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THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, called as a witness LOUIS GARCIA, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAURIE:

Q Your name, sir?

A Detective Louis Garcia.

Q Spell your last name.

A G-a-r-c-i-a.

Q And your employment?

A With the Cleveland Police Department, Detective Bureau.

Q How long?

A Twelve and a half years.

Q What phase of the Detective Bureau?

A I am assigned to the Robbery Squad.

Q How long with the Robbery Squad?

A Approximately three years.

Q And what is your latest assignment?

A Temporarily assigned to the investigation -- to coordinate the evidence and incidents which occurred during the riot of July 23rd.

Q All right, when were you specially assigned?

A Approximately two and a half months ago, Chief Gerrity assigned us to this case specifically to work with the County Prosecutor's office in coordinating this case.

Q And under whose immediate supervision are you?

A Mr. Corrigan.

Q Did you participate in the investigation of certain matters in this case?

A Yes, I did.

Q When did you do something pertaining to this case, if anything?

A On August the 7th, 1968, I had an occasion to go to 12312 Auburndale.

Q City of Cleveland?

A Yes, that's correct.

Q Cuyahoga County?

A That's correct.

Q What if anything did you do there?

A I located some cartridges and cartridge boxes in the rear and at the front of 12312 Auburndale, while looking for evidence.

Q Who were you with, if anybody?

A Sergeant Joyce and Detective Rice.

(State's Exhibit No. 177 was marked for identification.)

Q Detective, handing you State's Exhibit 177, can you identify this exhibit, sir?

What is your answer?

A Yes, I can.

Q What is it? Tell the jury, loud and clear.

A These are the items I picked up on August the 6th. Before I said "the 7th." It was August the 6th that these items were picked up.

Q Where?

A At 12312 Auburndale.

Q Did you mark them accordingly?

A Yes, I did.

Q What did you do with these items?

A These items were put in this bag and turned over to our Scientific Investigation Unit.

Q For further processing?

A That's correct.

Q After this, Officer, did you do anything else, other than your general assignment in this particular case?

A Yes, as I previously stated, approximately two and a half months ago we were assigned to coordinate the evidence in this case and while, or during this coordination, we came upon some photographs.

These photographs were of a police ambulance.

MR. TOLLIVER: Objection.

THE COURT: Overruled.

Q Go ahead.

A These photographs were of a police ambulance with numerous bullet holes --

MR. FLEMING: Objection.

THE COURT: Is this something that you have an exhibit here?

MR. LAURIE: Yes, we are leading up to it.

THE COURT: All right. Proceed.

A This ambulance, which is 531, had numerous bullet holes on the right side of it and especially in the area of the passenger side of this wagon.

In making inquiries, we could find that no --

MR. FLEMING: Objection.

THE COURT:

The objection is

sustained.

Q Tell us whether or not did you learn whether this particular ambulance was examined prior to when you examined it?

A There was no record.

MR. FLEMING:

Objection.

THE COURT:

Overruled.

A There was no record of this wagon having been previously examined by our Scientific Unit.

Q As a result of this investigation, what, if anything, did you do then, Officer?

A Detective Rice and myself examined this wagon on April the 18th in the basement of Central Police Station.

Q Which year?

A 1969.

Q And who was present again?

A Detective Rice, myself, the two men who were assigned to the wagon that day, which were Patrolman Torek and Patrolman Clancy.

Also present was Patrolman Madowee, who is assigned to the basement security of Central Police Station.

Q What, if anything, did you do?

A While probing a hole, Detective Rice hit a hard object. This hole was in the wooden seat in the rear of

the wagon. We then carved a section of wood and removed a layer of wood around this hole, which exposed a partial apparent carbine casing.

MR. TOLLIVER: Objection, Judge.

THE COURT: Overruled.

Q Go ahead.

A We then dug further and saw that this casing had definite markings on it which would possibly tie up with a weapon.

We immediately called the Scientific Investigation Unit who photographed this beard with the pellet lodged in it in place.

We contacted Detective Sergeant Kovacic who further examined this.

Q Did he come down and join your group?

A He came down at approximately 10:30 that night, at which time the Board was removed.

Q Where had you reached the Sergeant?

A At his home. He was off duty at that time.

Q Did he respond to your request?

A Yes, he did.

Q Then what was done in your presence, or the Sergeant's presence?

A The board was removed, and at this time Sergeant Joyce was present, also, the board was removed, taken to the Scientific Investigation Unit.

Q Being where in relation to the basement of the Police Station where you were at?

A On the third floor of Central Police Station.

Q Same building?

A Same building.

Q Was all this done in your presence?

A Yes, it was.

Q All right, who went up into the S. I. U. department with you, and with what, if anything?

A Myself, Detective Kovacic, Detective Sergeant Joyce, Detective Rice, and I believe -- I don't recall who else was there at that time.

Q All right. You say some photographs were taken before this?

A Yes.

Q Before this removal?

A Yes, sir, and photographs were taken before the removal of the pellet from the board, in my presence, also.

Q I see. Under your direction and control?

A Correct.

Q All right. Now, can you describe the description of this board and where it was in relation to this ambulance, police ambulance?

A Well, in the rear of the police ambulance, there are two large boards which act as benches or seats. Each board has a hinged section on it, which is folded up to be used for placing a stretcher on it.

This pellet or pellet jacket was imbedded in this hinged section.

Q And did you learn from your investigation, as you indicated, you were assigned to do, did you learn who was driving this particular ambulance on July the 23rd, 1968?

MR. FLEMING: Objection.

A Yes, sir.

THE COURT: Well, counsel, come over here.

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

THE COURT: Counsel for the State represents the matters that are now being discussed will be tied up in subsequent testimony.

The professional statement was made by

counsel in that respect; therefore, I will permit the question.

Q Do you remember the question?

A No, I don't.

(Question read by the reporter.)

A Yes, sir, I did. The driver of this ambulance was Patrolman Joseph McManamon. The passenger in this ambulance was Patrolman Chester Salkowski.

Q You said something about the rear of this ambulance. Can you expound on that a little bit?

A This particular ambulance has two doors on the rear, which open up, which allow either prisoners or injured people to be transported in it.

On each side of the interior of the rear section of the ambulance, there is a bench-like seat; this is for the seating purposes, and then, if you would have an occasion to put a stretcher on this seat, due to the fact that this seat isn't wide enough, they have this little hinged section that folds up, making the bench wider to allow a stretcher to rest on it.

Q Now, you mentioned, I believe we cut you off at the point where all of you went upstairs to the S. I. U. unit with this item.

What did you observe, if anything, that was done with this item, in your presence?

A Sir, Sergeant Kovacic removed this pellet from the board. He then got a vibrating tool and inscribed on the back of the pellet the number 032, which are the last three numbers of the lab number which was assigned to this pellet.

Q All right. What else did you observe, if anything?

A I observed him examining the pellet.

Q And can you describe what you observed him do by way of mechanics in examining this pellet, without giving any of his conclusions, if he had any?

A He put various test shots in one side of this comparison microscope, and this pellet, and when you looked through the glass, it shows both pellets side by side and at this point he was attempting to see if there was any similarity between the two pellets.

Q Was this then the extent of your participation, as far as this item is concerned (indicating)?

A That's correct.

(State's Exhibits 178, 178-A, 179 through 189 were marked for identification.)

THE COURT: Is this vehicle described by a number?

MR. LAURIE: Yes.

THE COURT: What number?

THE WITNESS: 591.

Q First, Officer, handing you what has been marked as State's Exhibit 178 and 178-A, can you identify first Exhibit 178?

A Yes, the board is the board I removed from the wagon and initialled and put the time on it of "10:15 p.m.,"

4-18-69," which was the time of the removal of this board from Car 591.

Q Car 591?

A Yes.

Q Is this the car you referred to in your testimony?

A That's correct.

Q Now, will you examine State's Exhibit 178-A?

A (The witness complied.) 178-A is the pellet which I witnessed being removed from this board (indicating) and has inscribed on the rear of it "032."

Q Which was inscribed in your presence?

A Correct.

Q Officer, first I will show you a group of photographs, identified as State's Exhibits -- they may not be in order -- 180, 181, 182, 183, 184, 185 and 179.

Will you examine all of these exhibits and tell us if you can identify them first and then I will ask another question.

A Yes, I can identify them.

Q What are these?

A These are photographs of the police ambulance 591. Some of which were taken on 4-18-69 and some which were taken at the time of the riot.

Q All right. And this is the same car that you referred to that you did some work to recently?

A Correct.

Q These pictures reflect the condition of this car that you worked on?

A Correct.

Q As it appeared earlier?

A Correct.

Q Now, showing you a group of photographs, 186, 187, 188 and 189, can you identify these exhibits first?

A Yes, I can.

Q What are they?

A These are photographs which were taken in my presence on 4-18-69 of the interior of this ambulance and also of the board in our lab prior to the removal of the pellet.

Q You are referring to the board which is 178?

A Correct.

Q And you say two photographs --

THE COURT: What number?

MR. LAURIE: 178, Judge.

Q -- which two photographs depict the interior of this car, Car 591, which the board was removed from?

A Correct, prior to the board's removal.

Q The board is in that picture?

A Correct.

Q And then the two photographs, 189 and 188?

A These are photographs of that same board which were photographed just prior to the removal of the pellet. This occurred on the third floor police laboratory.

Q Is this State's Exhibit 178, a picture of 178?

A Correct.

Q These four pictures depict the items as they show thereon as you saw them?

A Yes.

Q Car 591 and also up in the SIU?

A Correct.

MR. LAURIE:

That is all.

CROSS-EXAMINATION

BY MR. TOLLIVER:

Q Detective Garcia, first of all, when you went to this apartment on, you say, August of -- what was that?

A August the 6th.

Q 6th?

A Originally I said the 7th, then corrected myself.

Q This was approximately two weeks after the 23rd;
is that right?

A Correct.

Q And you testified that State's Exhibit 177, I think
it is, is what you found in the apartment?

A Outside the apartment.

Q Outside?

A Yes.

Q What do you mean by "outside the apartment"?

A In the rear yard of 12312 Auburndale, I found a
30-caliber casing which was not bent. I found a 22 casing
which was not bent.

And I found a 22 long rifle Winchester box, which
was empty, but originally contained 50 rounds of ammunition.

Q You assume that is what it contained?

A That is what the box said on it.

Q But you don't know what it contained?

A That is true.

Q Go ahead.

A In the front, I found a bent 30-caliber cartridge

case, in the enclosure of the yard proper.

Q You didn't find anything inside the building?

A Correct.

Q They were all outside the building?

A Right.

Q This was two weeks after the 23rd?

A Correct.

Q Now, you described State's Exhibits -- let's see, these exhibits, State's Exhibits 181, 184, 185, 179, these four exhibits you say were pictures that were taken of the vehicle; but you didn't take the pictures, did you?

A No, sir. These two were taken in my presence; these two were not (indicating).

Q These two were not taken in your presence (indicating). So, when these two exhibits, that is State's Exhibit 185 and 184, you can't tell us when these were taken?

A I can give you a date from the record, that is all.

Q You didn't take them?

A No, sir.

Q They weren't taken in your presence?

A No.

Q So you can't say at this moment when they were taken; is that right?

A No, sir, I cannot.

Q Now, these other exhibits, 182, 183, were taken in your presence?

A Yes, sir.

Q All the rest of them were taken in your presence?

A Correct.

Q Including these two (indicating)?

A Not those two.

Q These two were not, either?

A No, these are the only two.

Q These are the only two?

A The only, which were 184 and 185 of the ones I have before me here.

Q The other exhibits were taken on the 18th of April?

A Correct.

Q Is that right?

A Correct.

Q Now, showing you State's Exhibit 184, that was taken in your presence?

A No, sir, it was not.

Q It was not. These are the two that weren't (indicating)?

A That's right.

Q These were also, is that right?

A Those were taken in my presence, 179, 181.

Q I see. So then you are saying that, through some

accident, this particular bullet was discovered?

MR. LAURIE: Objection.

THE COURT: Overruled.

A No, it wasn't an accident.

MR. LAURIE: Objection to the
word "accident."

THE COURT: Overruled.

Q Well, how was it discovered?

A Through our investigation it was discovered.

Q So you were still investigating this particular
vehicle?

A Due to the fact that we came across these photos
which indicated that this vehicle was shot up in the area
of the door during the riot, we made investigation of this
door.

MR. FLEMING: Objection to the
word "riot." That is a conclusion.

THE COURT: Overruled.

Q These particular photos that you are speaking of,
185 and 184, were in your possession?

A They came in my possession in the last few months.

Q But presumably they had been in your possession
since July?

A Absolutely not.

Q Or whenever they were taken?

A Not in my possession.

Q They were in the possession of the Police Department?

A Correct.

Q Ever since they were first taken?

A Yes.

Q We take it, they were taken some time in July or August of last year? That is what we can presume?

So then you are saying that, even though these photos were in your possession or in the Police Department's possession -- I should say -- all this time, you didn't start an investigation of this particular vehicle until April of this year?

A This investigation, this was in April of this year when the chief specifically assigned us to this investigation and gave us all the records and photographs that they had in their possession to examine.

Q So then your records don't show that any investigation was made of this vehicle prior to April of this year?

A Our records do not show that. They do not show that this vehicle was examined prior to this date.

Q And the vehicle was in your possession or the possession of the Police Department?

A Yes.

Q Prior to this date, as far as you know --

A Correct.

Q That these photographs were not taken in your presence, that you identified, were also in the Police Department's possession prior to this date, is that right?

A Correct.

Q But your records show no investigation until April 18th?

A Correct.

Q I see. Now, where was this board, in the back of the vehicle?

A Yes, sir. It was on the driver's side in the rear of the vehicle.

Q In the rear of the vehicle?

A Yes.

Q So then I take it that there was no one riding back there at the particular time?

A Had there been, they would have been shot.

Q I said there was not?

A No, there was not.

Q So nobody was shot?

A No.

Q As a part of your investigation, Officer, did you have occasion to talk to a man by the name of James Turpin?

A Yes, I did.

Q On how many occasions?

A Two or three. I'm not certain.

Q Do you remember the time that you talked to him?

A Not exactly, no, I don't.

Q Well, do you remember whether it was in his home or whether it was at the police station or where?

A It was at the police station, I know on -- I shouldn't say that. I know for a fact that I had conversation with him in this building.

Q In this building?

A Correct.

Q Do you remember when that was?

A Not exactly.

Q Who was present when you had that conversation?

A Mr. Corrigan, Mr. Laurie, myself. I'm not certain if Sergeant Joyce was there or not at that time.

Q Was it this year?

A Yes, it was.

Q Had you talked to him prior in this year?

A Yes.

Q Do you recall when that was?

A Not exactly.

Q Was that over at the police station?

A That was in this building.

Q It was in this building, too?

A Correct.

Q But it was last year?

A No, it was this year.

Q No, I asked you had you talked to him last year, Mr. Turpin?

A I don't recall if I talked to him last year or someone else did.

Q I am asking you about what you did.

A I don't recall if I talked to him last year or if someone else did. I don't recall.

Q I thought you said you had talked to him more than one time?

A I did talk to him more than one time, but I wasn't sure if it was two or three. If it was two times, it was this year. If it was three times, it was also once last year.

Q Did you talk to him any other place, other than in this building?

A In this building, or if I talked to him on the first occasion, that would have occurred in the building, but I don't recall if I talked to him at this occasion.

Q You know he lives at 1384 Lakeview?

A Yes, sir, that's what he told us.

Q This is the home from which the defendant (indicating) surrendered, is that a fact?

A Yes, that is what I am told.

Q All right. Now, do you remember any of your conversations with him?

MR. LAURIE: Objection.

THE COURT: Of course, he can answer that if he remembers the conversation or not. The objection is overruled.

A Yes, I do recall some of his conversation.

Q And do you recall him telling you that the defendant was up in his attic?

MR. LAURIE: Objection.

THE COURT: Sustained.

Q Well, you investigated this matter, didn't you?

A I was present during this conversation with him, if you want to call that investigation.

Q Part of your investigation was to interview this man from whose house the defendant surrendered, wasn't it?

A Yes.

Q Now, as a part of that investigation, didn't he tell you that Ahmed Evans was up in the attic?

MR. LAURIE: Objection.

THE COURT: Sustained.

MR. TOLLIVER: This is part of his investigation, Judge.

THE COURT: It is improper. The question is improper. That's the reason I sustained the objection.

Q Well, since this trial has been going on, have you talked with Mr. Turpin?

A In regards to this matter?

Q In regard to this matter before the Court now.

A I did not personally talk to Mr. Turpin in regard to this matter.

Q Were you present when someone else talked to Mr. Turpin?

A Yes, I was.

Q When was that?

A I don't recall the exact date.

Q Was that in this building?

A Yes, it was.

Q Who was talking to him?

A Mr. Corrigan was talking to him.

Q The Prosecutor?

A Correct.

Q Who else was there?

A Myself, Mr. Laurie, and I believe Sergeant Joyce, but I am not positive about Sergeant Joyce.

Q I see. Now, at that time, was the testimony discussed —

A Pardon?

MR. LAURIE: Objection.

Q Did you talk about this case?

MR. LAURIE: Objection.

THE COURT: Overruled.

A I listened.

Q Well, was the discussion about this case?

A Yes.

Q And did Mr. Turpin at that time say that the defendant was up in the attic?

MR. LAURIE: Objection.

THE COURT: Come up here,

gentlemen. The objection is sustained.

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

Q Then you know -- well, do you know whether or not Mr. Turpin made a written statement to the police?

A Yes, sir, I do.

MR. LAURIE: Objection.

THE COURT: Sustained.

MR. TOLLIVER: Nothing further.

MR. LAURIE: Thank you, Officer.

(Witness excused.)

THE COURT:
witness, gentlemen?

Do you have another

MR. LAURIE:

Yes, Officer Kovacic.

THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, called as a witness VICTOR E. KOVACIC, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAURIE:

MR. FLEMING: Your Honor, may we approach the bench?

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

MR. LAURIE: Please mark this.

(State's Exhibit No. 190 was marked for identification.)

MR. LAURIE: Your Honor, at this time, it has been earlier stipulated by and between the State of Ohio and the Defendant, through his attorney, that if Mr. Heckman, I believe it is George Heckman, from the Heckman Arms Company, would be recalled, that he would testify that what is now marked as State's Exhibit 190 would be the gun that he sold Mr. Fred Evans on 7-23-68, referring to his sales slip identified as State's Exhibit 18,

being one U. S. carbine 30-caliber M-1.

Q Now, Officer, will you state your full name for the record and spell your last name.

A Victor Kovacic, K-o-v-a-c-i-c.

Q And what is your occupation, Officer?

A I am a member of the Cleveland Police Department, assigned to the Detective Bureau, the Scientific Identification Unit.

Q How long have you been a member of the Cleveland Police Department, Officer?

A Seven years.

Q Incidentally, what is your rank?

A Sergeant.

Q Sergeant. And is this term "Sergeant Detective"?

A Yes.

Q All right. And total service with the Cleveland Police Department was how long?

A A little over seven years.

Q Now, you say you are assigned to the Scientific Investigation Unit.

What particular department in that unit are you assigned to?

A The Scientific Investigation Unit is a specialized unit of the Detective Bureau, divided in three sections: the photograph section, the identification section, and

the laboratory section.

I am assigned to the laboratory section.

Q Will you explain to the jury the functions of the laboratory section of the S. I. U. department of the Cleveland Police Department?

A The laboratory section deals with all types of physical comparisons, microscopic examinations, the analysis of drugs and narcotics, all types of blood groupings, any type of physical comparison that would deal with scientific comparison.

Q And who heads this subdivision of the S. I. U. department?

A Sergeant Andes, John Andes.

Q Is that your immediate supervisor?

A Yes.

Q What other academic or scholastic background have you had preparatory for your work, if any?

MR. FLEMING: We will stipulate his qualifications, Judge.

MR. TOLLEVER: We will stipulate his qualifications.

MR. LAURIE: All right. We will accept the stipulation. Thank you.

Q (By Mr. Laurie) Now, Sergeant, directing your attention to the case now before this Court, did you

participate as a police officer in the investigation there?

A Yes, I did.

Q And approximately when and under what circumstances did you participate in this case?

A I made an appearance out at the crime scene, or the scene of the shooting. I also examined many weapons and pieces of evidence submitted in connection with that particular shooting.

Q All right. And during the course of your work, at this point just answer yes or no if you can, did you make some comparisons?

A Yes, I did.

Q Of exhibits submitted to you?

A Yes.

Q All right. And just yes or no at this point, did you arrive at any conclusions in these comparison tests?

A Yes.

Q Now we are referring to ballistics comparison tests, are we not, sir?

A That is correct.

Q Now, handing you what has been marked for the purpose of identification as State's Exhibit, I believe that is 42 -- yes, 45, what if anything can you tell me

about that exhibit, sir?

A I can tell that it was submitted to the laboratory on July 24, 1968, by Detective Birt and Sergeant Walsh and others that accompanied him in connection with the homicide of Lieutenant Jones.

MR. TOLLIVER: Objection.

THE COURT: The objection is sustained.

It was submitted to your department on July 24th. That is the answer.

THE WITNESS: Yes.

A (Continuing) Found at 12312 Auburndale.

MR. TOLLIVER: Objection.

THE COURT: Objection sustained.

Q (By Mr. Laurie) When this was submitted to you, sir, tell the Court and jury what if anything did you do with this particular gun?

A This weapon was examined and test-fired and found to be operable.

Q And tell me, Officer, along with this particular gun, which you say was test-fired and operable, did you make any other comparisons or examinations of this gun with anything else?

A I did

Q What did you do, sir?

A The cartridge case that was recovered in the test shot was compared with other evidence.

Q All right. Handing you what has been marked as State's Exhibit 177, in relation to this particular exhibit, the exhibit I showed you, the gun, what if anything did you do with this exhibit, with that gun, if anything?

A I made a comparison with the test shots from State's Exhibit No. 45, with the .22 spent cartridge case under State's Exhibit 177.

1910

Q Now, just so we have clarification of your work on this particular exhibit, you said you did a test shot?

A Yes.

Q Do you have that test shot with you?

A Yes.

Q May I see it?

(The object was handed to counsel.)

(State's Exhibit No. 191 was marked for the purpose of identification.)

Q Now, Officer, I believe we were at a point where I was showing you an item which we have marked for identification purposes Exhibit 191.

Can you tell us what that is?

A Yes, this is a test shot and cartridge case from State's Exhibit No. 45.

Q All right. Who made that test shot?

A I did.

Q Will you describe to the jury how you made that test shot?

A The weapon was loaded with a .22 long rifle.

Q Whose bullet?

A One of ours.

Q Police Department?

A One of the Police Department.

Q All right.

1911

A And the weapon was test-fired in a large can of cotton waste and recovered.

Q All right. And when you say, "a bullet," what caliber bullet did you say?

A A .22 caliber.

Q Is 45 a .22 caliber gun?

A Yes.

Q Incidentally, is there any other description of this particular gun by way of velocity or any other item?

MR. TOLLIVER: Objection.

THE COURT: Overruled.

A This weapon can handle a .22 long rifle.

Q Meaning what?

A That is a long .22 caliber long rifle cartridge.

Q Is it a high-velocity rifle?

MR. TOLLIVER: Objection.

THE COURT: Sustained.

Q Is this the extent of your description of this gun?

A Yes.

Q All right. Now, after recovering the test shot, what was the purpose of making the test shot, first? Take it a step at a time and tell this jury.

A The test shot was taken to determine the specific characteristics that would be imparted on a bullet and cartridge case in State's Exhibit No. 45.

Q After you fired a police bullet in this particular gun, recovered a cartridge, did it have characteristics you were looking for on it?

MR. FLEMING: Objection.

THE COURT: Overruled.

Q Did it?

A Yes, it did.

Q Then, explain your procedure that you used to make comparisons, if you did, sir?

A I examined the cartridge case microscopically.

Q Which one are you referring to?

A State's Exhibit No. 191.

Q All right.

A And looked for individual characteristics that would be found on same.

Q All right.

A Then I took the spent .22 cartridge case, under State's Exhibit 177, and compared it in like manner. Then they were both placed under a comparison microscope where both of the individual characteristics could be viewed at one time, both at the same moment.

Q And you made some observations then?

A Yes, sir.

Q Tell us whether or not if you made a match there?

A Yes, I did.

Q Explain this to the jury.

A I studied the firing pin impression, the mark that is caused by the firing pin hitting the back of the cartridge and I studied it for engravure and studied the test shot and found that they had the same engravure.

Q What is your conclusion then, Officer?

A In my opinion, the weapon under State's Exhibit No. 45 fired the .22 spent cartridge under State's Exhibit 177.

Q Officer, was this then the extent of the examination of this exhibit?

A Yes.

Q All right. Officer, now, handing you State's Exhibit 189, can you identify that exhibit first, Officer?

A Yes, I can.

Q What is it?

A This is an M-2 carbine.

THE COURT:

That is not 189.

Did you say --

THE WITNESS:

Just 89.

MR. LAURIE:

I'm sorry, 89.

Q That is an M-2 carbine?

A Yes.

Q Where have you seen that before?

A This was submitted to the laboratory on July 24

by Patrolman Phillips.

Q Through your investigation, did you learn where that gun came from?

A Yes.

MR. TOLLIVER: Objection.

MR. FLEMING: Objection.

THE COURT: Well, Mr. Phillips testified where he got it from. The objection is overruled.

A Yes, he recovered this weapon at 12314 Auburndale.

Q All right. Now, Officer, further describing this particular exhibit, what other description can you give us of this particular exhibit that was submitted to you by Detective Phillips?

A That it is a fully automatic weapon, as well as a semi-automatic weapon with a selector switch on the top.

Q What does that mean, pertaining to the gun, if anything?

A This means when a clip or a magazine is placed in position and this selector switch is pressed in the front position or forward, that this weapon will fire as a machine gun after one pull of the trigger.

Q Is it so classified, Officer?

A Yes, sir.

Q All right. And was this -- did you make an examination whether this particular gun, M-2 machine gun, was that in

working order?

A Yes, I did.

Q What were your results as far as being in working order?

A I found that the weapon was in perfect working order, that it fired semi-automatically and also would fire as a machine gun in full automatic.

Q What next did you do, if anything, with this particular weapon, Officer?

A I recovered the test shot and studied the test shot microscopically.

Q And, Officer, now again, without repeating on all these weapons, the test shot, the same procedure was used as you described with the first gun containing a test shot from this gun?

A That's correct.

Q Did you bring that test shot with you?

A Yes, I did.

Q May I see it?

(The object was handed to counsel.)

(State's Exhibit 192 was marked for the purpose of identification.)

Q All right, Officer, Handing you now what has been marked as State's Exhibit 192, can you identify that exhibit?

A Yes, sir.

Q What is it?

A These are the test shots that I fired from State's Exhibit 89.

Q Being this gun which you identified as being a machine gun?

A That's correct.

Q All right. And then after making this test shot, what next, if anything, did you do with the test shots relating to this gun (indicating)?

A I took the pellet projectile end and viewed it microscopically as well as the cartridge case.

Q Then what did you do?

A Then I made a comparison with a pellet that came from one of the victims of the shooting.

MR. TOLLIVER: Objection.

THE COURT: Objection sustained.

THE COURT:

What number did you say, Mr. Laurie? You say he compared, you started to say some number. You say he compared the test shot with some other exhibit. What was the number?

MR. LAURIE:

129, Dr. DeCrosse's testimony, Judge.

Q (By Mr. Laurie) Officer, handing you State's Exhibit 129, can you identify that particular exhibit?

A Yes, I can.

Q What is it, Officer?

A It is a spent 30-caliber carbine round pellet or bullet.

Q Who submitted that to you?

A This was submitted by Detectives Jackman and MacDonald.

Q From where?

MR. TOLLIVER: Objection.

MR. FLEMING: Objection.

THE COURT: Sustained.

I take it, this is the pellet that you compared with the test shot? Right?

THE WITNESS: That's correct.

MR. LAURIE: May I go further

on it? We have testimony --

THE COURT:

Not the source of it.

The source is in from somebody else. It was identified as someone coming from Dr. DeCrosse.

Q (By Mr. Laurie) Tell us what if anything you did with this exhibit with relation to the test-fire that you fired with this machine gun?

MR. TOLLIVER:

Objection.

Objection to the term "machine gun."

THE COURT:

Overruled.

A I examined this pellet microscopically and then I placed them under a comparison microscope which would view this pellet and State's Exhibit 192 at the same time.

Q What were your results of this comparison and examination?

A The examination disclosed that the micro-engravure on the lands were the same as that imparted by State's Exhibit 192.

Q When you say "lands," for the jury, Officer, can you explain the "lands" and "grooves" relative to your business?

A The "lands" and "grooves" are marks or grooves cut into a pellet when the pellet travels down the barrel and in spiral fashion, the rifling marks or grooves are cut into a barrel to cause the pellet to rotate rather than to tumble as it is traveling in flight, and these

lands and grooves are the things that put individual characteristics on each pellet.

Q If I understand your testimony right, that your test-shot and State's Exhibit 129 are identical as far as the characteristics are concerned?

A That's correct.

Q What is your conclusion, if anything, as to State's Exhibit 129, with reference to this gun?

A That's State's Exhibit No. 89 fired State's Exhibit 129.

Q All right. Now, Officer, handing you --

THE COURT:

Mr. Laurie, before

you take another exhibit, we will recess for lunch at this time. We will recess for lunch, ladies and gentlemen of the jury, until 1:15.

While you are out of the courtroom, don't talk to anybody, don't let anybody talk to you.

--

(Thereupon an adjournment was taken to 1:15 o'clock p.m., Tuesday, April 22, 1969, at which time the following proceedings were had:)

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TUESDAY AFTERNOON SESSION, APRIL 22, 1969 1:15 P.M.

THE COURT: Be seated, please.

THEREUPON, VICTOR KOVACIC, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (CONTINUED)

BY MR. LAURIE:

Q Officer, I believe we were discussing, Officer, before the lunch break, State's Exhibit 129, which you identified, sir, as coming from, being shot from State's Exhibit 89, pardon me, now, could you, Officer, tell us anything else about pellet -- I mean, what do you call that, a fragment? —

A No, pellet.

Q A fragment or a pellet, whatever was presented to you, was compared with this gun, you said shot from that gun, can you tell us anything about that pellet, its make and whatever?

A I can tell you that that is a 30-caliber round that has four lands and grooves with a right-handed twist, and that it is soft-point ammunition.

Q Meaning what?

A That is is a sporting ammunition.

Q Can you tell the jury the reaction of this type of ammunition, State's Exhibit 129, when it hits its target and its function?

MR. FLEMING: Objection.

THE COURT: Overruled.

THE WITNESS: This type of weapon,
upon contact --

Q You mean bullet?

A This bullet, upon contact, will flatten out and split up, causing more damage than a regular, solid-pointed pellet or bullet.

Q This is termed as a soft-point pellet?

A Sporting ammunition, yes, sir.

Q And that is a 30-caliber?

A Yes.

Q The same as this weapon?

A That's correct.

Q Okay, sir, put it back in this, if you would. Now, we take care of the pellets, then. I believe you did testify, or did you testify as to State's Exhibit 107, if you didn't, can you identify it? There are some loose items here and something in a small package.

THE COURT: What was the exhibit?..

THE REPORTER: 107.

THE WITNESS: Yes, I can.

Q (By Mr. Laurie) What is it?

A These are 18 spent caliber carbine shells, and the one that is listed as coming from 12312 Auburndale --

MR. TOLLIVER: Objection.

THE COURT: Objection sustained.

THE WITNESS: Submitted by Sergeant
Walsh and Detective Birt.

Q What, if anything, did you do with that as far as comparing with the weapon No. 89?

A The cartridge cases or the spent carbine shells in the envelope, there are 10 of them, were compared with the spent cartridge of test shot, State's Exhibit 192.

Q What did you find the result to be?

A I found that State's Exhibit 89 had fired the 10 cartridge cases under State's Exhibit 107.

Q All right, those are in the bag. How about these loose jobs here?

A There was no comparison made.

Q All right, these are both, in and out of the bag, 30-caliber cartridges, spent cartridges, is that what they are?

A Yes.

Q All right, showing you State's Exhibit 90, sir, can you tell me, sir, if you can identify this exhibit?

A Yes, I can.

Q What is it?

A It is a 30-round banana clip, submitted to the laboratory by Patrolman Phillips.

Q And what about these bullets that came in the same exhibit?

A These were the live rounds that were in the clip when I received it.

Q Did you do anything with this exhibit relative to State's Exhibit 89?

A No, sir.

Q While we are on this exhibit, did you do anything with this exhibit in relation to some other exhibits?

A No, sir.

Q All right, and you determined this to be a banana clip, and what caliber again?

A A 30-caliber carbine clip.

Q What type of clip does 89 use?

A 30-caliber clip, either 15 or 30-round capacity.

Q When this gun was submitted to you, do you recall whether there was a clip in it or not?

A No, sir, there was no clip.

Q Did you compare any other exhibits with gun 89?

A Yes.

Q What else did you compare?

A I compared the test shot from State's Exhibit 89 with 7, 30-caliber spent cartridge cases under lab number

116421.

Q Would you have the Prosecutor's number on that particular exhibit?

A Yes, sir, that was No. 20.

Q No. 20 -- handing you what has been marked as State's Exhibit 105 and can you identify this exhibit, State's Exhibit 105? Tell us what these are.

A Miscellaneous ammunition, there are 22, 22-caliber long cartridges; 5, 22 long caliber rifle cartridges; 1, 22 long caliber steel jacket; 1, 22-caliber long rifle; 3, 22-caliber spent cartridges. 7 point carbine cartridges.

Q What, if anything, did you do with State's Exhibit 105 in relation to gun 89?

A I examined all 7 of the spent 30-caliber carbine rounds with the test shots under State's Exhibit 192.

Q When you say 30 calibers, these medium-sized, compared to the rest of this group?

A That's correct.

Q What results did you find, if anything?

A I found that all seven of the 30-caliber spent cartridges under State's Exhibit 105 were fired by State's Exhibit 89.

Q All right, and what did you do, if anything, with the other spent or live ammo in this exhibit?

A The 22-caliber spent cartridges were fired by rifle under No. 116435.

Q That's your lab number?

A That's my lab number.

Q Just for my information, do you have the Prosecutor's code on that, for that rifle?

A Number 3.

Q Showing you what has been marked --

MR. TOLLEVER: May we see it a minute, Judge?

MR. LAURIE: Yes.

Q (By Mr. Laurie) Showing you what has been marked as State's Exhibit 46, can you identify that exhibit?

A Yes, sir. This is a 22-caliber Marlin 989-N-2 rifle.

Q Submitted by whom?

A Sargeant Walsh and Detective Blirt.

Q Now, in relation to the spent .22 cartridges in State's Exhibit 105, what did you say you did with the spent .22s?

A I compared them with the spent .22 cartridge case under the test shot that I have with me.

Q For that gun?

A For this gun, for State's Exhibit 46.

MR. LAURIE: Would you mark this
as an exhibit.

(State's Exhibit No.
193 was marked for
identification.)

Q (By Mr. Laurie) All right, now, Officer, showing you State's Exhibit 193, can you again, for the record, tell us what that is?

A Yes, that is a spent cartridge case and pellet or bullet, that was test-fired from State's Exhibit No. 46.

Q And compared with State's Exhibit 105, the spent cartridge; is that what you said?

A Yes. All of the 22-caliber cartridges were fired by this particular weapon.

Q This weapon you refer to now, for the record --

A State's Exhibit 46.

Q Now, while we are still on 105, I see some other items here. What would you call this item?

A That's a 22-caliber long unspent or live cartridge.

Q Then you further notice that there is this item.

What is this?

A This is a 30.06 spent cartridge case.

Q All right, did you do anything with those 30.06 cases?

A Yes, sir, I did.

Q Involving either one of these guns?

A No, sir.

Q Another gun?

A Yes.

Q Let's hold that for a minute and clear out Exhibit 105. What are these two items?

A Those are 30.06 rounds; one is a soft point and one is an armor-piercing round.

Q Which is which? Can you describe it?

A Yes. The one with the lead showing visibly is the soft point, and the one with the black tip has a hardened core, steel core, for penetration of metal.

Q Now, can you tell us anything else about these, power-wise and action-wise, once it hits its target, on each of these two 30.06s?

A Yes, sir. They both would be considered high-powered rounds, one meant to be more destructive on soft objects such as human flesh, and one being more destructive

and able to penetrate armor-piercing or metal surfaces.

Q And this one you pointed to as an armor-piercing bullet?

A Yes.

Q The other term is "soft point," a mushroom type, contact bullet?

A Yes, sir.

Q Now, Officer, I am trying to eliminate 89. Are we through with 89 as far as your examination is concerned? Can you tell us anything else about 89 while we are still on 89, the machine gun?

A Yes, sir, I can. In addition, I can say that the weapon was a stolen weapon, from a military installation.

MR. FLEMING: Objection.

THE COURT: Just a moment.

Q (By Mr. Laurie) And --

THE COURT: Just a minute.

There is an objection to that.

Is this something you have within your professional knowledge, as to where it came from?

THE WITNESS: I have the information recorded from --

MR. FLEMING: Objection.

THE COURT: All right. The

statement of the witness will be stricken from the record. The jury will disregard the source of this weapon.

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Q (By Mr. Laurie) From your experience as a police ballistics expert, can you tell us who uses this particular type gun?

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: Overruled.

THE WITNESS: Yes, sir.

Q (By Mr. Laurie) Who uses it?

A This is a military weapon, a combat weapon.

Q All right, are we through with this weapon as far as your examination is concerned?

A Yes.

Q And I presume, which is -- I am trying to keep these in order, which is the test shot -- 193?

A No, sir.

THE COURT: 102 is the test shot for 89.

MR. LAURIE: And 189 was with this gun? All right, Exhibit 129?

A Yes.

Q And 107?

A Yes.

Q And temporarily we are working on 105?

A Yes.

Q There has already been testimony relating to 2?

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A Yes.

THE COURT: You mean in relation to 2 exhibits?

MR. LAURIE: The 2 guns.

THE COURT: All right, Exhibits 46 and 39.

Q (By Mr. Laurie) If we can proceed with 3, you got State's Exhibit 46. Now you identified that as being a 22-caliber Marlin, right?

A Yes, sir.

Q And I believe you testified you made a test shot on that?

A Yes.

Q I believe you said that some of these spent cartridges from State's Exhibit 105 are identified as being fired from that gun?

A Yes, sir.

Q All right, and while we have got that gun in your hand, did you do anything else with that gun, 46?

A Yes, when the weapon was turned in to the laboratory, there was a jammed pellet in the chamber, crosswise in the action.

Q All right, did you remove that?

A Yes, sir.

Q And is the gun operable otherwise?

A Yes, sir.

Q And I notice State's Exhibit 4-A has something in it. Can you tell us whether you can identify it and did something with that?

A Yes, sir. This spent case and mutilated case is the one that were removed from the action that was jammed into the weapon.

Q All right.

THE COURT: That's Exhibit 46-A?

MR. LAURIE: 46-A, Judge.

THE WITNESS: And there was also a live round in the clip at the time.

Q (By Mr. Laurie:) This gun does have a clip. Did it come that way?

A Yes.

Q How many live ammos go in this clip?

A About 7 rounds, sir.

Q All right, and it is working?

A Yes.

Q All right, now, is this the extent of your examination of 46?

A Yes, sir.

Q And 46, you have 103 as the test shot, is that right?

A That's right.

Q I presume, from your testimony, Officer, that 105 --

we still have a little work to do with it, in relation to another gun?

A That's correct.

Q Showing you what has been marked as State's Exhibit 58? --

A 58.

Q All right, what is that item, Officer?

A This is a 22-caliber, semi-automatic Winchester rifle.

Q All right, and who gave it to you, and where did it come from?

A This was submitted by Detective Terpay, found in the rear yard of 1398 East 125th Street.

THE COURT: You may answer submitted by Detective Terpay.

MR. LAURIE: Let me approach it this way.

Officer, State's Exhibit 58, we have testimony in the case that it was found by Detective Terpay at 1398 East 125th.

THE COURT: East 125th Street.

MR. LAURIE: Can you further identify it?

MR. FLEMING: Objection.

MR. LAURIE: That is his testimony.

THE COURT: That was the testimony

with reference to this exhibit; the objection is overruled.

Q (By Mr. Laurie) Can you further identify it other than what I have indicated the testimony is?

A Yes, this is the weapon that he submitted.

Q He submitted it to you, all right, what kind of weapon?

A 22-caliber Winchester.

Q What is its condition?

A Its condition is somewhat rusted on the surface, but the weapon is fully operable.

Q Operable, all right, and you did say it is a 22 Winchester?

A Yes, sir.

Q Now, what if anything did you do with that, sir?

A I test-fired the weapon and have the test shots with me at this time.

MR. LAURIE: Would you mark
this as an exhibit?

(State's Exhibit 194
marked for identification.)

Q (By Mr. Laurie) Now, the test shot, 194, with this particular weapon, what if anything was done with that?

A Nothing was done with this for comparison examination.

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Q All right, is this the extent of your examination of this weapon, with this test-shot then?

A Yes, sir.

Q We still haven't got to 105 yet.

A No.

Q Showing you Exhibit 190, this has been identified earlier as a weapon, as the M-1 carbine sold to Mr. Fred Evans by Mr. Heckman.

Can you further identify this gun?

A Yes, sir, I can.

Q What is it?

A It is a 30-caliber M-1 carbine.

Q Before you go further on the explanation of that gun, anything else you learned about it, how was it submitted to you?

A It was submitted with a clip intact, 25 rounds in the clip.

Q Showing you State's Exhibit 185, can you describe that particular exhibit?

A Yes. This is a 30-caliber carbine clip or magazine.

Q You say that -- what else do you know about that gun?

A This is the clip that was in the carbine when I first saw it.

Q All right, and how many live ammos did it have in it?

A At this time, 25 in the clip.

Q And now, proceed to identify and explain the gun.
Was it submitted to you?

A The weapon was submitted by Detectives Shankland and Granger, and I removed the --

Q First describe the gun, what make gun is it?

A A 30-caliber U. S. carbine M-1 30-caliber M-1 carbine.

Q The condition in which it was given you is also considered as what?

A In working condition.

Q Proceed.

A This clip was removed and submitted to the fingerprint section for dusting.

Q All right.

A It was taken to the laboratory and test-fired.

Q Now, Officer, the way that gun was submitted to you, in its physical structure, other than being in working condition, what else is it classified as?

A With this clip intact, it is considered a machine gun.

Q And explain further.

A That is, that without reloading it's capable of firing 30 rounds, without reloading, by pulling the trigger 30 times.

Q Just leave it there. Now, other than the

description you gave and what you did with this clip, passing it on to the fingerprint unit, what else did you do with this gun, if anything?

A I test-fired the weapon.

Q You test-fired the weapon?

A Yes.

Q Have you got this test-shot?

A Yes.

MR. LAURIE:

Would you mark this,

please.

(State's Exhibit No.
195 was marked for
identification.)

Q (By Mr. Laurie) Officer, I am holding in my hand State's Exhibit 195. Is this the test-shot you referred to, that you used with that particular weapon?

A Yes, sir.

Q Can you define or explain what is in that box?

A There are four spent 30-caliber rounds and one cartridge case, test-fired from State's Exhibit No. 190.

Q These were the department's pellets?

A Yes, sir.

Q You test-fired more than once; you have four there, you say?

A Yes, sir.

Q And when you test-fired this particular gun with the

live ammo, did you have any trouble shooting with this gun?

A No, sir.

Q What if anything did you do with the test-fire shots of State's Exhibit -- what is that number again?

THE COURT: The test-shot,

195; the gun is 190.

Q (By Mr. Laurie) All right, what did you do with the test-shots there, Officer?

A I examined them microscopically and I compared them with another pellet.

Q Officer, handing you State's Exhibit 178, we have testimony that Detective Garcia removed this from somewhere and presented it to your office for further examination.

Tell us if you did anything with it?

A Yes, sir, I did.

Q What did you do about getting possession of this, if anything?

MR. FLEMING: Objection.

THE COURT: Overruled.

MR. FLEMING: Your Honor, this is in regard to what we talked about at side-bar.

THE COURT: Yes, I understand.

Come up, please.

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury,

and off the record.)

THE COURT:

Proceed.

Q (By Mr. Laurie) Proceed, Officer. What did you do?

A I examined -- first I removed this pellet from a section of wood that was removed from vehicle 591.

Q And who gave you that section of wood?

A Detective Garcia.

Q At this point, I would like to interrupt your testimony on this exhibit and ask you, can you identify State's Exhibit 178?

A Yes, sir.

Q What is it?

A It is from this location that I removed the pellet (indicating).

Q Indicating the end of this particular exhibit, right?

A Yes, sir.

Q The far end?

A Yes, sir.

Q All right, where did you remove this exhibit from this piece of wood, the exhibit referred to as State's Exhibit --

THE COURT: You mean what portion of the wood?

MR. LAURIE: Where, Judge, geographically, did you do this work on 178-A?

THE WITNESS: In the laboratory itself.

Q (By Mr. Laurie) In the Cleveland Police Department?

A Yes, sir.

Q Was Detective Garcia there with you?

A Yes, he was.

Q Then, after removing it, removing that pellet from State's Exhibit 178, what did you do with it, immediately, if anything?

A I examined it microscopically.

Q Did you mark it?

A Yes, I marked it.

Q What did you mark it as?

A I marked "032" on the back, to correspond with the last three digits of the laboratory number, 121032.

Q Does the marking appear on this pellet?

A Yes, sir.

Q Then what?

A Then I determined that it was a 30-caliber carbine round with 4 lands and grooves to the right, examined it microscopically under the stereomicroscope, an over-all view, and placed it under the comparison microscope so I could view this pellet and also the test shot under State's Exhibit 195.

Q When you say this pellet, you refer to Exhibit 178-A?

A Yes, sir.

Q Give the jury your results, if anything?

A I found that State's Exhibit No. 178-A was fired by State's Exhibit 190.

Q This gun here?

A That's correct.

Q Any doubt in your mind that that was fired from this gun?

A No, sir.

MR. FLEMING: Objection.

THE COURT: Sustained. The

jury will disregard the answer.

Q (By Mr. Laurie) After making this comparison test with this spent pellet, with the test shot in relation to gun number 190, did you do anything else with gun 190?

A No, sir.

Q All right, does this go with gun 190 and this (indicating)?

A Yes.

Q Showing you State's Exhibit 188 and 189, can you identify those two exhibits, sir?

A Yes, I can.

Q What are they?

A These are the photographs that I had ordered taken of State's Exhibit 178, showing the position of 178-A .

Q The material you just testified to in relation to this board?

A That's correct.

Q Do these portray the actual physical condition of these items as you saw them when you ordered these shots

taken?

A Yes.

Q At this point, can you identify or describe State's Exhibits 24, 23 and 22?

MR. TOLLIVER: I didn't hear that last question.

THE COURT: Can he describe 22, 23 and 24?

MR. TOLLIVER: Exhibits you are talking about?

THE COURT: Exhibits.

THE WITNESS: Yes, I can.

Q (By Mr. Laurie) What are they?

A These are three 30-round banana clips for 30-caliber ammunition.

Q Officer, we have further testimony these were found at 1384. Can you tell us anything in addition to this testimony relating --

MR. FLEMING: Objection.

THE COURT: Proceed.

MR. LAURIE: In relation to these particular exhibits?

MR. FLEMING: Objection.

THE COURT: Just a minute.

I am just uncertain about that portion of the

testimony, come over here.

(Whereupon discussion was held between Court and counsel, outside the hearing of the jury and off the record.)

THE COURT: The question is withdrawn.

Q (By Mr. Laurie) Officer, in relation to the clip that you have described in the last gun that we had here, I think it was 89, wasn't it, Judge?

THE COURT: No, 190.

Q (By Mr. Laurie) In relation to that clip, what similarity do you find in these three clips?

MR. FLEMING: Objection.

THE COURT: Overruled.

THE WITNESS: They are the same.

Q (By Mr. Laurie) All right, these are called banana clips?

A Yes.

Q How many bullets go in these things?

A 30 rounds.

Q State's Exhibit 25. Can you tell us what that exhibit is, Officer?

A Yes, it is a 303-caliber British Enfield military rifle with a clip and leather sling.

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Q Officer, we have this gun sold by Mr. Heckman to one James Dailey. Other than that, can you tell us anything else, sir?

A Yes.

Q What else?

A I can tell you that the weapon is operable and functions the way it was designed to function.

Q That's what caliber bullet does that take?

A 303-caliber, it's about a 30-caliber.

Q About a 30-caliber, all right, and other than finding it in working order and telling us what caliber weapon it is, can you tell us anything else?

A No, sir.

Q How about the power of that weapon?

MR. TOLLIVER: Objection.

THE COURT: Overruled.

THE WITNESS: It is a high-powered military weapon.

Q Tell me about the clip on the inside of the -- what do you call that portion of the gun -- was that in that form when submitted to you?

A Yes.

Q Is there any special name for that type of clip or quantity of bullets?

A Yes, it will hold 10 rounds of 303-caliber ammunition.

Q All right, did you do anything else other than examine it to see if it works?

A No.

MR. TOLLIVER: What caliber is that, Mr. Laurie?

THE COURT: 303 caliber.

MR. TOLLIVER: I meant, exhibit number.

THE COURT: The exhibit number is 25.

Q (By Mr. Laurie) How about State's Exhibit 105, did we come to that yet?

THE COURT: I think we went through it.

MR. LAURIE: No, we had some bullets in there, and you said you did some work with another weapon, (directed to witness).

THE COURT: A group of bullets.

MR. LAURIE: But he indicated he had done something with some other gun.

Q (By Mr. Laurie.) Have we reached that gun? - is the question.

A No, sir.

Q All right, Exhibit 59.

Now, can you tell us something about that particular

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exhibit, State's Exhibit 59?

A Yes, I can tell you it is a 22-caliber Marlin rifle.

Q Officer, other than we have testimony it came from 12314 Auburndale, can you tell us anything else about it?

A That it had a clip and five live cartridges, and that the weapon is fully operable.

Q You test-shot that particular weapon?

A Yes, sir.

Q Did you do anything with the test shots in this weapon?

A Made no comparisons at this time.

Q But it did fire?

A Yes, sir.

Q What about State's Exhibit 59-A, is that something there you know about?

A Yes, sir. That is a clip, and five cartridges in it.

Q Was it given you with the clip and five cartridges in it, for examination?

A Yes, sir.

Q This was submitted by Detective --

A Patrolman Flood and Phillips, sir.

Q All right. Is the last one you testified to, was it a 22-caliber Marlin, identified as being found at 12314?

A Yes, sir.

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Q Now, handing you what has been identified as a weapon found behind 1395, behind a dead man, can you tell us anything about that particular weapon? I forget the number on it.

MR. FLEMING: — Objection.

MR. LAURIE: 175.

A Yes.

Q (By Mr. Laurie) What is it?

MR. TOLLIVER: Objection.

THE COURT: The question is, can he tell him anything about it, Exhibit 175.

MR. FLEMING: I am objecting to where it was supposed to have been found.

MR. LAURIE: This was the testimony.

THE COURT: There is testimony about where it was found.

Overruled.

Q (By Mr. Laurie) What is it?

A A 222-caliber Remington bolt-action rifle.

Q And Officer, did you test-fire this to see if it was in working order?

A No, sir.

Q What if anything did you do with it?

A Nothing.

MR. TOLLIVER: What is that exhibit again?

THE COURT: 175.

Q (By Mr. Laurie) Handing you what has been marked State's Exhibit 37, I think you identified this earlier as being three boxes of 222 Remingtons.

What if anything can you tell us about this exhibit in connection with the gun that you have now testified to?

A These three cartons are the 222-caliber, the caliber capable of being fired in State's Exhibit 175.

Q The three ammo cartons?

A Yes, the ammo cartons.

Q The caliber of this gun is the same as the caliber on the boxes, of these exhibits?

A That's correct.

Q Showing you now State's Exhibit 32, I believe we have evidence that a Mr. Heckman sold this particular weapon to Fred Evans.

Can you tell us anything in addition to this, in regard to State's Exhibit 32?

A Yes. It is a 30.06 caliber Remington, game master rifle, a clip and four live cartridges.

Q It came with the weapon?

A Came with the weapon.

Q Inserted into the weapon?

1949

A Submitted this way.

Q All right, sir, and what caliber gun?

A 30.06.

Q 30.06. And it had a clip with some live ammo.

And what if anything did you do with the clip and/or the gun; first of all, did you test it?

A Yes, sir.

Q Was it in working order?

A Yes, it was in working order, and the test-shots were recovered.

MR. LAURIE:

Would you mark this.

(State's Exhibit No. 196 was marked for identification.)

Q (By Mr. Laurie) All right, Officer, I am handing you State's Exhibit 196. What is that, again?

A These are --

THE COURT:

Test-shots from

Exhibit 32.

1950

Q (By Mr. Laurie) All right, fine, thank you, Judge. What, if anything, did you do with those test shots?

A The expended cartridge cases from State's Exhibit 32 were examined microscopically and compared with the spent cartridge cases under State's Exhibit 105.

Q Now, getting back to Exhibit 105 here, all right, now, in relation to the various live and used ammo in State's Exhibit 105, which one did you do to examine with?

A I examined one of these marked 4-50 and I compared it with those two spent 30.06 rounds under State's Exhibit 105.

Q Am I grabbing the right two?

A Yes.

Q These two?

A Yes.

Q Compared with the test shots you have in your hand?

A That's correct.

Q Being a number, for the record?

A State's Exhibit 196.

Q After you compared these two with that exhibit, what did you find them to consist of?

A I found the firing pin impression and breech markings were the same as the weapon fired.

Q The same bullet, you mean?

A The same bullet as would be fired from State's Exhibit

32.

Q All right, and while we have this particular weapon here, 32, did you do anything else -- compare it with State's Exhibit 105?

A No, sir.

Q Can we remove Exhibit 105 now?

A Yes.

Q As far as this examination is concerned?

A Yes.

Q All right, Officer, handing you what has been identified as the weapon fired at 12312, sold at Atlantic Gun & Tackle Shop, can you identify it further?

THE COURT: What is the number?

MR. LAURIE: I'm sorry.

THE WITNESS: 57.

THE COURT: 57?

THE WITNESS: Yes, sir.

Yes, this is the 22-caliber Winchester rifle Model 190.

Q Did you make a further examination of that gun?

A Yes, this weapon had 8 live cartridges in the weapon, and one was jammed in the action of the weapon.

Q All right, and was this weapon workable?

A Yes.

Q Operable?

A Yes.

Q Was this the extent of the examination of this weapon?

A Yes, I have the test shot.

Q You didn't test it with anything, did you?

A No, sir.

Q All right, handing you State's Exhibit 36, there was earlier testimony that it was found at 1391 with a dead man, sold by Heckman, can you tell us anything about it?

MR. FLEMING: Objection.

THE COURT: Is there another exhibit number 36, is that one?

MR. LAURIE: What is the number, Sergeant?

THE WITNESS: 36.

MR. LAURIE: 36, Judge.

THE COURT: The objection is overruled.

Q (By Mr. Laurie) Can you tell us something about that gun?

A Yes, it is a 30.06 Remington, Gamemaster 760 pump action, with a clip.

Q Submitted by Starr?

A Submitted by Detective Albrecht.

Q Albrecht and Starr?

A Yes.

Q You say it is an automatic what?

A A pump action with a clip, having a capacity of four rounds.

Q Is there a clip in there?

A Yes, sir.

Q All right.

A (Witness indicates.)

Q How many bullets go in there?

A You put four in here and with one in the chamber, for a full load of five.

Q What did you do with this other than determine it had a clip in there and there was a pump action?

A That the weapon was fully operable.

Q Is that the extent of the operation on this gun?

A Yes, sir.

Q Showing you State's Exhibit 127, I believe the testimony of Terpay indicated he found this. Can you tell us anything about it?

A This is a 16-gauge Revelation sawed-off shotgun, sawed off at the stock and also at the barrel.

Q Did you do anything with that gun?

A No, sir.

Q Now, I would like to show you what has been marked as State's Exhibit 112-A, 112-B and 112-C. Can you tell

us anything about this exhibit in relation to this gun,
127 gun?

A Yes, sir.

Q What about them?

A That this is, State's Exhibit 112-A, 112-B and 112-C
is the type of ammunition that would be fired in State's
Exhibit 127.

Q And the type of ammo is what again?

A 16-gauge, extra range shotgun shells.

Q In your line of work, what is the purpose of any sawing
off of the -- what is this, the butt of the gun?

A The stock.

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: The objection is
sustained as to the purpose.

Q (By Mr. Laurie) What is the reaction of this weapon
with the stock sawed off?

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: He asked what is
the effect?

MR. LAURIE: The reaction or
the effect or the consequences?

THE COURT: Overruled.

MR. LAURIE: What about it?

THE WITNESS: The effect, it would have a greater effect for the person firing it and harder to handle firing. Harder to hit.

Q What about mobility?

MR. FLEMING: Objection.

THE COURT: Overruled.

THE WITNESS: It would be easier to conceal.

Q (By Mr. Laurie) Sergeant, handing you State's Exhibit 16, which it was earlier testified was removed from one Lethan Donald, can you tell us something about this exhibit?

First, identify it, if you will.

A Yes, sir, State's Exhibit 16 is a 410 shotgun, Savage Springfield, pump model.

Q And this was turned over to you by Starr?

A Yes, sir.

Q What if anything did you do with the particular weapon?

A I examined it.

Q Was it in working order?

A No, sir.

Q And explain?

A The weapon was incapacitated in that a bullet or something had struck the side, locking the bolt, thus enabling -- or, not enabling the weapon to function as it should. And the pump could not go back, putting another shell in the chamber and removing the one that was in there.

Q Now, after you cleared it out, was it in working order?

A With the restriction of the bolt, it was; it could have worked.

Q All right, and you said, beside the --

MR. FLEMING: Objection.

THE COURT: The question is:

After you apparently repaired it, was it in working order?

Was it your indication that you did not put it back into working order?

THE WITNESS: No.

THE COURT: Overruled.

Q (By Mr. Laurie) But it could have fired had you not broken it apart?

MR. FLEMING: Objection.

THE COURT: Overruled.

Q After you cleared it?

THE COURT: You mean, except for this particular impairment you are talking about, was it an operable gun?

THE WITNESS: Yes.

Q Yes, you say, inside there was one jammed -- what was it?

A A 410 spent shotgun shell jammed in the chamber.

Q All right.

A The side action of the bolt was locked in tight on the spent shell.

Q Was there any other shell, other than the one inside the gun?

A No, sir.

Q Did you remove that?

A Yes, sir.

Q Did you recover that which you removed from the gun?

A I did.

Q I will show you another exhibit //

MR. LAURIE:
as Exhibits 16-A and 16-B.

Please mark these

(State's Exhibits Nos.
16-A and 16-B were
marked for identi-
fication.)

THE COURT:
keeping all these exhibit numbers in mind.

I trust the jury is

Q (By Mr. Laurie) Officer, we removed all the con-
tents from these bags. Will you straighten them out,
first, before we examine them.

THE COURT: Who removed them?

MR. LAURIE: I don't know.

Between the defense counsel and myself.

Q (By Mr. Laurie) Now, showing you what has been
marked as State's Exhibit 16-A, will you tell us can you
identify that exhibit, first?

A Yes, sir, I can.

Q All right, what is it?

A It is an expended 410 shotgun shell, number 3-inch.

Q Where did you see that before, if you did?

A I removed that spent shell from State's Exhibit No.
15.

Q All right, and what kind of shotgun shell is it
again? 410, you say?

A Yes. It is a Remington 410 3-inch number 4 shot.

Q All right, and now we go to Exhibit 16-B, what is it?

A These are parts that fell out of the weapon when the weapon was broken in half and taken apart.

Q All right, when you took it apart?

A When I took it apart, yes, sir.

Q All right. Now, Officer, I am going to show you what has been marked as State's Exhibit 2, which, from testimony, they were pellets removed by the coroner's office from the body of Patrolman Golonka.

Can you identify further any matter which you came in contact with?

MR. TOLLIVER: The Court will note our objection?

THE COURT: Overruled.

MR. TOLLIVER: May we have a conference?

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

Q (By Mr. Laurie) Did you do anything; first of all, can you identify for the record what they are?

A Yes, sir.

Q Ballistically?

A This is shotgun, tiny BB's or pellets that would be expended from a shotgun shell.

Q All right, and what weight would these BB's or

pellets be of a shotgun shell?

A They approximate number 6 shot.

Q And in comparison to that which you have removed from this gun, how does it compare?

MR. FLEMING: Objection.

Q (By Mr. Laurie) The shotgun jammed -- what do they call that small item?

A The shell.

Q The shell jammed in this gun.
How do they compare?

MR. FLEMING: Objection.

THE COURT: Do you understand what he means?

THE WITNESS: Yes.

THE COURT: I understand the question to be - the pellets that are marked as Exhibit 2, are they the same type of pellets that would have been in the shell of the 410, of the type that was found in the gun?

Q (By Mr. Laurie) State's Exhibit 16.

A No, sir.

Q How do you compare them?

MR. FLEMING: Objection.

MR. TOLLIVER: He said, no.

THE COURT: Did you make any

comparison?

MR. LAURIE:

(Directed to

witness) You didn't make any comparison?

A The shotgun shell was the number 4 shot.

Q (By Mr. Laurie) What number is this?

A This is approximately a number 6 shot.

Q What is the capability of this gun shooting a 4 and a 6, if any?

MR. FLEMING:

Objection.

MR. TOLLIVER:

Objection.

THE COURT:

Overruled.

A It is capable.

1962

Q Of shooting both?

A Yes, sir.

Q All right, we will go to another exhibit. Where are they -- here. Now, Officer, showing you State's Exhibits 38 and 39, earlier evidence indicates that they were removed from the body of one Lathan Donald.

Can you tell us something about that in relation to the size pellet that the doctor turned over to your office that you just handed me -- what was that exhibit number? No. 2?

THE WITNESS: Yes, I can.

Q All right, can you tell us something about it?

A Yes, these, on this bandoleer are 410 shotgun shells, loaded, some 4 and some number 6 size shot.

Q Do I understand from your earlier testimony, that either one of these casings fit Exhibit No. 16?

A They both fit Item 16.

Q All right, and in relation to State's Exhibit 2, identified earlier as being removed from the body of Golonka, by the Coroner what, if any, comparison tests have you made there or examination?

A That the size shot, number 6, from State's Exhibit No. 2, approximates the size 6 shot that would be on the 410 shotgun bandoleer here (indicating).

Q And how about the rest of these 410's that are in

1963

there?

A Some are 4 and some are number 6 shot.

Q The same as what you had in your hand?

A Yes, sir.

Q All right, now, Officer, you are familiar with the Cleveland Police shotguns?

A Yes, sir.

Q What type of shells do they use in their shotguns?

A Double 0 butts.

Q Do the police use the 4 and 10 wing shells as we have found here or not?

MR. TOLLIVER: Objection.

THE COURT: Overruled; if he knows.

THE WITNESS: No, sir, they cannot.

Q Tell us whether or not do the police use the weight pellets, pellets that appear in State's Exhibit 2?

A They do not.

THE COURT: We will take our afternoon recess at this point. We have had a long session.

While you are out of the court room, don't talk to anybody and don't let anybody talk to you.

(Recess taken.)

Q Officer, I believe you were cut off at the point where you were telling us that the standard police shotgun the City of Cleveland Police Department has was, they use a double-0?

A Buckshot.

Q Buckshot. And in their cartridges?

A Yes, sir.

Q Will you explain further to the jury the makeup of this double-0 buckshot?

A They are large pellets that are about eight or nine in each shotgun shell and they are about at least ten times greater than 406 shot.

Q Then in relation to State's Exhibit 2, you testified earlier they were buckshots removed from the body of Golonka.

How did they compare in size with State's Exhibit No. 2?

A Much larger, at least ten times larger.

Q Was this the extent of your work on State's Exhibit 16, then?

A Yes, sir.

Q And connected items?

A Yes.

Q Showing you what has been marked as State's Exhibit 110, Officer, can you identify them?

1965

A Yes, I can.

Q What are they?

A These are two 15-round carbine clips with 19 cartridges.

Q And can you describe the bullets in those clips?

A Some are soft point and some are tracer type ammunition.

Q Again, the soft point, you mean -- what kind of reaction do they have on impact?

A They splatter and spread.

Q And as far as the red-tipped bullets, or what?

A These are tracer rounds.

Q What can you tell us about the red-tipped tracer rounds?

A They let out a slight incendiary reaction, showing the projectory of the shooting or pellet going in the direction.

Q It gives you a line of fire?

A That's right.

Q And who uses those bullets?

MR. FLEMING:

Objection.

THE COURT:

What is the normal

use of the bullets?

THE WITNESS:

Combat use.

Q (By Mr. Laurie) Army equipment?

1966

A Yes.

Q As opposed to commercial use.

MR. TOLLIVER: Objection.

THE COURT: It wasn't a question; it was just a statement.

MR. LAURIE: I will withdraw the statement.

THE COURT: He withdraws it.

Q (By Mr. Laurie) State's Exhibit 31, Officer, could you identify -- withhold this for a moment.

The soft point and the tracer bullets that you just identified, do those fit any of the guns that we went over here?

A Yes, sir.

QA All right. And how about the carbine, the carbine that was submitted to you with the clip -- I've forgotten its number -- it was found at 1384; did they fit that gun?

THE COURT: State's Exhibit

190.

Q 190. Did they fit that gun?

A Yes.

Q Now, if you will examine, if you will, sir, Exhibit 31 -- I think it is our 47.

A (Witness complies.)

Q Now you are looking at a box within the box that is

1967

Identified as State's Exhibit 31. Are you prepared to tell us something about that?

A Yes, sir.

Q Sergeant?

A Yes.

Q What is it?

A This is a military ammunition box, and this one carton within it contains 20 rounds of 30.06-caliber ammunition, and within the box, in loose form --

Q Hold on with that.

On that particular box, is it 30.06 ammo?

A Yes, sir.

Q Live ammo in there?

A Yes, sir.

Q I think we referred to one of our weapons as a 30.06 Remington?

A Two weapons, sir.

Q Two weapons?

A Yes, sir.

Q Do they fit those two weapons?

A Yes.

Q What else are there?

A There are 90 loose 30.06 armor-piercing rounds.

Q 30.06. First of all, you say they are armor-piercing rounds?

A That's correct.

Q What does that mean?

A That means that they are designed with a hard metal core to penetrate metal surfaces.

Q What is the normal usage for these bullets?

MR. FLEMING: Objection.

THE COURT: Overruled.

A Military combat use.

Q Now, they are also 30.06s?

A Yes, sir.

Q Would those fit the same two guns we referred as 30.06 Remingtons that we identified earlier?

A Yes, sir.

Q Okay, Sergeant.

MR. LAURIE: May I have a moment, Judge?

THE COURT: Yes, sir.

(State's Exhibits Nos. 197 through 199 were marked for identification.)

Q (By Mr. Laurie) Officer, showing you State's Exhibit 197, can you identify that exhibit?

A Yes, sir, I can.

Q What is it?

A It is a pair of broken glasses. /

Q What if anything do you know about them - who they

1969

belong to and what did you do with them?

MR. FLEMING:

Objection.

THE COURT:

Well, when did they

come to his attention?

A I was with Sergeant Jenardo in front of 12312
Auburndale. We found these glasses.

Q In your investigation, did you find who they belonged to?

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: Objection sustained

as to the form of the question.

Q Tell us whether or not you know who owned these glasses?

A I do.

MR. TOLLIVER: Objection.

Q Who owned them?

MR. FLEMING: Objection.

THE COURT: It is still as

to the form. You need more details, how the information came to him, did somebody tell him.

Q Tell us, in your police investigation, did you come across information as to who these glasses belonged to?

A Yes, sir.

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Who turned them over to you, Officer?

A Sergeant Jenardo and I found them together.

Q You found them?

A Yes, sir.

Q Where did you find them?

A 12312 Auburndale, in the street.

Q Did you determine whose glasses they were after you found them?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Did you make an investigation as to who these glasses belonged to yourself?

A No, sir.

Q All right. Then let's put them back in the sack. Showing you State's Exhibit 198, can you tell us anything about these, sir?

A Yes.

Q And what is that item?

A This is a bayonet and a 30-round banana clip that was removed from the excavation at 1395 Lakeview.

Q By whom?

A By me.

Q When?

A On July 30, 1968.

Q What excavation?

A The building that stood there was burned down and the surrounding soil and debris was pushed into --

Q 1395?

A Yes, sir.

Q When did -- was it excavated?

A Yes, sir.

THE COURT: Part of the excavation.
tion.

THE WITNESS: Excavation.

Q Was there a house there at the time you went there?

A No, sir.

THE COURT: Did you say, "July
30th"?

THE WITNESS: Yes, sir.

Q July 30, 1968?

A That's correct.

MR. TOLLIVER: We object to all
of this, Judge.

Q These two items you picked up yourself?

THE COURT: The objection is
overruled.

A Yes, sir.

Q All right. How about State's Exhibit 199? What,
if anything, can you tell us about this exhibit?

A This was submitted as the property of William --

MR. TOLLIVER: Objection.

THE COURT: Well, it was
submitted to you by somebody, Sergeant? Some-
body submitted it to you?

A Yes, sir.

THE COURT: Who, Detective?

THE WITNESS: Detective Himmelein.

Q What, if anything, did you do?

A I examined the shirt and found that there was a blood spot on the corner (indicating) and a hole -- large hole, and several small BB-like holes in the back.

Q From your experiences as a police officer, are these consistent with buckshot?

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

Q What are they consistent with then, those holes, as far as you are concerned, as a police officer?

MR. TOLLIVER: Objection.

THE COURT: Overruled.

A Buckshot.

Q All right. What about the hole on the bottom?

A Bullet hole.

MR. TOLLIVER: Objection.

THE COURT: Overruled.

Q Officer, showing you State's Exhibit 111, what can you tell us about this exhibit, sir?

MR. TOLLIVER: What is that exhibit?

MR. LAURIE: 111.

A That contains miscellaneous ammunition and debris and glass.

Q And what about the miscellaneous ammunition, what is it?

A Some are 22's. Some are spent. Two are 30.06 armor-piercing. The rest are either Luboys or lead.

Q In relation to the guns that we have on exhibit, do these bullets fit those guns, one or more of those guns?

A Yes, sir.

Q Now, Officer, I want to re-show you State's Exhibit 129 and I see it is in two parts, and when you were describing it, you put them both together.

Can you tell us what the two distinct parts are and how it functions, if indeed it functions as a solid bullet?

A Yes, sir. It was a solid bullet at one time and the lead portion (indicating) had a point on it, relative point, and this was all one piece (indicating) and as the jacket peeled back, and I peeled it back down to review the riflings, the insert or the lead came out.

Q It was in one piece?

A Yes, sir.

Q Now, the copper part above the lead, you say that is a jacket. What purpose is that on the soft-point bullet, if any?

A It encloses the lead and it protects the rifle.

Q When it goes out of the barrel of the gun?

1975

A Right.

Q Tell us whether there are occasions when the jacket stays on the pellet or does it remove itself?

A There are times when they completely separate.

Q And other times?

A They stay together.

Q And this is the way this was given to you?

A It was all together.

Q All together.

A Yes, sir.

Q So the copper jacket has a distinct purpose on the color?

A That's right.

Q Soft-point pellet -- soft-point bullet, that is?

A Yes, sir.

Q Officer Kovacic, is this the extent of your investigation of all these items is there more?

A There is more.

Q What do you mean, "there is more"?

A At the present time I am still working on pieces of evidence that have been submitted.

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: Well, by his answer,

"there are more," I assume there are more exhibits that he is either working on or going to work on.

THE WITNESS: Yes, sir.

Q (By Mr. Laurie) Tell us whether or not are you still working on some of these exhibits that have been given

to you?

A Yes.

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: Overruled.

Q I believe, earlier, I had showed you part of an exhibit you testified to as the property of Lathan Donald.

For the record, could you identify the other items, other than which you already worked with? These are the ammo belts, I believe you worked with those already.

There are two more items there, I guess.

A Yes, sir. I examined clothing, four bandoleers, and 410 shotgun shells, glasses, and a first-aid kit - was the property of Lathan Donald.

MR. TOLLIVER: Objection.

THE COURT: Should he recite you the exhibit number, you mean?

That is all it amounts to. They have been identified, otherwise, as being apparently garments taken from Lathan Donald.

MR. TOLLIVER: I mean, he doesn't know.

THE COURT: It is in the evidence.

Overruled.

Q (By Mr. Laurie) Did you mark all these?

A Yes, sir.

Q Is this your marking here (indicating)?

A Yes, that is the official laboratory number (indicating), and here is the other lab number.

MR. TOLLIVER: Judge.

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

MR. LAURIE: Nothing further at this time, your Honor.

THE COURT: Mr. Fleming.

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

MR. FLEMING: If it please the Court.

THE COURT: Mr. Fleming.

CROSS-EXAMINATION

BY MR. FLEMING:

Q Sergeant, did any other ballistic expert for the City of Cleveland make an examination of this equipment, other than yourself?

1979

A Yes, sir.

Q Who was that?

A Employees of the City of Cleveland?

Q Yes.

A Many members of the laboratory.

Q And did they make the same examination and come to the same conclusions that you have?

A One or more of them, usually, yes, sir.

Q I beg your pardon?

A One or more of them, usually.

Q What do you mean, "one or more of them"?

A In other words, it's not necessary for me to show every man within the unit what I have done.

Q All right. Who as a ballistic expert worked on this equipment, other than yourself?

A Detective Elmer Rgubal, Detective Len Townhill, Detective Lawrence Palhunic, Detective Sergeant Andes.

Q Now, with regard to State's Exhibit 190, you have testified that you conducted a number of examinations with regard to this weapon; is that correct?

A That's correct.

Q And your entire attention was directed to this weapon, wasn't it?

A Among others, yes, sir.

Q Specifically with regard to State's Exhibit 190?

A I was keyed for it, yes.

Q Now, did Detective Roubal make any examinations of this weapon (indicating)?

A Microscopic examinations, yes.

Q And did he make any conclusions that you haven't told us about?

A No, sir.

Q Now, has anyone, other than Detective Roubal and yourself, made any examination of this weapon (indicating)?

A Yes, sir.

Q Who was that?

A A man by the name of Herbert MacDonald, for the defense.

Q I mean, for the Police Department?

A No, sir.

MR. CORRIGAN: Will you let him finish his answer?

MR. FLEMING: He finished his answer.

MR. CORRIGAN: No, he did not.

THE COURT: Yes, he did.

He said, Herbert MacDonald made an examination for the defense.

MR. CORRIGAN: But he was going further, to explain who Mr. MacDonald was.

THE COURT: Had you completed your answer?

THE WITNESS: Basically.

MR. FLEMING: Thank you.

Q (By Mr. Fleming) Other than yourself, Detective Roubal, and Mr. MacDonald, has any other ballistic expert examined this weapon?

A Yes, sir. Detective Townhill, Sergeant Andes.

Q All right. With regard to Detective Townhill, did he develop any conclusions or any opinions that you haven't testified about?

A No, sir.

Q Who was the other detective? Detective Andes -- Sergeant Andes?

A Sergeant Andes.

Q Did he develop any conclusions or opinions that you haven't testified about?

A No, sir.

Q In other words, with regard to any examination made of this weapon by police officers, you have given this Court and this jury all of the opinions that your office has with regard to this weapon (indicating)? Is that correct?

A Yes, sir, at this time.

MR. LAURIE:

I didn't hear the

answer.

THE COURT:

"At this time,"

he said.

MR. LAURIE:

All right.

Thank you, Judge.

Q (By Mr. Fleming) Is it our understanding that you intend to further examine this weapon to develop conclusions or some opinions about how it was used on July 23?

A Yes, it's possible.

Q Is it possible, or is that what you are going to do?

A That is what I am going to do.

Q All right. And the first connection that you made with this weapon to any incident which occurred on July 23 was on the 18th of April, 1969; is that correct?

A Yes.

Q Now, Officer, there was some testimony with regard to number 6 buckshot found, taken from Officer Golonka, or his clothing and his body.

A Yes.

Q Now, were you able to ascertain and conclude as an opinion that that buckshot came from any of these weapons (indicating)?

A Positively?

Q Yes.

AN Not positively, no, sir.

Q In other words, all you can tell the Court and jury is that that buckshot is number 6 buckshot and that that buckshot could have been emitted from one of these weapons? Isn't that correct?

A Yes.

Q Now, did you test any other weapons, other than State's Exhibit 190, when you made your examinations and conclusions, on the 19th of April?

A Is 190 the number 5, the carbine?

Q Yes, the weapon that we were just looking at.

A Yes.

Q What weapons were they?

A I also tested the M-2 carbine.

Q The M-2?

A That was the one -- let me see.

Q Did you test any other weapon with regard to the evidence that you obtained on the 18th of April of this year? That would have been when -- last -- when was the 18th?

A Friday.

Q Last Friday?

A No, sir.

Q Which weapon did you examine first to make your determination?

A This weapon (indicating).

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Q Well, after you made your determinations, I believe you developed the opinion that this weapon could have fired that shot (indicating), is that correct?

A Did fire that shot.

Q Well, if you found that this weapon fired that shot, why was it necessary to make an examination of this weapon (indicating)?

A Just routine.

Q Well, if you developed an opinion, do you consider that to be a positive opinion that State's Exhibit 190 fired that shot?

A To the exclusion of all others, yes, sir.

Q Well, if you felt at that time and if it was your opinion that State's Exhibit 190 fired that shot, why then was it necessary for you to further examine this weapon (indicating), to make a determination?

A As a routine.

Q When you say, "a routine," what does that mean?

A So as to not make any type of human error.

Q I see. So then from your -- so then from your statement to us now, you felt that there was some possibility that that shot could have been fired from this weapon (indicating)?

A No, sir.

Q Well, were you, in fact, trying to make that

determination when you made the examinations that you testified about?

A No, sir.

Q What were you doing?

A Arriving at the fact as best I could.

Q I see. Now, what findings did you make which revealed to you that this weapon fired that shot (indicating)?

A What findings?

Q Yes.

A Microscopic findings.

Q And I believe you indicated you test-fired this weapon?

A Yes, sir.

Q You test-fired it into a barrel that contained some cotton?

A Once or twice, yes, and also --

Q You test-fired this weapon, which is marked as State's Exhibit 89?

A Yes, sir.

Q You test-fired that also into a barrel?

A And other places.

Q All right. Other than test-firing State's Exhibit 190, where else did you test-fire it?

A Down at the lake front in water.

Q When did you do that?

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A Right after the evidence was submitted in July.

Q All right. Now, what did you do? Did you make any further tests upon this weapon before you made the examination with the fragment or a shell that came out of the ambulance number 591?

A No, sir, the same shot.

Q You didn't make any further tests?

A No, sir.

Q Did you make any further tests of this weapon (indicating) before you examined it?

A No, sir.

Q Did you take this weapon also down to the lake front and fire it (indicating)?

A Yes, I did.

Q Who was with you when you made those tests?

A Captain --

Q On July 23rd or about July 23rd.

A Captain Jerome Poelking was present and several other detectives.

Q Will you tell us why you test-fired -- did you test-fire any weapons, other than these two (indicating), at the lake front?

A Yes, sir.

Q Did you test-fire all these rifles and shotguns (indicating)?

A All the high-powered weapons that would not stop normally without total destruction into the can facilities.

Q You fired them at the lake front?

A Yes, sir.

Q But it is my understanding that you tested this weapon first (indicating). Did you make that test on the 18th? Did you make it on the 18th or 19th?

A Yes, sir, on the 18th.

Q Did you make this test of this weapon on the 18th (indicating)?

A Yes, sir.

Q How long after you tested State's Exhibit 190 was it that you tested State's Exhibit 89?

A Within minutes.

Q Now, I believe you told us that the buckshot contained in police shotguns is double O three or double O eight?

A Double O zero.

Q Double O zero?

A Or double O buck.

Q Double O buck?

A That's right.

Q And that is pretty big shells?

A Yes.

Q Sometimes 32 shells, about 6 or 8 36 shells contained

1988

in one container?

A Large pellets, yes.

Q And I believe you indicated that the police officers do not carry size 4 or size 6 buckshot?

A No, sir.

Q Do you know of your own knowledge whether or not any police officers had such weapons on the scene?

A No, sir, I don't.

Q Do you know whether or not the regulation permits a police officer to carry such weapons to the scene of the crime?

A No, sir.

Q You don't know?

A There was -- at present, there is a slight conflict in the City regarding this.

Q I see. Well, you know this, don't you, that other than police weapons, that police officers aren't permitted to bring automatic or semi-automatics to a crime scene, don't you?

A There was one exception, sir. I can qualify that.

Q Well, no, my question is simply this: Under the regulations that exist today and existed on the 23rd of July, 1968, it was improper to take private weapons of an automatic or semi-automatic nature to a crime scene as a duty officer, isn't that true?

A There is a conflict on that point.

Q What is the conflict?

A The conflict is this, that the previous Chief of Police, Richard Wagner, sanctioned this type of carrying of their own weapons because the Department was under-equipped as far as fire power was concerned.

Q Automatic weapons?

A Yes, sir.

Q Well, Chief Wagner wasn't the Chief on the 23rd of July?

A That's correct.

Q And the regulations that existed then prohibited the carrying by police officers of semi-automatic and automatic weapons, other than police weapons, isn't that true?

A I don't know that, sir.

Q But you do know that the only weapons that police officers are permitted to carry with regard to shotguns are double 0 zero?

A Double 0 buck, yes, sir.

Q Do you know of your own knowledge whether any of the police officers who were on the scene investigating the incidents of July 23rd carried their own high-velocity weapons?

A Yes.

Q And how many officers do you know of who were present on the scene making an investigation of this case that had high-velocity weapons in their possession?

A A few.

Q When you say, "a few," about how many do you mean?

A I say five or so at one time.

Q Did you see any more than the five or so?

A Not at one time, no, sir.

Q Can you tell us whether or not any of these weapons were examined in an effort to determine some of these victims and police officers who were shot, whether or not those shots could have --

MR. LAURIE: Objection.

MR. FLEMING: I haven't completed my question.

THE COURT: Complete it then.

MR. FLEMING: Thank you, your Honor.

Q Can you tell us whether or not you made an examination of any of these personal and private weapons that belonged to police officers in an effort to determine whether or not these weapons killed anybody?

MR. LAURIE: Objection.

THE COURT: Overruled

A I didn't.

Q Do you know whether anybody in your department made such an investigation?

A They didn't.

Q Did you examine any personal -- were any personal sidearms carried to the scene?

A Yes -- oh, I don't know that, sir.

Q Now, there were a number of victims who were killed, civilians and persons described as Black Nationalists, isn't that true?

A Yes.

Q Other than police officers?

A Yes.

Q Now, did you or any ballistics expert connected with the Scientific Identification Unit go to the Coroner's office and obtain those pellets in an effort to determine whether or not those victims, civilians, Black Nationalists or otherwise, were killed by the police?

A We have these pellets, yes, sir.

Q My question is this: Did you examine these pellets?

A Yes, sir, I did.

Q Did you determine from what weapon any civilians may have been killed or shot?

A Yes.

Q Now, speaking specifically with regard to Bernard McDonald, do you recall that name?

A I recall the name, yes.

Q I believe this was a person who was killed and shot about 12 times?

A I don't know that.

Q Did you find any pellets or did you obtain any pellets from the Coroner's office with regard to that deceased body?

A Yes.

Q And do you have those pellets with you?

A No, sir.

Q Can you tell us where they are now?

A In the laboratory.

Q Did you or any of your -- any officers in your unit make an examination with regard to those pellets?

A I examined them, yes.

Q Did you make an effort to connect these pellets that you obtained from the Coroner's office to any weapon?

A No, sir.

Q There was a person who was killed, a civilian, by the name of Sidney Taylor. He was shot five times.

MR. CORRIGAN: Objection.

THE COURT: Overruled.

MR. LAURIE: There is no

testimony to that, Judge.

THE COURT: Overruled.

Q Did you go to the Coroner's office in an effort to obtain the pellets from Sidney Taylor or the fragments or shells?

A Yes, sir.

Q Did you obtain any such fragments or bullets?

A Yes, sir.

Q Do you have those with you?

A No, sir.

Q Did you make an examination of those pellets or fragments of shells in an effort to determine what gun or guns killed Sidney Taylor?

A No, sir.

Q But you do have those shells in your laboratory at the present time?

A Yes.

Q Has anyone in your department made an effort to determine who killed or where these pellets came from that killed Sidney Taylor?

A Not to my knowledge.

Q Did you obtain any shells or fragments of shells from the Coroner's office with regard to the deceased body of LeRoy Williams?

MR. LAURIE:

Objection.

THE COURT:

Overruled.

A I don't recall that name, sir.

Q Well, can you tell us this, when you made your request from the Coroner's office for these shells and fragments of shells, can you tell us how many bodies were involved?

A No, I can't.

Q Did you make a statement with regard to your activities in this investigation?

A No, sir.

Q Did you make any report with regard to your activities?

A The usual laboratory reports, yes, sir.

Q Did you make a Form 10 report with regard to your activities?

A No, sir.

Q Now, those laboratory reports that you are referring to, do you have them with you now?

A Yes, I do, (indicating).

Q And these are the only reports that you made about what you did in this investigation?

A Yes, sir.

Q When did it first come to your attention that there was an ambulance number 591 that had some evidence that might be connected with this trial?

A My first recollection was some time ago. I couldn't put a time factor on it.

Q Well, let's relegate our thinking to April. Who

first told you that some investigation ought to be made in an effort to see whether or not there was any evidence in this vehicle 591 that could be used in this case?

A It was Detective Garcia reviewed some photographs which disclosed that the vehicle had been shot up considerably and it was decided then that we should investigate further.

Q From your examinations and your knowledge as an officer connected with the Scientific Investigation Unit, there were a number of vehicles shot up, weren't there?

A Yes.

Q About how many vehicles were shot up in this incident?

A I don't know.

Q And an investigation was made by your department with regard to all of those vehicles, wasn't it?

A No, sir.

Q Well, how many of those vehicles did you investigate and examine?

A I examined one vehicle in company with other members of my unit.

Q I see. And of all those vehicles that were examined in April of this year after this trial had begun, Detective Garcia came to you and said, "We ought to further investigate vehicle 591," is that correct?

A No, sir.

Q Well, was anybody with him when he brought you the information about a further investigation of vehicle 591?

A Yes, sir. He was with Detective Reiss and myself and we were looking at the photographs and Sergeant Joyce thought it would be a good idea to go further into that vehicle.

Q You first obtained these photographs -- relegating our consideration to April of this year, now, when did you first look at these photographs in April of this year?

A First part.

Q The first of April?

A First part of April, yes, sir.

Q You mean about April 1st or 2nd?

A Somewhere in there, yes.

Q Who was present with you when you first looked at these photographs in April?

A Detective Garcia..

Q Anybody else?

A Quite a few people, but I don't recall anyone else.

Q All right. Now, after you looked at these photographs around the 1st or 2nd of April, did you do anything in connection with making an investigation of the vehicle itself?

A No, sir.

Q Did you discuss these photographs with anybody after you looked at them on April the 1st and 2nd?

A Yes.

Q Who did you talk to?

A Detectives Reiss and Garcia and Sergeant Joyce.

Q Anybody else?

A Not that I can recall offhand.

Q When was that?

A First part of April.

Q The 1st or 2nd of April?

A Somewhere in the first part of the month.

Q When was the next time you had occasion to do anything with regard to an investigation of that vehicle?

A On the 18th.

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Q During the interim, did you talk to anybody about these photographs and that vehicle?

A No, sir.

Q Did you make any report, any police report at all, concerning your review of these photographs and the examination of this vehicle?

A No, sir.

Q Whose idea was it to go back and look at these pictures, if you know?

MR. LAURIE: Objection.

Repetitious.

THE COURT: Overruled.

A I don't recall, offhand. We all thought it was a good idea.

MR. FLEMING: I see.

Your Honor, may we have a moment?

MR. TOLLIVER: Make it two moments.

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

THE COURT: It has been agreed that examination of these weapons may be had by counsel for the Defendant after court, and that unless -- do you have any further questions?

MR. LAURIE: I will wait until he comes back on the stand. If he is being withdrawn now, Judge, we will substitute another witness.

THE COURT: Very well.

MR. LAURIE: In that case, the State calls Detective O'Malley.

THE COURT: You will be available in the morning, won't you, Sergeant, if needed?

THE WITNESS: Yes, sir.

(Witness excused.)

MR. FLEMING: Might we have him bring the pellets from the laboratory when he comes tomorrow?

MR. LAURIE: Objection, not pertaining to this case.

MR. FLEMING: Not pertaining to this case?

THE COURT: We will discuss it when we finish here in the courtroom.

THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, called as a witness JAMES O'MALLEY, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORRIGAN:

Q Will you state your name, please.

A James O'Malley.

Q Spell your last name.

A O ' M-a-l-l-e-y.

Q What is your occupation, sir?

A Patrolman, Cleveland Police Department.

Q How long have you been a member of the Cleveland Police Department?

A Four and a half years.

Q Calling your attention to July 23, 1968, were you on duty on that particular day, in the early evening, sir?

A Yes.

Q Will you tell the Court and jury what your assignment was on that particular day?

A I was assigned to the task force unit and reported for duty at 5:00 a.m.

Q With whom were you so assigned?

A Patrolman Sweeney and Patrolman Gallagher.

Q Did you receive instructions from a superior officer on that date?

A Yes.

Q Pursuant to those instructions --

Who was that superior?

A Lloyd Schempp. Lieutenant.

Q Pursuant to those instructions, what did you do?

A We proceeded to 12312 Auburndale Avenue, where we were instructed to take up surveillance.

Q About what time did you arrive in the vicinity of Auburndale?

A Approximately 6:00 p.m.

Q Did there come a time, sir, when you left that vicinity?

A Yes.

Q Approximately what time was it when you left the vicinity?

A About 6:55.

Q And did you return?

A Yes.

Q How long were you gone?

A About fifteen minutes, roughly.

Q What was the purpose of your leaving?

A We were told via radio --

MR. FLEMING: Objection.

THE COURT: You had instructions
to leave, is that it?

THE WITNESS: Yes, sir.

Q (By Mr. Corrigan) What did you do when you left?

A We went to the Fifth District Station, at 105th and
Chester.

Q Did there come a time when you returned, sir?

A Yes.

Q How long were you gone?

A About fifteen minutes.

Q After you returned, then did you leave again at a
subsequent time?

A Yes, sir. About 8:20.

Q About 8:20?

A Yes.

Q All right. Will you come down here, sir, and
look at this aerial photograph, which is designated as
State's Exhibit 66.

(Witness left the stand and went to the map.)

Q This being Lakeview (indicating), this being
Moulton, this being Auburndale, and this being 124th
Street, this being Beulah.

Will you tell the Court and jury, by pointing out

on the map, where your automobile was parked on that occasion?

A Right about here (indicating).

MR. CORRIGAN: May the record show generally the corner of Auburndale and East 124th Street.

Q (By Mr. Corrigan) Now, sir, will you point out on the map the area that you had under surveillance?

A (Witness indicates.)

MR. LAURIE: Will you stand on the side, please, on this side by the window, will make it a little easier.

MR. TOLLIVER: Give him the pointer.

THE COURT: Maybe it would be just as well if you put that plank some place else.

MR. TOLLIVER: No bother.

Q What is the address of that residence that you had under surveillance?

A 12312 —

Q Keep your voice up, please.

A 12312 Auburndale.

Q Finally, when you left, at about 8:20, will you tell the court and jury by what direction you left?

A It's roughly south - southeast (indicating), up
Auburndale.

Q Up Auburndale to what street?

A Euclid Avenue.

Q Then where did you go?

A West on Euclid.

Q Then where did you go?

A North on Lakeview.

Q North on Lakeview. Then did you come back into the
area?

A No. We went west on Ashbury to East 108th and
Superior.

Q Did you come back into the area again at all that
evening?

A Much later, I, myself, did.

Q How much later did you come back in the area, what
time was it?

A About 10:00 o'clock.

Q About 10:00 o'clock.

Now, will you take the stand again.

(Witness resumed the stand.)

Now, sir, between the time that you first arrived
and the time that you left to go to the Fifth District,
what if any observations did you make from the vantage
point that you have pointed out to the jury, on the map?

A We saw numerous people -- well, when we first arrived, we observed between ten and twelve colored people sitting on the porch. They were in --

Q Sitting on the porch, where?

A At 12312 Auburndale.

Q Yes, sir.

A There was, I would say, about half were in Afro type robes; the other half were in conventional dress.

Then we took up our surveillance point and we recorded, which was our instructions, to record and observe movements to and from the house, and license numbers, and any known persons we saw going into or coming out of the house.

Q Did you have any mechanical devices to aid you in conducting this surveillance?

A Yes, sir.

Q What did you have?

A Binoculars.

Q Where were you seated?

A The right rear, rear seat on the right side of the car.

Q Do you know, sir, of your own knowledge, whether or not there was another surveillance vehicle in the area?

A Yes, sir.

Q Where was that vehicle located, if you know?

A Should I point it out?

Q I believe you can point it out by word of mouth, if you will.

A They were facing eastbound on Moulton Avenue, the corner of Lakeview.

Q Facing east on Moulton Avenue, at the corner of Lakeview.

(Indicating) This is Moulton Avenue, and this automobile was on Lakeview?

A On Moulton.

Q On Moulton (indicating)?

A Yes.

Q Facing in an easterly direction, is that correct?

A Yes.

Q This vicinity here, sir (indicating)?

A Yes.

Q Were you in contact with that vehicle?

A Via radio.

Q Were you in contact by radio with anybody else?

A Yes, sir.

Q And with whom were you in contact, other than that vehicle?

A Our office.

Q Now, sir, where were you located in your vehicle?

A The right rear of the car, rear seat, right side.

Q And you made certain observations between the time that you first arrived and the time that you left --

A Yes, sir.

Q -- to go to the Fifth District? Is that correct?

A Yes, sir.

Q And what did you do relative to any observations that you made?

A Well, I marked them down on a sheet of paper.

Q You marked them down -- what?

A License numbers and numbers of people, numerical numbers of people coming and going.

Q I see. And after you returned from the Fifth District, approximately what time was it?

A About 7:10 to 7:12.

Q And did you once again take up surveillance at that same point?

A Yes, sir.

Q Now, tell the Court and jury as to whether or not there came a time when you observed anyone arrive whom you knew?

A Yes, sir.

Q Who did you see arrive, who you knew?

A Fred Evans.

Q And how did he arrive?

A In a red Volkswagon.

Q How was he dressed?

A With a black Afro type robe and a black -- black with green and red trim, I would say, and black and red and green skullcap.

Q Did you see anybody else arrive whom you knew?

A No, sir, not offhand.

Q Did you see anybody else arrive whom you later came to know?

A Yes, sir.

MR. FLEMING:

Objection.

THE COURT:

Overruled.

Q Or did you see anybody leave --

A Yes, sir.

Q -- whom you knew?

A Yes.

Q Who was that, sir?

A Councilman Forbes.

Q Was he with anyone?

A Yes.

Q Who was he with, if you know?

A A man later identified to be Walter Beach.

Q And how did he leave?

A In Mr. Beach's auto.

Q Did you note that auto's license number?

A Yes.

Q Did you determine, sir, in whose name that automobile was listed?

A Yes.

Q Now, sir, shortly after Councilman Forbes and Beach left, what if anything occurred?

A Single colored male came out of 12312 Auburndale address carrying a carbine.

Q How was he dressed?

A He had Afro robe on and dark pants.

Q Where did he go?

A He stood on the sidewalk in front of 12312.

Q Then what else did you observe?

A Well, he stood there as if to take up --

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: Just describe what you observed, just what he did.

A As if to take up an armed guard.

MR. TOLLIVER: Objection.

THE COURT: He what?

THE WITNESS: He took up an armed guard.

THE COURT: Overruled.

Q As if he took up a guard position?

A Yes.

Q Then what else did you observe?

A Within minutes, Fred Evans came out of the house, followed by 16 to 18 more colored males, some dressed with Afro robes. One, in particular, had a leopardskin covering, I'd call it.

Most of these males had Army khaki web-type belts with first-aid kits and what appeared to be canteens, bandoleers of ammunition, shotgun shells.

As they came out of the yard and stood on the sidewalk for an instant, a minute, they grouped around Evans. At this point, the first male out of the house crossed Auburndale and took up a position opposite the house on Auburndale in front of a set of garages there and he went to his knees (indicating), kneeling down like this (indicating), with the weapon pointed toward our car.

Q What, if anything, did you see in the hands of the other individuals that came out?

A Various types of weapons; carbines, M-1 or M-2 carbines. One male had a shotgun, the one with the leopard-skin.

Q Now, you said you saw a man come out with a leopard-skin robe of some sort on?

A Yes, sir.

Q Did you later identify that man?

A Yes, sir.

Q Who did you come to know that man to be?

A Lathan Donald.

Q Now, after these people came out and you made these observations, then what next happened?

A We were in contact with our office via high band radio. We informed the office --

MR. TOLLIVER: Objection.

THE COURT: Overruled.

A We informed the office of our observations. We were told to proceed from the area.

MR. TOLLIVER: Objection.

THE COURT: Overruled.

Q You were told to do what?

A Proceed from the area.

Q Proceed from the area. And what did you next then do?

A We pulled out of our parking spot and proceeded up Auburndale.

Q What direction did you go?

A Well, about 70 -- 50 or 70 feet southbound on 124th, then left into Auburndale, southeast towards Euclid.

Q As you were traveling southbound, did you make any other observations?

A Yes, sir.

Q What were they, sir?

A Two of the males that came out of the house got into

a brown and tan Ford station wagon, about a '59, I believe it was. One of these males, the one who was a passenger, had a carbine in his hand.

As we were going up the street, they followed us for approximately 150 to 200 feet. At this time I heard a shot. Within an instant, they made a U-turn, went back down toward Lakeview.

We informed our office that we were being shot at.

MR. TOLLIVER: Objection.

THE COURT: Overruled.

A The office repeated the instruction to proceed from the area.

Q Now, sir, at any time that you were in the vicinity of Auburndale and 124th Street, did you get out of your vehicle?

A Myself?

Q Yes, sir.

A No, sir.

Q Did any of the other men that you were with get out of the vehicle?

A No, sir.

Q How, you indicated that you then left the area and you returned there about 10:00 o'clock, is that correct?

A Yes, sir.

Q Now, when you returned at 10:00 o'clock, with whom

were you with at that time?

A Patrolmen Horrigan.

Q Where did you return to in the area?

A On Lakeview in the vicinity of Auburndale.

Q What, if anything, did you do at that time?

A Well, we kept cover -- kept under cover most of the time. There was still some shooting going on.

Q And you made observations with respect to some shooting?

A Yes.

Q Where did you observe this shooting going on?

A It was farther north from where I was at the time.

Q Will you refer to the map and tell us where you were?

A Should I go over there?

Q Yes, if you will.

(The witness left the stand and went to the map.)

A When we got back here (indicating), we were about here --

Q Where did you come back with Detective Horrigan?

A We parked our car -- I think it was parked -- the street was blocked. We parked two or three houses farther up, up here (indicating).

We walked to this area here (indicating).

Q So you were then in the vicinity of Lakeview and Auburndale on the Lakeview side, is that correct, sir?

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A Yes.

Q What time was this?

A I would say roughly 10:00 o'clock.

Q How long did you stay in the area?

A Until about 12:00, I would say, or 1:00. That is, I'm not sure of that time.

Q Would you take the stand again, please?

(The witness resumed the stand.)

Q You have testified that you saw a man whom you knew as Fred Evens come out of the area at 12312 Auburndale.

Do you see that man in the court room today?

A Yes, I do.

Q Will you point him out, please?

A There (indicating).

Q There are one, two, three gentlemen at the table.

Which seat?

A The third from the front, the third gentleman.

Q Before you received this assignment --

MR. LAURIE: May the record show the identification, Judge?

THE COURT: It may so show.

Q Before you received that assignment or at the time that you received the assignment, did you know or did anyone tell you whose residence or headquarters you were to keep under surveillance?

MR. TOLLIVER: Objection.

A No, sir.

Q No one told you the name of any such individual?

A No, sir.

Q Did there come a time, sir, when you identified anybody, other than Evans and Lathan Donald as being among the people that you saw coming out of the house that you testified about?

A Yes, sir.

MR. TOLLIVER: Objection.

THE COURT: Overruled.

Q Who was that?

A Alfred Thomas.

Q A man by the name of Alfred Thomas?

A Yes.

MR. CORRIGAN: No further questions of this witness.

CROSS-EXAMINATION

BY MR. TOLLIVER:

Q Officer O'Malley, I understand that you were parked in a surveillance car up in this area here (indicating)?

A Yes, sir.

Q How long had you been there?

A The whole period?

Q Well, I think you said you stayed there until about 6:55?

A Yes, sir.

Q How long before 6:55 were you there?

A About 55 minutes.

Q So you had been there since about 5:55?

A About 6:00 o'clock.

Q About 6:00 o'clock?

A Yes.

Q And then at 6:55 you left?

A Yes, sir.

Q And at the time that you were sitting there, you say you saw 10 or 12 persons sitting on the porch?

A Yes.

Q Of course, this was in July, wasn't it?

A Yes, sir.

Q Pretty hot that day, wasn't it?

A Not exceptional.

Q It was warm?

A Yes.

Q So it wasn't anything unusual about people sitting on the porch?

A No, sir.

Q All right. Now, then you say you left?

A Yes, sir.

Q You were told to leave and you left?

A Yes, sir.

Q And you saw some persons got into a car and started following you?

A No, sir.

Q Well, you left, is that right?

A Yes.

Q Did anybody follow you at that time?

A No, sir.

Q I see. And where did you go, did you say, when you left?

A Fifth District Police Station.

Q How long did you stay there?

A We were there about four or five minutes

Q Then you came back?

A Yes, sir.

Q To the same place?

A Yes.

Q All right. When you came back, what time did you arrive?

A 7:10 to 7:12 p.m.

Q Around 7:00 o'clock or so?

A Between 7:10 and 7:12.

Q Somewhere between 7:10 and 7:20?

A 7:10 and 7:12.

Q I'm sorry. 7:10 and 7:12?

A Yes.

Q How long did you stay that time?

A Until about 8:20.

Q Then you were told to leave again?

A Yes, sir.

Q Now, was it at this time that you said somebody got into a station wagon and followed you?

A Yes, sir.

Q Now, when you left at 8:20 or, before you left at 8:20, did you hear any shooting?

A No, sir.

Q You didn't hear any?

A No, sir.

Q Then this car started trailing you?

A Yes, sir.

Q Then you heard some shots?

A Heard one shot.

Q Now, you said you were being shot at?

A I heard one shot.

Q You heard one shot?

A Yes, sir.

Q So, now, you couldn't tell at that time where the

shot was coming from, could you?

A No, sir. It sounded like it was in back of us.

Q But you couldn't say specifically that the car that was following you, that the shot came from that car?

A No. Well, the guy had a gun sticking out the window.

Q I didn't ask you that.

A And I heard a shot.

Q My question was -- I didn't ask you that -- can you say specifically if the shot came from the car that was trailing you?

A No, sir.

Q All right. The shot, as you call it, didn't hit the car, did it?

A No, sir.

Q So you heard the shot?

A Yes, sir.

Q Then the car in back of you turned around?

A Yes, sir.

Q Now, specifically where that car came from, you can't say?

A No, sir.

Q Did you recognize it specifically as a shot, or could it have been a backfire of a car or something else?

A No, sir.

Q You are positive it was a shot?

A Yes, sir.

Q A shot?

A One single shot.

Q All right. The car that you were riding in wasn't hit?

A No, sir.

Q So then you said to whoever you were talking to, you were being shot at; actually this was just a conclusion you had come to? Is that right?

MR. LAURIE:

Objection.

THE COURT:

Overruled.

A Re-state the question.

Q (By Mr. Tolliver) When you said to someone, I believe you said on direct examination that you noticed that you were being shot at?

A Yes, sir.

Q So this was just an opinion that you had formed at that time, is that right?

A Yes.

Q Because you couldn't say specifically that the shot that was fired was shot at you?

A No, sir.

Q You couldn't say specifically where it was fired from?

A No.

Q So then you left the area, is that right?

A Yes, sir.

Q Where did you go after that?

A To 108th and Superior.

Q How long did you stay there?

A About twenty or twenty-five minutes.

Q Then you came back to the Lakeview area?

A Later.

Q Later?

A And I received other assignments in the meantime.

Q In between times you had other places to go?

A (Witness nods.)

Q The car that you were in was assigned to go other places, is that right?

A No, sir.

Q You said you received other assignments?

A By myself.

Q You were alone at that time?

A Yes, sir.

Q In other words, after you got to 108th and Superior, you got out of the car?

A We rendezvoused there.

THE COURT:

What?

THE WITNESS:

We rendezvoused

there.

Q (By Mr. Tolliver) You met other police officers there?

A Yes.

Q Then you got out of this car?

A Yes, sir.

Q Did you go on foot or get in another car?

A I got in another car.

Q I see. You got in another car?

A Yes, sir.

Q And that car came back to the scene?

A Which car?

Q The car you got into.

A Later.

Q Later?

A Actually, not that car. Actually, the car I got into then didn't come back.

Q You had somewhere else to go in that particular car?

A Yes, sir.

Q Then later you came back to the scene in a still different car?

A Yes.

Q I see. So, in between time, then you were following other assignments; is that right?

A Yes.

Q So, by the time you came back, then the shooting was

heavier, is that right?

A When we returned -- when I returned, the shooting was sporadic.

Q Sporadic. And what time did you return?

A Roughly, 10:00 o'clock.

Q And I believe you said, when you came back, you were back down in this area (indicating)?

A That is where the car was.

Q And you embarked from the car?

A Yes.

Q You walked up in this direction (indicating)?

A Yes, sir.

Q Now, did you have a weapon?

A Yes, sir.

Q What kind of a weapon did you have?

A My police issue .38.

Q You didn't have a rifle?

A No, sir.

Q Did you see some policemen around there with rifles?

A When I got back?

Q When you got back.

A No, sir, I didn't.

Q Did you see any policemen with machine guns?

A No, sir.

Q Did you see some police officers with shotguns?

A Yes, sir.

Q How long did you stay in this area after you got back?

A About two hours, I would say, two or three hours.

Q While you were on the scene, did you do any shooting?

A No, sir.

Q None at all?

A No, sir.

Q Now, I understood that you left, that you arrived the second time about 7:10 to 7:12? Is that what you said?

A Yes.

Q Then you were told to leave?

A Yes.

Q Now, after you left, what did you do?

A Which time?

Q Well, that would be the -- when you left about -- you say you got back about 7:12, then I think you stayed until about 8:20?

A Yes, sir.

Q Then what did you do after you left?

A Went to 108th and Superior.

Q I see. Did you have some specific assignment there?

A Yes, sir.

Q How long did you stay there?

A About twenty or twenty-five minutes.

Q Then where did you go from 108th and Superior?

A I, myself?

Q Yes.

A Went to 105th and Superior.

2026

Q Did you have a specific assignment there?

A No, sir.

Q Did you meet anybody there?

A Yes, sir.

Q Was it another automobile, another police car?

A No, sir.

Q You talked to somebody there?

A Yes, sir.

Q All right, then how long did you stay there?

A About 10 minutes, I would say.

Q Then where did you go?

A To the Fifth District.

Q How long did you stay at the Fifth District?

A About a half hour, I would say.

Q Then were you dispatched with another car back to the area?

A I was dispatched to another assignment.

Q On another assignment?

A Yes.

Q Where did that take you?

A 74th and Superior.

Q 74th and Superior?

A Yes, sir.

Q How long did you stay at 74th and Superior?

A Possibly 10 minutes.

Q Then where did you go from there?

A Back to the Fifth District.

Q Were you in a car at this time?

A Yes, sir.

Q Who was in the car with you?

A Patrolman Horrigan.

Q Did you meet him at the Fifth District?

A No, sir.

Q Where did you meet him?

A On Chester.

Q On Chester?

A Yes, sir.

Q Now, was that after you left the Fifth District?

A Which time?

Q The last time you were there, you met him on Chester?

A Yes, sir.

Q Now, on which one of these sojourns or one of these trips did you meet Patrolman Horrigan on Chester?

A After the second trip, the Fifth District.

Q After the second trip?

A Yes.

Q Then he accompanied you, then, did he not?

A Yes, sir.

Q Were you and he the only ones in the car or was there another officer?

3

A Patrolman Gallagher was there for a while.

Q Three of you in the car?

A Yes.

Q Where did you say you went with Patrolman Gallagher and Patrolman Horrigan?

A 74th and Superior.

Q So the three of you were at 74th and Superior?

A Yes.

Q Then where did you go from there?

A Back to the Fifth District.

Q Back to the Fifth District?

A Yes.

Q Then you left the Fifth District and I think you said you were there about a half hour?

A No, about 15 minutes.

Q About 15 minutes and you left the Fifth District?

A Yes.

Q Who were you with then?

A Patrolman Horrigan.

Q So Patrolman Gallagher, you left him?

A He received another assignment.

Q So it was you and Patrolman --

A Horrigan.

Q -- where did you go?

A Back to Lakeview and Auburndale.

Q You got there about 10:00, you say?

A About 10:00 o'clock, I would say.

Q Now, did you make a report of the things that you have just testified to, a police report?

A Yes, sir.

Q Enumerating all of these different things that you have testified to?

A Most of them.

Q When is the last time you have seen that report?

A About July 25th or 26th.

Q You haven't seen it since?

A No, sir.

Q Did you make any statements to the Prosecutor regarding your activities that day?

A Yes, sir.

Q Where did you make that statement?

A About the same time as the Evens' preliminary hearing.

Q Over in Police Court?

A Yes.

Q Have you seen that statement since then?

A No.

Q So are you telling us you are testifying from memory?

A Yes, sir.

Q Your recollection has not been refreshed?

A No, sir.

MR. TOLLIVER: Judge, we would like to see the report or the statement.

MR. LAURIE: Again, we object.

THE COURT: The objection is overruled. Do you have it here?

MR. LAURIE: We don't have it here.

THE COURT: Is it downstairs?

MR. LAURIE: Yes.

THE COURT: As readily accessible as the other one was?

MR. LAURIE: Yes, it is the same length of time.

THE COURT: Do you have any other questions?

MR. TOLLIVER: Not at this time, Judge, no.

THE COURT: What?

MR. TOLLIVER: Not at this time, no.

THE COURT: Would you please come up here?

(Whereupon discussion was held between Court and counsel, outside the hearing of the jury.)

and off the record.)

THE COURT:

You may not believe it, but we have just disposed of about a half day's testimony and possibly not even hearing arguments of counsel with reference to it; but in any event, there is no further testimony that anybody is ready to present this afternoon.

We will adjourn until 9:15 tomorrow morning. When you're out of the court room, once again, don't talk to anybody and don't let anybody talk to you about this case.

(Whereupon an adjournment was had on Tuesday, April 22, 1969, until 9:15 a.m. on Wednesday, April 23, 1969, at which time the following proceedings were had:)

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