: If we could go to 135, please.

13 (People's Exhibit 135 was published.)

14 Q (BY MR. FREEMAN) What is depicted in 135?

15 A 135 is a photograph of item Number 2, a spent
16 casing which is located between the front end of the
17 pickup and the garage door.

18 MR. FREEMAN: And if we could just jump back to
19 People's 6, please.

20 (People's Exhibit 6 was published.)

21 Q (BY MR. FREEMAN) It may be a little hard to
22 see, but are you talking about this area just between the
23 front of the truck and the garage door?

24 A That is correct.

25 MR. FREEMAN: And if we can have 135 up, please.

1 (People's Exhibit 135 was published.)

2 Q (BY MR. FREEMAN) Is this a photograph of that
3 Placard number 2 over that casing?

4 A That is correct.

5 Q And 136, please.

6 (People's Exhibit 136 was published.)

7 Q (BY MR. FREEMAN) Photograph of the casing
8 itself, also in a crack?

9 A Yes, that's correct.

10 Q Was that one damaged at all?

11 A No.

12 MR. FREEMAN: And 137, please.

13 (People's Exhibit 137 was published.)

14 Q (BY MR. FREEMAN) Is that a photograph of the
15 bottom of that spent casing as well?

16 A Yes.

17 Q And there's an indication that it's a
18 Winchester, or Win, 9-millimeter Luger?

19 A That is correct.

20 MR. FREEMAN: And if we can go to 138, please.

21 (People's Exhibit 138 was published.)

22 Q (BY MR. FREEMAN) What is 138, what is Placard
23 3?

24 A Placard 3 is also a spent Winchester
25 9-millimeter Luger casing located along the passenger side

1 of the pickup truck, also in one of creases of the
2 driveway.

3 MR. FREEMAN: If we could bounce back to 6,
4 please. Sorry.

5 (People's Exhibit 6 was published.)

6 Q (BY MR. FREEMAN) Is that on this north side of
7 the pickup truck?

8 A That is correct.

9 Q And I think it's got, on this diagram, if you
10 could see it close enough, a designation of Number 3?

11 A That is correct.

12 MR. FREEMAN: And if we could have 138 up,
13 please.

14 (People's Exhibit 138 was published.)

15 Q (BY MR. FREEMAN) Is this a photograph of the
16 placard over that casing?

17 A That's correct, yes.

18 Q And this casing is in a crack as well?

19 A Correct.

20 MR. FREEMAN: And 139, please.

21 (People's Exhibit 139 was published.)

22 Q (BY MR. FREEMAN) And is this the base of that
23 casing?

24 A It is, yes.

25 Q And, again, a Winchester 9-millimeter Luger?

1 A That is correct.

2 Q And going back to your inspection of Agent
3 Trimmer's weapon, and specifically the type and caliber of
4 ammo, was all of her ammo Winchester 9-millimeter Luger,
5 stamped like these?

6 A Yes, it was.

7 MR. FREEMAN: If we could go back to People's 6.
8 (People's Exhibit 6 was published.)

9 Q (BY MR. FREEMAN) I'm going to ask you about
10 what you designated as Placard Number 4. Where is Number
11 4?

12 A Placard Number 4 is located, sorry, west of 8139
13 in the upper corner, right before the green area. I hope
14 I'm making that clear enough. Before the back sides, you
15 can see the large green area. Placard Number 4 is going
16 to be at the end of that driveway. So where the driveway
17 terminates and meets the green is where 4 is on the
18 roadway, not on the driveway.

19 Q And what was Number 4?

20 A Number 4 is a -- that is going to be an expended
21 shotgun shell.

22 Q And just so we're clear, are we talking about
23 this item up here (indicated)?

24 A No, sir. Down further.

25 Q Down further. Right here?

1 A That is correct.

2 Q You said a spent shotgun shell?

3 A That is correct.

4 Q How can you tell it was a spent, or fired,
5 shell?

6 A The contents from within is no longer inside of
7 it.

8 Q Is it sort of like an empty plastic cup at that
9 point?

10 A Correct. Yes.

11 Q And if I could have is the bailiff hand you 140
12 to 144. Taking a look at those photographs, do you
13 recognize those as various photographs of that spent
14 12-gauge shell that you designated in Placard 4?

15 A I do.

16 Q And do those accurately depict the way that item
17 looked when you located it?

18 A Correct. Yes.

19 MR. FREEMAN: Judge, I would move to introduce
20 140 through 144.

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

22 THE COURT: 140 through 144 are admitted.

23 (People's Exhibits 140 through 144 were admitted
24 into evidence.)

25 MR. FREEMAN: May we publish?

1 THE COURT: You may.

2 MR. FREEMAN: If we could have 140 up, please.

3 (People's Exhibit 140 was published.)

4 Q (BY MR. FREEMAN) It looks like off to the far
5 left of that photograph is the Placard Number 4.

6 A That is correct.

7 Q Is the placard over that spent shotgun casing?

8 A It is.

9 Q And it might be a better view if we look at 141.

10 (People's Exhibit 141 was published.)

11 Q (BY MR. FREEMAN) And it looks like around the
12 casing, there's some dark staining. Do you recall that?

13 A I do.

14 Q Do you know what that was?

15 A I believe that to be blood.

16 Q Why do you say you believe it to be blood?

17 A I did not field test that with phenolphthalein
18 to determine little was positive for blood. We did
19 collect a sample of it for lab confirmation, but I do not
20 have that result in front of me, so I believe it to be
21 blood based on its color, appearance and distribution.

22 Q And you said a big word, phenolphthalein. Is
23 that a chemical that you can use out in the field on a
24 substance to determine, at least presumptively, whether
25 it's blood or not?

1 A Yes, that is correct. It's a presumptive test
2 for the presence of blood.

3 Q And you didn't do that in this situation?

4 A No.

5 Q Why not?

6 A Because we collected the sample.

7 Q In your briefing by the agents on scene, was it
8 ever indicated to you that anyone other than the suspect,
9 Mr. St. George, had been bleeding or injured?

10 A No.

11 Q And, in fact, when you inspected Sergeant Maines
12 and Agent Trimmer, they had no apparent injuries on them?

13 A That is correct.

14 MR. FREEMAN: So let's look at, if we may, 143.

15 (People's Exhibit 143 was published.)

16 Q (BY MR. FREEMAN) Is 143 a close-up photo of
17 that expended shotgun -- are we calling it a casing or a
18 shell?

19 A It is a shell.

20 Q Shell. Sorry. Shell.

21 A Yes, it is.

22 MR. FREEMAN: And may we have 144 up, please.

23 (People's Exhibit 144 was published.)

24 Q (BY MR. FREEMAN) Take a look at 144. Does that
25 show the base of that shell?

1 A Yes, it is.

2 Q And it appear that the manufacturer is
3 Winchester?

4 A Correct.

5 Q And then 12GA for 12-gauge?

6 A This has correct. That is the caliber.

7 Q And in looking at the middle of that, there
8 appears to be that firing pin dent.

9 A That is correct.

10 Q Can you tell, by looking at either the base or
11 the side of this expended shell, what sort of ammo it held
12 before it was fired?

13 A I believe you're referring to whether -- if it's
14 buckshot or size of pellet?

15 Q Yes.

16 A Yes, generally that information is inscribed on
17 the sides of the casing.

18 Q I'd like to have you handed People's 301. Do
19 you recognize 301?

20 A I do.

21 Q And what is 301?

22 A It is a spent shotgun shell.

23 Q Do you recognize the item that you designated
24 with Placard 4?

25 A Yes.

1 Q And does it appear to be in the same or
2 substantially similar condition today as when you
3 collected it?

4 A Yes, with the exception of the writing from the
5 lab that is also on it.

6 Q Other than that, is it the same condition?

7 A Correct.

8 MR. FREEMAN: Judge, move to introduce 301, I
9 think I said.

10 THE WITNESS: 301, yes.

11 MR. ST. GEORGE: Would you mind holding that up
12 so that we can see that?

13 THE WITNESS: Absolutely.

14 MR. ST. GEORGE: Okay. We have no objection,
15 Your Honor.

16 THE COURT: 301 is admitted.

17 (People's Exhibit 301 was admitted into
18 evidence.)

19 Q (BY MR. FREEMAN) Is there any writing on the
20 outside that you can see that would tell you what sort of
21 ammo it was?

22 A It has the inscription Universal B on the
23 outside of it.

24 Q Do you know what that means?

25 A I'm not a hundred percent certain, so I'm going

1 to say no.

2 Q And I don't want you to guess.

3 A No.

4 THE COURT: So, Mr. Freeman, we're going to have
5 to take a midmorning break. Is this a good time for that?

6 MR. FREEMAN: Yeah, this is fine, Judge.

7 THE COURT: Ladies and gentlemen, we're going to
8 take a ten-minute break. Please keep an open mind. Don't
9 do any research. Don't talk about the case. We'll be
10 back in about ten minutes.

11 Thank you. You may step down.

12 THE WITNESS: You're welcome.

13 (The jury left the courtroom.)

14 THE COURT: About ten minutes.

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

16 (A recess was taken.)

17 THE COURT: We're bringing out the jury. Let's
18 have our witness.

19 (Pause in the proceedings.)

20 (The jury entered the courtroom.)

21 THE COURT: And everybody can be seated, please.
22 We can resume questioning.

23 MR. FREEMAN: Thank you, Your Honor.

24 Q (BY MR. FREEMAN) I think before the break we
25 were sort of working our way through the scene. I'm going

1 to ask the bailiff to hand you another set of photograph.
2 This is 127 and '8 and 145 and '6. Taking a look at those
3 four photographs, do you recognize what is depicted in
4 those?

5 A I do.

6 Q And do those accurately depict the various parts
7 of the scene as you saw them on the day of August 1st?

8 A Yes.

9 MR. FREEMAN: Judge, move to introduce 127 and
10 '8, 145 and '6.

11 THE COURT: Okay. I think I have 127 in.

12 MR. FREEMAN: Oh, okay. Then the other three.

13 MR. ST. GEORGE: Your Honor, I have no objection
14 to 145 or 146.

15 And you said it was 127 and --

16 MR. FREEMAN: And '8.

17 MR. ST. GEORGE: -- 128.

18 No objection, Your Honor.

19 THE COURT: All right. So 127 is in. 128, 145
20 and 146 are admitted.

21 (People's Exhibits 128, 145 and 146 were
22 admitted into evidence.)

23 MR. FREEMAN: And may we publish?

24 THE COURT: Yes.

25 MR. FREEMAN: May we have 128 up, please.

1 (People's Exhibit 128 was published.)

2 Q (BY MR. FREEMAN) Can you tell the jury what
3 we're looking at in this photograph.

4 A That is a photograph of that roadway between the
5 two driveways, between 8139 and 8119. You can see on the
6 left-hand side the rear end of the pickup truck, and
7 various tent placards along the right-hand side.

8 Q And is this photograph taken basically facing
9 north towards the open space?

10 A That is correct.

11 Q And I know it may be hard for the jury to see,
12 but looking at those placards there on the right, the
13 first one that's closest to the camera, is that Placard 5?

14 A Yes, it is.

15 Q And then the next one beyond that, I think, is
16 25. I don't know if you can tell.

17 A I believe that is 25.

18 Q And then the next one above that one is -- is
19 that Number 4?

20 A Correct.

21 Q And 4 was the one we were just discussing that's
22 a spent 12-gauge shotgun shell?

23 A That is correct.

24 MR. FREEMAN: If we could have Number 145 up,
25 please.

1 (People's Exhibit 145 was published.)

2 Q (BY MR. FREEMAN) What is that placard next to?

3 A This placard is indicating the bloodstains on
4 the -- on the roadway, not on the driveway.

5 Q Now, were there multiple bloodstains, or what
6 appeared to be multiple bloodstain, on that driveway?

7 A Correct.

8 Q Did you mark all of them?

9 A No.

10 Q Why not?

11 A I marked the beginning area where the
12 bloodstains are visible and the area that we obtained the
13 sample from. We don't mark the entire trail with tent
14 placards, as it just creates further confusion within the
15 photography.

16 Q And was there more or less a trail of apparent
17 blood from this point all the way to the back door of the
18 suspect unit?

19 A That is correct, yes.

20 Q And so this is the only one your marked. Is
21 this, fair to say, the southernmost area of suspected
22 blood?

23 A Correct.

24 Q By marking this and designating this with Number
25 5, are you meaning to indicate that you knew that is where

1 the person began bleeding?

2 A No.

3 Q And you don't know whose blood it is?

4 A No.

5 Q Presumably the suspect's, because he was the
6 only one bleeding?

7 A Correct.

8 Q So that next one that I think we talked about
9 being just a little bit to the north of Number 5, the
10 blood, was 25.

11 If I could have the bailiff hand you 192 through
12 194, please. Let me know if you recognize those as
13 photographs of Placard 25 and the item that you placed it
14 next to.

15 A I do.

16 Q And what was Number 25? What did you designate
17 with that placard?

18 A Item 25 is a shotgun pellet.

19 Q And do the photographs accurately depict the way
20 that pellet looked?

21 A Yes, they do.

22 MR. FREEMAN: Judge, move to introduce 192
23 through 194.

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

25 THE COURT: 192 through 194 are admitted.

1 (People's Exhibits 192 through 194 were admitted
2 into evidence.)

3 MR. FREEMAN: May we publish?

4 THE COURT: You may.

5 MR. FREEMAN: 192, please.

6 (People's Exhibit 192 was published.)

7 Q (BY MR. FREEMAN) And is this Placard 25 that is
8 placed over the pellet?

9 A That is correct.

10 MR. FREEMAN: And may we have 194, please.

11 (People's Exhibit 194 was published.)

12 Q (BY MR. FREEMAN) And this appears to be a round
13 metal ball?

14 A That is correct.

15 Q Does this appear to be one of shotgun pellets?

16 A Yes, it is. Thank you.

17 Q Did you do any testing on this to determine if
18 it, in fact, was a shotgun pellet?

19 A No. I identify it through my experience and
20 education.

21 Q And what was done with that item?

22 A It was collected and packaged in a similar
23 manner to the other physical evidence we collected.

24 Q Did you do any further testing on that item?

25 A No.

1 Q On your knowledge, or with your knowledge, was
2 there any way to match that pellet up to a particular
3 expended shell or a particular weapon?

4 A No.

5 Q If I could have the bailiff hand you 203 through
6 205. We're talking about item 28. Can you tell the jury
7 where item 28 was located.

8 MR. FREEMAN: If we could possibly go back to
9 Number 6, please.

10 (People's Exhibit 6 was published.)

11 Q (BY MR. FREEMAN) You know, it may be hard to
12 see, but is this Number 28 right there?

13 A Yes. Item 28 is going to be the most central
14 located evidence number on the diagram you're viewing.
15 It's near the center of the roadway.

16 Q And what did you designated as item Number 28,
17 or Placard 28?

18 A Item 28 is a ricochet mark in the roadway.

19 Q And what do you mean? What's a ricochet mark?

20 A A ricochet mark is an area where a bullet has
21 struck and did not penetrate or perforate the surface but
22 left a demarcation and continued traveling on its path.

23 Q And how can you tell that that mark from the
24 asphalt is from a bullet as opposed to something else?

25 A Asphalt is particularly useful in recognizing

1 ricochet marks. When a bullet strikes asphalt, it leaves
2 a very distinct mark that doesn't last for very long.
3 These go away within a day. So they are very fresh, very
4 crisp markings within the asphalt. It's how we recognize
5 it as being fresh versus as scuff mark from a tire or
6 other metal object that may have fallen in the roadway.

7 Q In looking at the ricochet mark, could you tell
8 anything like that type of projectile that would have made
9 it?

10 A No.

11 Q Could you tell if it would have been like a
12 9-millimeter bullet versus shotgun pellet?

13 A I can say that it would be more of a bullet. I
14 wouldn't go far as to say it was a 9-millimeter bullet,
15 but I would say bullet versus shotgun impact.

16 Q Can you tell anything about the directionality
17 of that bullet based on the ricochet mark?

18 A Based on the ricochet mark, along with other
19 items of evidence within this crime scene, yes, I can.

20 Q And at this point, do these photographs
21 accurately depict the way that mark looked?

22 A Yes, they do.

23 MR. FREEMAN: I move to introduce 203, '04 and
24 '05.

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

1 THE COURT: 203 through 205 are admitted.

2 (People's Exhibit 203 through 205 were admitted
3 into evidence.)

4 MR. FREEMAN: And may we publish?

5 THE COURT: You may.

6 MR. FREEMAN: May we have 204 up, please.

7 (People's Exhibit 204 was published.)

8 Q (BY MR. FREEMAN) 204, is that what you're
9 calling a ricochet mark on the asphalt?

10 A That is correct.

11 Q And that was roughly in the middle of the street
12 on the asphalt right there?

13 A That is correct.

14 Q Do you remember if that asphalt had any sort of
15 crown to it or not for drainage, or did you look for that
16 thing?

17 A It did. Very slight.

18 Q And what direction did that ricochet appear to
19 go?

20 A That ricochet mark traveled from north to east
21 across the road.

22 Q And was --

23 A I'm sorry. Excuse me. West to east. Sorry.
24 West to east.

25 Q That's okay. And how can you determine that it

1 went west to east, as opposed to the projectile traveling
2 east to west?

3 A Generally, when a bullet ricochets from one
4 surface, it impacts into another. And in this case, our
5 bullet impacted into a garage on the east side of the
6 road. So we correlated the bullet impact on the garage
7 door with this ricochet mark in the same line.

8 Q And that bullet on the garage door, that's a
9 garage door on the east side of the building -- or the
10 east side of the suspect building?

11 A Correct. That's at 8119.

12 Q And that was, I think -- that hole in the
13 garage, was that designated with a sticker that had a
14 number 3 on?

15 A That's correct.

16 MR. FREEMAN: If we could go back to Number 6,
17 please.

18 (People's Exhibit 6 was published.)

19 Q (BY MR. FREEMAN) And can you describe for the
20 jury approximately where that hole was in the garage door.

21 A The garage door, the hole was approximately 5 or
22 6 inches from the ground level on the garage door on that
23 upper portion of the block that you see labeled 8119. So
24 where you see your evidence placard, it is in line with
25 that. So if you drew a straight line from where that

1 evidence tent is to the garage door, that is where that
2 bullet impact would be.

3 Q And if you took a line from that hole in the
4 garage door and drew it to that ricochet mark and then
5 kept going, where did that line lead to?

6 A The left side of the pickup truck where Evidence
7 Placard Number 3 is located.

8 Q Now, you say "left side." If the pickup truck
9 is facing to the west, is that driver's side or
10 passenger's side?

11 A Passenger's side.

12 Q So on this diagram, that's the north side of the
13 pickup truck?

14 A Correct.

15 Q Was there any effort to -- made to go into that
16 garage and collect that projectile?

17 A Yes, there was.

18 Q And did you participate in that?

19 A I did.

20 Q Was a projectile, or part of a projectile,
21 eventually collected?

22 A Yes.

23 Q Where did it -- where did you find it?

24 A We found a piece of the jacketing to this bullet
25 in a cardboard box that was within the garage. The bullet

1 perforated through the box and entered into a wall leading
2 into that apartment. We were not able to get into that
3 apartment, as the resident was not home at the time.

4 Q And, eventually, was that resident contacted and
5 the rest of that projectile collected from their
6 apartment?

7 A Yes, that's my understanding.

8 Q You mentioned the jacket. Is that sort of the
9 outer metal wrapping of the projectile?

10 A Generally, it is a copper surrounding to some
11 types of bullets, yes.

12 Q I'm going ask the bailiff to hand you 206
13 through 208. And I think those depict what was designated
14 next to Placard 29. Was Placard 29 just a little bit to
15 the north of Placard 28?

16 A Yes, slightly.

17 Q So right there (indicated)?

18 A Correct.

19 Q I'm shaky. And what did you designate as
20 Placard 29?

21 A Placard Number 29 is going to be copper
22 jacketing, bullet fragment that was found on the roadway.

23 Q And do those photographs accurately depict the
24 way that item looked?

25 A Yes.

1 MR. FREEMAN: Judge, move introduce 206 through
2 208.

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

4 THE COURT: So 206, 207 and 208 are admitted.

5 MR. FREEMAN: Yes. Thank you.

6 (People's Exhibits 206 through 208 were admitted
7 into evidence.)

8 MR. FREEMAN: And may we publish?

9 THE COURT: Yes.

10 MR. FREEMAN: Can we have 207 up, please.

11 (People's Exhibit 207 was published.)

12 Q (BY MR. FREEMAN) Tell us what we're looking at
13 in this photograph.

14 A In this photograph, you can see a small, almost
15 curved shape piece of metal near the center of the
16 paragraph, along with what is called an ABFO measurement
17 scale, and that is -- shows you the size of that item.

18 Q And how are you able to recognize this item as a
19 bullet, or part of a bullet?

20 A That copper jacketing, I recognize it based on
21 my experience and education.

22 Q And this copper jacketing, is this more
23 consistent with the type of ammunition that Agent Trimmer
24 had, or is this -- could this be a shotgun pellet that's
25 deformed?

1 A No, this is copper jacketing from a semi-
2 automatic round, not from a shotgun round.

3 Q And was that item collected as well?

4 A It was.

5 Q Based upon your training and experience, can
6 that item -- do you think that an item like that could be
7 matched up to a particular firearm to see if it was fired
8 from that firearm?

9 A Depending on its condition and the amount of it
10 that remains, yes, it can be.

11 Q And is that part of the reason that you
12 collected it, for somebody else to determine if that, in
13 fact, could be done?

14 A Correct.

15 Q I'm going ask the bailiff to hand you 209
16 through 212. And tell us what is depicted in those
17 photographs.

18 A 209 -- well, they all show evidence item Number
19 30, as well as the ricochet and impact mark into item
20 3 -- I labeled as item 30.

21 Q And item 30, was that another bullet fragment?

22 A That is correct, yes.

23 Q And do these photograph accurately depict the
24 way that item and other parts of the scene looked?

25 A Yes.

1 MR. FREEMAN: Judge, move to introduce 209
2 through 212.

3 MR. ST. GEORGE: Your Honor, I'd like to voir
4 dire on 212.

5 THE COURT: Sure.

6 VOIR DIRE EXAMINATION

7 BY MR. ST. GEORGE:

8 Q Ms. Parker, the scale next to there, it's got
9 the ABFO. Could you tell us what the ABFO means?

10 A Absolutely. It's called the American Board of
11 Forensic Odontology. The scale was originally created for
12 forensic odontology for bite mark evidence and was adapted
13 by other forensic sciences as a means of showing the size
14 of evidence items. It has a true gray scale, so if a
15 photograph is to be taken in the incorrect color
16 composition, you can have it color corrected based that
17 gray scale.

18 MR. ST. GEORGE: Thank you.

19 THE WITNESS: You're welcome.

20 THE COURT: Any objection?

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

22 THE COURT: 209 through 212 are admitted.

23 (People's Exhibits 209 through 212 were admitted
24 into evidence.)

25 MR. FREEMAN: And may we publish?

1 THE COURT: You may.

2 MR. FREEMAN: May we have 209 up, please.

3 (People's Exhibit 209 was published.)

4 DIRECT EXAMINATION (CONTINUED)

5 BY MR. FREEMAN:

6 Q And what is depicted in 209?

7 A Evidence Exhibit 209 is showing the ricochet
8 mark in the roadway, along with evidence tent Placard
9 Number 30 and Impact Number 3 into the garage door of
10 8119.

11 Q And it may be a little difficult to see, but the
12 ricochet mark, are you talking about this mark here?

13 A That is correct.

14 Q And then this is Placard 30?

15 A That is correct.

16 Q And I don't know if the jury can see it, but
17 just beyond 30, at the base of the garage door, is that
18 Number 3 next to that bullet hole in the garage?

19 A Correct. Impact 3, not spent casing Number 3.

20 Q Right.

21 MR. FREEMAN: And if we could go to 210, please.

22 (People's Exhibit 210 was published.)

23 Q (BY MR. FREEMAN) Is that a little closer-up
24 version of the Placard 30?

25 A Correct.

1 Q And is this -- the sticker next to the bullet
2 hole in the garage here Number 3?

3 A That's correct.

4 MR. FREEMAN: And if we may see Number 212,
5 please.

6 (People's Exhibit 212 was published.)

7 Q (BY MR. FREEMAN) Is that a photograph of the
8 apparent bullet fragment that was next to Placard 30?

9 A That is correct.

10 Q And, again, does this appear to be part of a
11 semi-automatic round, as opposed to a deformed shotgun
12 pellet?

13 A That is correct.

14 Q Was that item collected?

15 A It was.

16 Q I'm going to ask the bailiff to hand you 195, '6
17 and '7. Do these three photographs depict what you
18 designated as item 26?

19 A They do.

20 MR. FREEMAN: And if we could have Number 6 up,
21 please.

22 (People's Exhibit 6 was published.)

23 Q (BY MR. FREEMAN) Is item 26 basically this
24 northeasternmost item on the concrete before this grassy
25 area?

1 A Correct. In that area is a pull-out for the
2 driveways, as well as a drainage ditch. So there's a
3 large drainage ditch, not in the exhibit that you're
4 looking at right now, but if you were on scene, you would
5 see a large drainage ditch within that area.

6 Q And what item did you designate next to Placard
7 26?

8 A This is a shotgun pellet.

9 Q And do these photographs accurately depict the
10 way that item looked?

11 A Yes.

12 MR. FREEMAN: Judge, move to introduce 195, '6,
13 and '7.

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

15 THE COURT: 195 through 197 are admitted.

16 (People's Exhibits 195 through 197 were admitted
17 into evidence.)

18 MR. FREEMAN: And may we publish?

19 THE COURT: You may.

20 MR. FREEMAN: Can we have 197 up, please.

21 (People's Exhibit 197 was published.)

22 Q (BY MR. FREEMAN) Is that a close-up of that
23 shotgun pellet?

24 A It is.

25 Q And was that item collected?

1 A It was.

2 Q If I could have the plaintiff hand you 147, '8
3 and '9, please. Do you recognize what is depicted in 147,
4 '8 and '9?

5 A I do.

6 Q And what is that?

7 A This is going to be evidence item Number 6, and
8 it is a plastic shot cup.

9 Q And do those photographs accurately depict the
10 condition of that item and where it was found on the day
11 of August 1st?

12 A Yes, they do.

13 MR. FREEMAN: Judge, move to introduce 147, '8
14 and '9.

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

16 MR. FREEMAN: And may we publish?

17 THE COURT: Yes. 147 through 149 are admitted.

18 (People's Exhibits 147 through 149 were admitted
19 into evidence.)

20 MR. FREEMAN: Actually, could we go back to
21 People's 6 first.

22 (People's Exhibit 6 was published.)

23 Q (BY MR. FREEMAN) So this Placard Number 6, is
24 it located up here next to this tree?

25 A That is correct. It is located -- there's kind

1 of a round-looking black circle in the upper greenbelt
2 area. That is a tree, and that is on the 8119 side, and
3 the shot cup is near that tree.

4 MR. FREEMAN: And if we could have 147 up,
5 please.

6 (People's Exhibit 147 was published.)

7 Q (BY MR. FREEMAN) What are we looking at in 147?

8 A In this photograph, you will see the tree that
9 you saw in the diagram and tent Evidence Placard Number 6
10 over top of the shot cup.

11 Q And as far as the direction that the camera's
12 facing, is it facing more or less south, maybe a little
13 bit to the east?

14 A Yes.

15 Q And in this upper right-hand corner, is that the
16 beginning of the garages on that east side of the area?

17 A That is correct.

18 Q And one of those garages was the one that had
19 the number -- marked Number 3 building strike?

20 A Yes. That is Building 8119.

21 MR. FREEMAN: If we could have 149 up, please.

22 (People's Exhibit 149 was published.)

23 Q (BY MR. FREEMAN) Is that photograph a close-up
24 of that shot cup?

25 A Yes, it is.

1 Q Now, shot cup, is it different than wadding?

2 A They're basically the same thing. They're part
3 of the inner component of the shot cup.

4 Q Can you tell anything about the caliber of
5 weapon or anything from this item?

6 A I know that this would belong to a 12-gauge
7 based on its size. But as far as the ammunition contained
8 within, I cannot make any assumption.

9 Q And you're familiar that 12-gauge ammunition
10 comes in sort of different types. There's lead ball where
11 it's just one big ball, there's pellets, there's buckshot?

12 A Correct.

13 Q All right. Let's -- if I could have the bailiff
14 hand you 150 through 156. Taking a look at those
15 photographs, do you recognize what is depicted in those
16 photographs?

17 A I do.

18 Q And what is depicted in those photographs?

19 A This area is that turnout with the drainage
20 ditch, and items Number 7, 8, 9 and 10 on the drainage
21 ditch area, as well as up onto the grassy area of Building
22 8139.

23 Q And do those photographs accurately depict the
24 items that you located in those areas?

25 A Yes.

1 MR. FREEMAN: Judge, I would move 150 through
2 156 into evidence.

3 MR. ST. GEORGE: I have no objection, Your
4 Honor.

5 THE COURT: 150 through 156 are admitted.
6 (People's Exhibit was admitted into evidence.)

7 MR. FREEMAN: And may we publish?

8 THE COURT: Yes.

9 MR. FREEMAN: If we would go to 150, please.

10 (People's Exhibit 150 was published.)

11 Q And it's a little dark. I'm not sure how well
12 the jury can see. Starting from right to left, is this
13 Placard 7?

14 A Yes, it is.

15 Q And then Placards 8 and 9 are over here?

16 A Correct.

17 Q Maybe if we could bounce back to Number 6.

18 (People's Exhibit 6 was published.)

19 Q (BY MR. FREEMAN) Designated on your diagram, is
20 this Number 7 right here still on the concrete -- or, I'm
21 sorry, the asphalt?

22 A Yes.

23 Q And then 8 and 9 are just to the northwest of it
24 on the grass?

25 A Correct.

1 MR. FREEMAN: All right. If we could go back to
2 150.

3 (People's Exhibit 150 was published.)

4 Q (BY MR. FREEMAN) Placard Number 7 appears to be
5 just to the left of that drain?

6 A Correct.

7 Q Okay. And what did you designated next to
8 Placard 7?

9 A Placard Number 7 is a spent 12-gauge shotgun
10 shell.

11 MR. FREEMAN: And if we could have 151 up,
12 please.

13 (People's Exhibit 151 was published.)

14 Q (BY MR. FREEMAN) Is that a photograph of the
15 placard over the shell?

16 A That is correct.

17 MR. FREEMAN: And if we can have 155 up, please.

18 (People's Exhibit 155 was published.)

19 Q (BY MR. FREEMAN) Is that a photograph of the
20 shell that was underneath Placard 7?

21 A Correct. Yes.

22 Q And you can tell it's an expended shell because
23 it's empty?

24 A Correct.

25 MR. FREEMAN: And if we could have 156 up,

1 please.

2 (People's Exhibit 156 was published.)

3 Q (BY MR. FREEMAN) Is this the base of the shell?

4 A Correct.

5 Q Indicating the manufacturer, the caliber, and

6 also that indentation in the -- from the firing pin?

7 A Yes.

8 Q Is that an item that was collected as well?

9 A Yes, it was.

10 Q If I could have the bailiff hand you 303. Do
11 you recognize what is depicted in 303?

12 A I do.

13 Q And what is that?

14 A This is the spent shotgun shell that is on the
15 screen right now, Exhibit 190 -- or 156.

16 Q 156, yeah. And does it appear to be in the same
17 or substantially similar condition today as when you
18 collected it?

19 A With the exception of the writing from the lab
20 on it, yes.

21 MR. FREEMAN: Judge, move to introduce -- I
22 already forgot the number.

23 THE WITNESS: 303.

24 MR. FREEMAN: 303.

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

1 THE COURT: 303 is admitted.

2 (People's Exhibit 303 was admitted into
3 evidence.)

4 MR. FREEMAN: If we could republish 151.

5 (People's Exhibit 151 was published.)

6 Q (BY MR. FREEMAN) That appears to show, towards
7 the upper left-hand part of that photograph, those
8 Placards 8 and 9?

9 A Correct.

10 Q And those are just, it looks like, to the north
11 and the west of that sort of drainage area?

12 A Yes.

13 Q All right. So I want to talk about those. If I
14 could have the bailiff hand you 157 through 160, please.
15 And I think that set of photographs generally focuses on
16 what you designated with Placard 8?

17 A That's correct.

18 Q What was Placard 8?

19 A Placard 8 is a live round of 12-gauge
20 ammunition.

21 Q And you say "live round," so unfired?

22 A That is correct.

23 Q And do those photographs accurately depict the
24 condition of that item and where it was found?

25 A Yes, it does.

1 MR. FREEMAN: Judge, move to introduce 157
2 through 160.

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

4 THE COURT: 157 through 160 are admitted.

5 (People's Exhibits 157 through 160 were admitted
6 into evidence.)

7 MR. FREEMAN: And may we publish?

8 THE COURT: Yes.

9 MR. FREEMAN: May I have 157 up, please.

10 (People's Exhibit 157 was published.)

11 Q (BY MR. FREEMAN) Can you tell us what we're
12 looking at in this photograph.

13 A This is a photograph of both evidence items
14 Number 8 and Number 9 on the grassy area nearest
15 Building 8139. You can see the metal fence in the top
16 corner dividing the resident line and the greenbelt area.

17 Q And is this camera viewpoint looking roughly
18 west, maybe slightly north?

19 A Correct.

20 MR. FREEMAN: And if we could have 159 up,
21 please.

22 (People's Exhibit 159 was published.)

23 Q (BY MR. FREEMAN) Do you recognize what's
24 depicted in 159?

25 A Yes. This is evidence item Number 8.

1 MR. FREEMAN: And can we have 160 up, please.

2 (People's Exhibit 160 was published.)

3 Q (BY MR. FREEMAN) Do you recognize what is
4 depicted in 160?

5 A I do.

6 Q And what is that?

7 A This is the base of evidence item Number 8.

8 Q And what can you determine from looking at the
9 base of this item?

10 A You can tell the manufacturer, Winchester, gauge
11 of 12-gauge, and you can see that the firing pin is not
12 fired.

13 Q And if I can have the bailiff hand you 347. Do
14 you recognize -- tell us if you recognize what 347 is.

15 A I do.

16 Q What is that?

17 A This is the live round of ammunition indicated
18 by my Evidence Placard Number 8.

19 Q And is it in the same or substantially similar
20 condition now as when you collected it?

21 A It is.

22 THE COURT: And this is 347?

23 THE WITNESS: This is 347.

24 MR. FREEMAN: Moving to introduce People's 347.

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

1 THE COURT: 347 is admitted.

2 (People's Exhibit 347 was admitted into
3 evidence.)

4 Q (BY MR. FREEMAN) And if I could have the
5 bailiff hand you 161 through 163. I think those focused
6 on what you designated Placard Number 9. What was Placard
7 Number 9, or what was next to it?

8 A Placard Number 9 is a spent round of Federal
9 12-gauge shotgun ammunition shell.

10 Q And do those pictures accurately depict the way
11 that item looked when you found it on the morning of the
12 1st?

13 A Yes.

14 MR. FREEMAN: Judge, we move to introduce 161
15 through 163.

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

17 THE COURT: 161 through 163 are admitted.

18 (People's Exhibits 161 through 163 were admitted
19 into evidence.)

20 MR. FREEMAN: And may we publish?

21 THE COURT: Yes.

22 MR. FREEMAN: Can we have 162 up, please.

23 Q (BY MR. FREEMAN) What is depicted in 162?

24 A This is a close-up of item Number 9, evidence
25 item Number 9, the spent shotgun casing.

1 MR. FREEMAN: And if we could take a look at
2 163.

3 (People's Exhibit 163 was published.)

4 Q (BY MR. FREEMAN) Do you recognize this as the
5 base of that same item?

6 A Yes.

7 Q And it looks like there's that dent from the
8 firing pin, also indicating it was fired?

9 A Correct.

10 Q Is that an item that was collected?

11 A Yes, it was.

12 Q I'll show you 304 -- or I'll and the bailiff to
13 bring you 304. And I'll ask you if you recognize 304 as
14 that actual expended shell.

15 A I do.

16 Q And is it in the same or substantially similar
17 condition as when you collected it?

18 A It is.

19 MR. FREEMAN: Judge, move to introduce 304.

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

21 THE COURT: 304 is admitted.

22 (People's Exhibit 304 was admitted into
23 evidence.)

24 Q (BY MR. FREEMAN) And I'll ask the bailiff to
25 bring you 164 through 167. Do you recognize those as

1 photographs of what you designated with Placard 10?

2 A I do.

3 Q And what was next to or underneath Placard 10?

4 A Number 10 is also a Federal brand 12-gauge
5 shotgun shell.

6 MR. FREEMAN: And if we could bounce back to
7 People's 6 for a moment.

8 (People's Exhibit 6 was published.)

9 Q (BY MR. FREEMAN) Again, it might be difficult
10 to see, but is Number 10 just to the north of this tree
11 here?

12 A That is correct. It is on the 8139 side above
13 that squiggly circle indicating the presence of a tree.

14 Q And somewhat to the west of 8 and 9 that we just
15 looked at?

16 A That is correct.

17 Q And do those photographs, 164, '5 and '6 and
18 '7 -- sorry -- do those accurately depict the way that
19 item looked?

20 A Yes, they do.

21 MR. FREEMAN: Judge --

22 Which numbers did I give you? Oh, I gave you
23 164 through '7.

24 Judge, we move to introduce 164 through 167.

25 MR. ST. GEORGE: Your Honor, may I voir dire on

1 164 and 165?

2 THE COURT: Sure.

3 VOIR DIRE EXAMINATION

4 BY MR. ST. GEORGE:

5 Q Ms. Parker, included in the photograph here,
6 164, I see what looks like a red discoloration. Can you
7 see that as well?

8 A I'm not sure exactly what you're referencing. I
9 see the drainage grate in the upper corner and some
10 leaves.

11 Q I'm asking if some of those red spots -- could
12 that be blood?

13 A Absolutely, yes.

14 Q Okay. And also in 165, we've got a little bit
15 of a closer view, and there's some red discoloration there
16 on the grass. Could that also be blood?

17 A I believe what you're referencing to is kind of
18 below the tent placard. Is that the area that you're
19 focusing on?

20 Q It is.

21 A Yes. To answer your question, yes.

22 Q That could very well be blood?

23 A Yes.

24 MR. ST. GEORGE: Thank you.

25 THE COURT: Any objection?

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

2 THE COURT: 164 through 167 are admitted.

3 (People's Exhibits 164 through 167 were admitted
4 into evidence.)

5 MR. FREEMAN: And may we publish?

6 THE COURT: Yes.

7 MR. FREEMAN: Can I have 164 up, please.

8 (People's Exhibit 164 was published.)

9 DIRECT EXAMINATION (CONTINUED)

10 BY MR. FREEMAN:

11 Q 164, does that appear to depict where item
12 Number 10 -- or what you designated item Number 10 was?

13 A Yes.

14 Q And towards the left side, in the upper left
15 corner, appears to be sort of a gravelly area there.

16 A That is correct.

17 Q And if you continue to the left of the
18 photograph, would that take you south towards the pickup
19 truck?

20 A That is correct. The driveway is on the other
21 side of this gravel area.

22 Q Okay.

23 MR. FREEMAN: And if we could have 166 up,
24 please.

25 (People's Exhibit 166 was published.)

1 Q (BY MR. FREEMAN) And is that a closer-up photo
2 of that expended 12-gauge shotgun shell?

3 A Yes, it is.

4 MR. FREEMAN: And if we could have 167 up,
5 please.

6 (People's Exhibit 167 was published.)

7 Q (BY MR. FREEMAN) Is this the base of that
8 12-gauge shell?

9 A Yes, it is.

10 Q If I could have the bailiff hand you 305. Let
11 us know if you recognize what 305 is.

12 A 305 is the evidence item from beneath Placard
13 Number 10.

14 Q And does it appear to be in the same or
15 substantially similar condition today as when you
16 collected it?

17 A Yes, it does.

18 MR. FREEMAN: Judge, I would move to introduce
19 305.

20 MR. ST. GEORGE: No objection.

21 THE COURT: 305 is admitted.

22 (People's Exhibit 305 was admitted into
23 evidence.)

24 Q (BY MR. FREEMAN) In taking a look at 305, does
25 it appear to be the same type of ammo as what you had

1 previously collected, or does it appear to be any
2 different?

3 A It is the same ammunition as evidence item
4 Placard Number 9, but it differs from the previous items
5 of evidence, yes.

6 Q And can you tell by looking at it what type on
7 ammo -- not what gauge, but what buckshot or lead ball?

8 A Yes, I can.

9 Q And how can you tell?

10 A The type of ammunition is -- on the Federal
11 ammunition, unlike the Winchester, has the type of
12 ammunition inscribed upon the side of it. So it indicates
13 its manufacturer, Federal, and a double-aught buckshot
14 within the casing.

15 Q And you know what that means, double-aught buck?

16 A Correct.

17 Q What does that mean?

18 A It is the size of the ammunition within. So it
19 is -- the buckshot is the larger size, just below the full
20 lead projectile that you referenced earlier in your
21 direct.

22 Q And some of the pellets that we showed earlier
23 and you talked about collecting, do those appear to be
24 buckshot, double-aught buckshot, or bigger or smaller, or
25 do you know?

1 A They are consistent with buckshot.

2 Q And is buckshot quite a bit bigger than
3 birdshot?

4 A Correct.

5 Q In looking at People's 6, it looks like item
6 Number 10 was the westernmost item in the backyard that
7 you designated on this diagram.

8 A On this diagram, yes, that's correct.

9 Q Did you make another diagram -- if I could find
10 it. People's -- what has been marked as People's 7, did
11 you make another diagram that includes both the interior
12 of the residence and some items on the exterior?

13 A Of which reference -- residence are you
14 referencing?

15 Q I'm going have the bailiff hand you People's 7,
16 the suspect residence.

17 A Yes. Thank you for the clarification. Yes,
18 that is correct.

19 Q And I think you mentioned earlier that you guys
20 started outside because you were waiting on a search
21 warrant to get into the suspect unit?

22 A Correct. Unit Number 103.

23 Q At some point were you given the go-ahead to get
24 into that unit and process it as well?

25 A Yes, we were.

1 Q And in doing that, did that allow you to create
2 that diagram, People's 7 that I just handed you?

3 A That is correct.

4 Q And does People's 7 -- does it accurately depict
5 the layout of the inside of that unit and also some of the
6 items that you found both at the rear and the front of
7 that unit?

8 A That is correct, yes.

9 Q And is there sort of a legend there as well
10 indicating what each placard number or what each number on
11 the diagram corresponds to?

12 A Yes.

13 MR. FREEMAN: Judge, move to introduce People's
14 7. Is it already in? I think it did come in through
15 Maurer.

16 May with publish that item?

17 THE COURT: Yes.

18 MR. FREEMAN: If we could have 7 up, please.

19 (People's Exhibit 7 was published.)

20 Q (BY MR. FREEMAN) Taking a look at People's 7,
21 it looks like, based upon the markings towards the bottom,
22 that north is to the left?

23 A That is correct.

24 Q Other than that, does this accurately depict the
25 layout of that apartment?

1 A That is correct. The layout of the apartment
2 was actually obtained from the apartment website. So I
3 obtained this online, and then I overlaid the items of
4 evidence within it.

5 Q And the south side of the apartment where the
6 main entrance is, is that to the right of the diagram?

7 A Yes.

8 Q And the back side where there's the open space,
9 is that on the left?

10 A That is correct.

11 Q And it looks like there's two evidence items
12 just to the left of the unit itself, 11 and 12. Are those
13 items you that you collected outside the unit?

14 A There are actually three items. 11, 12 and 13
15 are all outside of apartment. On the diagram itself,
16 that's a little misleading. Where 13 is located is
17 actually just a covered porch area, but it is still
18 outside.

19 Q Okay. I'm going to ask the bailiff to hand you
20 168 through 172. Do you recognize what is depicted in
21 those photographs?

22 A I do.

23 Q And what is that?

24 A These are photographs from the backyard
25 indicating evidence items 11, 12 and 13, and close-ups of

1 item Number 11.

2 Q And what did you designated with Placard Number
3 11?

4 A Number 11 is a spent shotgun shell, Federal
5 12-gauge.

6 Q And do those photographs accurately depict the
7 condition and the location of that item?

8 A Yes.

9 MR. FREEMAN: Judge, move to introduce 168
10 through '72.

11 MR. ST. GEORGE: Your Honor, voir dire on 168?

12 THE COURT: Sure.

13 VOIR DIRE EXAMINATION

14 BY MR. ST. GEORGE:

15 Q In that photograph, does that red coloration --
16 could that also be blood?

17 MR. FREEMAN: Judge, objection. This is proper
18 for cross, but this is not voir dire.

19 THE COURT: I'll sustain that objection.

20 Any objection to 168 through 172 being admitted?

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

22 THE COURT: They are admitted.

23 (People's Exhibits 168 through 172 were admitted
24 into evidence.)

25 MR. FREEMAN: And may we publish?

1 THE COURT: You may.

2 MR. FREEMAN: Can I have 168 up, please.

3 (People's Exhibit 168 was published.)

4 DIRECT EXAMINATION (CONTINUED)

5 BY MR. FREEMAN:

6 Q Can you describe what we're seeing or what we're
7 looking at in 168?

8 A This photograph was taken from approximately the
9 fence line that you saw on previous photographs, the large
10 fence property line facing south towards the back of this
11 unit, Unit 103. In bottom left-hand corner, you can see
12 Evidence Placard Number 11. In the rocky area further
13 towards the top, in the shade, is Evidence Placard Number
14 12, and on the concrete patio, you will see Evidence
15 Placard Number 13.

16 Q And it looks like there's sort of a porch light
17 on, and just below that, is that the rear entrance to that
18 unit?

19 A That is correct. That is the doorway to access
20 Unit 103 from the back side.

21 Q In the sunny part of that photograph, there
22 appears to be a lot of red staining. Did that appear to
23 lead into the unit?

24 A That is correct.

25 Q And we haven't really got inside the unit yet,

1 but when you got inside of there, was there a lot of blood
2 inside the unit?

3 A Yes.

4 Q Or what appeared to be blood?

5 A Correct. Yes.

6 MR. FREEMAN: If we could have 171 up, please.

7 (People's Exhibit 171 was published.)

8 Q (BY MR. FREEMAN) Do you recognize 171 as a
9 photograph of the item that was designated with Placard
10 11?

11 A I do.

12 Q And this is the spent shotgun shell?

13 A Correct.

14 MR. FREEMAN: And if we could have 172 up,
15 please.

16 (People's Exhibit 172 was published.)

17 Q (BY MR. FREEMAN) Is this a photograph of the
18 base of that shell?

19 A It is.

20 MR. FREEMAN: Judge, we need to add this one to
21 our evidence list. It would be 346.

22 Q (BY MR. FREEMAN) In taking a look at 346, do
23 you recognize that as the shell that's designated with
24 Placard 11?

25 A I do.

1 Q And does it appear to be in the same or
2 substantially similar condition today as when you
3 collected it?

4 A Yes.

5 MR. FREEMAN: Judge, move to introduce 346.

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

7 THE COURT: 346 is admitted.

8 (People's Exhibit 346 was admitted into
9 evidence.)

10 Q (BY MR. FREEMAN) I want to move on to what you
11 designated item 12. I'll have the bailiff hand you 173
12 through 176. Do you recognize the items depicted in those
13 photographs?

14 A I do.

15 Q And what was -- what is depicted in those
16 photos?

17 A These are photographs of the porch area,
18 including items Number 12 and 13 and close-ups of item
19 Number 12.

20 Q And, specifically, what did you designate with
21 placard -- or as item 12?

22 A That is a Federal 12-gauge live round of
23 ammunition.

24 Q And do those photographs accurately depict the
25 way that item looked, and that part of the residence, as

1 when you were there on the 1st?

2 A Yes.

3 MR. FREEMAN: Judge, move to introduce 173
4 through 176.

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

6 THE COURT: 173 through 176 are admitted.

7 (People's Exhibits 173 through 176 were admitted
8 into evidence.)

9 MR. FREEMAN: And may we publish?

10 THE COURT: You may.

11 MR. FREEMAN: If we could have 173 up, please.

12 (People's Exhibit 173 was published.)

13 Q (BY MR. FREEMAN) And in this photograph, it
14 looks like there's sort of a gravel area that leads onto
15 that patio.

16 A That's correct.

17 Q And on the left side there, I don't know how
18 well the jury can see it, is that Placard 12?

19 A Yes.

20 Q And then Placard 13 is actually up on the
21 concrete slab?

22 A That's correct.

23 MR. FREEMAN: If we could publish 175, please.

24 (People's Exhibit 175 was published.)

25 Q (BY MR. FREEMAN) And is 175 a photograph of

1 what you designated with Placard 12, what you called the
2 live 12-gauge round?

3 A Yes, it is.

4 Q And if we could have 176 up, please.

5 (People's Exhibit 176 was published.)

6 Q (BY MR. FREEMAN) Is that the base of that,
7 indicating that it hasn't been struck by a firing pin?

8 A Correct.

9 MR. FREEMAN: If we could go back to 175 for a
10 moment.

11 (People's Exhibit 175 was published.)

12 Q (BY MR. FREEMAN) The writing on the side of
13 that is where it says, 00 Buck, is that what you were
14 referring to earlier, double-aught buck?

15 A That's correct.

16 Q And that refers to the size of the pellets
17 inside the round?

18 A That's correct.

19 Q If I could have the bailiff, we have to add this
20 our list as well -- 348. Do you recognize 348 as the
21 actual live round that you collected that was next to
22 Placard 12?

23 A I do.

24 Q And is it in the same or similar --
25 substantially similar condition today as when you

1 collected it?

2 A It is.

3 MR. FREEMAN: Judge, move to introduce 348.

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

5 THE COURT: 348 is admitted.

6 (People's Exhibit 348 was admitted into

7 evidence.)

8 Q (BY MR. FREEMAN) I'm going to go to what you
9 designated as item 13. I'm going to have the bailiff hand
10 you 177 through 179. Do you recognize those as
11 photographs of what you designated as item 13?

12 A I do.

13 Q And what was item 13?

14 A Item 13 is a live round of Winchester 12-gauge
15 ammunition.

16 Q And do those photographs accurately depict the
17 way that item looked?

18 A Yes, they do.

19 MR. FREEMAN: Judge, move to introduce 177
20 through 179.

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

22 THE COURT: 177 through 179 are admitted.

23 (People's Exhibits 177 through 179 were admitted
24 into evidence.)

25 MR. FREEMAN: And may we publish?

1 THE COURT: Yes.

2 MR. FREEMAN: Can we have 178 up, please.

3 (People's Exhibit 178 was published.)

4 Q (BY MR. FREEMAN) Is that a photograph of that
5 live round?

6 A It is.

7 Q And there appears to be a spot of blood above
8 it?

9 A Several, yes.

10 MR. FREEMAN: And if can we have 179 up, please.

11 (People's Exhibit 179 was published.)

12 Q (BY MR. FREEMAN) Is that a photograph of the
13 base of that round?

14 A It is.

15 Q Before we get -- before we get inside the
16 residence, I'd like to finish up with the outside. Did
17 you also document and collect any items from the front of
18 the unit?

19 A Yes.

20 Q And, specifically, was there a firearm that was
21 out there?

22 A Yes, there was.

23 Q And can you describe that firearm.

24 A There was a .380 semi-auto pistol in the front
25 of this residence, Number 103, at the front of the

1 breezeway, closer to a large bush near the driveway.

2 MR. FREEMAN: And if we could go back to

3 People's 7 for a moment.

4 (People's Exhibit 7 was published.)

5 Q (BY MR. FREEMAN) Was that semi-automatic

6 handgun designated with Placard 14?

7 A That is correct.

8 Q And is that right there next to that -- I guess,

9 what is it, a tree?

10 A I believe it was maybe eventually a tree, but it
11 was a large shrubbery. Taller than me.

12 Q Hoping to be a tree?

13 A Hoping to be.

14 Q I'm going to have the bailiff hand you 180
15 through 185. If you would take a look at those, and tell
16 us if you recognize what is depicted in those photographs.

17 A I do.

18 Q And what is depicted in those photographs?

19 A This is the handgun that's located near the
20 tree/bush.

21 Q And do these photographs accurately depict both
22 the condition of that weapon and the location where you
23 found it?

24 A That is correct.

25 MR. FREEMAN: Judge, move to introduce 180

1 through 185.

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

3 THE COURT: 180 through 185 are admitted.

4 (People's Exhibits 180 through 185 were admitted
5 into evidence.)

6 MR. FREEMAN: And may we publish?

7 THE COURT: Yes.

8 MR. FREEMAN: So if we could have 180 up,
9 please.

10 (People's Exhibit 180 was published.)

11 Q (BY MR. FREEMAN) It looks like on the far right
12 side of that, in the shade, is that Placard 14?

13 A That is correct.

14 Q And next to that, is that where the handgun was
15 found?

16 A That's correct.

17 MR. FREEMAN: And if we could go to 181, please.

18 Q (BY MR. FREEMAN) Does that depict the handgun
19 that was located?

20 A That's correct.

21 MR. FREEMAN: And if we could go to 182.

22 (People's Exhibit 182 was published.)

23 Q (BY MR. FREEMAN) Can you tell us what we're
24 looking at in 182?

25 A This is the ejection port of the Ruger pistol

1 that you saw in the previous photo indicated with Evidence
2 Placard Number 14.

3 Q And is there anything you can tell about this
4 condition from that weapon from this photograph?

5 A This particular model of firearm has what's
6 called a viewing window along that top slide that would
7 give the trained eye the ability to determine that it is
8 loaded with a round in the chamber.

9 Q And are you talking about this little area right
10 here where there's sort of a lighter color?

11 A Yes. That's the copper jacketing.

12 Q And that indicates that it's got a round in the
13 chamber, and it's ready to fire?

14 A Correct. And I'm sorry. It was not the
15 jacketing. That's the casing. Excuse me.

16 Q Casing.

17 MR. FREEMAN: And if we could publish 183,
18 please.

19 (People's Exhibit 183 was published.)

20 Q (BY MR. FREEMAN) What is depicted in 183?

21 A 183 is the downloaded weapon. You can see the
22 slide is locked in the back position. The case -- the
23 live round of ammunition that was within that chamber is
24 located near the trigger guard, and the magazine is
25 located towards the right with live rounds within it.

1 Q And who put the weapon into this condition with
2 the slide locked back and the magazine out?

3 A I did.

4 Q Could you tell, in looking at the magazine, how
5 many rounds it is capable of holding?

6 A This is a six-round.

7 Q And how many live rounds were left in this
8 magazine?

9 A Two.

10 Q And the round that's sort of sitting there by
11 itself between the gun and the magazine, where did that
12 come from?

13 A That came from the chamber.

14 Q So if a person wanted to fully load this, they
15 could put six rounds in the magazine and also have one in
16 the chamber, for seven total shots?

17 A That's correct.

18 Q And is it accurate to say that when you found
19 this weapon, it had three live rounds in it?

20 A That is correct.

21 MR. FREEMAN: And if we could have 184 up,
22 please.

23 (People's Exhibit 184 was published.)

24 Q (BY MR. FREEMAN) Is this a picture of the base
25 of that round from the chamber?

1 A Yes, it is.

2 MR. FREEMAN: And if with could have 185 up,
3 please.

4 (People's Exhibit 185 was published.)

5 Q (BY MR. FREEMAN) Is that the magazine and the
6 two live rounds that were still in the magazine of that
7 weapon?

8 A That's correct.

9 Q And I think we -- you said that you think it
10 holds six. It looks like there's an indication next to
11 the little windows that it holds six rounds?

12 A That's correct.

13 Q What was done with that item?

14 A That item was collected and packaged as evidence
15 as well.

16 Q And did you do anything further with that item?

17 A I did not.

18 Q You personally didn't process it for prints or
19 DNA or try to compare it to any items at the scene?

20 A No, sir.

21 Q Do other people possibly do that upon request?

22 A Yes.

23 MR. FREEMAN: Judge, I'm just showing the item
24 to the deputy. It is ziplocked, and it's got a trigger
25 lock on it as well.

1 THE COURT: Thank you.

2 MR. FREEMAN: Just so everybody's aware.

3 If we could have the bailiff hand 294 to the
4 witness.

5 Q (BY MR. FREEMAN) If you could take a look at
6 294, and tell us if you recognize that item.

7 A I do.

8 Q What do you recognize 194 to be?

9 A 294 is the firearm that you viewed in the
10 previous exhibit photographs.

11 Q And is that in the same or substantially similar
12 condition today as when you collected it on August 1st of
13 2016?

14 A The major exception, obviously, it's in a box.
15 It has what's called a trigger guard on it, which is a
16 lock, so that firearm cannot be fired, and the slide has
17 been marked by the lab.

18 Q And does it also have zip ties through --

19 A Correct. It is affixed to the box via zip tie.
20 I packaged it in an evidence bag, which is contained
21 within.

22 Q And is the magazine or the live ammunition in
23 there?

24 A No. I don't package the magazine or ammunition
25 with the firearm when I submit it to evidence.

1 Q Okay. Other than those qualifications, or
2 qualifiers, is that item in the same or similar condition
3 as when you collected it?

4 A It is.

5 MR. FREEMAN: Judge, move to introduce 294.

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

7 THE COURT: 294 is admitted.

8 (People's Exhibit 294 was admitted into
9 evidence.)

10 Q (BY MR. FREEMAN) And just so we're clear, 294
11 was the item 14 that you collected, the handgun that was
12 under the tree?

13 A That is correct.

14 Q Okay. Before we get into the unit, one more set
15 of photos from outside. I'd ask the bailiff to hand you
16 119 to 124. Take a look at those, and tell us if you
17 recognize what is depicted in those photographs.

18 A I do.

19 Q And what is depicted in those photos?

20 A These are photographs of the back side, or north
21 side, of Building Number 119, plus bullet impacts into the
22 tree near 119.

23 MR. FREEMAN: If we could have People's 3 up,
24 please.

25 (People's Exhibit 3 was published.)

1 Q (BY MR. FREEMAN) Taking a look at People's 3 --

2 MR. FREEMAN: And, actually, we might need the

3 next one, People's 4.

4 (People's Exhibit 4 was published.)

5 MR. FREEMAN: If we could zoom in on those right

6 cluster buildings. Thank you.

7 Q (BY MR. FREEMAN) Taking a look at People's 4.

8 And I think that northwesternmost building has been

9 identified as Building 7, where the suspect unit was, the

10 building to the right of that being Building 6. Can you

11 tell by looking at this aerial photograph roughly where

12 these photographs were taken from?

13 A Yes.

14 Q And, I don't know, I don't want to give you the

15 laser pointer because it will bounce off, but would you

16 mind walking up there with that stick, that pointer, and

17 pointing it out to the jury?

18 A Yes.

19 Q Thank you.

20 A The photographs that we're speaking about are

21 taken from this section, so the upper left-hand corner of

22 the photograph as you're viewing it.

23 Q So it looks like you're designating or

24 indicating an area on the western half of that Building 6.

25 A Correct.

1 Q Okay. All right. You can go ahead and have a
2 seat.

3 A (The witness complied.)

4 Q Do those photographs, 119 through 124,
5 accurately depict the way that area looked, at least
6 during the daytime, on August 1st?

7 A Correct. Yes, they do.

8 MR. FREEMAN: Judge, move to introduce 119
9 through 124.

10 THE COURT: Any objection?

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

12 THE COURT: 119 through 124 are admitted.

13 (People's Exhibits 119 through 124 were admitted
14 into evidence.)

15 MR. FREEMAN: And may we publish?

16 THE COURT: Yes.

17 MR. FREEMAN: If we could have 119 up, please.

18 (People's Exhibit 119 was published.)

19 Q (BY MR. FREEMAN) Is this a photograph that's
20 taken basically looking towards the west?

21 A That is correct.

22 Q And from that area that you described?

23 A Correct.

24 Q And I don't know how well the jury can see it,
25 but in the sunny part in that photograph, sort of toward

1 the right side, I looks like there's sort of a green box,
2 like a utility-type box?

3 A Yes.

4 Q And then on both sides of that, it appears to be
5 police tape?

6 A Correct.

7 Q And is it beyond that box of police tape where
8 the gap is between the buildings where we spent a lot of
9 time talking about things that were found?

10 A Yes.

11 Q So this is what is somewhat to the east of that
12 scene?

13 A That is correct.

14 Q Okay. Just wanted to make sure everybody knows
15 where we're at.

16 MR. FREEMAN: If we could go to 120.

17 Q (BY MR. FREEMAN) Can you tell the jury what
18 we're looking at in 120?

19 A To help orient you with this photograph, because
20 it is difficult to understand what you're looking at here,
21 you can see the two yellow police tapes. So this
22 is -- this photograph was intended to show the viewpoint
23 of Sergeant Maines in his approach from behind
24 Building 8119. So you see in the lower portion of the
25 photographs some shrubbery. You can start to see a bush

1 which is contained within those two yellow police tapes.
2 And that large tree, you can't really see the trunk too
3 well in this photograph, but you can see the leaf portion
4 is sticking up in the top portion of the photo.

5 Q So you're talking about this bush here that was
6 indicated to you where Sergeant Maines was?

7 A That is correct.

8 Q And in that last photo, when I talked about that
9 green utility box, can you sort of see that little sliver
10 of it here on that far right side of that photo?

11 A That is correct.

12 MR. FREEMAN: If we could go to 122, please.

13 (People's Exhibit 122 was published.)

14 Q (BY MR. FREEMAN) What are we looking at in 122?

15 A We have now shifted our gaze to the opposite
16 sides. We're now viewing the same area but from the east
17 side. So we're looking east towards the area we just saw
18 the photo. So the previous photo, we were looking west.
19 Now we're looking east, back down to the same area. So
20 our direct line of sight is this tree. You saw the large,
21 bushy portion of that tree in the previous photograph, and
22 now you'll note to the left of that photograph is that
23 green utility box, to help orient you.

24 Q This is the green box?

25 A That is correct.

1 Q And this is the bush?

2 A That is correct.

3 Q Now, why did you take picture of this tree?

4 A This tree has impact marks on the lower portion
5 of the trunk.

6 Q And how could you tell that they're impact
7 marks?

8 A The tree bark is freshly removed in multiple
9 areas.

10 Q And can you tell what it was that impacted that
11 tree or caused those marks?

12 A That would be an impact mark from a shotgun.

13 Q And how can you tell?

14 A Based on the multiple areas that it was struck
15 and the size of the bark that was removed.

16 Q Were you able to tell if any of the pellets
17 penetrated that tree so that you could try to remove them?

18 A No. None of them were present.

19 MR. FREEMAN: And if we could take a look at
20 124, please.

21 (People's Exhibit 124 was published.)

22 Q (BY MR. FREEMAN) Is that a closer-up view of
23 the base of that tree?

24 A That is correct.

25 Q And those sort of reddish-orange marks, are

1 those the marks that you indicated that appear to be
2 impact marks?

3 A Correct.

4 Q Did you do anything to inspect the bush to
5 determine if you could find any evidence of impact marks
6 or pellets within the bush?

7 A We did look at the bush, but there was nothing
8 overtly obvious about the bush.

9 Q And if we could have the 123 up, please.

10 (People's Exhibit 123 was published.)

11 Q (BY MR. FREEMAN) What are we looking at in 123?

12 A This is a view of -- again, looking west, so
13 we've flopped back the opposite again. This is the view
14 of that drainage turnout area from that bush, indicating
15 Sergeant Maines' view of that crime scene area.

16 Q All right. I think we're ready to move inside
17 the unit. I think you described at one point you got the
18 go-ahead to go inside and process the unit. Did you go
19 about that in sort of a similar manner as you did on the
20 outside?

21 A Yes. We have a protocol in place when we
22 execute a search warrant, regardless of what type of case
23 we're investigating.

24 Q And I'm going to have the bailiff hand you 70
25 through 81. If you could take a moment to look at those

1 photos, and tell us if you recognize what is depicted in
2 those.

3 A I do.

4 Q And do you recognize those as photographs of
5 various parts of the inside of that unit as they looked
6 when you got in there on the morning of August 1st?

7 A Yes.

8 Q Do those photographs accurately depict the way
9 the various parts of that unit looked?

10 A Yes, they do.

11 MR. FREEMAN: Judge, move to introduce 70
12 through 81.

13 MR. ST. GEORGE: I have no objection, Your
14 Honor.

15 THE COURT: 70 through 81 are admitted.

16 (People's Exhibits 70 through 81 were admitted
17 into evidence.)

18 MR. FREEMAN: And may we publish?

19 THE COURT: Yes.

20 MR. FREEMAN: If we could have 70, please.

21 (People's Exhibit 70 was published.)

22 Q (BY MR. FREEMAN) Can you tell us what part of
23 the unit we're looking at in the photograph?

24 A This is the entryway to Unit 103. The front
25 door is that green sliver that you see to the right. This

1 is the floor area that we're focusing on in this
2 photograph. And the threshold to the residence is that
3 bottom left-hand corner. The door beyond, in the top of
4 the photograph, is the door to the garage.

5 Q So you're indicating this is the threshold to
6 the front door, this is the front door that swings in, and
7 then this is the door to the garage?

8 A That is correct.

9 Q This sort of shiny item down here, just inside
10 the front door, do you recall what that was?

11 A That was a .380 spent casing.

12 Q And was that an item that was designated and
13 collected?

14 A Yes, it was.

15 Q And did you give that an item number or placard
16 number?

17 A I did.

18 Q And what number is that?

19 A That is evidence placard item Number 17.

20 MR. FREEMAN: And if we could have Number 71 up,
21 please.

22 (People's Exhibit 71 was published.)

23 Q (BY MR. FREEMAN) What are we looking at in
24 People's 71?

25 A This is the same area as seen in the previous

1 exhibit. We simply shifted our gaze upward, showing less
2 of that entryway floor. You can now see the garage door
3 in the focal of the photograph, and on the left-hand side
4 of the photograph is a storage shelf. On the right-hand
5 side is the door.

6 Q So still basically looking in the front door to
7 the unit?

8 A That is correct.

9 MR. FREEMAN: And if we can have 73 up, please.

10 (People's Exhibit 73 was published.)

11 Q (BY MR. FREEMAN) Is that a close-up of that
12 expended shell casing that's just inside that the front
13 door?

14 A Yes, it is.

15 Q You said it's item 17?

16 A That's correct.

17 MR. FREEMAN: If we could have 74 up, please.

18 (People's Exhibit 74 was published.)

19 Q (BY MR. FREEMAN) What are we looking at in the
20 photograph?

21 A In the photograph, we have stepped into the
22 residence. We're standing around the area where you
23 viewed the garage door, so we are now positioned into the
24 living space of this unit. So you see a hallway with a
25 doorway off to your right. That doorway is the bathroom.

1 Straight ahead is the living room. The kitchen will be
2 off to your left, which is not viewed in this photograph,
3 but you can see an upright red and blue box. At the end
4 of that wall where that red and blue box is propped is the
5 kitchen area.

6 Q Now, towards the bottom of that photograph,
7 there appears to be another box that's partially in the
8 hallway and then partially going into a doorway to the
9 right. Where does that doorway lead?

10 A That's the bathroom doorway.

11 Q And does that photograph accurately depict the
12 way that part of the apartment looked?

13 A Yes, it does.

14 Q Before we do that, I'm going to ask the bailiff
15 to bring you 296. Just before we move on, do you
16 recognize 296 as that expended .380 casing that you found
17 just inside the front door?

18 A I do.

19 Q And is it in the same or substantially similar
20 condition today as when you collected it?

21 A Yes, it is.

22 MR. FREEMAN: Judge, move to introduce 296.

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

24 THE COURT: 296 is admitted.

25 (People's Exhibit 296 was admitted into

1 evidence.)

2 MR. FREEMAN: If we could go to 75, please.

3 (People's Exhibit 75 was published.)

4 Q (BY MR. FREEMAN) What is depicted in
5 People's 75?

6 A This is a photograph. This can be a little bit
7 confusing. This is a photograph of a bullet impact into
8 the closet of Unit 103. The front door is that green door
9 which is open, so it is partially covering the closet
10 door, and you can see the defect mark there between the
11 trim and the door edge.

12 Q And just so we're clear, this dark green part on
13 the right. That's the outside of the front door?

14 A That is correct.

15 Q And is this the locking mechanism for that front
16 door?

17 A That is correct.

18 Q And then this shiny thing down here, is that the
19 knob for the closet door?

20 A That is correct.

21 Q And the defect that you're referring to, is it
22 right there on the molding?

23 A Yes.

24 Q And did that appear to be a bullet defect?

25 A Yes, it did.

1 Q And I think we had some testimony from Detective
2 Gideon yesterday about efforts to determine the trajectory
3 of that round, and then also efforts to collect that
4 round. Did you help him do any of that?

5 A Yes. We did that together.

6 Q I won't go over that again.

7 MR. FREEMAN: If we could have 76 up, please.

8 (People's Exhibit 76 was published.)

9 Q (BY MR. FREEMAN) And with 76, what are we
10 looking at in this photograph?

11 A This is going to be that left wall of the hall.
12 Do you remember the previous photograph when we were
13 positioned facing towards the living room, and I mentioned
14 the box at the end of that wall was the kitchen? This is
15 that same wall. We're looking up at the crown molding
16 near the ceiling. You can see a light on and the bullet
17 defect into that crown molding.

18 Q And, again, we heard testimony from Detective
19 Gideon yesterday about efforts to try to collect that
20 projectile. Did you take part in that?

21 A I did.

22 MR. FREEMAN: If we could have People's 80 up,
23 please.

24 (People's Exhibit 80 was published.)

25 Q (BY MR. FREEMAN) Do you recognize what is

1 depicted in People's 80?

2 A I do.

3 Q And what is that?

4 A This is a safe, or lockable container, located
5 within the garage area of Unit 103.

6 Q And was this safe, or locked unit, ever opened?

7 A Yes, it was.

8 Q And without going into too much detail, were
9 there targets, ammunition, firearm-related items stored in
10 there?

11 A Yes, there were.

12 Q If I could have the bailiff hand you 86 and 88
13 through 99.

14 A Okay.

15 Q Do you recognize what is depicted in those
16 photographs?

17 A I do.

18 Q And what is that?

19 A These are various areas throughout the
20 residence, the kitchen area, bedroom and bathroom.

21 Q And do those photographs accurately depict the
22 way those various parts of the unit was?

23 A Yes, they do.

24 MR. FREEMAN: Judge, move to introduce 86 and 88
25 through 99.

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

2 THE COURT: 86 and 88 through 99 are admitted.

3 (People's Exhibits 86 and 88 through 99 were
4 admitted into evidence.)

5 MR. FREEMAN: And may we publish?

6 THE COURT: Yes.

7 MR. FREEMAN: Can I have 86 up, please.

8 (People's Exhibit 86 was published.)

9 Q (BY MR. FREEMAN) Take a look at 86. What part
10 of the unit is this photograph taken in?

11 A This is a photograph taken from the doorway into
12 the bedroom from the living room.

13 Q And there appears to be some sort of rifle
14 leaning up against the wall of that room. Do you recall
15 that?

16 A I do, yes.

17 Q And what item was that?

18 A I don't recall which item number. I don't
19 believe we used a tent placard, but we did seize that
20 shotgun -- or I think it was a rifle, yes.

21 Q Do you recall that being a .22 caliber rifle?

22 A Yes.

23 Q Also on that, we'll call it a nightstand or
24 small cabinet there, does there appear to be a glass of
25 red liquid?

1 A Correct.

2 Q And on the left side, it looks like there's
3 coverings for a window. Do you recall there being a
4 window at that location?

5 A Yes, there was.

6 Q And where does that window look out onto?

7 A This window looks out directly onto that porch
8 area where you saw evidence items 11 and 12.

9 Q So this is the back side of the north side of
10 that unit?

11 A That is correct.

12 MR. FREEMAN: And if we could go to 88, please.

13 (People's Exhibit 88 was published.)

14 Q (BY MR. FREEMAN) What are we looking at in
15 People's 88?

16 A This photograph is taken into the living room
17 from the bedroom. So from the previous photograph, if you
18 were to turn around, this is the position you would be in.
19 We see in this photograph the doorway from the bedroom
20 into the living room. There's -- you see a red line on
21 the bottom there. That, I believe we indicated, was item
22 Placard Number 18, and a shotgun tent among bloodstains.

23 Q Now, the red item that's sort of on the
24 threshold between the bedroom and living room, was that a
25 live 12-gauge shotgun round?

1 A Yes, it was.

2 Q And did -- the shotgun itself, was that item
3 collected?

4 A Yes. Both items were collected.

5 Q And I think we had testimony from Agent Maurer
6 earlier, by do you recall if the shotgun was loaded or
7 not?

8 A I believe the shotgun was not loaded.

9 Q Do you know if there was ammo -- live ammo
10 connected to the shotgun in some fashion?

11 A Yes. I had an ammunition holder on the side,
12 which did have an ammunition within it, live rounds of
13 ammunition.

14 Q And do you know how many rounds that weapon can
15 hold?

16 A I do not.

17 Q You didn't try to do anything to determine that?

18 A No.

19 Q And was that item collected?

20 A Yes, it was.

21 MR. FREEMAN: If we could have -- if we could go
22 to People's 90, please.

23 (People's Exhibit 90 was published.)

24 Q (BY MR. FREEMAN) What is depicted in
25 People's 90?

1 A In this photograph, from the previous, if you
2 were to take one step forward and turn to your left, you
3 would be positioned facing toward the hallway that you saw
4 in previous exhibits. You can see in the bottom right-
5 hand corner the upper portion of that tent that you saw in
6 the previous photograph. You can see the blue wall, which
7 was part of the living room, a fish tank, and then off to
8 your left, you see the bar that indicates the area of the
9 kitchen. And near the center of that photograph, you see
10 the hallway that leads back towards previous exhibits with
11 that coat rack, and the closet is just out of view in this
12 photo.

13 MR. FREEMAN: And can we have 91 up please.

14 (People's Exhibit 91 was published.)

15 Q (BY MR. FREEMAN) This looks like a view facing
16 toward that blue wall with the aquarium in it?

17 A That's correct.

18 Q And on the right side, there appears to be a
19 doorway to a room. Is that the bathroom?

20 A That's correct.

21 Q And it looks like on that kitchen counter there,
22 there's another glass of some sort of red liquid?

23 A Correct.

24 MR. FREEMAN: If we could go to 93, please.

25 (People's Exhibit 93 was published.)

1 Q (BY MR. FREEMAN) In taking a look at 93, do you
2 recognize what is depicted in this photograph?

3 A I do.

4 Q And what is that?

5 A This is the living room floor. If you look at
6 the right of the photograph, you see a white area with
7 some shoes propped against it. That is that bar for the
8 kitchen that you saw in the previous photo. That black
9 round area is a stool that was up against that bar area,
10 and there is a cell phone on the floor near those shoes
11 among some suspected blood as well.

12 Q Was that phone collected?

13 A It was.

14 Q And if I could have the bailiff hand you 292,
15 please. Let us know if you recognize what 292 is.

16 A I do.

17 Q And what is that?

18 A This is the cell phone that's depicted in the
19 exhibit on screen.

20 Q And how is it that you're able to identify that
21 as the same phone?

22 A The cell phone in and of itself I recognize.
23 The evidence packaging is within this pink-colored bag.
24 This is an anti-static bag. So it's repackaged after
25 collection. My paper bag is within.

1 Q And does that phone -- does it appear to be in
2 the same or substantially similar condition now as when
3 you gathered it on the 1st?

4 A The only extension is that the rubber case has
5 been removed from its bag, but yes, otherwise.

6 MR. FREEMAN: Judge, I would move to introduce
7 292.

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

9 THE COURT: 292 is admitted.

10 (People's Exhibit 292 was admitted into
11 evidence.)

12 Q (BY MR. FREEMAN) Once you collected the phone,
13 did you permanently do anything to try to get into the
14 phone, analyze the contents, the call history?

15 A No.

16 Q Somebody else's job?

17 A Correct.

18 Q So I won't and you about that.

19 MR. FREEMAN: If we could have 95 up, please.

20 (People's Exhibit 85 was published.)

21 Q (BY MR. FREEMAN) And in looking at 95, can you
22 tell us what we're looking at in this photograph?

23 A This is a photograph of one of those stools that
24 you saw in the previous photograph. You can see the black
25 topper and the silver legs. And that wall, that white

1 wall, is that same wall that you saw in the previous
2 photographs with the shoes that were leaning up against
3 it. And at the bottom, on the carpeted area near the feet
4 of that stool, is another .380 Summit spent casing.

5 Q And what number did you designate for that?

6 A Referring my diagram, Exhibit Number 7, that
7 would be indicated with evidence placard item Number 20.

8 Q And was that an item that was collected as well?

9 A It was, yes.

10 Q And you might have said this. Was this a .380
11 semi-auto expended casing?

12 A Yes, it was.

13 Q I'll have the bailiff hand you People's 297. Do
14 you recognize what 297 is?

15 A I do.

16 Q And is that the actual casing that you just
17 talked about that you had designated with Placard 20?

18 A It is.

19 Q Is it in the same or substantially similar
20 condition today as when you collected it?

21 A It is.

22 MR. FREEMAN: Judge, move to introduce 297.

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

24 THE COURT: 297 is admitted.

25 (People's Exhibit 287 was admitted into

1 evidence.)

2 MR. FREEMAN: If we could have 98 up, please.

3 (People's Exhibit 98 was published.)

4 Q (BY MR. FREEMAN) Is this what we're looking at
5 in 98?

6 A This is the countertop and bar area of the
7 kitchen.

8 MR. FREEMAN: And if we could have 99 up,
9 please.

10 (People's Exhibit 99 was published.)

11 Q (BY MR. FREEMAN) Can you tell what we're
12 looking at in People's 99?

13 A This is the floor of the bathroom.

14 Q And do you see sort of towards the threshold
15 area where it looks like it transitions to the hallway,
16 was there another expended .380 casing found there?

17 A Yes, there was.

18 Q And what number -- or what placard number did
19 you designate for that?

20 A That evidence item is going to be indicated with
21 evidence item Number 22, and it's a .380 Summit spent
22 casing.

23 Q I think we had testimony yesterday from
24 Detective Gideon about what appeared to be a bullet defect
25 in the ceiling of that bathroom.

1 A That is correct.

2 Q Can you roughly just explain to jury where this
3 casing was in relation to the defect in the ceiling.

4 A We found two casing in the bathroom, two spent
5 casing within this bathroom. This spent casing is located
6 near the threshold to the hallway, the previous
7 photographs that you saw. The other spent casing is going
8 to be located near the toilet and trash. The impact,
9 Impact C, is located in the ceiling of this bathroom area
10 near a vent.

11 Q And where is the other bullet defect that was in
12 the crown molding in relation to the bathroom door?

13 A It's directly across from this opening.

14 Q Okay. I'm going to have the bailiff bring you
15 298, please.

16 THE COURT: There's an ambient noise coming
17 from -- we're going to check where that is coming from.

18 MR. FREEMAN: I thought somebody's stomach was
19 growling.

20 THE WITNESS: It's not me.

21 Q (BY MR. FREEMAN) Do you recognize 298?

22 A I do.

23 Q And do you recognize that as the actual casing
24 that you designated with Placard 22 that's depicted in
25 Photo 99?

1 A Yes.

2 Q And is it in the same or substantially similar
3 condition today as when you collected it?

4 A It is.

5 MR. FREEMAN: Judge, move to introduce 298.

6 THE COURT: Any objection?

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

8 THE COURT: 298 is admitted.

9 (People's Exhibit 298 was admitted into
10 evidence.)

11 MR. FREEMAN: And if I could have the bailiff --

12 THE COURT: Ms. Downey is going to help you.

13 MR. FREEMAN: Yeah. She got called away.

14 Sorry. 300.

15 THE COURT: And this is number?

16 MR. FREEMAN: 300.

17 THE WITNESS: Did you care to see?

18 MR. ST. GEORGE: No, thank you.

19 Q (BY MR. FREEMAN) Do you recognize that item.

20 A I do.

21 Q And what is that?

22 A This is other .380 Summit spent casing located
23 near the toilet. This was indicated with Evidence Placard
24 Number 31.

25 Q And is that item in the same or substantially

1 similar condition as when you collected it?

2 A Yes, it is.

3 MR. FREEMAN: Judge, move to introduce 300.

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

5 THE COURT: 300 is admitted.

6 (People's Exhibit 300 was admitted into
7 evidence.)

8 THE COURT: And, ladies and gentlemen, are you
9 okay to go just a few more minutes?

10 (No verbal response.)

11 THE COURT: Okay. We're going to continue until
12 about ten after.

13 (Pause in the proceedings.)

14 MR. FREEMAN: Judge, I'm just showing the deputy
15 to indicate that it's been made safe. It's got a lock --
16 trigger lock in the trigger well and a zip tie through the
17 ejection port. If I could have this brought to the
18 witness.

19 THE COURT: Yes. And this number?

20 MR. FREEMAN: I think it's 293. 293.

21 Q (BY MR. FREEMAN) Do you recognize 293?

22 A I do. I'm going set it here, if that's okay.

23 Q That's fine. What do you recognize that to be?

24 A This is the shotgun that I collected from the
25 living room floor of Unit 103.

1 Q And just so we're clear, there's no live
2 ammunition in there, in that box?

3 A No.

4 Q And the weapon appears to be unable to be
5 operated because there's a lock in the trigger and a zip
6 tie through the opening?

7 A That is correct.

8 MR. FREEMAN: I just wanted everybody to be
9 aware. If we could have 88 up, please.

10 (People's Exhibit 88 was published.)

11 Q (BY MR. FREEMAN) What's in the box? Is that
12 the item that was there on the floor of People's 88?

13 A Yes, it is.

14 Q Now, the item that's here is wrapped in clear
15 plastic. Was there some concern that there might be blood
16 or biological material on it?

17 A Yes. When I seized the weapon on August 1st,
18 the item was substantially bloody, so it was preferable
19 that the item be placed in a plastic bag to prevent any of
20 that dried blood from flaking off.

21 Q And other than that, other than the plastic and
22 the zip ties and the trigger lock, is it in the same or
23 substantially similar condition now as when you gathered
24 it on August 1st?

25 A Yes.

1 MR. FREEMAN: Judge, move do introduce 293.

2 THE COURT: Any objection?

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

4 THE COURT: 293 is admitted.

5 (People's Exhibit 293 was admitted into
6 evidence.)

7 Q (BY MR. FREEMAN) Did you personally do anything
8 further with that shotgun as far as analysis for
9 fingerprints, DNA, functionality?

10 A No, sir.

11 Q Are those other people's jobs, potentially?

12 A That's correct.

13 MR. FREEMAN: Okay. Judge, I do have one more
14 topic to go through. It's probably another 10 to
15 15 minutes. Do you want me to forge on?

16 THE COURT: Yes. We're going to go a little
17 past 12:00 today.

18 MR. FREEMAN: Okay. So may we have the lights,
19 Your Honor?

20 THE COURT: Surely.

21 Q (BY MR. FREEMAN) Earlier in your testimony, we
22 discussed the FARO device. And is that F-A-R-O?

23 A Yes. It is capital F, capital A, capital R,
24 capital O.

25 Q And is that an acronym or somebody's name?

1 A It is not an acronym. It is the name of the
2 company.

3 Q And in using that device, were you able to make
4 what I think we call fly-throughs or various walkthroughs
5 of vary parts of the scene, as if somebody was actually
6 there?

7 A That is correct, yes.

8 Q And is that the kind of thing -- you mentioned
9 FARO takes images in 3D. Is that the kind of thing that
10 you can do with a FARO scan?

11 A Correct. The FARO takes measurements of all of
12 the items surrounding it. It takes those measurements
13 plus photographs to create a three-dimensional reality of
14 the area in which you scanned.

15 Q How many different fly-throughs did you make for
16 this case?

17 A I believe I made three.

18 Q And from what perspectives? What parts of the
19 scene?

20 A We attempted to do Mr. St. John's (sic) view
21 from the back of his residence to the area where the
22 shooting occurred, Agent Trimmer's viewpoint from the
23 shooting area, and Sergeant Maines's area -- area of view.

24 Q And just so we're clear, are these fly-throughs
25 during the daytime or nighttime?

1 A Well, the fly-throughs are based on the FARO
2 scan data in light, so during the day. So they
3 have -- you'll be able to see it's not taken in dark.

4 Q And do the scans accurately depict the way that
5 scene looked from those three perspectives?

6 A Absolutely, yes.

7 Q If I could have the bailiff hand you 317. Do
8 you recognize the CD, 317, as the one containing the FARO
9 fly-throughs that you just described?

10 A I do.

11 Q And how is it that your are able to recognize
12 that exhibit as containing those items?

13 A When I created the fly-throughs, I saved the
14 data onto a disk. I affixed to it a Lakewood Police
15 Department label in which I labeled it with our crime case
16 number, CR Number 16-031418, FARO fly-through, and the
17 date in which it was created.

18 Q And it's got your initials and the date, as
19 well, that you reviewed it?

20 A That is correct.

21 MR. FREEMAN: Judge, at this time I move to
22 introduce People's 317.

23 MR. ST. GEORGE: Your Honor, may I voir dire on
24 this item?

25 THE COURT: You may.

1 VOIR DIRE EXAMINATION

2 BY MR. ST. GEORGE:

3 Q Now, Ms. Parker, a moment ago you said that
4 these were attempts at giving a view or a perspective of
5 what the defendant, Trimmer and Maines would have seen.

6 A Could have seen, yes.

7 Q Is this just an approximation or a really
8 accurate one?

9 A It is a hundred percent accurate of the area.
10 The measurements are without fault. The perspectives are
11 an estimation.

12 MR. ST. GEORGE: Thank you. Nothing further,
13 Your Honor.

14 THE COURT: Any objection?

15 MR. ST. GEORGE: No objection.

16 THE COURT: 317 -- it say four clips --

17 MR. FREEMAN: Four clips.

18 THE COURT: -- so is this --

19 DIRECT EXAMINATION (CONTINUED)

20 BY MR. FREEMAN:

21 Q Do you believe it being four clips?

22 A I believe fourth was not meant as perspective.
23 It was more of a general overall of the scene.

24 MR. FREEMAN: So I don't think we're going to
25 play all four. So I'll play the three.

1 THE COURT: Okay. So 317, as amended, is
2 admitted.

3 (People's Exhibit 317 was admitted into
4 evidence.)

5 MR. FREEMAN: Thank you. And may we publish?

6 THE COURT: Yes.

7 MR. FREEMAN: If we could play -- I guess we
8 need the exhibit.

9 THE WITNESS: I handed it back.

10 MR. FREEMAN: Oh, did you?

11 THE WITNESS: I did.

12 MR. FREEMAN: Okay.

13 Q (BY MR. FREEMAN) Which clip did you want to
14 play first?

15 A Let's start with Mr. St. George.

16 (Exhibit 317 was published.)

17 Q Before we start -- I guess it's moving. What
18 direction are we looking?

19 A This orientation is from the back side of Unit
20 103 as it continues through. We are traveling east
21 through the backyard, and you can see the yellow evidence
22 placards that you viewed in previous exhibits.

23 MR. FREEMAN: And if we could play the one for
24 Agent Trimmer next.

25 THE WITNESS: Yes.

1 THE COURT: And, Mr. Freeman, we're going to
2 break after this particular one and do the third one when
3 we get back.

4 MR. FREEMAN: Okay.

5 (People's Exhibit 317 was published.)

6 THE COURT: All right. We're going to break for
7 lunch, ladies and gentlemen. I'm going ask that you be
8 back here at 1:10. 1:10. Please don't talk about the
9 case. Don't -- keep an open mind. Don't do any research.
10 1:10, and we'll get started then.

11 (The jury left the courtroom.)

12 THE COURT: For the purposes of planning, I'm
13 going talk to the jury about staying until 5:30 this
14 evening.

15 MR. MENGES: 5:30?

16 THE COURT: Yes.

17 MR. MENGES: That's fine. We won't go past
18 5:30, so I can schedule?

19 THE COURT: No. 5:30 is what my expectation is.

20 MR. MENGES: I don't mind a minute or two, but
21 as long as --

22 THE COURT: So that's what I'm thinking. I'm
23 going to run it by the jurors and the rest of the staff to
24 see if we can accommodate this.

25 MR. MENGES: That's fine. Thank you, Judge.

1 1:10. We will be back ready to go before 1:10.

2 THE COURT: Yes, please.

3 MR. MENGES: Okay. Thanks.

4 (The lunch recess was taken.)

5 (The jury entered the courtroom.)

6 THE COURT: Everybody were seated. Welcome
7 back. We can resume. Oh, we're missing a juror. Hold on
8 a second.

9 (Pause in the proceedings.)

10 THE COURT: Okay. Let's begin.

11 MR. FREEMAN: I think we have one last -- the
12 FARO fly-throughs to play, so if we can play that now. It
13 is the within for Ms. Elliott.

14 (People's Exhibit 317 was published.)

15 Q (BY MR. FREEMAN) Ms. Parker, just a few more
16 questions.

17 MR. FREEMAN: May we have the lights, please.

18 A Before we move on from this exhibit, can I offer
19 a clarification?

20 Q (BY MR. FREEMAN) Sure.

21 A In my previous direct, I said I had the three
22 fly-throughs, the two agents and Mr. St. George. I did
23 not mention Ms. Elliott. I realize that after we started
24 playing the video, or the fly-through, that was a of Ms.
25 Elliott's perspective, not Sergeant Maines'. So I just

1 wanted to offer that clarification and correction to my
2 previous testimony.

3 Q And I was going to ask about that, so thanks for
4 clarifying that. If I could have the bailiff hand you
5 People's 325. Do you recognize 325?

6 A I do.

7 Q And what is that?

8 A This is a legend of evidence items that I
9 collected, including descriptions and locations of those
10 items.

11 Q And do those items that you collected -- does it
12 also correspond with those placard numbers that we went
13 through this morning?

14 A That is correct.

15 Q And is it complete and accurate as it relates to
16 those items?

17 A Yes, as it a relates to some of the items
18 collected, not all the items that were collected.

19 MR. FREEMAN: Judge, I'd move to introduce 325.

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

21 THE COURT: 325 is admitted.

22 (People's Exhibit 325 was admitted into
23 evidence.)

24 Q (BY MR. FREEMAN) And I want to talk to you
25 about one other handgun I think we didn't get into this

1 morning. There's mention of a Taurus Curve handgun. Do
2 you recall that being found inside the unit?

3 A I do.

4 Q Do you remember where that was found?

5 A That was found in the closet of the bedroom.

6 Q And who located that item?

7 A At the time it was Detective Maurer, but Agent
8 Maurer, yes.

9 Q And did he point that out to you?

10 A He did.

11 Q Is that an item that you collected and booked as
12 well?

13 A I collected and booked it, yes.

14 Q If I could have the bailiff bring you 309.

15 MR. FREEMAN: And for the record, Judge, it's a
16 handgun that's been locked open. It's got a cable lock
17 through the breech, so it can't be -- can't function, and
18 it doesn't have ammunition.

19 Q (BY MR. FREEMAN) Is that correct?

20 A That is correct.

21 THE COURT: All right.

22 Q (BY MR. FREEMAN) Do you recognize 309?

23 A I do.

24 Q And what is it?

25 A It is the Taurus Curve handgun that we collected

1 from inside the residence.

2 Q This weapon now doesn't have a magazine or
3 ammunition; is that correct?

4 A That is correct.

5 Q When it was found, did it have a magazine and
6 ammunition in it?

7 A It did.

8 Q Do you remember how many rounds it had loaded
9 into it?

10 A It had six live rounds in the magazine.

11 Q How many was that magazine designed to hold?

12 A I do not know.

13 Q And what about a round in the chamber? Did
14 anybody check for that?

15 A I don't believe it had any round in the chamber.

16 Q And what was done with that item?

17 A All three items were collected and booked.

18 Q And is People's 309, other than sort of being
19 locked open, does it appear to be in the same or
20 substantially similar condition today as when it was
21 collected back on August 1st?

22 A When I collected it on August 1st, I did not
23 place it in evidence packaging. I attached a red label to
24 the item with a zip cable, which has since been removed so
25 that the lock can be placed into it, and then it's been

1 added to the box. So similar to the other firearms, it
2 has just been put into a court demonstration mode.

3 Q Other than that, is it in the same condition?

4 A Yes.

5 MR. FREEMAN: Judge, I would move to introduce
6 309.

7 THE COURT: Any objection?

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

9 THE COURT: 309 is admitted.

10 (People's Exhibit 309 was admitted into
11 evidence.)

12 Q (BY MR. FREEMAN) Just getting back to that last
13 FARO clip, is that one of the interior of the residence?

14 A Yes.

15 Q And, generally speaking, what does that one
16 show?

17 A That just shows the orientation of the evidence
18 within Unit 103.

19 MR. FREEMAN: Judge, may we play that one as
20 well?

21 THE COURT: Yes.

22 (People's Exhibit 317 was published.)

23 Q (BY MR. FREEMAN) One last item identified as
24 People's 316. Do you recognize what's depicted as 316?

25 A I do.

1 Q And what is that?

2 A This is a photograph of the bullet impact to the
3 garage door of 8139, indicated by Evidence Placard Number
4 1, Sticker Number 1.

5 Q And was that the one that was on the driver's
6 side of that black pickup truck?

7 A That's correct, yes.

8 Q And almost all contained on the actual garage
9 door itself?

10 A Correct.

11 Q And does that photograph accurately depict the
12 way that shotgun pellet pattern looked?

13 A Yes, it does.

14 MR. FREEMAN: Judge, I would move to introduce
15 316.

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

17 THE COURT: 316's admitted.

18 (People's Exhibit 316 was admitted into
19 evidence.)

20 Q (BY MR. FREEMAN) Is that poster -- does that
21 appear to be the actual size of the pattern?

22 A Yes.

23 MR. FREEMAN: Judge, may I publish that?

24 THE COURT: Yes. How are we going to publish
25 this?

1 MR. FREEMAN: I think it's too big for the TV.
2 If she could just hold it up for the jury to see.

3 THE COURT: Yes.

4 You can step down if you want.

5 MR. FREEMAN: Okay. Perfect. Thank you.

6 (People's Exhibit 316 was published.)

7 Q (BY MR. FREEMAN) So that's the actual size of
8 the pellet pattern?

9 A Within reason, yes.

10 Q All right. Thank you.

11 A You're welcome.

12 MR. FREEMAN: I don't have any further
13 questions, Judge.

14 THE COURT: Cross-examination?

15 CROSS-EXAMINATION

16 BY MR. ST. GEORGE:

17 Q Ms. Parker, I want to start by going back to the
18 Taurus Curve gun that you recovered.

19 A Okay.

20 Q And just a moment ago, we heard you say that
21 when it was found, it was found with no round in the
22 chamber and six rounds in the magazine?

23 A I believe that's accurate. I did not download
24 the weapon.

25 Q Okay. And -- all right. You didn't download

1 the weapon. I will ask the bailiff to bring you a
2 photograph. Now, Ms. Parker, you said that it's customary
3 that when you take photographs of a weapon that you've
4 recovered, if there's a round in the chamber, you take
5 that round and you place it on the paper, correct?

6 A When I download a weapon, yes, that is the way
7 that I do it.

8 Q Okay. If someone else downloads the weapon and
9 then you photograph it, will they follow that same
10 protocol?

11 A Not necessarily, no.

12 Q Okay.

13 THE COURT: What number is this?

14 MR. ST. GEORGE: This has not been offered by
15 the People, but it was in discovery.

16 THE COURT: Okay. I understand. What -- so
17 you're asking to show a photograph that's on your computer
18 to the witness?

19 MR. ST. GEORGE: Right, that was taken by --

20 THE COURT: Okay. And for reference for the DA,
21 what is this --

22 MR. ST. GEORGE: So --

23 THE COURT: -- as to page number, or some kind
24 of identification.

25 MR. FREEMAN: Are we intending refresh her

1 recollection, or are we intending to admit the photo or
2 the laptop?

3 MR. ST. GEORGE: We'll start with a refresh.

4 THE COURT: So you want to refresh her
5 recollection with this photograph? So you want to ask a
6 question, and then you can show the photograph.

7 MR. ST. GEORGE: Correct, Your Honor.

8 THE COURT: So go ahead and ask the question.

9 Q (BY MR. ST. GEORGE) So the question is, did you
10 take a photograph of the Taurus Curve?

11 A We took several photographs, yes.

12 Q Okay. And if I show you the photograph that you
13 took, would you recognize it?

14 A Yes.

15 Q Okay.

16 THE COURT: You can tilt it if you need to see
17 the computer.

18 THE WITNESS: Yes. Sorry.

19 A Okay.

20 Q (BY MR. ST. GEORGE) All right. And does that
21 photograph accurately represent the Taurus Curve?

22 A No, that's not a photograph of the Taurus Curve.

23 Q Or, rather, the magazine and the ammunition from
24 the Taurus Curve.

25 A That is correct, yes.

1 Q Okay. And did you see this photograph to have
2 five rounds in the magazine, and one of the rounds set
3 elsewhere in the photograph?

4 A Yes, that's correct.

5 Q Okay. So would that tend to tell you that the
6 gun was found with one round in the chamber and five in
7 the magazine?

8 A That's probable, yes.

9 Q Okay. Your -- the diagram that you produced,
10 that diagram is not to scale, correct?

11 A That is correct.

12 Q And so the items are not shown on the diagram,
13 necessarily, in a scaled distance from other items on the
14 diagram?

15 A That is correct.

16 Q Okay. But you can correspond what you see in
17 the diagram back to the pictures from -- that were taken
18 from reality? From the actual scene, I should say,
19 rather.

20 A I'm not sure I understand exactly your question.

21 Q You can -- looking at the legend, it has placard
22 numbers, and you can reference those placard numbers back
23 to photographs taken from the scene itself?

24 A Yes.

25 Q Okay. Placard Number 4 -- I'm sorry.

1 Placard -- Placard Number 4 was an expended shotgun shell,
2 correct?

3 A That is correct.

4 Q And that was found on the north end of the
5 drive?

6 A Correct.

7 Q And it was not crushed or damaged in any way?

8 A Not to my recollection, no.

9 Q Okay. Placard Number -- yes, Placard Number 27,
10 that was a single Hornady round, or Hornady casing,
11 correct?

12 A If I may have the two diagrams from the
13 prosecution so that I don't misspeak as far as placard
14 numbers, I would prefer that, if possible.

15 Q Okay.

16 A Thank you. I'm sorry. You referenced 27?

17 Q Placard Number 27.

18 A Thank you. Yes. And, I'm sorry, your question?

19 Q Was number 27 a single Hornady casing?

20 A Yes, it was.

21 Q Okay. And going back to the Taurus Curve, was
22 it loaded with Hornady brand rounds?

23 A I don't imagine that off the top of my head. I
24 would have to reference my property sheets for
25 clarification.

1 Q Do you have those available for you?

2 A I do.

3 Q Fantastic.

4 A May I?

5 Q Please.

6 A Yes. According to the notes for my item, that
7 would be item number 108. That is six live rounds of
8 Hornady .380 auto hollow-point ammunition.

9 Q Okay. Let's go to the casings that were found
10 inside the house. And just as a point of clarification,
11 there was only the single Hornady casing found out in the
12 street, correct?

13 A That is correct, yes.

14 Q And there was no other found out in the street?

15 A That is correct.

16 Q Okay. Now, going back to the casings that were
17 found inside the house. Placard 17, that was a Summit
18 .380 caliber casing, correct?

19 A That is correct.

20 Q And Placard 20, that was a spent Summit brand
21 .380 casing, correct?

22 A That is correct.

23 Q Placard 22 is a Summit .380 expended casing?

24 A That is correct.

25 Q And Placard 31 is a Summit .380 spent casing?

1 A That is correct.

2 Q All four brass in color?

3 A Correct.

4 Q The Ruger LCP firearm, when it was found, was it
5 found to have one round in the chamber?

6 A Yes.

7 Q And was it found to have two in the magazine?

8 A Yes.

9 Q Were those three rounds Summit .380 brand
10 rounds?

11 A Again, may I reference my property sheets so
12 that I don't misspeak?

13 Q Yes, you may.

14 A Thank you. Yes, that is correct.

15 Q Okay. And the Ruger LCP, is the capacity of
16 that firearm a six plus one?

17 A Yes.

18 Q Okay. And does six plus one mean that you can
19 fit six rounds in the magazine and one round in the
20 chamber?

21 A That is correct, yes.

22 Q So if that firearm was found with three total
23 rounds in it, could you describe that firearm as missing
24 four?

25 A If it is loaded to full capacity, yes, one could

1 describe it in such a manner.

2 Q The Taurus Curve, do you know that weapon to
3 have a capacity of six plus one?

4 A I do not know the capacity of the Taurus Curve.

5 Q Okay. The photograph that you just saw, the
6 magazine, did it have window holes that you could see
7 through?

8 A I don't recall. I'm not comfortable with that
9 firearm, so I would not be willing to offer any type of
10 opinion as to its capacity.

11 MR. ST. GEORGE: Your Honor, I'd like to offer
12 the previously shown photograph as Defendant's JJ.

13 THE COURT: Okay. I need the photograph.

14 MR. ST. GEORGE: All right.

15 THE COURT: What you have is a computer screen
16 right, now so we need a photograph.

17 MR. ST. GEORGE: Is it possible for us to simply
18 publish it on the screen so all can see?

19 THE COURT: We can do that, but we will need a
20 photograph so that we have the photograph to put into
21 evidence to take back to the jury. That's merely a manner
22 of publishing it and not the piece of evidence itself.

23 MR. ST. GEORGE: And I've been advised that we
24 will print that out, if you will allow us to publish it.
25 We'll make sure that a printed copy is made available.

1 THE COURT: Okay. Is there an objection
2 to -- and you've designated this as?

3 MR. BURNETT: JJ.

4 MR. ST. GEORGE: JJ.

5 MR. FREEMAN: So the plan is, just so I
6 understand, if the Court admits it, that we'll show the
7 image up on the screen, and then at some point before the
8 end of trial, there will be a hard copy later?

9 THE COURT: That is my understanding.

10 MR. FREEMAN: Okay. Under that understanding, I
11 don't have an objection.

12 THE COURT: Admitted.

13 (Defendant's Exhibit JJ was admitted into
14 evidence.)

15 MR. ST. GEORGE: Thank you, Your Honor. May I
16 publish?

17 THE COURT: Yes.

18 (Defendant's Exhibit JJ was published.)

19 THE COURT: Okay. You have to just continue
20 with the examination, please.

21 MR. ST. GEORGE: Okay. Your Honor, I'm going to
22 offer another exhibit.

23 THE COURT: Well, wait. You've admitted JJ and
24 asked to publish it.

25 MR. ST. GEORGE: Correct.

1 THE COURT: Are you publishing JJ?

2 MR. ST. GEORGE: This is JJ.

3 THE COURT: Okay. So you've published JJ.

4 Q (By MR. ST. GEORGE) And this shows the magazine
5 with one --

6 THE COURT: You need the and a question.

7 MR. ST. GEORGE: I'm sorry.

8 Q (BY MR. ST. GEORGE) Ms. Parker, does this show
9 the magazine with five rounds that were in it and one
10 round that was in the chamber?

11 A As I mentioned in my previous question, I do not
12 know how this was loaded. I do not download it. This is
13 the orientation in which it was presented to me by
14 Detective Maurer for the photograph.

15 Q Okay. Are you able to see in the photograph
16 that it's designated with a 6 that shows how many rounds
17 the magazine is capable of holding?

18 A I cannot see from here. If I'm able to approach
19 the screen, I can confirm that.

20 Q Yes, please.

21 THE WITNESS: Thank you, Your Honor.

22 A Thank you. Yes.

23 MR. ST. GEORGE: Okay. Let the record reflect
24 the magazine has a capacity of six.

25 THE COURT: I don't think you can say that. I

1 think what you can say in this case is -- ask the question
2 of the witness, and you can't say, then, let the record
3 reflect, et cetera. You have to just go with the answer
4 of the witness.

5 Q (BY MR. ST. GEORGE) Ms. Parker, does this
6 magazine appear to have a capacity of six?

7 A Yes.

8 Q Thank you. And so a Taurus Curve, thusly, has a
9 capacity of six plus one?

10 A Correct.

11 Q It was found with six live rounds, correct?

12 A That is correct.

13 Q Would you -- does this represent a state of
14 missing one?

15 A If loaded to full capacity, yes.

16 Q Okay. Thank you.

17 MR. ST. GEORGE: Can we publish People's 125.
18 (People's Exhibit 125 was published.)

19 Q (BY MR. ST. GEORGE) Okay. Yesterday we were
20 given testimony by Detective Gideon, and he showed us on
21 this same photograph the strike that you just held the
22 poster of. Does that reflect the upper right-hand portion
23 of the garage door to the left of the black truck in this
24 photograph?

25 A Yes.

1 Q It does. And I had asked him to give us an idea
2 of the trajectory, and he told -- he showed us a
3 trajectory that went from that strike to Placard 5. Would
4 you agree with that?

5 MR. FREEMAN: I'm going to object. That
6 misstates the evidence.

7 THE COURT: I'll sustain that objection.

8 Q (BY MR. ST. GEORGE) Ms. Parker, you're a
9 forensic scientist, right?

10 A I am not.

11 Q A forensic detective, then?

12 A I am not.

13 Q Could you please tell me what your title is.

14 A Yes. I'm a senior crime scene analyst.

15 Q Okay. And in your time in doing that type of
16 work, have you ever had to plot a graph of a scatter plot
17 of data on an X-Y axis?

18 A No.

19 Q Have you seen such a thing?

20 A No. Not that I recall, no.

21 Q A graph of data points that maybe reflected
22 temperature over time?

23 MR. FREEMAN: Judge, objection, relevance.

24 THE COURT: I'm going to excuse the jury for a
25 moment. Please keep an open mind. Don't do any research.

1 Don't discuss the case.

2 (The jury left the courtroom.)

3 THE COURT: Okay. So I am somewhat concerned
4 about where we're going and what we're doing.

5 You can step down for a moment.

6 THE WITNESS: Okay. Thank you.

7 (The witness was excused.)

8 THE COURT: And how we're questioning, and we're
9 getting sort of bogged down here. The first thing I have
10 to say to you, Mr. St. George, you did elect to go ahead
11 and try this case, and so that is your choice. Advisory
12 counsel has a limited role and can't provide you with each
13 question as we're moving along. This is becoming
14 difficult and laborious that way.

15 Advisory counsel has certain roles. I've got to
16 law pulled up here. You understand the Court's not
17 required to appoint, but certainly did in this case, but
18 they can't write out the role -- the questions for you.
19 They can't tell you each question as you move along.
20 Also, you have to ask the witness a question, and she has
21 to respond, and then you can ask the next question.

22 So right now, we're at asking her if she has
23 ever gone ahead and done a certain kind of exhibit, and
24 where are we going here? She said no.

25 MR. ST. GEORGE: I understand, and my direction

1 is to -- I was going to ask her if she's ever seen a graph
2 where a best fit line or a trend is illustrated on that
3 graph amid a group of data points. And so I will simply
4 try to use another tool in order to get to where I'm
5 headed, that would be more familiar to her. And I
6 apologize if I've gotten a little off --

7 THE COURT: Okay. Okay. All right.

8 MR. ST. GEORGE: Because to me, those are
9 familiar things, and I must -- I presumed that they would
10 be to her as well.

11 THE COURT: Okay. Because she said no --

12 MR. ST. GEORGE: And I'll stop.

13 THE COURT: -- and so that's where we're at.

14 All right. Anything else that we can deal with right now
15 that we know is going to come up and be an issue?

16 (Discussion off the record.)

17 MR. ST. GEORGE: Okay. It's my intention to
18 offer to her an illustration. It would be the same
19 photograph, but in black and white, with a line drawn
20 along that blood trail, and I'm going to ask her, after
21 I've proffered her as an expert, to --

22 THE COURT: An expert in what?

23 MR. ST. GEORGE: In bloodstain analysis.

24 THE COURT: So you're going to qualify her --

25 MR. ST. GEORGE: Correct.

1 THE COURT: -- as an expert in bloodstain
2 analysis and then ask her to track a line that you've made
3 in the photo?

4 MR. ST. GEORGE: That is correct, Your Honor.
5 And I am -- I've got her CV here. In 2012 through --

6 THE COURT: I think she testified that she's
7 been qualified in the past.

8 MR. ST. GEORGE: She has.

9 THE COURT: Did you provide notice of use of her
10 as a bloodstain expert?

11 MR. FREEMAN: No.

12 MR. ST. GEORGE: I did not, Your Honor.

13 THE COURT: Okay. I'll hear from the People.

14 MR. FREEMAN: Judge, we just ask that we're
15 treated the same by the Court whether, you know,
16 Mr. St. George is an attorney or not. The Court has said
17 repeatedly throughout this case that it would treat him
18 like counsel. He is required to know to rules, and he did
19 not endorse Ms. Parker as an expert witness in bloodstain
20 pattern analysis. I haven't spoken to her about it. I
21 don't know that she's prepared to do it. We object.

22 THE COURT: Response?

23 MR. ST. GEORGE: Your Honor, this falls well
24 within the purview of what she's qualified to do, and she
25 was on the scene. She would have -- she would have

1 performed the crime scene analysis already, and so I don't
2 think I'm asking anything that's outside of the boundaries
3 of what she's already performed and capable of performing
4 based on her expertise.

5 THE COURT: Okay. So, again, the Court requires
6 people to provide the other side with the required
7 information under the rules. So I've heard nothing that
8 this witness has done bloodstain analysis in this case.
9 This is something that's, perhaps, outside of this. This
10 is your having her draw or look at a blood pattern, but
11 not analyze the blood pattern, so this isn't blood
12 splatter or spatter.

13 My understanding -- and you heard that she has
14 been qualified as an expert, and certainly she's been
15 qualified as an expert specifically in the blood analysis,
16 so understanding that that's a specific area of expertise
17 that someone needs to be qualified as, you should have
18 notified the prosecution of such. It is my understanding
19 that you want her to look at a trail, perhaps, and I would
20 say in this case that you're not asking her to talk about
21 how droplets fell?

22 MR. ST. GEORGE: No, Your Honor.

23 THE COURT: Hold on. You're asking her to look
24 at a trail of blood?

25 MR. ST. GEORGE: Yes, Your Honor.

1 THE COURT: If you are asking her to look at a
2 trail of blood and she's able to have observed that and
3 talk about the trail of blood, then I would certainly
4 allow you to ask her about a trail of blood since she was
5 at the crime scene, and she's a crime scene analyst. If
6 you are asking her about the directionality of the
7 droplets, or anything like that, then I believe we have
8 another issue.

9 MR. ST. GEORGE: Okay. I think that we will be
10 safe. During the direct --

11 THE COURT: I'm going allow you to do it --

12 MR. ST. GEORGE: Okay.

13 THE COURT: -- if it's just the trail of blood,
14 following what looks to be like red stains on the ground.

15 MR. ST. GEORGE: Correct. And --

16 THE COURT: She has told you they weren't
17 tested.

18 MR. ST. GEORGE: Correct. During the direct, it
19 was referred to as a beginning, and then it was also
20 referred to as a trail, and I mean to do nothing different
21 than that.

22 THE COURT: Okay. I'm allowing you to do it --

23 MR. ST. GEORGE: Okay.

24 THE COURT: -- so you don't have to convince me
25 of it. I'm allowing you to ask her if it appears that

1 there is a trail of blood.

2 MR. ST. GEORGE: Okay. Thank you, Your Honor.

3 MR. FREEMAN: And, Judge, just so we're clear,
4 it's my understanding what the Court is saying is that
5 you're going to allow him to ask the witness questions
6 about her observations of that, but not expert opinions
7 interpreting that. Is that what I'm hearing?

8 THE COURT: Well, I'm not sure there are expert
9 opinions to be drawn from a trail of blood. I questioned
10 Mr. St. George about the specifics of it, such as in blood
11 pattern, bloodstain, blood spatter analysis, sometimes
12 we'll hear directionality, sometimes we'll hear what kind
13 of a blow caused a certain bloodstain or blood splatter,
14 et cetera. It's my understanding Mr. St. George wants her
15 to trace a pattern of stains to see if they fall in his
16 straight line or not.

17 MR. FREEMAN: And I think that's okay, but is he
18 going to ask her, based upon that pattern, if she can
19 determine the directionality that the person was moving as
20 they were bleeding? That's clearly expertise and expert
21 opinion, and that's what I'm objecting to.

22 MR. ST. GEORGE: I could ask her an open
23 question along the lines, if she were able to make any
24 inferences, and if she answers yes, I may continue on
25 that. Otherwise, I will stop.

1 MR. FREEMAN: That's just word salad. I'm
2 sorry. That's just semantics. That's -- asking for an
3 expert opinion and putting a different label on it doesn't
4 change the nature of it. I'm sorry.

5 THE COURT: I think we should go with whether or
6 not she can track your line.

7 MR. ST. GEORGE: Okay.

8 THE COURT: And let's have our witness back on
9 the stand, and let's have the jury come back out.

10 (The jury entered the courtroom.)

11 THE COURT: Everybody can be seated, please.

12 MR. ST. GEORGE: Thank you.

13 Q (BY MR. ST. GEORGE) Ms. Parker, I'm going to
14 have the bailiff bring a pair of photographs to you. So
15 what we have here is another color photograph of --

16 THE COURT: Okay. And just say -- you're going
17 to ask her to take a look at what numbers?

18 MR. ST. GEORGE: These -- it's a -- they're both
19 the same as People's 125.

20 THE COURT: Okay. So -- so are we going
21 to -- if there's been a change to 125, then we need to
22 mark these. Do you intend to admit these?

23 MR. ST. GEORGE: Yes, Your Honor.

24 THE COURT: And we're going to mark these as?

25 MR. BURNETT: KK.

1 THE COURT: Both. And are they both the same
2 photograph?

3 MR. BURNETT: One is already marked
4 Defendant's --

5 THE COURT: Okay. Hold on. Mr. St. George has
6 to tell me.

7 MR. ST. GEORGE: One of them is already marked
8 as Defendant's Exhibit D, and the other one is marked as
9 Defendant's Exhibit KK.

10 THE COURT: Okay. All right. So the witness
11 has D and KK.

12 Q (BY MR. ST. GEORGE) Now, Ms. Parker --

13 THE COURT: And so these haven't been admitted.

14 MR. ST. GEORGE: Correct.

15 THE COURT: So --

16 Q (BY MR. ST. GEORGE) Do you recognize these
17 photographs as being pictures of the crime scene?

18 A Yes.

19 MR. ST. GEORGE: Okay. I'm offering Defendant's
20 Exhibit D and Defendant's Exhibit KK.

21 MR. FREEMAN: Judge, I haven't really seen them.
22 Can I just take a quick peek?

23 THE COURT: Take a look.

24 MR. FREEMAN: My I voir dire, Your Honor?

25 THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. FREEMAN:

Q Ms. Parker, on KK, there appears to be sort of a red line drawn. Is that at the crime scene?

A No.

Q That appears to be drawn on the photograph?

A That is correct.

Q Did you draw that red line?

A No, I did not.

Q Do you know what it's meant to represent?

A No.

MR. FREEMAN: Judge, I would object to KK. I don't have an objection to D.

THE COURT: Okay. So D is admitted right now.

(Defendant's Exhibit D was admitted into evidence.)

THE COURT: And we need some sort of foundation with regard to KK.

CROSS-EXAMINATION (CONTINUED)

BY MR. ST. GEORGE:

Q Ms. Parker, looking at photograph K -- or Exhibit KK, does the red line look to approximate the blood trail, its location?

A Yes.

MR. ST. GEORGE: Okay. Defense asks to admit

1 KK.

2 MR. FREEMAN: I'm still objecting, Judge.
3 There's a line drawn on there. We don't know who drew it.
4 We don't know what it's meant to represent. Simply
5 because it roughly follows what we can already see, it
6 doesn't make it admissible, so I'm objecting.

7 THE COURT: Okay. Just a couple more questions.

8 Q (BY MR. ST. GEORGE) Ms. Parker, if I were to
9 ask you to draw a line on KK, if there weren't one
10 already, and I asked you to trace the location of the
11 blood trail with a level of accuracy to a foot or so,
12 would you have drawn a line similar to the one that you
13 see in the exhibit?

14 A Generally, I would say no to that. The reason
15 being, when we're looking at blood trails or area of
16 bloodstaining, usually lines indicate movement or travel
17 through a scene. If you ask to circle areas containing
18 bloodstains, I would absolutely do that. But I'm hesitant
19 to indicate the presence of blood via line.

20 Q Okay. When you, in your work, are trying to
21 establish a trail of blood, how would you go about doing
22 that?

23 A We locate the areas that we observe bloodstains,
24 and we photograph them accordingly.

25 Q Okay. How would your -- if I had asked you to

1 draw a line, how would your line have differed from the
2 one that is shown on Exhibit KK?

3 MR. FREEMAN: Judge, objection as to vague. I
4 don't know what he means by "draw a line."

5 THE COURT: I'm going allow the witness to
6 answer.

7 A As I indicated in my previous answer, I would
8 circle bloodstains in the areas contained within, but I
9 would not indicate movement through a scene, as indicated
10 with a line.

11 Q (BY MR. ST. GEORGE) Okay. Rather than using
12 Exhibit KK, can we use the screen and, with your pointer,
13 indicate where the trail of blood is located?

14 A Yes.

15 Q Thank you.

16 A Would you like me to approach the screen?

17 Q Please.

18 THE WITNESS: May I use the pointer, Your Honor?

19 THE COURT: Yes, please.

20 THE WITNESS: Thank you.

21 A In People's Exhibit 125, which is displayed on
22 the screen, you can see areas of drip bloodstains here
23 near Placard 5. So as I'm pointing to the screen, that
24 would be on the asphalt. There's additional areas of drip
25 staining on the other side of Placard Number 5. There are

1 drip stains onto the gutter area, which would be in front
2 of Building Number 8119 as you view the photo, near the
3 base of the photograph. There's additional bloodstaining
4 up around area 4, which is in the bottom corner of the
5 photograph, Exhibit Number 125. There's additional blood
6 into the grassy area, which is Building Number 8139.

7 Q (BY MR. ST. GEORGE) Thank you. Placard Number
8 8, was that an unfired shotgun shell?

9 A That is correct.

10 Q And can you use some means to determine that
11 that was cycled through a weapon?

12 A I cannot, no.

13 Q Okay. How would an unfired shotgun shell go
14 through a weapon?

15 A It would be ejected through the ejection port at
16 the top of the weapon.

17 Q Did you find any shotgun pellets that penetrated
18 through the envelope of the surrounding buildings around
19 that truck?

20 A I don't know what you mean by "envelope."

21 Q Does a -- did any of the shotgun bullets or
22 shotgun pellets go through the siding of the buildings?

23 A Which impact in particular are you referencing?

24 Q Impact Number -- on Building 819 (sic), that was
25 Building 6, did any of those shotgun pellets go through

1 the siding and into the living space of the building?

2 A Building 8119, yes, pellets did penetrate
3 through the window into Apartment Number 206.

4 Q That was an open window, correct?

5 A I believe so, yes.

6 Q Okay. The window itself was not broken?

7 A Not to my recall, no.

8 Q All right. There were three -- were there three
9 9-millimeter shells found around the black truck?

10 A There were three spent casings of the
11 9-millimeter variety around the black truck, yes.

12 Q One of those was accounted for as the ricochet
13 into the garage door, correct?

14 A That is correct.

15 Q One of those was accounted for by testimony from
16 Dr. Zaw-Mon as being left inside of me?

17 A I have no idea. I was not here for that
18 testimony.

19 Q Was this third one accounted for?

20 A The only bullet on scene that was accounted for
21 is the one that entered into Impact Number 3,
22 Building 8119.

23 MR. ST. GEORGE: Thank you very much.

24 THE COURT: You're welcome.

25 MR. ST. GEORGE: I have nothing further, Your

1 Honor.

2 THE COURT: Redirect?

3 MR. FREEMAN: I don't have anything else, Judge.

4 THE COURT: Does anyone on the jury have a
5 question for this witness?

6 Okay. We're going excuse the jury for a few
7 minutes.

8 THE WITNESS: Would you like me to step down,
9 Your Honor?

10 THE COURT: Yes.

11 THE WITNESS: Thank you.

12 (The witness was excused.)

13 (The jury left the courtroom.)

14 THE COURT: Okay. Here are our questions from
15 the jury. The first one is a couple of different
16 questions.

17 If I'm correct, FARO takes measurements. How
18 big of an area is the FARO accurate in regards to
19 measurements and what measurements are taken?

20 Are there objections?

21 MR. FREEMAN: No objection.

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

23 THE COURT: Next question: Did anyone find
24 evidence of a second shot at Ms. Elliott?

25 MR. FREEMAN: I don't know that she can answer

1 this question. I think she is -- it is phrased as "did
2 anyone." I think she can be asked if she looked or if she
3 found.

4 THE COURT: From the defendant?

5 MR. ST. GEORGE: I have no objection, Your
6 Honor.

7 THE COURT: I don't know -- certainly, if she
8 can say did anyone or -- and evidence itself is pretty
9 broad. We had Ms. Elliott testify, so that's evidence.
10 We had -- you know, clearly what they're looking at is, at
11 the crime scene, was there physical evidence found at the
12 crime scene of a second shot at Ms. Elliott, or any shots
13 at Ms. Elliott.

14 Can we -- can we change this to, while you were
15 at the crime scene, did you find evidence of a second shot
16 directed at Ms. Elliott, something to that effect?

17 MR. ST. GEORGE: Perhaps, Your Honor. I might
18 offer a suggestion.

19 THE COURT: What is it?

20 MR. ST. GEORGE: Something more along the lines
21 of, was there any physical evidence -- any physical
22 evidence of a second shot in the street?

23 MR. FREEMAN: Judge, I guess my concern is that
24 the way the question is phrased, it's sort of asking her
25 to draw a conclusion. I mean, she only knows what she

1 found. She found casings in the unit. She found a
2 casing -- a .380 casing out in the street. She certainly
3 can't say anything about how that casing was deposited
4 there, or if that's where someone was standing, or what
5 they were aiming at, you know, versus in the air or at
6 someone. So I'm concerned about asking questions that ask
7 her to draw conclusions about the evidence. I think she
8 can certainly testify to what she looked for and what she
9 did or didn't find.

10 THE COURT: Okay. And I don't -- I don't want
11 any further discussion of the one bullet in the breezeway,
12 I think we've been talking about.

13 Was there any evidence of a weapon fired in the
14 street? Did she find any evidence of a weapon fired in
15 the street?

16 MR. FREEMAN: Well, I think, as phrased, I mean,
17 there's a lot of shotgun evidence, 9-millimeter, .380s, so
18 I don't know if that's helpful or not. I don't mean to be
19 difficult, Judge, but there was evidence of three
20 different firearms, the deputy's -- I'm sorry, Agent
21 Trimmer's, and then a shotgun and then a .380 handgun.

22 THE COURT: Okay. I certainly see where this
23 juror is going here, but I understand there's a
24 significant amount of gunfire.

25 MR. ST. GEORGE: Perhaps, Your Honor, maybe the

1 question could be phrased, were any impacts found in the
2 street or in the surrounding buildings?

3 THE COURT: I don't think I can ask that. It's
4 not a bad question, but I don't think I can take this jury
5 question and make it into impacts here. I think I just
6 can't ask this. And, certainly, with other witnesses,
7 perhaps, this information can be brought out, but --

8 MR. ST. GEORGE: Forensic evidence of a second
9 shot? Limit it to that?

10 THE COURT: Again, I -- I don't know -- how can
11 it be the first or the second? So I think I can't ask
12 this. This is a good question, but a question that the
13 Court can't ask. Okay.

14 Besides for the impact marks on the bush north
15 of Building 6, or 8119, where Sergeant Maines was, was
16 there any other evidence of impact marks around that area?

17 MR. MENGES: I'm sorry, Judge, can you repeat
18 the question?

19 THE COURT: Sure. There's a lot of --

20 MR. MENGES: I think there's a couple questions
21 in there.

22 THE COURT: -- clauses here. He's asking, or
23 she's asking, besides -- and I'll take out a couple words.
24 Besides the impact marks on the bush north of Building 6,
25 or 8119, this was where Sergeant Maines was, was there any

1 other evidence of impact marks around that area?

2 My recall was that we heard about the bushes
3 surrounding him. So anything else, other evidence of
4 impact marks around that area is what's being asked.

5 MR. FREEMAN: I don't have an objection, Judge.

6 MR. ST. GEORGE: Your Honor, yeah, I understand
7 how difficult it is to phrase a question properly, having
8 to teach myself, so do you want to parse that out into a
9 couple of smaller questions?

10 THE COURT: Well, I don't think it is a smaller
11 question. I think what the juror is telling us is that
12 they heard testimony regarding impact marks on the bushes
13 north of the building. They want to know if there's
14 anything more.

15 MR. ST. GEORGE: I have no objection to asking
16 that.

17 THE COURT: I'll be slow and repeat it for the
18 witness a couple of times.

19 Okay. We're going to have our jury back. Let's
20 have our witness back on the stand.

21 MR. FREEMAN: Judge, I need a quick bathroom
22 break. Are we going to --

23 THE COURT: Okay. Hold up. Hold up. Let's go
24 ahead and everybody take a minute.

25 (A recess was taken.)

1 THE COURT: Let's get our jury.

2 (Pause in the proceedings.)

3 (The jury entered the courtroom.)

4 THE COURT: Everybody can be seated, please.

5 All right. Ladies and gentlemen, I need to tell

6 you that sometimes there are some questions the rules of

7 evidence and rules of law do not allow the Court to ask.

8 If the Court is unable to ask a question, please don't

9 speculate or question as to why the question wasn't asked,

10 and certainly it's not a reflection on the person who

11 asked it because it's simply a matter of applying the same

12 sets of rules of evidence and rules of law that I would

13 have to in each and every case.

14 So I do have a couple questions for you. Is it

15 accurate to say that that FARO takes measurements?

16 THE WITNESS: Yes, that is a correct statement.

17 THE COURT: Can you tell us, how big of an area

18 is the FARO accurate in regards to measurements?

19 THE WITNESS: So when -- I hope this answers

20 your question. So when we take -- when we utilize the

21 FARO, when we put that data into the scene program, we

22 check the calibration of the data. It tells us within

23 what degree of measurement it is accurate.

24 So we place an item that we know the known

25 measurement to, and then we remeasure that same item

1 within the scene program, and it's generally -- it's down
2 to a point, point 02 meter of accuracy. It is the most
3 accurate means in which we can take measurement, which is
4 why we utilize it instead of our hand-held device that we
5 used to do to make a diagram in the past.

6 THE COURT: So what measurements are taken?

7 THE WITNESS: We no longer take measurements on
8 scene. Any measurements that are needed, we utilize the
9 FARO scan data in order to obtain those measurements. So
10 we will take one measurement to give us our correct
11 measurement. We have a yardstick that is laser printed
12 that is placed within the scene for one scan. So when we
13 pull up the data within the scene program, we remeasure
14 that yardstick, we confirm the accuracy, and then any
15 additional measurements that are required from either the
16 defense attorneys or the DA are -- those are directly
17 derived from that scene data.

18 THE COURT: Okay. So aside from the impact
19 marks on the bush north of Building 6, or 8119, where
20 Sergeant Maines was reported to be, was there any other
21 evidence of impact marks around that area?

22 THE WITNESS: Yes. There were impact marks to
23 8119. The pellets hit the face of that building. So we
24 marked those Impacts 4 through 10, and those were across
25 the upper portion of Building 8119, not that garage

1 portion like the opposite. That impact struck across the
2 face of Building 8119, to include the window into
3 Apartment Number 2006, across the front and onto one of
4 peaks of garage, but not onto that door, with the
5 exception of Impact Number 3, which you all saw and I gave
6 direct testimony on.

7 THE COURT: Are there questions as a result of
8 the jury's questions.

9 MR. FREEMAN: Just a couple.

10 REDIRECT EXAMINATION

11 BY MR. FREEMAN:

12 Q Ms. Parker, just on that last one, so focusing
13 on the area on the north side of that building by the bush
14 where Sergeant Maines -- or was indicated to you that
15 Sergeant Maines was sort of located, are you able to look
16 in that particular area for any other pellet impact marks?

17 A Yes.

18 Q And what did you find?

19 A We did not find any pellet impact marks to the
20 north face of Building 8119.

21 Q And would that be consistent with somebody
22 shooting in an east-west -- west to east direction? You
23 wouldn't expect it to hit the north side of that building?

24 A That's correct, yes.

25 Q What about the vegetation and things that we saw

1 in the pictures, the other bushes the grass and things
2 like that? Are you able to look for pellets in
3 vegetation?

4 A We offer an attempt to look through that area,
5 but it's not easy to determine whether an impact mark has
6 caused that, or hail, or any type of bug activity. So I
7 would not personally be willing to say, yes, there's
8 definitely an impact here, without finding metal objects
9 to associate with said impact.

10 MR. FREEMAN: All right. Thank you.

11 THE COURT: Mr. St. George?

12 MR. ST. GEORGE: I have no questions.

13 THE COURT: You may step down.

14 THE WITNESS: Thank you.

15 (The witness was excused.)

16 MR. FREEMAN: Judge, we'll call Ryan Keep. He
17 is from Sprint.

18 JOHN RYAN KEEP,
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 Would you please state your full name, and spell

1 your last name for us.

2 A Yes. My full name is John Ryan Keep. Last name
3 is spelled K-e-e-p.

4 Q And, Mr. Keep, what do you do for a living?

5 A I'm a custodian of records with Sprint.

6 Q And for how long have you been doing that?

7 A I've been with the company for 8 years. I've
8 been doing this job for about one month.

9 Q And can you briefly describe what your duties
10 are as a custodian of records for Sprint?

11 A Yes. We provide records for Google demands, and
12 then I go to trials like this to testify to the validity
13 of the records.

14 Q And when we're talking about Sprint, we're
15 talking about Sprint, the cellular phone service provider?

16 A Yes.

17 Q And where is Sprint based out of?

18 A Overland Park, Kansas.

19 Q To your knowledge, does Sprint keep records of
20 cell phone activities for their customers?

21 A Yes.

22 Q And is that kept for billing purposes?

23 A Yes.

24 Q And is it also kept for legal purposes?

25 A Yes.

1 Q Do you know for the how long those records are
2 kept?

3 A We have standard call records available for
4 18 months.

5 MR. ST. GEORGE: Your Honor, I may need to
6 object here. Bear with me. I'm looking at the People's
7 list of anticipated witnesses. I'm not seeing Mr. Keep,
8 is it?

9 MR. FREEMAN: Judge, he's not on our list
10 because he's a custodian of records.

11 THE COURT: Okay. Hold on a second. I'm going
12 excuse the jury for a minute.

13 Don't talk about the case. Keep an open mind.
14 Don't do any research.

15 You can step down for just a moment, sir.

16 (The jury left the courtroom.)

17 (The witness was excused.)

18 MR. ST. GEORGE: I'm sorry I didn't get that
19 objection out as soon as he was called. I needed to check
20 the list before I opened my mouth. I'm sorry.

21 THE COURT: Okay. And the objection is he's not
22 on the witness list?

23 MR. ST. GEORGE: That's correct, Your Honor.
24 This man is not on the People's list of anticipated
25 witnesses.

1 MR. FREEMAN: Judge, we did list and endorse a
2 custodian of records from Sprint. As the Court may be
3 aware, we often don't know who that person is until they
4 literally send them to us. They have multiple custodians
5 of records, and they are somewhat fungible. It's not like
6 we've ever spoken to Mr. Keep or have a report for him.
7 He's just here to authenticate the records that we
8 received from Sprint, which we gave to the defendant. I
9 would hope that Mr. Menges would have advised the
10 defendant that this is a normal practice.

11 THE COURT: Okay. So in regard to this, you're
12 saying that you endorsed a custodian of records from
13 Sprint -- for Sprint.

14 MR. FREEMAN: We did.

15 THE COURT: Okay.

16 MR. MENGES: And, Judge, I can explain. I
17 didn't know this was coming up. I can take a minute and
18 explain it to him.

19 THE COURT: Okay.

20 (Discussion off the record.)

21 MR. MENGES: Judge, just go ahead.

22 THE COURT: Are we fine?

23 MR. MENGES: Yes, we're fine.

24 THE COURT: Okay. Is there an objection?

25 MR. ST. GEORGE: Yes. I don't see where he's

1 been endorsed or where a Sprint records custodian is
2 endorsed.

3 THE COURT: Okay. So that is a different issue.
4 Is there a custodian of records or a Sprint official
5 endorsed as a witness?

6 MR. FREEMAN: Yes. I just have to find our list
7 of endorsed witnesses.

8 THE COURT: Okay.

9 (Pause in the proceedings.)

10 MR. FREEMAN: Judge, on May 1st of 2017, we
11 filed a notice of endorsement of witness. The second
12 witness at the time was Elizabeth Jordan, Sprint corporate
13 security, subpoena specialist. I think there was probably
14 a generic one earlier in the case as well. We're going to
15 look for that one.

16 THE COURT: Okay. So we do have some notice
17 that Sprint was coming at that time. It was Elizabeth
18 Jordan. Let's continue to look.

19 MR. ST. GEORGE: Your Honor, if the People were
20 able to tell me what it is that they need this witness
21 for, perhaps I could just stipulate to it. If it's just a
22 matter of bringing in the call log, or something like
23 that, I would just simply stipulate to the call log.

24 MR. FREEMAN: Well, it's Exhibit 322, if counsel
25 wants to look at it. It's the call history for his phone

1 on the night in question.

2 THE COURT: Mr. St. George?

3 MR. ST. GEORGE: Just trying to parse the
4 record.

5 (Pause in the proceedings.)

6 MR. ST. GEORGE: So these records don't indicate
7 what would have been shown on my telephone screen. What
8 these records indicate is what Sprint would have recorded
9 as the calls. So if the -- if the People intend to offer
10 this as simply proof that a call was made, I wouldn't
11 object. But if the People intend to use this as proof of
12 a caller ID notification on my cell phone, I would
13 absolutely object to it. I would say the People would
14 need to use the download from my phone, which was offered
15 in discovery, and done with the Cellebrite program.

16 THE COURT: Okay. So I don't know why and for
17 what reason the People intend to offer this exhibit. It's
18 your opportunity or your ability to object to its
19 admission. Right now we have an individual from the phone
20 company who has testified that he is a custodian of
21 records for that company, so that is his role in this
22 case. And then I think the -- then there might be a
23 request to have something admitted, but I don't know why
24 either side is going to use a particular item of evidence.

25 It is my understanding, from what was just begun

1 with regard to this witness and then the offer, that this
2 person was just a generalized custodian of records, that
3 this person will just say that these records are kept in
4 the ordinary course of business, that it is their
5 responsibility to keep these record, and that these are,
6 indeed, their records for your phone number.

7 MR. ST. GEORGE: I'm stipulate to authentication
8 but not admissibility.

9 THE COURT: Okay. Then let's deal with
10 admissibility right now. So you're not requesting that --
11 or you're not requiring that the custodian of records talk
12 about these, and so there's no foundational element as a
13 business record. Is that what you're saying? You're not
14 objecting to them as a business record?

15 MR. ST. GEORGE: I don't think so, Your Honor.
16 This was also not made available to me in discovery, this
17 particular record, and so I think it may be a discovery
18 violation as well.

19 MR. FREEMAN: Judge, it was discovered a long
20 time ago. We can do all this. I hate to keep the jury
21 waiting. He's had his phone record and phone download for
22 months.

23 MR. ST. GEORGE: This isn't a phone download.

24 THE COURT: This is phone records. And when
25 were the records that the Sprint witness is going to

1 testify about discovered? Could we have that, please.

2 MR. FREEMAN: Yeah. We're looking.

3 THE COURT: Could you tell the jury that we're
4 going to take our afternoon break, and why doesn't -- and
5 we'll have the court reporter take a break right now, and
6 we'll look to see where we have these records that were
7 disclosed, and also -- well, just these records that are
8 disclosed.

9 Ten minutes.

10 (Pause in the proceedings.)

11 MR. FREEMAN: Judge, I have the date of
12 discovery when you're ready.

13 THE COURT: Okay. We're -- I want our court
14 reporter to take a moment, too, so we're going come back
15 on in a minute.

16 MR. FREEMAN: All right.

17 (A recess was taken.)

18 THE COURT: Okay. We're going to go back on the
19 record. We're going bring the jury out. Hold on. Wait.

20 Before we do that, are you stipulating to the
21 admission of this evidence? Was this evidence disclosed?
22 Can I have, if it was, disclosure date from the People.

23 MR. FREEMAN: Judge, originally, August 31st of
24 2016, and then rediscovered when the defendant began
25 representing himself in July of 2017.

1 THE COURT: Okay. So, Mr. St. George, this
2 material was discovered. Do you have it?

3 MR. ST. GEORGE: Yes, we have a copy of the
4 exhibit, and we stipulate to the admission of it.

5 THE COURT: Okay. So I'll tell the jury that
6 we've reach a stipulation that it has been admitted. It
7 is admitted as?

8 MR. ST. GEORGE: People's 322.

9 MR. FREEMAN: 322, Judge.

10 THE COURT: And that the witness is no longer
11 needed.

12 MR. FREEMAN: No, I still need him.

13 THE COURT: Okay. And hold on. And what are
14 you bringing this in for other than the admission of 322?

15 MR. FREEMAN: Judge, I do need him to explain
16 some of the information on here. I don't think it's
17 readily understood by the average layperson. And, also,
18 there's a little bit of explanation that needs to be made
19 regarding some of times. Phone calls that are indicated
20 by voice are an actual correct local time for Denver.
21 Text details were actually in Central Standard Time, so
22 they are an hour ahead. So those sorts of things need to
23 be explained by the custodian. I can't explain it because
24 it's not self-explanatory from the records.

25 THE COURT: Okay. So, Mr. St. George, do you

1 still want to have no objection to 322, knowing that the
2 witness will need to testify anyway?

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

4 THE COURT: Okay. So we'll bring the witness
5 back on the stand. You'll move to admit -- let's just
6 move to admit 322, you say no objection, we'll admit it,
7 rather than introduce a stipulation to the jury.

8 MR. FREEMAN: Okay.

9 THE COURT: And then we'll move from there, if
10 that's okay with you, Mr. St. George.

11 MR. ST. GEORGE: That's fine, Your Honor.

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

13 (The jury entered the courtroom.)

14 THE COURT: Everybody be seated, please. And
15 let's resume.

16 MR. FREEMAN: Judge, at this time we move for
17 the introduction of People 322.

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

19 THE COURT: 322 is admitted.

20 (People's Exhibit 322 was admitted into
21 evidence.)

22 MR. FREEMAN: And may we publish, Judge?

23 THE COURT: You may.

24 (People's Exhibit 322 was published.)

25 MR. FREEMAN: We're going try to rotate that.

1 Q (BY MR. FREEMAN) Mr. Keep, let me ask you a
2 little bit about the records before I have you look at
3 them. When calls are made using a device that's got a
4 Sprint number, do the records indicate whether it's an
5 outgoing on ingoing call, incoming our outgoing call?

6 A It does.

7 Q And do the records document whether it's a voice
8 call where like people actually talk to each other versus
9 as call that goes to voicemail?

10 A Yes.

11 Q And how is voicemail indicated?

12 A Voicemail is indicated two ways. One, it will
13 say "routed" for the call type, and the other it has a
14 specific identifier in the area code section of the dialed
15 digits --

16 Q Okay.

17 A -- that indicates it went to voicemail. It
18 is -- it starts with 6245.

19 Q Okay. And just so we're clear, the phone number
20 that these records are for, is that there at the top?

21 A Can you zoom in on that for me?

22 Q Yeah. You know what, can I --

23 THE COURT: Also, if you need the step down --

24 MR. FREEMAN: I'm going to have him brought a
25 copy of the records, Judge.

1 THE WITNESS: Thank you.

2 Q (BY MR. FREEMAN) So taking a look at 322, why
3 don't we just go from left to right. And we probably
4 won't go all the way across, but that first -- at the very
5 top, what phone number are these records for?

6 A This is for phone number (865) 280-3742.

7 Q And do these records cover the time period of
8 July 31, 2016, into August 1st of 2016?

9 A Yes.

10 Q Just so the jury understands what the
11 information is on here, that very first column on the
12 left, it says Calling, and then it says NBR. What does
13 that pertain to?

14 A That is the calling number.

15 Q And what is that column documenting?

16 A That is the phone number that has initiated the
17 phone call.

18 Q And the next number, Called NBR, what does that
19 mean?

20 A That is the called number. That is the phone
21 number that received the phone call.

22 Q Okay. And then the next one, it says Dialed
23 Digits. And I think on the screen, it appears to be
24 blank, but on the first page that you got there, at some
25 point there are interspersed -- sometimes there's numbers

1 in that column, and sometimes there's not. Can you
2 explain that?

3 A So for all of the blanks that we see on the
4 screen, those are for text messages. So we don't record a
5 dialed digit for text message because there really weren't
6 any numbered dialed for a text. If a phone number was
7 placed, we'll have the actual number that was dialed into
8 the handset to be delivered to the receiving handset.

9 Q Okay. And is that called the call digit number?

10 A That is the dialed digits.

11 Q I'm sorry. Dialed digits. The next column, it
12 says Mobile Role. What does that mean?

13 A That identifies if it is an inbound, outbound,
14 routed call or undetermined call.

15 Q So inbound would be an incoming call?

16 A Correct.

17 Q Outbound, outgoing call?

18 A Correct.

19 Q And when you say "routed call," that's
20 voicemail?

21 A That can be voicemail.

22 Q Can be voicemail. And then undetermined, what
23 does that mean? Just some other category?

24 A The undetermined means that our system was
25 incapable of capturing that portion of the call. So we

1 can read the records to determine what type of call it is,
2 but having it identify mobile role is impossible in that
3 case.

4 Q Okay. Then the next column says Start Date, and
5 it looks like it's got a date and a time. Is that in
6 military time?

7 A It is.

8 Q And then it's got an In Date and Time as well.
9 What do those column pertain to?

10 A That is when the phone call was initiated and
11 when it ended or when --

12 Q And --

13 A Oh, sorry.

14 Q Go ahead. I cut you off.

15 A Or when the text message was sent.

16 Q So is it fair to say that whatever the phone
17 activity was, whether it was a voice-to-voice call, a
18 voicemail or a text, that's the beginning and the end of
19 that activity on the phone for that incident?

20 A Yes.

21 Q Okay. And the next column says Duration, and
22 then it says SEC. Is that for seconds?

23 A Yes, it is.

24 Q Is that measuring the duration of the phone
25 activity?

1 A Correct.

2 Q And next to it, it says, Call type. At the
3 beginning there, there's a whole bunch that say, Text
4 detail. That duration is zero. Why is that?

5 A Text messages are so small that they are
6 transmitted instantaneously.

7 Q So those don't show up with any duration?

8 A Correct.

9 Q So does the duration, if there is a number
10 there, that simply pertains to the length of the
11 conversation or the length of the voicemail?

12 A It is the amount of time that the call is active
13 on the Sprint network.

14 Q Okay. And that's in seconds?

15 A Correct.

16 Q And then I'm not going to ask you about those
17 last few columns because I don't think they pertain to
18 this case. The indications of start and end date in
19 military time, is that accurate to local Denver time as it
20 pertains to all of the information on these records?

21 A The phone calls are all in local Denver time.
22 The text messages are all in Central Standard.

23 Q So is that one hour later than it actually is in
24 Denver?

25 A Right.

1 Q So, for example, in that very first column, I
2 don't know if the jury can see that, but it's got a start
3 date, July 31 at 1:17 and 7 seconds, and an end date, July
4 31, 1:17 and 7 seconds. Was that actually at 12:17?

5 A Yes.

6 Q So you have to subtract an hour?

7 A That's correct.

8 Q But that's just for the texts?

9 A Yes.

10 Q Okay. I don't know if you can see that from
11 where you're seated, but under the dialed digits, right
12 about there, there's a references to 911. Do you see that
13 on the third page?

14 A I do.

15 Q And do you know what that's a reference to?

16 A That is an event where phone number
17 (865) 280-3742 dialed 911.

18 Q And there's an indication that it's an outgoing
19 call?

20 A Correct.

21 Q Does the -- presumably some sort of software
22 system that captures this information, does it capture it
23 at or about the time, close to the time, that the calls
24 and activity are made?

25 A Yes.

1 Q And is the order that the calls and the activity
2 that's indicated on this phone, is it in the order that
3 it's made as well?

4 A The events of this report are sorted by time and
5 date. So for the phone calls that are in Mountain Time,
6 those are in order, and for the text messages, those are
7 in order.

8 Q Okay. There's a series of calls, it looks like
9 six calls, just above that 911 entry, and there's an
10 indication of a calling number, a called number and a
11 dialed digits. Do you see those?

12 A I do.

13 Q Can you explain that phone activity, what that
14 means? And there's three numbers there.

15 A Yes. So the -- starting with the call on August
16 1, 2016 at 0017 and 50 seconds, that was a call placed by
17 (720) 616-1471, received by (865) 280-3742, and the dialed
18 digits on this are (651) 968-9927.

19 Q And you explain why there's a different dialed
20 digits than the number that they were calling, the 865
21 number?

22 A Yes. There are a few possibilities, but what is
23 likely to be the case here is that that is a temporary
24 local dialing number. That is a phone number that assists
25 phone calls to be completed if they would otherwise fail.

1 To put it in simple terms, if somebody calls a Sprint
2 phone and the call would drop before receiving -- getting
3 to the Sprint customer, the back-end systems will make
4 another phone call from that dialed digits number and
5 bridge the two calls together.

6 Q Okay. So that's just something that is built
7 into Sprint's software to make sure that calls get
8 completed?

9 A Right.

10 Q Okay.

11 A The other option is that it could have been a
12 routed call set up for call forwarding, but I have no way
13 to determine that.

14 Q Okay. In those six calls, if you go to call
15 type, it indicates that those are all voice calls?

16 A Yes.

17 Q And what does that indicate?

18 A That they were voice communications where one
19 phone dials another, and then a voice communication would
20 be able to occur.

21 Q And the durations there in seconds for all of
22 those, that's an indication for how long that phone
23 activity took place for each one of those calls?

24 A Correct.

25 Q Can you tell from these records if any of the

1 incoming calls that were made to this phone came from a
2 blocked number or not?

3 A That is not shown on these records.

4 Q Does Sprint keep records of such things?

5 A Are you asking if we can determine if a number
6 was blocked when the call was placed?

7 Q Yes.

8 A That is not something we store.

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

10 THE COURT: Cross-examination?

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

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

14 (No verbal response.)

15 THE COURT: You may step down.

16 THE WITNESS: Thank you, Your Honor.

17 (The witness was excused.)

18 MR. FREEMAN: We'll call Daniel Dunnebecke.

19 DANIEL DUNNEBECKE,

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 MR. FREEMAN:

Q Good afternoon. Would you state your name, and spell your last name for us.

A Good afternoon. My name is Dan Dunnebecke, D-u-n-n-e-b-e-c-k-e.

Q And, Mr. Dunnebecke, what do you do for a living?

A I am an investigator with the Jefferson County Sheriff's Office, currently assigned to the Rocky Mountain Regional Computer Forensics Laboratory, or RMRCFL.

Q And are you a peace officer?

A I am a police officer, yes.

Q For how long have you been a peace officer?

A I've been a police officer for 35 years.

Q And how long have you been assigned to the RMRCFL?

A Since October of 2007, or just a little over ten years.

Q And can you briefly describe your duties working for the Rocky Mountain lab.

A The Rocky Mountain Regional Computer Forensics Lab, or RMRCFL, is one of 16 current computer forensic laboratories across the country. It's a task force environment. It's run entirely, and funded, by the FBI.

1 I work with numerous agencies, state and local, as well as
2 federal law enforcement. Our sole purpose is the
3 examination of digital evidence, computers, hard drives,
4 mobile devices, cell phones, audiovisual devices.
5 Anywhere at the federal level, state, local, in Colorado
6 and Wyoming, we do forensic examination of devices
7 submitted to us.

8 Q And do you only do that on behalf of law
9 enforcement?

10 A We support law enforcement only, yes.

11 Q Okay. And is part of your duties, when
12 requested, at times to try to download information from
13 cellular phones?

14 A Yes, it is.

15 Q And a does that sometimes include what are known
16 as smartphones, phones with Internet or Wi-Fi capability?

17 A Yes, it does.

18 Q And for how long have you been doing that
19 specific kind of work?

20 A I received a secondary certification in mobile
21 devices, or cell phones, in addition to computers in June
22 of 2016 is when I got my mobile device certification
23 through the FBI.

24 Q Now, are there times when phones have passwords
25 or they're encrypted and you simply can get in and view

1 the contents of the phone?

2 A There are many times, yes.

3 Q And are there times when you're able to get past
4 those sorts of security devices and get into a phone even
5 without a password?

6 A Yes, there is.

7 Q And once you're into a phone, either pursuant to
8 a consent or a search warrant, what sort of information
9 can you sometimes get during those inspections of the
10 contents of the phones?

11 A There are basically three types of extractions
12 of cell phones. There's a logical extraction, which is
13 being allowed to extract the data that you can see -- the
14 user can see on the phone, what you can pull up, reach
15 into your pocket, grab your cell phone, look at it, that
16 data that you can see on the phone.

17 Then there's a physical extraction, which
18 actually is the most comprehensive, which allows me to do
19 a complete extraction of the data that's on the that
20 device, which not only includes the data that user can
21 see, but it also includes deleted data and some databases
22 that are stored in the background.

23 And then there's also just the file system
24 extraction, which will get some deleted, but only a
25 partial extraction of that.

1 Q Can you get call history on the phone as far as
2 the history of the person receiving and making calls with
3 the phone?

4 A Yes, you can.

5 Q Can you get e-mail history if the phone is set
6 up to send or receive e-mails?

7 A Yes, you can.

8 Q And can you get content of e-mails?

9 A Some, you can, yes.

10 Q How about text messages, I think what you would
11 call SMS messages?

12 A That's correct. Yes, you can.

13 Q And do you get not only dates and -- can you get
14 dates and times that those messages were sent and
15 received?

16 A Yes, you can.

17 Q Do you get content of those messages, what was
18 actually said in the messages?

19 A In many cases, yes.

20 Q What about things like Snapchat or Instagram, or
21 things like that, that sort of temporarily appear maybe on
22 the phone but then go away, maybe, by design quickly?

23 A You may recover some artifacts or some data
24 related to that application, but an application such as
25 Snapchat, just like Gmail or Facebook, social media, that

1 information, the main information that you're seeing is
2 not on the cell phone. It's been transferred to your cell
3 phone. It's not being stored on the cell phone or your
4 computer. It's being stored on servers elsewhere.

5 So the gist of the information, or the Snapchat
6 information or the -- whatever communication, Gmail, web-
7 based, is going to be stored elsewhere on servers, not on
8 the phone.

9 Q If there are photographs on the phone, can you
10 sometimes get those?

11 A Yes, you can.

12 Q How about videos?

13 A Yes.

14 Q How about voicemail messages that have been
15 left?

16 A Yes, you can.

17 Q I'm going to have you handed 292, and I'm going
18 to ask if you got a request by the Lakewood Police
19 Department, and, specifically, I think it was Detective
20 Jeff Larson, to attempt a cell phone download of that
21 phone that's contained in 292.

22 A Yes. It is the same phone, yes.

23 Q And how is it, in looking at that, you can
24 recognize that as the phone that you were sent and asked
25 to analyze?

1 A I recognize, number one, there's a unique
2 barcode that's on the back of the cell phone, which is
3 used by our evidence system at the laboratory identifying
4 it as this particular item of evidence. Additionally, the
5 packaging, I recognize that, as well as my initials and
6 the date of 11/16 of '16, and my handwriting in red that
7 says, Biohazard.

8 Q And what were you asked to do with that item?

9 A I was asked to attempt an extraction of data
10 from this cell phone, if possible.

11 Q And were you able to do that?

12 A Yes, I was.

13 Q Can you describe the process that you went
14 through to do that.

15 A I checked this out of evidence control facility.
16 I reviewed not only the request form on what the detective
17 was asking me to do, he also supplied to us a search
18 warrant giving me authorization to search -- do an
19 extraction on this device. I reviewed that search warrant
20 in entirety. I checked this out of the evidence facility,
21 did a physical inspection of this device, which I noted it
22 was kind of taken apart. It was -- it wasn't damaged, but
23 it had some blood on it, and it was in pieces from,
24 apparently, a previous attempt by the Lakewood Police
25 Department.

1 I then researched the make and model -- specific
2 make and model of this device, Samsung Galaxy Note 4,
3 because despite just being that type of phone -- like an
4 iPhone 6, if you say iPhone 6, there are a number of
5 versions of iPhone 6s, different models. So depending on
6 what that exact model is, we have a database that's
7 updated daily by the FBI where we can access and see if we
8 have a tool that will allow us to get an extraction,
9 whether it be a physical, a logical, or just a file
10 system.

11 In this particular case, a software tool that we
12 have allowed me to get a physical extraction of this
13 particular device.

14 Q What's the name of that software program?

15 A It's a Cellebrite is the manufacturer of the
16 software. Pretty common. They're in the business of
17 unlocking cell phones. Forensic software. The device
18 itself is called a UFED, a UFED device, that is hooked up
19 to the software that really allows me to, with a USB
20 cable -- the software will tell me what cable to use. We
21 have a number of cables to fit different phones, all makes
22 and models of phones. It tells me what cable it is, and
23 then just follows me through the instructions on what to
24 do with this device, the UFED device.

25 Q Do you have the password for that phone?

1 A I did not have that password.

2 Q Were you still be able to bypass that security
3 and get into the phone?

4 A I was, yes.

5 Q And that's something that the Cellebrite
6 software allowed you to do?

7 A In this particular case, yes.

8 Q And were you able to do that without damaging
9 the physical phone or the contents?

10 A I was, yes.

11 Q What sort of download were you able to do?

12 A I was able to obtain a physical extraction of
13 this cell phone.

14 Q And I think you said earlier that's the complete
15 data, including any deleted information?

16 A Yes.

17 Q How can you tell if something's been deleted,
18 such as a text?

19 A The software will actually -- the program will
20 actually identify it as a deleted text or a deleted e-mail
21 or a deleted item.

22 Q Now, by identifying it as deleted, do you just
23 get an indication that something's been deleted, or can
24 you actually see the content of that text that was
25 deleted? Can you recover the actual text?

1 A In a lot of cases, yes. You still see the text.
2 You still see the picture. You still see the e-mail.
3 It's just been deleted.

4 Q And we just had somebody testify to phone
5 records for that phone, so I don't want to ask you about
6 incoming and outgoing calls. I want to ask you about the
7 SMS, or the text messages, on that phone. Did you review
8 the text messages that came into that phone and were sent
9 from that phone on the evening of July 31 of 2016 into the
10 early morning hours of August 1?

11 A Yes, I did.

12 Q Was there any indication that there had been any
13 e-mails deleted during that time?

14 A There were -- e-mails or text messages?

15 Q I'm sorry. Texts.

16 A Yes. There were indications that there
17 were -- I don't -- I don't recall that day, that specific
18 day, but -- if they were deleted, but I did note that
19 there were deleted text messages.

20 Q Not sure --

21 A I don't recall exactly if they were that day.

22 Q Okay. I want to show you what's been marked as
23 People's 323. Now, when you -- when you do the Cellebrite
24 download and you get the information, is it sort of put
25 into separate folders, like the calls are sort of get in a

1 separate folders from the e-mails, which are kept separate
2 from the texts?

3 A Yeah. The program that runs with this software
4 allows you to generate a pretty user friendly, easy-to-
5 view report that can be gone through, and it comes with
6 links. It's got hyperlinks to each of the categories. So
7 it will categorize out call log, incoming, outgoing,
8 deleted, SMS text messages, which are short text messages
9 MMS messages, categorizes those. Those are text messages
10 that might have some type of media that are attached to
11 it, whether it be an emoji or a picture or something.
12 They will separate it out. It will categorize it out. So
13 really in the report that I, or any other law enforcement
14 officer, they can just go on any computer and just click
15 on the links to open up the particular category.

16 Q And so is it accurate to say that when you do
17 the download, it keeps the -- initially, at least, it
18 keeps the incoming text in a separate file from the
19 outgoing text?

20 A That's correct.

21 Q So in order to see sort of the entirety of the
22 conversation if there is back and forth between two users,
23 you have to sort merge those two files?

24 A Right. You can actually tweak that report at
25 some point do where they -- you can fine tune the report

1 to where they're together. You can edit the report to,
2 you know, whatever -- whatever you need, whatever your
3 needs are, what -- for example, a lot of times we get
4 cases where we do a physical extraction, but there's stuff
5 on this device that we don't have permission to search
6 for, so we don't include that, so we'll exclude that, or
7 whatever.

8 Q So in order to sort of merge two parts of a
9 conversation, the back and forth, do you use the
10 timestamps, or how do you do that to make sure you get the
11 conversation in the correct order?

12 A The date and time stamps on both the incoming
13 and the outgoing logs match those two up.

14 Q Taking a look at People's 323 that's in front of
15 you, do you recognize that as part of the download from
16 the Samsung phone that's in front of you?

17 A Yes, I do.

18 Q And does that appear to be the merging of two
19 text conversations that occurred between the person in
20 possession of that Samsung phone and various persons on
21 the evening of July 31 of 2016?

22 A Yes, it does.

23 Q And have you looked at that and compared it to
24 the complete download to, say, complete an accurate sort
25 of back and forth between the e-mails -- I'm sorry,

1 between the texts of those persons at that time?

2 A Yes, it is.

3 Q And is it in the correct order?

4 A Yes, it is.

5 MR. FREEMAN: Judge, at this time I would move
6 to introduce People's 323.

7 MR. ST. GEORGE: Can we see the actual exhibit?

8 THE COURT: Sure.

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

10 THE COURT: 323 is admitted.

11 (People's Exhibit 323 was admitted into
12 evidence.)

13 Q (BY MR. FREEMAN) Did you also look through the
14 various folders in the phone around the evening of July
15 31, 2016 into the morning of August 1 for any sort of
16 threatening messages, texts, I think you said MMS,
17 messages, SMS messages, anything of that nature?

18 A Yes, I did.

19 Q Did you find anything that appeared to be of a
20 threatening nature either being sent to that phone and
21 from that phone?

22 A I did not.

23 MR. FREEMAN: And, Judge, I don't know that I
24 qualified Mr. Dunnebecke as an expert, but I would move at
25 this time to qualify him as an expert in cell phone

1 download and analysis.

2 THE COURT: Any objection?

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

4 THE COURT: Ladies and gentlemen, this witness
5 has been qualified as an expert in cell phone download and
6 analysis.

7 Q (BY MR. FREEMAN) Did you also -- or were you
8 also able to download and recover some voicemail
9 messages from that phone?

10 A Yes, I was.

11 Q And were those provided to Lakewood PD as well
12 as part of your report?

13 A Yes, it was.

14 Q Going back to that evening of July 31st into the
15 morning of August 1st, can you say whether you noticed any
16 indication that any texts had been deleted or not from
17 that phone?

18 A There were indications that texts had been
19 deleted, as noted in the way the report lists it.
20 However, I could read those texts. I could read the text
21 of -- the content of those texts.

22 Q Was there anything of a threatening nature in
23 any of those deleted texts?

24 A No, there was not.

25 Q Could you tell if those deleted texts -- were

1 those texts that had been sent from the phone or received
2 by the phone?

3 A I believe there was either -- there's both
4 deleted -- sent and received texts in that report.

5 Q Do you remember who any of those texts were
6 from?

7 A I do not recall without seeing it.

8 Q Okay.

9 MR. FREEMAN: All right. Thank you.

10 Q (BY MR. FREEMAN) Actually, one more question.
11 On that exhibit, it looks like each of the communications
12 is in there twice. Do you know why that is?

13 A For some reason, on some phones, the -- it will
14 list it twice, because the software is actually pulling
15 this off of a -- two different places of the -- of the
16 device, of the cell phone, two different locations of the
17 cell phone, where it stores it.

18 Q It doesn't necessarily mean that the person that
19 sent the message sent the exact same message twice?

20 A No, it does not mean that. It is the same -- it
21 is the same entry. It is just pulling it from a
22 different -- a different place, and it doesn't -- it will
23 do this on certain -- certain models of phones.

24 MR. FREEMAN: All right. Thank you.

25 THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. ST. GEORGE:

Q Mr. Dunnebecke, you mentioned a proprietary piece of software, I believe it is called Cellebrite; is that right?

A I don't remember using "proprietary," but that's -- Cellebrite is the manufacturer.

Q Cellebrite, then. Thank you. And that's the software that you used for downloading the data from the cell phone?

A Cellebrite device with a UFED analyzer tool.

Q Okay. And is that the software that creates, you said, a user friendly PDF record?

A It is, yes.

Q If you saw a screenshot taken of a page from that PDF report, would you be able to recognize it?

A Yes.

MR. ST. GEORGE: Okay. Defendant is offering Exhibits U, V and W.

THE COURT: Okay. So you're showing him U, V and W?

MR. ST. GEORGE: Yes, Your Honor, U, V and W.

Q (BY MR. ST. GEORGE) And, Mr. Dunnebecke, do you need a moment to review those?

A Yes.

1 Q Okay.

2 (Pause in the proceedings.)

3 Q (BY MR. ST. GEORGE) Okay. And are you able to
4 identify those as screenshots taken from the report that
5 was created from the question -- the cell phone in
6 question?

7 A Yes, I do.

8 MR. ST. GEORGE: Okay. Defense asks to admit U,
9 V and W.

10 MR. FREEMAN: I don't have an objection.

11 THE COURT: U, V and W are admitted.

12 (Defendant's Exhibits U, V and W were admitted
13 into evidence.)

14 Q (BY MR. ST. GEORGE) I'll draw your attention,
15 Mr. Dunnebecke, to the incoming and missed calls. And do
16 you see the most recent calls that were inbound?

17 A The most recent incoming?

18 Q Correct.

19 A Yes, I do.

20 Q And do you see that they are timestamped?

21 A Yes, I do.

22 Q And can you tell me who was the -- can you tell
23 me the caller ID of those three calls and the times of
24 those three calls?

25 A The caller that it is from is unknown, and

1 beginning with the first and going to the third is -- the
2 date is 6 -- 8/1 of -- this is really small. 8/1 of 2016
3 at 12:32:17 a.m.; same date, 12:20 a.m. and 27 seconds;
4 and then on 7/31 at 10:18 and 29 seconds p.m.

5 Q Those were the three unknown calls?

6 A Yes.

7 Q Okay. Can you tell me again the timestamp on
8 the third one? You may have just read it.

9 A 12:20 and 27 seconds a.m.

10 Q Okay. And you have another page there of missed
11 calls, correct?

12 A That's correct.

13 Q Okay. What is the exhibit number of that
14 particular item?

15 A That is Exhibit V, as in Victor.

16 Q Exhibit V, as in Victor. Thank you. And do you
17 also see three calls there that are missed from an unknown
18 ID?

19 A That's correct.

20 Q And can you tell me, based on the timestamps, at
21 what time those calls were made?

22 A They are all three on 8/1/2016, beginning at
23 12:30 a.m. and 27 seconds, 12:23 a.m. and 21 seconds, and
24 12:17 and 50 seconds a.m.

25 Q Thank you. So you were also asked to look into

1 the phone for -- was it call log, e-mails? What were the
2 other things that you were looking for?

3 A Text messages.

4 Q How about Internet search history?

5 A Internet search history is also included in the
6 report.

7 Q And did you investigate through the Internet
8 search history?

9 A I did look through the Internet history, yes.

10 Q What were you asked to look for?

11 MR. FREEMAN: Objection, relevance, Judge. I
12 think we need to have a discussion.

13 THE COURT: We're going to have to excuse the
14 jury. Please don't do any research. Don't talk about the
15 case. Keep an open mind. We'll see you in a minute.

16 (The jury left the courtroom.)

17 THE COURT: Okay. I do have some concerns --
18 I'm going keep the witness right here for a moment --
19 about where we might be going and what doors we might be
20 opening here.

21 MR. FREEMAN: Judge, I think where he's heading
22 is he's going to ask, like he brought up in his opening
23 statement, if there's any indication of a hatred of police
24 or, you know, some antisocial views, or something like
25 that. It is improper character evidence, and I don't

1 think it should be admitted. If it does come in, I think
2 it does open the door to some other information that we
3 would seek to admit, but I think the Court had previously
4 excluded.

5 THE COURT: Okay. So, Mr. St. George, where are
6 we going here with the Internet history? You asked this
7 witness what it was that he was tasked with looking at.

8 And, sir, if I asked you that question, what
9 would you respond with?

10 THE WITNESS: Only activity really specified --
11 specific to two days, which would have been June 31st --
12 or, I'm sorry, July 31st and August 1st.

13 THE COURT: Okay.

14 MR. ST. GEORGE: Okay.

15 THE COURT: Okay. And so I'm going to ask that
16 you step down, and we can continue. Go ahead and step out
17 for a minute, and we'll call you back up.

18 THE WITNESS: Okay.

19 (The witness was excused.)

20 THE COURT: So, Mr. St. George, you asked him
21 the question, what were you tasked with looking at with
22 reference to the Internet. And I'm paraphrasing. And
23 he -- I asked him that question because I wanted to see
24 what -- and he said he was asked to look at just the
25 July 31st to August 1st time period.

1 MR. ST. GEORGE: And, Your Honor, based on the
2 answer to that question, I would have had to have stopped
3 there. I wouldn't have gone any further.

4 THE COURT: Okay. So I guess I'll sustain the
5 objection. I'm not certain there's any relevance that he
6 looked at this if we're not going to get into any
7 specifics with regard to this or there's no specific topic
8 that we're looking at. If we're not going any further, I
9 don't think -- necessarily think it is relevant.

10 So we'll have the jury back, and we'll have our
11 witness back on the stand.

12 I'll just have you move on to your next
13 question, then.

14 (Pause in the proceedings.)

15 THE COURT: Mr. Dunnebecke, we'll have you back
16 on the stand.

17 MR. ST. GEORGE: Your Honor, for the purposes of
18 the jury, do I want to ask him again, and he'll tell me
19 that he limited his search to July 31st of '16 and
20 August 1st of '16, and then I'll just simply say no
21 further questions?

22 THE COURT: So this is your last question?

23 MR. ST. GEORGE: I'll leave it --

24 THE COURT: No, it's fine. I'll let you ask
25 that if that's your last question and you need some sort

1 of conduit.

2 MR. ST. GEORGE: Yeah. Based on the answer to
3 his question, Your Honor, that would have been the end of
4 my --

5 THE COURT: Okay. So you can ask that question,
6 he can say the dates that he reviewed it, and then go
7 ahead and sit down.

8 MR. ST. GEORGE: Okay.

9 (The jury entered the courtroom.)

10 Q (BY MR. ST. GEORGE) And, Mr. Dunnebecke, I
11 believe the last question I had asked you was did
12 you -- did you perform a search of the Internet search
13 history of the phone?

14 A I reviewed the activity -- the Internet activity
15 for specifically two days, which would have been July 31
16 of 2016 and August 1 of 2016.

17 MR. ST. GEORGE: Okay. Thank you. I have no
18 further questions.

19 THE COURT: Redirect?

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

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: Thank you.

1 (The witness was excused.)

2 THE COURT: And you called your next witness?

3 MR. FREEMAN: Yeah. I'm sorry, Judge. Betty
4 Clark.

5 BETTY CLARK,
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 MR. FREEMAN:

12 Q Good afternoon. Would you state your full name,
13 and spell your last name for us.

14 A It's Betty Clark, C-l-a-r-k.

15 Q Ms. Clark, what do you do for a living?

16 A I'm an investigative tech for Lakewood Police
17 Department, crimes against children.

18 Q And as an investigative tech, are you a peace
19 officer?

20 A No, I'm not.

21 Q Are you a civilian employee?

22 A Yes, I am.

23 Q Can you briefly describe what your duties are.

24 A I do a variety of different things. I book
25 property into evidence. I request medical records. I

1 assist victims with their cases when I get assigned to
2 them, as well as download cell phones.

3 Q And for how long have you been doing that kind
4 of work for Lakewood PD?

5 A Investigative tech for 7 years.

6 Q And during that time, have you at times
7 downloaded cell phones for them?

8 A Yes.

9 Q And we just had a witness talk about using a
10 Cellebrite software. Is that something you're familiar
11 with?

12 A Yes.

13 Q And do you sometimes use that as well?

14 A Yes.

15 Q Are there times when you attempt to download the
16 contents of a cell phone and are unsuccessful and forward
17 it off to the Rocky Mountain lab?

18 A Not the Rocky Mountain lab, but the crime lab we
19 have at Lakewood, yes.

20 Q Or the Lakewood crime lab. I don't want to go
21 through everything that the last witness testified to, but
22 if you were successful in downloading the contents of a
23 phone, are you able to get the phones history as it
24 relates to incoming and outgoing calls for a period of
25 time?

1 A Yes.

2 Q And you get the phone's history as far as
3 incoming and outgoing texts?

4 A Yes.

5 Q Can you sometimes get content of texts?

6 A Sometimes.

7 Q And you get an indication if a text has been
8 deleted or not?

9 A If it's imported by Cellebrite on iPhones, yes.

10 Q And how is that indication of a deleted text,
11 how does that shown on the download?

12 A It shows in the right column, there will be an X
13 why it says deleted.

14 Q And if there is such an X there, are you able to
15 recover that deleted text and see what the content of it
16 was?

17 A It usually has the content with it.

18 Q Okay. And an indication that it was deleted?

19 A Correct.

20 Q Did you get a request by Detective Feik to try
21 to conduct a forensic download on a cell phone for an
22 Emily Elliott?

23 A Not by Feik, no.

24 Q I'm sorry. Did I say Feik? I meant Larson.

25 A Yes, Larson.

1 Q I was thinking about Feik. Did Detective Larson
2 make that request of you?

3 A Yes, he did.

4 Q And did he indicate to you that Ms. Elliott was
5 consenting to the download of her phone?

6 A Correct.

7 Q Is that important for you to know that you have
8 a legal right or ability to get into the phone?

9 A Yes. I have to have that.

10 Q Okay. And in doing that, were you provided with
11 a password, or did you need a password to access your
12 phone?

13 A Detective Larson provided me the password.

14 Q And did that enable you to successfully download
15 the contents of her phone?

16 A Yes.

17 Q And, specifically, regarding her text activity
18 on that phone around August 1 of 2016, in the morning,
19 going backwards into the evening of July 31 of 2016, were
20 you successfully able to get that information?

21 A Yes.

22 Q Now, when you did the download, did it have the
23 incoming and outgoing texts together sort of in a
24 chronological order, or were they in separate files?

25 A Separate files.

1 Q And is there a way to try to merge those so you
2 get the whole history of the incoming and outgoing texts
3 in the order that activity was conducted on the phone?

4 A The PDF report that we provide, it has a
5 timeline feature, and going to that, it gives you to and
6 from and correspondence back and forth.

7 Q Okay.

8 MR. FREEMAN: Judge, I thought defense has the
9 copy of it. They have the disk with the data, but not the
10 actual exhibit. So we can either make a copy now, or I
11 could make a copy at a break.

12 THE COURT: Did you want to let them take a look
13 at it for a moment?

14 MR. FREEMAN: Sure.

15 (Pause in the proceedings.)

16 MR. ST. GEORGE: Your Honor, we do have the
17 information. In the interest of time, I'm just going to
18 not object.

19 THE COURT: Okay. Let's continue, then. Okay.
20 We're good. Let's continue.

21 MR. FREEMAN: All right. The bailiff will hand
22 the witness 365.

23 Q (BY MR. FREEMAN) In taking a look at 365, do
24 you recognize that as a partial -- a printout of some of
25 the downloaded information from Ms. Elliott's phone?

1 A Yes, I do.

2 Q And does that appear to contain the incoming and
3 outgoing text activity for her phone during that time
4 period of July 31 into August 1 of 2016?

5 A Yes, it does.

6 Q The timestamps on there, are those accurate in
7 the sense to local Denver time, or are they some other
8 time zone?

9 A It's Universal Time Code minus six hours. So
10 it's usually minus six hours from Universal Time Code.

11 Q What does that mean? How do we read those? Are
12 the times that are indicated on there accurate for when --
13 the times they were sent, or do we have to do some math?

14 A I think we have to do some math.

15 Q Okay. And how do you do that to make sure that
16 when you see a text from a certain person that you know
17 what time it was actually sent?

18 A I usually use a conversion on my computer that
19 you can plug in the time, and it gives you the conversion
20 of what time that has been sent.

21 Q Okay. Has that been done for those records?

22 A I do not know.

23 Q Okay. Other than that, do the records appear to
24 be complete and accurate for the incoming and outgoing
25 text activity for that phone?

1 A Yes.

2 MR. FREEMAN: Judge, I would move to introduce
3 365.

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

5 THE COURT: 365 is admitted.

6 (People's Exhibit 365 was admitted into
7 evidence.)

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

10 THE COURT: Cross-examination?

11 (Pause in the proceedings.)

12 THE COURT: Is there cross-examination?

13 MR. FREEMAN: I'm done.

14 MR. ST. GEORGE: Oh, I'm sorry. I didn't -- I
15 didn't hear you say -- I have no further questions, Your
16 Honor, or any questions of my own, Your Honor.

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

19 (No verbal response.)

20 THE COURT: You may step down.

21 (The witness was excused.)

22 MR. FREEMAN: We call Dale Higashi.

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

1 THE COURT: Have a seat, please.

2 THE WITNESS: (The witness complied.) Thank
3 you.

4 DIRECT EXAMINATION

5 BY MR. FREEMAN:

6 Q Good afternoon.

7 A Good afternoon.

8 Q Would you state your full name, and spell your
9 last name for us.

10 A Certainly. It's Dale Higashi. Last name is
11 H-i-g-a-s-h-i.

12 Q And how are you employed?

13 A I'm employed by the Colorado Bureau of
14 Investigation as laboratory agent, and I'm assigned to the
15 firearms and toolmark section of the laboratory.

16 Q And just for ease of discussion, I'm going refer
17 to it as CBI.

18 A Okay.

19 Q How long have you worked for CBI?

20 A It is about 13 1/2 years.

21 Q Is that a State-run lab?

22 A Yes, it is for the State.

23 Q And for how long have you been doing firearms-
24 related analysis?

25 A 28 years.

1 Q Can you briefly describe the formal education
2 you have that qualifies you for your job.

3 A Okay. So I was trained as a firearms and
4 toolmark examiner when I was working as a criminalist in
5 the Los Angeles County Sheriff's crime lab. It's there
6 that I underwent about two years working under the direct
7 supervision of four other firearms examiners, who had in
8 excess of 40 years' experience with firearms and firearms
9 identification. I had the opportunity to complete four
10 courses that were put on by the California Department of
11 Justice in firearms safety, firearms identification
12 criteria, trajectory analysis and fully automatic
13 conversions. So it was there where I learned how to work
14 and become a firearms examiner.

15 Q Have you testified in court before regarding
16 firearms examination and analysis?

17 A Yes, I have.

18 Q Do you know how many times, approximately?

19 A Approximately 150 times in the state of Colorado
20 and probably close to 500 times in the state of
21 California.

22 MR. FREEMAN: Your Honor, at this point I would
23 offer Mr. Higashi as an expert in firearms analysis.

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

25 THE COURT: Ladies and gentlemen, this witness

1 has been qualified as an expert in the area of firearms
2 analysis.

3 Q (BY MR. FREEMAN) Does CBI support law
4 enforcement requests for firearms analysis?

5 A Yes, we do.

6 Q Do they -- do they respond or do they support
7 requests from private citizens for that analysis?

8 A No. I believe we all -- we get all of our --
9 all of our requests come from law enforcement agencies.

10 Q If a criminal defendant wanted access to some of
11 the evidence that you've analyzed for a law enforcement
12 agency, will you make it available to them?

13 A It is not our evidence, so it would become -- we
14 analyze it, and then we give it back to the submitting
15 agency. I believe it would -- that would be up to the
16 submitting agency, or the agency that actually owns the
17 evidence. We borrow it, I guess you could say, we analyze
18 it, and then we give it back to the submitting agency, and
19 it would be their call, or the district attorney in that
20 particular area, I believe.

21 Q So once you're done with your analysis, you send
22 it back to the agency?

23 A Yes, we do.

24 Q And do you generate a report?

25 A Yes, I do.

1 Q How do you receive items of evidence from these
2 various police agencies that you support?

3 A Okay. We have an evidence control section at
4 the laboratory, and this is where all the participating
5 agencies within the state bring their items of evidence.
6 Folks at the counter will, if it's new evidence, assign it
7 a CBI case number, so we don't have to deal with a Jeffco
8 file number versus an Adams County file number, which
9 could be the -- exactly the same. So it gets a unique CBI
10 lab case number. And from that, any other items -- any
11 other items of evidence are submitted under that CBI case
12 number for that particular agency. So they intake all the
13 items, they electronically store it, put it in a location,
14 and then when the case comes up for it to be worked,
15 somebody draws the lucky straw, goes to the evidence,
16 picks up the evidence in that particular case, and then
17 proceeds to do their work, whether it's in firearms or
18 DNA, or whatever unit.

19 Q And along with picking up that evidence that's
20 sent by the agency, is there a request from the agency to
21 do -- or look for a particular thing?

22 A Yes. It's called, on our submission form -- so
23 they have a request for the forensic examination, and
24 usually it entails a detailed evidence list of what they
25 are submitting, and then an idea of what they would like

1 us to look at and come up -- use or expertise and come up
2 with an opinion or do some scientific investigation on.

3 Q Do you sometimes get requests from agencies to
4 determine if a particular firearm functions properly?

5 A Yes. That's probably the number one request we
6 get.

7 Q And how do you go about making that
8 determination?

9 A Simply put, we'll take notes about the
10 particular firearm. We'll give it the once over, so I can
11 look at it, and, using my training and experience, I can
12 determine if it's going to be safe for me to fire. Once I
13 make that determination, if it's just a straight -- what
14 we call straight -- what we call straight test fire, I can
15 just grab random ammunition from our collection for that
16 particular firearm, shoot it in our indoor range, and then
17 come up with a conclusion that this gun fires ammunition
18 and does function properly.

19 Q In addition to determining if the gun functions
20 properly, do you also document various things like the
21 make, manufacturer, caliber, things like that?

22 A Yes, all that, and the lengths of the barrel,
23 trigger pull, whatever safety mechanisms are designed on
24 that particular firearm, those are all stored in our
25 notes.

1 Q And you mentioned trigger pull. What is that a
2 reference to?

3 A That's just a reference to how much pressure is
4 required on the trigger to cause it to function. So we
5 basically put the firearm -- unload the firearm, point it
6 in an upward direction, hang a series of trigger weights
7 from the trigger, and then lift up the objects. Once we
8 have the trigger function where the hammer will fall,
9 that's the weight that's recorded as pounds required to
10 make the trigger function.

11 Q And can that amount of pounds for the trigger
12 pull, can that be different for different weapons or types
13 of weapons?

14 A Yes. It generally varies by the type of weapon
15 it is. Some target models will have what we call a
16 lighter trigger pull, 3 to 4 pounds or less. General
17 service grade, police-type firearms may have something on
18 the order of 5 to 7 pounds, things like that. So we'll
19 see different variations on standard firearms.

20 Q Are you familiar with different kinds of
21 handguns?

22 A Yes, I am.

23 Q And, specifically, are you familiar with the
24 difference between a semi-automatic handgun and a
25 revolver?

1 A Yes, I am.

2 Q What's the main difference between those two?

3 A The main difference is the mechanism feeding the
4 firearm. So a semi-automatic pistol is fed by a magazine.
5 This is a box that -- with -- a spring-loaded box that can
6 contain the ammunition for that particular pistol. It
7 is -- during the firing process, it will extract and eject
8 cartridges, cartridge cases, and load the next round of
9 ammunition from the magazine.

10 A A revolver differs in that it has a revolving
11 cylinder that can be loaded with a number of rounds, and
12 once the action is closed and that revolver is fired, the
13 cartridge cases stay within the chamber of that revolver
14 until it's manually unloaded.

15 A So the big difference is a semi-automatic pistol
16 will extract and eject cartridge cases at or about the
17 area where the gun is fired. A revolver will stay within
18 the cylinder until it is manually unloaded.

19 Q And that extraction process for a semi-automatic
20 handgun, how quickly does that happen?

21 A Real quick. Hundredths of a second. If you see
22 it under high-speed photography, you can see each action.
23 There's a device called an extractor, and that will pull
24 the fire cartridge case out of the chamber of the firearm
25 and cause the ejection. You can -- as a firearms

1 instructor, I can sit there and watch it. I can watch the
2 action go. But unless you tuning into that, most of the
3 time it just happens in the blink of an eye.

4 Q And when you were talking about the extraction
5 process, you sort of gestured out to your right. Do most
6 semi-automatic handguns eject that spent casing a certain
7 direction or distance?

8 A Yes. Most semi-automatic pistols, the ejection
9 port is generally open to the right, so naturally that's
10 where it goes. It is kind of an action of physics because
11 the extractor, the thing that pulls it out, is on the
12 right-hand side. There's a device on the inside that's
13 called the ejector. That's usually on the left-hand side.
14 So just commonsense would dictate it is going to go out
15 the open port, which is generally on the right, so that's
16 the direction they go.

17 Q And that sort of presumes that the gun is being
18 held in a vertical orientation, sort of the way it's
19 designed to be shot?

20 A Right. The normal configuration, using the
21 sights, in terms of being vertical.

22 Q How about the distance that that spent casing is
23 extracted from a semi-automatic handgun? Can that vary by
24 gun?

25 A Yes, it varies by gun. It can vary with the

1 same gun using different ammunition. Quite a bit of it
2 has to do with the grip that the shooter has on the gun.
3 That can help dictate how far it will actually go. If you
4 have what we call a light wrist or limp wrist, that's
5 going to absorb some of the energy that's required to make
6 it stoutly eject, or extract and eject. And so all these
7 things come into play, so that's why we -- we do get asked
8 to do ejection patterns, but it is generally under one set
9 of this is how -- where it went when I fired it doing
10 this, because there are so many variables that can come
11 into play.

12 Q Can you give us any kind of broad range of that
13 distance that the spent casing is it typically ejected?

14 A The thing that I usually go by is about 5 feet
15 to the right and 5 feet to the rear. If you have a 5-foot
16 circle, generally most of them would end up there.

17 Q Now, if you're standing on a hard surface, such
18 as asphalt, and you fire that and that casing comes out
19 and hits the asphalt, what tends to happen with that
20 casing?

21 A It tends to bounce off and go wherever that
22 little barrel decides to roll to.

23 Q And is that more true if the asphalt, or
24 something, is on is a slanted surface, that it will roll
25 downhill?

1 A Yes. It is going to do naturally what it is
2 designed to do. A round, cylindrical object it's going
3 roll downhill and come to a rest somewhere.

4 Q So is it sometimes hard to determine, based upon
5 where casings are found at a scene, exactly where the
6 person that was firing the gun was standing, for those
7 reasons?

8 A Those and many more, but, you know, those are
9 the main reasons, is once they hit where they get ejected,
10 they tend to then take another tangent off of that.

11 Q So they may bounce, they may roll, they can get
12 kicked?

13 A They can get kicked.

14 Q Run over?

15 A They can get run over, taken away by the wind.

16 Q What about shotguns, specifically, a 12-gauge
17 pump shotgun? Is that a weapon you're familiar with?

18 A Yes, it is.

19 Q Have you fired that before?

20 A Yes, I have.

21 Q And is that a fairly common occurrence for you
22 in your job?

23 A Yes, it is.

24 Q Are you familiar with how that weapon works?

25 A Yes. With a pump action shotgun, it's -- like

1 it says, there's a pump action under the bottom part of
2 the barrel that needs to be pulled to the rear and pulled
3 forward to chamber a round from the internal magazine.
4 Then you can then fire that particular shot shell that's
5 in the chamber of the shotgun, then you must manually pull
6 that thing to the rear and pull the handle to the rear, it
7 extracts and ejects, then you can push it forward and
8 reload the next round.

9 Q If we have a demonstration 12-gauge shotgun,
10 would you be willing to show the jury how that works?

11 A Sure.

12 THE COURT: Mr. Freeman, tell me about this gun.

13 MR. FREEMAN: Judge, this is the one that we had
14 earlier. It's had the firing pin removed, and there is no
15 ammo with it. I was going to show our deputy. We do have
16 dummy rounds that can be cycled through to show how it
17 works. So I was going to have him verify that these are,
18 in fact, dummy rounds that do not contain any gun powder.

19 May we have it brought up, Judge?

20 THE COURT: Yes. Can you also have a
21 conversation about the rounds with the witness, please.

22 Q (BY MR. FREEMAN) If you could take a look at
23 those white plastic rounds. Do those all appear to be
24 dummy rounds without any sort of gun powder and capable of
25 being fired?

1 A Yes. They are -- look like pretty brand-new
2 dummy rounds that are generally used for cycling purposes
3 and demonstration purposes.

4 THE COURT: Thank you.

5 Q (BY MR. FREEMAN) And just so we're extra safe,
6 can you take a look at that gun and make sure there are no
7 rounds already in the tube or the firing chamber.

8 A Yes, it is also empty, the chamber as well as
9 the magazine.

10 Q Okay. Would you mind standing up and showing
11 the jury, making sure that it is pointed either up or
12 down, whatever is safest for you, how that weapon would be
13 loaded in anticipation of firing it.

14 A Okay. So this is the standard Remington 870, a
15 lot of -- standard-type shotgun. This is basically
16 representative of a normal 12-gauge pump shotgun. So the
17 action has to be slid forward before you can have access
18 to the magazine tube. So the rounds are put into the
19 bottom, put into the tube, and there's a shell stop there
20 that holds it in place. That's the first one, second one,
21 third, fourth. And this is the extended one, so it holds
22 four rounds in this magazine tube.

23 Q And the tube, is that that sort of the round
24 area below the barrel there?

25 A Right. It's the ones down in here. So the four

1 rounds are now within this bottom cylindrical object.

2 Q Now, if were those real ammunition rounds, would
3 this weapon still be ready to fire?

4 A No, it would not. The chamber on the shotgun is
5 still empty.

6 Q What would you have to do to make that weapon
7 ready to fire?

8 A The release here next the trigger guard, it's
9 called a slide release, so that unlocks the slide, so the
10 slide can then be pulled back. I'll demonstrate. That
11 allows a round from the magazine to go into this elevator
12 section of the action, of the receiver. You can see the
13 shot shell is now there. So once the slide is closed, the
14 gun is now -- it has a shot shell chambered, and depending
15 on the position of the safety, it could be fired.

16 Q If that was real ammunition?

17 A If it was, correct, real ammunition and this had
18 a firing pin.

19 Q Do all 12-gauge shotguns have the same capacity?

20 A No. Some have -- in fact, this one should
21 probably hold more. This one has an extended magazine
22 tube. Some of the other shotguns come out equal, or some
23 you may extend for other purposes. So you can hold
24 anywhere from two, if it was plugged for legal hunting
25 purposes, all the way up to, I think the one I have holds

1 seven.

2 Q If you did fire -- if that was real ammo and you
3 did fire that weapon, what would happen to the empty
4 shotgun shell casing?

5 A If I fired it, it would still stay in the
6 chamber. That's where you would still have to unlock the
7 slide and pull it to the rear.

8 Q Okay. So unlike a semi-automatic handgun, that
9 empty shell is not automatically ejected?

10 A No, sir.

11 Q So the operator has to pull that pump down to
12 eject it?

13 A Right. Not only pull the trigger, but for the
14 next round, we have to pull the slide to the rear and push
15 it forward to eject, and then cycle the next round in.

16 Q So if you fired that weapon, would that empty
17 shell stay in there indefinitely until somebody pulled
18 that pump action down and ejected it?

19 A Yes.

20 Q And what happens when a person does that? What
21 happens to the empty shell?

22 A It comes out of the right side of shotgun, and
23 depending on the amount of force one uses depends on how
24 far away it goes.

25 Q Can you give us any kind of range for that?

1 A That, too, is generally 5 to 10 feet.

2 Q And is that to the right as well?

3 A To the right, yeah. Or, actually, depending on
4 where you have the port pointed, that's where the
5 cartridge would go.

6 Q If the weapon is oriented vertically, sort of
7 the way it is designed to be fired, does it typically go
8 to the right?

9 A Yes, it will fall out to the right. You can
10 work this thing back so gingerly, it will just fall out of
11 the action. So it all depends on how hard you use the
12 pump mechanism.

13 Q Okay. And once the person pulls that pump and
14 ejects that empty shell, does it then bring in a new
15 shell?

16 A It will allow it -- upon closing the action, it
17 will allow the next round that's in magazine, so now
18 there's three down here, it will allow the next one to be
19 released from the magazine tube and placed on that
20 elevator. So once the fired shell clears the receiver,
21 moving the slide forward will bring the next one in and
22 allow it to be chambered.

23 Q Can you demonstrate for us that action of
24 pumping that and sending out that shell?

25 A Sure. So normally, pull the trigger, it would

1 release the slide, but I will just hit the slide release.
2 It causes that one -- it doesn't go very far because that
3 one has the lead shot it in, so it is weighted. The next
4 shell is down here in the lower part of the receiver. And
5 then when I pull it forward, the next round is in the
6 chamber.

7 Q So it would be ready to fire again?

8 A Correct.

9 Q Now, I think you said these dummy rounds, they
10 do have some lead in the front to give them some weight,
11 so is that part of the reason why it didn't go very far?

12 A Yeah, that's probably the main reason. Usually
13 it's just the plastic hull, and if you put a little
14 emphasis on it, you can launch them pretty far.

15 Q I think you said maybe 5 to 10 feet --

16 A 5 to 10 feet.

17 Q -- under those circumstances?

18 A Correct.

19 Q They are round. Similar to expended shell
20 casings from a semi-auto, if they hit a hard surface, can
21 they bounce, can they roll?

22 A They can bounce and definitely can roll, because
23 the light plastic will roll and carry and catch wind.

24 Q And I was going to ask, can they sometimes be
25 blown by wind?

1 A Yes, they can.

2 Q When a 12-gauge shotgun is fired, in addition to
3 the ammunition, whatever the lead is, do other things come
4 out of the barrel as well?

5 A Yes, quite a few products.

6 Q What else comes out?

7 A So there's a big powder payload that comes out,
8 so you get a lot of gun powder particles that are coming
9 out, a lot of smoke because there's plastic and lead being
10 generated, and then there's usually a shot cup of some
11 sort. So the hundredths or so pieces lead shot that are
12 in there are contained in a plastic cup. So the cup will
13 protect the inside of the barrel from lighting up. You'll
14 get plastic'ed up.

15 So the plastic goes down here. It has slits in
16 it, usually four -- three to four slits in the side of the
17 wadding. So then once it gets outside of the confines of
18 the barrel, the plastic wad will kind of open up like a
19 parachute, and it will go downrange for some distance and
20 then fall off, because the mass of the payload has now
21 been pushed forward and is now going towards its target.

22 Q And I was going to ask you, you said it will go
23 downrange some distance. Do you know how far those shot
24 plugs tend to travel?

25 A No. We -- at the range, we have them hit the

1 targets when we're up somewhat close. When we're at crime
2 scenes and we see what we call petal slap on a victim
3 that's been hit by these things, you can actually see the
4 flaps of the shotgun wad on the wound, so that gives you
5 an indication of some distance, but not too far away. So
6 it is -- and, again, it all depends on the load and the
7 type of wad.

8 Q And can those plastic waddings, do they tend to
9 roll, tumble, get blown by the wind as well?

10 A Absolutely.

11 Q You can go ahead and have a seat.

12 A Thank you.

13 Q Are there different types of ammunition that you
14 can fire through a 12-gauge shotgun?

15 A Yes. A 12-gauge is probably the most versatile
16 weapon out there.

17 Q And can you name the different types?

18 A Yes. So some of the main ones, like this one
19 with the little, tiny pellets is typically what they
20 called birdshot, so you think use this to shoot small
21 things. You have a greater likelihood of hitting it
22 because there's probably 2 or 300 of these possible. If
23 you get larger shot in size, then you can get game animals
24 or duck or geese that are maybe a further distance, so the
25 pattern will stay a little nice and tighter. So the

1 bigger the pellet size, the more likelihood you can hit
2 things farther away.

3 So they get varying pellet size -- so as the
4 pellet size increases, the number of pellets decreases
5 because you generally have about an ounce, ounce and a
6 half of lead, whatever it is. So you can have tiny
7 pellets, bigger pellets. Police use double-aught buck
8 pellets, which are a third of an inch in diameter.
9 There's about nine of them in a shot like that. And then
10 we also have what we call slugs, which are about an ounce
11 of solid lead that's about three-quarters of an inch in
12 diameter. It spans the gamut from light target loads or
13 bird loads all the way up to a 1-ounce slug that could be
14 devastating.

15 Q Have you heard of double-aught buck. Is that a
16 type of ammo?

17 A Yes. Double-aught buck is -- probably that and
18 the slug rounds are probably the most popular police
19 rounds.

20 Q And what does double-aught buck mean? What size
21 are those?

22 A Again, their about .32 inches in diameter. I
23 think they weigh about 50 grains each. So they are about
24 the diameter of a .32 automatic and the weight of a .25
25 automatic. So each one of these has a tremendous amount

1 of energy behind them. There's nine pellets, usually, in
2 a double-aught buckshot load.

3 Q Now, you said birdshot is for smaller game. Can
4 birdshot be lethal to a human being?

5 A Absolutely. Probably a much shorter range,
6 because the light weight of each of these pellets tends to
7 lose energy a lot quicker. But up close, these couple
8 hundred pellets will kill you just as fast as the nine big
9 double-aught buckshots.

10 Q When somebody fires either a double-aught buck
11 or birdshot round, does it tend to spread out as it
12 travels away from the muzzle of the weapon?

13 A Yes. Usually the smaller the shot, the quicker
14 the dispersion. And, again, those come into variables
15 with the barrel length, the type of choke mechanism,
16 there's the type of load that you're shooting. But,
17 generally, it is designed to spread out as it -- you gain
18 distance from the shotgun.

19 Q Is the sound of a 12-gauge shotgun, is that
20 somewhat distinctly different than a handgun sound?

21 A The action mechanism definitely is, but the
22 report of it is -- because of the -- I think it's
23 .72 inches in diameter, so just the diameter of that pipe
24 going off has a more distinct sound than the pistol
25 rounds.

1 Q Are you able to -- if you have spent casings
2 from a semi-automatic handgun, the same caliber, say
3 9-millimeter, are you able to try to compare those to each
4 other to see if they were fired by the same weapon?

5 A Yes, sir.

6 Q How do you do that?

7 A That's based on the examination of the primer
8 area of the fired cartridge case. It's something we do
9 all the time under our comparison microscope. We'll look
10 at these areas, because in the pistol or the handgun that
11 fired those, that area is a machined surface, and from our
12 studies, we found out that even ones made right after each
13 other have different impressions that can be left behind
14 on fired cartridge cases. So we're able to take a whole
15 pile of these and look at the marks and attribute them to
16 different types of firearms based on our examinations.

17 Q So does a particular gun leave unique marks on
18 those expended casings?

19 A Usually. In a particular gun, because it
20 undergoes its own unique interaction with the tool that's
21 making it, can leave individual marks on the cartridge
22 case.

23 Q And can you sometimes compare those individual
24 marks on a microscopic basis to determine if those casings
25 came from the same weapon?

1 A Yes. That's what we do daily.

2 Q What about if you have an expended casing and
3 you have a suspected firearm, are you able to do an
4 analysis to determine if that casing was fired by that
5 firearm?

6 A Yes, we can.

7 Q And how do you do that?

8 A By taking that same firearm and test firing it.
9 So not only do we get to know if that firearm functions
10 properly, is able to fire ammunition or able to collect
11 the known test fires, now we have known exemplars, known
12 samples of what that particular gun does to fired
13 cartridge cases. So we can look at the two knowns that we
14 have under a microscope, line them up to see if there's
15 sufficient types of marks left behind. Then once we
16 determine that, we can then replace one of the items with
17 cartridge cases from the crime scenes and make our
18 determinations.

19 Q If a live round of ammunition is simply cycled
20 through a semi-automatic handgun, not fired but just the
21 action is worked so that it's cycled through, does that
22 leave marks that you can compare?

23 A Yes, it can.

24 Q And is that the same for a 12-gauge shotgun?

25 A Yes. For any type of action of -- short of

1 being a -- short of a revolver, which generally doesn't
2 leave any marks, but anything where a round of ammunition
3 goes from the magazine into the action and then pulled
4 out, there's parts of the firearm that touch it and can
5 leave impressions or scratches on a particular route of
6 ammunition that can be compared to the gun itself, to
7 fired ammunition, or to other rounds that have been worked
8 through the action of that gun.

9 Q If you were sent an expended bullet, are you
10 able to determine if it came from a particular gun?

11 A Yes, we can.

12 Q How do you do that?

13 A That, again, is based on the bullet itself going
14 down a machine barrel of the pistol that fired it. The
15 machining process of the pistol leaves what we call
16 general characteristics. Those are marks that -- let's
17 say we're talking about a cold Government model. They'll
18 all have the same number of lands and grooves, the
19 direction and twists, and possibly even the same
20 measurements. Each one will have a different internal
21 surface where the rifling characteristics were put in
22 there by a machine. The machine -- the tool interacts
23 with the inside of the barrel uniquely, so we can look at
24 those minute scratches that are found on one particular
25 barrel. Those will be impressed onto the surface of

1 bullets that are fired from that barrel, and we can look
2 at those and identify the barrel as the source. We can
3 also identify differences based on changes in those
4 individual characteristics to make an identification to a
5 different gun just based on the lack of those matching
6 individual characteristics.

7 Q Does that hold true for 12-gauge shotgun rounds
8 that may have been cycled through a particular weapon?

9 A Yes. In that aspect, we're dealing with the
10 shot shell ammunition. So we can look at different parts
11 of this that can come in contact with different parts of
12 the shotgun. The little stop that holds it in the
13 magazine can leave a mark. The extraction and ejection
14 out of chamber, even though it hasn't been fired, can
15 leave minute marks, minute scratches in different areas.
16 So we can use those at least to attribute some ammunition
17 to a particular firearm, if necessary.

18 Q Talking about the birdshot, the little pellets,
19 and the double-aught buck, the bigger pellets, if you're
20 sent expended samples of those, say, from a scene, are you
21 able to match those from a particular gun?

22 A I would say only in textbooks. Because they go
23 down, usually they're covered by the shot cup. Sometimes
24 there's a defect in the barrel that may cause damage to a
25 stray pellet that could come in contact with it, or some

1 of the buckshot isn't loaded into a wad. They are
2 basically in the bore. So they could strike a defect in
3 the inside of a shotgun. Inside of a shotgun is smooth,
4 so generally you don't get any marks. But sometimes the
5 front side is screwed down too far, or there's a burr, or
6 something like that, that can be identified, but you have
7 to get very lucky.

8 Q Have you ever fired a pistol-grip 12-gauge
9 shotgun?

10 A Yes, I have.

11 Q Is that different than firing one that has the
12 shoulder stock like the demonstration gun that's sitting
13 next to you?

14 A Yes, it is, because the -- usually when you fire
15 these -- and depending on the load, the little birdshot
16 loads aren't too bad, but once you get up into the more
17 powerful loads, you really want this tightly against
18 your -- the crease in your shoulder, because that way, it
19 will help distribute the pain across your whole body.
20 With a pistol grip, it puts the pivot axis about right by
21 your wrist, so they're a little painful to shoot.

22 Q And is it more difficult to shoot accurately a
23 pistol-grip versus as shoulder-stock shotgun?

24 A Yes, it is.

25 Q Does it make any different noise not having that

1 shoulder stock?

2 A No, it wouldn't.

3 Q All right. I'm going to ask you about your
4 analysis in this particular case.

5 A Okay.

6 Q Were you sent various items to you by the
7 Lakewood Police Department, and specifically by, I
8 believe, Detective Larson for analysis?

9 A Yes, we did receive quite a bit of evidence.

10 Q And I want to go through that, if I can find the
11 list. Do you have that list with you?

12 A Yes, I do.

13 Q Okay. Can you go ahead and list the items that
14 you were sent by Lakewood PD. And this is regarding, I
15 think your lab case number is D162749?

16 A Yes, that's correct.

17 Q What was sent to you by Lakewood PD? And I
18 think, just to make sure we're talking about the right
19 case, it is indicated that the suspect was Eric James St.
20 George?

21 A That's correct, yes.

22 Q Okay. What was sent to you by Lakewood PD?

23 A A few 9-millimeter shell casings, I think it was
24 four fired 12-gauge shot shells, it looks like some
25 more -- some .380 auto cartridge cases.

1 Q Well, let me -- why don't we do it this way.
2 How many different firearms were you sent? It looks like
3 you were sent a Glock 17?

4 A That's correct.

5 Q And were you also sent a Ruger .380
6 semi-automatic handgun?

7 A A Ruger LCP.

8 Q Okay. And was that .380 caliber?

9 A That is a .380.

10 Q Were you also sent a Mossberg 12-gauge shotgun?

11 A Yes, sir.

12 Q And at a later date, were you sent a Taurus
13 Curve .380 semi-automatic handgun?

14 A Yes, I was.

15 Q Was that all of guns -- the firearms you were
16 sent in this case?

17 A Yes, sir.

18 Q And as far as 9-millimeter spent casings, were
19 you sent three of those?

20 A Yes, I was.

21 Q And on your report, I think you got four -- I'm
22 sorry, five expended .380 casings?

23 A Yes, that's correct.

24 Q Item 13 and items 15 through --

25 A 18.

1 Q -- 18?

2 A That's correct, yes.

3 Q And we also sent -- you said you were sent some
4 expended shotgun shells?

5 A Yes, sir. From my report, it looks like five
6 fired 12-gauge shot shells.

7 Q Okay. And then were you also sent some live,
8 unfired 12-gauge shotgun shells?

9 A No. I believe they were all fired.

10 Q So all the ones you got were fired. What about
11 bullet fragments?

12 A It looks like three that were of value, three
13 that were too small, too mutilated, and had no comparison
14 value. So a total of six.

15 Q And were you also sent one bullet, I think it
16 was item 23, bullet in closet wall?

17 A Yeah. I included that. I had 19, 22 and 23
18 were fired bullets, and then 20, 21 and 24 were fragments.

19 Q Okay. And were you asked to do some analysis on
20 those various items?

21 A Yes, I was.

22 Q And what were you asked to do?

23 A Basically, make sure the firearms that were
24 submitted were capable of firing and inflicting serious
25 injury or death, which I did, and I found that all four

1 firearms were capable of being fired. To compare the
2 fired 9-millimeter cartridge cases. So that one was
3 automatically compared to the Glock pistol to see if the
4 Glock pistol was the source of those cartridge cases, and
5 based on my examination, I was able to find that those
6 were fired by the Glock pistol.

7 Q Okay. Let stop there.

8 A Okay.

9 Q So did you test fire the Glock pistol?

10 A Yes, I did.

11 Q And did you compare that test-fired casing to
12 the three casings that were sent to you that were of
13 9-millimeter caliber?

14 A Yes, I did.

15 Q And based upon that comparison, what did you
16 conclude?

17 A That the three fired 9-millimeter cartridge
18 cases were fired in the Glock.

19 Q And those were the only 9-millimeter casings
20 that were sent to you?

21 A That's correct.

22 Q In the .380 caliber casings, there was mention
23 of both a Ruger and a Taurus. Are those two different
24 manufacturers of handguns?

25 A Yes, they are.

1 Q Are they both the same caliber?

2 A Yes. Both of those pistols were .380 auto
3 caliber.

4 Q And does that mean that the ammunition, as long
5 as it's .380 caliber, the ammunition can be used in either
6 one of those guns?

7 A Right. They would be interchangeable.

8 Q And do people sometimes mix ammunition in a
9 weapon?

10 A Yes.

11 Q So have you ever seen somebody mix, say,
12 Winchester and Federal in the same magazine and same
13 weapon?

14 A Yes.

15 Q Is that common or uncommon?

16 A I would say it's fairly common.

17 Q But so long as it's the same caliber, it will
18 work in that weapon?

19 A That's correct.

20 Q How about the -- let's talk about the Ruger, the
21 .380 semi-automatic handgun.

22 A Okay.

23 Q This has been admitted as 294. Do you recognize
24 294?

25 A Yes, I do.

1 Q And do you recognize that as one of weapons that
2 was sent to you by Detective Larson?

3 A That's correct, yes.

4 Q How is it that you were able to recognize that
5 weapon?

6 A I have the CBI case number, the item number that
7 it was submitted under, my initials, the date that I
8 opened it, and also on the right side of the slide, I have
9 the same information on the pistol itself.

10 Q And is this a weapon that you were able to
11 determine its functionality?

12 A Yes, it is.

13 Q And did that weapon function properly?

14 A Yes, it did.

15 Q And did you test fire that weapon in order to
16 have a test-fired casing to compare to the other .380
17 caliber casings that you were sent?

18 A Yes. I would normally test fire it two times.
19 So I would have two fired bullets, two fired cartridge
20 cases.

21 (Pause in the proceedings.)

22 MR. FREEMAN: Sorry. I'm just trying to get
23 organized here.

24 Q (BY MR. FREEMAN) If I could have you handed
25 People's 306, 307 and 308. Do you recognize those

1 exhibits as containing the three 9-millimeter casings that
2 you compared to the Glock handgun?

3 A Yes, I do.

4 Q And how is it that you are able to recognize
5 those?

6 A From the CBI crime lab stickers with this case
7 number, items 3, 4 and 5, respectively, on the envelopes,
8 my handwriting all over the bag, the box, as well as the
9 cartridge cases themselves all have corresponding CBI case
10 numbers.

11 Q And if I could have the bailiff bring you 296.
12 Do you recognize People's 296?

13 A Yes, I do.

14 Q And what is 296?

15 A That is one fired .380 automatic caliber
16 cartridge case.

17 Q And what item number did you assign to that?

18 A This was my item Number 13.

19 Q And I think that was identified by Lakewood PD
20 as become Placard 17?

21 A Yes, it is.

22 Q And what is that item?

23 A It is one fired .380 auto -- automatic caliber
24 cartridge case.

25 Q Were you able to match that fired case to a

1 particular -- one of particular guns that you were sent?

2 A Yes, I was.

3 Q Which one did that match to?

4 A This particular one did go to People's 294, the
5 Ruger LCP.

6 Q The one that's in front of you?

7 A Correct.

8 Q Okay. I want to make sure we have it. And if I
9 can have the bailiff hand you 300. Do you recognize
10 People's 300?

11 A Yes, I do.

12 Q And what is People's 300?

13 A It is also a fired .380 automatic caliber
14 cartridge case.

15 Q And what item number did you assign to that?

16 A It was item 18.

17 Q And was that Placard Number 31 from Lakewood PD?

18 A Placard 31, correct.

19 Q And I'm going to go ahead and have the bailiff
20 hand you 297, 298 and 299.

21 A Thank you.

22 Q Do you recognize those as the other expended
23 .380 caliber casings that you were sent?

24 A Yes, I do.

25 Q And if I could have the plaintiff bring you 309.

1 Do you recognize People's 309?

2 A Yes, I do.

3 Q And what do you recognize People's 309 to be?

4 A It is the Taurus Curve, the .380 auto caliber
5 pistol -- another .380 automatic caliber pistol.

6 Q I know you're running out of room.

7 A Yes.

8 Q The Taurus Curve, did you test that for
9 functionality?

10 A Yes, I did.

11 Q Did it function properly?

12 A It did function properly.

13 Q Does that weapon take the same ammo as the
14 Ruger?

15 A Yes, it does.

16 Q Were you able to match any of these five .380
17 casings that you were sent to the Taurus Curve?

18 A Yes, I was.

19 Q Which one matched the Taurus Curve?

20 A That would be People 299, my item Number 17.

21 Q And was that indicated their Placard Number 27?

22 A Yes, Placard 27.

23 Q Were any other of those remaining .380 casings
24 matched to the Taurus Curve?

25 A No, sir.

1 Q What about those -- trying to match those to the
2 Ruger? Did you try to do that?

3 A Right. The other three were identified as being
4 fired in the Ruger LCP.

5 Q You said three. Was it actually four?

6 A Yes, only because we went over one, and then the
7 three additional ones that are left over.

8 Q Okay.

9 A So four total were attributed to having been
10 fired from the Ruger LCP and one from the Taurus Curve.

11 Q In examining the shotgun that you were sent, the
12 Mossberg 12-gauge, did you determine that it functioned
13 properly and was capable of being fired?

14 A Yes, it was.

15 Q Take a look at People's 293, and let us know if
16 you recognize it.

17 A Yes, I do.

18 Q And what do you recognize 293 to be?

19 A The Mossberg shotgun that I received in this
20 case.

21 Q And you said you test fired that, and it
22 appeared to function properly?

23 A Yes, sir.

24 Q Did you make any effort to determine if any of
25 the expended 12-gauge rounds that you were sent by

1 Lakewood PD were cycled through or fired by that weapon?

2 A Yes, I did.

3 Q And how did you go about doing that analysis?

4 A Again, after I test fired this particular
5 weapon, I generated exemplar, fired shot shells that I
6 could use to look at not only the retrace marks, or area
7 around the firing pin, but also marks of the extractor and
8 ejector mechanisms in the shotgun to see if those marks
9 were found on anything Lakewood had submitted to me for
10 comparison sake.

11 Q And what did you determine?

12 A I determined that three of the shot shells I
13 could identify having been fired in the Mossberg shotgun
14 based on examination of the breech face, and then two of
15 the rounds were identified as being cycled through the
16 shotgun because of lack of marks in the breech face area,
17 so then I had to look at different areas where an
18 extractor or ejector could have come into play to mark the
19 shot shells that Lakewood submitted.

20 Q Could you exclude any of the shot shells that
21 you were sent from that shotgun?

22 A No. They had some attributable marks to the
23 Mossberg shotgun.

24 Q And in light of the weapons that you were sent,
25 the Glock handgun, the Taurus Curve handgun, the Ruger

1 handgun and the shotgun, and then the various spent
2 casings that you were sent, was there any indication of
3 any other weapons being fired besides those four?

4 A No. Based on the shot shell evidence or
5 cartridge case evidence, they all had marks that could
6 attribute them to a submitted firearm.

7 Q Just a few more questions. Are you familiar
8 with an AR-15 rifle?

9 A Yes, I am.

10 Q What kind of weapon is that?

11 A It's generally called the black rifle. It's a
12 semi-automatic magazine-fed rifle. Usually the magazine
13 is a 30-round capacity, fires the .223 Remington or 5.56-
14 millimeter ammunition. It's probably now the most popular
15 police weapon that we have.

16 Q Is that a high-velocity round?

17 A Yes, it is. Generally it fires a 55-grain
18 bullet that travels at about 3,100 feet per second.

19 Q What about a .308 rifle?

20 A .308 rifle can be generally associated with like
21 a deer rifle, or, in police terms, it's a little old
22 school, a sniper-type rifle.

23 Q What about a .22 caliber rifle?

24 A And that would be something that would be just
25 like a general rimfire plinker that adults as well as kids

1 could easily fire.

2 MR. FREEMAN: All right. Thank you.

3 THE COURT: Cross-examination?

4 CROSS-EXAMINATION

5 BY MR. ST. GEORGE:

6 Q Mr. Higashi, I think you may have used a term
7 that may not be familiar to all. You said "plinker." Can
8 you tell us what a plinker is?

9 A Okay. It is generally just shooting at stuff.
10 If you were to go out in the dessert, shoot at cans,
11 targets et cetera, generally my term for a plinker.

12 Q Okay. So something you'd use for target
13 practice, perhaps?

14 A Yes.

15 Q Okay. Now, you talked about a pair of .380
16 caliber handguns, a Taurus Curve and a Ruger LCP; is that
17 right?

18 A Yes, that's correct.

19 Q Okay. And those two handguns, were they both
20 loaded with the same type of ammo?

21 A No. The Curve was submitted with, I believe it
22 was, Hornady ammunition, and I'm not sure -- I don't
23 recall what the Ruger LCP was loaded with.

24 Q Could it have been Summit brand?

25 A It could have. Again, it escapes me at the

1 moment.

2 Q Those two -- are you checking your records?

3 A I'm checking my notes just on the fired
4 cartridge cases, just to see if I can get some indication.

5 Q Okay.

6 A Okay. Yes, that's correct. I'm sorry.

7 Q Okay. And when those two handguns were
8 submitted to you, there wasn't any mixing of brands within
9 them?

10 A That's correct. I do not believe the Taurus had
11 anything but Hornady ammunition, and the Ruger with Summit
12 brand.

13 Q Okay. And you were submitted a total of five
14 .380 caliber spent casings; is that right?

15 A That is correct.

16 Q Four of those casings were Summit brand; is that
17 right?

18 A That's correct.

19 Q And one of them was Hornady?

20 A Correct.

21 Q The four that were Summit, which one -- which of
22 the two .380 caliber weapons did those appear to come
23 from, had they been fired by?

24 A They were fired in the Ruger LCP.

25 Q All four were fired through the Ruger LCP?

1 A Yes, sir.

2 Q And the one Hornady --

3 A Yes.

4 Q -- was it fired by the Taurus Curve?

5 A Yes, it was.

6 Q Okay. When those guns were submitted to you,
7 the capacity -- can you tell us, what is the capacity of a
8 Ruger LCP?

9 A Unfortunately, I forgot to print out the gun
10 information for the first submission, so I don't have
11 that. I believe it's six rounds, but I could be mistaken.
12 The magazine might be a five plus one. It's either a five
13 or six because it's a smaller-stature firearm.

14 Q I won't belabor the point with you. Just to
15 clarify, though, the one Hornady came from the Taurus?

16 A Correct.

17 Q And the four Summit were fired by the Ruger LCP?

18 A Correct.

19 Q All right. I think just about everything else
20 was covered. Bear with me one second.

21 (Pause in the proceedings.)

22 Q So Mr. Freeman asked you about a couple of
23 different weapons a moment ago.

24 A Yes.

25 Q Okay. And there was -- the Mossberg shotgun was

1 one of them?

2 A Yes.

3 Q What kind of ammunition was loaded into that
4 weapon?

5 A Again, I don't have that because I didn't bring
6 the -- I forgot to print out the information for the
7 shotgun and the Ruger and the Glock, so I apologize for
8 that. I don't know exactly what it came -- or was
9 submitted with.

10 Q Okay. And a .308 rifle --

11 A Yes.

12 Q -- what kind of ammunition does that fire?

13 A It would be standard fix centerfire ammunition,
14 so it would obviously have to be .308 caliber, or 7.62 by
15 51 is the military designation. So any of those would be
16 suitable, and they'd come in a variety of manufacturers,
17 as well as different bullet weights and bullet types.

18 Q Is it a bullet, or is it a pellet?

19 A The .308?

20 Q Yes.

21 A Would be a bullet.

22 Q It's a bullet?

23 A Fires a single projectile.

24 Q What kind of shape is the bullet?

25 A It's -- that's a good question. Generally

1 they're pointed at the front end, coming down to a point,
2 and at the back end, it would have to be the .30 caliber
3 diameter, so it would streamline into a pointed bullet.

4 Q Okay. You talked about AR-15s also. You said
5 that fires either a 5.56 or a .223?

6 A Their virtually interchangeable.

7 Q Okay. And is that a bullet, or is it a pellet?

8 A No, that would be a single bullet projectile.

9 Q What kind of shape does it have?

10 A Like a baby .308. It's going to have the same
11 shape, except down to a 22.22 inches of the base, coming
12 to a point.

13 Q It's pointy on the end?

14 A Yes, it is.

15 Q So if you were evaluating those weapons for
16 penetration through a target, which would be more
17 penetrating, the pointy bullets or the round pellets?

18 A It depends on the target.

19 Q Okay. Call it ballistic gelatin.

20 A Okay.

21 Q Which of those would penetrate deeper into it?

22 A It would probably be pretty close, because the
23 rifles, because of their high velocity, the bullets will
24 disrupt and will penetrate probably 2 to 3 feet, I would
25 image, as well as some of the buckshot, because the

1 buckshot has a lot of energy behind it. So they're both
2 going to penetrate a good distance. The .223, maybe,
3 might fragment a little quicker, but, again, that's going
4 to penetrate quite a bit of gelatin.

5 Q Does birdshot penetrate less than buckshot?

6 A I would image it would.

7 MR. ST. GEORGE: Thank you, Mr. Higashi. I have
8 nothing further.

9 THE WITNESS: Thank you.

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION

12 BY MR. FREEMAN:

13 Q Just a few more questions. Were all of the
14 weapons that you were sent potentially lethal to a human
15 being?

16 A Yes.

17 Q Is a .22 caliber rifle potentially lethal to a
18 human being?

19 A Yes, it is.

20 Q Are some of these weapons maybe more lethal than
21 others, depending on the situation?

22 A Yes, that would be correct.

23 Q The shotgun ammo, the spent casings that you
24 were provided for comparison, do you recall if they were
25 all from the same manufacturer, or were they different

1 manufacturers?

2 A If I could refer to my notes, I'll hopefully
3 have that answer for you. Okay. After referring my note,
4 I was able to find out that two of them, the ones that --
5 some had Number 8 birdshot, and three of them were
6 double-aught buck size.

7 Q So different types of ammo. Were there also
8 different manufacturers for those types of ammo?

9 A Yes. The birdshot had one particular brand, I
10 believe it was Winchester. And the other one, I have to
11 look. The other brand was -- the double-aught buck was
12 Federal brand.

13 Q So it appeared whoever that shotgun used
14 different brands and different types of ammo in the same
15 weapon?

16 A Yes, that's correct.

17 MR. FREEMAN: All right. Judge, I neglected to
18 move into evidence 306 through 308.

19 THE COURT: Any objection? 306 through 308, any
20 objection?

21 MR. ST. GEORGE: I don't know what they are.

22 THE COURT: They are designated as expended
23 shell casings.

24 MR. FREEMAN: The 9-millimeter.

25 MR. ST. GEORGE: Did we talk about these items

1 on direct?

2 MR. FREEMAN: We did. I think he was handed
3 those. These are the 9-millimeter weapons that were
4 matched to the Glock.

5 THE COURT: 306, 307 and 308 were --

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

7 THE COURT: Okay. They're admitted.

8 MR. FREEMAN: Thank you.

9 (People's Exhibits 306 through 308 were admitted
10 into evidence.)

11 THE COURT: Recross?

12 RECROSS-EXAMINATION

13 BY MR. ST. GEORGE:

14 Q I've only got one remaining. Is a .223 or a
15 .308 more likely to be lethal than birdshot?

16 A I would say both of them.

17 Q Both a .223 and a .308 are more likely to be
18 lethal than birdshot. Is that what you meant to say?

19 A Again, it would depend on the situation, but the
20 velocities involved in the rifle bullets versus the
21 shotgun, but then again, up close, either one -- all three
22 of them are going to be just as devastating.

23 MR. ST. GEORGE: Okay. Thank you.

24 THE COURT: Does anyone on the jury have a
25 question for this witness?

1 (No verbal response.)

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

3 THE WITNESS: Thank you, Your Honor. Should I
4 unload the rest of the rounds in the shotgun, or should I
5 leave it?

6 THE COURT: Just leave it, I think.

7 THE WITNESS: Okay.

8 (The witness was excused.)

9 THE COURT: So we have jurors that need to leave
10 by 5:15, so if we can do something within those
11 constraints, otherwise we'll break now for the evening.

12 MR. FREEMAN: Yeah, I have one more witness, and
13 it's Detective Larson, and he won't be ten minutes.

14 THE COURT: All right. Ladies and gentlemen,
15 we'll stop for the evening now. Please keep an open mind.
16 Don't do any research. Don't talk about the case. 8:15
17 tomorrow morning we'll get started. 8:15.

18 (The jury left the courtroom.)

19 THE COURT: All right. Then we need to continue
20 on the record. We have issues we need to deal with.

21 Mr. St. George, I am going to give you what I
22 call the *Curtis* advisement now. I'll give it to you at
23 the conclusion of the case, but you will have overnight to
24 consider this too. For today, are you under the influence
25 of any drugs or alcohol or any condition that would make

1 it difficult to understand what's going on here?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Do you understand you have a right
4 to testify?

5 THE DEFENDANT: Yes, I do, Your Honor.

6 THE COURT: Do you understand that if you want
7 to testify, then no one could prevent you from testifying?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: You do understand that if you
10 testify, that the prosecution would be entitled to
11 cross-examine you?

12 THE DEFENDANT: I do, Your Honor.

13 THE COURT: You understand in this case, jurors
14 are being able to pose appropriate questions, and you've
15 seen the mechanism by way of them doing it, writing it
16 down, and then we have a discussion. But, in effect,
17 jurors would also be able to ask you questions. Do you
18 understand that?

19 THE DEFENDANT: I understand, Your Honor.

20 THE COURT: Do you understand that if you've
21 been convicted of a felony, then the prosecutor would be
22 entitled to ask you about it and, thereby, disclose it to
23 the jury?

24 THE DEFENDANT: I understand.

25 THE COURT: If you testify, you'd be entitled to

1 an instruction informing the jury that evidence of prior
2 felonies is admitted only for the limited purpose of
3 impeaching credibility. Do you understand?

4 THE DEFENDANT: I do you, Your Honor.

5 THE COURT: Do we have prior felony convictions
6 that would be used by the prosecution?

7 MR. FREEMAN: Not that I'm aware of, Judge.

8 THE COURT: Okay. All right.

9 So do you also understand that if you choose not
10 to testify, then the jury could be instructed about that
11 right and could be told that they cannot infer your guilt
12 from the fact that you remained silent? It would still be
13 up to the prosecution to prove each and every element of
14 case to the jury beyond a reasonable doubt.

15 THE DEFENDANT: I understand that, Your Honor.

16 THE COURT: Do you understand that the decision
17 to testify or not to testify is yours personally, and
18 really only you can make that decision?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you fully understand this
21 advisement?

22 THE DEFENDANT: I'm sorry?

23 THE COURT: Do you understand what I've said to
24 you?

25 THE DEFENDANT: I do, Your Honor.

1 THE COURT: Okay. I'm not going to ask you what
2 your decision the right now. I just want you to have a
3 chance to think about it overnight.

4 The People are telling me that they're last
5 witness is Detective Larson tomorrow?

6 MR. FREEMAN: That's correct, Judge.

7 THE COURT: Okay. So, Mr. St. George, I don't
8 have your jury instructions.

9 MR. ST. GEORGE: I have them here, Your Honor.

10 THE COURT: Do you have a copy of them, or did
11 you -- you were telling me that you might write them out
12 on a piece of paper.

13 MR. ST. GEORGE: I did handwrite them on a piece
14 of paper, Your Honor.

15 THE COURT: And what jury instructions are you
16 requesting? Are you using the COLJI numbers?

17 MR. ST. GEORGE: Yes, Your Honor, I'm using the
18 COLJI numbers.

19 THE COURT: Okay. And maybe we can get those
20 numbers.

21 MR. MENGES: Judge, these are the list of COLJI
22 cites.

23 THE COURT: Okay. Go ahead. I'm ready right
24 now.

25 MR. ST. GEORGE: Your Honor, we're going to use

1 H-03, consent of victim; H-11, use of non-deadly physical
2 force in defense of a person.

3 THE COURT: Use of non-deadly physical force?

4 MR. ST. GEORGE: In defense of a person. H-12,
5 use of deadly force, physical force, defense of person;
6 H-18, use of non-deadly physical force, defense of
7 property; H-34, voluntary intoxication.

8 THE COURT: Hold on. So you had H-18,
9 non-deadly physical force, defense of property?

10 MR. ST. GEORGE: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. ST. GEORGE: And then H-34, voluntary
13 intoxication. I have another, and this comes from Young
14 v. People, 42 Colo. 352.

15 THE COURT: And you've crafted an instruction
16 on --

17 MR. ST. GEORGE: Yes, Your Honor.

18 THE COURT: What is it?

19 MR. ST. GEORGE: This is for self-defense as
20 well.

21 THE COURT: Okay. So you're going to have to
22 have that written out for us to look at.

23 MR. ST. GEORGE: Okay.

24 THE COURT: So you are not using the COLJI
25 instructions for self-defense, or you're not requesting

1 the COLJI instructions for self-defense?

2 MR. ST. GEORGE: Yes, I am, Your Honor. H-12,
3 use of deadly physical force in defense of a person is
4 that COLJI one.

5 THE COURT: Okay. All right. But you are
6 asking for an additional instruction on self-defense?

7 MR. ST. GEORGE: Yes, Your Honor. I have it
8 written out if you -- you've read my penmanship in the
9 past. Or I can read this aloud to you.

10 THE COURT: Why don't you go ahead and read it
11 aloud.

12 MR. ST. GEORGE: Okay. When a person has
13 reasonable grounds for believing and does, in fact,
14 actually believe that he is in imminent danger of bodily
15 harm, he may act on such appearances and defend himself,
16 although he may be mistaken as to the extend of the real
17 or actual danger.

18 THE COURT: Okay. Any other instructions you're
19 requesting?

20 MR. ST. GEORGE: That would obviously be the
21 affirmative defense instruction. I think that was -- I
22 don't mean to suggest that was implied. Is it?

23 THE COURT: Okay. So you have H, you said, 03.
24 So H-3? Or did you say for consent?

25 MR. ST. GEORGE: Consent of victim.

1 THE COURT: H-11, H-12, H-18, H-34. You've
2 cited -- you've used the Colorado cite 42 CO 352?

3 MR. ST. GEORGE: That's correct, Your Honor. Is
4 the P easier?

5 THE COURT: I can find it either way.

6 MR. ST. GEORGE: I'll give this to you, then.
7 107 P. 274.

8 THE COURT: Okay. And an affirmative defense
9 instruction. Okay. And we're going to need to talk about
10 these. You have the prosecution's suggested instructions?

11 MR. ST. GEORGE: It's been given to us, Your
12 Honor.

13 THE COURT: We have some time. Let's review
14 those. Let's get those out, please. Okay.

15 (Pause in the proceedings.)

16 MR. ST. GEORGE: Your Honor, from what I've read
17 of them, I don't have any initial objection. I don't
18 think I have one now.

19 THE COURT: Okay. Let's go through them, then.
20 We would -- we can only number some because we -- we're
21 just receiving your instructions now. We can number the
22 first couple.

23 So, Mr. St. George, you're going to have to be
24 prepared to talk to me about the jury instructions you're
25 requesting if there's any objection to them, so you want

1 to be prepared for that, please, and we going to have to
2 do that tomorrow when we have some moments of time. You
3 also need to have your witnesses ready, because the People
4 are telling me they have one last witness, so it's quite
5 likely your witnesses will begin tomorrow morning, and so
6 you want to have witnesses here and ready to go.

7 So we'll start out with, members of the jury,
8 the evidence in this case has been completed, that's Jury
9 Instruction Number 1.

10 The charges against the defendant are not
11 evidence. The charges are just an accusation. And then
12 it is what the charges are. That would be 2.

13 In this case a separate offense is charged
14 against the defendant in each count. That would be 3.

15 Then we have the presumption of innocence and
16 reasonable doubt is 4.

17 The number of witnesses that testified for or
18 against a certain fact doesn't disprove or prove, so that
19 would be 5:00. I'm paraphrasing these so we know which
20 one I'm talking about.

21 MR. MENGES: Judge, we're following around
22 along. I've got it.

23 THE COURT: 6, credibility of each witness.

24 Okay. Do we have anyone that has been convicted
25 of a felony?

1 MR. FREEMAN: No, Judge, I don't think so.

2 THE COURT: I'm taking this out. Then we have
3 you're not bound by the testimony of witnesses who have
4 testified as experts, that's Number 7.

5 Number 8 is direct and circumstantial evidence,
6 and the way the jury is to look at those.

7 Okay. So this is when we will stop numbering.
8 The next one is every defendant has the constitutional
9 right not to testify, so we'll make a decision on this
10 tomorrow.

11 Then we have a separate offense is charged
12 against the defendant in each count of the information.
13 Then we have certain out-of-court statements of the
14 defendant and any weight. The question one I'm going hold
15 to the -- more towards the end with while the jury's
16 deliberating. Then we have written questions during the
17 trial. Then we have committed a voluntary act prohibited
18 by law, so voluntary act. Then we have the after
19 deliberation, intentionally or with intent, knowingly or
20 willfully.

21 MR. FREEMAN: And then there's also -- should be
22 a page after that that has recklessly.

23 THE COURT: You know, I do not have recklessly
24 here.

25 MR. FREEMAN: Okay. We need to add that, or I

1 can send you ours, because I think that's an element of
2 the illegal discharging of the firearm.

3 THE COURT: Okay. Okay. So, Mr. St. George,
4 you've asked for the affirmative defense of consent.
5 Looking at the next instruction, is this the instruction
6 that you are requesting?

7 MR. MENGES: I'm sorry, Judge. Where are you
8 putting it after, which instruction? Is that what you're
9 asking us?

10 THE COURT: I was just asking if this was the
11 instruction he was requesting. He asked me for the
12 consent of a victim as an instruction.

13 MR. ST. GEORGE: Correct, Your Honor. H-3,
14 consent of victim.

15 THE COURT: Okay. And this is the instruction
16 you were requesting, the one you have there?

17 MR. ST. GEORGE: Yes.

18 THE COURT: Okay.

19 MR. ST. GEORGE: I presume you're holding a
20 printed copy of that COLJI consent of victim?

21 THE COURT: You have -- you're looking at the
22 instructions on the computer.

23 MR. ST. GEORGE: Okay.

24 THE COURT: So take a look at it.

25 MR. ST. GEORGE: Which page are you now on,

1 because we are currently looking at --

2 THE COURT: I stopped numbering them because I
3 don't know if you're going testify or not, so --

4 MR. MENGES: Your Honor, I'm confused as well.
5 You're talking about something that was given to us by the
6 prosecution? That's what I'm going off.

7 THE COURT: Yes. This was in their
8 instructions. I think it's around page 14.

9 MR. FREEMAN: Which instruction are you
10 referring, Judge? The consent one?

11 THE COURT: Yeah.

12 MR. MENGES: I don't have that, Judge. I don't
13 think we're looking at the same thing.

14 THE COURT: Okay. Well, all right. So you're
15 asking for consent. I'm thinking that this is consent.

16 MR. ST. GEORGE: I have an electric -- or a --

17 THE COURT: Okay. So we're just going to move
18 on. Then I'm looking at elementals, and I have attempt to
19 commit murder in the first degree. Is everybody with me
20 on this one?

21 MR. FREEMAN: Yes, Judge.

22 THE COURT: Are you with me?

23 MR. ST. GEORGE: Yes, we are, Your Honor.

24 THE COURT: Okay. Did the People submit to me
25 attempted murder in the second degree, as charged in

1 Count 3?

2 MR. FREEMAN: I believe so.

3 THE COURT: I've got that. Do you have that?

4 MR. ST. GEORGE: We do, Your Honor.

5 THE COURT: Assault in first degree?

6 MR. ST. GEORGE: Yes, Your Honor, we have that.

7 THE COURT: Okay. Then I have an interrogatory,
8 which is a question asking the jury, if they -- if they
9 find you not guilty of certain things, they're not to read
10 this. If they find you guilty, then they are to consider
11 whether or not -- was there use or possession or a threat
12 of the use of a deadly weapon. Do you see that one?

13 MR. FREEMAN: Is that for the menacing, Your
14 Honor?

15 THE COURT: This is attempt to commit murder in
16 the first degree in your set of instructions --

17 MR. FREEMAN: Okay.

18 THE COURT: -- along with attempt to commit
19 murder in the second degree and assault in the first
20 degree.

21 MR. ST. GEORGE: Your Honor, I believe we have
22 this. It's just we're in a different order than you are,
23 I think.

24 THE COURT: Okay. Then I have an elemental
25 which applies to Counts 6, 7 and 8 for menacing.

1 MR. ST. GEORGE: Yes, we have that one, Your
2 Honor.

3 THE COURT: Then with regard to menacing, I have
4 by the use of a deadly weapon or any article used or
5 fashioned in a manner, which the an interrogatory.

6 MR. ST. GEORGE: We have that, Your Honor.

7 THE COURT: I've got the illegal discharge of a
8 firearm, unlawful sexual contact.

9 MR. ST. GEORGE: Yes, we have that, Your Honor.

10 THE COURT: Then I've got the instructions -- I
11 mean, rather, the definitions. Looking at the
12 definitions, are there any definitions that you're asking
13 be included? Does anyone see any definitions that are not
14 covered?

15 MR. ST. GEORGE: I don't see anything at the
16 moment, Your Honor.

17 THE COURT: Then we have, for the jurors, if
18 they want to a question, they can. For the most part,
19 Mr. St. George, it's difficult to answer jury questions
20 once they ask it, but we allow them to ask it. Sometimes
21 we're allowed to. Most of time we have to tell them that
22 the evidence is completed.

23 Then members of the jury, you can discuss this
24 case only when you are all present, and the bailiff will
25 now escort you.

1 Okay. So regard the request, we're going to
2 have argument with reference to the requested jury
3 instruction. Depending on the Court's decisions, we're
4 going to put those jury instructions in. And then we are
5 have to have -- depending on what's decided, instructions
6 having to do with changing the attempt murder, ag assault,
7 those two different degrees, et cetera, along with
8 carrying instruction.

9 MR. FREEMAN: That's would be one of my
10 questions, Judge. I don't know if the defendant is asking
11 for any lessers. Obviously, we want to know in advance
12 and be ready for that.

13 MR. ST. GEORGE: I have no intention of asking
14 for any lesser-included. No lessers, Your Honor.

15 THE COURT: Okay. I'm going to let you think
16 about that again with regard -- because you have a
17 voluntary intoxication defense, and the voluntary
18 intoxication defense applies only to certain specific-
19 intent crimes, and it causes certain crimes to be
20 construed as a lower level, and you might want to take a
21 look at that.

22 MR. ST. GEORGE: Okay, Your Honor.

23 MR. FREEMAN: Judge, also, can we have a list of
24 witnesses the defendant intends to call?

25 THE COURT: I think I had them.

1 MR. FREEMAN: I know there was a fairly
2 extensive list at the beginning of the trial, but I think
3 we called most, if not all, of those folks. So I'm just
4 wondering at this point who he's intending call.

5 THE COURT: So, Mr. St. George, do you have a
6 response to Mr. Freeman?

7 MR. FREEMAN: Judge, I think -- of the witness
8 that were on the defendant's list, I think we called all
9 of them except for maybe Mr. Kuntz, the gentleman who was
10 going to testify by Skype. It's my understanding there's
11 still an intention to try to accomplish that at some point
12 tomorrow.

13 MR. ST. GEORGE: Yes.

14 THE COURT: Right. And you need to remember my
15 instructions on that. You've got to vet that to make sure
16 that goes well, because the jury has to be able to both
17 observe the witness while the witness is testimony --
18 testifying, so you want to get that -- make sure that
19 connection is good before.

20 Looking at the witness list I had, I thought
21 there was another witness identified by Mr. St. George.

22 THE REPORTER: They called Ms. Gibson, Judge.

23 THE COURT: Okay. So Ms. Gibson was called. So
24 Mr. Kuntz?

25 MR. ST. GEORGE: Give me 30 seconds.

1 THE COURT: Sure.

2 MR. MENGES: Judge, one more witness he's
3 deciding whether or not he's going to call or not, Judge.

4 (Pause in the proceedings.)

5 MR. ST. GEORGE: All right. Your Honor,
6 we're -- I'm going to -- I'm going call Steven Kuntz, and
7 I don't anticipate any others.

8 THE COURT: Okay. So I need everyone here -- I
9 need everyone here by 8 o'clock. You need to have your
10 instructions and specifics as to what you're asking the
11 Court. I can tell you that I have some questions about
12 the use of non-deadly force in this.

13 And so I'll need, Mr. St. George, something with
14 regard to that from the testimony and the evidence in the
15 case. So I can tell you that just from your list, I'm
16 going to ask you about that, because I have to make a
17 decision about the evidence there and what evidence is
18 available to provide that instruction, because I can't
19 give instructions without backing, and so I'm going to be
20 asking you about that.

21 Look at your voluntary intoxication and what it
22 can be a defense to, because it's not a defense to much of
23 what is charged here and cannot be used. So it's --
24 voluntary intoxication is not an affirmative defense. It
25 is looking at a specific element and a specific intent.

1 MR. MENGES: I think he understands that, Judge.
2 I explained that to him. And the Court can advise him.
3 But he knows -- I believe he knows. We've had a
4 conversation, that he knows voluntary intoxication is only
5 a defense to specific intent crimes.

6 THE COURT: Okay. So that is known.

7 MR. MENGES: And I'll talked to him about the
8 non-deadly force. I think, if I -- I'll talk to him in
9 the morning before we -- if I can have him brought in a
10 couple minutes early.

11 THE COURT: Okay. Well, I'm going to -- we're
12 going to break now, and we'll come back tomorrow,
13 8 o'clock, and we need to be ready because we're the
14 jury's coming at 8:15. We'll have our last witness at
15 8:15. We'll break.

16 Mr. St. George, then you can bring me any kind
17 of motions you'd like to bring me, then it's your
18 opportunity to -- you're going to tell me whether or not
19 you're going to testify, and then you present your case.

20 MR. ST. GEORGE: Okay. Thank you, Your Honor.

21 (The proceedings concluded at 5:36 p.m.)
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1 REPORTER'S CERTIFICATE

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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 19th day of
8 February, 2019.

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12 RICHAEAL M. SILVIA
13 Registered Professional Reporter
14 Certified Realtime Reporter
15 Colorado Realtime Certified Reporter
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*This is an electronically signed transcript.