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MULTNOMAH COUNTY GRAND JURY
DEATH INVESTIGATION

Deceased: Quanice Derrick Hayes) DA No.
Date of Incident: February 9, 2017) 2355587-1
Location: 8301 NE Hancock Street) PPB. No.
Portland, Oregon) 17-39972

TRANSCRIPT OF PROCEEDINGS
Volume I

BE IT REMEMBERED that the above-entitled
transcript of GRAND JURY proceedings was heard,
commencing at the hour of 8:45 a.m., on Friday,
February 10, 2017, at the Multnomah County Courthouse,
Portland, Oregon.

APPEARANCES

Mr. Donald N. Rees
Deputy District Attorney
On Behalf of the State of Oregon.

* * *

SUSAN M. BULMAN, CSR, RDR
Certified Shorthand Reporter
Portland, Oregon

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P R O C E E D I N G S

Friday, February 10, 2017

MR. REES: This is Deputy District Attorney Don Rees with Grand Jury No. 1. The date is Friday, February 10th, 2017. The time is 8:45 a.m.

The witness called before the Grand Jury this morning may not be available at a later date, so we're taking his testimony now and it'll be recorded for later transcription because a court reporter was not available, given the timeframe.

And at this time, please swear in the witness.

A GRAND JUROR: Would you raise your right hand?

1 ARMANDO SUAREZ,
2 was thereupon called as a witness on behalf of the
3 State, and, having been duly sworn, was examined and
4 testified as follows:

5 A GRAND JUROR: Thank you very much. You
6 can have a seat.

7

8 EXAMINATION

9 BY MR. REES:

10 Q All right. Mr. Suarez, when you're ready,
11 please state your first and last names for the Grand
12 Jury.

13 A Armando Suarez.

14 Q And could you spell that, please?

15 A A-r-m-a-n-d-o; S-u-a-r-e-z.

16 Q All right. Thank you, Mr. Suarez. Were you
17 robbed at gunpoint yesterday morning in Northeast
18 Portland?

19 A I wasn't only robbed at gunpoint, I was held
20 hostage for an extended period of time.

21 Q When did you first become aware that this
22 person with a gun was confronting you?

23 A The second I lowered my window. I think it
24 was my friend that stayed -- was staying at the hotel.

25 Q You were asleep in your car?

1 A That is correct.

2 Q And you were parked on a street near the
3 Value Inn?

4 A Right next to it.

5 Q All right. And so were you sound asleep when
6 this first happened?

7 A Yes.

8 Q And what -- what did you notice? What woke
9 you up?

10 A The knock on the door, the knock on the
11 window.

12 Q Knock on the window?

13 A Exactly.

14 Q You thought it was your buddy?

15 A Exactly.

16 Q So you unrolled your window.

17 A Well, it was a power window. I just --

18 Q Oh.

19 A I brought it down and here comes the gun.

20 Q What -- what did you see?

21 A A .45 caliber gun coming at me. I know of
22 guns because I've been in a military academy and I like
23 guns. So I just saw the barrel and everything. I
24 already knew what caliber it was.

25 Q And did this person say anything?

1 A Did this person say anything?

2 Q Yeah.

3 A "You're lucky you're not dead right now."

4 Q That's what he said, "You're lucky you're not
5 dead right now"?

6 A Yeah. "You're lucky you're not dead right now
7 because in Chicago, we shoot you first, and then we rob
8 you." These words are coming out of his mouth.

9 Q Uh-huh. And --

10 A Shortly after that, he opens the door and gets
11 in the car, searches the car, searches me. And the
12 whole time, he's holding a gun in my face.

13 Q Were you in the back of the car or the front
14 of the car?

15 A I was asleep in the driver's seat.

16 Q You were asleep in the driver's seat.

17 A When all this started.

18 Q He gets in the car with you.

19 A Yeah.

20 Q What did you think was going to happen?

21 A I didn't know what was going to happen. I've
22 got some madman with a gun threatening to shoot me. I
23 don't know what's going to happen. I know I can't beat
24 somebody pulling a trigger. I just stood still, tried
25 to stay calm as much as I could. What can I do?

1 Q And did he take some of your property?

2 A Yeah, he -- cigarettes, he took a vest, my
3 food stamp card. My car's pretty nice, but
4 unfortunately with the circumstances that I've fallen
5 into with my employer, which is a whole other story,
6 I've ended up homeless.

7 This guy assumed that I had money because
8 of my car. I had no money on me at all. Which is a
9 stupid assumption because if I had money, why would I be
10 asleep outside the hotel when I have the hotel right
11 next to me? I'd be inside.

12 Q You tried to tell him --

13 A I told him this --

14 Q -- that you -- you didn't have anything?

15 A I told him this multiple times before it
16 finally registered that he robbed the wrong guy. And I
17 found it very funny that at one point when he had
18 finally realized this, he stayed with two cigarettes and
19 gave me the pack back.

20 Q Now, you said he took a vest.

21 A Yes.

22 Q And this was a vest that said Alaska?

23 A It has a -- yeah, it has a patch that says
24 Alaska right here on the vest. It's reversible.

25 A GRAND JUROR: It says what? Sorry.

1 THE WITNESS: Alaska.

2 A GRAND JUROR: Alaska, thank you.

3 THE WITNESS: It's reversible. On one
4 side it has a faded green color. It's more like a nylon
5 waterproofing. The inside, it's more of like an
6 insulation for the cold. It's kind of a velvet
7 material, but it's not velvet. And it's blue in color.

8 BY MR. REES:

9 Q And then you said he took your -- your EBT
10 card, which is -- that's like --

11 A Food stamps.

12 Q -- a food stamp card that was in your wallet.

13 A Correct.

14 Q So did he kind of go through --

15 A He went --

16 Q -- your wallet?

17 A He went through the whole inside of the car,
18 not just the wallet. You know, he was reaching in my
19 pockets. He did everything. He went through the whole
20 inside of the car. The only place he did not go through
21 was the trunk.

22 Q Did he do any damage to the car?

23 A Yes. He ripped off the glove box, the door
24 for the glove box. It was actually laying on the
25 ground, but (indiscernible).

1 Q So he just pulled it off its hinges?

2 A Exactly. You know, in the middle of all this,
3 at one point, I got a little agitated and I said
4 something stupid. And at that point, he racked the gun
5 and stuck it in my face.

6 Q You just made a motion with your hands
7 like he's --

8 A Yeah.

9 Q -- sliding back the action --

10 A Yeah, he's sliding --

11 Q -- on the gun.

12 A Exactly.

13 Q When you saw that, what -- what did you think
14 he was doing?

15 A Well, when I saw that, it kind of gave me a
16 reminder that he's in control right now, so I kind of
17 just calmed myself back down and he just let things play
18 out, because --

19 Q Did you think he was putting a bullet into the
20 chamber --

21 A Yeah, he's --

22 Q -- of the gun?

23 A -- he's chambering the gun. That's what he
24 was doing. He was putting a bullet in the chamber.
25 Exactly what it is.

1 Q You told the detectives yesterday that he at
2 some point ordered you to drive the car.

3 A Yes.

4 Q What did he -- what did he say to you?

5 A Well, he wanted me to drive him around so he
6 could continue to do what he was doing to -- so he can
7 get money.

8 Q So is that what he said, "We're going to go --

9 A Yeah.

10 Q -- get some money"?

11 A Yeah. "You're going to drive me so I can make
12 some money." Fortunately that night, earlier I'd woken
13 up from the cold, I put the heater on in the car and I
14 fell back to sleep and the car had kept running and I'd
15 run out of gas by that point. So I couldn't go
16 anywhere.

17 So when I first realized the car was out
18 of gas, that moment was pretty scary because I didn't
19 know how he was going to react to the fact. What's he
20 going to do now?

21 Q And what did he say?

22 A Well, it was funny because it was just like
23 when I was telling him that I didn't have any money. It
24 didn't register. He kept on rifling through the car and
25 he said to me, "Let's go to the gas station."

1 So about two, three times, I actually had
2 to hit the start button in my car for him to realize
3 that it's not starting. And I actually had to point
4 out, "Don't you hear the engine turning over? It's not
5 starting."

6 That's when his attitude started changing.
7 He actually handed me back the pack of cigarettes. I
8 thought, wow. It's like it finally sunk in his mind
9 that I'm just as broke and homeless as he was.

10 Q If the car had started, if you had gas in the
11 car --

12 A If the car would have started, that would have
13 been the longest nightmare I've ever been on. He wanted
14 me to drive him around. Besides being -- my life being
15 threatened, I was held hostage. He was going to use me
16 at gunpoint to commit crimes all day long. You know,
17 this is insane.

18 Q What was his demeanor like? How was he
19 acting?

20 A He was acting like if he was a professional at
21 what he was doing: Calm, cool, collected, and very
22 direct. This guy had -- there was no way of doubting or
23 disbelieving that this guy was not a pro. He had done
24 this multiple times. Without a doubt. It was too --
25 too precise.

1 Q Did he seem like he was mentally ill or high
2 on drugs?

3 A Somebody that's mentally ill, I don't think
4 they perform in such a manner. High on drugs, I didn't
5 see him tweaking, and that's what the area calls for.
6 It's either heroin or crystal meth out there. He
7 definitely wasn't asleep and he wasn't tweaking.

8 Q And he seemed calm.

9 A Yeah, exactly.

10 Q Did that make it more scary or less scary?

11 A Of course it's more scary.

12 Q More scary.

13 A Because he knows exactly what he's doing.
14 He's not doing things randomly trying to get away with
15 something. He's doing this deliberately. It was a
16 deliberate act that he knows how to go one, two, three
17 steps and get what he was looking for. This is
18 something he's accustomed to doing just so he can get
19 what he wants. That makes it even more scary, yes.

20 Q Were you thinking how is this going to end?
21 Is he going to leave the car? What's -- what's going to
22 happen?

23 A I was actually trying not to think about that.
24 But that's what actually got me agitated when he
25 chambered the bullet in the round.

1 Q At some point, he left you. What -- what
2 happened?

3 A "Don't call the police."

4 Q He said, "Don't call the police"?

5 A "I see cop cars still driving around, I'm
6 going to come back and put two in you."

7 Q So he told --

8 A I sat in the car for about 10, 15 minutes
9 after he walked off. That's when I went to my friend's
10 room at the hotel and got my phone, because he was
11 charging it.

12 Q So you -- you took that threat seriously when
13 he said, "Don't call the police."

14 A Well, yeah, because all he has to do is sit
15 across the street behind a tree or something. I have no
16 gas so I can't even leave the area.

17 Q So you waited --

18 A I waited about 15 minutes for him to see there
19 was no cops coming around. And then I walked -- got my
20 phone, and from there I walked to the hotel office.

21 Q How did he act when he left you in the car?

22 A Just as calm, cool, and collected as he was
23 from the beginning. He just looked at me and said,
24 "Don't do it. I'm going to come back and put two in
25 you."

1 Q What did he --

2 A And just -- and just he -- he put his gun
3 around his waistline and just calmly walked away.

4 Q Let me ask --

5 A He didn't -- he didn't even run. This -- this
6 is the part that really -- he -- he was so cocky about
7 it, so like if he knew nothing was going to happen to
8 him. No fear. He didn't run. He just calmly walked
9 away.

10 Q Let me ask you about the gun. Can you tell us
11 again or show us what did he do with the gun when he
12 left?

13 A When he left, when this -- when this -- I
14 don't know if he had a holster or not, but when he was
15 putting it away, it seemed he was putting it around his
16 waistline. Now, he might have been putting it into a
17 jacket pocket. I'm not sure.

18 Q Okay.

19 A But from what I'm seeing, I'm seeing him from
20 behind at this point, and all I'm seeing is him doing
21 this.

22 Q So you're motioning --

23 A The guy was -- yeah. He was either putting it
24 through a jacket or he struck putting it into his
25 waistline, but.

1 Q Okay. So you waited 15 minutes and then you
2 go to the Value Inn.

3 A Right.

4 Q And --

5 A I get my phone from my friend. From there, I
6 go to the hotel office, because at that time it was
7 closed. Now, the security guard was sitting inside, let
8 me in, and a little while later I was talking to you
9 guys on the phone, 911.

10 Q So you called 911.

11 A Right.

12 Q Okay.

13 A Now, the hotel does -- the hotel has a video
14 system. Where my car is parked, you can see it on the
15 camera. You guys will see this individual walking up
16 and walking away. Now, I don't know if you can see what
17 happened in the vehicle or not. The dome light inside
18 the vehicle was on. Maybe that makes it easier to bring
19 it out.

20 Q So you -- and you told -- everything you've
21 just told the Grand Jury, you relayed to the police
22 yesterday, correct?

23 A Yes. And, you know, I really don't want to
24 talk about it much because it's -- it's -- it's, you
25 know, last night, I got a few hours of sleep, but my

1 mind, I don't know even know how to -- what to make out
2 of this. You know, I'm waking up, right, but I'm still
3 there.

4 Q You were very upset?

5 A Well, no. Can you imagine you just went
6 through the situation, you go to sleep and you're going
7 through it again in a nightmare? This -- outrageous.

8 Q Yesterday later, sometime I think in the
9 afternoon, the police brought you a vest and they asked
10 you if that was your vest with the word Alaska on it; is
11 that right?

12 A Well, they didn't actually bring it to me.
13 You know, I don't -- I don't need to actually have it in
14 front of me, but they showed me a photograph of it.

15 Q They showed you a photo. Okay.

16 A And that is my vest.

17 Q That was your vest.

18 A Without a doubt.

19 Q Okay.

20 A Blue, green, reversible. The blue is not as
21 faded as the green, the Alaska patch. You know, I got
22 that thing at a thrift store about five years ago in
23 Colorado for \$2. I don't need it.

24 Q And I understand the police also recovered
25 your EBT card.

1 A I never saw the card, but they got it.
2 It's -- it's already been canceled, so I don't need it.

3 Q Yeah, you canceled it yesterday morning right
4 away, right?

5 A That's the first thing I did. I was actually
6 giving time for -- for him to get out of the
7 neighborhood entirely before I even called the police.

8 Q But you called --

9 A I didn't want to take the risk of actually him
10 coming back and giving me the two.

11 Q So you called to cancel the card so he
12 couldn't use it.

13 A I -- correct. That was funny about that that
14 he went to that convenience store that's about a block
15 and a half away and got into an argument with the clerk.
16 And he's on video inside the store with his left arm up
17 and his hand in the same side where the gun's at.

18 Q How old do you think this guy was?

19 A He looked to me to be very young, about 23
20 years old. I don't know how close I am to his age, but
21 he looked to be very young.

22 Q And do you remember the physical description
23 that you gave the police?

24 A I'd say he weighs about 120 pounds. He was
25 shorter than me. He had a small rounded head. Couldn't

1 see his hair because he had the hoody on all the time.

2 A GRAND JUROR: Can I just ask how tall
3 you are?

4 THE WITNESS: Excuse me?

5 A GRAND JUROR: You said he was shorter
6 than you. Can I ask how tall you are?

7 THE WITNESS: Five eleven.

8 BY MR. REES:

9 Q Shorter than five eleven, and was -- what --
10 could you tell his race?

11 A Black. But I figure he weighs about 120
12 pounds. He was rather skinny.

13 A GRAND JUROR: Do you remember any other
14 distinguishing marks, scars?

15 THE WITNESS: No, since he has -- he was
16 clothed from head-to-toe. The only thing I could see of
17 his body is actually his face and his hands.

18 A GRAND JUROR: Okay. Any --

19 THE WITNESS: I didn't see any tattoos or
20 anything like that.

21 A GRAND JUROR: Any marks on his hands?

22 THE WITNESS: I never -- if he had marks
23 on his hands, I didn't see them. I'm more focused on
24 his arm movement that's holding the gun.

25 A GRAND JUROR: No facial hair?

1 THE WITNESS: No.

2 BY MR. REES:

3 Q Any other questions from the Grand Jury?

4 A Now, I will say that I have bad eyes up close.
5 Like right now, looking at you guys, you guys are
6 blurred out. At this distance, he's still kind of
7 blurred. Now, if he had some facial hair, I may have
8 missed that, but I did not notice it at the time.

9 Q Mr. Suarez, is there anything else that we
10 didn't ask you about that you think the Grand Jury
11 should know about this incident?

12 A Oh, the description of the gun. It's black.
13 The handle, it's not a normal handle.

14 Q It was not a normal handle?

15 A No.

16 Q What did you notice about it?

17 A The grips on the handle were a light color.
18 It's almost like a desert camouflage, is what it seemed
19 to me. I didn't -- but it's not a black or a gray
20 handle like most guns have. It was like a beige, desert
21 color as, you know, would be a camouflage deal.

22 Q Okay.

23 A You know, as long as I was sitting in that car
24 with this guy putting his gun in my face, sometimes
25 getting a little abrupt and literally just poking my

1 face with the gun, it was just -- I'm glad he's dead.
2 I'm glad he's dead. It still bothers me because the way
3 everything happened, but I'm glad he's dead.

4 MR. REES: All right. Well, thank you
5 again for coming in this morning and if there's no
6 further questions from the Grand Jury, we will excuse
7 Mr. Suarez. Thank you.

8 A GRAND JUROR: Thank you so much.

9 A GRAND JUROR: Thank you.

10 A GRAND JUROR: Thank you.

11 THE WITNESS: You're welcome.

12 (End of recording.)
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1 STATE OF OREGON

ss.

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County of Multnomah

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4 I, Susan Bulman, certified shorthand reporter,
5 hereby certify that I reported in stenotype all
6 testimony adduced and other oral proceedings had
7 from a CD recording in the foregoing transcript;
8 that thereafter my notes were reduced to typewriting
9 under my direction; and that the foregoing
10 transcript, pages 1 through 17, both inclusive,
11 contains the full, true, and correct record of all
12 such testimony adduced and oral proceedings had and
13 of the whole thereof to the best of my abilities.

14 Witness my hand at Portland, Oregon, this 22nd
15 day of March, 2017.

16

/s/

17

18

Susan Bulman, RDR, CSR
Registered Diplomat Reporter

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1 MULTNOMAH COUNTY GRAND JURY

2 DEATH INVESTIGATION

3

4 Deceased: Quanice Derrick Hayes) DA No.

5 Date of Incident: February 9, 2017) 2355587-1

6 Location: 8301 NE Hancock Street) PPB. No.

7 Portland, Oregon) 17-39972

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9

10 TRANSCRIPT OF PROCEEDINGS

11 Volume II

12 BE IT REMEMBERED that the above-entitled
13 transcript of GRAND JURY proceedings was heard,
14 commencing at the hour of 8:00 a.m., on Monday,
15 March 20, 2017, at the Multnomah County Courthouse,
16 Portland, Oregon.

17

18 APPEARANCES

19 Mr. Donald N. Rees
20 Mr. Jeffrey D. Auxier
21 Deputy District Attorneys
22 On Behalf of the State of Oregon.

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KAREN M. EICHORN, CSR, CRR
Certified Shorthand Reporter
25 Portland, Oregon

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P R O C E E D I N G S
Monday, March 20, 2017

JAMES FERNER,
a witness called on behalf of the State, having been
first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. REES:

Q For the record, Officer, please state your
first and last name and spell your name.

A James, J-A-M-E-S. Ferner, F-E-R-N-E-R.

Q And what's your occupation?

A Portland police officer.

Q How long have you been a police officer?

A Almost 23 years.

Q All right. And what's your current assignment
with the Portland Police Bureau?

A I'm working patrol out of East Precinct on the
morning shift.

Q On the morning of Thursday, February 9th,
2017, what time did your shift begin?

A Roll call is at 7:00 a.m., and usually out on
the street by 7:20, 7:25 in the morning.

Q All right. And so is that day a regular

1 patrol day for you?

2 A Yes.

3 Q Is there anything unusual that was mentioned
4 at roll call or anything unusual going on on that day?

5 A No.

6 Q All right. So let me direct your attention to
7 a radio call that you received later that morning that
8 took you to the area of the Portland Value Inn, which is
9 near the intersection of NE -- I'm sorry, SE Schuyler --

10 A Northeast.

11 Q NE Schuyler and 82nd Avenue.

12 What was the call you received?

13 A We received a call from dispatch that there
14 was an armed robbery that occurred. The victim was at
15 the hotel.

16 I had asked them to clarify if it was
17 actually the hotel or if it was one of the guests or
18 that type of stuff, because usually the hotel office
19 area isn't open that time in the morning.

20 Q All right. Did you receive some additional
21 information from dispatch while you were responding to
22 the scene?

23 A Yes. Dispatch said it was a gentleman who was
24 sleeping in his car that had been robbed and was at the
25 hotel.

1 Q All right. And if I could ask you to go up to
2 a photographic diagram and show the members of the Grand
3 Jury where you went and where you eventually located
4 Mr. Armando Suarez.

5 A So the call originally came to the hotel here,
6 which is the Portland Value Inn. Mr. Suarez was parked
7 right here on NE Schuyler.

8 As we were responding to the call, there
9 was a second call of a car prowler at the Banfield Pet
10 Hospital, which was over here.

11 So initially, when I had gotten the call,
12 it was Portland Value Inn. So I pulled into the
13 Portland Value Inn and Officer Tatro had pulled over
14 here and found Mr. Suarez while he was trying to find
15 the victim of the car prowler.

16 So when I heard Officer Tatro come out
17 here, I went down to here, then he left to go find the
18 victim of the car prowler.

19 Q Thank you.

20 What did you note about the demeanor of
21 Mr. Suarez when you contacted him?

22 A Mr. Suarez was extremely scared. He was
23 shaking visibly, very upset. For as many years as I've
24 done my job as a police officer, I have a pretty good
25 read on people, and he seemed like a person that has had

1 a difficult life at times and has been around the block,
2 so to speak.

3 And for seeing him that shaken up, it was
4 obvious that something serious had happened to him, in
5 my opinion, when I contacted him.

6 Q What did he tell you had happened earlier that
7 morning?

8 A Initially, it was tough getting information.
9 He was just -- he was so excited and upset and scared,
10 that he was just kind of bouncing around. But basically
11 he'd been sleeping in his car.

12 And, you know, we have a lot of people
13 that are living out of their cars. Mr. Suarez is not a
14 person that you would normally find living out of his
15 car, so the car was a nicer car. It wasn't typical of a
16 person that actually lives out of their car.

17 And so he said he was sleeping in his car
18 because he'd run out of money. And was sleeping
19 against -- parked against the curb there. Because a
20 friend of his who -- the friend of the family had a room
21 at the hotel was the reason he was there.

22 And he'd been sleeping there when he heard
23 a knock on the passenger side window. Believing it was
24 his friend coming over for some reason to ask him or
25 talk to him or whatever, so he went and rolled down the

1 electric window when the suspect put the gun inside the
2 window at him and then reached in and opened the car
3 door.

4 Q And did Mr. Suarez describe to you what the
5 gun looked like?

6 A Yes. Mr. Suarez said it was -- looked like a
7 .45, which is a larger semiautomatic-type pistol. He
8 said it was black, and the handle was either desert camo
9 or tan in color. He said it was difficult to see. He
10 saw that tan color thing. Mr. Suarez says he has been
11 around guns in his life, so he is aware of sizes and
12 that type of thing.

13 Q All right. And did you broadcast over the
14 police radio a description of the handgun?

15 A Yes.

16 Q And why did you do that?

17 A Because as this was progressing, you know,
18 7:30 in the morning, it's pretty much a quiet area. We
19 usually don't start picking up calls till 8:30, 9:00 on
20 82nd Avenue there.

21 And when it went from a robbery to a car
22 prowl, and a third call coming in right within a short
23 amount of distance, all in the same time frame, the
24 concern was that it was a single individual that was
25 doing all this stuff.

1 So the fact that there was actually a gun
2 involved, and based on his demeanor, it seemed that it
3 was very obvious that there was a gun involved as scared
4 as he was. I wanted to make sure I had that information
5 out for the other officers that you have a potentially
6 armed subject in the blocks.

7 Q And on our diagram we have from the time of
8 the 911 calls that were dispatched to the call from
9 Mr. Suarez at 7:24 and then a call at the Banfield Pet
10 Hospital regarding a car prowl at 7:26 a.m., and then a
11 call from Marsha Pittman, the resident at 8322 NE
12 Tillamook at 7:35 a.m.

13 So three calls in close succession, were
14 you aware of those calls? Were you hearing those calls
15 over your police radio?

16 A Yes.

17 Q So when you're hearing those coming out, what
18 are you thinking? How does that shape your contact with
19 Mr. Suarez?

20 A When I contacted Mr. Suarez, from seeing his
21 demeanor and the way he was behaving, it was obvious
22 that he was seriously traumatized by what had just
23 happened to him, which obviously increases your
24 awareness of this is something serious going on here.

25 And as you know, the car prowl issue

1 occurred. And then this third call of a person banging
2 on the door and everything else, you are all within a
3 very -- you know, couple hundred yards as it's moving
4 kind of in a northeast manner.

5 My concern was the fact of the firearm,
6 and that was the reason why I had Mr. Suarez -- he
7 couldn't leave. His car was out of gas because he had
8 run out for the night.

9 So I had him go back to the hotel where he
10 could feel safe over there and said, "Listen, I'll come
11 back to you. I need to go cover these other officers
12 and figure out what's going on." He was good with that.
13 So I had left to go to the Tillamook address to cover
14 the other officers.

15 Q Before you left Mr. Suarez, did you have the
16 opportunity to ask him whether any of his property was
17 stolen during the reported gunpoint robbery?

18 A Yes. He had said the suspect had gone through
19 his wallet and took his EBT card, but had also taken a
20 green vest that said Alaska on it, a patch that said
21 Alaska.

22 Q An EBT card, is that --

23 A Oregon Trail.

24 Q Food stamp card?

25 A Yes, debit state card.

1 Q Okay. Did you notice any damage to
2 Mr. Suarez's car at that point?

3 A At that point, no.

4 Q Later on, you did return to Mr. Suarez's car,
5 I believe.

6 A Yes.

7 Q What did you notice about it in your later
8 contact?

9 A He had showed me later on when I reinterviewed
10 him on how the defendant had -- the suspect had gotten
11 into the car and was sitting in his car with him and had
12 actually pulled the glove box down, breaking it, so it
13 was on the floor of the car.

14 Q So you saw the damage to the glove box?

15 A Yes.

16 Q And also before you left Mr. Suarez to go to
17 respond to these other calls that were coming in, did he
18 describe how his contact with the armed robber ended and
19 what the robbery suspect did when he left?

20 A He said the suspect was -- his demeanor was
21 the suspect was very cool about it; that he obviously
22 had done this before and was experienced.

23 You know, the suspect had tried to get him
24 to drive around to do other robberies. He said that
25 when the suspect got out, he put the gun into the front

1 of his pants and just nonchalantly walked away as if he
2 didn't care.

3 Q Okay. And so after you received that
4 information, if I understand this correctly, the report
5 of the robbery, description of the gun, what was stolen
6 from Mr. Suarez, and then the robbery suspect leaving,
7 according to Mr. Suarez, and putting the gun into his
8 waistband, you told us that you broke contact with
9 Mr. Suarez.

10 A Yes.

11 Q Where did you go?

12 A That is when I drove over to the Tillamook
13 address.

14 Q Would you mind showing us on that diagram
15 where you went?

16 A Sure.

17 So when I was interviewing Mr. Suarez
18 here, that's when Officer Tatro and Officer Rippe were
19 arriving here. We weren't sure what was really going on
20 there, because while interviewing Mr. Suarez, it's tough
21 to listen to your radio at the same time. I wasn't sure
22 if it was a potential burglary in progress, but
23 something really odd was going on.

24 So I just pulled up to Tillamook. And as
25 I was arriving was when Officer Tatro and Officer Rippe

1 had contacted the person, and were asking for cover to
2 speed up because he was being noncompliant with them.
3 So that's when I arrived at the location there.

4 Q Okay. And can you describe for the Grand
5 Jury -- you can resume your seat.

6 But as you arrived then, what's kind of
7 the word picture? What are you seeing as you come up to
8 that residence?

9 A The residence is what they call a flag lot, so
10 it is a house behind a house. As I came around the
11 corner, the driveway -- looking down the driveway, there
12 was a car parked in the driveway. On the right side of
13 the car --

14 Q So this is a photograph of the driveway going
15 up -- going out.

16 A So I came around the corner there where that
17 blue barrel is, coming this direction.

18 Q Okay. So it's a long driveway with a rather
19 tall fence running down one side of it.

20 A Yes. Yes.

21 Q You're looking from the street down the drive;
22 is that correct?

23 A Yes.

24 Q Okay. And that's looking towards the backyard
25 and the side yard?

1 A So when you look down the driveway, the
2 driveway goes all of the way to the end of the property
3 and the house sits off to the right.

4 So as I came down there, the house is off
5 to the right, facing towards the driveway that's there.
6 There was a car sitting there in the driveway.

7 Kind of at the end of the fence where the
8 fence turns off for the -- I don't think the aerial
9 photo shows kind of how it is -- but the fence line here
10 that's kind of going back, there's a side yard before
11 you get to the house.

12 So as you come down the driveway, you have
13 that side yard and then the house, and there was a car
14 sitting right there.

15 So as I came down the driveway, Officer
16 Rippe was at the corner of the fence as you came down,
17 which would be the west side of the driveway, and then
18 looking down this direction.

19 And Officer Tatro was on the other side of
20 the car across the hood, and they were trying to talk to
21 the person who was standing in the yard here to the left
22 of the luggage. You can't see -- the house is right to
23 the left of this picture.

24 Q Okay. And could you see from your vantage
25 point the subject that the officers were confronting?

1 put your hand behind your head and back up to us. We'll
2 get this straightened out. We'll figure it out," trying
3 to calm the situation and all.

4 And he started putting his hands down
5 around his -- towards his waist again. Then I told him
6 to, "Get your hands up. Put them behind your head."
7 And, you know, this was all within a couple seconds.

8 And that's when he brought his hands up.
9 And he kind of had them up here, and then he brought
10 them down a little bit. And I told him to get them up.
11 He got them up higher.

12 And then he just kind of turned and
13 ducked, sort of like he's getting ready to run. But he
14 took both hands, and he jammed them into this front
15 waistband as he was starting to move.

16 Usually when you'll see like people with
17 sagging pants that decide they are going to run, they'll
18 grab one hand to pull up their pants so they can run.

19 When they are sticking both hands down
20 into that front waistband, then usually they got
21 something concealed there. He started that little duck,
22 like he was going to move, and he put his hands down,
23 and he started just going around with his back to us
24 around the blind corner and the rear of the house.

25 Q Did you chase after the suspect?

1 A As he went around the blind corner of the
2 house, I looked over, and Officer Tatro, he had heard
3 what was going on. He was looking down the west -- the
4 south side of the house looking west. So I knew he had
5 a visual down that direction. I don't know what was
6 down there, but he was looking there.

7 I wasn't about to chase him at this point
8 when he did that overt dive into his pants, like I
9 assumed right then that this was going to be our robbery
10 suspect with a gun, and I'm not going to go running into
11 a blind corner.

12 Then I heard a hit from the fence, like a
13 thunk of somebody like trying to go over a fence. Then
14 I ran back out of the driveway and down, you know, west
15 on Tillamook. Figuring if he had gone west, then at
16 least I was paralleling him, and I could kind of block
17 him off if he was to come that direction.

18 Q Okay. But to be clear, is this right, that
19 you did not immediately chase him on foot because you
20 thought he was armed?

21 A Correct.

22 Q And is that something that's in the training
23 for the Portland Police Bureau?

24 A Yes. Yes.

25 Q And what's the thinking behind that, the

1 training, because as I understand it, it used to be
2 common practice for police officers to chase a suspect
3 in that situation?

4 A Once you lose sight of the suspect, the fear
5 is being ambushed. And it's better to surround the area
6 and do it safely as opposed to -- one of my friends was
7 a police officer chasing an armed suspect that was
8 murdered back in 1997.

9 So very, very sensitive to me about
10 running into a blind corner where you can be set up.
11 I've had other cases where we've gone after the fact and
12 found weapons. So you just basically set your
13 perimeter, get everybody in, and then go in in a safe
14 manner to address the issue.

15 Q When you were interviewed by the detectives on
16 the morning of February 9th, 2017, you were pretty clear
17 that you said to yourself, I'm not going to chase that
18 person.

19 A No, not around that corner.

20 Q I think he has a gun.

21 A No.

22 Q During that confrontation in the side yard of
23 the house of Marsha Pittman, in your mind were you
24 thinking this was the same person who had robbed Armando
25 Suarez more likely than not?

1 A I believed it was. I wasn't a hundred percent
2 sure. But definitely more likely than not, it probably
3 was him just based on the time frame and the basic
4 description.

5 But the minute that he dove into that
6 waistband, like he did, it made me feel very strongly
7 that this was the same individual that had been armed.

8 Q Okay. And we saw in that picture a small
9 suitcase and some articles kind of strewn around on the
10 ground there in the side yard here.

11 Were those the articles that this subject
12 left behind as far as you could tell?

13 A That was -- you know, when I got there, my
14 interaction with him was only several seconds long,
15 three or four seconds long. And I saw that stuff there,
16 but I don't know where it came from --

17 Q Okay.

18 A -- or what it was related to.

19 Q But that was there at the time?

20 A Yes.

21 Q And so then moving ahead in time.

22 After he fled, you described your
23 immediate steps. What did you do thereafter?

24 A I was in front of the houses to the northwest
25 of this location, basically holding a perimeter to see

1 if I could see him coming through a backyard or
2 challenge him if he came out in my direction while they
3 were setting up the rest of the officers.

4 Q All right. And so you stayed on the
5 perimeter.

6 A Yes.

7 Q And an officer-involved shooting was then
8 broadcast at 9:21 a.m.

9 Were you still on the perimeter at that
10 time?

11 A Yes.

12 Q And did you hear the gunshots?

13 A Yes.

14 Q Before you heard gunshots, did you hear
15 anything else?

16 A I heard the radio traffic. There was some
17 yelling, but it happened extremely fast.

18 Q Okay. You couldn't see from where you were
19 the perimeter and taking in the location where the
20 shooting occurred?

21 A No.

22 MR. REES: All right. Are there any
23 questions from the Grand Jury?

24 A GRAND JUROR: What was he wearing when
25 you saw the suspect?

1 THE WITNESS: When I saw him?

2 A GRAND JUROR: Yes.

3 THE WITNESS: It was -- he had, like, a
4 dark sweatshirt with, like, an olive drab or
5 green-colored sweater or jacket or something over it. I
6 wasn't sure if it was what was taken from Mr. Suarez or
7 not. I didn't know. I believe he had blue jeans on.

8 He had the hoodie up, so I couldn't get a
9 hair description, which we asked Mr. Suarez. And that
10 was part of the issue. We asked Mr. Suarez. He hadn't
11 seen the guy's hair.

12 But somebody called in that he had
13 dreadlocks. I don't know if that was the car prowler
14 person or what. Then when I got there, it happened so
15 quick, I didn't see the dreadlocks. I just saw his hood
16 was up.

17 MR. REES: Anything else?

18 Okay. Not seeing any further questions,
19 so we'll excuse Officer Ferner.

20 Thank you for coming in.

21

22

23

24

25

1 JULIE CHRISTIE,
2 a witness called on behalf of the State, having been
3 first duly sworn, was examined and testified as follows:
4

5 EXAMINATION

6 BY MR. AUXIER:

7 Q Just to start out, can you tell us your name
8 and spell your name?

9 A Yes. My name is Julie Christie, J-U-L-I-E.
10 C-H-R-I-S-T-I-E.

11 Q And you don't have to give us your address,
12 but do you live in the Portland area?

13 A I do, yes.

14 Q What part of town?

15 A Southeast Portland.

16 Q Got it.

17 And back on February 9th of 2017, did you
18 go to the Banfield Pet Hospital?

19 A Yes.

20 Q And why did you go over there?

21 A I went over there because I was taking my dog
22 to the vet that morning.

23 Q And about what time did you get there?

24 A It was right about 7:00 in the morning, so
25 they were opening right then.

1 Q Got it.

2 So you were like one of the first patients
3 there?

4 A Yes. I was trying to get an appointment in
5 because I didn't have one because my dog -- I woke up
6 and my dog wasn't feeling very well.

7 Q I see. And you drive there?

8 A Yes.

9 Q And what kind of car did you drive?

10 A I drove a Ford Focus, a 2014.

11 Q And did you go there alone?

12 A Yes.

13 Q And when you parked in the driveway, were
14 there many other cars in the parking lot?

15 A Not a ton. Maybe a couple. I think there was
16 maybe one or two. It was, it was right when they were
17 opening. So they had, you know, probably a couple
18 employees and then me and maybe one or two other people
19 that were waiting or going in.

20 Q And when you entered the hospital, did
21 something unusual happen shortly thereafter?

22 A Yes. So I went in and was waiting for the
23 doctor. And, um, another person that was bringing our
24 pet in came in, and I think reported to one of the
25 people that works there that a car had been broken into.

1 And so they were asking around who drove a Ford Focus,
2 and it ended up being me.

3 So do you want me to just tell you what
4 happened?

5 Q Sure.

6 What happened next?

7 A So I ended up leaving my dog with the vet, and
8 I walked out to my car, because I was just going to go
9 get all of my stuff that I was taking to work.

10 And, um, I kind of saw some movement in my
11 car, but it didn't really register to me that there was
12 someone in my car until I got up a little bit closer.

13 And I had -- my passenger side window,
14 front window had been busted out, and there was a, a guy
15 sitting in my car, kind of rummaging through a bunch of
16 stuff.

17 And my car was just pretty trashed. And I
18 asked him what he was doing, because I was a little bit
19 startled, and I was a little bit frustrated and upset
20 because my dog was pretty sick.

21 So he responded that it was his aunt's
22 car. And I basically said, "This isn't your aunt's car.
23 This is my car and you need to get out." And he kind of
24 sat there and argued with me, I guess, a little bit.

25 And I had -- I basically then just said,

1 you know, "I'm calling, I'm calling the police." So I
2 kind of stepped back a little bit, because it started to
3 register to me what I was, you know, going through at
4 the time.

5 And I then -- I think he then got out of
6 the car, and I was calling 911 at the time. And I
7 started to get really nervous, so I just started acting
8 like I was talking to 911.

9 Q Let me stop you there.

10 A Yeah.

11 Q Okay. What made you feel nervous at that
12 moment and made you act like you were already talking to
13 dispatch?

14 A Um, I think it was that I -- it started
15 registering to me that this person had obviously broken
16 into my car. And, um, they came out and, you know, just
17 like when, when they were lower than me, I was like -- I
18 don't know.

19 They came out, and they were taller, and
20 it just all started, oh, my gosh, you're confronting a
21 person that just broke into your car. And I really
22 didn't know what -- you know, like it just scared me a
23 little bit.

24 Q When he got out of the car, did he walk
25 towards you?

1 around the corner there. And then he kind of had his
2 back to me, and he was kind of fiddling like this with
3 his back to me (indicating.)

4 And then he turned around and saw me, and
5 kind of yelled something else at me, and then he just
6 kind of headed down the street. Down Hancock basically
7 is where he was. And then I turned around and left just
8 'cause I wasn't really expecting to run into him again.
9 I was just trying to see a street sign.

10 Q When you saw him and he was fiddling with
11 something, can you describe that in more detail?

12 A Yeah. It was -- well, to be quite honest, I
13 thought he was going to the bathroom because it looked
14 like he was fiddling with his like belt buckle. His
15 pants weren't down or anything. But it was just like
16 what is he -- I was kind of like, what is he doing?

17 But he just had his back to me and kind
18 of -- he had, he had like kind of like a rolling
19 carry-on bag with him that was just sitting to the side.

20 And he had just -- kind of was, you know,
21 doing something like this. And then he turned around
22 and just took his stuff and went, so I couldn't -- I
23 honestly couldn't see what he was doing.

24 Q His back was to you, though?

25 A His back was to me, yeah, until he turned

1 around, but he was already kind of, you know, done with
2 whatever he was doing.

3 Q Did it seem like he put both hands near his
4 belt buckle area of his pants?

5 A Yeah. It was almost, like, he was, like -- I
6 mean, it would be, like, if you came upon somebody who
7 might have been tucking their shirt in or, like, doing
8 their belt, or you know what I mean. It was almost that
9 kind of a -- what I was thinking it looked like.

10 Q Got it. And to backtrack a little.

11 After he ran down in the direction of
12 Hancock, you didn't see him again?

13 A Not until I walked down there, yeah.

14 Q Got it.

15 A Yes. I saw him basically twice: Once in my
16 car and then once when I approached the street sign.

17 Q I see.

18 A Uh-huh.

19 Q And based on those two different interactions,
20 were you able to give the police a description of --

21 A Yes.

22 Q What did you say?

23 A He was a young African-American man with
24 dreadlocks, probably shoulder length. He had a black
25 hoodie. He was wearing jeans, and he had dark-colored

1 shoes and kind of a light either gray or whitish-colored
2 belt on. Um, and he had a dark-colored rolling kind of
3 carry-on bag with him as well.

4 Q Do you remember, was it after that second
5 confrontation at the intersection that you went back to
6 your vehicle and assessed what was missing?

7 A Yes. Well, yes, uh-huh. I was waiting for
8 the police actually at my vehicle at that time.

9 Q Got it.

10 And once the police arrived and you told
11 them what happened, were you able to look inside your
12 vehicle and see what was amiss?

13 A Yeah. I mean, honestly, I, I didn't really
14 look a whole lot at that point in time. I was, I was
15 really kind of worried about my dog. And my car was
16 trashed, like there was stuff thrown everywhere.

17 There was some items that didn't belong to
18 me in there. And there was like a green vest and some
19 Handy Wipe-type things in there. And there was like --
20 there was glass everywhere.

21 So I honestly didn't -- you know, I didn't
22 want to rummage through stuff. I went and got towels
23 from Banfield and put it down so I could drive home to
24 clean my car out.

25 So I really -- you know, I knew that my

1 lunch bag was missing. I knew that -- I want to say my
2 lunch bag, which obviously had my lunch items and had my
3 knee brace and a wrist brace in there and everything
4 else. I really couldn't tell because I had like CD's
5 thrown everywhere.

6 My glove box was opened and everything was
7 gone, but I didn't know if it was in my car or things
8 were thrown in the back seat, so it was really hard to
9 tell what was missing at the time.

10 Q Was your glove box damaged at all?

11 A No. It, it just had been opened and
12 everything pulled out.

13 Q Got it.

14 Was there any of your property that was
15 inside the glove box before the car prowl that was now
16 missing?

17 A Later, yes. I found -- I mean, yes, there
18 was. I kind of assessed it later. There was, like, my,
19 my car manual was gone and my, like, insurance cards.

20 And, gosh, what else? My glasses were
21 gone, but I can't remember if my glasses were in my
22 glove box or in the side part because I go back and
23 forth to where they are.

24 And I mean, there was, like, my water
25 bottle, but that wasn't in the glove box, but a water

1 bottle. That means a lot to me to know that my water
2 bottle was particularly missing.

3 Q What did the water bottle look like?

4 A It was a green, like, Nalgene 32-ounce bottle
5 that had a sticker that said 'The Zoo Needs You' on it.
6 I work at the zoo. So the sticker is kind of a lot of
7 the animals that I've worked with. It's one of those
8 that I like to keep.

9 Q And the lunch bag, can you describe that?

10 A Yeah. It was kind of like a pink and brown,
11 um, just like a little tiny grocery bag. It's probably
12 about this big (indicating) very -- kind of flowery-ish
13 type. I'm busy looking. Right there.

14 Q Let me show you these pictures here.

15 A That's it.

16 Q Do you recognize this bag in this picture?

17 A Yes. That's my bag.

18 Q That was taken from your car this day?

19 A Yes.

20 Q I'm going to show you some other pictures that
21 the police took later that day. Tell me if you
22 recognize anything here.

23 A Okay. That's my water bottle. My wrist
24 brace, my knee brace is over there, my lunch bag. It's
25 hard to see.

1 Q Right now I've got the little curser on the
2 bottle. Is that the bottle from your car?

3 A Yes, uh-huh. And then that is a wrist brace
4 that's right there. And my knee brace is right over
5 there. That's my lunch bag there. The other stuff --
6 it's --

7 Q Does this rolling bag look familiar to you?

8 A That is what, yeah, he was carrying or similar
9 to. And that actually was my -- what I keep my
10 insurance in is that top thing there.

11 Q A little plastic billfold-type.

12 A Like my insurance and passenger registration
13 card would have been in there. Those are my silverware,
14 my wrist brace, the plastic bag I think that was in
15 there, and probably that throw quilt might have been
16 mine.

17 The lower -- I can't read that. The Ford
18 thing up above is -- I have one that's like that that
19 was missing. And then it looks like that could be my
20 insurance. I can't see it. Yup, that's me.

21 MR. REES: Just for the record, you're
22 seeing your name on the insurance registration
23 information?

24 THE WITNESS: Yes.

25 MR. AUXIER: Any questions from the Grand

1 Jury?

2 A GRAND JUROR: At any time when you saw
3 this person or when he was in your car, did you see him
4 with any weapons of any type?

5 THE WITNESS: I did not, no.

6 BY MR. AUXIER:

7 Q Ms. Christie, when you saw his belt that you
8 described as being kind of lighter colored, was that
9 during your first interaction with him or at the second
10 interaction?

11 A Um, I think I feel like it was both. I feel,
12 like I said, to the 911 operator, like I remember seeing
13 it both because it kind of just contrasted, you know.

14 You know, it was like darker-colored
15 jeans, darker-colored hoodie, and the belt was just
16 light in color. So I just remember seeing that very
17 clearly.

18 MR. AUXIER: Okay. No further questions.

19 A GRAND JUROR: So I think I missed that
20 part. So when did you see this light-colored belt?

21 THE WITNESS: Um, when he was getting out
22 of my car, and I first had started giving a description.

23 Um, I -- when I was talking to 911, I was
24 just really trying to get, like, distinguishing things.
25 And then later when I walked down to get -- to look at

1 the street sign, when he was standing there with his
2 back to me, I could see the light-colored belt.

3 MR. AUXIER: Thanks, Ms. Christie.

4 I think that's it.

5 A GRAND JUROR: Thank you very much.

6 THE WITNESS: Thank you.

7

8

9

HEATHER RIPPE,

10 a witness called on behalf of the State, having been
11 first duly sworn, was examined and testified as follows:

12

13

EXAMINATION

14 BY MR. AUXIER:

15 Q So, Officer Rippe, to start out, can you --
16 can you tell us your name and spell it?

17 A Heather Rippe, H-E-A-T-H-E-R. Rippe,
18 R-I-P-P-E.

19 Q And what do you do for a living?

20 A I am a police officer with the City of
21 Portland.

22 Q And how long have you been doing that?

23 A Almost 19 years.

24 Q And were you working on February 9th of 2017?

25 A I was.

1 Q And what shift were you working back then?

2 A I was working A shift, which is 7:00 a.m. to
3 5:00 p.m.

4 Q And when you started your shift that day, did
5 a call come out regarding a robbery that occurred at the
6 Value Inn?

7 A Yes.

8 Q If you don't mind -- well, actually I'll have
9 you stay seated here for a second.

10 When that call came out, were you
11 dispatched to that call?

12 A No.

13 Q How did you first hear about it?

14 A I heard it over the air. Dispatch had given
15 it to Officer Ferner and Officer Tatro.

16 Q When you heard that over the air, did you
17 respond in any way to that call or did you --

18 A Not to that call, no.

19 Q What did you respond to? Was there another
20 call shortly thereafter?

21 A Another call came out, so Officer Ferner and
22 Officer Tatro were going to go to the robbery call.
23 Officer Ferner cleared Officer Tatro because another
24 call came out of a car prowl that just occurred close
25 by.

1 Q Got it.

2 A Officer Tatro started for that, and I became
3 cover for Officer Tatro on the car prowl.

4 Q And when you became cover car for Officer
5 Tatro, where did you go?

6 A I was headed -- I can't remember -- towards 84
7 and Tillamook, over by the DMV or Banfield.

8 Q And did you make it there?

9 A I almost did and then Officer Tatro had
10 cleared me. He said, "I'll do the area check and you
11 can go." So I turned back around, and I was at 82 and
12 Glisan, and I got called back for another call that may
13 have been related.

14 Q What was that call?

15 A That call was, um, a caller at 8322 on
16 Tillamook was calling saying an unknown subject was
17 pounding on her door. And she was concerned because
18 her -- in order to get to her residence, it was
19 completely fenced in, and the person would have had to
20 have jumped over the fence.

21 Q Got it.

22 And can you stand up and show us on the
23 map where these locations that we're talking about are?

24 A Oh, goodness. This is 82nd. So obviously,
25 kind of -- the robbery was over here and the car prowl

1 was here, right in here. And then --

2 Q And you're pointing to that --

3 A I'm sorry. 82 and Schuyler area was where the
4 incident occurred. And I was called to 8322 on
5 Tillamook, so two blocks away, three blocks away.

6 Q About what time did that call come out?

7 A 7:35 a.m.

8 Q All right. You can return to your seat.

9 When you responded to 8322 NE Tillamook,
10 what did you do?

11 A Well, first, I didn't realize it was a flag
12 lot. So I asked dispatch, I was, like, "I can't find
13 the residence." She directed me, and told me it was a
14 flag lot.

15 I then saw the gates were completely
16 closed, so I decided to wait for Officer Tatro before I
17 went to the backyard. So while I was waiting, I called
18 the complainant to see if she could still see the guy or
19 if he was still in the backyard. She said she didn't
20 know.

21 Q So you just parked out front?

22 A I just parked out front, yes, and I waited.

23 Q And you're working a solo car; you don't have
24 a partner in your patrol car?

25 A Correct.

1 Q And so as you wait for Officer Tatro, you just
2 call Ms. Pittman, the 911 caller, from your own cell
3 phone?

4 A From my Bureau-issued phone, yes.

5 Q Got it.

6 And tell us about that conversation.

7 A I asked her if she still -- I told her I was
8 there. I asked her if she still saw the suspect or the
9 guy. And she said no, that she had a big backyard.
10 She, she didn't know if he was still there.

11 I told her I was waiting for another
12 officer to come and then we would go and check it out.
13 And she told me that the gate is locked, but that I
14 could go and get a chair at the neighbor's along the
15 fence line and stand on the chair and unlock the gate.

16 Q You needed to stand on a chair to get over the
17 fence?

18 A Yes.

19 Q Was this -- about how tall was this gate, this
20 fence?

21 A Probably eight feet.

22 Q Can you see through it?

23 A No. No.

24 Q Relative to other fences in the area, was it
25 taller or shorter?

1 A It was taller.

2 Q About what time was it? How much later was it
3 when Tatro arrived on scene to cover you?

4 A It seemed like forever, but it took a little
5 bit of extended time because he didn't realize that the
6 dispatcher had told him to come and cover me. So it was
7 probably ten minutes.

8 Q And when he got there, what happened?

9 A We walked over. We had to go get the chair
10 and drag it over to the front of the fence. And he
11 stepped on it and unlocked the gate from the other side.
12 Reached over the fence and unlatched it. We used the
13 chair to prop it open. Then we started down the
14 driveway.

15 Q And I should have asked you this earlier.

16 Were you in standard Portland Police
17 Bureau uniform?

18 A Yes.

19 Q The same with Officer Tatro?

20 A Yes.

21 Q And what did you see as you walked into the
22 Pittman property on the other side of the fence?

23 A So it is a very long driveway, and there's a
24 car parked at the end of it and then the house is off to
25 the right. And then you can't see what's on the other

1 side of the fence until you get to the very end towards
2 the front of the house.

3 So Tatro went first and we walked down
4 there. And about the time he got to the car, you could
5 see around the corner and saw the, the man was still
6 there.

7 Q How did you know Tatro had seen someone?

8 A Because he told me, like, "He's right there."

9 Q Did he start addressing the person that he saw
10 before you saw him or did you see him just minutes --
11 moments?

12 A It would have been moments. But he, he put
13 himself on the other side of the car, so he had the car
14 between him and the guy. And then I went to the edge of
15 the fence. And I think when he got to the front of the
16 car is when he told the guy to get his hands up.

17 Q So at this point where are you standing and
18 where is Officer Tatro standing?

19 A I'm standing at the edge of the fence.

20 MR. REES: So that shows the driveway with
21 the fence along the side; right?

22 THE WITNESS: Correct. That's the view
23 between the neighbor and the driveway there, so we
24 didn't go in the other --

25 MR. REES: This isn't the --

1 THE WITNESS: That's the side. That's
2 about where I was at at the edge of the fence there.
3 That's where the corner is. I was standing at the
4 corner and then there's a vehicle where the cameraman
5 is.

6 BY MR. AUXIER:

7 Q Basically where the photographer is standing?

8 A Where the photographer is standing is a car,
9 and Tatro was on the other side of the car.

10 Q And you were, too?

11 A No. I was at the edge of the fence.

12 Q I see.

13 A So the fence goes like an L, and I was at the
14 corner.

15 Q And on the right side of that picture where
16 you see the fence, that's just -- that sort of right
17 side is the corner of the fence where the fence turns
18 right.

19 A Correct.

20 Q Got it.

21 What kind of car is Tatro standing by?

22 A I don't remember.

23 Q Okay. So there's -- down towards the end of
24 that little stretch of property, you can see some items
25 kind of strewn about on the ground.

1 Is that where the subject was located?

2 A Yes. He was standing over the black suitcase
3 there.

4 Q And he was -- so he was standing.

5 A Correct.

6 Q What else did you notice about him physically
7 when you first saw him?

8 A That he matched the description of the car
9 prowler subject that Tatro was on -- he was a black male
10 with dreadlocks, and he had a dark hoodie and jeans, or
11 some sort of pants on.

12 Q So describe your -- the police interaction
13 with the subject at that time.

14 A Tatro told him to get his hands up. He put
15 his hands halfway, just about to his shoulders. And he
16 kept telling him, "Get your hands up. Get your hands
17 up."

18 He's like, "What's this all about? What's
19 going on?"

20 And Tatro is just, like, "Get your hands
21 up and we'll talk about it."

22 He's like, "No, just -- I live here. Go
23 talk to my guardian. They are inside."

24 And I think he gave a name, but I can't, I
25 can't recall that name. Go check with so-and-so. But I

1 knew that it was not the homeowner because I just talked
2 to the homeowner, Marsha, on the phone. I was in the
3 front of the house waiting.

4 Q Was Tatro -- you described commands that Tatro
5 made. Was he making all of the commands?

6 A I gave very few. I thought it better just for
7 one person to direct the attention.

8 Q And does he have a clear line of sight towards
9 you and Tatro at this time?

10 A Yes.

11 Q Do you have weapons drawn?

12 A Um, I started for my Taser. He had his -- I
13 don't know. I think he had his gun drawn, but I do not
14 know because I was focused on the -- my attention was
15 towards the suspect, not Tatro. He was behind me.

16 Q And this distance between where you were
17 standing and where the subject was, what would you
18 describe that distance as?

19 A Twenty-five feet.

20 Q Did -- at this time what is your belief about
21 whether or not the subject has a weapon?

22 A I did not know. I didn't hear the description
23 of the robbery suspect. I was pretty confident that
24 this was the car prowl suspect, but I had not correlated
25 the two together.

1 Q Got it.

2 Do you remember Officer Tatro making any
3 comments about whether or not the subject had a weapon?

4 A He told the guy to put his hands up. At one
5 point he told him, "I believe you have a weapon. If you
6 make a move for that weapon, you'll be shot."

7 Q As you, you described it earlier that his
8 hands were raised, but they were raised at about
9 shoulder length (sic).

10 A Correct.

11 Q Is that a normal response when an officer
12 commands someone to get their hands up?

13 A No. Usually they put their hands all of the
14 way up. And it wasn't like he left them there. He just
15 started to put them down. He talked, and then he would
16 start to put them down. "Get your hands back up." And
17 he never would go past this point.

18 And we asked him -- Tatro asked him to
19 walk back towards us so we could talk about it. He, he
20 refused. And he's like, "No. I know how these things
21 go. No. I'm not going to do that."

22 Q So after Tatro is making these commands
23 repeatedly, and it doesn't sound like the subject is
24 complying with the commands, he's not walking towards
25 you, he's not keeping his hands up, what do you and

1 Officer Tatro decide to do?

2 A Well, I had told dispatch that he wasn't
3 complying, so they started sending more cars. Officer
4 Ferner at some point had shown up quickly.

5 And then at that point Tatro asked, "Well,
6 should I just go talk to the homeowner to make sure that
7 she doesn't know this?"

8 Like, "Well, okay," because it was kind of
9 like a lull, like he's not doing anything. He's just
10 standing there not following orders. But he wasn't
11 making any -- he just kind of put his hands down and he
12 wasn't doing anything.

13 So we had that opportunity to go and knock
14 on the door. So Tatro took the opportunity, knocked on
15 the door. She's like, "I don't know him." And he said
16 then to get back in the house.

17 At that point that's when he decided to
18 run. And he turned -- do you want me to keep going?

19 Q Sure.

20 A I don't know if there was a question.

21 So he dropped his left hand as he's
22 turning around and started holding his left side and
23 took off around the corner. And that's when I knew that
24 this probably is the robbery suspect. It just, like,
25 just like clicked with me.

1 Q Why?

2 A Because I felt that he was going for a weapon.
3 And I was, like, oh, he's got something because I've
4 never seen that before in anybody else that doesn't have
5 a weapon, that they go right to hold it when they take
6 off running.

7 Q Got it.

8 So you said his hand moved down towards
9 his waist like he was holding something.

10 A Correct.

11 Q Did you say side or waist?

12 A Well, it was right in between his side and
13 waist, like right here, like he had something in his
14 waistband. So that when he goes to run, he's either
15 grabbing for it or holding it so it doesn't drop.

16 Q When -- and then -- so looking at this picture
17 that we're using as a reference, did he go -- he turned
18 left around the corner there?

19 A Correct.

20 Q And you watched that happen?

21 A I watched that happen, yeah.

22 Q And I imagine you lost sight of him relatively
23 quickly?

24 A I did.

25 Q And what happened next?

1 A Well, because I saw that movement, I was --
2 did not chase, followed behind him. Tatro and I both
3 had our weapons out. And we started to pie around the
4 other side slowly, around the other side of the house.

5 Q What do you mean by "pie"?

6 A I mean, like taking the corner very, very
7 slowly so that if he was there and he had a weapon, we
8 would be ready for him versus just chasing after him.

9 Q So you're moving all of the way around the
10 left side of the house.

11 A Very slowly.

12 Q And --

13 MR. REES: Is that the corner we see in
14 the photograph?

15 THE WITNESS: No. So that's the garage
16 there on the left and then the front door and then the
17 corner of the house. So we went to the other side. So
18 he goes this way, we go that way.

19 BY MR. AUXIER:

20 Q When you got to the other side, did you have a
21 clear line of sight to the backyard like you do on this
22 side?

23 A Yes. But obviously, you can't see what's in
24 the back of that fence. There's, there's property
25 between the sliding glass door and that back gate right

1 there, that back fence right there, so we could not see.
2 It looks like this. You could see all of the way down
3 on the side, but you couldn't see around that corner
4 either.

5 Q Once you got to the left side of the house and
6 looked towards the backyard, did you see the subject?

7 A No.

8 Q And Tatro was by your side at that moment?

9 A Correct.

10 Q And he didn't mention seeing anyone either?

11 A He didn't see anybody either, no.

12 Q Did you hear anything noteworthy at that time?

13 A I did not. Ferner had gotten on the radio and
14 said that he thought that the subject had jumped the
15 fence.

16 Q Were you able to eventually clear the entire
17 Pittman property here?

18 A Yes. Yes.

19 Q And you didn't find anyone?

20 A Correct.

21 Q What happened next?

22 A Well, started calling for whoever was
23 available to come. Got K-9 en route. I went back out
24 to the front of the driveway. We put up a perimeter and
25 started to look for him.

1 Q And by "perimeter --"

2 A Perimeter meaning, well, he's probably within
3 three blocks in each direction, so get a car in each
4 direction -- put a car within that three-block radius so
5 you have him surrounded.

6 Q And you were part of that perimeter.

7 A I was.

8 Q And your location within the perimeter was
9 essentially, going back a couple of pictures to the, out
10 here by the blue bin.

11 A Correct.

12 Q You are in your police car?

13 A Well, my police car was actually parked a
14 couple houses down originally. And I actually moved my
15 car up and took cover because at that point I honestly
16 believed that he was armed. If he came back down the
17 driveway, I would at least have space between me and
18 him.

19 Q Did you see him at any point?

20 A I did not.

21 Q Did you eventually hear the sound of shots
22 being fired?

23 A I actually did not.

24 Q How did you learn that shots had been fired?

25 A It was immediately got on the air and said

1 shots had been fired.

2 Q About how much time had passed between your
3 last sighting of the subject and the radio call out that
4 shots had been fired?

5 A It was a while. I don't remember time-wise,
6 but it was a half-hour. Longer, I want to say. It was
7 a long time.

8 Q Did you take a look at the property that was
9 over by the roller bag at any point after he ran off?

10 A I didn't go through it. I just saw that there
11 was some clothes strewn.

12 I know Tatro that -- he had mentioned on
13 the radio when we went around, after we had cleared the
14 house, he continued on. I went the other way around --
15 I went back how we came he went. He continued around
16 the house. And he looked at the stuff and said that
17 that was the -- he got on the air and said that's the
18 car prowler victim's stuff.

19 MR. AUXIER: Any questions from the Grand
20 Jury?

21 Thanks, Officer Rippe.

22 THE WITNESS: Thank you.

23 A GRAND JUROR: Thank you.

24

25

1 And what was that?

2 A That morning I was upstairs, and my kids is
3 downstairs, and my dog was downstairs, and I heard the
4 dog, you know, with -- you know, bark. And then I hear
5 my daughter calling me.

6 So I thought it was my son just went with
7 the dog. And then I heard her call me again so I run
8 downstairs, and she says, "Someone is at our door." And
9 I was getting ready to go to the front door, but then
10 she says, "No, the back sliding door."

11 And so I see my dog just barking
12 aggressively at this person. So I was just, like, okay,
13 so I opened the kitchen window. I didn't see nobody.

14 So then I just went to the door and I
15 pulled the curtain back, and there's a young guy
16 standing there holding a suitcase. And I just started
17 yelling at him, "Get out of my yard."

18 So he stood there for a while. I kept on
19 telling him to get out of my yard. And he's, like, "I
20 need, I need to ask you something."

21 I says, "No. Get out of my yard." And my
22 dog was still barking. And he was, like, biting at the
23 window. And so he stood there. And I said, "Where's my
24 phone?" You know, my daughter went upstairs, got my
25 phone, and I called 911.

1 Q Let me ask you about the high fence and the
2 tall gate because I have the impression that it would be
3 unusual for someone to simply come up to your front
4 door.

5 A Yes. So he wasn't at the front. He was at
6 the back. And the only way he could have gotten in was
7 to climb over through the backyard, over from a
8 neighbor's house to get into my yard.

9 Q Okay. So people don't come up to that back
10 door?

11 A No. No.

12 Q And so what did you think -- what did you
13 think was going on?

14 A I didn't know, I didn't know anything was
15 going on. I was just, like, why is this person in my
16 yard, and he won't leave, and he just kept on, you know,
17 like standing there.

18 And so when I called 911, I told them,
19 "Hey there's this person in my yard." And then I seen
20 him go to the left of him and around. And I'm, like,
21 well, how does he think he's going to get out, you know?

22 So he went to my front door and started
23 banging real hard and ringing the doorbell, like a kid
24 would playing with the doorbell.

25 And so I just went real quick, locked the

1 top lock of it both, and I told my kids, I said, "Get
2 upstairs." So he was, like, ringing and banging. He
3 started to shake the doorknob.

4 And so then I told them to get upstairs
5 and stuff and to stay upstairs. And the dog started
6 barking again at him, you know, looking out the curtain
7 and stuff, but he didn't leave.

8 Q When you say he was ringing the doorbell, it
9 sounds like not just a one-time dingdong, but like
10 dingdong, dingdong, dingdong, like ringing the bell like
11 that?

12 A He's like ding, ding, ding, ding, bam, bam,
13 bam, bam, ding, ding, ding, shaking the doorknob. And
14 so it was just, like, okay.

15 Q So what did you think when you heard all that
16 and saw that?

17 A I was just, like, I was scared, you know. My,
18 my kids was frightened and stuff. And my, my daughter
19 was talking to my husband. He was all of the way out in
20 Clackamas. She was talking to him, and he says, "I'm on
21 my way." And he said --

22 Q Your husband is on the phone?

23 A Yes, on the phone with my daughter.

24 And while she was on the phone with my
25 husband, I was on the phone with 911. And she told me

1 someone is coming and stuff. She took my information,
2 and she says someone will be there.

3 Q Were you worried that this person was going to
4 break into the house?

5 A Yes.

6 Q And why did you think that was a possibility?

7 A Because he wasn't leaving. I mean, if he goes
8 to the front door and starts shaking the doorknob or
9 ringing the doorbell like that and stuff, and just
10 like -- and he wouldn't leave. And I'm yelling at him,
11 "Get away from my door," and he just, he just stood
12 there.

13 So at that time my son thought he had
14 quit. And my son is, like, "Well, mom, I think he's
15 gone," and he went out to look out.

16 And I said, "Get away from the door." I
17 said, "Don't get by the door. Don't get by the window.
18 You guys just head upstairs. The police is coming."

19 You know, when she called me, the officer,
20 when she called me, she asked, "Well, is he still
21 there," and I says, "I don't know." I said, "My yard
22 goes all of the way around." I said, "He could be
23 anywhere," and he was still there.

24 Q Before the police officer, and I believe it
25 was a female police officer that called you on the

1 phone.

2 A Yes.

3 Q And you were talking first to the 911
4 operator, did you give a description of the person who
5 was at your door?

6 A Yes. She asked me. She asked me what he
7 looked like. And I said, "He's a black guy." And she
8 asked me the age, and I says, "I don't know." I said,
9 "He's probably in his early 20's, late teens."

10 Then she asked me if he had dreads, and I
11 said, "I don't know. He had a hoodie on."

12 So I went to the window, and I said,
13 "Well, he's still ringing my doorbell and knocking." I
14 went to the door and I peeked out. I says, "Yes." You
15 know, I said, "I can't tell if he had dreads because he
16 has his hoodie on."

17 Q And then the female police officer called you
18 and said, "I'm at your location. I'm at your house."

19 A Yes, she did. I thought she said she was on
20 her way. I said, "Somebody got to get here." I said --
21 she says, "I am here. I'm outside of your fence and
22 it's tall. How am I going to get in?"

23 So I had to tell her to go into the
24 neighbor's yard. I said, "The yellow house on your
25 left," I says, "she has some chairs against her fence

1 that are still there." So I said, "You are going to
2 have to use one of them unless you're over 6'5" to reach
3 over to unlatch the lock."

4 Q And if you would tell the Grand Jury what
5 happened after that conversation with the police
6 officer.

7 A So she said that her backup is coming. And
8 so, you know, I'm -- "Just stay inside. The backup is
9 coming."

10 And then I got off the phone with her, and
11 I told my kids, I said, "You know, do we just -- you
12 guys stay upstairs." I said, "The police is here and
13 they are coming."

14 And then the next thing I hear is, "Put
15 your hands up." So I figured, okay, he's still in my
16 yard. And so it was, you know -- and they, you know,
17 repeat it, "Put your hands up. Turn around. Put your
18 hands up" and stuff.

19 And so the next thing I told my kids, I
20 said, "He's not listening." I said, "Get upstairs."
21 And we just get in the farthest room because he's not
22 listening. You know, they said it several times.

23 Then, all of a sudden, I hear this knock
24 on my door, and I'm just, like, I'm not going to my
25 door. And so when the knock -- and so then the doorbell

1 rung, and then my dog started going crazy. And I'm
2 just, like, oh, my gosh.

3 So I'm like -- but I could still hear them
4 talk, one of the officers still talking, telling him to
5 put his hands up. Turn around. Put his hands up and
6 stuff.

7 And so I looked out my window and I seen
8 the officer standing there, so I opened the door. And
9 first I asked, "Who is it?" And he said, "The police."
10 Then so I'm like, "I don't know," so I opened the door
11 because I didn't know where the boy was.

12 I didn't know if he was at the edge of my
13 garage because I couldn't see. I could just see the
14 officer standing on the driver's side of my car. And
15 then the officer lady was standing on the passenger
16 side.

17 And he was like -- and I said, "I don't
18 know where they are at." So when I opened my door, he
19 asked me, do I -- you know, how long have I been living
20 here?

21 He also said, "He said I'm his guardian."

22 And I said, "I don't know the boy." I
23 said, "Get him out of my yard."

24 And so he asked me, he says -- so I told
25 him I've been living here for 12 years and stuff. And

1 he said, "Well, he's stating that you're his guardian
2 and he stays here."

3 I said, "I've never seen him in my life.
4 Get him out of my yard." And so the officer looked at
5 the other officer, shook his head, and kept on telling
6 him, you know, give him -- put his hands up and turn
7 around.

8 And then next thing, um, I says is, oh, my
9 gosh, he's not listening. So my son was, like, coming
10 downstairs. I said, "No. You still have to stay
11 upstairs. Stay upstairs." And the next thing I hear
12 is, "He's on the run."

13 Q How do you know he's on the run?

14 A I just heard the officer say it. "He's on the
15 run."

16 Q Oh.

17 A Yeah. I get -- I can't see anything, but when
18 I heard that, and I'm like, "You guys don't, don't even
19 come down here."

20 Q To your kids?

21 A Yes.

22 So from my bedroom window you could see
23 them running after him. And you could tell where he
24 hopped over the fence. And that's a fence I believe
25 that he came in at because my fence starts going down

1 like that, so it goes lower at the end, and so that's
2 the part he had hopped over.

3 Q What happened then to your morning routine?
4 You had kids who needed to get to school, and it sounds
5 like your husband was en route from where he was.

6 So what did you do?

7 A So it was strange because I was getting ready.
8 My daughter, she was really worried, and, you know, they
9 was getting ready to take a field trip to the high
10 school that day.

11 So I was sitting up here, and I'm
12 thinking, I says, wow -- you know, I'm thinking, well,
13 if he would have came again about six to eight minutes
14 later, my daughter had started asking can she go out and
15 start the car. She would have been outside and stuff.
16 And so thankful that didn't happen.

17 So they was sitting up here, and I'm just
18 like -- she was like, "Are we going to be able to go to
19 school? Is daddy coming?" So she was, she was really
20 frightened more than my son was.

21 And so I says, "Your daddy is on his way."
22 I said, "We'll be fine." I says, "The police is out
23 there and stuff." I said, "They are looking for him
24 because he's on the run."

25 And you could see -- look out and see the

1 officers. And so I said, "I don't know," and then I
2 hear a thud -- getting ready to knock on my door. And
3 then I was just, like, oh. And then my husband was
4 actually putting the key in the door.

5 And so, you know, I had to explain what he
6 looked like. You know, he was, like, "Okay."

7 "He's a 6'5" guy, he's going to come.
8 They have no relations and stuff."

9 So he said, "Yeah." He said -- you could
10 hear all of the police cars and stuff, and you could
11 hear all of the noise.

12 And so he stood up here, and I says,
13 "Well, I'm going to go ask her if I can get these guys
14 to school because I don't want them -- if anything
15 happened, I don't want them to hear all this."

16 So, you know, I was able to take them to
17 school and then I came back. And so she asked me if me
18 and my husband would stay in the house. They were
19 getting a K-9, and that, you know, I'm probably going to
20 have to be talked to later. So I says, "Okay."

21 Q Who was this telling you this?

22 A The female officer.

23 Q The female officer is saying, "Okay"?

24 A Uh-huh.

25 Q Okay. And so then you stay in the house after

1 you delivered the kids to school.

2 A Uh-huh.

3 Q And what did you hear a little bit later that
4 morning?

5 A So you could hear them, like, looking for him.

6 And I told my husband, I said, I said he's
7 -- "I know he has been hiding out because he couldn't
8 get that far."

9 All of a sudden, you hear, "Get your hands
10 up. Put your hands up. Get your hands up." You know,
11 just kept on repeating and stuff. I'm, like, they found
12 him. You know, I told my husband they found him.

13 And so you could hear and you could just
14 from my window, you could see, you could see the lights,
15 and I seen the officer and stuff, but I didn't see the
16 shooting. Then I heard the three shots.

17 Q So you heard commands from the police?

18 A Yes.

19 Q And then you heard shots?

20 And do you remember what, what kind of
21 commands you heard, what words you heard?

22 A I heard, "Get your hands up. Turn around.
23 Get your hands up," just multiple times and stuff.

24 Q And on this photographic diagram, this aerial
25 view, your house on NE Tillamook is noted generally and

1 then the location of the shooting is on NE Hancock.

2 A Uh-huh.

3 Q And that is one block south of your house.

4 A Uh-huh.

5 Q And it looks like the backyards are adjoining
6 the houses on Tillamook to Hancock; is that right?

7 A Uh-huh. Yes.

8 Q Did I neglect to ask you anything that
9 happened that morning that you think the Grand Jury
10 should know about?

11 A No. No, I don't think so. I think that's
12 pretty much it.

13 MR. REES: All right. Are there any
14 questions from the Grand Jury?

15 Mr. Auxier.

16 MR. AUXIER: Nothing from me.

17 THE WITNESS: Okay.

18 MR. REES: Thank you, Ms. Pittman, for
19 coming in.

20 THE WITNESS: No problem.

21 A GRAND JUROR: Thank you.

22 THE WITNESS: Thank you.

23 A GRAND JUROR: I hope your kids are okay.

24 THE WITNESS: They are still a little
25 frightened, and so am I. We check our yard all of the

1 time.

2

3

4

DANIEL TATRO,

5

a witness called on behalf of the State, having been

6

first duly sworn, was examined and testified as follows:

7

8

EXAMINATION

9

BY MR. AUXIER:

10

Q To start out, can you state and spell your

11

name?

12

A Daniel Tatro. D-A-N-I-E-L. T-A-T-R-O.

13

Q What do you do for work?

14

A I'm a police officer with the City of

15

Portland.

16

Q How long have you been doing that?

17

A Almost ten years now.

18

Q And were you working on February 9th of 2017?

19

A I was.

20

Q What shift were you working back then?

21

A I was working day shift. That's A shift. We

22

start at 7:00 a.m.

23

Q Okay. And right after your roll call at

24

7:00 a.m., was there a call about a robbery at gunpoint?

25

A There was. I was -- Officer Ferner was the

1 primary officer on the call, and it's in his district.
2 I was dispatched as the cover officer.

3 Q Did you drive directly to the scene of the
4 robbery?

5 A The robbery came out of the Portland Best
6 Value Inn, kind of that area. About two or three
7 minutes after being dispatched as cover for that, an
8 additional call had come out very close to where the
9 robbery was being reported.

10 The robbery had -- I think there was a --
11 the robbery said -- maybe it occurred maybe a half hour,
12 30 minutes prior. So the dispatcher sent me to a
13 different call right across the street to a car prowl
14 that had just occurred.

15 So weren't sure if they were connected
16 initially, but because they were in such close
17 proximity, they sent me as primary to the new car prowl
18 that had just come in.

19 Q Things got slightly confusing shortly after
20 that, right, because of people flagging you down?

21 A Correct. Right.

22 So on my way in, I was doing an area check
23 for the suspect, and I got flagged down by a gentleman
24 who at first, I wasn't sure if this was my car prowl
25 victim.

1 I was looking for a Ford Focus. I think
2 he was in a Nissan Altima. So I was just trying to wade
3 through who are you again. That's when Officer Ferner
4 arrived and said, "I think this is my robbery victim."

5 I said, "Okay. I think mine is across the
6 street at the pet clinic." I was looking for a Ford
7 Focus. I drove across the street and saw another lady
8 flagging me down saying my car had been broken into.

9 Q Did you stop and talk to her at that time?

10 A Yeah. So when I got out and spoke with her,
11 she was in the parking lot of the Banfield Pet Clinic,
12 which is 82nd and Schuyler, directly across the street
13 from where Officer Ferner's robbery victim was waiting
14 for him.

15 Q What did you notice about the scene in the
16 parking lot of the Banfield Pet Clinic?

17 A So I contacted Julie Christie I think is how
18 it is. She was next to her Ford Focus. And the front
19 passenger window had been smashed out of the Focus.

20 She told me that she was inside the pet
21 clinic, and somebody said, "Hey, does somebody own
22 this?" It was something like that, in the parking lot,
23 because they noticed glass around the side of it, that
24 it had been broken into.

25 She said that's how she got notified about

1 it. She told me when she went outside, there's actually
2 somebody still in the vehicle, much to her surprise.

3 Let me see if I -- I don't want to miss
4 anything here. She remembers seeing the guy like
5 cleaning himself with, like, Baby Wipes. She handed me
6 a Ziplock baggy. It was, like, a gallon size baggy with
7 Baby Wipes inside and handed them to me. So I grabbed
8 those.

9 There was -- also she showed a reversible
10 vest that had been left inside the car by the suspect.
11 It was, like, a fleece vest.

12 Q Do you remember anything else noteworthy about
13 that vest?

14 I'm going to show you a picture. Is that
15 the vest?

16 A That's the vest that she handed me that was in
17 the front passenger seat.

18 Q Is she's handing you this property because
19 presumably -- was she telling you it's not hers?

20 A It's not hers. It was left behind by the
21 suspect.

22 Q Just for the record, what does it say there on
23 the right?

24 A I think it says Alaska. I'd have to go up to
25 see what it says underneath. Very small letters.

1 Q So I also wanted to ask you about the glass.

2 Did you see broken glass?

3 A Yeah. It was inside the vehicle and then
4 obviously on the outside of the passenger side of the
5 vehicle.

6 Q Inside and outside of the car?

7 A Correct.

8 Q Did you ask Ms. Christie for a description of
9 the suspect?

10 A I did. I asked, I asked her what she
11 remembers him wearing. She said he was -- the gentleman
12 had a black sweatshirt on, a white belt. He was 5'7"
13 tall, thin. Had dreadlocks down to his shoulders and
14 was carrying -- walked away with, like, a roller-type
15 suitcase. Described him as a black male.

16 Q About that time -- oh, did you also receive a
17 call from Officer Rippe?

18 A I didn't get a call, but dispatch notified me
19 that Officer Rippe, who I think was coming to cover one
20 of -- Officer Ferner or I, because of the two calls, had
21 been diverted to a nearby home where the homeowner had
22 called in and said there's somebody in my yard. This is
23 strange because we have a six foot cedar fence around
24 our entire property, that they would have to jump to get
25 in.

1 So dispatch said that the description of
2 my subject and the guy that was in the yard of this
3 homeowner were similar.

4 They just wanted me -- so I think they
5 didn't know I was talking to the car prowl victim at the
6 time. So they actually sent me to that call because,
7 um, it was more -- it was a higher priority because
8 somebody is actually in a yard.

9 There was a little confusion there. So I
10 had to quickly finish my investigation of the car prowl
11 to go cover Officer Rippe because there was nobody else
12 close by.

13 Q What were sort of the last steps you took to
14 finish up your contact with Ms. Christie?

15 A I grabbed -- she pointed out a rock that had
16 been presumably used to smash the window that was now on
17 the driver's side floorboard. Then I asked then if
18 anything else had been taken. She told me her lunch box
19 was taken. She had a water bottle on the side of it.
20 Then she also said the owner's manual for her vehicle
21 was missing from the glove box.

22 So I gave her my business card with the
23 case number. Then I asked, before I left, if she could
24 identify the gentleman she saw in the car again. She
25 said, "A hundred percent. It would not be a problem."

1 Q And then at that point you drove over to
2 Officer Rippe's location.

3 A Right. So I was at 82nd and Schuyler, and
4 then two blocks to the north is where Officer Rippe was
5 on 82nd and Tillamook. She was east of 82nd on
6 Tillamook.

7 Q What happened when you arrived there?

8 A So Officer Rippe is out of her patrol car kind
9 of standing near a six-foot high cedar fence that is a
10 flag lot -- almost to a flag lot where a home is behind
11 kind of another home.

12 And Officer Rippe goes and grabs a chair
13 from the side of this fence, because I have to reach
14 over to unlock the fence because that's where the lock
15 is. So she drags it over.

16 It had been raining. So it was really --
17 for some reason, it was like a cloth chair. It was
18 really heavy and wet. She drags it over. I stand on it
19 and unlock the fence. Then we make entry into the
20 property.

21 Q Describe your approach and what you saw once
22 you made it into the property.

23 A Yes. So, like I said, it is a flag lot. I
24 remember seeing a Subaru parked at the end of the
25 driveway. There it is. There's the paved driveway and

1 there's a Subaru parked there.

2 And so I'm on the east side of the car,
3 which is the driver's side of the car as it's parked,
4 and Officer Rippe is on the passenger side, the west
5 side.

6 As I come around the corner of that fence
7 there, you can see that fence is the northern boundary
8 of this property, I see a black male with dreadlocks
9 down to his shoulders standing near the luggage you can
10 see in the picture there.

11 It appears as if he's either taking off a
12 coat or putting a coat on. I can't tell. But it
13 definitely matches the description given to me by the
14 car prowl victim and the subsequent description given by
15 the homeowner of this home here.

16 And so we're going in with the assumption
17 that this may still be the same subject that committed
18 the armed robbery 30 minutes prior because all of the
19 descriptions were kind of lining up that this could be
20 the same subject.

21 So he's about 30 or 40 feet from me. I'm
22 behind the engine block of the car. And I pull my gun
23 out, and I put it in the sul position, which I'm holding
24 it here. It's not pointed down to the ground.

25 It's kind of a way we hold our guns. It's

1 out of the holster, but it's still easy for us to -- in
2 case it becomes a deadly force encounter, we can get up
3 on target quicker.

4 It's not down because I have a car in
5 front of me. So it wouldn't make sense to be next to a
6 car and have my gun either resting on the car or being
7 blocked by the fender, so it's here, up here
8 (indicating).

9 Q And, for the record, can you describe the
10 position you're holding your gun in? You're
11 demonstrating it very effectively then.

12 A Yes. How do I describe it? So it's -- the
13 gun is pointed off to my left-hand side towards the
14 ground, but it's flat up against my chest.

15 Q You have the gun in that position. And do you
16 say anything to the subject?

17 A I immediately yell out to him to have him put
18 his hands up in the air because first, I want to get to
19 a point where it's safe for us to talk to him, but we're
20 too far away to have a conversation because it is 30 or
21 40 feet away.

22 So if -- the assumption is that he may be
23 armed. So we want to treat this as kind of a high-risk
24 at least detainment, because we don't a hundred percent
25 know it's our suspect in either thing, but we do know

1 that he's been called in by the homeowner as unwanted.

2 So we're operating under the assumption he
3 may be armed. So we're going to go slow and do one step
4 at a time. We're not going to approach him. We're
5 going to have him come to us.

6 So first thing is get your hands in the
7 air and then we'll go from there. So that's what I do.
8 I first announce, "Get your hands in the air." He looks
9 over, and that's when he first notices that we're both
10 standing there.

11 Q And what does he do?

12 A So he slowly starts to put his hands up, and
13 he raises them to, like, his ear level, kind of where
14 I'm right now (indicating). They are not completely
15 high up in the air, but they are -- they are about --
16 his, his hands are about where his ears are.

17 Then he starts asking, "What's going on?"

18 And I'm trying to communicate to him
19 simple, clear instructions one step at a time. "Get
20 your hands up." And first his hands are up. There's
21 nothing in his hands. He's complying with my request to
22 put his hands up.

23 And he's far enough away, I can't see
24 clearly, but I don't see anything, like, in his
25 waistband or anything to change my response in any way.

1 We're just trying to kind of establish a line of
2 communication and see how -- if he's able to follow
3 directions so we can get him closer to us.

4 Q You couldn't see anything in his waistband.

5 Why are you saying you saw, you saw his
6 waistband and you didn't see anything in it or you
7 couldn't see the waistband?

8 A I can only see part of the waistband. He's --
9 the right side of his body is towards me, but he's kind
10 of at an angle to where I can see -- sort of see the
11 front of his waistband.

12 But I'm not even -- and he's got kind of a
13 large green coat, or it's like a hooded sweatshirt. I
14 can't remember. I think he's got a hooded sweatshirt
15 and a coat over that.

16 So I can't see the entire waistband for
17 sure. But we're not even there yet to the point where
18 we have him lift up his coat and spin in a circle so we
19 could see his entire waistband. That is one of the
20 steps we're going to get to.

21 I'm just trying to get him to put his
22 hands up and then walk backwards closer to me so I can
23 see, see him more clearly.

24 And instead of getting -- where I'm to the
25 second step, instead he's very inquisitive about what's

1 going on. And I'm trying to communicate to him that I
2 can't have this conversation with him. We're too far
3 away to communicate that. I just need him to listen to
4 my instructions and put his hands up, turn around and
5 walk backwards to the sound of my voice.

6 I repeat those instructions multiple
7 times. And he's unable to do any of the things I am
8 asking him to do other than put his hands in the air is
9 the only instruction he's following.

10 Q Did you ever say, "Put your hands all of the
11 way in the air"?

12 A No. I just, I just kept reminding him to just
13 keep his hands up in the air. I felt like this was good
14 enough for me. His hands were up at his ear level. I
15 could see them clearly. So that felt fine to me. I was
16 trying to move on to the next step, which was face away
17 from me and walk backwards to the sound of my voice.

18 Q How many times do you think you commanded him
19 to do that?

20 A I would say four to five is what I remember.
21 There was some interruptions in there because he kept
22 asking questions or making statements over and over
23 again.

24 Q And just to reiterate those questions he was
25 asking, those statements he was making, what were those?

1 A So the questions he was asking is, "What's
2 this about? What's going on," which I continued to
3 answer. "I can't talk about that right now. I just
4 need you to listen to my instructions and do what I'm
5 trying to tell you to do."

6 Then the other statement he made was,
7 "It's okay, I live here. This is where I live." He
8 kept saying that to me.

9 Q At any point did you try to communicate to him
10 your reason for wanting him to take these steps?

11 A Yes. At one point I told him that we received
12 information that he may be armed with a weapon, and that
13 if he reached for that weapon, that he would be shot.

14 So I made it known that we were treating
15 him as an armed subject, and that if he made any
16 movements towards a weapon, that he would be shot.

17 Q Do you remember how he responded to that
18 statement?

19 A He said, "I don't have anything on me."

20 I told him that was okay, and I just
21 needed him to turn around and put his -- walk backwards
22 to the sound of my voice. And he said, "No" to me.

23 And right after that happened is when
24 Officer Ferner arrived. And he was right next to me on
25 my right side, on the east side of the car. So I felt

1 like we were getting -- we were kind of in a stalemate
2 here. We weren't getting anywhere with him.

3 He wanted to kind of -- he was inquiring
4 about what was happening. I was telling him that was
5 impossible at this time. You just need to listen to my
6 instructions. We went back and forth, like I said,
7 several times.

8 So once Officer Ferner had arrived, I felt
9 I could -- I remember looking over and seeing the
10 homeowner peeking out of their front window to see, you
11 know -- she probably could hear our voices, and she knew
12 she called the police. I assumed she was making sure
13 that was us.

14 So I said, "Hey, would you mind if I just
15 ran over to the front door," which is maybe 15 feet away
16 from me, "and just ask" -- just to clear up the fact if
17 this guy lives here or not?

18 He was fine with that. That was kind of
19 my next step. I ran towards the front door from my
20 position behind the car and knocked on the door.

21 Q What happened then?

22 A So the homeowner, I don't know her name,
23 answers the door. It's a black female, probably in her
24 mid 40s, early 40s, and she immediately knows. She's
25 visibly shaken, scared about kind of what's going on.

1 I just asked her, "Do you know the
2 gentleman that is outside your house?"

3 She says, "I don't know who he is. I've
4 never seen him before."

5 Then I asked her how long she's lived
6 there. She told me she's lived there for 12 years. And
7 so it was clear to me that, you know, she'd been there
8 long enough. There's no mistake that this guy does not
9 live here. She had no idea who he was.

10 Q Did she say anything specific about her level
11 of fear?

12 A Yes. She said, she said that she was -- she
13 did communicate to me that -- she told me she was really
14 scared. I told her just to shut the door and lock it,
15 and that we were going to take care of it on our end
16 outside.

17 Q What was Officer Ferner doing? Do you have
18 any idea what he was doing while you were in contact --

19 A So I don't remember exactly what he was
20 saying, but it was similar to my directions. Telling
21 him to, "Keep your hands up."

22 He was telling him -- I think he was
23 trying to get him to walk back. But then right after
24 the homeowner had shut and locked the door, I heard
25 Officer Ferner in a louder voice yell at the suspect to

1 keep his hands up in the air. Indicating to me that
2 maybe he was dropping them.

3 I don't know because I couldn't see. But
4 typically when we yell louder and more kind of in a
5 faster pace, because maybe somebody is not doing
6 something they were doing.

7 And so that -- at that time right after
8 Officer Ferner yelled at him to keep his hands up, I
9 heard him say that the guy is now running away from the
10 position I had last seen him in.

11 Q You couldn't see that happening?

12 A I didn't see it at all, no.

13 Q But you heard Officer Ferner say it?

14 A I heard it, uh-huh.

15 And then Officer Rippe came over to where
16 I was by the front door. We were now going to clear the
17 south side of the yard to see if he'd maybe ran south.
18 I wasn't sure which direction. Obviously, he didn't run
19 towards the officers. So he had three options: West,
20 south, north.

21 So I was, I was close enough to the south
22 side that I could easily see if he had jumped over that
23 fence. So Officer Rippe and I did that. We did kind of
24 a slow clear of the backyard, and there was nobody in
25 the backyard.

1 Q Did you hear anything that made you think the
2 person hopped the fence?

3 A I couldn't.

4 Q The absence of the person was an indicator.

5 A Right. He was no longer in the yard. The
6 yard is not very big. And so once the yard was cleared,
7 Officer Ferner and Rippe went out to kind of establish a
8 perimeter.

9 And that's when I was able to -- can you
10 go back to that last picture -- to go through those
11 items there to make sure -- I was just going to see
12 maybe if there was a gun, if it had been left behind or
13 whatnot.

14 So I quickly just went through all of the
15 clothes on the ground and the roller suitcase to see if
16 there had been a gun left behind, and there had not.
17 The one thing I did notice was the owner's manual for a
18 Ford Focus sitting in those items there.

19 MR. REES: I have a question.

20 When you saw that Ford Focus owner's
21 manual, did that link the property in your mind to the
22 car prowling incident?

23 THE WITNESS: Yes, it did.

24 MR. REES: And in this photograph, we see
25 this -- these items of property strewn around the ground

1 next to a small black suitcase.

2 Is that how it appeared when you arrived
3 on the scene or did you pull those items out of the
4 suitcase?

5 THE WITNESS: I didn't pull anything out
6 of the suitcase. All of the clothes that you see on the
7 ground are the clothes the way in which I found them.

8 I quickly just -- I -- at this point I'm
9 looking for a gun. I'm not going into, like, small
10 pockets or anything. So I'm just quickly opening things
11 because I know that I need to get out on a perimeter
12 spot to contain. So it's a very quick --

13 MR. REES: So the items were already on
14 the ground?

15 THE WITNESS: Yes, they were.

16 MR. REES: Okay.

17 BY MR. AUXIER:

18 Q And did you broadcast over the radio that you
19 did not see a gun in the property?

20 A Yes. I gave that information out so that
21 officers on the perimeter would know that this suspect
22 potentially still has the gun with him.

23 Q When you got back out to the street, what did
24 you do?

25 A I, I got to my police car and then the

1 perimeter is being established. I took a corner spot on
2 the perimeter to make sure that we could set up
3 containment as fast as possible.

4 Q Do you remember where that spot was?

5 A That was 84th and Hancock. So it was two
6 blocks east of 82nd and then one block to the south of
7 the residence that I was just in the backyard of.

8 Q I think I see it on this map.

9 You are pretty familiar with the area, I
10 assume?

11 A Yes.

12 Q Is it this corner right here?

13 A Yes. Sorry. I'm all backwards here. Here is
14 Tillamook. Yes. So I'm right here, like kind of in
15 this. That's my perimeter spot right there.

16 Q Got it. Go ahead and have a seat.

17 Did anything unusual happen as you stood
18 by at that location at 84th and Hancock?

19 A In terms of --

20 Q What was the next thing that was relevant to
21 the investigation?

22 A I was there for about 45 minutes. And then I
23 heard a sergeant, I think it was Sergeant Helfrich get
24 on the dispatch and say he heard a chain link fence
25 rattling, and he was about a half a block from me. I

1 don't remember hearing a chain link fence rattling from
2 my position at 84th. Yeah.

3 Q You weren't -- eventually you heard over the
4 radio -- or did you hear shots at any point?

5 A I did. Before -- let me make sure -- I want
6 to make sure the events were in the right order here as
7 I remember them.

8 So one of the officers got on the radio to
9 broadcast that they were challenging somebody at a house
10 that was down the block from me more towards 82nd. I
11 couldn't tell exactly from my position where exactly
12 they were.

13 Then I heard a dog barking, like a K-9 dog
14 barking, and then I heard three consecutive shots right
15 in a row.

16 Q Could you hear, could you -- could you hear
17 the -- you heard on the radio that the officers were
18 challenging someone.

19 Could you hear the commands from your
20 location?

21 A I don't remember hearing commands. I think I
22 was too far away to hear the commands.

23 MR. AUXIER: Any questions from the Grand
24 Jury?

25 Thanks, Officer.

1 THE WITNESS: Thank you.

2 A GRAND JUROR: I do have one question.

3 I'm sorry.

4 When you were having a conversation with
5 the suspect in the backyard, did he seem like he was on
6 drugs, or did he seem like he was lucid when he was --
7 when he was -- when he -- did he seem lucid when you
8 were talking to him?

9 THE WITNESS: He did because he was able
10 to -- he would ask the question, I would give the
11 answer. And then he would ask a different question or
12 make a different statement like he understood my answer.

13 But to me, it was more like a just, just
14 based on my experience, that it felt to me more like a
15 stalling tactic where sometimes when people are thinking
16 of their options, they will ask questions even though
17 they already have gotten the answer, because even if
18 they are not listening for the answer or maybe they are
19 going through other things in their mind, I couldn't
20 tell at the time.

21 But it was clear to me that it wasn't a
22 cognitive thing, like he wasn't understanding my answer
23 and that is why he was asking the question. It felt to
24 me like it was a stalling tactic for him than anything
25 else, if that makes sense.

1 A GRAND JUROR: That makes perfect sense.
2 Thank you very much.

3

4

5

CHRISTINE VU,

6

a witness called on behalf of the State, having been

7

first duly sworn, was examined and testified as follows:

8

9

EXAMINATION

10

BY MR. REES:

11

Q For the record, please state your name and

12

spell your name.

13

A Christine Vu. C-H-R-I-S-T-I-N-E. And the

14

last name is Vu, just V-U.

15

Q Ms. Vu, do you reside at 8322 NE Tillamook

16

Street?

17

A I do not.

18

Q Who lives there?

19

A 8322?

20

Q I'm sorry, I'm misreading.

21

A My address is --

22

Q 8301?

23

A Yes.

24

Q NE Hancock Street.

25

A Yes.

1 Q I apologize for misreading that.

2 Do you live at that residence on NE
3 Hancock Street?

4 A I do.

5 Q Who do you live there with?

6 A My dog.

7 Q Do your parents live there as well?

8 A No. They own the house, but they live in
9 Jakarta, Indonesia.

10 Q And on the morning of February 9th, 2017,
11 which is the date of the incident the Grand Jury is
12 examining, it's my understanding that you were not at
13 home; is that correct?

14 A I was not. I was in Lacey, Washington. I'm
15 back and forth a lot for work.

16 Q All right. At some point that morning,
17 however, you were, you were contacted by someone
18 regarding something happening at your house; right?

19 A I got a call from Security Professionals,
20 which is the security company that we just started
21 using.

22 And I want to say last summer they came by
23 and installed motion sensors and then the things on the
24 doors. So every time you open it, it tracks when
25 everything opens. When I leave the house to go out of

1 town, I turn the security system on.

2 And so they contacted me. I want to say
3 it was around 9:15, to ask if there was supposed to be
4 anybody in my home because the alarm had gone off and
5 was still going off.

6 It gives you, I want to say, 30 seconds to
7 a minute to turn it off, and I hadn't turned it off. So
8 they contacted me and asked if I wanted a police officer
9 dispatched.

10 Q What did you say?

11 A I said yes, because I figured someone had just
12 broken in and maybe heard the alarm go off and ran away.
13 So I just needed someone to lock up the house and turn
14 the security system back on.

15 So they said they would dispatch a police
16 officer, and that I would get a call from the police
17 officer as soon as they got to my house, and, you know,
18 to get instructions for what I wanted them to do and to
19 take pictures.

20 About 45 minutes later, I still hadn't
21 heard from anyone. So I tried calling the nonemergency
22 line. They said they would have someone in the field
23 call me.

24 And then 30 minutes later after I still
25 hadn't heard from anyone, so I called my friend Joe and

1 asked him if he -- I just explained, like, "Hey, police
2 haven't called me yet. I'm not sure what's going on,
3 but if you could just run by my house, grab a few of my
4 valuables and lock it up for me, that would be great."

5 Joe called me probably 25 minutes after
6 that and said that he couldn't get to my house. He said
7 that he was at the end of the street, almost two blocks
8 away, that was the closest he could get. And he was
9 explaining to the police officers that were roping
10 everything off that he'd been asked by the person who
11 lives there to go lock everything up.

12 But they obviously wouldn't let him in.
13 And they kind of just asked when I was going to be back.
14 And I hadn't planned to come back until a few days
15 later.

16 At that point Joe had to leave and he just
17 gave them my phone number again, and they said someone
18 would call me.

19 Q Was the call from the security company earlier
20 that morning the first indication that there was
21 something amiss at your residence?

22 A Yes, because I wasn't there. I had received a
23 call -- from what I can understand, the police had asked
24 my neighbor for my phone number. But when they called,
25 it came from a blocked number and I didn't pick it up.

1 They didn't leave a message. So that was before the
2 security company call. But, yeah, I didn't pick that
3 one up.

4 Q Did you later return to your Portland
5 residence and observe some damage to the inside of the
6 house?

7 A So I didn't come back until two days later
8 because -- when the detective finally did call me, they
9 asked if I knew what happened because it was on the
10 news.

11 I said I was kind of piecing things
12 together, but I wasn't really sure. So when I did come
13 back -- they had already sent me a few photos just so I
14 could identify certain things.

15 Q Well, that's really -- we're looking at one of
16 those photos here.

17 What do we see in this photo?

18 A The blinds had been ripped off in a really
19 bizarre manner where I couldn't salvage them. It was,
20 you know, not just ripping them off the top, but it was,
21 like, he had grabbed the middle of the blinds and ripped
22 them out this way. So the blinds were all over the
23 floor. And then there was glass everywhere, too.

24 Q What's outside of this window that we see in
25 the photograph?

1 A My driveway and garage. There's a small, I
2 think it's a bamboo tree, but it's not planted in the
3 ground. It's just in a pot.

4 Q We'll come back to that picture in just a
5 moment.

6 What are we seeing in this picture?

7 A That's the basement. So we're coming back
8 to -- that was really hard to figure out what was going
9 on. It kind of looked like a tornado just tore through
10 everything in there.

11 I wasn't really sure if there was any
12 rhyme or reason for what was going on in the basement.
13 But it was just everything was on the ground and
14 things -- there were drawers opened. It was just chaos.

15 Q This is not how you left it?

16 A No, of course not.

17 Q We're seeing things knocked over, it looks
18 like clothes knocked over.

19 A Yeah. That's like a room separator.

20 Q This wooden object?

21 A Yeah.

22 Q And then here, is this the exit door from the
23 basement?

24 A Yes.

25 Q And did you note the damage to the screen on

1 the door?

2 A Yes.

3 Q Was this an item that you recognized?

4 A Yeah. That's my dad's.

5 Q This looks like a varsity letterman style
6 Trail Blazer jacket?

7 A It's from a long time ago. It's a collector's
8 item. It is from a long time ago.

9 Q Here we see three pairs of what appear to be
10 new Nike shoes and a belt. Are those your items?

11 A Yeah. Those are my dad's as well.

12 Q Do you recognize this area?

13 A Yeah. That's the outside, the window where
14 the blinds had been ripped off.

15 Q This photo shows this side of the house and
16 then an open space that's about three feet wide. And
17 then this, this structure is the side of your garage;
18 correct?

19 A Yes.

20 Q And so what we saw a few moments ago, the
21 interior photo of the damaged blind, the window that we
22 saw in the pictures is on the side of the house,
23 somewhere around here; is that right?

24 A It's actually -- yeah, that one.

25 Q Okay. I think we have another view of that,

1 too.

2 So that's the door that leads to the
3 basement that we saw the interior portion, right, of the
4 damage to the screen and broken glass?

5 A Yes. That was glass. And then I guess they
6 are not bars. They are just -- I don't really know what
7 that is. It's some sort of metal that obviously wasn't
8 very strong.

9 Q That glass was broken and that metal was bent
10 out?

11 A Yes.

12 Q I understand that you've since replaced this
13 with an all metal security door.

14 A Yes, I had to.

15 Q Here we go. So now, we're seeing the side of
16 the house and this window.

17 Is this the window that was -- you
18 observed was broken out -- the blinds were broken out?

19 A The blinds were broken out.

20 Q Okay. You met later with Detective Erik
21 Kammerer. I believe he also showed you some photos or
22 asked you about some items that were found associated
23 with this case, which included some Asian currency.

24 A Yes. Things that we collected from our
25 travels, mission trips, things like that.

1 Q So you recognize those items as coming from
2 inside of the house?

3 A Yes.

4 Q Do you recall if Detective Kammerer asked you
5 about a decorative bracelet that was found on the wrist
6 of the suspect in this case?

7 A He did ask me, and I believe he showed me a
8 picture. I didn't recognize it. But it could be my
9 sister's or my mom's. I wasn't really sure. I asked
10 them, but they didn't recognize it either. So we're not
11 really sure where that would have come from.

12 Q All right. Is there anything that I didn't
13 ask that you think is important for the Grand Jury to
14 know?

15 A Um, no. I think it's all in the pictures
16 there. The security camera was ripped off the wall. I
17 think there was a picture of that.

18 Q There is.

19 A Okay.

20 Q Does that show the interior of the house and
21 the security panel?

22 A Yes. So from what I can gather, because of
23 the way that our alarm system works, is it only goes off
24 on the doors if the door actually opens.

25 So because he broke in through the window,

1 that never went off. When he got into my basement, he
2 was in the basement for a while before he came upstairs
3 and set off a motion sensor. So he never actually set
4 off the basement door because it never opened. So it's
5 like a switch up at the top.

6 Q And then when you looked at this panel inside
7 your home, it was apparent that this had been damaged?

8 A Yes. It was essentially just kind of ripped
9 off. I'm assuming he wanted -- the motion sensor is
10 really loud. It's louder than if you open a door. That
11 gives you a chance to turn it off.

12 But when the motion sensor goes off, it's
13 just like this blinding constant siren. So I don't know
14 if that -- if ripping it off the wall even would turn
15 that off. But we had to have that whole thing replaced.
16 Then we added additional security features afterwards.

17 MR. REES: Any questions from the Grand
18 Jury?

19 MR. AUXIER: Ms. Vu, did you have guns
20 inside the house?

21 THE WITNESS: I did not have guns inside
22 the house.

23 MR. AUXIER: No one in your family owns
24 guns?

25 THE WITNESS: I own guns, but they weren't

1 inside the house. I take them with me so they are not
2 left unlocked.

3 MR. AUXIER: Okay.

4 MR. REES: All right. If there's no other
5 questions, we'll excuse the witness.

6 A GRAND JUROR: Thank you very much.

7

8

9

GREG ADRIAN,

10 a witness called on behalf of the State, having been
11 first duly sworn, was examined and testified as follows:

12

13

EXAMINATION

14 BY MR. AUXIER:

15 Q Let's start out with can you tell us your name
16 and spell it?

17 A Yes. Greg, G-R-E-G. Last name is Adrian,
18 A-D-R-I-A-N.

19 Q All right. And I see you're in uniform. Can
20 you tell us what you do for a living?

21 A Yes. I'm a police officer for Portland
22 police.

23 Q How long have you been doing that?

24 A Twenty-four years.

25 Q And were you working on February 9th of 2017?

1 A Yes.

2 Q That morning, was there a call that came out
3 over the radio about a gunpoint robbery or car prowling
4 or -- do you remember hearing calls of that nature that
5 morning?

6 A Yes. That was outside of my district, but I
7 heard the calls go out over the radio.

8 Q Where were you when those calls came out?

9 A Physically, I was in the area of 108th and
10 Holgate, and I heard the calls come out to a different
11 officer.

12 Q So what did you do?

13 A I listened.

14 Q Did you start heading over in that direction?

15 A Not at the time of the first call. The first
16 call came out and it sounded like a possible car jacking
17 or an attempt to steal a car. That's what it sounded
18 like, but it sounded like it was several minutes old.
19 It didn't sound like anything I needed to go to. I was
20 about three or four miles from the scene at my location.

21 Q You eventually started to make your way to
22 that area. Why did you do that?

23 A I started heading north toward the area of 82
24 and Tillamook, because I heard over the air Officer
25 Ferner who was on the call had broadcast that he had

1 just seen the suspect in the earlier car jacking
2 attempt. And I also knew that there was a secondary
3 call within about a block away regarding somebody trying
4 to get into cars.

5 Q And eventually was a perimeter set up?

6 A Yes, sir.

7 Q And did you take a role in that perimeter?

8 A I did.

9 Q What did you do?

10 A I was on the corner of approximately 85th and
11 Tillamook. And we believed that we had a suspect in the
12 area between Tillamook and the block one north of
13 Tillamook, between 86th and 82nd.

14 Q And at some point you sort of joined a group
15 of officers that were clearing backyards and clearing
16 houses; is that correct?

17 A That's correct. We had a K-9 officer who was
18 working with his K-9. That K-9 triggered into the home
19 of 8301 NE Hancock.

20 Q Who was the officer -- well, first of all, who
21 was the K-9 officer?

22 A Officer Wullbrandt.

23 Q Who else was with your group?

24 A In that group it was Officer Higginbotham,
25 Officer Hearst and Officer Mele, and we were led by

1 Sergeant Helfrich.

2 Q So when the K-9 triggered to 8301 NE Hancock,
3 what did you do? What did you and the officers that you
4 were with do?

5 A I was sent back to the backside, which is the
6 north side of that residence, where it appeared that the
7 house had been broken into.

8 Q I'm going to show you a picture. I'll ask you
9 if you recognize it.

10 What do you see there?

11 A Yes. That's the basement entrance into 8301,
12 and that's the door that I was watching in the backyard.

13 Q So that was the first sign of a break-in that
14 your group of officers noticed with respect to this
15 house?

16 A Correct.

17 Q So at this point you have two reasons to think
18 that the suspect may be in this house. One is the K-9
19 seems to be keying on this house, according to Officer
20 Wullbrandt, and then you also see this damage to the
21 back basement door.

22 A There was that damage, but there were also --
23 there was a fresh muddy boot print on the side of the
24 house up at the top of the stairs. There was a hand
25 print on the railing at the top of the stairs.

1 The wooden railing, you could tell that
2 that hand print in the wet wood was brand new. And I
3 checked the boot print and made sure that it was fresh,
4 and it was fresh and muddy.

5 There was also a boot print down in the
6 door down by the doorknob, which led me to believe that
7 this was all recent, as in certainly the last hour would
8 be my guess. Everything was still wet.

9 Q So did you and the officers just charge right
10 into the house when you saw this?

11 A No. We posted on that for quite a while while
12 we gained resources. Posted on that. And the K-9
13 officer wanted to take his K-9 all of the way around the
14 area, the yards to the east and west and to the south of
15 this location while we stood on this door, posted on
16 this door.

17 Q Why wouldn't you and your officers just go
18 right into the house?

19 A It's too dangerous.

20 Q So as you stood by this door, were you able to
21 formulate a plan with the other officers that were with
22 you?

23 A The only other officer at that time was
24 Officer Higginbotham, and we backed out to the north
25 over by a shed in the backyard. We wanted to give

1 ourselves time and distance from that breached door.

2 Q In case someone came charging out of it?

3 A Yes.

4 Q What were the other -- there was a larger
5 group of officers previously that you were with. But at
6 this point you're saying it was just you and Officer
7 Higginbotham.

8 So what happened?

9 A The K-9 continued to go through the area
10 around this residence. I remember seeing them in the
11 yard to the west, which becomes a business area toward
12 82nd Avenue.

13 We posted there for probably 45 minutes
14 would be my guess. I didn't look at my timepiece. But
15 we posted in that backyard for a long time until the K-9
16 came back to the location.

17 Q What happened after that 45-minute period that
18 caused you to eventually move from the backyard?

19 A I didn't move from the backyard. Officer
20 McHugill from traffic division ended up taking the spot
21 of Officer Higginbotham, and we were directed to go down
22 that staircase and check on the door directed by
23 Sergeant Helfrich.

24 We believed that that was a two-person
25 job, and we recognized that there was a possibility of

1 engaging somebody in the house.

2 So we walked down, looked inside. It was
3 quite messy in that basement. I made several attempts
4 to loud hail any occupant that was in the house. I
5 yelled loudly, "Portland police. We know you are in
6 here. Give yourself up." I did that multiple times
7 from that breached door.

8 Q Did you hear anything moving or hear any
9 noises inside?

10 A Nothing.

11 Q So what did you do?

12 A We posted there for several minutes, tried to
13 assess whether somebody got in there -- through there
14 recently.

15 I believed wholeheartedly that somebody
16 was in there based on how much effort that steel door
17 was -- the screen to break into that house. I took the
18 effort that that took, as well as the fresh boot print
19 and the fresh hand print, and I believed that somebody
20 was inside of that house.

21 We backed out of the stairs so that we had
22 advantage at least in elevation and got out of that area
23 at the bottom of the staircase. I felt vulnerable right
24 there because I believed a bad guy was in there. I
25 believe the bad guy might be armed. And I had no idea

1 who we were, who we were searching for.

2 I wanted out of that location. I felt at
3 a disadvantage. So we came back up the stairs. Got
4 over the railing and then posted at that door once
5 again.

6 Q What happened after that?

7 A Sergeant Helfrich instructed us to stay on
8 that door. They were going to go back to the other side
9 of the house and do a consult with our SERT personnel.
10 That's our Special Emergency Response Team personnel.

11 Q Just a couple minutes after that, did you
12 start hearing some noises on the other side of the
13 house?

14 A Yes. I heard shouts, loud shouts. I couldn't
15 decipher exactly what it was, but it was clear that
16 officers were attempting to challenge somebody verbally.

17 I heard the dog barking over and over. I
18 could tell that all those noises were coming from the
19 other side of the house. I was in the backyard. I
20 could tell it was from the front yard.

21 Q Did you run to the front yard or did you stay
22 at your location?

23 A I stayed at my location.

24 Q What did you hear -- did anyone ever come out
25 of the back door?

1 A No.

2 Q Did you -- what was the next thing that you
3 heard?

4 A I heard the shots of what sounded like a long
5 gun. I believed that it was likely police fire just
6 because it was a long gun. The suspect that we believed
7 was inside was purportedly carrying a small handgun, and
8 it didn't sound like that. And I heard three or four
9 shots.

10 Q Then after that, did someone yell for you from
11 the front yard?

12 A Yes. I heard my name being yelled or a
13 nickname that I go by.

14 Q What's that?

15 A It is a nickname named Adro.

16 Q What did you hear?

17 A I heard that name ring out. I don't know who
18 had yelled it, but I began running to the other side of
19 the house. So that east side of the house is where I
20 was at this point.

21 Q Can you tell us where you're standing?

22 A Would you like me to go to the screen?

23 Q Sure.

24 A Okay. As I came around, I was basically
25 behind the house right here. I went around the garage

1 and ended up right by the recycling.

2 There was an officer behind me with a less
3 lethal. That was Officer Mele, and then Officer --

4 A GRAND JUROR: Excuse me, what's a less
5 lethal?

6 THE WITNESS: I'm sorry. It's a, it's a
7 shotgun that fires beanbags.

8 A GRAND JUROR: Oh.

9 THE WITNESS: I'm sorry, I should have
10 clarified that. We try to bring all of our tools out.
11 That's a less lethal.

12 A GRAND JUROR: You are not going to kill
13 somebody with it probably?

14 THE WITNESS: So we're standing there.

15 BY MR. AUXIER:

16 Q And what do you see from that vantage point?

17 A I see this gentleman right here on the ground.
18 The distance of this is approximately 15 feet, maybe
19 18 feet. It was pretty close by. And so I was watching
20 this gentleman, looking for any signs that he remained a
21 threat.

22 Q Did you see him move?

23 A No. I was looking for signs of breathing. I
24 saw none. Signs of his hands moving, I saw none.

25 Q What were the other officers doing at the

1 scene?

2 A So there were three officers here. I saw a
3 number of officers who would be off the screen, and they
4 were toward Hancock Street back here.

5 Q Did you notice any weapons near the subject on
6 the ground?

7 A Not from my vantage point from over here, no.

8 Q Did you all just remain in that position, or
9 what was the next thing that the officers at the scene
10 did?

11 A We gathered a shield from one of the cars.
12 It's a bullet shield that we can see through and we
13 approached at the same time. Within perhaps 45 seconds
14 to a minute, we were at the gentleman. And I saw a
15 camouflage-appearing semiautomatic on the west side of
16 the gentleman at approximately -- that's what I saw.

17 Q How close to the subject on the ground was
18 that weapon?

19 A Perhaps two feet.

20 Q And that's the exact position you saw the
21 weapon in when you first saw it?

22 A Yeah. I believe I was the first person who
23 saw it. As we're coming up to the gentleman, I made the
24 announcement to everybody who's there, approximately
25 five other guys, and I said, "Gun," and I pointed to it,

1 and made sure that everybody saw a gun on the ground
2 here. The gentleman was approximately here, out of the
3 picture.

4 Q Go ahead and have a seat.

5 A Thank you.

6 MR. AUXIER: Do the Grand Jurors have any
7 questions?

8 Thanks, Officer Adrian. I think that's
9 it.

10 THE WITNESS: Thank you, sir.

11 A GRAND JUROR: Thank you.

12

13

14

ERIK KAMMERER,

15 a witness called on behalf of the State, having been
16 first duly sworn, was examined and testified as follows:

17

18

EXAMINATION

19 BY MR. REES:

20 Q Detective, for the record, if you would please
21 state your first and last name and spell your name.

22 A Erik, E-R-I-K. Kammerer, K-A-M-M-E-R-E-R.

23 Q What's your occupation?

24 A I'm a detective with the Portland Police
25 Bureau.

1 Q How long have you been a police officer?

2 A Twenty-two years now.

3 Q And how long have you been in the position of
4 detective?

5 A Since 2003. In my current assignment since
6 2007.

7 Q Within the detective division, are you
8 assigned to a particular unit?

9 A Yes. I'm assigned to the homicide detail.

10 Q How many homicide cases have you worked on?

11 A In the last count, it was over 150.

12 Q And what training and experience do you have
13 related to the investigation of police officer use of
14 deadly force?

15 A So, of course, I've been -- when you are hired
16 as a police officer, you are sent to the basic academy
17 that everybody in the state has to go to to become
18 certified to be a police officer. So I've been to that.

19 And then when you are promoted to
20 detective in the Portland Police Bureau, they send you
21 to a two-week detectives academy, which I've also
22 attended. And then various trainings on, you know,
23 various things, like blood-splatter analysis or
24 officer-involved shootings or just general homicide,
25 crime scene forensics, things like that.

1 Q And have you participated in the investigation
2 of officer use of deadly force cases?

3 A Yes, I have.

4 Q Do you know how many of those cases you've
5 investigated?

6 A As the lead investigator, I think the last
7 count was -- actually I don't remember. Somewhere more
8 than ten, less than 20. But even assisting, almost all
9 of them since 2003 -- I'm sorry, since 2007.

10 Q Are you assigned as the lead detective in this
11 case, which is an investigation surrounding the shooting
12 by police of Quanice Derrick Hayes on February 9, 2017?

13 A Yes. I am the lead investigator.

14 Q All right. So directing your attention now to
15 this particular investigation, would you tell the Grand
16 Jury when you first received the assignment in this
17 case?

18 A On the day that the shooting happened. I was
19 at work. We received notice that the shooting had
20 occurred at that time. I and my partner were assigned
21 as the lead investigators for this. We responded out to
22 the scene that morning.

23 Q The electronic records kept in the police
24 bureau show that the first report of the shooting was at
25 9:21 a.m.

1 Do you know what time you would have
2 received notice?

3 A I believe we were notified somewhere around
4 9:45 a.m.

5 Q And you work here in Downtown Portland at the
6 Justice Center; correct?

7 A That is correct, yes.

8 Q Is that where you were when you received
9 notice?

10 A Yes. I was in the office.

11 Q So what did you do when you received this
12 report?

13 A We, we received information that a shooting
14 may have occurred. I notified my sergeant. We
15 confirmed all that. And then my partner and I responded
16 out to the scene.

17 Q And your partner being Detective Mark Slater?

18 A Correct.

19 Q Can you give the Grand Jury an idea of the
20 other investigators and personnel that also responded to
21 the scene that morning as part of the overall
22 investigative effort?

23 A Sure.

24 So in addition to Detective Slater and I,
25 there's also two additional detectives who are assigned

1 to do crime scene and then two additional detectives for
2 support purposes. And that's in any homicide, any
3 activation, any call-out, you get at least six
4 detectives going on that.

5 In this case we also include at least two
6 detectives from the East County Major Crimes Team. I
7 believe on this case three responded. We also have
8 additional detectives that were at work that day that
9 were used to conduct interviews of officers. So any
10 witness officer was interviewed by one of these
11 detectives. I think there was five of those.

12 Also responding to the scene are at least
13 two members of the forensic evidence division, our
14 criminalists, along with their sergeant.

15 We get a representative from the district
16 attorney's office that responds to the scene. We have
17 members of the independent police review that respond to
18 the scene, members from Internal Affairs. I believe
19 someone from City Hall also came.

20 Normally, like on a regular homicide, if
21 you will, you don't get that many people responding, but
22 in an officer-involved shooting, you do. There's a lot
23 more oversight, a lot more review. So we have a lot
24 more people coming out to the scene.

25 Q Because it involved police officer use of

1 deadly force?

2 A That is correct, yes.

3 Q You mentioned the East County Major Crimes
4 Team sent three members. These are outside police
5 agencies in this case.

6 Do you recall it was the Gresham Police
7 Department and the Multnomah County Sheriff's Office?

8 A Yes. It was a detective from Gresham Police
9 and two detectives from Multnomah County.

10 Q All right. And do you recall in this case
11 actually myself and Deputy District Attorney Auxier also
12 responded to the scene?

13 A Yes.

14 Q And is that all part of the standard protocol
15 for these types of investigations?

16 A Absolutely, yes.

17 Q Can you explain to the Grand Jurors briefly
18 what steps are taken to preserve the scene and to
19 identify any relevant evidence at the scene and to
20 collect that evidence?

21 A Sure.

22 So scene preservation and evidence
23 preservation starts with the uniformed officers that are
24 already on scene where it occurs.

25 So anybody that's not directly involved in

1 the shooting would then assume responsibility for the
2 scene, set up crime scene tape, start locating and
3 marking items of evidence, weapons, shell casings, any
4 other pertinent item of evidence that would help
5 describe what happened.

6 We'll have our inner perimeter where
7 there's only one point of entry. So we have one person
8 with a crime scene log who records everybody that goes
9 in and out of that. And that inner perimeter is what we
10 call the scene. That's where everything happened.

11 Then we'll have a much larger perimeter,
12 which is our working area, where we'll restrict access
13 to just law enforcement. So we have an area to do our
14 jobs. And then there will be a further out perimeter,
15 outer perimeter, if you will, where everybody else can
16 gather, the media, the public.

17 When we respond -- one of my jobs is to
18 identify who's involved. You have an involved officer,
19 which is the officer or officers that actually fired the
20 weapon. And then you have witness officers who are the
21 officer or officers who saw what happened or a witness
22 to the use of force.

23 And then you have what we call sometimes
24 ear witness officers, so they heard what was going on,
25 but they didn't necessarily visually see it.

1 So we'll determine where all of the
2 officers on scene fall into this group, separate them.
3 There will be somebody placed with each group of
4 officers to ensure that they don't discuss anything
5 prior to being interviewed by us.

6 And then they are actually, after being
7 interviewed by us, they are provided with what's called
8 a communication restriction order, which prohibits them
9 from discussing any of the details of the case with
10 anyone involved in the case. Basically you can't talk
11 about it unless you are talking to an investigator, your
12 clergy or your spouse.

13 Q Was that done in this case?

14 A Absolutely.

15 Q And in this case, how were the officers
16 physically separated and where were they interviewed?

17 A In this case it was pouring down rain. Some
18 of the officers -- I know Officer -- the officer that
19 was involved that used the force, Officer Hearst, was
20 inside a vehicle.

21 Most of the witness officers were gathered
22 under a carport in a residence down the street. They
23 were caught out in the rain, and it was a little chilly
24 that day. Some of them were actually starting to
25 shiver.

1 So when I got there, I had them get into
2 their police cars, if they weren't in the scene, and
3 they just had somebody with them.

4 We have members of the Employee Assistance
5 Program, EAP, which come out. The Traumatic Incident
6 Committee, also known as TIC, so these are officers that
7 have been in these kind of situations before, and they
8 will come out and sit with them to ensure that they
9 don't talk to anybody about anything.

10 Q And then were the witness officers taken to
11 East Precinct for the interviews themselves by
12 detectives?

13 A Yes. Once we determined we didn't need those
14 officers at the scene anymore, then they were sent to
15 East Precinct to be interviewed by other detectives.

16 Q Who was identified as the shooting officer in
17 this case?

18 A Officer Hearst.

19 Q This is Officer Andrew Hearst.

20 And did, did any other officers in this
21 case discharge their weapons?

22 A No.

23 Q So you identified a single shooter. And did
24 you contact Officer Hearst that morning at the scene?

25 A Yes, we did.

1 Q When you contacted him, what was his general
2 appearance and demeanor like?

3 A He was dressed in his police uniform. He was
4 reserved, professional.

5 Q And did you identify the weapon that Officer
6 Hearst used in this case?

7 A Yes. It was his AR-15 patrol rifle.

8 Q What did you do with that weapon?

9 A We -- in every officer-involved shooting, once
10 we've identified who the officers are that fired, we'll
11 collect their weapons, and then we'll do what's called a
12 count down on it.

13 So we'll remove all of the bullets from
14 all of the magazines and count them up. And I know how
15 many are supposed to be in each magazine.

16 So once I've determined how many we're
17 supposed to have, then I know how many are missing, then
18 I can determine how many times the officer fired their
19 weapon.

20 So we'll do that for every weapon the
21 officer has on him. Whether it's a rifle or handgun, a
22 less lethal shotgun, whatever they are carrying on their
23 person, we'll collect all that and we'll count it all,
24 and then we know what was fired and how many times it
25 was fired.

1 And then in this case, the fired weapon is
2 retained by us. And anything that wasn't fired is then
3 returned to the officer.

4 Q So based on your count in this case and your
5 inspection of Officer Hearst's weapon and ammunition,
6 were you able to determine how many times he fired that
7 weapon?

8 A Yes. Three times.

9 Q And was that consistent, three times, with
10 other physical evidence at the scene?

11 A Yes. Right at the scene we located three
12 shell casings, so that was consistent.

13 Q I'm showing the Grand Jury a photograph.

14 Can you tell us approximately when this
15 was taken and what it documents?

16 A So it was taken the day of the shooting. What
17 you see here is the driveway of the residence that he
18 had broken into and then jumped out.

19 Is it okay if I approach the picture?

20 Q Sure.

21 While you're moving up to the photo, just
22 for the record, is this the residence of Christine Vu,
23 8301 NE Hancock Street?

24 A Yes. 8301 NE Hancock.

25 So you're looking at -- this is the

1 residence right here.

2 So this window here leads into the
3 kitchen. And down here there's a broken out screen that
4 had been in the window. So the screen was pushed out,
5 jumped down, and then there's this little alcove back
6 here.

7 The garage does attach to the residence,
8 but it's way at the back. It's just like a little
9 hallway. So you have this alcove in here. So it is a
10 little U-shaped alcove, that's very narrow, that goes
11 back to that exterior wall.

12 Then these three markers here are placards
13 that were put out by our criminalists from the forensic
14 evidence division. Those are marking the location of
15 the three shell casings in the driveway there.

16 Q These would be the three shell casings from
17 Officer Hearst's AR-15 rifle?

18 A That is correct, yes.

19 Q And are automatically ejected by the rifle
20 each time it's fired?

21 A Yes. The rifle is semiautomatic. Meaning
22 when you pull the trigger, it cycles. It fires. It
23 pushes -- the firing pin hits the back of the casing, it
24 ignites the powder in the casing, pushes the bullet out
25 the end of the barrel. It causes the bullet to move

1 back. And there's a little hook on the casing that
2 pulls it out and then another piece pushes it out. So
3 it ejects it out.

4 And then as the bullet travels forward
5 again, there's another round in a magazine that it
6 catches and pushes up into the chamber, so it's ready to
7 go again.

8 So you have to pull the trigger each time
9 to get it to fire, but it's not like a bolt action where
10 you have to load it and unload it every time.

11 Q So you have these three casings on the
12 driveway.

13 Was the area inspected just to ensure or
14 to check whether there were any other casings or bullets
15 in the area?

16 A Absolutely. Yes.

17 Q Was anything else found?

18 A No. Nothing else was found. You know, we've
19 had cases in the past where we see shell casings. We
20 mark them all. We'll go back. We'll do the count down
21 on the weapon and like this isn't adding up. We're
22 missing some more. Then we'll go back out and then
23 we'll look and we can find the rest.

24 But, like I said, everything was matching
25 up. We looked around and we didn't find anything more.

1 So that's what we have.

2 Q Okay. There's some other photos.

3 Let me back up here. So this is Placard
4 4. So is this just a closeup shot of one of the spent
5 brass shell casings from Officer Hearst's rifle?

6 A Yes. That's a .223 shell casing right there.

7 Q And Placard 2 and Placard 3 show the other
8 two, for a total of three casings?

9 A Yes, that's correct.

10 Q And is it correct that you personally
11 inspected the crime scene on February 9th? These are
12 things that you saw personally?

13 A Yes. Absolutely.

14 Q In the photo that's coming up, we'll see that
15 the body of Quance Hayes is handcuffed in the photo.

16 A Yes.

17 Q And before we look at the photo, can you
18 explain why, why was he handcuffed?

19 A So whenever someone is shot, it's not -- it's
20 not like on TV, right, where they just get shot, boom,
21 dead. The body is quite strong. You can be shot in the
22 heart. Your heart will explode and you can still do
23 whatever you want for two minutes.

24 You're dead at that point. There's no
25 saving you, but you can still fight. You can still do

1 whatever you want to do. Run.

2 So when someone is shot by the police, we
3 will approach them when it's safe to do so and we will
4 handcuff them. We don't automatically believe they are
5 dead. We want to handcuff them. They've done something
6 that's caused us to shoot them, so we want to keep them
7 from doing anything else.

8 We'll handcuff them, put them in what's
9 called the post-shooting position, which is where we
10 move them on to their side, because if you're handcuffed
11 and you're laying on your chest, it's very hard to
12 breathe. You can -- actually if you're a heavier
13 person, that weight will compress your lungs and you
14 can't breathe.

15 You know, you could be okay, saveable, but
16 then when you are on your chest and you die of
17 asphyxiation, so that's not acceptable to us. So you
18 put them on their side with their legs kind of spread
19 apart to keep them from rolling over.

20 When you are on your side, you can
21 breathe. You don't have that weight pressing down on
22 your chest and your diaphragm. So that's what we'll do
23 is we'll move up, we'll place them in handcuffs, put
24 them on their side, and then get medical attention up to
25 them as soon as possible.

1 Q And so that's pursuant to police bureau
2 policy, is that correct, and training?

3 A Correct.

4 Q And so when you observed the body of Quanice
5 Hayes in the driveway, was it in that post-shooting
6 position?

7 A Yes, it was.

8 Q All right.

9 MR. REES: Just for the Grand Jurors, does
10 anyone have -- we tried to select a photo that wasn't
11 especially gruesome but which also documents the
12 clothing that Quanice Hayes was wearing and the
13 appearance.

14 Is anyone concerned about viewing that
15 picture? Okay. All right. I just thought I would
16 check. Sometimes people don't want to see it.

17 BY MR. REES:

18 Q I'm sorry. These may not be in an exact order
19 here, but let's try to go through some of these photos.

20 So in this photo, which again is the wide
21 shot of the driveway, is that the position of the body
22 of Quanice Hayes when you arrived at the scene?

23 A Yes, that is correct.

24 Q And was the indication that you received from
25 witnesses that the body essentially was not moved other

1 than for purposes of medical checking the body,
2 handcuffing and insuring that the body was in the
3 appropriate position?

4 A Yes. Other than placing him in handcuffs and
5 then moving his leg down there so he wouldn't roll on to
6 his chest, he was not moved from that position.

7 Q What do we see in this picture?

8 A This is Mr. Hayes. That's his back left
9 pocket of his jeans. And then this is the arm of the
10 deputy medical examiner, Damien O'Brien, that responded
11 to the scene.

12 Q Did you observe what was captured in this
13 photo? Did you observe this happening?

14 A Yes, I did.

15 Q Who else was on the scene at that time?

16 A Well, this picture was taken by one of the
17 criminalists from the forensic evidence division. I was
18 there. My partner was there. Another detective, a
19 couple other detectives were in the driveway area there.

20 Q And what did you note -- what do we see in the
21 photo about the clothing of the deceased?

22 A So he's wearing blue jeans. There's a white
23 belt around the hips of the jeans. And then this is
24 actually his boxer underwear here. So that's an Oregon
25 Trail card that was removed from his back pocket.

1 Q And what did you note on the back of this
2 Oregon Trail card? This is a food stamp card?

3 A Yes. It is an Oregon Trail EBT card. When it
4 was flipped over -- there's no name on the front --
5 there's just a number, but on the back people will sign
6 them. Much like your credit cards, you'll sign your
7 name on the back of the credit card. On this one, it's
8 written in cursive, "Armando Suarez."

9 Q So did it appear to you to be clear that this
10 was the EBT card that Mr. Suarez had reported had been
11 taken from him earlier that morning?

12 A Yes, it did.

13 Q What do we see in this photo?

14 A So Placard 6 denotes the broken screen. You
15 can see that's the frame there. Then you have a piece
16 of the frame over here.

17 This little piece connecting them together
18 is that rubber seal that goes around the inside of a
19 screen frame. So you have the cloth of the screen. And
20 then that slide is put in there to pin the screen into
21 the frame. So that -- the screen has been kicked out
22 and kicked apart. So you have the busted screen over
23 here, the frame, the frame with that slide running in
24 between them.

25 Q Ms. Vu testified earlier that it appears to

1 her from inside of the kitchen of her residence the
2 blind in the kitchen window had been violently ripped
3 apart and the screen removed.

4 So what did you conclude when reviewing
5 the scene had happened, had caused this?

6 A I was inside the residence, too. I saw the
7 same thing, that the blinds had been torn down and
8 destroyed in the process. It appeared to me that
9 someone had torn the blinds down. Had busted out the
10 screen and then jumped out the window.

11 Q In terms of the clothing worn by Quanice
12 Hayes, did it appear to be similar or dissimilar to the
13 clothing descriptions that had been provided earlier by
14 Mr. Suarez and Ms. Christie and Ms. Pittman, the
15 citizens that had called the police that morning?

16 A Yeah. It was generally consistent in
17 appearance. Obviously, the colors vary from person to
18 person, but the darkness of the clothing, the
19 description of it and even the description provided by
20 Officer Tatro when he ran from the backyard of Marsha
21 Pittman's residence was pretty much spot on at that
22 point.

23 Q What does this photo show?

24 A That is that alcove that I talked about
25 previously. So the window would be right about here

1 where my hand is. This is a bag of items that was in
2 the back of that alcove.

3 Q And when you met with Ms. Vu during this
4 investigation, did you ask her about this bag?

5 A I did. This bag was collected. It was one of
6 the items that was collected. It was taken back to the
7 forensic evidence division where everything was laid out
8 and photographed.

9 So I took those photographs to Ms. Vu, and
10 I showed them to her, and she was able to identify the
11 bag and its contents as coming from her residence.

12 Q What was inside the bag?

13 A There's three pairs of shoes, Nike shoes, a
14 Trail Blazers jacket, what I later learned was like a
15 little ingrown toenail tool, I guess, for -- you find on
16 a manicure/pedicure kit.

17 Q We saw earlier a photograph of three pairs of
18 Nike shoes, a letterman jacket style, Portland Trail
19 Blazer article of clothing.

20 So are those items that were found inside
21 that bag in the alcove?

22 A Yes.

23 Q And what do we see in this picture?

24 A This is the gun that Mr. Hayes had. In case
25 you're wondering why some of these pictures have

1 placards in them and some don't, just so you understand
2 the way we process these scenes, our criminalists will
3 go in and then we will do photographs and video of
4 everything prior to it being touched, altered, changed
5 in any way, shape or form.

6 Then once we've determined what is items
7 of evidence, they will place the placards down,
8 rephotograph them with the placard next to them showing,
9 you know, Placard 2 is this.

10 So we have pictures before anything gets
11 altered. And then by putting something in there, we're
12 altering the scene, if you will. So we want to capture
13 the scene as sterile, and then we start doing our thing
14 and take pictures as we go again.

15 So this is a picture of the gun as
16 initially taken prior to any placards being put down.

17 Q What is this picture showing?

18 A This is the driveway of 8301 Hancock. You are
19 back against the garage looking out to the street. You
20 can see the residence across the way there, the police
21 car there, and you can just make out a casing right
22 there.

23 Q All right. And this house directly across the
24 street from Ms. Vu's home is the residence of a Ms.
25 Colby --

1 A Yeah. Correct.

2 Q -- a witness in the case?

3 What are we seeing in this picture?

4 A There's that window again. Whereas, the
5 previous one was kind of taken from this angle looking
6 this way. Now, you are looking straight in the window.

7 You can actually see the fridge right
8 there. This is the kitchen in there. The blinds were
9 there, and they were torn down and thrown over here.
10 There's a counter right on the other side of that
11 window.

12 Q And so when you looked at the scene and
13 reviewed the various statements from the witnesses, what
14 did you conclude about the sequence of events that
15 occurred at the home in terms of what was the point of
16 entry and what was the exit point?

17 A The point of entry was the downstairs basement
18 door. Not actually by opening the door, but by going
19 through the door. There had been glass in the window
20 that was broken out. It was inside and outside.

21 Then there's, like, a metal screen,
22 security screen that had been pushed in, and then he was
23 able to climb in through there.

24 And obviously, then he exited through this
25 window up here. And it is very close in proximity to

1 this alcove, so you can jump down and get back to that
2 alcove very quickly without anybody seeing you.

3 Q And in the alcove -- again, in that photo we
4 can see at the end of the alcove is the black bag with
5 the Nike shoes in it.

6 So did you conclude that Quanice Hayes had
7 carried or thrown that bag out with him when he left the
8 kitchen window?

9 A Absolutely. Yes.

10 Q All right. And on our photographic diagram we
11 have the times of the 911 calls made by the different
12 citizens in this case.

13 No time next to the burglary of the home
14 because it's really not known exactly when entry was
15 made into the home; correct?

16 A Correct. It was right about 7:45 a.m. when
17 Officer Tatro and Officer Rippe challenged Mr. Hayes in
18 the backyard of Marsha Pittman's place at 8322 Tillamook
19 and then he runs over that fence. So it was sometime
20 after 7:45 and obviously prior to 9:20 where this
21 occurred.

22 Q The alarm company called Ms. Vu after 9:00, I
23 believe, she said.

24 A Yes.

25 Q When the alarm was triggered inside of the

1 home.

2 A Right.

3 The way the alarm system works in her
4 house is the downstairs door has a sensor on it.
5 There's another sensor on the door. So when those
6 sensors are separated, that's what triggers the alarm.
7 Because the door was never opened, those sensors never
8 became separated.

9 However, upstairs in the main floor
10 there's a motion sensor. When that was triggered,
11 that's what triggered the alarm.

12 Q So do you believe that Quatrice Hayes was
13 initially in the basement and then moved to the upstairs
14 of the house at some point?

15 A Yes, sir.

16 Q It triggered the alarm?

17 A GRAND JUROR: How do they do it without
18 creating an alarm on the door?

19 THE WITNESS: Because the door itself was
20 never opened, so the sensors stayed together. So there
21 was no motion sensor downstairs.

22 MR. REES: Here is a photograph maybe that
23 will help you explain.

24 THE WITNESS: Here is your sensor on the
25 door.

1 A GRAND JUROR: I get that. But if he
2 went upstairs, did he have to go through a door?

3 THE WITNESS: So when you go up the
4 stairs, there's a door that opens. It opens inward.
5 But it wasn't until he got out into the hallway there
6 that he activated the motion sensor.

7 A GRAND JUROR: Okay.

8 BY MR. REES:

9 Q That's a motion detector at that point?

10 A Yes.

11 A GRAND JUROR: But not a sensor on the
12 door?

13 THE WITNESS: No. It is an interior door.
14 Usually you don't see alarms on interior doors.

15 A GRAND JUROR: Okay.

16 BY MR. REES:

17 Q I believe this is the point of entry; correct?

18 A Yes. You can see the broken glass down here.
19 These stairs go up to the backyard. There's that screen
20 that I was talking about that was kind of bashed in, and
21 then you could just slide through the opening there
22 inside.

23 Q This photo shows the relationship between the
24 body of Quanice Hayes and the gun; is that correct?

25 A Yes. So you see Quanice Hayes, the gun there,

1 then there's that broken out screen that we talked about
2 with the window right above it.

3 Q What did you observe about the gun? Did you
4 handle the gun at the scene?

5 A I did. I picked it up. As you can see it
6 laying there, it's -- it looks like a real gun to me.

7 Even when I picked it up and started
8 actually handling it, that's when I realized that it's
9 like an airsoft gun. It's a pellet gun. It's got a CO2
10 charge.

11 So you actually access the CO2 canister by
12 removing the magazine, like you would in a real handgun,
13 and then it is in there. It has what you commonly see
14 in real handguns, there's a magazine release lever here,
15 a safety right there, and then a slide stop lever there.

16 Q When did you realize it was actually a CO2
17 pellet gun?

18 A When I removed the magazine from the, from the
19 handgun itself.

20 Q And was the gun collected as evidence and
21 transferred to the Oregon State Police Forensic Lab for
22 processing?

23 A Yes, it was.

24 A GRAND JUROR: I don't know anything
25 about guns. So what are the gun laws -- I'm just

1 curious.

2 Do most airsoft guns of these kind of
3 pellet guns, are they required to have some kind of -- I
4 don't know -- like coloring?

5 Is that, like, coloring specific to that
6 type of gun, or do they have to have some designation to
7 make them recognizable, or should they have some --

8 THE WITNESS: Should they? Absolutely.

9 A GRAND JUROR: I mean, is that a law? I
10 mean, do they?

11 THE WITNESS: There are. Yes.

12 So fake guns, if you will, right, not
13 actually real guns, usually have some sort of marking.
14 Usually an orange ring around the barrel, you know, the
15 part that the bullet comes out. There's usually an
16 orange marker there to denote that it's not a real gun.

17 A GRAND JUROR: Can this be removed?

18 THE WITNESS: Yes. They can be removed.

19 A GRAND JUROR: Should this type of gun
20 have had that type of marking?

21 THE WITNESS: Yes.

22 BY MR. REES:

23 Q We're looking for a photo, Detective. Because
24 I understand you did some research into this particular
25 brand of gun; correct?

1 A That is correct.

2 Q I think I have the exhibit right here.

3 So did you determine that this airsoft C02
4 pistol is sold by the manufacturer with an orange safety
5 tip on the barrel?

6 A Yes, it is.

7 A GRAND JUROR: Okay.

8 BY MR. REES:

9 Q So did you conclude that it had been removed
10 in this case in order to defeat the safety feature and
11 to make the gun appear even more realistic?

12 A Yes. It appeared to me that the orange part
13 that projects out from the slide had been removed so as
14 to make it look more realistic.

15 A GRAND JUROR: We don't know why?

16 THE WITNESS: Well --

17 A GRAND JUROR: So this is probably not --
18 maybe a dumb question.

19 Once again, I don't know anything about
20 guns. They make guns in tan? I mean, like they make
21 real guns, not this kind, but they make real guns in
22 those colors?

23 THE WITNESS: They do, yes. Not only this
24 color, but name a color, and you can find a handgun in
25 that color.

1 A GRAND JUROR: So it would be reasonable
2 to suspect that an officer seeing a gun that was this
3 color would not jump to the -- I mean, would not
4 automatically go to the conclusion that this would not
5 be a real gun just because it wasn't black?

6 THE WITNESS: You are absolutely correct.

7 A GRAND JUROR: Okay.

8 THE WITNESS: We know that people will
9 take real guns and paint them to look like it's a fake
10 gun.

11 A GRAND JUROR: But a gun is a tan
12 colored -- the real guns come in tan colors?

13 THE WITNESS: Yes, they do.

14 BY MR. REES:

15 Q Mr. Suarez had described this gun as being
16 desert camo.

17 Do you know whether that's actually a
18 popular style of weapon currently?

19 A Yes, it is. Actually desert tan or desert
20 camo is very popular because of everything going on in
21 the Middle East with the soldiers and everything over
22 there. So it's not uncommon to find this available.

23 Q Were any of the officers in this case wearing
24 body cams?

25 A No. We don't have body cams in the Portland

1 Police Bureau.

2 Q All right. And were efforts made to locate
3 any video in this case from any other sources?

4 A Yes. We retrieved video from the Value Inn,
5 from the Banfield Pet Hospital. There's a couple other
6 businesses around there that we pulled video from.

7 Q Did you identify any officers who stated they
8 saw the gun, this gun in the photograph in the hands of
9 Quanice Hayes?

10 A No, I did not.

11 Q So based on your training and experience, had
12 you reached a conclusion about how this CO2 pellet gun
13 reached the location in the photo about two feet away
14 from the body of Quanice Hayes?

15 A It's my belief, based on everything that I
16 know from the scene, my experience in these kind of
17 matters, that the gun was either in his waistband or his
18 pocket, but right in this front area here. He's got his
19 hand on it and was retrieving it at the time that he was
20 shot.

21 So whether -- I can't say how far it came
22 out, but my belief is he had his hand on it. And as he
23 was shot and falling down, his arms came out, you know,
24 whether to catch himself or whatever, but he still had
25 that gun in his hand, and then it just flopped down on

1 the ground.

2 Yes, ma'am.

3 A GRAND JUROR: Why is that your belief?

4 Did someone -- you can't say if someone
5 said that to you because that would be, right --

6 MR. REES: Well, I'm asking -- you know,
7 you can ask the question. And the question is really
8 based on, because he's the lead investigator, everything
9 that he saw and everything he learned was his
10 conclusion. So, yeah, that's the question.

11 Why do you believe that and why do you
12 believe that as opposed to --

13 A GRAND JUROR: As opposed to it falling
14 out of his pocket when he fell out of the window or
15 jumped. I have no idea whether he fell or jumped.

16 THE WITNESS: Yeah. Right. That's a
17 valid question.

18 So if you look at this picture here, you
19 can see the handgun that's in the picture and you see
20 that window frame, right, the screen frame.

21 So the officers that were on that search
22 team that came around this side of the house, Officer
23 Higginbotham and Officer Wullbrandt, specifically both
24 noted that that window was opened and hadn't been opened
25 prior, and that the screen that was in it was now on the

1 ground. They saw the screen. They saw it in its broken
2 state.

3 I don't want to say it's impossible, but
4 it is extremely unlikely that they would notice the
5 window, the screen, the screen torn apart, and not
6 notice the handgun right next to it.

7 That's things that we key in on when you
8 see weapons laying around. I mean, that would be more
9 noticeable to us than, say, a broken screen. It's
10 something that we would see first and then the screen.

11 So based on the fact that nobody saw that
12 gun there until afterwards, that's why I believe that he
13 had it on him and was in the act of retrieving it at the
14 time that he was shot.

15 BY MR. REES:

16 Q And just to make sure we're clear, Detective,
17 and we're calling this witness as well, but you've been
18 given the indication that prior to the shooting of
19 Quanice Hayes, an officer witness says he observed the
20 broken screen from the window on the ground.

21 A Yes, that is correct.

22 Q But at that time did not observe a gun on the
23 ground?

24 A That is correct, yes.

25 A GRAND JUROR: So would it be a fair

1 inference that Mr. Hayes was -- your officer saw a
2 broken screen and a broken window, but not see
3 Mr. Hayes, nor a gun at that point; right?

4 MR. REES: This was prior to the shooting?

5

6 A GRAND JUROR: Right, prior to the
7 shooting.

8 THE WITNESS: Yes.

9 A GRAND JUROR: And that little alcove,
10 would it be where someone could conceivably have
11 concealed themselves while they were looking at the
12 broken screen and the broken window?

13 Is that a correct -- or a possibility?

14 THE WITNESS: If I'm understanding you
15 correctly, you're asking if someone could conceal
16 themselves in that alcove and not be seen while the
17 officers were seeing the open window and the broken
18 screen?

19 A GRAND JUROR: Correct.

20 THE WITNESS: Yes, that is correct.

21 MR. REES: Okay. I'm going to step out
22 for some other photos and a photo of the gun so you can
23 see that.

24 (Short Recess.)

25 MR. REES: I'll pass these photographs

1 around.

2 BY MR. REES:

3 Q If you can explain to us what we're seeing as
4 far as the appearance of the alcove from the driveway.

5 A So that's the alcove. Obviously, all of the
6 evidence is gone at this point. But you are in the
7 driveway looking right back at this alcove. It actually
8 goes a little deeper than you would think. It's hard to
9 get a perspective on these photos.

10 Q This has the measurements in this picture.

11 A Yes.

12 Q The width was measured out at?

13 A Thirty inches.

14 Q And the depth of the alcove was measured out
15 at 94 inches.

16 A Yes. So just over seven feet, or almost seven
17 feet.

18 Q Just to be clear, these photos that we're
19 passing around were taken days afterwards, just so we
20 could answer some of the questions like that.

21 In terms of Mr. Hayes himself, you
22 attended the autopsy that was performed by Dr. Young the
23 next day; correct?

24 A That is correct, yes.

25 Q And when you observed Mr. Hayes, did he appear

1 physically similar in terms of height and weight and
2 hairstyle to the subject described by the various
3 citizens in this case who reported the series of crimes
4 that morning?

5 A Yes. Absolutely.

6 Q Did he have dreadlocks?

7 A He did, yes.

8 Q How old was Quanice Hayes?

9 A Seventeen.

10 Q And did you have information as to where he
11 was residing before this happened?

12 A He was reportedly living on the streets. We
13 were able to determine that he actually had been staying
14 in a hotel on 82nd Avenue a few blocks north of there,
15 somewhat, you know, the night or two before this
16 happened.

17 Q There had been a report that he'd been listed
18 as a missing person with a national registry of missing
19 persons.

20 Was that correct?

21 A That is correct, yes.

22 Q Do you know about how long he was reported as
23 a missing person?

24 A Well, when you say "missing person," it was
25 actually not like he disappeared. He was reported as a

1 runaway, and that had been in effect since, well, at
2 least the fall of 2016 and perhaps even earlier than
3 that. Maybe the spring of 2016.

4 MR. REES: Okay. Someone wanted to see a
5 picture of the weapon used by the officer, so we can
6 look that up.

7 Were there any follow-up questions for the
8 detective?

9 A GRAND JUROR: No. That was the only
10 one.

11 MR. REES: If something does come up, I
12 believe you're available for the next two days to come
13 back.

14 THE WITNESS: Absolutely.

15 MR. REES: We'll excuse our witness, and
16 we'll call Detective Gradwahl.

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1 TODD GRADWAHL,
2 a witness called on behalf of the State, having been
3 first duly sworn, was examined and testified as follows:
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5 EXAMINATION

6 BY MR. REES:

7 Q Would you state and spell your full names for
8 the record?

9 A Todd, T-O-D-D. Gradwahl, G-R-A-D-W-A-H-L.

10 Q Detective Gradwahl, how long have you been a
11 member of the Portland Police Bureau?

12 A For 22 years.

13 Q All right. And were you one of the detectives
14 assigned to investigate an officer use of deadly force
15 in the City of Portland on February 9th, 2017?

16 A I was.

17 Q All right. You've been called before the
18 Grand Jury today specifically to talk about surveillance
19 video that you retrieved and examined in this case.

20 On the screen, we're going to look at two.
21 One is from Portland Value Inn and one is from the
22 Banfield Pet Hospital.

23 Before we show them, can you just explain
24 briefly how these two videos were obtained?

25 A These videos were obtained, you know -- I

1 didn't go talk to the motel or the Banfield Pet Hospital
2 personally.

3 This is just some evidence that came in.
4 And Detective Kammerer handed I believe the Portland
5 Value Inn one over to me, and I believe the Banfield Pet
6 Hospital was one that we went in front of a Grand Jury
7 to open that, and then I examined them.

8 It was one of the things that I helped do
9 was there's some video, and I volunteered to look at it
10 and kind of put some timelines together the best I
11 could.

12 Q Okay. Before we look at the Portland Value
13 Inn video, were you able to see what you believed to be
14 the vehicle of Armando Suarez and his contact by Quanice
15 Hayes in this case and what Mr. Suarez described as a
16 robbery that took place?

17 A Yes. It's not real clear as far as, you know,
18 high definition and the lit condition. But based on all
19 accounts of where the vehicle was parked, there was
20 video cameras that captured -- video camera that
21 captured that.

22 Then there's some other video cameras that
23 captured other areas of the motel where Mr. Suarez later
24 went. So the video I put together kind of is from
25 several different cameras that kind of piece the whole

1 thing together the best we could based on the evidence
2 collected.

3 Q We're putting up a clip of the video. Feel
4 free to go to the screen if you want.

5 (Video played.)

6 What are we seeing?

7 A This is a camera that faces to the northwest
8 from the Portland Value Inn. This vehicle right here is
9 the one we're going to be focused on, Mr. Suarez's
10 vehicle. This is a parking lot area. The camera is on
11 the corner of the building and faces this direction up
12 here.

13 MR. AUXIER: Did we just see someone walk?

14 THE WITNESS: Yes. That was Mr. Hayes
15 approaching the vehicle.

16 Right before that, about 20 seconds before
17 that, there was the brake lights flashed on the car.

18 And then about 20 seconds later, that's
19 when Mr. Hayes approached the passenger side of the car.
20 Then you can see him get in.

21 BY MR. REES:

22 Q Armando Suarez said he was sleeping in the
23 driver's side of the car.

24 So would the brake lights flash -- as
25 we're seeing now in the video, could that be from him

1 hitting the brakes?

2 A I know from experience of doing surveillance a
3 lot over the years in my career that, you know, when I'm
4 not even trying to tap the brakes, sometimes it doesn't
5 take much. Just adjusting my feet or something like
6 that.

7 So I believe when I was watching this
8 video, that if he was sleeping, maybe just adjusted
9 positions and bumped the brake lights based on if he
10 said he was sleeping.

11 Q And so shortly after the lights flash we see a
12 subject approach the car. And based on the report of
13 Mr. Suarez, you believe that to be Quanice Hayes.

14 And then did you watch the video until the
15 time that you see a subject leaving the car?

16 A Yes, I did.

17 Q And can you tell the Grand Jury, please, what
18 was the length of time that this person believed to be
19 Quanice Hayes was inside of the car with Armando Suarez?

20 A Approximately 33 minutes.

21 Q So 33 minutes inside of the car.

22 And during that time no one else left or
23 entered the car; is that correct?

24 A Correct. During that time there was several
25 times when the taillights, brake lights would come on.

1 You could see that in the video. And sometimes quickly
2 on and off and then on for a few seconds and off.

3 Q I'm going to show now the video from the
4 Banfield Pet Hospital. Again, if you could just help us
5 as we watch this and explain what we're seeing.

6 (Video played.)

7 A This video here is a little more difficult in
8 the aspect that it's not time-stamped. It doesn't
9 have -- what you're watching is where I screen-captured
10 it. But their actual video, which is in the center of
11 the screen doesn't have times on it.

12 I think there was a person I highlighted
13 that was walking from left to right. They are going to
14 come into view here. You can see them moving at the top
15 of the screen.

16 Q Can you show us the car of Ms. Christie?

17 A That's her car there. You can see Mr. Hayes
18 approaching the car.

19 Also, you are going to see here in a
20 second where it skips. So some of these camera systems
21 are better than others. Some are motion-activated. But
22 it takes a certain amount of movement to get the camera
23 started again. So that's why it jumps around, I
24 believe.

25 He started out on the driver's side, then

1 circled around the passenger side. This here is going
2 to switch to another camera here in a few seconds. But
3 he goes along the south side of the building.

4 He went along the south side, then he
5 comes back to the car. This is when I said he's going
6 to the south side. This is from a different camera
7 angle to watch what he's doing.

8 Q What does he appear to be doing on this side
9 of the building?

10 A I can't tell if he's looking for something.
11 He goes and picks something up, then he walks back
12 toward the car.

13 You are going to see a sudden movement in
14 front of the car where he appears to break the window
15 out. That's where it appears that he breaks the window
16 out, then he gets in after that.

17 Where you see somebody walking off, that's
18 not him. That's just before the lag, and the camera
19 captures somebody else walking down the sidewalk.

20 Q You know that because we then see Julie
21 Christie coming out to the parking lot?

22 A Correct.

23 Q She told police that she actually confronted
24 the subject in her car before calling 911.

25 So do you believe that's what we're seeing

1 there at this point?

2 A Yes. I believe this is her on the initial
3 confrontation.

4 Q Do we now see the person in the car getting
5 out?

6 A Yes, with the black piece of luggage.

7 Q Being followed by Julie Christie?

8 A Correct.

9 MR. REES: Okay. Are there any questions
10 for Detective Gradwahl?

11 All right. Thanks very much for coming
12 in.

13 THE WITNESS: Thank you. I appreciate it.
14 (Luncheon recess, 12:00 p.m. to 1:00 p.m.)

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1 CHRISTOPHER R. YOUNG, M.D.,
2 a witness called on behalf of the State, having been
3 first duly sworn, was examined and testified as follows:
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5 EXAMINATION

6 BY MR. AUXIER:

7 Q Can you tell us your name and spell it for us?

8 A My name is Dr. Christopher Young. Last name
9 is spelled Y-O-U-N-G. Christopher,
10 C-H-R-I-S-T-O-P-H-E-R.

11 Q What do you do for work?

12 A My title is deputy state medical examiner. So
13 I'm a forensic pathologist, and I work for the Oregon
14 State Medical Examiner's office.

15 Q How long have you worked with the Oregon State
16 Medical Examiner's office?

17 A I've been there going on 13 years.

18 Q And what did you do before that?

19 A A lot of schooling.

20 Q Where did you go to school?

21 A My undergrad was at Pepperdine where I studied
22 biology. My medical degree was at the University of
23 Texas Medical School in Houston. I came to Portland for
24 my pathology residency at Oregon Health and Sciences
25 University. And then I went back to Texas for a

1 fellowship in forensic pathology. Specialty training in
2 this type of work.

3 And I've worked here ever since. I
4 trained and I am board certified in anatomic and
5 forensic pathology and licensed to practice medicine in
6 the State of Oregon.

7 Q So you are a medical doctor who has focused
8 your practice on forensic pathology; is that correct?

9 A That's correct. And really pathology -- most
10 pathologists work for a hospital. So the kind of
11 specialty side training from that is forensic pathology.

12 Q And in the course of that work, is it safe to
13 say that you conduct a number of autopsies often for
14 related to criminal investigations?

15 A We do.

16 Q How many do you think you've performed in your
17 13 years with ME's office?

18 A We do right around 200 cases a year.

19 Q And did you perform an autopsy on Quanice
20 Hayes on February 10 of 2017?

21 A I did.

22 Q And to sort of summarize the conclusion of the
23 autopsy, what was your finding regarding cause of death?

24 A I listed the cause of death as multiple
25 gunshot wounds.

1 Q How many times was Mr. Hayes shot?

2 A Three times.

3 Q And can you just tell us the approximate
4 location of those three shots?

5 A Certainly. So I listed them one through
6 three.

7 The first one I called gunshot wound of
8 the head. And that was on the right frontal hair
9 bearing scalp, so kind of above the forehead, up in
10 the -- beyond the hairline.

11 The second one is a gunshot wound of the
12 torso. I describe that as being on the left lower
13 chest, near the midline. So that's right at the bottom
14 of the rib cage sort of.

15 Then the third one is another gunshot
16 wound of the torso. And that one is the left
17 mid-abdomen also near the midline. So just about the
18 level of your belly button and just a little bit over
19 from midline.

20 Q To backtrack to the shot that you first
21 mentioned, the one to the hairline, to quote from your
22 report, it was described as the right frontal hair
23 bearing scalp.

24 You pointed to the area. But for the
25 record, was that towards the front of the scalp,

1 forehead area?

2 A Yes. It's above the forehead, but into the
3 hair bearing scalp on the right side.

4 Q Got it.

5 But not in the back of the head, on the
6 front more towards the front?

7 A It's on the front of the hair bearing scalp
8 just beyond where the forehead is.

9 Q Got it.

10 And you did mention two shots to the torso
11 and in slightly different areas.

12 And when you say "torso," you're referring
13 to the front of the body, not the back?

14 A The front, that's correct.

15 Q Those were the only three gunshot wounds that
16 you noticed?

17 A Yes.

18 Q In regards to each one of those three gunshot
19 wounds during the course of your autopsy, were you able
20 to recover bullets or bullet fragments?

21 A Um, I was able to recover bullet fragments
22 from all three.

23 Q Did it appear to be the same type of bullet
24 with every gunshot?

25 A It did. These were -- they were portions of

1 the bullets. I can tell that they were small caliber,
2 and they appeared to be copper jacketed as well.

3 Q I noticed in your report that you said the
4 range of fire was indeterminate.

5 Can you explain what caused you to reach
6 that conclusion?

7 A So when we look at gunshot wounds,
8 occasionally we can tell the range of fire based on
9 residues or injuries that are left on the skin.

10 It depends on type of weapon, the type of
11 ammunition that's used. But it also depends on if the
12 bullet goes through a secondary target.

13 So if somebody is shot with a gun within
14 three feet, sometimes between one and three feet, you
15 can have some small particles of partially burned and
16 unburned gunpowder that are almost like sand particles
17 that can strike the skin and leave a stippling pattern,
18 which are tiny little pinpoint abrasions.

19 Then if you are inside that one-foot
20 range, there's also a very hot cloud of smoke that comes
21 out of the gun. And so you can have that soot deposit
22 on the skin as well.

23 And so if I don't see any of those
24 findings, then I list it as indeterminate because many
25 times people are shot through clothing. So the clothing

1 would absorb those, so I wouldn't be able to tell. So
2 that's the reasoning for that terminology.

3 Q So you couldn't tell if the shot was 100 feet
4 away, five feet away, ten feet away?

5 A Not just by looking at the wound.

6 Q Correct. Got it.

7 Now, you noted those three gunshot wounds,
8 but you actually do an examination of the entire body
9 and examine other organs.

10 Was your conclusion that he was otherwise
11 healthy? There was no other indicators of possible
12 intervening causes of death?

13 A No. He was a young, otherwise healthy
14 individual.

15 Q And did you notice any other abrasions or
16 injuries on his person?

17 A There were some minor abrasions. I described
18 on the forehead just left of midline, a
19 one-and-a-half-inch patch of extremely superficial
20 abrasion and contusion. It's the kind of abrasion you
21 see from, like, asphalt or something of that nature.
22 And it was on the forehead between the hairline and the
23 eyebrows.

24 Additionally on the left cheek, was a one
25 inch, one quarter by one-quarter inch dry red abrasion.

1 Then on the left back was a one half inch
2 extremely superficial abrasion that had some crusting on
3 it. Meaning it was an older abrasion with some
4 scabbing.

5 Q Did you notice anything on his hands?

6 A No.

7 Q Did you begin the autopsy with a body being
8 presented to you in the state in which it was being
9 found, correct, clothing is still on the body; is that
10 right?

11 A On a case like this, yes, fully clothed.

12 Q And tell us what you noticed during that
13 external examination as far as the clothing of the body.

14 A Do you want me to go through all of the
15 clothing?

16 Q Sure.

17 A I describe the body as being received wearing
18 multiple layers of clothing. There was an olive green
19 zippered jacket.

20 Then do you want me to go through
21 everything in the pockets?

22 Q Yes.

23 A Okay. In the right front pocket was a
24 right-handed Nike nylon and leather glove. In the left
25 front pocket was a partially broken dark brown or black

1 screw to that lid that had some round material
2 resembling tobacco in the inner surface.

3 Beneath the outer layer was a black
4 zippered North Face hoodie sweatshirt. And then I
5 described defects in these garments in the areas where I
6 noted the gunshot wounds.

7 Q So there were some small holes in the clothing
8 that he was wearing that were consistent with the
9 gunshot wounds to the torso?

10 A Correct. So there were two defects in the
11 left front of the garments, and then the black hoodie
12 had a defect on the right front region.

13 Q Okay.

14 A There's more clothing if you want me to keep
15 going.

16 Q If you could.

17 A Around the right wrist was a plastic white
18 metal bracelet with large clear colorless stone
19 settings. So it looked like a metal bracelet, but it
20 had some elasticity to it.

21 There was a pair of blue denim jeans that
22 had zippers, kind of above and below that were
23 decorative, above and below the knees.

24 He was wearing men's boxer briefs that had
25 images of astronauts and cats. He had a white and navy

1 blue belt, brand Louis Vitton.

2 In the right front pocket of the pants was
3 a plastic baggy containing a key chain, attached to a
4 black elephant with kind of little decorative beads on
5 it.

6 Also, in his -- in the pocket was a small
7 miniature padlock and a small skeleton key. In the left
8 front pocket was a combination of different currency
9 types of money.

10 And I'm not certain, you know, what
11 country this currency was from. But there was one that
12 said Singapore and two dollars. One read Bank of
13 Malaysia, that said RM1, and then two additional bills
14 that had a 20, as well as a 20,000 marking on them.

15 Also in the pocket were three one dollar,
16 U.S. currency and mixed coin currency, predominately
17 consisting of U.S. money. That included 21 quarters, 38
18 dimes, 30 nickels, three half dollars, 205 pennies and
19 36 foreign coins.

20 Q Did you notice any shards of glass in his
21 pocket?

22 A Yes. Also in the pocket were small portions
23 of shattered safety glass.

24 Q Now, you testified earlier that Mr. Hayes was
25 shot three times.

1 Can you talk to us about the trajectory of
2 those three shots?

3 A The trajectory of the gunshot wound of the
4 head was front to back and slightly downward. The
5 trajectory of the gunshot wound that entered the left
6 lower chest was front to back downward and right to
7 left. And the third gunshot wound through the abdomen
8 was front to back downward and also right to left.

9 Q Some of the -- the testimony at the scene was
10 that Mr. Hayes fell forward after the three shots were
11 fired. He didn't fall backwards. The shots didn't
12 propel him back into the alcove or hit a wall.

13 Can you explain whether or not that's
14 unusual to you?

15 A Well, as far as which direction somebody falls
16 in, I mean, it kind of depends on how they are standing
17 or what they are doing at the time they were shot. But
18 as far as being blown backwards or something of that
19 nature, that's something that they typically show on
20 movies, television.

21 And the fact is, I mean, you have
22 something that weighs as much, you know, as a small
23 pebble or this paperclip flying towards you, and there's
24 no way for something with that small of a mass to push a
25 grown human's body backwards the way that they depict it

1 in those kind of scenarios.

2 So what happens is bullets go through
3 bodies, and they don't push them back at all. They
4 don't jump, fly backwards the way they look on movies.

5 Q Can you talk to us about a subject's ability
6 to continue making movements after being shot in this
7 manner?

8 Is one able to continue to make some
9 movements after being shot in the way that Mr. Hayes was
10 shot?

11 A Well, it depends on the gunshot wound. If
12 somebody is shot through the spinal cord, you know, they
13 no longer have control of their body and will fall right
14 away.

15 But with that said, a person is still
16 alive and they still have muscles, and everything is
17 still oxygenated for moments afterwards for seconds.
18 And so there can be some respiratory effort or some
19 involuntary twitching or muscle movement.

20 So in this particular case, I mean, there
21 was a gunshot wound in the head, but there's still --
22 the brainstem is still relatively intact, which drives
23 breathing, so there may be some respiratory effort or
24 some groaning or some motion afterwards.

25 Q If you sort of had already began making a

1 certain motion, would it just stop immediately upon
2 impact of the bullet to the brain?

3 A No, not necessarily.

4 Q Was there any evidence of that the spinal cord
5 was struck in this case?

6 A No. Most of the damage to the brain was above
7 that level.

8 MR. REES: So if I can follow up on that,
9 Doctor.

10 If in this case Quatrice Hayes was pulling
11 an object, a firearm from his waistband at the time that
12 he was shot, is it your medical opinion that he would be
13 able to continue the physical motion of pulling it up
14 and out despite being shot or not?

15 THE WITNESS: Well, I don't believe that
16 he would be able to reach and grab it after being shot.
17 But if he's already got a hold of it, you know, he
18 certainly could have a reaction to being shot, you know,
19 where he flings it or moves it in some way after being
20 shot. Certainly.

21 MR. REES: Okay. So the body doesn't
22 freeze up or something in reaction to being shot, a
23 person can still have some movement or motion?

24 THE WITNESS: Absolutely.

25 BY MR. AUXIER:

1 Q In the course of your post-mortem
2 examinations, do you also pull blood and urine samples
3 to determine what sort of substances are in the
4 subject's system?

5 A We do. In certain cases and in cases like
6 this particular one, we perform toxicology testing on
7 blood and urine.

8 Q And were you able to do that in this case?

9 A We did.

10 Q I'm going to ask you about the results that
11 were found in this case.

12 First, I'm going to turn your attention to
13 the February 28, 2017, the Analytical Report that tested
14 Mr. Hayes' alcohol levels. It's my understanding that
15 no alcohol was detected in Mr. Hayes; is that correct?

16 A That's correct.

17 Q And now I would like to turn your attention to
18 the February 13, 2017, (sic) Analytical Report. There
19 was a urine specimen that was examined by a forensic
20 scientist named Emily Lawler.

21 Can you tell us what control -- just tell
22 us what chemicals were detected in Mr. Hayes' body?

23 A So we tested urine and blood. So the urine
24 has slightly different substances than what was found in
25 the blood. But what it has is cocaine, and cocaine

1 metabolites were detected in the urine.

2 So it's cocaine, and then the metabolites
3 are Benzoyllecgonine, Ecgonine methyl ester,
4 Cocaethylene, and Ecgonine ethyl ester.

5 So those are all metabolites of cocaine.
6 And the one that stands out that I'm not seeing in the
7 blood is Cocaethylene. So that's a metabolite that's
8 formed as your body is metabolizing cocaine when there's
9 alcohol present.

10 So there is no alcohol detected in his
11 system, but because I see Cocaethylene there, I know
12 that he was using alcohol at some point while his body
13 was metabolizing cocaine.

14 Also, in his urine was Alprazolam, which
15 is a Benzodiazepine, Diphenhydramine. It is an
16 antihistamine, and Dextromethorphan. That's a cough
17 suppressant. So the last two things you might see in
18 like a Robitussin, something along those lines.

19 And then also detected, but not confirmed
20 was Levamisole. That's something that's oftentimes
21 found as a contaminant or in cocaine. It's something
22 that's used to cut it or enhance it. I'm not sure
23 exactly why they put that in there. But it's actually a
24 medication that treats -- it's used more for treating
25 animals for some type of parasitic infections. But it

1 shows up in the majority of cases where we see cocaine.

2 And then Doxylamine and Cannabinoids. So
3 in the actual blood -- so urine is kind of concentrated
4 wastewater. So oftentimes there may be something that's
5 in the urine that's not in the bloodstream. Things that
6 someone takes can be detected for long periods of time
7 often in the urine, and it's not necessarily still in
8 their system. So the actual drugs that we detected in
9 the blood are more active or still present in the
10 bloodstream.

11 Q So now, you're switching over to what was
12 found present in his blood?

13 A What we found in his blood. So we had cocaine
14 and the cocaine metabolites, but not the metabolites
15 that are produced when alcohol is present.

16 Q And can you read those off again?

17 A There's cocaine. And so the level of cocaine
18 is less than .01 milligrams per liter, so it's kind of
19 saying it is a trace level of cocaine. Benzoylecgonine,
20 Ecgonine methyl ester. So those are the three -- the
21 one cocaine level and the two metabolites. And then we
22 also found Alprazolam. Again, that's benzodiazepine.

23 There was hydrocodone, which is an opiate.
24 Again, a trace level of that. Norhydrocodone, which is
25 a metabolite of hydrocodone. Diphenhydramine and

1 Dextromethorphan, the antihistamine and the cough
2 suppressant.

3 The antihistamine and cough suppressant
4 were both listed as qualitative. Meaning they didn't
5 actually quantitate how much was actually in the system.

6 I've spoken with the lab. And because of
7 the nature of this case, I'm asking if they quantitate
8 those for the future, but they said they are likely very
9 low levels.

10 Q So looking at cocaine and then the cocaine
11 related with blood, looking at all those as a whole, can
12 that lead you to some conclusions about recency of
13 cocaine use?

14 A It can. So when we -- for most drugs when we
15 perform toxicology, it gives us a snapshot of what the
16 drug levels were just when they died. So you're only
17 getting one data point.

18 Cocaine is a little different in that it
19 can continue to break down and metabolize in the blood
20 after death. And to the point where I rarely see -- I
21 mean, cocaine is not a drug that's as widely used in the
22 northwest as other drugs, but it's unusual that I see
23 parent cocaine in the bloodstream on cases.

24 So the fact that it's there tells me he's
25 used it in the last several hours. The half-life,

1 meaning the amount of time that it takes for your body
2 to metabolize half a level, from the certain level to
3 half of that level is somewhere between about .7 and one
4 and a half hours. So it's a pretty rapidly metabolized
5 drug.

6 So just seeing -- just because of the fact
7 that there's parent cocaine there tells me that it was
8 likely used in the several hours before and probably
9 less than 12 if you're reaching out probably the
10 longest.

11 Q Can you explain a little bit for the Grand
12 Jury what the physiological effects of ingesting cocaine
13 are?

14 A Cocaine is known to be a stimulant. So it
15 causes people to be hyperaware. It elevates your body
16 temperature and your heart rate. It can -- it can make
17 people require less rest. They are more wakeful.
18 People take it because it causes a sense of elation.
19 But that's -- it's a stimulant is the bottom line.

20 Then some of these other substances that
21 are found in his bloodstream are sedating. So he's got
22 kind of a combination of benzodiazepines,
23 antihistamines. All of those things tend to make
24 someone more sedated and drowsy, and cocaine is a
25 stimulant.

1 Q Can you explain a little bit more about what
2 benzodiazepines are?

3 A Just that. I mean, they are a sedating drug.
4 They are often given to people to help control anxiety.
5 People have trouble sleeping, those type of things.
6 Sometimes for antidepressants.

7 Q Do they go by any sort of common street names?

8 A Well, Xanax is Alprazolam. Of all of the
9 drugs here, the Alprazolam level is kind of what is
10 considered high therapeutic. So it's fairly high.

11 MR. REES: And that's a drug that is
12 commonly abused; correct?

13 THE WITNESS: It is oftentimes, yes.

14 MR. REES: Is there any nexus between the
15 abuse of drugs like that and cocaine and criminal
16 behavior? You mentioned that cocaine has certain
17 effects on a person.

18 But does it relate potentially to a
19 person's conduct in a way that might be deemed criminal
20 or noncompliant?

21 THE WITNESS: I think that it raises the
22 chicken or the egg kind of thing for me. I see these
23 drugs in a lot of cases where there is criminal
24 activity. And I see it in cases where people abuse
25 these drugs. But I can't say, you know, one causes the

1 other necessarily. They tend to kind of co-exist in my
2 experience.

3 MR. REES: Okay. The levels of drugs
4 you're seeing here and sort of the combination of drugs
5 that you're seeing here, does that look to you
6 consistent with abuse of the drugs rather than sort of
7 the therapeutic use, or can you tell?

8 THE WITNESS: Well, certainly, you know,
9 many of these drugs are things that you might take if
10 you have a cold. Or hydrocodone, if someone is treating
11 someone for pain. And Alprazolam is something that I
12 see fairly frequently.

13 But in the setting of someone who seems
14 pretty healthy and also has cocaine onboard, that
15 wouldn't be that uncommon for someone who uses cocaine
16 to also use these other medications.

17 MR. REES: Hydrocodone is an opiate and
18 that's frequently abused as well; right?

19 THE WITNESS: It is, yes.

20 MR. REES: Are you aware of the fairly
21 widespread abuse of certain types of cough medications,
22 some contain some form of opiate? Do some of those
23 prescription cough syrups that have an opiate also
24 include --

25 THE WITNESS: Some have codeine.

1 MR. REES: And do they also maybe have an
2 antihistamine or cough suppressant in that mixture?

3 THE WITNESS: Yes.

4 MR. REES: And does codeine appear as
5 another form of opiate, or where did you see that?

6 THE WITNESS: It would show up as codeine.

7 BY MR. AUXIER:

8 Q With respect to the Alprazolam, which is the
9 benzodiazepine, commonly known as Xanax, you said
10 that -- I believe you said the level was, like, high
11 therapeutic.

12 Are those the words that you said?

13 A That's correct.

14 Q What do you mean by that?

15 A Well, so generally when you talk about certain
16 drugs, and again, it really depends upon which drug you
17 are talking about, and some drugs people develop a
18 tolerance to.

19 So sometimes you can have a therapeutic
20 range that overlaps with a lethal range on a given
21 medication. But as far as if you consider Alprazolam,
22 .1 or .15 is kind of on the higher end of what somebody
23 might have in their system if they are taking it for
24 therapeutic reasons as prescribed. So a higher dose of
25 Alprazolam.

1 Jury?

2 A GRAND JUROR: Yes.

3 How long between the time, the time of
4 death and the time you saw him?

5 THE WITNESS: That's a good question. The
6 death was on 2-9-17. And the autopsy was on
7 February 10th. So it was a little over 24 hours.

8 A GRAND JUROR: So some of this might have
9 gone through his system prior to you running the type of
10 toxicology screens or not?

11 THE WITNESS: That really relates just to
12 the cocaine. So cocaine can be metabolized as it's in
13 the bloodstream. It turns into other metabolites
14 which -- so you still have a level, but it's turning
15 into another form of cocaine.

16 As soon as we draw the blood, we put it
17 into tubes that have some salts and those stop the
18 metabolism in the blood. So the toxicology even is
19 done, you know, takes longer for that to be performed.
20 But once we get it into these special salt tubes, it
21 stops that metabolism.

22 MR. REES: Is that why you were saying it
23 was unusual to see when you called that parent cocaine
24 in the blood because frequently it's metabolized before
25 the blood draw, but here you actually saw it?

1 THE WITNESS: Correct. And I would see it
2 if somebody acutely overdosed on cocaine. But if they
3 overdosed on cocaine and weren't found for several days,
4 it might not find the parent cocaine.

5 A GRAND JUROR: Where is your lab?

6 THE WITNESS: It's in Clackamas.

7 A GRAND JUROR: Okay.

8 BY MR. AUXIER:

9 Q So I think I may be -- you may walk me back
10 from this statement a little bit.

11 But if I understood you correctly, cocaine
12 continues to metabolize after death and the presence of
13 cocaine in the bloodstream suggests that there was
14 ingestion within the few hours leading up to death.
15 Then at one point you said 12 hours.

16 A Yes. So I am just kind of estimating it. It
17 really depends on how much cocaine was in the system.

18 Q But it was still there 24 hours in the
19 bloodstream after.

20 A And the half-life is not the same once you are
21 dead as it is when you are alive.

22 So in a living person, it's about .7 to
23 1.5 hours. And it's just that if you allow it to sit in
24 a tube without any potassium salts to help stop the
25 metabolism, it will decline. But it's not -- by no

1 means is it the same rate because your liver and other
2 organs help metabolize the drug.

3 Q I understand.

4 A So but as far as seeing parent cocaine in the
5 blood, that just indicates to me that he was using it
6 some hours before, before he died. And I think 12 hours
7 is probably an overly generous window. I mean, it's
8 probably like four or five hours is my sense, but I
9 don't know.

10 A GRAND JUROR: I have a question.

11 So with the type of drugs that you are
12 describing that were in his system, like, you know, a
13 fairly high level of Xanax, and it sounds like a fairly
14 high level of cocaine, an antihistamines and pot and,
15 you know, when you start looking at all those things,
16 this is just kind of like a layperson, wouldn't that
17 kind of even you out?

18 Wouldn't you kind of come back to ground
19 zero? I mean, you know what I'm saying when you've
20 gotten a lot of stimulants and a lot -- does that -- I'm
21 just asking because I don't know how that works. But it
22 just seems like --

23 THE WITNESS: Right. So the levels of
24 cocaine that are there are very low. They are just
25 trace levels. And so how much effect it's having on his

1 system, I couldn't tell you.

2 The benzodiazepine, the Xanax, that has a
3 much longer half-life, so it may be that it's still
4 elevated and everything else has gone down because he
5 took them all at the same time. I have no way of
6 knowing. So I frequently see stimulants and sedatives
7 in the same individual.

8 A GRAND JUROR: Just seems like that's
9 counterproductive just to a layperson, I'm just saying.

10 THE WITNESS: I don't know that -- you
11 know, I don't know that it causes some kind of balance
12 to where somebody is just totally normal. I think
13 that's probably not the case.

14 But, you know, looking at these levels, I
15 mean, it could be that he was doing cocaine and these
16 sedatives earlier in the night and is kind of coming off
17 of those drugs.

18 So, you know, somebody who's been up all
19 night taking these drugs probably is going to be kind of
20 irritable and tired as they come off of them.

21 So if someone comes down from a high on
22 cocaine or these kind of drugs, you could say that they
23 might be irritable or a disagreeable state of mind. But
24 again, I can't predict any of that based on these
25 levels. All I have is what's, what's there and what's

1 in his system.

2 A GRAND JUROR: And my other question was
3 so there was three different gunshots. One to the head.

4 Can you tell us if -- or which of those
5 would have been a lethal shot? Would the head wound --
6 would any of these shots killed him? Would all of them
7 have killed him? Can you give us any kind of indication
8 about that?

9 THE WITNESS: Yes. So the type of gun and
10 ammunition in this case is a very small bullet. It's
11 similar to the size of a .22, so very tiny, but
12 traveling at a very high velocity. So the speed of most
13 handguns is on the order of feet per second; whereas,
14 from a rifle like this is on the order of thousands of
15 feet per second.

16 And so despite being a very tiny entrance
17 defect -- well, for handguns, generally what's injured
18 is just along the wound track. So with this type of
19 rifle, with this kind of ammunition, there's a wave of
20 kinetic energy that goes through the tissues that causes
21 pretty significant tissue destruction. It exceeds the
22 elasticity of the skin, so the head wound is, you know,
23 lethal. It's more than just the small track that the
24 bullet travels through.

25 So it's the same with the injuries to the

1 torso. Whereas a .22 handgun would just be a little
2 hole through different organs, there's more tissue
3 disruption. So I think all three are potentially
4 lethal.

5 Certainly gunshot wounds two and three
6 didn't strike as critical organs. Gunshot wound two
7 injured the stomach, the bowel, the kidney and then went
8 into the back of the wall of the abdominal cavity. But
9 there would be significant bleeding with all three of
10 these.

11 A GRAND JUROR: So all three of them could
12 have been lethal shots?

13 THE WITNESS: Yes.

14 A GRAND JUROR: And so I'm guessing, like,
15 you know, obviously, if you get shot in the head and
16 there's, like, significant damage to your brain, that's,
17 like, you aren't going to come back from that, probably.

18 But being shot in the torso, even though
19 it's, like, you said there's destruction because of the
20 velocity of the shot, with the lethality of the shots
21 would be pretty instant or -- let's say, he just got
22 shot with shot number two, would that have been
23 something that was possibly they could have, like -- he
24 could have gone to the hospital and been treated for?

25 THE WITNESS: Gunshot wounds two and three

1 potentially could have, could have survived.

2 A GRAND JUROR: Okay. That was my
3 question.

4 Thanks.

5 BY MR. AUXIER:

6 Q Dr. Young, you wrote in your report what the
7 cause of death was. And what did you write there?

8 A I listed it as multiple gunshot wounds.

9 MR. AUXIER: All right. I think that's
10 it.

11 Thanks, Dr. Young.

12 THE WITNESS: You're welcome.

13 A GRAND JUROR: Thank you so much.
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1 NAVARATH DANIEL OUTHAYTHIP,
2 a witness called on behalf of the State, having been
3 first duly sworn, was examined and testified as follows:
4

5 EXAMINATION

6 BY MR. REES:

7 Q Sir, for the record, please state your name
8 and spell your name.

9 A Okay. My full name is Navarath Daniel
10 Outhaythip. First name is spelled N-A-V-A-R-A-T-H.
11 Middle name D-A-N-I-E-L. Last name O-U-T-H-A-Y-T-H-I-P.

12 Q What's your occupation?

13 A I work for the City of Portland, and I work at
14 the Portland Police Bureau. My current title is
15 criminalist.

16 Q How did you become a criminalist with the
17 Portland Police Bureau?

18 A For Portland Police Bureau, in order to become
19 a criminalist one has to start out as a patrolman. So I
20 was a patrol officer for 12 years prior to being
21 promoted off the street to become a criminalist.

22 Q All right.

23 A Yes.

24 Q And have you received special training in
25 processing crime scenes and the documentation and

1 collection of evidence at crime scenes?

2 A Yes.

3 Q And do you also have experience in a variety
4 of different crime scenes, processing them for evidence
5 and working with detectives on the scene?

6 A Yes.

7 Q Are you one of the criminalists who responded
8 to a scene of an office-involved shooting on NE Hancock
9 Street in the City of Portland on February 9, 2017?

10 A Yes.

11 Q You were called before the Grand Jury just to
12 give the Grand Jurors some information about the
13 evidence that you collected. I have a copy of the
14 report that you generated to help refresh your memory,
15 if you would like it.

16 A Thank you.

17 Q Can you tell the Grand Jurors then what
18 evidence did you observe and collect at the scene?

19 A The items off the top of my head I collected
20 at the scene were shell casings. Well, to be exact,
21 there's three shell casings. They are .223 shell
22 casings to be exact, a BB gun, kind of like a
23 backpack -- not a backpack. I take that back. It's
24 more like a duffle bag type or a day bag. And I also
25 got handed the handcuffs from the deceased. That was

1 handed to me at the scene. And the Oregon Trail card.

2 Q All right.

3 A Yes.

4 Q On the video monitor we see a photograph.

5 Did you take that photograph?

6 A Yes, I did.

7 Q And did you witness then the deputy medical
8 examiner retrieving an object from the pocket of the
9 deceased that you documented with this photograph?

10 A Yes.

11 Q As I understand it, that's not your gloved
12 hand because you were taking the photo; is that right?

13 A That is correct.

14 Q But you witnessed the removal of this Oregon
15 Trail card and took the photograph of it, including this
16 photo that shows the signature of Armando Suarez?

17 A Yes.

18 Q All right. And did you and the other
19 criminalist place the placard numbers at the scene and
20 then document the evidence and its locations with your
21 photographs?

22 A Yes.

23 Q Let me show you a picture of what would
24 ultimately prove to be a CO2 pellet gun at the scene.

25 Those were the casings that you documented

1 in the driveway?

2 A That is correct.

3 Q You mentioned just a moment ago that you
4 seized a -- you described it in different ways.

5 Is that the bag you're talking about?

6 A That is correct.

7 Q Okay. And then is this the gun that you
8 observed at the scene?

9 A Yes.

10 Q And so what in terms of the collection of that
11 gun, what steps were taken to record and document and
12 then seize that gun?

13 A Same with other method. We would place a
14 number of placards next to the gun.

15 Q Did you -- do you photograph it first without
16 a placard?

17 A Yes. Yes.

18 Q Okay.

19 A Yes. And then later, once we figure out
20 once -- what belongs or what I believe is part of the
21 investigation, that's when you start laying down
22 numbered placards, yes.

23 Q All right. And then what happened with this
24 particular article of evidence that you witnessed? Feel
25 free to refer to your report to refresh your memory.

1 A Yes.

2 (Witness reading.)

3 A Okay. I'm sorry about that, because we go to
4 so many calls, they are not all like this. But then
5 again, we go to so many, many calls, so sometimes it's
6 good to refresh my memory.

7 Q Okay. So did you have an opportunity to look
8 at your report and refresh your memory?

9 A Yes.

10 Q Okay. Do you want me to repeat the question?

11 A Yes, please.

12 Q Which was simply about the processing of the
13 gun. How did that take place and what did you observe?

14 A Yes. Okay. You were correct.

15 At the very beginning when I first get
16 there, I document the scene as the way I found it. Once
17 we determine what items that we believe are part of the
18 investigation, a number of placards are placed beside
19 the items. Photos are taken and videos were made. I
20 also made a video -- yes, I did make some video.

21 Once it's all documented with photos,
22 video and sometimes like, not me but another criminalist
23 did like conducted the laser scans of the whole, the
24 entire scene, Detective Kammerer retrieved a weapon from
25 the area and brought it out to the driveway, and he made

1 the weapon safe.

2 And only then, then we knew -- or that he
3 knew that I saw, too, that the weapon turned out to be a
4 BB gun, not an actual, real pistol.

5 Q Prior to that hands-on examination of the gun,
6 did you believe that it was a semiautomatic pistol?

7 A Yes. Yes.

8 Q And so did you witness Detective Kammerer
9 attempting to make the weapon safe?

10 A Yes.

11 Q After that took place, what happened to the
12 weapon?

13 A I received the weapon from him, and then
14 later, I transported it back to our office and just
15 packaged it all up.

16 Q And submitted it to the property evidence
17 room?

18 A That is correct.

19 Q Okay.

20 A Yes.

21 MR. REES: Thank you, Criminalist
22 Outhaythip.

23 Are there any follow-up questions about
24 any of the work that he did at the scene?

25 Okay. Great. Thank you for coming in

1 this afternoon.

2 THE WITNESS: Thank you.

3 A GRAND JUROR: Thank you.

4 THE WITNESS: You're welcome.

5

6

7

THOMAS EDWARD JONES, JR.,

8

a witness called on behalf of the State, having been

9

first duly sworn, was examined and testified as follows:

10

11

EXAMINATION

12

BY MR. REES:

13

Q Please take a seat. And then when you are

14

ready, if you could state your name for the record and

15

spell your first and last names.

16

A Sure. Thomas Edwards Jones, Junior.

17

T-H-O-M-A-S. J-O-N-E-S.

18

Q Mr. Jones, could you tell the Grand Jury what

19

you do for a living?

20

A I'm a forensic scientist for the Oregon State

21

Police at the Portland Metro Forensic Laboratory.

22

Q What's your educational background?

23

A I have a Bachelor of science in microbiology

24

and chemistry from Oregon State University and a

25

Master's of science in environmental health and

1 molecular biology from Oregon State University.

2 Q Then in addition to your educational
3 background in science, what type of training do you have
4 to qualify to be a forensic scientist?

5 A When I started with the Oregon State Police, I
6 entered into a training program that was approximately a
7 year and a half. And that encompassed the entirety of
8 latent prints and their connection with identification
9 as well as forensics.

10 That encompassed the processing side, the
11 chemistry behind the chemicals we used for processing,
12 complex evidence, prosecute processing of that type of
13 evidence, advanced comparisons, distortion, photography,
14 digital imaging.

15 While doing that particular training, I
16 was also working practical exercises. So mock case
17 work, trying to develop prints on different fake
18 evidence, as well as comparing hundreds and hundreds and
19 hundreds of latent prints to known standards.

20 After that I started to supervise case
21 work where you actually work real cases under the
22 tutelage of a senior analyst. After that, I
23 successfully passed a competency exam in the latent
24 processing and comparison side of things. So
25 essentially it was like finals week for a year and a

1 half of my life. It was intense.

2 Q What are fingerprints and how can they be
3 detected for purposes of comparison to known
4 individuals?

5 A Fingerprints -- we kind of -- that's a
6 specific term. But if we think of it broadly, we really
7 look at friction ridge detail.

8 There's two areas of the body that have
9 friction ridge skin. And that's the soles of the feet,
10 as well as the palms of the hands and the finger joints
11 and the fingers. And they are comprised of ridges.

12 And it allows us to -- causes friction.
13 So it allows you to grab a cup of coffee and it doesn't
14 slip out of your hands or to walk barefoot and prevents
15 you, for the most part, slipping. So it's unique
16 because they are unique to every person.

17 You get that type of skin development
18 approximately six weeks starting in utero. And then
19 about 16 weeks, the fetus will stop growing that type of
20 skin all together. From that time on it is permanent.

21 Another responsibility of mine is
22 post-mortem identification using friction ridge detail.
23 So if the body is in good enough condition, we can also
24 use friction ridge skin for identification purposes of
25 the deceased individuals as well.

1 fibers, anything else that might be forensically
2 probative.

3 After swabbing and doing a thorough visual
4 exam, we would start then -- on this type of item,
5 usually we do Super Glue. And so we would put that in a
6 Super Glue tank. It's humidity chamber. So we heat the
7 Super Glue. The vapor is expelled into the air and it
8 mixes with the humidity. It settles back on to the
9 evidence. And it's a good visualization technique. It
10 will usually turn the latent prints like a white.

11 But it's also a good preservative
12 technique. If you can imagine Super Glue, it will
13 adhere to the evidence. It will also keep the
14 fingerprints in place as well. So it's kind of a
15 two-for-one type of processing step.

16 We will then examine it again to see if
17 there's any prints that either improved. So let's say I
18 saw something during visual exam, and it may improve
19 with Super Glue, I'll re-image that, or new prints may
20 develop with Super Glue as well.

21 Normally we would do then like a dye
22 stain, so it's a liquid solvent. We apply that to the
23 substrate. And that's a great technique where we will
24 visualize it with a particular light source and it will
25 excite the chemicals. So usually that dye stain will

1 adhere to the Super Glue more than the evidence.

2 So if you have a latent print that is
3 covered in Super Glue, then that dye stain will come and
4 adhere to that area and so you will excite that chemical
5 with a particular light and it will glow, so it's a
6 great visualization technique. Every time we're trying
7 to get a better contrast between the latent print and
8 the evidence that it's on.

9 Normally we'll do a powder. Sometimes
10 just like a dry powder or sometimes we have a liquid
11 powder suspension. That's usually the techniques that
12 you use on this type of substrate.

13 Q In this case, no prints were developed that
14 were suitable for comparison to any known prints.

15 Are there particular challenges in
16 attempting to lift fingerprints? I'm calling them
17 fingerprints; you probably call them a latent print --

18 A A latent print.

19 Q -- from a surface of a polymer object such as
20 this?

21 A Yes. I just happen -- not that I always carry
22 a laser pointer on me or anything, but I just got out of
23 court downstairs, so I do have something.

24 But if you look at this, it's interesting
25 because a lot --

1 Q If you want to move closer to the screen, you
2 can, too.

3 A I think this screen absorbs this purple light.

4 So if you can tell, there's a lot of
5 textured areas on here. And it's specific for -- it
6 helps with gripping, especially in this area. I'm not
7 familiar where with this particular firearm, but this is
8 usually synonymous with the slide area.

9 Even the safeties usually have a nurlled or
10 a textured area just so your thumb or your finger
11 doesn't slip from trying to put the firearm into safety
12 mode. This also helps with gripping.

13 It looks likes there's some texturing on
14 here where maybe, you know, if you can imagine the palm,
15 which has rich and latent print possibilities, this
16 would be a difficult place to develop a print as well
17 here.

18 In my ten years, almost ten years with the
19 Oregon State Police, I think I have developed a print
20 maybe twice on the trigger.

21 So this particular -- firearms are
22 difficult because the areas that you usually touch on a
23 firearm are usually textured. So it's not surprising
24 that there really weren't any prints of value developed.

25 Q All right. Other types of surfaces, smooth

1 surfaces are better for the kind of work that you do?

2 A Generally, that would be the case. The
3 other -- I'm looking at this and the other factor, too,
4 is just the environment.

5 Depending upon, you know, the weather, if
6 it was left outside, if it was touched while it was wet,
7 if it was rained upon, all that will cause -- can be
8 deleterious to latent prints.

9 Q Is that because the latent print itself is
10 really this ephemeral oil on a surface?

11 A It is a transfer of residue from the friction
12 ridge skin on to something else. So it's not absorbed
13 in the -- in this particular instance. It's not
14 absorbed into the surface.

15 It's laying on top of the surface, which
16 means it's vulnerable to be wiped away or even -- you
17 know, the sun can dry out a latent print if it's
18 deposited with -- just from sweat.

19 A GRAND JUROR: Do you think these things
20 were designed that way so you can't pick up prints from
21 them?

22 THE WITNESS: There are theories, but I
23 would not know, ma'am.

24 A GRAND JUROR: Seems to me that would be
25 my first reaction.

1 MR. REES: Any other questions about the
2 prints in the case?

3 All right. Mr. Jones, thank you very much
4 for coming in.

5 THE WITNESS: You're welcome, sir.

6 Thank you.

7

8

9

 JERROLD DALE HIGGINBOTHAM,
10 a witness called on behalf of the State, having been
11 first duly sworn, was examined and testified as follows:

12

13

EXAMINATION

14

BY MR. AUXIER:

15

Q All right. To start out, can you tell us your
16 name and spell it for us?

17

A Jerrold Higginbotham.

18

H-I-G-G-I-N-B-O-T-H-A-M. Jerrold is J-E-R-R-O-L-D.

19

Q What do you do for work?

20

A I'm a Portland police officer.

21

Q How long have you been a Portland police
22 officer?

23

A It was 23 years in October.

24

Q All right. And were you working on February 9
25 of 2017?

1 A I was.

2 Q What was your -- what sort of police work were
3 you doing that day? What was your role in the police
4 bureau?

5 A I was working in patrol. I was in uniform.
6 Basically if you call 911, I would be showing up.

7 Q And what shift do you work?

8 A Day shift.

9 Q Did you just come on?

10 A Shift just started.

11 Q So were you one of the officers who responded
12 to the area of 82nd and Tillamook to look for this
13 subject who had fled Officer Tatro and Officer Rippe?

14 A I was.

15 Q And when you arrived on scene, what did you
16 do?

17 A Initially, I took up a perimeter position. I
18 came into the area and was just east of the Les Schwab
19 building that's on the corner of 82nd and Tillamook.
20 And I was responsible for having the side down Les
21 Schwab, as well as a couple yards. Then we had another
22 officer, Officer Ferner, was about mid-block from me.

23 Q And at some point were you -- did you receive
24 further direction at the scene?

25 A I did. Sergeant Helfrich had advised that he

1 heard what sounded like glass breaking, and he was one
2 block south on Hancock. And so he came up to Tillamook,
3 and we were putting together what's called a contact
4 team or a search team.

5 At that point I had a shotgun with me.
6 And nobody had a long gun, had an AR-15 with them, so I
7 was going to be long cover for the contact team. So he
8 directed me to load my shotgun with slugs and then we
9 moved up to where the suspect was last seen.

10 Q And so you formed this plan to create a
11 contact team. And is that a term that you learned in
12 your Portland Police Bureau training?

13 A It is.

14 Q And what's the idea?

15 A We -- the K-9 was there now. So we were going
16 to be searching the yards looking for him to take him
17 into custody.

18 Q And why doesn't the K-9 officer just do
19 everything by himself along with the dog?

20 A Because it's not safe to do so. We had an
21 armed suspect that was in the blocks. The K-9 officer
22 is responsible for watching his dog and taking his cues
23 from how the dog reacts to different scents in different
24 areas.

25 So we provide the cover for the K-9

1 officer, as well as being the additional eyes and ears
2 as we're going through the yards and so forth.

3 Q When you form a contact team, are there -- are
4 there -- is there an ideal number of officers that you
5 use each assigned to a different role, or is it a little
6 bit more fluid?

7 A It's kind of fluid. The ideal will probably
8 be five. You would have the K-9 officer and his K-9
9 partner, and then usually a long cover, and two
10 additional people off to the side, and then one as kind
11 of a rear guard or directing. In this case Sergeant
12 Helfrich was that supervisor directing, kind of
13 directing.

14 Q Got it.

15 And who all was in this group with you?

16 A I remember Sergeant Helfrich, and then K-9
17 Officer Wullbrandt, myself. I can't remember who else
18 was in that.

19 Q Well, one reason for that may be that Officer
20 Hearst eventually switched out and took over for you.

21 A Yeah, he did.

22 Q Why was that?

23 A Well, when he and his partner, Officer Mele,
24 showed up, Officer Hearst had an AR. So it was a more
25 advantageous weapon to use as long cover. It was more

1 accurate and provided us with additional stand-off
2 distance if we were going to be challenging him from a
3 greater distance.

4 And so when Officer Hearst arrived, he and
5 his partner became part of that search team. His
6 partner had a less lethal shotgun. And so they became
7 part of that search team. And I was relieved of being
8 on that contact team and was put on to a perimeter
9 position now, about the 8400 block or so of Hancock.

10 Q Did that eventually take you into the backyard
11 of the residence at 8301 NE Hancock?

12 A It did.

13 A GRAND JUROR: I just have a quick
14 question. I'm sorry to interrupt.

15 MR. AUXIER: Go ahead.

16 A GRAND JUROR: I thought that you said
17 you did have an AR-15 that you loaded with slugs.

18 THE WITNESS: No. A shotgun, a 12 gauge
19 shotgun with slugs because we didn't have the AR
20 available at the time.

21 A GRAND JUROR: Okay. Thank you.

22 BY MR. AUXIER:

23 Q How did you get from your perimeter position
24 to the backyard with Officer Adrian of this address?

25 A The search team or contact team had gone

1 around to the backyard of 8301. They discovered that
2 there was a door downstairs at the residence on the
3 backside or north side of the residence that had a
4 broken window on it. And the dog had reacted to the
5 scent in the backyard very strongly, as well as back
6 shed area.

7 So Officer Adrian and I were sent to the
8 backyard to keep a watch on that door, as well as the
9 backside of the house while they continued to search.
10 There was an empty lot that was just to the west of that
11 address where they wanted to check in there. It was
12 locked. It had a padlock and chain on a gate, and so
13 they wanted to check that out first.

14 Q As you walked to the backyard of 8301 NE
15 Hancock, did you take note of this sort of alcove area
16 at the front of the house?

17 A Yes.

18 Q And when you walked to the backyard, the
19 subject seen in this picture wasn't present; is that
20 correct?

21 A Correct.

22 Q There's this open door -- open window right
23 here.

24 Was that open at that time?

25 A It was not.

1 Q And you didn't see a broken screen on the
2 ground or anything like that?

3 A I did not.

4 MR. REES: Did you look specifically in
5 that area at that time, and in your mind were you
6 looking for a suspect at that time?

7 THE WITNESS: Well, I looked and made note
8 of the house as we walked back. And we went around
9 where that, I don't know what you call it, little
10 pergola-type gate is. That's where we entered the
11 backyard from.

12 And so initially I came up through the
13 driveway, and, you know, had -- and just noted that the
14 windows were all there, and had gone around to the back
15 of that house. I don't know if you have any shots of
16 that.

17 BY MR. AUXIER:

18 Q This may not be exactly what you are looking
19 for.

20 A No.

21 Q That's the backyard.

22 A That's the backyard. That's where the window
23 that they found broken is.

24 Q You were eventually called back out to the
25 front of the house by Sergeant Helfrich.

1 A Well, actually what happened is they went, and
2 they were -- they searched that yard to the west of us.
3 And they worked their way back around to the backyard
4 where Officer Adrian and I were.

5 And then Officer Adrian and Officer
6 McHugill had gone down the stairs and looked to see if
7 they could see any muddy footprints or any signs that
8 entry was actually made.

9 At this point we didn't know whether
10 somebody -- the suspect had gotten into the house or
11 not. That screen was pushed in. It was over behind the
12 glass on that back door. So after going down and taking
13 a look, they were making a decision to try and send the
14 dog into the house with a camera on him.

15 They had mentioned that there was a
16 lockbox on the front of the house for a key, you know,
17 like realtors might use.

18 And I know from personal experience,
19 because I have one, that if you use it continually, the
20 same numbers, the oils on your fingers will leave an
21 outline. And so they are kind of -- if you know that,
22 it's easy to gain access.

23 And so I was going to go around to the
24 front of the house and take a look at the lock to see if
25 I can figure out what the combination was. And that's

1 what brought me around to the front of the house.

2 Q When you walked back to the front of the
3 house, had the condition of the front of the house
4 changed?

5 A Yeah. This is actually the east side of the
6 house. And that's when I noticed that the window was
7 opened. I noticed that the screen was kind of mangled
8 and on the ground.

9 I was -- I yelled back to the guys in the
10 backyard, you know. I think I probably even got on the
11 radio and asked, you know, if this window had been
12 opened before.

13 And as I started coming around, because I
14 was wanting to kind of look in, I was looking in the
15 window to see if I could see anybody inside. And as I
16 kind of got around to the corner out this way, that's
17 when I saw the suspect back in that alcove between the
18 garage and the wall of the house.

19 Q Describe the position that you saw the suspect
20 when he was back in the corner there.

21 A He was crouched, kind of like -- almost like a
22 catcher in a baseball would be. He was back down, and
23 he was kind of like this (indicating) hiding.

24 Q Was he facing you?

25 A He was.

1 Q And you can see in this picture a backpack all
2 of the way in the back of the alcove that we've been
3 talking about.

4 Where was he?

5 A He was right, right here (indicating).

6 Q Was his -- was he, based upon what you could
7 perceive from your angle, to be all of the way in the
8 back of the alcove?

9 A Yes.

10 Q But crouched down on his feet, on the balls of
11 his feet?

12 A Yes. Yes.

13 Q And facing you?

14 A Yes.

15 Q What did you notice about his physical
16 appearance? Was it kind of relevant to some of the
17 other calls that had come out recently?

18 A Yes. His clothing description matched that
19 with what we were given as being a male black with a
20 black hoodie, a green coat and blue jeans.

21 Q And what did you do when you first saw that
22 person back there?

23 A As soon as I saw him, I drew my weapon and
24 pointed it at him, and told him to get his hands in the
25 air. I yelled back, "He's out. He's out here. He's

1 out here," something to that effect, to let everybody in
2 the backyard know that I had the suspect out front.

3 Q You drew your weapon. Was that the shotgun?

4 A No. It was my Glock, my pistol.

5 Q When you got taken off the contact team, did
6 you return the shotgun to the patrol car?

7 A I did. And put it in the rack, in the shotgun
8 rack in the patrol car.

9 Q How did the subject react when he knew he'd
10 been spotted by you and you started saying these things?

11 A He stood up -- I backed off, and I lost sight
12 of him just a little bit because I was concerned that he
13 was going to draw down on me.

14 And so I moved just to where -- just a
15 little bit of sight, and then I came back and kind of
16 what we call slicing the pie. It's where you come
17 around a corner so hopefully you see them before they
18 can see you, and it provides me with cover from him. At
19 that point the other officers came from the backyard and
20 we began giving him direction.

21 Officer Hearst was one of those officers.
22 Although, I don't know if he came from this gate here
23 and came around behind me or if he went around the house
24 the other way.

25 I know that Officer Mele came from that

1 side, but I was focused on him. So I don't know which
2 direction the other officers came.

3 MR. REES: I'm going to put up the Leica
4 scan.

5 BY MR. AUXIER:

6 Q So maybe to start out, can you tell us where
7 you were at the exact time you first saw the subject?

8 A I was probably right about probably somewhere
9 right around in here (indicating). Because the corner
10 of the garage would have blocked my view until I got to
11 a point where I could see back in there.

12 Then, like I said, I backed up a little
13 bit and then started coming back forward. I was
14 startled at seeing him down in there, and I was afraid
15 that he was there to ambush us.

16 Q And so where -- from that moment you first saw
17 him and found yourself startled, where did you go?

18 A Like I said, I backed up.

19 Q You backed up back towards the right?

20 A Yeah. Initially when I saw him, I was
21 probably around in this area and I backed up over here.
22 And then started coming forward again now that I had my
23 gun out and was challenging him, telling him to get his
24 hands in the air, keep his hands up. And then yelling
25 for everybody else to -- that I had him out front.

1 Q What were the commands that you remember
2 specifically making to the subject?

3 A I just -- keep his hands in the air where we
4 could see them. I believe we told him that we think
5 you're at harm if you don't keep your hands in the air.
6 Don't reach for anything. If you reach for anything,
7 you are going to get shot.

8 Then as the other officers came around,
9 since Officer Hearst had long cover, he started giving
10 those directions. And then as Officer Wullbrandt had
11 come around with the dog, it made more sense to have him
12 start giving those commands because he would be sending
13 in the dog if he didn't come out, any of those kind of
14 things.

15 And so the focus kind of shifted from me
16 initially making the commands to Officer Hearst giving
17 him direction and then Officer Wullbrandt started giving
18 him most of the direction.

19 Q So command-wise, it went Higginbotham, Hearst,
20 Wullbrandt?

21 A Correct.

22 Q Can you stand up again and identify where
23 everyone is standing once everyone kind of gets to their
24 places?

25 A Sure.

1 So we were probably right about in here.
2 I was probably right here. Officer Wullbrandt was on my
3 right side. Officer Hearst was on my left shoulder.
4 Sergeant Helfrich was behind us.

5 As we were giving him direction to come
6 out, he was told to crawl out on his, on his knees,
7 keeping his hands in the air. A couple times he started
8 to put his hands down, and was told by Officer Hearst to
9 get his hands back in the air and to keep his hands away
10 from his waist.

11 He started being belligerent, kind of --
12 his attitude -- he started cursing at us. You know,
13 'cause he was saying something about, "How am I supposed
14 to, you know, crawl out if I've got my -- without my
15 hands on the ground," or whatever, you know.

16 So we're telling him, "Keep your hands in
17 the air. Just walk out on your knees."

18 Q Was he on his knees at this point?

19 A He was.

20 Q And how many times do you remember seeing his
21 hands go from being up in the air to down?

22 A Well, they didn't come all of the way down,
23 but they lowered at least twice. And, like I said, he
24 was told to keep his hands in the air. Put his hands
25 back up in the air.

1 Q Would you say that, you know, maybe using the
2 numbers on a clock, like how low during this period in
3 the contact were his right hand and left hand going?

4 A Initially, you know, they were up somewhere
5 between the 10 and the 11 and the 1 and the 2, and that
6 he dropped them down to almost the 9 and the 3, maybe
7 just a little bit past and then, you know, back up.

8 Q You did command him and then he would bring
9 them back up?

10 A Right. Correct.

11 Q At one point did he start crawling out?

12 A Yeah. He started coming out on his knees.
13 You can't see it from this picture, but there's a gas
14 meter that's kind of --

15 Q Can you see it in this picture here?

16 A Yeah. He had to crawl out from back here in
17 that corner past this gas meter, so it narrowed.

18 Q And is that what caused him to go on the
19 ground further than his knees?

20 Is that what you're saying?

21 A No. That's just when we're telling him to
22 crawl out, to walk out on his knees. That's where he
23 started -- he was right about at that when he's, like,
24 how am I supposed to crawl out if I don't get my
25 hands -- telling him to keep your hands in the air.

1 Just walk out on your knees. So they clarified that for
2 him.

3 Q And he continued coming out on his knees?

4 A He did. He did.

5 Q And Officer Hearst, at this point he's still
6 making the commands primarily?

7 A It switched. Like I said, there's a little
8 bit of communication, you know, that Wullbrandt said,
9 you know, "Let me do it," you know, because he had the
10 dog. If he didn't comply, wouldn't come out, those kind
11 of things, then he'd be sending his -- potentially
12 sending in his dog to bring him out.

13 And so at this point now right about, you
14 know, the time that he got even with the gas meter, it
15 was Wullbrandt that was giving him commands primarily,
16 you know.

17 If his hands started dropping, then Andy,
18 Officer Hearst, told him to keep his hands up. "Get
19 your hands away from your waist," those kind of things.

20 At some point there's -- I heard Sergeant
21 Nice also. He was behind. He also yelled at him to
22 keep his hands in the air, for him to keep his hands in
23 the air.

24 Q Do you remember him dropping from his knees
25 down to the ground to crawl out?

1 A No.

2 Q Okay. And did you witness exactly what
3 happened during the shooting?

4 A I did not because I was -- we were getting
5 ready to take him into custody. We were 60 seconds away
6 from having him being prone out and us going up and
7 putting handcuffs on him.

8 So I was going to be responsible for
9 taking his right arm as he came out. So I was on the --
10 would have been on the left side. Andy was going to
11 shift around and be what we call the lethal cover.

12 When we go in to take somebody that we
13 believed to be armed into custody, we have somebody
14 that's responsible to provide lethal cover and one
15 person on each of his arms.

16 And then what we would have done would be
17 put him down, face down on the ground, like an airplane
18 with his arms out to the side and head, forehead either
19 straight down or on one side, and then myself and the
20 other officer would have came up and taken control of
21 his arms and then put him in handcuffs.

22 Whoever that lethal cover would have been,
23 in this case would have been Officer Hearst, would have
24 been responsible for if he started -- went for a weapon.
25 While we were making our approach, it would have been

1 his responsibility to shoot him.

2 Q What do you recall about the circumstances
3 surrounding the shooting?

4 A So I was trying to figure out who was going to
5 be that officer that was going to come around.

6 Initially, Sergeant Helfrich was going to
7 be the person to take control of his left arm, coming up
8 on the right side. He decided it would be better as a
9 supervisor to have somebody else. So he was directing
10 somebody to come up.

11 And I had turned to look to see who that
12 was, because we like to try and have physical contact
13 with everybody so we get in line and all come up
14 together.

15 So I wanted to reach back and see who that
16 was going to be. And just as I reached back out of the
17 corner of my eyes, I, I saw movement, which initially I
18 thought he was going down to the ground and he was
19 getting -- going to go prone. And that's when I heard
20 the three shots.

21 Q Could you see out of your peripheral vision
22 any particular movements from the subject at that time?

23 A No. I just, I just -- you know, like I said,
24 movement out of the corner of my eye and the three shots
25 go out. And then I looked back around and saw him fall

1 forward.

2 Q What happened after that?

3 A After that, some of the officers that were in
4 the driveway that were going to be part of the arrest
5 team, and there was some other officers that had come up
6 along the side, between the -- like on the side of the
7 building here and where that lamp post is, they
8 retreated and went around to the corner.

9 Officer Mele, and I don't remember who was
10 with him, they were over by the blue recycling. I
11 withdrew my pistol again because I put it away in order
12 to be able to use my hands to be the arrest team and
13 then I moved over to where Andy was.

14 He had moved from -- sorry, Officer Hearst
15 had moved from over here to now he was over here and I
16 came over along him. Both of us with our weapons drawn
17 because his hands were underneath him, and I couldn't,
18 you know, see if he had anything.

19 Then we moved back to where we were using
20 the corner of the house now as concealment or cover in
21 case he were to start shooting at us.

22 Q And did the custody team use the shield
23 approach at that point?

24 A Then the plan was made as Andy and I had
25 lethal cover. We were also giving him commands to get

1 his hands out. He wasn't moving. He wasn't responding.

2 At this point I started seeing the foamy
3 blood coming from his mouth. He wasn't moving. Didn't
4 see any respirations. Officer Mele had asked, you know,
5 if he thought that we should hit him with a beanbag to
6 see if we get any response from him.

7 And I told him no, that I believed he was
8 gone, that he was dead. We brought up a shield from the
9 sergeant's car. It was Sergeant Nice and his patrol car
10 was nearby. They went back and got a shield.

11 Officer Dick, she had the shield. And
12 then I then became, once again, the custody person on
13 the -- for the -- on the left side to take control of
14 his right hand. And then Officer Lock was the person
15 that was going to be taking his left hand from the right
16 side of the shield.

17 And I don't recall who the lethal cover
18 person was. Because once -- before we got the shield up
19 there, we got Andy away. Officer Gillock had taken him
20 away and took him back to a patrol car, and I was that
21 lethal cover until somebody else came up. And I don't
22 remember who that was.

23 Q During -- you're involved in the custody and
24 you were involved in handcuffing the subject's left
25 hand.

1 A Yes. I took his right hand. I was on the
2 left side as we approached but his right.

3 Q Okay. And you were focused on the subject.
4 You didn't see who the lethal cover was at that time?

5 A No.

6 Q As you approached on the left side, did you
7 notice anything on the ground that you didn't notice
8 before?

9 A It wasn't until after I had him handcuffed
10 that I noticed that there was kind of a tannish color
11 semiautomatic handgun that was laying on the ground just
12 off of the concrete in the flower bed. Yes.

13 Q Was that the position that you see in this
14 picture?

15 A Yes.

16 Q The picture you see there of the gun, that's
17 the position it was in when you first saw it?

18 A Yes.

19 Q How close was that weapon to the subject's
20 hand when you first placed him under arrest, can you
21 say?

22 A Um, probably three feet.

23 Q I see some sort of white wooden --

24 A That's part of the screen that was kicked out.

25 Q Now, you had seen that screen on the ground

1 before you saw the subject.

2 A Correct.

3 Q Did you see the gun there?

4 A I did not. I didn't see the gun until after
5 we got him handcuffed.

6 Q Would you have seen the gun?

7 A I believe I would have seen it. Like I said,
8 I saw and noticed the screen. I would have hoped I
9 would have seen the gun.

10 MR. AUXIER: Any questions from the Grand
11 Jury?

12 A GRAND JUROR: I just wondered how the
13 dog knows what the victim smells like to go after him?

14 MR. REES: We're calling the K-9 officer,
15 so the dog handler can answer that question.

16 A GRAND JUROR: Okay.

17 A GRAND JUROR: I have a question.

18 So when you were getting ready to walk up,
19 when he was coming out on his knees and you were going
20 to walk up on his -- to whatever side you were going to
21 walk up on and you looked back, did you hear anything?

22 You didn't hear the subject make -- say
23 anything? You didn't hear the officer -- nobody -- the
24 next thing you heard was three gunshots.

25 THE WITNESS: Yes.

1 A GRAND JUROR: When you saw him fall
2 forward, did he fall from his knees forward?

3 THE WITNESS: You know, I don't remember.
4 I think he was, but I don't remember. I'm, I'm pretty
5 sure he was on his knees.

6 But also right before -- as he was
7 walking -- he was walking out on his knees, he was kind
8 of -- he was scanning the area looking at us. He just
9 kind of -- his facial expression had kind of changed.

10 He just -- I don't know whether he was,
11 you know, counting how many of us were there, trying to
12 figure out where we were at. But he just -- it looked
13 to me like he was, I don't know, trying to figure out
14 what he was going to do next.

15 A GRAND JUROR: So you've been a police
16 officer for 23 years. Congratulations, by the way.

17 THE WITNESS: Yes.

18 A GRAND JUROR: So in your experience, and
19 that's a lot of experience, would you say that, and you
20 use your intuition I'm sure to stay alive, and that has
21 served you for a long time, would you say that
22 something -- when he got to that place, right before you
23 heard the gunshots, would you say that something
24 changed, and that something -- that, that you feel like
25 something changed, like something -- something --

1 something changed? You felt like something that changed
2 about him?

3 THE WITNESS: Yes. And I don't -- I don't
4 know whether that was, okay, he's resigned to the fact
5 that, okay, there's a lot of us there, that it's over,
6 you know, as far as like him trying to run and get away,
7 or if he'd decided that he was going to try and shoot
8 us; that he was going to see how many of us that he
9 could take out. I don't know. Like I said, his
10 expression had changed.

11 A GRAND JUROR: You just felt something --
12 some shift had happened.

13 THE WITNESS: Yes.

14 MR. AUXIER: Nothing more from me.

15 Thanks, Officer.

16 A GRAND JUROR: Thank you very much.

17 THE WITNESS: Okay.

18 (Recess.)

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RYAN MELE,

a witness called on behalf of the State, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. AUXIER:

Q All right. Just to start out, can you state and spell your name?

A My first name is Ryan, R-Y-A-N. Last name is Mele, M-E-L-E.

Q What do you do for work?

A I am a Portland police officer, and I work on the East Precinct Neighborhood Response Team.

Q And what's the Neighborhood Response Team do?

A The Neighborhood Response Team deals with larger community issues.

So, let's say, you live by a park and you have maybe a house next to you that was vacated or foreclosed, and now there might be some people who are living in it illegally, squatting inside of it. You might have heard that term.

We deal with a lot of politically sensitive information, you know, with the homelessness population. We deal with -- the newest trend right now is we have over 500 camps in East Precinct alone, which

1 includes motor homes, which is now kind of the new thing
2 that we're starting to see. We deal with drug houses,
3 drug complaints.

4 We really are kind of separate from normal
5 patrol. We deal mostly with the community and what that
6 community is having problems with because each obviously
7 neighborhood is going to have its own set of problems.

8 Q And do you dress like in a suit like you are
9 now or do you wear a uniform, display a badge, just like
10 any patrol officer?

11 A Yes. I wear a uniform every day.

12 Q And how long have you been on the neighborhood
13 response team?

14 A Um, three years. I think it will be three
15 years.

16 Q What's the neighborhood?

17 A We actually cover -- so we had two guys just
18 leave the team. So now Andy and I cover everything west
19 of 205 all of the way to 39th. And then we go from
20 Clackamas County all of the way to North Precinct
21 border, which is about Sandy Boulevard. Just the two of
22 us. There's a lot of different neighborhoods in there.

23 Q It's kind of that stretch that goes along
24 82nd?

25 A Eighty-second.

1 MR. REES: When you say "Andy," you mean
2 your partner, Andrew Hearst?

3 THE WITNESS: I do.

4 BY MR. AUXIER:

5 Q How long has he been your partner?

6 A The entire time that I've been on the
7 Neighborhood Response Team, so about three years, but
8 I've known him for my total career duration.

9 Q How long have you been an officer?

10 A I've been an officer for about eight and a
11 half years.

12 Q And you were working on February 9th of 2017.

13 A I was.

14 Q And that morning, what were you doing?

15 A Well, so Officer Hearst and I had partner car.
16 We ride partners every day. Some days he drives. Some
17 days I drive. Some days Andy -- Officer Hearst has -- I
18 am going to refer to him as Andy because he's my friend,
19 so.

20 A GRAND JUROR: That's okay.

21 THE WITNESS: So he kind of -- he'll work
22 certain neighborhoods and then I'll work certain
23 neighborhoods.

24 That day, that morning, Andy had kind of
25 something set in motion that he was going to go do.

1 There was some people that were dumping trash, and their
2 cars were parked illegally so that was his morning
3 thing.

4 I remember I was, like, I want to get
5 coffee, and he's like we got to do this real quick. So
6 that's what we did. We went to go tow some cars.

7 BY MR. AUXIER:

8 Q You were there together?

9 A Yes.

10 Q While you were there, did you get a call about
11 this robbery car prowl suspect who was in the area of
12 82nd and Tillamook, 82nd and Hancock?

13 A Yeah. We didn't actually get the call to
14 begin with. As we were sitting out next to the vehicle
15 that Andy was towing and the tow truck had arrived, we
16 had heard the information that had come out about they
17 had chased someone into the blocks. Someone had
18 potentially robbed someone at gunpoint. Then they had
19 asked for someone available with a rifle or a long gun.

20 So I had asked Andy, because he was
21 dealing with the tow truck operator at that point, and I
22 said, "Hey, Andy, did you hear that?"

23 My partner, Officer Hearst, is a long
24 rifle operator. So I just said, "Hey, did you hear?"

25 He said, "Yeah, I did. We should probably

1 cut loose from this and head that way." So that's what
2 we did. We waited until the tow truck showed up. Kind
3 of got some more information on what was going on. I
4 was driving. Andy was looking at the computer and
5 getting all of the updates, relaying those updates to
6 me.

7 Q What was he saying about the updates?

8 A Just letting us know -- letting me know that,
9 you know, where the perimeter is going to start, where
10 it was -- you know, where the track was going to --
11 where the dog track was going to begin, where we were
12 going to meet the other officers.

13 Q Was he saying stuff about the status of the
14 suspect and what we knew about him, that sort of
15 intelligence, or was that not that type of update?

16 A Um, you know, as I'm driving, it's hectic
17 getting through traffic. So Andy is saying things, I'm
18 sure, but things are sticking out to me, like, okay, the
19 track is going to start at 82nd and Tillamook.

20 I'm, like, is it going to start east of
21 82nd, or, you know, I don't want to go through the
22 track -- or I don't want to cut through a certain side
23 street if I don't have to. And obviously, driving on
24 82nd in the morning is a little bit difficult in its
25 own, especially when you go lights and sirens.

1 Q So you caught up and you eventually met up
2 with Officer Wullbrandt; right?

3 A Yes, I did.

4 Q And do you remember all of the officers sort
5 of in your contact there?

6 A Oh, gosh. To my knowledge, I believe it was
7 Sergeant Helfrich was there, Officer McHugill, Officer
8 Adrian and K-9 Officer Wullbrandt, myself and Officer
9 Hearst.

10 Q And when you guys got together, the search
11 eventually took you to 8301 NE Hancock.

12 A Eventually, yes, it did.

13 Q And when you got to that location, did you go
14 to the backyard first?

15 A We did. We went to the backyard.

16 Q And what sort of -- what did you sort of
17 understand -- at that point what did you understand
18 about the house at 8301?

19 A Why it was important?

20 Q Yes.

21 A So I am a less than lethal operator, so what I
22 carry is a 12 gauge shotgun. It's painted bright
23 orange.

24 I don't know if you guys have seen some
25 officers carry it. It's bright hunter orange. And what

1 it does is it carries a sock. Inside of that sock is a
2 beanbag. And it's the equivalent of getting hit with a
3 fast pitch baseball. So it's less than a lethal. So
4 that's what I'm carrying.

5 As we walk back alongside, this would be
6 the -- this is what we call the number four side right
7 there by that bamboo plant. We walk back. And it's my
8 job to essentially provide cover for these officers.

9 So once we get into the backyard, I'm
10 looking at -- I'm kind of taking a step back looking for
11 prints in the mud because it has just been raining,
12 obviously. It's been doing the same thing this whole
13 time.

14 Q It was raining that day?

15 A Yeah. I'm looking for fresh prints, anything
16 that would stand out to me. And I'm also looking in the
17 windows in the backyard on the house.

18 It's a two-story house as you can see.
19 I'm looking for blinds to open or close, you know. Is
20 there someone peeking through them?

21 Because, like I said, at this point all I
22 know is that there's a potentially armed person who had
23 just robbed someone at gunpoint, so I don't want my
24 other officers to be injured during that.

25 Then it's brought to my attention that

1 once we get to the backyard, we're standing around
2 looking for prints, if there are any signs of entry to
3 the house. And they see a storm door, which was in one
4 of your slides. If you want to go back to that -- yeah.
5 So that's about the view that I had, which was further
6 back.

7 But there's, there's a 2x6 wood railing
8 that runs the length from about that concrete right
9 there all of the way to another building. So in order
10 to get down into this, you actually have to jump over or
11 crawl over this railing, which is about yay high
12 (indicating).

13 And so someone had noticed, and an
14 officer -- I'm sure I stated it earlier before, but it
15 kind of slipped my mind here until he brought it to my
16 attention, they had seen the print on the wood.

17 If you've seen wood sitting in rain for a
18 long time that hasn't really been disturbed, it kind of
19 has that weird kind of coating that forms on it. Then
20 if you were to put your hand on it, it would leave that
21 print as if you could see someone had put their hand on
22 top of that piece of wood and gone down.

23 Q Officer Mele, if I may in the interest of
24 time, fast-forward you a little.

25 Is it safe to say that based on the

1 observations from yourself and other officers at the
2 scene, you had all just concluded that the suspect was
3 likely inside the house?

4 A Very likely.

5 Q And eventually you got called out kind of to
6 the front area of the house; is that right?

7 A I did.

8 Q And just so -- I did take a little bit of a
9 leap there, but pick up where I just took you to.

10 A Sure.

11 So some other officers were going to go
12 around front. My sergeant said, "Hey, make sure --
13 let's just have two officers post at this manned door
14 here while they go around front just in case he comes
15 out the back door." You want to have that space
16 covered.

17 So as he did that, I was kind of already
18 past there. I started to make my way. So I walked back
19 and I told McHugill and Officer Adrian, "Hey, you guys
20 post up on the door."

21 "Okay. We're good with that."

22 I proceeded to walk back around the house,
23 the number four side, towards Hancock Street, which is
24 right on the side of the bamboo towards the blue and
25 yellow recycle bin right there.

1 Q You were right by the recycle bin?

2 A I was actually right by the bamboo. I walked
3 up probably three feet past that initially, and then
4 that's when the dog started barking. And they
5 started -- I overheard the commands being given.

6 "Hey, show us your hands." For whatever
7 reason, I don't know why, but I had noticed there's a
8 little slider window. You see that power meter right
9 there, on the wall there's a little window next to it.

10 For whatever reason, when I walked past in
11 the beginning, it was closed. Then when I came back out
12 as the dog is barking, and that's taking place, and the
13 commands are being given, I noticed that the window was
14 opened.

15 So I put two and two together, but I
16 couldn't see anyone because there's an alcove between
17 the garage and the house that goes back a little bit.

18 So I again had my less than lethal
19 beanbag. And so I saw that there was officers basically
20 where this camera angle is facing towards them, giving
21 commands.

22 So what I wanted to do is -- obviously, we
23 have enough people right here. So what I wanted to do
24 was stand off to the side and kind of triangulate my
25 position. So if he comes out and he tries to do

1 anything, I'm there with a beanbag gun.

2 Q And you are essentially between the two, the
3 recycling bin and the bamboo? Is that what you would
4 say?

5 A Yes. I was -- I remember vividly that the
6 bamboo plant was -- we were right there.

7 Q Got it.

8 And when you came around the corner from
9 the backyard to the front, were officers -- as soon as
10 you got to the front, were officers already in the
11 process of challenging the suspect?

12 A Yes. Officers were -- I heard, I heard
13 commands given. But like I said, I've been working with
14 Andy for up to three years, and, you know, we work this
15 far away from each other in a police car, (indicating),
16 so Andy's voice sticks out to me more than other
17 officers' voices.

18 I heard Andy's voice specifically giving
19 commands for the person to, you know, do our normal down
20 on the ground, show us your hands, put your hands out on
21 the sides. Andy was having him crawl towards him and
22 wanting him to show his hands the entire time. Then you
23 could also see the K-9 barking as well.

24 Q What did you remember hearing Officer Hearst
25 say specifically?

1 A "We believe you have a gun. And if you reach
2 for that gun, you will be shot."

3 MR. REES: Is that a command that the
4 Portland Police Bureau trains officers to use?

5 THE WITNESS: It is. It is.

6 BY MR. AUXIER:

7 Q Did you hear him make other commands?

8 A Yeah. Um, you know, there was, "Keep coming
9 towards us. Keep showing your hands." But at that
10 point all this is going on.

11 So if you guys can put yourself in the
12 position where this camera is facing, these are all
13 officers that have weapons drawn facing this way.

14 So what I know from this is that there are
15 two more officers in the backyard, right, that were
16 staged at that one door. So what I didn't want to
17 happen is if, you know, the worst case happens, the
18 shots are fired and a shot goes through or someone
19 doesn't get it, that, that is going -- that round is
20 going to keep traveling. And I don't know if it's going
21 to be stopped by just that wall.

22 So, you know, what officers kind of tend
23 to do is they get drawn to the situation and they might
24 leave their posts. So what I wanted to make sure that
25 they didn't walk past that kind of zone because I knew

1 where they were at. They were safe.

2 So what I did was I yelled back. I kind
3 of put my -- I was close to that garage wall and that
4 bamboo plant. So what I did was I just peeked back, and
5 I kind of, you know, announced my voice that way so it's
6 not blocked by the garage.

7 "Hey, Adrian, McHugill, we are challenging
8 one out here in front. Don't come towards it. Don't
9 walk towards us yet."

10 Do you want me to keep going on that?

11 Q What happened when you -- tell us when you
12 were heading back towards them.

13 A And it was literally within that span of time.
14 "Hey, guys, we're challenging one. FYI, don't walk out
15 here. Guns are facing that way."

16 Then I heard a boom, and it kind of
17 surprised me. And I looked over and I immediately
18 looked over at Andy. And I saw Andy's barrel had, like,
19 steam coming from it.

20 Then I saw -- I heard one more boom. And
21 then I looked over at the suspect who had previously
22 kind of skipped over that.

23 As he was coming out, he was kind of in --
24 I don't know if you guys know, like, in track, track or
25 wrestling -- in track, you have that starter's position

1 where you are kind of bent over, and it looks like you
2 are going to -- you are going to start to run, or a
3 wrestling position where you are going, kind of a
4 forward stance ready to go.

5 And what I had noticed before that was you
6 have, you have multiple officers and a K-9 dog that's
7 barking. You have weapons pointed at you. I remember
8 he looked off. And he was looking towards -- so he
9 didn't know I was there.

10 And my whole thought process is I don't
11 want this potential armed robber to run into the street,
12 so I had good areas. I had thighs. In order to take a
13 shot with the beanbag, if that was the case, if he was
14 going to run, I had a good backdrop.

15 He was walking past the officers. I
16 remember seeing him doing that. And that definitely got
17 the hairs on the back of my neck to stand up, like he's
18 looking for a potential somewhere to run. I knew
19 without a doubt in my mind that is what he was most
20 likely thinking.

21 So as I turned -- I'm going to skip
22 forward. As I turned back around, after I gave
23 announcements to the guys to stay where they were at,
24 that's when Officer Hearst had fired. And I looked over
25 and I saw the suspect fall down. So I could only see

1 the suspect's left-hand side the entire time. I
2 couldn't see anything in front of him.

3 Q So you were not part of the custody team; is
4 that correct?

5 A So eventually what happened was I was and I
6 wasn't.

7 So after that happened, "Hey, shots
8 fired," we start getting everything ready to go.
9 Obviously, McHugill and Officer Adrian are in the back.
10 They are probably wondering what's going on. So we let
11 these guys know, "Hey, I'm going to bring these guys
12 around to me, so I have more people here to triangulate
13 as well."

14 As they come back around, they meet up
15 with me, and we come up with a plan that they are going
16 to have a custody team with a shield. And they are
17 going to go up and do what they have to do while I
18 provide cover with a beanbag or less lethal. And I have
19 two guys with me that have lethal cover as well.

20 Q Anything noteworthy from your -- that occurred
21 during the custody phase?

22 A During the custody phase?

23 Q Right.

24 A No.

25 Q And from your vantage point, to back up, from

1 your vantage point by the bamboo, did you -- the, the
2 suspect must have come out from the alcove enough for
3 you to see him.

4 A Yes.

5 Q You were originally challenging the suspect.
6 Could you see him at the very beginning?

7 A Not at the very beginning, I couldn't.

8 Q When he came out of the alcove enough for you
9 to see him, was he standing? Was he on his knees or was
10 he crawling?

11 A No. He was -- he had started off on his
12 knees, but he had his hands forward. And I remember
13 that he had them forward on the ground. And it was
14 like, um -- it looked like a wrestling-like position.

15 It didn't look like, you know, a, okay,
16 you know, I have my hands out and I'm listening to what
17 you guys are saying. He was, like, a very kind of I'm
18 forward. His body language was different than just
19 that.

20 Q And was that the same position he was in when
21 you moved your head back?

22 A No.

23 Q What position was he in before you -- right
24 before you moved your head back?

25 A Right before I moved my head back, that's the

1 position he was in was kind of like lunging forward like
2 this (indicating) when I turned and saw the steam coming
3 off the barrel and I saw the suspect go from his knees
4 down.

5 Q Got it.

6 MR. REES: So you're indicating about face
7 forward?

8 THE WITNESS: I'm also indicating that he
9 had changed his position from here to he must have gone
10 up to his knees because then that's when he had fallen,
11 yes.

12 MR. REES: Because he was in a more erect
13 position than before?

14 THE WITNESS: Correct.

15 MR. AUXIER: Any questions from the Grand
16 Jury?

17 Thanks, Officer Mele, for your time.

18 THE WITNESS: Thank you for your time.

19 A GRAND JUROR: Thank you very much.
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1 STEVEN MC HUGILL,
2 a witness called on behalf of the State, having been
3 first duly sworn, was examined and testified as follows:
4

5 EXAMINATION

6 BY MR. AUXIER:

7 Q To start out, can you tell us your name and
8 spell it?

9 A My name is Steven McHugill. M-C-H-U-G-I-L-L.
10 S-T-E-V-E-N.

11 Q And you're a Portland police officer?

12 A Yes.

13 Q How long have you been a Portland police
14 officer?

15 A Going on 12 years this summer.

16 Q And you were working in the morning of
17 February 9th, 2017?

18 A Yes.

19 Q And on that day, were you called to assist in
20 setting up a perimeter and searching for a suspect in
21 the area of 8301 NE Hancock?

22 A Yes.

23 Q And were you part of the custody team that was
24 following along with Officer Wullbrandt?

25 A Yeah. The track, we were all in the track.

1 Q Got it. And you ended up in the backyard of
2 that residence with Officer Adrian.

3 A Yes.

4 Q And what were you doing in the backyard?

5 A Well, we had found where it looked like a
6 point of entry on the back of the house. And so I was
7 pretty confident that the person we were looking for was
8 in the house. So Adrian and I were hanging out in the
9 back, covering the back.

10 Q And you were in the backyard when you heard
11 the shots that were fired?

12 A Yes.

13 Q So you didn't see the suspect at all until
14 after the shooting?

15 A After the shooting, yes.

16 Q What happened after the shooting? Did you
17 eventually come to the front of the house?

18 A Yes. I think they yelled -- or I can't
19 remember if they yelled or said over the air they needed
20 some help up front.

21 So Adrian and I ran up along the garage.
22 And it would be where that blue garbage can is, and him
23 and I were -- I know what I did. I provided cover on
24 the suspect as they formed up their custody team to move
25 up.

1 Q Where were you standing? Can you show us?

2 A I was on the other side -- to the right of
3 that blue recycling bin or whatever.

4 Q So after the shooting when you came to the
5 front yard, you were behind the blue recycling bin
6 relative to the suspect who is lying on the ground?

7 A Yes.

8 Q And you were pointing your handgun at the
9 suspect?

10 A Yes. Yes.

11 Q Could you -- did you notice any weapons on the
12 suspect or near the suspect as the custody took place?

13 A Not from where I was standing there. When the
14 team moved up, then I moved across the front of the
15 garage, and they took him into custody. Then I could
16 see a handgun in between the body and the house
17 laying -- there was some rocks or something there.

18 Q What do you see in this picture?

19 A I see a handgun.

20 Q Is that where you first saw it during the
21 custody?

22 A Yes.

23 Q And then can you walk up to this image and
24 kind of show us where you started and where -- let me
25 restate that question.

1 Can you show us where you were when you
2 started the custody phase and where you were providing
3 cover, and then where you were -- where you moved to
4 when you first saw the gun?

5 A Okay. So we were standing up back here and I
6 had my gun pointed at him. Then the other officers were
7 over here. They had formed a custody team.

8 So they were going to actually put -- take
9 custody of him. So as they moved up, I also moved
10 across the garage, and then they moved up and secured
11 him and then I could see a handgun. That was down in
12 here.

13 MR. AUXIER: No further questions from me.
14 Anything from the Grand Jury?

15 Thank you.

16 THE WITNESS: Thank you.

17 A GRAND JUROR: Thank you very much.
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1 7:35, 7:30, 7:35 a.m.

2 Q At that time what was the situation as you
3 understood it?

4 A Officer Ferner had gone out on a robbery. The
5 suspect had robbed somebody with a gun, and Officer
6 Ferner -- initially, we were sent as cover. And then
7 Officer Ferner set up a perimeter and asked for a K-9.
8 So we went to 82nd and Hancock to sit on the perimeter.

9 Q All right. And how are you getting this
10 information that you just described to us?

11 A Over the radio.

12 Q Over the police radio, which is what is being
13 broadcast?

14 A Yes.

15 Q And did you have a suspect description?

16 A Yes. I believe Officer Ferner put out a
17 suspect description, which was a black male, young,
18 like, I think he said 20s. He was wearing a hoodie
19 under a green jacket, I believe. And then his pants
20 were sagging, and his boxer shorts were showing
21 underneath his pants.

22 Q All right. Did you receive any information
23 that this suspect was armed with a handgun?

24 A Yes. The information also said that he had
25 tried to rob somebody at gunpoint. So he was armed with

1 a weapon, and he was last seen putting the weapon in his
2 waistband.

3 Q All right. Would you please walk over to the
4 photograph diagram and show the Grand Jurors where you
5 went when you set up the perimeter?

6 A So this is 82nd. Okay. So we were sitting
7 right here on 82nd and Hancock. And so our view was
8 down this way because they thought he had gone into the
9 area over here.

10 Q And are you inside of your patrol car at that
11 point?

12 A We were sitting in our patrol car.

13 Q All right. Thank you. You can resume your
14 seat.

15 And so are you essentially set up to
16 prevent the escape of the suspect if he decided to go to
17 82nd Avenue and Hancock?

18 A Yes.

19 Q All right. And so at some point you go right
20 to the residence where the shooting occurred.

21 A Yes.

22 Q That's seen in this photograph.

23 A Yes.

24 Q On Hancock Street.

25 What brought you closer to that house?

1 A The team with the K-9 were searching the
2 blocks. They were concentrating on this house because
3 there was a sign of a break in. This was being
4 dispatched over the radio as how we were getting this
5 information.

6 They saw a sign of a window that was
7 broken out, so they were kind of concentrating on that
8 house. And then at one point they went -- I believe it
9 sounded like they went from one side of the house to the
10 other side of the house, and that's when they saw the
11 suspect.

12 When they said they saw the suspect,
13 Officer Lock was driving a partner car. We have an --
14 we were driving an armor-plated car. So we drove our
15 car up to the end of the driveway there so we had -- so
16 there was cover there, hard cover.

17 Q We're not quite able to see the end of the
18 driveway in this Leica image.

19 A Correct.

20 Q It would be at the end of the driveway where
21 the driveway meets NE Hancock Street; is that right?

22 A Yes.

23 Q And can you describe for us what you saw then
24 from that location at the end of the driveway?

25 A Um, we both got out of the car and we were on

1 the passenger side of the car. So I could see the
2 lethal, less lethal, everybody in the driveway there
3 confronting the suspect.

4 They were telling him to get down -- I
5 think they were telling him crawl out, crawl out on your
6 hands and knees. He didn't look like he was really
7 complying. He was kind of coming out slowly.

8 I've seen a lot of people get taken into
9 custody at gunpoint. And typically they've got their
10 hands up like this (indicating), and they are complying,
11 and they are doing everything that they are telling
12 them.

13 This guy kind of just had his hands about
14 halfway. He was just kind of -- it didn't look like he
15 was really doing what he was told to do.

16 Q Just for the record, because we can't really
17 see your gesture, you were first describing you've seen
18 people come out with their hands extended all of the way
19 up.

20 A Way up in the air.

21 Q But in this case, rather than being completely
22 above their head, you gestured to show his hands were
23 about shoulder height?

24 A Yes. So he's kind of like halfway between up
25 and down (indicating).

1 Q And did that strike you as unusual given that
2 this was a suspect who has been confronted now at
3 gunpoint by these police officers?

4 A Yes, very unusual.

5 Q What did you, based on 30 years of experience,
6 what did you think was happening?

7 A I thought, oh, my gosh, he needs to start
8 listening to them or something bad is going to happen
9 here.

10 Q Now, do you have your gun out at this point?

11 A I don't because I was behind everybody, so
12 they would have been in my line of fire, so I did not.
13 I was just there, just basically if he decided to run or
14 if something else were to happen, just, you know.

15 Q You're not giving commands?

16 A No.

17 Q You're looking down the driveway and seeing
18 this?

19 A Yes.

20 Q Did you see the suspect?

21 A Yes.

22 Q You could.

23 And did you believe that he matched the
24 description of the suspect from the earlier crimes that
25 were reported in the neighborhood?

1 A Yes. Yes. Definitely.

2 Q And so what happens then as you continue to
3 watch this?

4 A So as I can see him coming out of the
5 breezeway there, and like I say, they are telling him,
6 "Crawl out. Get down -- get down on the ground. Crawl
7 out." And he's not really doing it.

8 I see him kind of -- it looked like he was
9 maybe going down. Then I can see his hands come down to
10 his waistband. And my thought was, oh, my gosh, you
11 know, he's so lucky right now that he's not getting shot
12 because his hand came down to his waistband.

13 It came partly down, and then he hesitated
14 and then went -- definitely a movement towards his
15 waistband. And the last information that we had
16 received was that he had put the gun in his waistband.

17 I couldn't see from that distance if there
18 was a gun, but all I'm thinking is, oh, my gosh, you
19 know, he's being really stupid right now. And as soon
20 as I thought that, that thought went through my head,
21 then three shots went out and he dropped.

22 Q So the hands come down to the waistband and
23 then you heard three shots.

24 A Yeah.

25 Q In your experience, is it common for criminal

1 suspects to carry firearms in their waistband area
2 without a holster?

3 A Yes.

4 Q And simply keeping the gun tucked into their
5 pants or waistband?

6 A Yes.

7 MR. REES: Any questions from the Grand
8 Jury?

9 A GRAND JUROR: Did you see how he fell?
10 Was he on his knees or was he standing?

11 THE WITNESS: Um, he fell -- he fell down
12 to his knees and then just straightforward.

13 A GRAND JUROR: Okay.

14 A GRAND JUROR: When you saw him reaching
15 into his waistband then, had he stood up? Was he -- had
16 he --

17 THE WITNESS: Um --

18 A GRAND JUROR: -- was he still on his
19 knees?

20 THE WITNESS: It seems like he was going
21 down to his knees as he was reaching down to his
22 waistband.

23 A GRAND JUROR: So at some point he had
24 stood up or changed position?

25 THE WITNESS: He was standing up. When he

1 came out of the breezeway, he was standing up. Then
2 they were yelling at him to get down on the ground.
3 Crawl. Then I believe he did go down to his knees.

4 I'm trying to remember. So, yeah -- I
5 want to say he was on his knees or almost to his knees.
6 And then when he was shot, he just fell forward.

7 BY MR. REES:

8 Q Maybe just so we have a clear picture of what
9 you're describing.

10 When you say "on his knees," do you mean
11 on hands and knees or crawling like a baby?

12 A No. No.

13 Q Or with his upper body up and erect?

14 A Yeah. Upper body up and erect, yeah.

15 Q Okay. And so in that position, reaching for
16 the waistband?

17 A Yes.

18 Q Half his body being upright then; is that
19 right?

20 A Yes. Yes.

21 MR. REES: Did that answer your question?

22 A GRAND JUROR: Can I -- it's hard -- so
23 he was -- you saw him on his knees and his hands went
24 from here (indicating)?

25 THE WITNESS: His hands were never up in

1 the air (indicating). His hands were never straight up
2 in the air. His hands were like down like this
3 (indicating).

4 MR. REES: Shoulder height?

5 THE WITNESS: About shoulder height,
6 sorry. About shoulder height and then definite movement
7 to his waistband.

8 A GRAND JUROR: Thanks.

9 MR. REES: That was good clarification.
10 Did that answer your question?

11 A GRAND JUROR: Yes. Absolutely.

12 Thank you very much.

13 MR. REES: Any other questions, folks?

14 Officer Bishop, thank you for coming in
15 this afternoon.

16 THE WITNESS: Thank you very much.

17 A GRAND JUROR: Thank you very much.

18 THE WITNESS: You're welcome.

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1 ROBERT WULLBRANDT,
2 a witness called on behalf of the State, having been
3 first duly sworn, was examined and testified as follows:
4

5 EXAMINATION

6 BY MR. REES:

7 Q For the record, Officer, please state your
8 first and last name and spell your names.

9 A Last of W-U-L-L-B-R-A-N-D-T. First name of
10 Rob or Robert, R-O-B-E-R-T. My BPST is 42649.

11 Q You are a Portland police officer?

12 A Correct.

13 Q How long have you been a police officer?

14 A It will be 14 years this month, I believe, on
15 the 27th.

16 Q What's your current assignment?

17 A I'm currently assigned to the K-9 unit, which
18 I have been assigned to since 2011. Prior to that I was
19 part of our NRT. And then prior to that, I was a
20 district officer in East Precinct.

21 A GRAND JUROR: What's NRT mean?

22 THE WITNESS: Neighborhood Response Team.
23 They do a lot of livability issues, drug house
24 complaints, that kind of thing.

25 BY MR. REES:

1 Q And when you were with the K-9 unit, are you
2 assigned a particular dog that you then handle during
3 your shifts?

4 A I do. I've had -- I'm on my third dog right
5 now. I've had -- my first dog was Ace. He was a German
6 Shepherd, then Billy who is a Belgian Malinois who was
7 involved in this case here.

8 Q So when you were working with the K-9 unit,
9 are you assigned to a particular precinct?

10 A No. We are city-wide. A lot of times
11 we're -- we go other places, too. Clackamas County,
12 Multnomah County, Washington County. So we go all over
13 the place. We're not assigned to a certain area. We
14 just go where they may need the specialized skills of
15 the K-9 to try to help apprehend or track a suspect.

16 Q All right. And so the officers that we've
17 heard testify who work at East Precinct began their day
18 at East Precinct then leave from there after roll call.

19 How do you begin your day, and how did you
20 begin your day on February 9th, 2017?

21 A So that particular day I was starting at 8:00.
22 Our training night is the night before. We all train as
23 a unit on Wednesday night. And typically we train until
24 2:00 in the morning or later sometimes. So on Thursday
25 morning, I was starting at 8:00.

1 And so about 7:45 a.m., I was in my garage
2 getting my uniform and stuff on. And when I do that, I
3 turn my radio on and I listen to see if anything is
4 going on.

5 And when I did that on this particular
6 morning, I heard -- I turned it on, and I immediately
7 heard Officer Ferner put out information that he had a
8 subject run from him, and they were asking for a K-9.

9 So at that point I answered up. I let
10 them know that I was just getting ready for work, and
11 that I was a few minutes out, and I was coming from
12 Clackamas County, and it would take me a few minutes to
13 get there.

14 Q All right. And so once you were ready, did
15 you go in your police vehicle with your dog to go to
16 that area that we see in the photographic diagram, the
17 area around 82nd and Schuyler -- or within those blocks?

18 A Yeah. I believe I responded to 8322 on
19 Tillamook; is that correct?

20 Q 8322 NE Tillamook is the home of Marsha
21 Pittman, who had reported that someone had come to her
22 door that morning banging on the door.

23 A Correct.

24 Q Is that the house that you went to?

25 A That's the house that I responded to.

1 different types of scent sources as they are tracking in
2 a neighborhood like this. The first one is called raft,
3 their raft cells.

4 So as you move about, move through this
5 room, move through your day, you're continually
6 sloughing off skin and dead cells that are latent with
7 bacteria that fall off you. The estimates are somewhere
8 around 40,000 of these raft cells are sloughed off your
9 person with every minute.

10 So these fall to the ground. Depending
11 upon the condition, the wind, the sun, heat, cold, it
12 can affect these cells, but they fall to the ground. In
13 good conditions, you know, if it's a nice, damp,
14 non-windy day, they will fall down, and hopefully
15 they'll collect close to where you have been walking.

16 Like I said, on a day that it may be windy
17 or it's super hot out, it's going to affect the way
18 these raft cells work. But for the most part on a day
19 like this, you can tell it's damp on the ground. It
20 was, it wasn't super windy.

21 There was wind. But in an area like this,
22 which is pretty, which is pretty contained, you know,
23 you may have some of the scent pooled up against the
24 house depending on the wind direction.

25 But most of that is going to fall straight

1 down to the ground. The K-9 is going to be able to use
2 his nose to follow that scent.

3 Another way that they do it is called
4 vegetative scent. So as you walk through the
5 environment. Here is a little different. There's mud,
6 but there's also some grass and some vegetation.

7 As someone walks through this vegetation,
8 they are breaking down the vegetation underneath them.
9 And that breakdown of the vegetation releases an odor
10 also.

11 So the dogs use those two types of scent
12 primarily to help us follow and track a person through a
13 neighborhood or through a field. It gets tricky when
14 you get to some hard surfaces because then there's
15 nothing really collecting those, that scent.

16 So sometimes when, you know, you are doing
17 a street crossing or you get to a hard surface you are
18 relying on, let's say, if the person is wearing boots, a
19 portion of that, a very small portion of rubber is
20 coming off their boots. They are still dropping those
21 raft cells. It's just harder in an area where it's all
22 concrete, but it's still possible.

23 That's how we try to train our dogs
24 initially is on hard surfaces because we believe if they
25 can track on a hard surface, on concrete, then once you

1 get into the grass and the neighborhood, it's a lot
2 easier because there's so much more scent and, you know,
3 vegetation for them to follow.

4 A GRAND JUROR: So it's not holding up a
5 T-shirt saying --

6 THE WITNESS: No. We do a lot of last
7 known locations.

8 So, for instance, on this one, we knew
9 that his last known location was at this -- it is a
10 jacket and some other miscellaneous items.

11 So we do -- is we bring them to the last
12 known location, and sometimes it will be the seat of a
13 car. Sometimes it will be, you know, a jacket, the
14 luggage.

15 We don't hold -- what you're referring to
16 is a scent article. And they do that with bloodhounds
17 and some other --

18 A GRAND JUROR: They are scent hounds.

19 THE WITNESS: Yeah. Correct.

20 And so they'll imprint them on that
21 particular item, but we just use last known location
22 because it's similar, because they are still using that
23 same odor.

24 But we get to that -- this area, when I
25 see my dog put his nose down to begin his track, I give

1 him his track command which is suk.

2 And that's kind of like -- he takes a
3 photograph in his mind, okay, that's what I want him to
4 follow. And he continues to try to follow that scent
5 after I gave him his command until we get to the end and
6 he finds what he was looking for.

7 Q In this case, did you have an indication that
8 your K-9 partner was picking up a scent from the
9 suspect?

10 A Yes. So after our -- we formulated our team,
11 we start down. And I knew that this was his last known
12 location because Officer Ferner, and I believe it was
13 Officer Rippe had told me that they had confronted him
14 here, and that he had disappeared around the back of the
15 house, and then it was unknown from there. So I knew I
16 had a good start location where the items were at.

17 And immediately upon getting there, Billy
18 put his nose down. Like I said, I gave him his track
19 command and he tracked around the corner.

20 Then if you go around to the south of this
21 house, there's an old wooden fence similar to this one,
22 but it was even worse off than that. He tracks up to
23 the fence. And then he kind of comes up and is casting
24 his nose back and forth on the fence like there's odor
25 up above.

1 To me that means that he's -- you know,
2 he's working that odor on that fence now. And then you
3 could see it kind of had some of that green mossy
4 Pacific Northwest moss stuff on the fence. You could
5 see there was boot marks on there from somebody trying
6 to go over. And there was also breakage of the boards
7 at the top, like they had pulled themselves over the
8 fence.

9 I had good indicators that the suspect
10 went around the house and then continued south from the
11 location.

12 Q All right. If I could ask you to go up to the
13 photographic diagram. And just, if you could just
14 generally show us the path of your traffic with the dog
15 that morning, if you're able to do that. It was just
16 really a general overview. You don't have to --

17 A I'm trying to find -- I see this address here,
18 but I'm trying to find it on the map here.

19 Q The house might be partially obscured by the
20 label here.

21 A Do you know which one on here is the
22 officer-involved? This one?

23 Q Again, it might be partially obscured by the
24 label, so just a general.

25 A Okay. So it was a flag lot. It may be this

1 one here, right here.

2 So he tracks around the west side of the
3 house to the south fence line, over into this yard, I
4 believe right here. And then we can't get over this
5 fence because it's going to fall down if we try to go
6 over it.

7 I don't want to get anybody on the search
8 team or my dog hurt, so we make the decision to work
9 around and then come back into this yard off of Hancock
10 to try to reacquire the track.

11 So I end up sending Billy in off-lead. He
12 gives me a track to the east, initially to this fence
13 line gate, to this house right here.

14 There's some chicken wire on the top of
15 this fence that I noticed is peeled down, and I can't
16 tell if it's old or new, but I decide to check this yard
17 first just to rule this east portion of the track out.

18 And 'cause a lot of times people that are
19 running from the police will come into a yard, they may
20 bounce around a little bit trying to choose which way
21 they are going to go.

22 So it's hard to tell if he came to this,
23 was in a, you know, push south or if he came and looked
24 over and then decided to go back this way, but we
25 decided to go east. We don't get anything in this next

1 yard.

2 So then I come back out and we go to the
3 8301 Hancock address. And I do the same thing where I
4 send Billy in off-lead and allow him to work up to this
5 fence line. He basically goes to the northeast corner
6 of the fence, which I believe is where the suspect
7 hopped over the fence into 8301. And he gives me a good
8 track all of the way across the yard.

9 And there's a shed in this portion of the
10 yard here. And as he comes to the shed, he circles
11 around the back and one of the doors is opened. He
12 enters the shed.

13 I can see him in there. Again he's
14 working odor. He's casting his nose back and forth up
15 along the sides of the shed. And to me that indicates
16 that there's fresh odor there. A lot of times odor will
17 pool against the wall especially in some type of metal,
18 you know, type area where there's a lot of odor.

19 I believe that the suspect was in there
20 for a little bit. Maybe all that odor was pooling
21 against the walls there, so I send him in there. And
22 after about 20 seconds, he comes back out. I can see
23 into the shed, and I can almost visually clear it.
24 There's a lawnmower and then there's a tarp on the
25 ground.

1 So I send him back in just to make sure
2 that he didn't miss anything in there. He goes back in
3 there. Again, is kind of working the odor along the
4 walls, but shows no indication that the person is under
5 the tarp or anything like that. So we make a plan. We
6 end up going and clearing that shed before we continue
7 on with our search.

8 Do you want me to keep going?

9 Q Sure.

10 A Okay. So after we get done with that shed,
11 which is over here, in this area here, you know, I let
12 the track team know I think he was in this area, but he
13 obviously probably hunkered in the shed and now has gone
14 somewhere else in the block.

15 So we start back down the fence line here
16 of 8301 on Hancock. And as we get to the corner of the
17 house, again, the dog is working some odor here.

18 I hear somebody from my track team say
19 that they looked down into the stairwell, and it
20 appeared that the window to the door -- that led into
21 8301 on Hancock was either broken or kicked in. And it
22 appeared there was some muddy shoe or boot prints next
23 to the door handle.

24 But it was kind of hard to see because up
25 above here, it was covered with like a black netting to

1 keep the leaves out, so we couldn't see great down into
2 it. There was a little bit of a discussion if it looked
3 old or if it looked new. As far as the damage, was that
4 something that happened weeks ago or was that something
5 that just happened?

6 Q You're referring to examining this door in the
7 photo that leads into the basement of the house there?

8 A Correct. So we're up above here. There's a
9 railing that runs this way, and then there's a black
10 netting that was over the top of it, which I was looking
11 down through.

12 So to me, I didn't -- I couldn't get a
13 great look at how fresh this looked. It looked
14 obviously like somebody had damaged it, but we couldn't
15 tell if it was new or fresh.

16 Q Okay. So you can resume your seat. Thank
17 you.

18 Now, you are at the house on NE Hancock
19 Street. And we understand you are with your K-9
20 partner.

21 Who else are you with during that track
22 that you described from Tillamook down to Hancock?

23 A Sergeant Helfrich was the sergeant on scene.
24 He was with us. Officer Hearst was there. He was the
25 AR operator. Officer Mele was there. He was the less

1 lethal operator. Officer McHugill, traffic officer was
2 there. He was going to be part of the custody team.
3 And then officer -- there was one other officer who
4 joined up with us. I can't -- I'm drawing a blank.

5 Q That initial group had a five-person team that
6 you just described then, including yourself, all have
7 different roles.

8 A Correct.

9 Q And you all traveled together then or with the
10 dog working this area as you move through; correct?

11 A Correct. Correct.

12 Q And once you get to the residence, and you're
13 looking at it, what do you do with your K-9 partner?

14 A So at this point I make the decision, I talk
15 with Sergeant Helfrich. I thought it would be a good
16 idea if we shrunk our perimeter down. Because at this
17 point it was 82 to 86, which is pretty large perimeter.

18 We had good indicators in this yard. We
19 had these indicators in the basement of the house, which
20 we still weren't sure, you know, if they were fresh or
21 not. But we had all this stuff leading up to this
22 house.

23 So my thought was let's shrink our
24 perimeter down. Let's lock this house down with
25 additional officers. Let's take my K-9 partner to the

1 yards to the west and we'll see if we get anything
2 leaving this yard, which would then indicate that maybe
3 he was in this yard, tried to attempt to make access
4 into the house, didn't get in and continued west.

5 If we don't get anything, then we can
6 focus all of our attention here with the probability
7 that, yes, he probably is inside this house. So that's
8 what we decide to do.

9 We get additional resources there. We get
10 people on the front and back of the house. And then I
11 take the search team and Billy, and we continued to the
12 west to try to rule out any type of westerly traffic.

13 Q Okay. Just to clarify something that you
14 said. The perimeter you said was 82 to 86.

15 So does that mean 82nd Avenue east to
16 86th?

17 A Correct.

18 Q That was the area the police were holding on
19 to while searching for the suspect?

20 A Correct.

21 Q But now --

22 A We shrunk, we shrunk it just from 82nd to
23 84th, and I believe it was Hancock to Tillamook was our
24 perimeter now.

25 Q All right. Did you have an understanding that

1 morning that the suspect you were searching for was
2 believed to be armed?

3 A I did. As I'm enroute to the call, there was
4 radio traffic about the suspect possibly being involved
5 in an attempted car jacking, where a firearm was
6 involved earlier in the day.

7 And then I also had heard, when Officer
8 Ferner contacted him and he ran away, Officer Ferner put
9 out information on the radio that he was holding his
10 waistband, like he was trying to secure something as he
11 ran from the officers.

12 Q This photo is post-shooting, obviously. But
13 do you recognize this location?

14 A I do.

15 Q And at some point after arriving at the house
16 at NE Hancock, did you notice some apparent damage to
17 this window that faces out from the house towards the
18 driveway and the garage?

19 A I did.

20 Q What did you notice?

21 A So initially in our initial search into this
22 yard, I know that the window is closed. I examined the
23 side of this house.

24 And from six-plus years in K-9, you know,
25 as we're doing a track, I'm continually looking at the

1 houses. I'm looking at windows. Because a lot of
2 times, you know, suspects can get into places. Try to
3 get into a house. Take a screen off. So we're
4 continually looking at the houses as we move around
5 them. I know this window was closed.

6 So as we're in the back, we're making a
7 plan. I decide to come back out front to talk to the
8 officers out front. As I do so, I hear -- I don't
9 remember if it was on the radio or just another officer
10 that was with me, "Hey, did you see the open window next
11 to the garage?"

12 That is about the same time I'm
13 cresting -- I'm walking south out of that little pergola
14 on the side of the garage there. And I look, and I
15 notice the window is open and the screen is on the
16 ground.

17 I think to myself, I know, you know, five
18 minutes ago that screen and that window were not in that
19 condition. So to me, I'm thinking, okay, the suspect
20 either is out of the house and back into the blocks or,
21 you know, he attempted to come out, was unsuccessful and
22 is still in the house there.

23 Just about that same time as I'm
24 processing all this, I hear somebody from the street
25 start challenging the suspect, who I can't see because

1 there's an alcove in this area right here that goes
2 back -- it's not -- you can't get into the backyard, but
3 it goes back a little ways, and he's out of my sight. I
4 can hear them challenging him.

5 I thought that they said he was running at
6 first. So I start to move out with my K-9 partner
7 thinking that he's running back into the backyard.

8 So I'm trying to position my K-9 partner
9 so that he can see the bad guy in case I need to use the
10 dog to apprehend him. In other words, send him to bite
11 the suspect and hold him in an effort to try to get him
12 into custody.

13 Q And when you say "challenging," do you mean a
14 police officer giving verbal commands to the subject?

15 A Correct.

16 Q And at some point as you move around, do you
17 and your dog see the suspect?

18 A We do.

19 So I start to, like I said, kind of just
20 slice out, so I am trying -- I don't want to just run
21 out into the middle where the alcove is. I'm trying to
22 do it a little tactically in case, you know, he's
23 waiting there in some type of ambush.

24 So I'm trying to move out. I had my dog
25 on lead. And I'm trying to direct him so that he can

1 also get what I would call a target lock so that he can
2 see what the other officers are yelling at.

3 He hears a lot of commotion going on now,
4 so he's getting excited, but he doesn't know -- he
5 doesn't see anybody, so he doesn't know, you know, why
6 are all these officers yelling. Then finally he gets
7 out far enough where he can see the suspect standing in
8 that alcove there.

9 Q How could you tell that the police dog could
10 see the suspect?

11 A Because just his body language changed. He
12 tensed up. He started barking at the suspect. Now he's
13 staring straight at him, barking as opposed to looking
14 around with everybody else yelling.

15 Q Could you see the suspect also?

16 A I could. He was standing in the alcove.

17 About that time, like I said, I felt
18 people moving around me to my left. And I heard them
19 begin to start challenging and yelling at the suspect to
20 get his hands in the air.

21 Q Does this picture show the part of the
22 driveway where you were standing at this point?

23 A Yes.

24 Q And let me -- go ahead, if you want to show us
25 where -- I'm not going to switch to a different view.

1 A Like I said initially, I was coming out this
2 way. Then I kind of sliced out into this area. I would
3 say I ended up somewhere in the middle of the driveway
4 over here as he's coming -- as the suspect is over here.

5 Q That would be about the center of the garage
6 door?

7 A Yeah. That's what it seemed like to me.

8 Q And back -- did you have a sense of how far
9 back from the garage door you were?

10 A I thought we were 20 to 30 feet away from the
11 suspect initially.

12 Q So that would be further back than this garden
13 hose, for example, do you think or --

14 A Yeah. It seemed like it. It seemed like we
15 were, but it's kind of hard to tell from that picture to
16 get, to get a true distance.

17 Q A true distance.

18 I was going to try to go to the Leica
19 view, if I can. This is a little wider view of the
20 house and the driveway.

21 A Yeah. I do remember later that the officers
22 retreated to the corner of the house right there. So I
23 know we were in front of the corner where the end of
24 that garden hose is. I would say, I would say maybe in
25 between those two hose loops, somewhere about where we

1 were positioned.

2 Q Okay. And you say you saw the suspect.

3 A Uh-huh.

4 Q Could you see him well enough to have an
5 impression of whether he looked like the person that you
6 and the dog were searching for?

7 A Yeah. You know, the description was a male,
8 black, in his early 20's, thin build with dreads.

9 And given the track that Billy had taken
10 me on and the indicators that we got in that yard and
11 the indicators of the house possibly being broken into
12 and then the, you know, him matching that description, I
13 believe that was the suspect that Officer Ferner had
14 seen and that ran from Officer Ferner.

15 Q In part because the police dog tracked him
16 from Ms. Pittman's residence in NE Tillamook; right?

17 A Correct.

18 Q And you said another officer was giving verbal
19 commands.

20 Could you tell whether the suspect was
21 responding to the commands or not?

22 A Initially, he was not responding. Officer was
23 yelling at him to get his hands in the air. I describe
24 it as he was staring at us, but he was -- it was almost
25 as if he was looking through us.

1 He wasn't acknowledging the commands that
2 were being given to him. He, you know, wanted -- it was
3 almost like he had no -- didn't care about what we were
4 trying to get him to do. He was just staring past us.

5 To me, it felt like he was, he was trying
6 to buy time almost to formulate some type of plan of
7 what he was going to do next, and, you know, whether
8 that being trying to get away from us again or what his
9 next move was going to be. That's what I kind of felt
10 like.

11 Q So what did you do at that point?

12 A So the commands were given numerous times to
13 get his hands in the air. He put them up shoulder
14 height maybe. And they were yelling at him to get his
15 hands all of the way up.

16 Once he finally put his hands all of the
17 way up, I attempted to give him commands that I wanted
18 him to get down on his hands and knees and have him
19 crawl out to us.

20 I didn't want to perform custody in the
21 alcove because it was so small and with the possibility
22 of him being armed, you know, I wanted to keep the
23 distance. I wanted to have time, the ability to react
24 if he did attempt to access the firearm he was purported
25 to have.

1 So my thought was I wanted him down on his
2 hands and knees, which limited his mobility, and it also
3 gave me the ability to react if he took off running, and
4 I would be able to use my K-9 partner to apprehend him.

5 So the plan was to have him go down to his
6 hands and knees. I was going to have him crawl out into
7 the driveway area, and then I was going to prone him
8 out, which means he was going to go down to his stomach,
9 put his arms out like an airplane is what we use, and to
10 cross his legs, and then look away from the custody
11 team.

12 That's the way that we're trained to do a
13 high risk prone. Then we would advance on him and take
14 him into custody that way.

15 Q Is that pursuant to your training to have a
16 suspect like this come out to you rather than you going
17 into that narrow alcove?

18 A Yes. Like I said, we wouldn't have been able
19 to do a two-on-one custody in that alcove. It was too
20 small. And so I thought that the best positioning would
21 be to bring him out. That way we would also be able to
22 judge his level of compliance as he's crawling out to
23 us.

24 And we would also be able to keep some
25 distance and keep that ability to react as opposed to

1 people are very compliant. They are scared of dogs.
2 You know, when the dog is barking on them, it's almost a
3 deescalation because they don't want to have any
4 interaction with that dog. They will do anything to try
5 to get into custody so the dog is put away and they
6 don't have to deal with it anymore.

7 But on this one, he was so defiant of the
8 commands, that it made me think that he was, you know,
9 trying to do something else or he had some other
10 ulterior motive.

11 Q So what happened then?

12 A So he stands up again. Officers -- and his
13 hands are not -- are back down towards his side.
14 Officers are yelling at him again to put his hands up in
15 the air, which he does eventually.

16 And then I go through again telling him,
17 "You are going to have to crawl out to us." I get him
18 back down on his hands and knees for a second time and
19 tell him to start crawling. At that point that's what
20 he does.

21 So he begins crawling out from the alcove
22 towards the driveway. Right about the position where
23 he's lying in this picture, he stops with nobody telling
24 him to stop, and he raises up.

25 He's still on his knees, but he raises up

1 with his torso towards us and is looking at us. Just
2 staring at us. And then, all of a sudden, he dives his
3 hands back down towards his waistband, and then I hear
4 the shots fired.

5 Q Did you have your gun out?

6 A I did not. My dog was on a 15-foot lead. And
7 I had him about -- I would say he was about eight feet
8 out in front of me on the lead barking. And it's called
9 a watch is what we call it. He's barking at the
10 suspect.

11 You know, a lot of times when we find
12 them, we will use the dog that will bark at them in
13 order to get compliance from the suspect. So that's
14 kind of what he was doing. He was there as a deterrent
15 so the bad guy knew that if he were to try to run, the
16 dog would be used to apprehend him.

17 Q But I gather you don't have your gun out
18 because you're controlling this police dog; correct?

19 A Right.

20 Q You just testified that you saw the suspect
21 reach towards his waistband --

22 A Correct.

23 Q -- before the shots were fired.

24 Would you describe the movement as fast or
25 slow?

1 A I would say it was fast. It was with
2 intention. It wasn't as if he was, you know, slowly
3 going back down to the ground to comply with the
4 commands. It was as if he was going down with some type
5 of intention to either retrieve something or to perform
6 some type of act. Whether that be retrieve the gun that
7 we believed that he had or something else. Like I said,
8 it looked like it was intentional to what he was doing.

9 Q A lot of things were happening all at once.
10 But did you have a thought in your mind in the split
11 seconds leading up to the shooting when you saw those
12 things happening, and you said you didn't have your gun
13 out, you were holding your dog, can you tell us what
14 were you thinking at that point?

15 A Yeah. You know, as we put these teams
16 together, everybody has a job to do. I'm the K-9
17 officer. I'm watching my dog. I'm monitoring my dog,
18 controlling my dog.

19 You have your less lethal guy. You have
20 your lethal person. So my thought is I hope that the
21 person who I put in charge of covering me in this lethal
22 situation is going to do their job because I didn't --
23 had he come out with a gun. I was hoping that they
24 would react appropriately with deadly force and address
25 the threat.

1 MR. REES: Any questions from our Grand
2 Jury?

3 A GRAND JUROR: Um, I think I have one.

4 So when you were addressing him, um, do
5 you recall if you were the only one that was addressing
6 him?

7 THE WITNESS: When I was having him
8 crawling out?

9 A GRAND JUROR: Yeah. When you were
10 yelling and talking to him to crawl out, were you the
11 only one that was talking to him at that point?

12 THE WITNESS: Initially, there was
13 multiple people yelling at him to get his hands up, but
14 I believe when I was addressing him with the commands to
15 get on the ground and do the crawling, I was the only
16 one speaking at that point.

17 A GRAND JUROR: And then when -- and then
18 if I'm remembering your testimony correctly, and I may
19 not be, so correct me if I'm wrong, so then when he
20 crawled to the end of the alcove, as you instructed him
21 to do, he stood up.

22 THE WITNESS: He didn't stand all of the
23 way up on to his feet. He was on his knees still and
24 kind of rose up, staring at us so that he was looking at
25 us with his torso up and his knees on the ground. But

1 there was no direction.

2 A GRAND JUROR: You didn't hear anybody
3 direct him to do --

4 THE WITNESS: No.

5 A GRAND JUROR: -- to get his hands off
6 the ground and put his hands up?

7 So it didn't seem to you that he was
8 trying to comply with someone else's instructions at
9 that point?

10 THE WITNESS: It didn't seem like that.
11 It seemed like he did that all on his own.

12 MR. REES: Any other questions, folks?

13 All right. Having no further questions,
14 Officer Wullbrandt, we'll excuse you. Thank you.

15 A GRAND JUROR: Thank you very much.

16 THE WITNESS: Thank you.

17 (Evening recess.)

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P R O C E E D I N G S

Tuesday, March 21, 2017

BRYAN PARMAN,

a witness called on behalf of the State, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. REES:

Q Sir, have a seat.

When you are ready, if you could please state your first and last name and then spell your names.

A Bryan Parman. B-R-Y-A-N. P-A-R-M-A-N.

Q What is your occupation?

A I'm a commander with the Portland Police Bureau.

Q All right. And what's your current assignment as commander?

A I'm assigned as the commander at East Precinct.

Q And could you briefly explain to the Grand Jury what that means when you say that you are the commander at East Precinct of where you are in terms of the chain of command for the bureau?

1 A Certainly.

2 So obviously, it's a paramilitary
3 organization, so we have several promoted ranks. We
4 have sergeants, lieutenants, captains, commanders.

5 So as the commander of the precinct, I'm
6 the highest ranking person within the building. So
7 there's roughly 180 folks who work at East Precinct.
8 And I would be at the tip of the pyramid for the
9 building. Then from my building, it goes down to the
10 chief's office, to the assistant chiefs and chiefs.

11 Q All right. On February 9th, 2017, the date of
12 the officer-involved shooting in East Precinct, was that
13 a regular day of work for you?

14 A Yes, sir.

15 Q And what time did your day begin?

16 A Our first roll call is at 7:00 a.m. I think I
17 started around 6:30 or so that morning.

18 Q And do you participate in the roll call?

19 A Yes.

20 Q And then what did you do after that?

21 A So we headed out to start our day, to grab a
22 cup of coffee actually.

23 Q And did you go with someone else?

24 A Yeah. I had Lieutenant Rick De Land with me.

25 Q And as the morning began, this was a weekday

1 morning at East Precinct, would you describe it as being
2 a fairly quiet precinct at that time, beginning of the
3 morning?

4 A Well, it was quiet, but coming out of roll
5 call, there was this call developing here in the
6 precinct and I heard officers being dispatched. I heard
7 them setting up a perimeter.

8 So I was kind of half listening to the
9 call and half just going through the normal day-to-day
10 routine with my lieutenant, getting caught up on what we
11 had planned for the day.

12 Q All right. And at the same time were you
13 hearing the report, of the armed robbery report on
14 Northeast 82nd and the other reports from that area?

15 A I -- actually I didn't hear those. It wasn't
16 until I was on my way to the call that I learned really
17 about the nature of the call.

18 I heard the perimeter being established.
19 I heard more people, you know -- you know, I'm not
20 involved in line level supervision, but I was just kind
21 of keeping an ear tuned. And I could hear this call
22 starting to draw more and more resources from the
23 precinct.

24 Q Okay. And so having said that, at some point
25 you did go with the lieutenant towards that

1 neighborhood; is that right?

2 A Yes, that's correct.

3 Q So what was kind of the tipping point for you
4 to make that decision to go to the neighborhood?

5 A So Rick -- I'm sorry, Lieutenant De Land was
6 listening to the radio. And I believe he got a phone
7 call at some point from the sergeant who was out there
8 supervising the scene. They started having a
9 conversation about potentially calling out SERT on this.
10 That's our, like, a SWAT team.

11 And so at that point I felt like I should
12 go by. And really that's a fairly large scale call for
13 us. So I wanted to go by and see what they had and get
14 some more information and help, be a resource to
15 determine whether or not it would be appropriate to call
16 out SERT.

17 Q So where did you and Lieutenant De Land go?

18 A So we drove over to the location just off of
19 82nd, just east of 82nd and Hancock. There's, I believe
20 it used to be a DMV, but there's a business there, and
21 they had a parking lot in the back. And that's where
22 Sergeant Nice was parked in his vehicle. So we pulled
23 up door to door and had a conversation.

24 En route, Lieutenant De Land was on the
25 computer in the car giving me kind of a high points of

1 the call. He mentioned the arm robbery. He mentioned
2 the block search and those things. Then I arrived and
3 talked to Sergeant Nice.

4 Q And you were provided some specific
5 information by Lieutenant De Land, I believe.

6 Do you recall some of the particulars that
7 you received about what was happening in the
8 neighborhood?

9 A Well, I remember the initial call had come in
10 possibly as a car prowler, and then it evolved into like a
11 car jacking, and then the suspect was reported to be
12 armed with a large handgun at the time.

13 And then officers had seen that suspect
14 and had run into the block, and they were coordinating a
15 block search for him.

16 Q Okay. Would you mind going up to the
17 photographic diagram and showing us where you and
18 Lieutenant De Land went initially to meet with the
19 sergeant?

20 A Okay. Yeah.

21 So this, this is -- I think this used to
22 be a DMV. This is the Les Schwab. So this parking lot
23 here -- so Sergeant Nice was parked in his SUV at about
24 here. And then I pulled in alongside him, and we were
25 talking right here in the parking lot.

1 Q So you were indicating on Hancock, east of
2 82nd, the parking lot there.

3 A Yes.

4 Q Okay.

5 A Yes.

6 Q All right. Thank you.

7 A Okay.

8 Q You said door to door. So I take it you mean
9 the police vehicle parked next to another police vehicle
10 and having a conversation that way?

11 A Yes. So it's driver's door to driver's door
12 and the cars are close together. So you can roll your
13 windows down and talk to each other, but you don't get
14 out.

15 Q Do you recall generally what additional
16 information you received from the sergeant?

17 A So generally they had an officer that had seen
18 the suspect, I believe, about a block away. The suspect
19 had gone into the blocks, and they heard what could have
20 been the sound of the suspect breaking into a house.

21 So what really -- the concern when I
22 arrived was whether or not the suspect was located in
23 this house and trying to determine whether or not the
24 suspect had, in fact, broken into the house and was then
25 inside and hiding.

1 Q All right. As the commander of the precinct
2 and receiving this information, what was your thought
3 process?

4 A Well, you know, I think frankly, we're
5 right -- we're getting really close to a tipping point
6 where we would want to have SERT come and resolve this
7 call.

8 You know, we're talking about an armed
9 suspect potentially in the blocks, potentially now have
10 committed a burglary inside a house. Unknown who else
11 might be inside.

12 So this is a significant call. It's
13 starting to draw more resources than the precinct can
14 support. And getting folks out there with specialized
15 tools and equipment would be the best way to resolve the
16 call.

17 And so what it really hinged on for us was
18 determining whether or not the suspect was actually in
19 that house. And so we had a K-9 helping with the block
20 search. And we were trying to connect the dog to the
21 house where there was this damage and the suspect was
22 potentially inside.

23 Once we felt we could determine the
24 suspect was inside the house, that's when we were going
25 to call out SERT. So that was the -- that was the plan

1 that we had.

2 And then I actually left to go find a spot
3 for SERT to stage anticipating that we would, we would
4 be able to tie the dog track to that house and then we
5 would activate SERT.

6 Q All right.

7 A GRAND JUROR: Can I ask a question?

8 MR. REES: Please.

9 A GRAND JUROR: So being unfamiliar with
10 police work and SERT, I understand that it's a community
11 response team.

12 Is that what it stands for?

13 THE WITNESS: No. It is the Special
14 Emergency Reaction Team. It's like a SWAT team.

15 A GRAND JUROR: That's what I was asking
16 what that is.

17 THE WITNESS: Yes.

18 A GRAND JUROR: And what kind of
19 specialized tools and equipment do they have that other
20 officers don't have?

21 THE WITNESS: So they have additional
22 armor. They have armored vehicles. They have larger
23 pieces of armor. They also bring -- the big piece that
24 they bring is they bring our Crisis Negotiations Team.

25 And they have the ability to do -- to

1 gather more intel, to do background. I mean, the vast
2 majority of the work that we do in that area is the
3 negotiating of a peaceful surrender of whomever it is,
4 whether they be in crisis by themselves or whether they
5 are a criminal suspect.

6 But they bring additional bodies,
7 additional resources and additional equipment that will
8 help. Sometimes, you know, for example, we may not be
9 able to make contact with the person inside. We have a
10 phone we can actually insert into the house so we can
11 start talking to that person, those types of pieces.

12 A GRAND JUROR: Thank you.

13 BY MR. REES:

14 Q And maybe just as a followup on the question.

15 If you could explain why would SERT be a
16 consideration when you have an armed burglary suspect in
17 a house versus the police officer just being able to go
18 into the house?

19 A Well, you know, if you've got this person in
20 the house, and we know we certainly don't want to go
21 into the house and force the confrontation. We want to
22 use time and tactics to our advantage to try to resolve
23 it peacefully.

24 There's a difference between somebody who
25 is out in the open in a block, they are armed, there's

1 this threat to the community, there's a threat to the
2 officers who might encounter the suspect.

3 But if you can isolate that person within
4 a house, you have a little more time, and you're able to
5 bring more resources to bear and start to slow that call
6 down because you have the person contained.

7 Containment is what we want more than
8 anything because once we have a person isolated, we can
9 take time to work the call.

10 MR. REES: Does that answer your question?

11 A GRAND JUROR: Yes.

12 BY MR. REES:

13 Q Well, after you found a suitable place to
14 potentially stage the SERT officers, where did you go?

15 A So I drove -- I did a quick loop around and
16 found a spot for SERT to stage. And then I drove back
17 to where Sergeant Nice had been parked, so right back to
18 that, to that parking lot.

19 And as I was driving looking for a spot
20 for SERT, I heard a conversation on the radio. Dispatch
21 advised that they had gotten an alarm from a house that
22 we were interested there on Hancock. And the officer is
23 asking if that was the only alarm trip, and the
24 dispatcher advised that it was.

25 And the officer, I don't know who it was,

1 but the officer -- I believe they said on the radio or
2 maybe I just presumed it, that that would have been the
3 police kind of nosing around, trying to figure it out.
4 So it in my mind that actually meant that the suspect
5 probably wasn't inside that house.

6 And so by the time I got back to Sergeant
7 Nice, Sergeant Helfrich, who was with the search team,
8 came out of the block, and we had -- the four of us kind
9 of had a conversation.

10 And we had decided that the -- that we
11 believed the suspect wasn't in that house. And so the
12 search team was going to finish searching the yard and
13 then a few more yards and that was it. But our interest
14 in the house then at that point was waning. We didn't
15 believe the suspect was inside.

16 And so we were talking. Again, we were
17 door to door. I think I was a little bit farther apart
18 because I think Sergeant Helfrich was standing between
19 the two cars, Lieutenant De Land.

20 So the back of my vehicle was facing the
21 house on Hancock, so it was behind us. But Lieutenant
22 De Land must have been looking over my shoulder -- or
23 his shoulder to the car, and I heard him say, "There
24 they are," or "They've got him," or something.

25 And I heard -- then I heard yelling. I

1 heard officers challenging someone. And so I pulled
2 forward because I didn't believe there was enough room
3 for us to get out of the car. So I pulled forward and
4 then we got out and went across the street towards that
5 address.

6 Q So you were on foot at that point?

7 A Yes.

8 Q And does this view that we're looking at show
9 the area where you walked or ran to?

10 A Yes. So as I was -- as I was walking -- so
11 the -- you know, the location is a little bit west and
12 then from the south side of the street.

13 So as I was walking across the street kind
14 of diagonally towards the residence, that police vehicle
15 you see there in the front -- do you mind if I go to the
16 board?

17 Q That will be very helpful.

18 A Okay. So just for frame of reference, we were
19 parked here in this -- kind of the eastern end of the
20 parking lot. And so it would have been -- I believe
21 that's the driveway apron right there.

22 I would have walked across the street. As
23 I walked towards the house, this vehicle was being
24 pulled up by two officers.

25 I believe it was Officer Lock and Officer

1 Bishop and they pulled up. And so the other --
2 Lieutenant De Land, the other sergeants, they went up
3 into the driveway where officers were confronting the
4 suspect. And then I stayed here at this street using,
5 just using this car to kind of hang back and see if I
6 saw anything that needed to be addressed.

7 Q Okay.

8 A GRAND JUROR: Can I ask another
9 question?

10 MR. REES: Do you want him to stay up by
11 the picture?

12 A GRAND JUROR: No.

13 MR. REES: Okay.

14 A GRAND JUROR: When you reached the
15 front, could you hear the alarm going off?

16 THE WITNESS: I, I don't recall hearing
17 the alarm. I don't, I don't remember that.

18 A GRAND JUROR: That was it.

19 MR. REES: Okay.

20 BY MR. REES:

21 Q And so then you said you heard -- I believe
22 you said you heard commands from the officers.

23 Do you remember anything specifically that
24 was being said?

25 A So I remember officers -- I heard several

1 people saying, "Get your hands up." I heard someone
2 tell the suspect to get down on his knees. I heard at
3 one point -- you know, the suspect was -- it's difficult
4 to see, but there's a breezeway between the house and
5 the garage. So the suspect was, was in the breezeway
6 there when I saw him. And then, you know, my, my view
7 is just slightly uphill.

8 And there's police officers between the
9 suspect and I. So as they are moving, I have this
10 on-again, off-again view of the suspect.

11 So at one point they told the suspect to
12 go down to his knees, which he did. At one point he
13 was -- again, I don't want to presume why he wasn't, but
14 he wasn't -- must not have been moving or responding
15 because I actually heard the officers tell him to crawl
16 towards them.

17 They were trying to keep him on his knees
18 as he moved out into -- I presume they were trying to
19 get him into an open area where they could have room to
20 work.

21 Q Okay. Go ahead.

22 A So I saw the suspect. He had his hands up.

23 And I remember once his hands started to
24 come down, and I thought maybe he was putting his hands
25 out in front of him to crawl, but his hands went much

1 closer to his body.

2 Again, he was told to, "Get your hands up.
3 Get your hands up." Put his hands back up. He put his
4 hands down again.

5 At that point what I remember seeing is
6 his right hand, and it went very close to his body. And
7 I couldn't tell if he was pulling his jacket up or if he
8 just reached in towards his waistband.

9 And at that point again, the officers
10 moved just a little bit. I lost my view of the suspect.
11 And shortly after losing that view of the suspect, I
12 heard three shots.

13 Q Okay. Could you tell who fired those shots?

14 A I wasn't sure who fired them. I believe when
15 I heard them that they were from a patrol rifle. There
16 were -- I saw at least two different rifles there, but I
17 believe they were from a patrol rifle.

18 MR. REES: Okay. Any follow-up questions
19 for Commander Parman?

20 A GRAND JUROR: So when you came on the
21 scene, everything was already in motion and the SERT
22 people never had a chance to even get there; is that
23 correct?

24 THE WITNESS: Yeah. We didn't activate
25 SERT. If we had found the suspect in the house and had

1 him contained, we would have called SERT.

2 A GRAND JUROR: So -- and then who was in
3 charge of the scene when you came up? Who was --

4 THE WITNESS: Sergeant Nice. So the
5 way -- if you want me to explain a little bit more about
6 that.

7 A GRAND JUROR: Sure.

8 THE WITNESS: The way we manage critical
9 incidents is we refer to whoever is in charge as an
10 incident commander. That could be an officer when it
11 first starts. That could be a sergeant. It could be a
12 lieutenant. It could be anyone at any rank.

13 So when I arrived, the incident commander
14 in my mind was Sergeant Nice. And when I arrived or
15 even if somebody who outranks a lieutenant or a captain
16 or somebody else shows up at the scene, we aren't
17 automatically in charge.

18 What would happen if we wanted to assume
19 command is I would ask for a briefing. I would get all
20 of the information that the sergeant has, and then I
21 could assume command of the incident. And I did not do
22 that in this case.

23 A GRAND JUROR: Thank you.

24 A GRAND JUROR: When you were hearing the
25 commands being given, who was giving -- was it one

1 person giving all of the commands or were there
2 different people giving commands at the same time?

3 THE WITNESS: They were different people.

4 In a perfect world, you know, we want to
5 only have one person giving commands. But it's -- you
6 know, again, with the stress and the intensity and the
7 really close proximity, I heard more than one voice.
8 The consistent seemed -- sorry, the command seemed
9 consistent, but I did hear more than one person giving
10 commands.

11 MR. REES: Any other questions, folks?

12 Seeing no further questions, we'll excuse
13 Commander Parman.

14 Thank you very much.

15 THE WITNESS: Thank you very much.

16 A GRAND JUROR: Thank you.

17 THE WITNESS: You bet.

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1 RICHARD DE LAND,
2 a witness called on behalf of the State, having been
3 first duly sworn, was examined and testified as follows:
4

5 EXAMINATION

6 BY MR. AUXIER:

7 Q All right. To start out, can you tell us your
8 name and spell it?

9 A My name is Richard De Land, D-E L-A-N-D.

10 Q What do you do in your work?

11 A I'm a Portland police lieutenant.

12 Q How long have you been with the Portland
13 Police Bureau?

14 A Twenty-six years this last December.

15 Q And how long have you been a lieutenant?

16 A Two years.

17 Q And what does a lieutenant do? How is it
18 different from a commander, a patrol officer?

19 A A lieutenant is essentially a shift commander.
20 So I'm the lowest level of the command ranks.

21 But my duties are I am in charge in my
22 current assignment of a shift, so I have sergeants that
23 work underneath me and then officers who work underneath
24 them.

25 Q What shift is that?

1 A Day shift at East Precinct right now.

2 Q And Commander Parman may or may not be present
3 sort of working at the precinct with you at the same
4 time.

5 A Correct.

6 Q And on the morning of February 9th of 2017,
7 you were with Commander Parman?

8 A I was.

9 Q And what were you two doing when you got this
10 call?

11 A We were at coffee. So we went together in his
12 vehicle to get a cup of coffee together and talk about
13 things that were going on with the precinct when we
14 heard this call come out over the radio.

15 Q And when you heard it, what did you do?

16 A We just monitored it on the radio at the time.
17 We heard two sergeants responding and multiple officers
18 to the scene. And so we just kept track of what was
19 going on by what was coming over the radio.

20 Q What were you hearing and what sort of
21 concerns did you have based on what you heard?

22 A So it initially came out as an attempted car
23 jacking. And then information was put out that the
24 person was last seen jumping a fence nearby. The
25 responding officers started to set up a perimeter.

1 The sergeants responded and K-9 responded.
2 And so at that point it looked like it was going to be a
3 fairly regular evaluation for a track, a dog track in
4 the blocks to figure out whether they had him contained
5 within the perimeter or not.

6 We didn't have a sense from where we were
7 at of the time frame of where the person was seen. So
8 at that point we were still just -- you know, we were
9 paying attention to the call, but we didn't feel an urge
10 or a need at that point to immediately respond.

11 Q What changed that?

12 A The information that the person may have
13 attempted to or successfully broken into a residence.

14 Q When you heard that, what did you do?

15 A We headed to the scene. I called Sergeant
16 Nice, who was the incident commander at the time to get
17 an update on kind of where we were at and to get his
18 location. And he told us that he was in a parking lot
19 on Hancock, just east of 82nd. And we said that we
20 would meet him there and get an update on what was going
21 on.

22 Q What is it about hearing that the suspect may
23 have broken into a house that sort of changed the
24 situation for you and Commander Parman and made you
25 decide to go to the scene?

1 A It drastically elevates the risk factor,
2 because now we've got a residence that may or may not be
3 occupied. People may or may not be home, asleep.

4 And now we've got a person who reportedly
5 just did an armed robbery with a handgun breaking into
6 somebody's home, and it just -- it definitely changes
7 the situation at that point. Elevates the risk.

8 Q You mentioned the attempted car jacking,
9 hopping a fence.

10 Had you heard about a gun being involved
11 in those prior incidents?

12 A Yes, a very distinctive gun.

13 Q Okay. What do you remember about it?

14 A That it was described as a camouflage or
15 tan-colored handgun with a black slide, which caused me
16 to -- I'm not a gun guy, like, away from work, but I've
17 been a firearm's instructor for 20 years now.

18 We carry Glock handguns, and I'm familiar
19 with that brand. And I know specifically that Glock
20 produces a handgun where the polymer frame or the lower
21 half of the gun is colored tan. It's very distinctive
22 and a unique kind of look for a gun.

23 So when that kind of description went out,
24 that was immediately what I thought is that this person
25 has a tan-colored Glock handgun.

1 Q When you arrived on scene with Commander
2 Parman, what do you do next?

3 A So we met up in person with Sergeant Nice. He
4 updated us on where they were at in the decision-making
5 process on this.

6 And essentially where they were at at the
7 time was the search team, which was inside the perimeter
8 attempting to find this person, was evaluating the
9 evidence that they had around the residence about
10 whether or not they thought the person successfully
11 entered the residence.

12 At that time they had shoe prints or boot
13 prints on a door as if somebody was trying to kick the
14 door in. And there was a broken window somewhere on the
15 back of the house that may or may not have been big
16 enough for entry or enough to access a window latch to
17 open the window to get in. They hadn't made that
18 determination yet.

19 So in an attempt to anticipate where this
20 might go, I suggested to Sergeant Nice that Commander
21 Parman and I look for a proper staging area for the SERT
22 team in case we determined that the person did make it
23 into the house and that the decision would have been at
24 that point to activate the SERT. They need a large area
25 to be able to come in and stage their vehicles and set

1 up a command post.

2 So we left at that point and drove the
3 area near but outside the perimeter to try to find a
4 suitable location where we could stage SERT.

5 Q Now, it sounds like the suspect being in the
6 house played a big role in your decision-making about
7 whether or not to call SERT out.

8 A Yes.

9 Q What is it about the presence inside of a
10 house that makes you consider that?

11 A A person inside a residence, you've got
12 multiple factors. You have the risk to people who may
13 be in the residence, which then folds into potentially a
14 hostage situation if he's in there and desperate, if
15 somebody is asleep in bed. And it produces a situation
16 where we can't safely resolve that with the equipment
17 that we have at the patrol level.

18 In addition to that, if he's in the house
19 and there's nobody in the house, he still has all of the
20 advantage. He's inside a building with predictable
21 entry points, and we just don't have the capability to
22 safely do anything with that.

23 Where SERT has their armor and specialized
24 equipment, a negotiation team can come out and then they
25 have a very methodical way that they would deal with

1 that situation if we determine that he was inside the
2 house.

3 So that residence created a situation
4 where if we determined that he got inside, it would
5 essentially become outside of our capability at the
6 patrol level to safely deal with that situation.

7 Q Now, do you just call SERT every single time a
8 suspect --

9 A No.

10 Q It is a pretty labor-intensive process to call
11 SERT?

12 A Yes, it is. It is a massive undertaking.

13 Q How many people are involved in a SERT team?

14 A I don't know how many people are on the team
15 now, but I mean, you go from -- you know, the number of
16 officers we probably had at this scene, you know, I'm
17 guessing to some degree, but it would be 10, 12, 14
18 people.

19 SERT coming out and the command structure
20 that comes with that, you're talking about 50, 60 people
21 coming out.

22 Q So you can't just do that every time you have
23 some suspicion --

24 A I've been told it's about a \$15,000 button
25 when you press it.

1 A GRAND JUROR: I have a question.

2 Can I ask one question?

3 MR. AUXIER: Yes.

4 A GRAND JUROR: I used to work in a
5 hospital and I was on a code team. When they called a
6 code, all of us had jobs in other areas of the hospital
7 and we all gathered to be part of that team.

8 Is that similar with the SERT? When you
9 call for them, they aren't all just sitting around
10 someplace waiting for the SERT call.

11 Are they all part of other teams and have
12 specialized skills and they all come together?

13 THE WITNESS: That's correct. They are.
14 But it doesn't mean that they are all necessarily
15 working at the time.

16 So what will happen is that -- it's a
17 detached position. So they all have regular jobs that
18 they do, and they are also part of the SERT with that
19 specialized training and equipment.

20 So when we activate SERT, we will
21 immediately get any SERT team officers that are working.
22 They will respond and typically be the first SERT team
23 members that arrive.

24 But we're also calling everybody up who is
25 at home, wherever they live. And so you could get SERT

1 team members there -- you know, a few of them within
2 five minutes and you could get some that take an hour.

3 BY MR. AUXIER:

4 Q So let's fast forward a little to the moment
5 when we have this confrontation with the suspect.

6 Where are you when that occurs?

7 A In a parking lot across the street and just
8 west of the residence.

9 So we had scouted out the staging area.
10 We found a suitable staging area and then we returned to
11 Sergeant Nice's location to get an update on where we
12 were at in the evaluation of the entry into the
13 residence.

14 When we arrived back at that location, we
15 pulled up essentially next to Sergeant Nice's supervisor
16 vehicle in the parking lot. You should be able to see
17 it as this rotates around.

18 And the determination at that point was
19 that the search team did not think that he had made it
20 into the residence.

21 So at that point we're looking at if we
22 don't think he made it into the house, then do we think
23 he's still within our perimeter, or do we think that
24 with the timing that it took to get perimeter
25 established, that he just took off in a straight line

1 and went in one direction and actually got outside the
2 perimeter?

3 And that's where we start to discuss
4 whether it's time to break down the perimeter and kind
5 of essentially give up at this point believing that he
6 got away, or whether the search team feels like the dog
7 is tracking hot enough that we want to give it another
8 try.

9 Sometimes the K-9 team will restart and
10 try again. That was kind of the point that we were at
11 once they determined that they didn't think that he got
12 into the residence.

13 Q And then just suddenly the circumstances
14 changed?

15 A Yes. So what happened was the angle that I
16 had was looking across the street and to the east, to
17 the residence, at an angle to the driveway.

18 What I saw as we were having this
19 discussion about probably breaking the perimeter down
20 and leaving, I saw Officer Jerry Higginbotham emerge
21 through a gate from what would have been the backyard of
22 the residence to the driveway itself.

23 So if you want me to indicate on the
24 screen, I can.

25 Q Sure. Thanks.

1 A So I am over here across the street and to the
2 west looking at an angle this way, and there's a gate
3 here. So Officer Higginbotham emerges from this gate
4 and comes to -- did I do that -- through this gate and
5 walks out to the driveway, and he's still looking at
6 this residence here.

7 And it was kind of that initial process of
8 breaking down where if you've got that search team on
9 the inside, and it's like we've kind of exhausted our
10 options here. And so what you end up doing is you are
11 kind of looking around and seeing, is there something
12 that we missed?

13 So I see him kind of walk out to the
14 driveway here. And then another officer, who I don't
15 remember who it was, emerges through the same gate. So
16 now two of them are here. And I see Officer
17 Higginbotham looking in this direction, and something
18 catches his attention.

19 He reaches for his mic. Of course, I'm
20 far away so they are talking. And I can't hear what he
21 says. He keys his mic. So I hear him over the radio
22 say, "Did anybody notice the broken window on the front
23 of the house?"

24 So we're, like, okay. Well, now, we're
25 back -- we need to -- now, we've got another window. We

1 need to evaluate that. There's no response initially on
2 the radio. And then I think you get the kind of, no, we
3 hadn't noticed that.

4 He goes, "Well, I've got a broken window
5 on the, on the east-facing side of the house towards the
6 front."

7 As he's making that transmission, both of
8 those officers jump, that's an exaggeration, but they
9 are startled and immediately their guns come out. And
10 they start yelling, and they are pointing their guns
11 towards the side of the house, towards the east side of
12 the house from the driveway.

13 Now, I can't see what's there from where
14 I'm at. And at the time that it happened, we were kind
15 of such in the process of breaking this down, that
16 Sergeant Nice is a rifle operator, and he had his rifle
17 slung.

18 He was half in his vehicle, putting his
19 rifle away, locking it into the rack immediately next to
20 where I was sitting in Commander Parman's car. That put
21 him kind of in my way.

22 So when I see this happen, I want -- my
23 instinct is I want to jump out of the car and go help
24 them because I can see that they are caught completely
25 out in the open.

1 And if the person is either in the house,
2 or it turns out around a corner that I can't see in the
3 house, that person has a huge advantage over them
4 because they have no cover. They are completely caught
5 in the open. And so my instinct is to bail out of the
6 car and go help them.

7 So I start yelling at Sergeant Nice that
8 they are confronting somebody, and he backs out of his
9 vehicle and gets out of my way, and he starts taking off
10 that way. I jump out of my vehicle and I take off that
11 way.

12 So I run across the street at an angle up
13 the driveway to just behind where that south-facing,
14 that we see in the picture, here and the corner. I
15 essentially run up to kind of this area here
16 (indicating.)

17 As I'm doing that, other officers that
18 were out of my view to the east are doing the same
19 thing. And so this group of us converges on the
20 driveway in response to the challenging of this, of this
21 subject.

22 Q From your position, what do you see the
23 suspect doing?

24 A So when he first comes into my view, I can see
25 that there's a very narrow, it's probably not even

1 accurate to call it a walkway, but there's a gap between
2 the garage and the house, and he is in that gap.

3 The other officers that were just east of
4 the house, you know, beat me in the race to the
5 driveway, so I'm behind a group of officers. So at this
6 point I'm just observing.

7 And what I see is that there's a person
8 who's in that, just beyond the facing of the garage, in
9 that narrow walkway. They've been yelling commands at
10 him as I run across the street.

11 So when he comes into my view, he's on his
12 knees, with his hands up, about shoulder high
13 (indicating), facing straight outward from that, from
14 that gap.

15 Q What are the commands that you heard as you
16 ran over?

17 A So the initial commands are what I would call
18 stabilization commands.

19 When you are trying to get initial control
20 of somebody, what you really want them to do is stop.
21 You know, you want to freeze them into a position so
22 that you can evaluate their level of cooperation so you
23 can get their hands away from the access to any weapons.

24 So it is things like don't move, get your
25 hands up, those kind of things, rather than commands

1 that are leading towards a custody, like, okay, I want
2 you to walk forward or I want you to crawl forward, that
3 comes later in this case.

4 But those initial commands that they are
5 yelling at him like, "Get your hands up. Don't move.
6 Get down on your knees." We do that to try to take away
7 mobility. So he did all of that.

8 So when I get there, that's the position
9 that I see him at is that he's standing -- now, we
10 prefer that the hands be straight up to maximize the
11 distance from where you could keep weapons.

12 In this case they weren't all of the way
13 up. They were about shoulder high, and his elbows were
14 close to his body. So he was on his knees in a position
15 kind of like this (indicating.)

16 Q What happened next?

17 A So then they moved to custody commands where
18 they told him to reach forward and crawl forward out of
19 the space that he was in towards the driveway, and he
20 did that. He put his hands out in front of him on the
21 ground and he began to crawl.

22 Q Could you tell from your angle where his hands
23 were as he crawled?

24 A In a normal crawling position.

25 Q Got it.

1 A Like you would crawl on your hands and knees.

2 So he was following the directions for the
3 most part and he was crawling out towards the driveway,
4 and kind of anticipating how that was going to go. He
5 was, he was 15 or 20 seconds from being safely into
6 custody at that point.

7 All he needed to do was crawl another four
8 or five feet and they would have him go all of the way
9 down on the ground and officers would move in and put
10 handcuffs on him.

11 But he didn't crawl all of the way out to
12 the driveway. Just short of the driveway, he stopped on
13 his own crawling, and he got back up into a vertical
14 position on his knees.

15 And when he did that, his hands came up to
16 the same position that he had started in when he first
17 came into view of me to where he's now on his knees with
18 his hands kind of shoulder high again (indicating).

19 And commands were being given to him to,
20 you know, "We want you to crawl all of the way out to
21 the driveway. So, you know, put your hands back out in
22 front of you and crawl to the driveway."

23 Instead of doing that, his right hand
24 moved straight down towards his waistband. And when
25 you're dealing with somebody who's -- who does something

1 that you don't want them to do, you're put in a position
2 where you have to very, very quickly interpret what it
3 is they are doing.

4 And sometimes you're right and sometimes
5 you're wrong, but you're left to kind of interpret the
6 body language of what their intent is when they do that.

7 I'll tell you that this first reach that
8 he made for me, my impression was that he was reaching
9 down to pull up his pants.

10 And I think in going through my memory of
11 that and why I thought that in the moment is it was
12 because the motion that he made with his hand was that
13 his, that his fingertips and his palm went straight
14 down.

15 So his fingertips pointed straight to the
16 ground as if my pants were falling down and I wanted to
17 pull my pants up, I would do this (indicating) and hitch
18 my pants up.

19 And so in that instant that was happening,
20 that was kind of the interpretation that I made was that
21 he's going to hike his pants up so that he could reach
22 forward and crawl the rest of the way.

23 What he did instead is he reached down
24 with that hand, with the finger straight down, and he
25 patted his right pocket twice. And everybody is yelling

1 at him at that point, "Get your hands back up. Get your
2 hands back up."

3 And he very slowly brought his hand back
4 up. When he did that, he didn't bring it all of the way
5 up even with the other one. He brought it up just like
6 this (indicating), just enough to lift the palm towards
7 us, which is odd.

8 It was odd that he patted his pocket. But
9 it was also odd how he put his -- he didn't bring his
10 hand back up to here. He brought his hand back up more
11 chest high. And it wasn't even with his left hand.
12 That was already up.

13 When he did that, an officer to my right,
14 and I don't know who said it, "If you reach for your
15 waist again, I'm going to shoot you."

16 And almost as if in response to that
17 warning, he dropped that hand again, but he did it in a
18 different way. Instead of the fingertips going straight
19 down, his hand went to the side.

20 And I interpreted that movement
21 significantly differently than I interpreted the first
22 movement especially after the pat of the pocket because
23 you're standing there thinking, why did he do that? And
24 I was left with he's indexing his gun.

25 And so when his hand went down with the

1 fingertips pointed inward, that's more consistent with
2 the reach either to the waistband itself or to -- he was
3 wearing a hoodie. And a lot of those have those side
4 pockets. A lot of times they go all of the way through
5 where you can hold your own hands in the middle of it.

6 That when his hand went down in that way,
7 it was, it was as if he was reaching for a pocket, like
8 that (indicating), or that he was going to something
9 that was in his waistband.

10 That, that caused me to act. And my act,
11 knowing that there were officers in front of me, was to
12 immediately look and move to my left. And my goal there
13 was knowing that I had officers in front of me and I
14 didn't have any capability of addressing what was going
15 on.

16 One, I was in the way of the officers in
17 front of me if their reaction was to retreat, because
18 they'd run over me, I would be in their way. The other
19 is that none of us had cover at this point. And I was
20 looking for a place to go where I could get out of the
21 line of fire of bullets.

22 So I shifted to my left towards the stairs
23 of the house. And as I did that, the shots went off.

24 Q Did you see the shots, or was the direction to
25 your cover area?

1 A I didn't see the shots. I definitely heard
2 them. It was painfully loud. One of those where -- I
3 mean, my right ear immediately started ringing. I could
4 feel the concussion of it. It was, it was extremely
5 loud.

6 MR. REES: When you moved to the left, I
7 believe you're saying you moved from the driveway area,
8 left behind the cover of this side of the house?

9 THE WITNESS: Yes. I never made it there.
10 I was, I was looking for a place to go. I probably made
11 a couple of steps in that direction because my view
12 shifted from the officers in front of me. I'm
13 looking -- essentially up to this point I'm looking
14 between two officers that are in front of me.

15 So as I moved to the left, you know, their
16 position shifted from my point of view. And so I had an
17 obscured view as the shots went off. I actually reached
18 up with my right hand and covered my ear.

19 And then looked to see what was going on
20 because I didn't know in that moment if there was an
21 exchange of gunfire, you know, other than I knew that
22 shots were going off.

23 And what I saw, you know, as the view
24 cleared was I could see him falling forward on to the,
25 on to the driveway.

1 MR. REES: You testified that you made
2 that move. You said you acted because you were
3 concerned in part about being in the line of fire.

4 THE WITNESS: Yes, of the suspect.

5 MR. REES: And that was my question.

6 When you say, "the line of fire," the line
7 of fire from police officers or from the suspect, or
8 both?

9 THE WITNESS: From the suspect.

10 I was behind all of the officers, so I
11 wasn't concerned about their fire. I was concerned that
12 if he was drawing a gun and just started shooting, all
13 of us would have been in his line of fire. My goal was
14 to get out of that line.

15 MR. REES: And, of course, you've taken
16 the time to testify to the Grand Jury I think very
17 clearly step by step when this is happening in real time
18 --

19 THE WITNESS: Yes.

20 MR. REES: -- on February 9th, 2017.

21 What is the time actually like?

22 THE WITNESS: It was, it was fast. I
23 don't know what the actual time was. But I mean, this,
24 this whole thing -- I think that we went from thinking
25 that we're leaving to the shots being fired, we're

1 probably talking a minute to a minute and a half tops.

2 And I mean, it was -- the frustrating part
3 about this case for me, and the emotion that I had
4 immediately in the aftermath of this thing was that he
5 was, he was just that close to being safely in custody.
6 And it was, like, why did that just happen?

7 My first emotion, I was mad. It was,
8 like, what are you trying to accomplish? What -- why
9 did you do that was my thought.

10 MR. REES: No further questions for me.

11 A GRAND JUROR: Was he saying anything as
12 he was reaching either time?

13 THE WITNESS: No. He had a very, very,
14 um, flat facial expression. The only thing that was
15 really moving was his eyes.

16 You know, my interpretation, and again,
17 I'm not a mind reader and I don't want to put his
18 motives -- I don't want to make up his motives. It's
19 just what I'm observing and trying to interpret,
20 especially afterwards, as I just thought over and over
21 about this and why it happened, was that the way that
22 his eyes shifted after the warning.

23 If he reached down like that again, I'm
24 going to shoot you, the ways that his eyes shifted and
25 his hand almost on cue to that was almost, like, well,

1 let's see, or -- it was almost, like, in defiance. And
2 it just -- it made me mad.

3 A GRAND JUROR: I have a couple questions.

4 We heard testimony from the, um, woman
5 that owned the house that there was a burglar alarm
6 inside the house, and it was tripped. And she said that
7 it was extremely loud.

8 In your opinion, when you came up, could
9 you hear that burglar alarm going off?

10 THE WITNESS: I don't remember hearing it.

11 Now, I remember some radio traffic
12 earlier. And now that you bring that up, it refreshes
13 my memory around part of the evaluation process of this
14 was that I believe we, we, I mean, officers on scene,
15 tripped that alarm at some point.

16 And I don't know what they did to trip it,
17 whether they were, you know, looking or reaching into
18 one of the broken windows. It wouldn't have been the
19 front one because they didn't know about it, but it
20 would have been the back one, I guess. It would have
21 been tripped before Commander Parman and I arrived.

22 And that, that -- the fact that it hadn't
23 been tripped prior to that was part of what Sergeant
24 Nice was dialing into his evaluation of whether we
25 thought he had made it into the house or not. If he had

1 gotten into the house, he would have tripped it.

2 Since the one trip that we had, we
3 probably tripped it kind of started to point us in the
4 direction that he had not made it into the house.

5 A GRAND JUROR: But you didn't -- you
6 know, you think -- I'm assuming you would have
7 remembered, like, some really loud cacophony of sound
8 that accompanied a dog barking and people yelling
9 commands.

10 THE WITNESS: Right.

11 A GRAND JUROR: And on top of it there was
12 a sound that was so loud, that it may have had the
13 suspect not be able to hear the commands that were being
14 given to him.

15 THE WITNESS: I don't remember the alarm
16 going off at that time.

17 A GRAND JUROR: In your experience, in
18 your 26 years, hearing -- we've heard from several
19 officers that there was more than one person yelling
20 commands at him.

21 And the commands that we've heard that
22 were given were not all the same. Some of the commands
23 were, "Don't crawl. Get on your knees." Some of the
24 commands were, "Crawl," you know.

25 In your professional opinion, over 26

1 years, could you state that he seemed confused by --
2 that his actions when he came out and reaching down
3 could have been something that was -- because he was
4 confused about commands that he was being given?

5 THE WITNESS: No. No. He didn't look
6 confused to me. I didn't think -- and it is challenging
7 on these scenes when you have multiple people yelling
8 commands. And the times that there were multiple people
9 yelling commands were in response to actions that he was
10 taking from those positions of stabilization.

11 And so a person who has successfully
12 gotten themselves into a position where they are static
13 and their hands are reasonably up where we want them,
14 and they are not doing anything other than standing
15 there, we can stay there all day. And there will be one
16 person giving direction to them at that point to move
17 this forward.

18 When you do something that's contrary to
19 that stabilization position, it's, it's everybody's
20 natural instinct to yell at them to not do that. And
21 that's, that's when the multiple commands were being
22 given.

23 When the hand goes down, everybody is
24 going to be yelling at him to get his hand back up.
25 Once we're in a position where, you know, reach forward

1 and crawl forward, that's one officer doing that
2 typically.

3 And when we have more than one officer
4 doing that, we try to correct that and address it in our
5 debriefing process and all of that. We train a lot
6 around there's one person who needs to be giving
7 commands through the custody process itself.

8 But if you have somebody where you're
9 either not in that process or something has halted that
10 process and somebody is doing something that's
11 threatening the safety of the officers, it is really,
12 really hard to not yell commands to get them to stop
13 doing what they are doing.

14 And your question about him being
15 confused, I didn't get any impression of confusion at
16 all. I got the impression he was, he was just doing
17 what he wanted to do at that point.

18 BY MR. AUXIER:

19 Q One real quick question.

20 Can you walk up to the map and show us,
21 just point to the position where you were standing and
22 where Officer Hearst was standing in relation to you?

23 How much closer to the suspect was Officer
24 Hearst than you were?

25 A I can show you where I was standing.

1 So I don't know where Officer Hearst was
2 standing other than I know that he was standing to my
3 right.

4 Q Okay.

5 A So I was standing approximately here. And
6 there were officers in front and kind of encircling the
7 driveway here. At the time I had the impression they
8 were kind of like two, two groups with a space in
9 between, but I don't know if that's true or not.

10 There was — you know, officers converged
11 on this driveway, and they were being basically all
12 encircling this spot where he was originally at.

13 Q Officer Hearst then is on your right side, he
14 would have had a better look at the side of the
15 suspect's body. Is that safe to say?

16 A He would have had a front-on, a directly
17 front-on view if he was to my right. I had a look more
18 from his right side, because at that point he was angled
19 more to the east.

20 As he crawled out of that and started
21 crawling towards the driveway, he would have been coming
22 out more of a 45-degree angle to me towards the driveway
23 rather than facing me direct on, like he initially was.

24 MR. AUXIER: Thank you.

25 I think that's it, Lieutenant De Land.

1 Thank you.

2 A GRAND JUROR: Thank you very much.

3 THE WITNESS: Thank you.

4 (Recess.)

5

6

7

DERRICK FOXWORTH, JR.,

8

a witness called on behalf of the State, having been

9

first duly sworn, was examined and testified as follows:

10

11

EXAMINATION

12

BY MR. REES:

13

Q Sir, if you could please state your name for

14

the record and spell your first and last names.

15

A Certainly. My first name is Derrick. Spelled

16

D-E-R-R-I-C-K. My last name is Foxworth. That's

17

spelled F-O-X-W-O-R-T-H.

18

Q What's your occupation?

19

A Currently employed as a police officer for the

20

City of Portland.

21

Q How long have you been a police officer?

22

A A little over 13 years now.

23

Q And what assignments have you had within the

24

Portland Police Bureau?

25

A I started out in my career working

1 North/Northeast Portland. I was assigned to the Cully
2 neighborhood at the time. I worked that area for about
3 three and a half years.

4 After that, I worked with the Gang
5 Enforcement Team for about four and a half years. I
6 spent a year on the investigative side and then three
7 and a half years on the uniformed patrol side.

8 During that time one of my
9 responsibilities was to respond to gang shootings. And
10 during that time I responded to well over a hundred
11 gang-related shootings around the City of Portland.

12 From there I developed an interest in
13 training, which led to my current position, which is a
14 lead instructor for the Portland Police Bureau. I've
15 held that position, it will be five years this May. And
16 I'm also a member of our Special Emergency Reaction
17 Team, which is Portland's SWAT team.

18 Q What's your educational background?

19 A I have a Bachelor's degree from the University
20 of Portland and a Master's degree in public
21 administration from Portland State University.

22 Q In your current assignment, what kinds of
23 things do you do on a daily or weekly basis?

24 A Certainly.

25 So the training division has two primary

1 training responsibilities. One is our advanced academy,
2 and that is currently a 13-week program that all new
3 officers go through after they are hired.

4 In addition to that, we also do our annual
5 in-service training, which varies from 20 hours a year
6 to 40 hours. The Patrol Tactics Program, which I co
7 lead, covers about 16 different topics, ranging from how
8 to do a basic level investigation to critical incident
9 management, to our tactical medical program, and then up
10 to our active shooter response.

11 The Patrol Tactics Program basically takes
12 the other police disciplines, such as firearms training,
13 defensive tactics training, law and policy, and brings
14 them together to put officers in what we call
15 scenario-based training to basically create
16 circumstances an officer might find themselves in on
17 patrol.

18 So that way they have an opportunity to
19 work through those. We have an opportunity to debrief
20 those. Make corrections where needed. Provide guidance
21 if needed and also reaffirm behaviors that are
22 consistent with policies and training.

23 Q When do police officers first receive their
24 training? At what part of their career does that occur?

25 A Certainly.

1 So the Patrol Tactics Program, that's
2 training that they get at the very beginning of their
3 police career, and then it's continuous throughout their
4 entire career.

5 So every in-service training officer will
6 receive Patrol Tactics training. Our last in-service,
7 it was about four hours additional Patrol Tactics
8 training that officers received. And that was -- this
9 most current one was focused primarily on tactical
10 medicine and then also some communication scenarios.

11 Q Do you teach police officers in how to respond
12 to situations where a person may be armed with a weapon,
13 and they are confronted, and they are in a situation
14 where they are taking this person into police custody?

15 A Yes, I do.

16 That's again, something that would be
17 covered in our Patrol Tactics Program. What our
18 training specifically speaks to and the way we train our
19 officers is to our policy.

20 So our policy has a constitutional use of
21 force standard, which was established in Graham vs.
22 Connor. With regard to daily force specifically,
23 there's two instances that officers may use deadly
24 force.

25 The first instance is the officer may use

1 deadly force to protect themselves or another person
2 from what that officer reasonably believes to be the
3 immediate threat of death or serious physical injury.

4 So again, I'll repeat that. An officer
5 may use deadly physical force to protect themselves or
6 another from what they reasonably believe to be the
7 immediate threat of death or serious physical injury.

8 The second portion of our policy also
9 talks about when an officer may use deadly force. And
10 it states that an officer may use deadly force to effect
11 a capture or prevent the escape of a suspect where the
12 officer has probable cause to believe that suspect poses
13 an immediate threat of death or serious physical injury
14 either to the officer or another.

15 So the difference between those two is the
16 standard. So in the second one we talk about the effect
17 in capture or preventing the escape of a suspect where
18 we have probable cause to believe that person poses an
19 immediate threat of death or serious physical injury.

20 So we take that policy and then we put
21 officers in what we call force scenarios, where an
22 officer may encounter during a traffic stop the
23 presentation of a weapon, firearm, knife.

24 Again, so we can work through those
25 scenarios that an officer unfortunately, may find

1 themselves in when they are actually out on patrol. So
2 they get an opportunity to work through these scenarios
3 ahead of time.

4 So the first time an officer is involved
5 in a force encounter is not their first time on the
6 street if that makes sense.

7 A GRAND JUROR: What was the case?

8 THE WITNESS: Graham vs. Connor.

9 BY MR. REES:

10 Q That's a U.S. Supreme Court case?

11 A Yes, it is.

12 Q And the officers are taught in that case,
13 and -- is there training related to that term, "The
14 reasonable belief of the officer"?

15 Does that come from the totality of the
16 circumstances?

17 A Yes. Again, everything comes from that
18 particular case.

19 And it establishes when an officer can use
20 force, and what that case specifically boils down to is
21 the reasonableness standard. Would an officer in
22 similar situations choose from those reasonable force
23 options. So that's the standard that we teach our
24 officers to. Also from that case there's a term
25 referred to as "totality of the circumstances."

1 Basically the way we teach that is that
2 every piece of information that an officer receives
3 during the call should be taken into account. So that
4 might be information that comes in over the radio. That
5 might be information that an officer receives from their
6 observations on scene. That might be information that
7 an officer receives from a witness. All that
8 information helps an officer decide a course of action,
9 how to bring that situation to a peaceful resolution.

10 Q Let me ask you about a concept or a term
11 called "action-reaction."

12 Are you familiar with that concept?

13 A Yes, I am.

14 Q Is that something that you teach police
15 officers?

16 A Yes, it is.

17 Action-reaction is a concept. And
18 basically what it boils down to is is that in a contest
19 of speed, action will always be the reaction. So in a
20 contest of speed, action will always beat the reaction.

21 So to give you kind of an example. You
22 might see in everyday life, take a traffic signal. You
23 are in your vehicle. The signal changes. You have to
24 observe and recognize that change, and then you have to
25 decide about what you are going to do about it.

1 either the presentation of a weapon or the movement
2 towards a weapon in the area, and they have to decide
3 about how they are going to react to it. Again, that
4 built-in reactionary gap, officers recognize that
5 there's going to be a time delay.

6 So things that we train specifically to
7 try and manage that, we will never overcome that.
8 There's no way to beat that, that time gap.

9 Things we talk about in police training is
10 controlling the hands. The reason we are focused on the
11 hands is generally it's the hands that are going to
12 retrieve a weapon from a pocket, the waistband, a bag,
13 kind of within that immediate arm's length. So that's
14 kind of step one for us is to control the hands.

15 We also talk about training distance when
16 it is available to us. Distance gives us options as
17 well. Because of this reactionary gap, we also do not
18 train our officers to wait until they are shot at in
19 order to respond because we understand that built-in
20 time delay.

21 If we taught officers to wait until they
22 are shot, there's a couple things, obviously that could
23 happen. You would have to wait, one, for a muzzle
24 flash; two, the gun going off, that kind of loud bang,
25 and the bullet has already left the gun.

1 So the consequences of potentially waiting
2 is you might have an officer that is now either injured
3 or dead and unable to respond to that threat, or you
4 might have a community member who has been shot as a
5 result of that. That bullet could have traveled through
6 a window, through a car and now hits someone either in
7 their home or their vehicle.

8 So we teach our officers, as public safety
9 stewards, that risk is an unacceptable risk for us in
10 the law enforcement side to allow someone, if we can
11 prevent it, to fire first.

12 Q Do you have scenario training for officers
13 where they can go through the experience of confronting
14 an armed subject and then having to make a split-second
15 decision of whether to respond with deadly force or to
16 wait?

17 A Certainly. And that training is continuous.

18 It starts, as I mentioned earlier, during
19 our advanced academy training where we put officers in a
20 variety of deadly force scenarios. And that training
21 continues throughout their career, so that we continue
22 to refresh in those skills.

23 Those decisions happen very, very quickly
24 in some circumstances where an officer has to make that
25 decision whether or not to use deadly force. It might

1 be in a matter of seconds.

2 Q You said that officers are certainly not
3 trained to wait until they are actually shot at like in
4 the movies. It seems like the cowboys a lot of times
5 wait until someone is shooting at them. That's not what
6 you train.

7 What is the training in terms of timing in
8 making a decision? You said they are not trained. They
9 don't have to wait until they are shot at.

10 But what about waiting until they actually
11 see a weapon in the suspect's hand?

12 A Certainly.

13 There's going to be a variety of
14 circumstances and training scenarios that we put folks
15 through. A lot of times what will dictate the decision
16 to shoot or not to shoot is, one, the presentation of
17 weapon; two, does the officer have cover.

18 By "cover," that's going to be something
19 that would stop bullets. For example, if the officer is
20 behind a brick wall and they've got some cover, if they
21 are behind the front end of a police car, that cover
22 will allow them additional time. If the officer doesn't
23 have those things, that can potentially escalate the use
24 of deadly force sooner.

25 So, as I mentioned, things that would get

1 us to that point of using deadly force, presentation of
2 a weapon, movement towards a weapon, and then failure to
3 obey lawful commands, or don't reach for that weapon,
4 don't reach towards your waistband, things of those
5 nature, those are things that are specifically trained
6 as well.

7 Q So if the distance between the officer and the
8 suspect is closer rather than farther, and if there's no
9 cover, then are you saying that the officer's deadly
10 force decision might be reasonably sooner than it would
11 be if there was a great distance and there was plenty of
12 cover?

13 A And that's potential. Each situation is going
14 to be dependent upon the circumstances they are
15 presented.

16 You could have a tremendous amount of
17 distance, but if you have people that are between you
18 and the suspect, that's now a potential concern as well.
19 So the distance portion does play in.

20 But again, going over those factors of
21 things to consider are how close is the individual
22 that's armed to the officer is the primary
23 consideration. Location of the weapon. Does the
24 officer have cover? Does the officer have additional
25 officers with them? What is the backstop?

1 one of our classes that's called mindset. We talk about
2 officers may be put in a position where they have to use
3 deadly force, which could lead to taking of a life.

4 And so we want officers to recognize
5 deadly force is not going to be necessarily the first
6 option. Generally, our first option is communication,
7 trying to get the person to comply with commands. Get
8 the person to comply or surrender so that we don't have
9 to use deadly force because we recognize the sanctity of
10 life.

11 Q You in your capacity as a training officer,
12 were not involved in the officer use of deadly force
13 that occurred in Portland on February 9th, 2017;
14 correct?

15 A No, I was not.

16 Q In this case generally, officers confront a
17 person who's reported to be armed with a gun and who's
18 reported to be a suspect in an armed robbery, a car
19 prowl, a situation where they are pounding on the door
20 of a resident, and then are believed to be involved in a
21 home burglary, and then the subject is confronted
22 outside of that house in a tight, confined space about
23 31 inches wide, what's the training on how to approach a
24 person in that situation?

25 Do the officers go to the person or do

1 they, do they call the person out, or what are they
2 trained to do?

3 A So, again, starting with that initial call,
4 we've talked about totality of the circumstances. The
5 officer should be taking in all of the information they
6 have at this point.

7 So, first of all, we are seeing kind of an
8 escalation of behavior from the armed robbery to an
9 attempted home break-in, to a confrontation with the
10 police and now a fleeing away from the police. All that
11 information should be taken into account.

12 So once they do encounter this individual,
13 our training would be that they not go to the
14 individual, but they try and have that individual come
15 to them. The reason being is we want to try and
16 maintain as much distance as possible.

17 One of the other things we teach in law
18 enforcement, I mentioned, is controlling the hands. In
19 addition to controlling the hands, we also want to
20 control a person's mobility or their ability to run away
21 from us.

22 So in a situation like this, I would
23 expect officers to, one, control the hands, have the
24 person go down on their hands and knees, because again,
25 that's going to limit their ability to run away from us

1 and then crawl out to us.

2 Again, we want to be in a stationary
3 position, have that person come to us so that we can
4 then take them into custody.

5 Q For a police officer, if you're able to answer
6 this question, how dangerous is a situation like this
7 versus other encounters that police have on a daily
8 basis?

9 A This one is pretty dangerous. Again, I think
10 when you couple the escalation of criminal activity in a
11 very short time span, information leading officers to
12 think that this person is armed, this is about as
13 dangerous as it gets.

14 And then trying to take this person into
15 custody. We know that there's a weapon. We know that
16 we have attempted to get this person to comply already.
17 And so, you know, officers are going to be aware of all
18 that information in trying to take that person into
19 custody.

20 One of the other benefits of having the
21 person go down on their hands and knees and crawl
22 towards the officers is that it would broadcast any
23 movements towards a weapon. It would broadcast any
24 movements to stand up and try to flee. So that gives
25 officers additional time to decide how to react to that.

1 Q Is there training about verbal commands, what
2 police officers should say to a suspect in a situation
3 like this?

4 A Yes. Specifically, it's in our deadly force
5 policy. And what it says is that, if feasible, some
6 warning should be given prior to using deadly force. If
7 feasible, some warnings should be given.

8 The reason that that "if feasible" part is
9 in there is again, we recognize that sometimes their
10 timing is not an option, because the situation happened
11 so quickly. An officer has to react to it.

12 What we would expect the warning to look
13 like is basically kind of two parts. So part one would
14 be the specific addressing of behavior. Don't move.
15 Show us your hands.

16 The second part of that is the
17 consequences. Don't move towards the gun or you may be
18 shot. Don't reach towards your waistband or you may be
19 shot. Drop the knife or you may be shot.

20 So it's not specific for every case, but
21 we want those two parts generally. The addressing of
22 the specific behavior and then the potential
23 consequences of that behavior.

24 Q In this case I think we've heard testimony of
25 a specific wording, along the lines of, "I believe

1 you're armed with a weapon. And if you reach, you will
2 be shot."

3 Is there training to give a command like
4 that?

5 A Yes. And that would be consistent with our
6 training as well.

7 Q And what's the idea behind that, using that
8 kind of language?

9 A That's very specific. It's very clear-cut
10 about the behavior that we want stopped and the behavior
11 or the consequences of that continued action.

12 Again, given this particular situation and
13 with the information about the armed robbery, the home,
14 attempted home invasion, the previous interaction with
15 officers, we want to be very clear with our
16 communication about how we want this custody to go,
17 which is we don't want any movement. We want you to
18 obey our commands so that we may take you into custody
19 at that point.

20 Q Has time and experience shown that a command
21 like that is -- can be effective?

22 A Yes. In my personal experience as a police
23 officer in the City of Portland, those commands are
24 effective.

25 Other officers have also used those, which

1 is why we continue to train and use that. And it also
2 goes back to our policy. Specifically if we have the
3 opportunity, if feasible, that we are to provide warning
4 so that people do know the consequences of not following
5 those lawful commands.

6 Q Is a command like that intended to be sort of
7 a challenge or is it intended to gain compliance?

8 A The intent is always to get compliance. We
9 would -- we always want to gain peaceful compliance.
10 And that's why we specifically use those types of
11 commands in those types of situations.

12 Q Now, in terms of the decision to use deadly
13 force, what's the current training on where on a
14 suspect's body the officer should aim if they do use
15 deadly force?

16 Is there training about what part of the
17 body?

18 A Yes, there is. I'm also a firearms instructor
19 for the Portland Police Bureau, and we teach three
20 primary areas to shoot at. First, our goal is not to
21 kill the person. Our goal is incapacitation. We're
22 looking to take away that threat level.

23 So the first area that we teach officers
24 to shoot at is the chest area. The reason we train that
25 is because it is the largest section on a person which

1 increases our likelihood of hitting what we were aiming
2 at.

3 When you are talking about or thinking
4 about deploying deadly force with a firearm in the City
5 of Portland, one of our primary concerns is what is
6 beyond, what we call the backdrop. If I miss, what is
7 this round potentially going to hit?

8 We teach our officers that you are
9 responsible for each and every round that you fire. So
10 again, when we want to increase the likelihood of
11 hitting what we are shooting at, that's why we aim at
12 the largest portion on a person.

13 The second area that we train officers to
14 shoot at is what we call the pelvic girdle. So that's
15 basically below the beltline. That's the second kind of
16 largest portion on a person to aim at. Again, with a
17 goal of making sure we hit what we're aiming at and that
18 we don't have stray rounds.

19 The last portion that we train officers to
20 shoot at is the head for a couple of reasons. While our
21 goal is not to kill the person, we do recognize that
22 there are situations where, to make the situation safe
23 for the community and for the public, that may be an
24 option.

25 For example, you may think like an active

1 shooter-type situation where a person will not obey
2 commands, they are still shooting at officers, community
3 members, so we do want officers to be trained when they
4 face those types of situations to be capable of using
5 deadly force in those three areas.

6 Q You said that the goal is, I believe,
7 incapacitation.

8 A Correct.

9 Q Not death.

10 A Correct.

11 Q Although, sometimes death may occur.

12 A Correct.

13 Q So how many times are officers taught to pull
14 the trigger? How many times are they trained to shoot a
15 person in a situation like that?

16 A Each situation is going to be dependent upon
17 the circumstances they see. So we do not teach officers
18 to fire a specific number of rounds.

19 We teach officers to use the deadly force
20 until that threat is no longer there, until the threat
21 is neutralized. So that could be one round. That could
22 be two rounds. If the person is wearing body armor,
23 that could be numerous rounds.

24 So each situation is going to be dependent
25 upon those specific fact circumstances. So there's not

1 a specific prescribed number of rounds that officers are
2 taught to shoot.

3 Q So are they taught when to stop shooting?

4 A Certainly. When the shooting stops is at the
5 point where they recognize that this person is
6 incapacitated or the threat of deadly physical force is
7 no longer present.

8 Q Is a warning shot a feasible option?

9 A No. In fact, our policy specifically
10 prohibits warning shots, so that is not an option for
11 officers.

12 Again, the thought behind that is we don't
13 want to lower the standard of using deadly force by
14 firing a warning shot. We reserve firing your weapon
15 specifically to deadly force encounters, so we don't
16 fire warning shots.

17 Q What about -- again, this is something you see
18 in the movies. If you are shooting somebody in the foot
19 or in the hand or some other limb, is that, in real
20 life, is that feasible?

21 A No. I think that's actually a perception from
22 Hollywood and TV that you can shoot the gun out of
23 someone's hand. You can shoot them in the arm. Again,
24 our goal is incapacitation. Hands, arms move very
25 quickly.

1 Again, for the officer, this is a dynamic
2 event. The officer is potentially moving. The
3 individual, they are using deadly force against us
4 moving.

5 So by training to aim at the hands, it is
6 an object that moves very, very quickly. It's going to
7 reduce the likelihood that the officer is going to hit
8 that. And it's also not going to lead towards
9 incapacitation. With that being said, there may be some
10 instances where that might be the only option an officer
11 has.

12 For example, if a suspect is standing on
13 the other side of this door, and they kind of reach in,
14 and there's firing, and all you have is their hand, then
15 an officer at that point may try and use the deadly
16 force on that hand because that's the only option that's
17 available to them. But generally that is not trained.

18 MR. REES: Are there any questions for
19 Officer Foxworth?

20 A GRAND JUROR: Do officers who carry long
21 guns, do they have specialized training?

22 THE WITNESS: Yes.

23 So officers that carry -- we have two
24 different long guns. We have the 870 Remington shotgun
25 that all officers are trained in. And we qualify those

1 quarterly throughout the year.

2 And then officers that carry the AR-15,
3 that is an additional training. I think currently it's
4 about 60 hours of additional training. And that
5 includes both how to operate the weapon. It also
6 includes scenario-based training, which gets to the
7 decision-making around using that weapon as well.

8 So that's something officers have to apply
9 to. They have to be recommended by their precinct
10 supervisors. And then as I mentioned, it's another 60
11 hours of additional training.

12 A GRAND JUROR: I have one more question.
13 You guys carry your guns in holsters.

14 THE WITNESS: Yes, ma'am.

15 A GRAND JUROR: So that's a consideration
16 in timing; right?

17 THE WITNESS: Yes, ma'am.

18 For most officers, and there's been
19 numerous studies done where an officer, to retrieve
20 their firearm from their holster, depending upon the
21 level of retention, so our holsters have some built-in
22 retention devices, so they just don't fall out, for the
23 average officer, it is about a second to a second and a
24 half to retrieve that, present it, and then be able to
25 fire a round.

1 A GRAND JUROR: Okay.

2 A GRAND JUROR: So, so, so it's reasonable
3 for officers that are confronting a situation to come in
4 with their guns drawn for --

5 THE WITNESS: Yeah. Depending on the
6 situation that they are presented with, certainly.

7 MR. AUXIER: Officer Foxworth, do the
8 AR-15's have safeties on them?

9 THE WITNESS: Yes, they do. So the safety
10 on the AR-15 is on the left side of the gun. You turn
11 the safety on and off with your thumb.

12 MR. AUXIER: When does an officer receive
13 training as regarding when to take a gun off of safety?

14 THE WITNESS: Yeah. It would be at the
15 moment where they are planning on using deadly force,
16 not prior.

17 MR. AUXIER: Do you factor in the time it
18 would take to take a gun off safety when you are talking
19 about reaction times?

20 To me, as just a layperson, when you are
21 going into this active situation with the potential
22 shooting threat, you would maybe take the gun off safety
23 and just right away as you approach the person, so you
24 could pull the trigger as quickly as you need to.

25 THE WITNESS: So it's a very delicate

1 balance.

2 So as far as taking the safety off, we
3 want that to be at the moment that they are planning on
4 pressing the trigger and not prior to. So we don't have
5 to have an accidental discharge.

6 So, let's say, they are approaching an
7 individual and that deadly force threat dissipates, we
8 just don't want there to be any potential negligent
9 discharge is what we refer to that as.

10 So it is a time factor of having to take
11 that safety off, but that gets factored into what we
12 talked about that reactionary gap as well. And it
13 happens very quickly. You take safety off very quickly,
14 but it still does take time, too.

15 A GRAND JUROR: So these long guns fire
16 more rapidly than --

17 THE WITNESS: No, ma'am. So the AR-15,
18 what the patrol officers carry, is what we refer to as a
19 semiautomatic. So for every press of the trigger, one
20 bullet leaves the barrel.

21 A GRAND JUROR: Do the bullets go faster?

22 THE WITNESS: The bullets do go faster.

23 So the AR-15 bullet that we carry travels
24 at approximately 2700 feet per second. Our handgun
25 round, I think is about 1100 feet per second.

1 A GRAND JUROR: Okay.

2 THE WITNESS: So it's moving at a much
3 higher velocity.

4 MR. REES: Maybe as a followup to that
5 question.

6 BY MR. REES:

7 Q If you can answer this question, why does the
8 police bureau have a small group of officers equipped
9 with these rifles instead of every one just using
10 handguns?

11 A Again, throughout law enforcement, since
12 basically 1999, with the Hollywood bank robbery where
13 officers in that particular incident found themselves to
14 be literally out-gunned by the bank robbers who had
15 rifles and body armor.

16 So there was a complete shift in law
17 enforcement to the recognition of we do need this
18 capability to have rifles where officers can deploy for
19 a couple of reasons.

20 One, the increased accuracy that the rifle
21 provides and then also to defeat body armor is another
22 option for us. So that AR-15 specifically does those
23 two main things. It allows us in most cases a greater
24 stand-off distance, and it provides us with greater
25 accuracy, and it also can defeat body armor.

1 Q Have the 9-millimeter handguns used by police
2 been proven around the country at times to be somewhat
3 ineffective at stopping suspects?

4 A Yes. Again, as I mentioned those examples of
5 body armor. A handgun is not as accurate as a rifle.
6 So as a law enforcement agency, we want to make sure
7 that we equip officers for the situation that they can
8 expect to encounter.

9 A GRAND JUROR: So when they fire these,
10 they bring them up or do they shoot from the hip?

11 THE WITNESS: We fire our AR-15 rifles
12 from the shoulder. None of our firearms training
13 anymore is fired from the hip. I think that stopped in,
14 like, the mid '70s.

15 What officers found is it just wasn't
16 accurate. It's more accurate to bring the weapon system
17 up to your eye. You get a more stable platform where
18 the weapon is supported by the shoulder. So that's why
19 there was that shift in training.

20 A GRAND JUROR: Okay. I don't know
21 anything about guns.

22 THE WITNESS: Ask away.

23 A GRAND JUROR: So in a situation like
24 this where there was, um, and, I'm guessing, like at
25 least ten officers with their weapons drawn, they, they

1 are -- it seemed like there was a designated person to
2 be the person that was -- so that there wasn't 15 people
3 firing at this suspect when he wasn't obeying commands.
4 It's a thought-out process; is that correct?

5 THE WITNESS: Yes, ma'am.

6 So to answer your question, this would be
7 what we call a critical incident and specifically a
8 custody team.

9 So a custody team is a group of officers
10 that is -- primary goal is to take someone into custody
11 peacefully, but we're also prepared for the deadly force
12 encounter if it were to occur.

13 So one component of that may be an AR-15
14 rifle because of things we've mentioned: The increased
15 distance it allows, increased accuracy.

16 In addition to that, we would also expect
17 one to two officers who are specifically assigned to be
18 handcuffers. Those are going to be the officers at the
19 point the person is compliant to move in and then take
20 that person into custody.

21 Other officers we expect to be part of
22 this custody team would be someone assigned to a less
23 lethal option. That could be a Taser. That could be a
24 less lethal shotgun and potentially a K-9.

25 So if the AR operator on this custody

1 team, their primary responsibility would be to use
2 deadly force if it was needed for a couple of reasons,
3 the increased accuracy, the distance it allows.

4 We also don't want, if we can avoid it,
5 multiple shooters. Because the more rounds that we fire
6 increases the possibility that those rounds are going to
7 go somewhere that we don't want.

8 So we talk to our officers about a limited
9 number of rounds if we can manage it. That's not always
10 the case, but that is something we talk about when we
11 train.

12 A GRAND JUROR: So in this particular
13 instance, there was an officer that was standing in very
14 close proximity that had a less lethal weapon, and then
15 we had the, um, officer that was the designated -- that
16 had the AR-15.

17 What, what is it that makes a situation,
18 um -- I'm not sure I know how to ask this -- for the
19 police where they decide, um, to not use a person that
20 has the less lethal round and to use a person that has
21 the lethal round?

22 THE WITNESS: Certainly.

23 So that's going to be, as we talked about,
24 the individual officer's decision going back to that
25 deadly force standard that we have.

1 If the officer perceives that immediate
2 threat of death or serious physical injury, that may
3 lead them to the decision to use deadly force.

4 I don't know if there's communication
5 between the less lethal operator and the AR-15 operator.
6 There could have been something that the AR-15 operator
7 saw or noted that led him to the decision versus the
8 person using the less lethal option.

9 The less lethal option is not an
10 appropriate option if we're dealing with a threat of
11 death or serious physical injury. So I think that's the
12 main difference there.

13 A GRAND JUROR: Okay. Thank you. That
14 really helps.

15 Then I think my last question is, and this
16 is because as a layperson, usually when we see somebody
17 with an AR-15, which isn't something that we usually
18 see, it's on television, and what we see is that they
19 are a sniper or -- I don't know if that's a sniper
20 rifle, but anyway, they are far away.

21 And it appears here that the person that
22 was using the AR-15 was, was at a very close -- well,
23 reasonably close distance. And just for me personally
24 that seems like a lot closer than I would suspect
25 someone would use that type of a weapon.

1 Um, so is that a misconception? Are they
2 used in that kind of close range confrontational manner?

3 THE WITNESS: The short answer is yes, and
4 a great question.

5 So the reason again that the AR-15 would
6 be deployed or used in this situation is we don't
7 exactly always know on the officer side where this force
8 encounter is going to take place. This individual could
9 have came out and the officers could have been walking
10 half a block away.

11 And so as we do our block search, again in
12 a city environment, we don't know if we're going to be
13 at five feet or an entire block. So by having that
14 tool -- you know, if you change the circumstances just a
15 little bit, if they had encountered the suspect half a
16 block away or a full block away only armed with
17 handguns, the ability to accurately use deadly force
18 diminishes.

19 So that's why that AR-15 in some
20 circumstances is such a useful weapon to have because
21 it's effective close up, as well as at greater
22 distances.

23 The AR-15 that our officers currently have
24 on patrol is not a sniper rifle. As I mentioned
25 earlier, I'm on our SWAT team. It's not a sniper rifle.

1 There's no magnification on our AR-15 system that we
2 have. So if you think of a rifle, you think they can
3 see thousands of feet away. No magnification.

4 What it has is it's called a holographic
5 site. So there's a red circle and a red dot in the
6 middle. And wherever you move that red dot or that
7 circle, that is your point of impact.

8 Our officers qualify and train with our
9 AR-15 out to 100 yards. So from 100 yards all of the
10 way to seven yards. Because basically 100 yards is a
11 city block in the City of Portland, so we want to make
12 sure that we can accurately use that weapon in what we
13 would expect in the City of Portland.

14 A GRAND JUROR: Thank you.

15 MR. REES: That was an interesting
16 question.

17 Did that answer your question?

18 A GRAND JUROR: Yes.

19 MR. REES: I'm wondering, just to follow
20 up then.

21 BY MR. REES:

22 Q You said shoot a city block. But what about a
23 use of deadly force encounter where maybe it's 15 to
24 20 feet, would that be considered a reasonable --

25 A Yes, it would be reasonable.

1 Again, that's why we train out to
2 100 yards all of the way to seven yards because we
3 recognize that this weapon system will be called into
4 the city and we don't know if the encounter is going to
5 be at five feet or, you know, 300. So we want officers
6 to be competent and proficient for everything within
7 that span.

8 MR. REES: Thank you.

9 Any other questions?

10 All right. Officer Foxworth, thank you
11 very much for coming in.

12 A GRAND JUROR: Thank you.

13 THE WITNESS: Thank you.

14 (Recess.)

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1 KYLE NICE,
2 a witness called on behalf of the State, having been
3 first duly sworn, was examined and testified as follows:
4

5 EXAMINATION

6 BY MR. AUXIER:

7 Q To start out, can you tell us your name and
8 spell it?

9 A My name is Kyle, K-Y-L-E. Nice, N-I-C-E.

10 Q And what do you do for work?

11 A I'm a supervisor with the Portland Police
12 Bureau, a sergeant.

13 Q How long have you been with the Portland
14 Police Bureau overall?

15 A Twenty-five years.

16 Q And what about as a sergeant?

17 A I was promoted in October of 2003, so 14
18 years.

19 Q And in February of 2017, what shift were you
20 working in? What precinct were you working in?

21 A I was working the A or day shift, as we call
22 it, at East Precinct.

23 Q And on February 9th of 2017, do you remember
24 calls coming out in the morning regarding a robbery and
25 a car prowl?

1 A I do. I was actually just coming out of roll
2 call. I wasn't notified by one of the night shift
3 sergeants that this call was coming out. I started
4 listening to the radio.

5 Q Roll call is at 7:00?

6 A Yes, sir.

7 Q And so it sounds like that first call must
8 have just gone to the night shift and they pass it on to
9 you.

10 A Yeah. We usually go 10 to 20 minutes,
11 somewhere, for roll call. I don't remember exactly what
12 time it was. But one of the night shift sergeants came
13 in and said, "Hey, you need to be aware of this call,"
14 because it sounded fairly serious at the time, so...

15 Q And what information did you have and what did
16 you communicate to other officers?

17 A Um, the night shift sergeant told me that it
18 initially came out as a car jacking. When I turned on
19 my radio, I heard that officers were challenging one,
20 which means they were giving someone some commands, the
21 suspect. And that he was -- I don't remember the exact
22 words, but he was not following directions.

23 Q So the officers involved in the immediate
24 response to these incidents, they must have been -- they
25 were notified via dispatch.

1 You didn't notify them and send them out?

2 A No. They were notified via dispatch. And I
3 was -- you know, at the end of roll call, I was speaking
4 with my command staff and my fellow sergeants, so we
5 were delayed getting out of roll call a little bit.

6 So some of my officers had already rolled
7 out and they were dispatched. And then once I was
8 notified of the call, I turned on my radio. Heard those
9 statements over there, and immediately went to my
10 vehicle and rolled out there.

11 Q You turned on the radio and it's already sort
12 of hot?

13 A Yes. It's already going by the time I turn my
14 radio on, so...

15 Q Okay. And so where did you drive to?

16 A Um, let's see. I drove from Stark to 82nd
17 Avenue. 82nd Avenue to I want to say Schuyler and took
18 a perimeter position. On the way there, made a couple
19 of -- we had a K-9 going. Make sure we had all of the
20 appropriate resources to handle this call.

21 Q And upon arrival at that perimeter, was
22 already being set up?

23 A It was, yeah.

24 Um, dispatch helps us with it, but it's
25 still my responsibility as a supervisor to make sure

1 that we have good coverage.

2 I parked -- I'm able to pull up a map on
3 my computer in my car and see where the cars are parked
4 and see where the streets are to make sure we don't have
5 any holes in our perimeter.

6 Q You were present for this rendezvous with
7 Commander Parman and Lieutenant De Land as well.

8 A Yes. That's much later in the call, yes.

9 Q What was going on at the time of that meeting
10 with your command staff?

11 A At the time of the meeting we had cleared most
12 of the area inside the perimeter and our attention was
13 brought to a house. I'm sorry, I don't know the exact
14 address.

15 But there was some indications that there
16 had been a break-in at the house. I believe there was a
17 broken either window or door. I don't have my notes
18 with me. And we were trying to determine whether it was
19 an older break-in or one that had just happened.

20 We noticed that there was an alarm company
21 sign on the house, but we had not gotten a notification
22 from the alarm company. So we were trying to determine
23 whether it would be prudent to go in, whether it would
24 be safe to go in, or whether it was something that the
25 SWAT team should do.

1 So that was the whole of the conversation
2 with Lieutenant De Land and Commander Parman.

3 Q And it sounds like, based on the testimony
4 we've heard from Parman and De Land, that it was heading
5 in the direction of concluding there was no one inside
6 that house.

7 A Um, yeah. It was -- we were leaning towards
8 that way, but we weren't comfortable enough to walk away
9 from it. I think that's why we ultimately landed on the
10 decision to send in the K-9 with a camera.

11 Our K-9's are able to put a camera on
12 their back, and they can go in and take a look without
13 really putting one of us in danger.

14 And plus, once they get inside a house, if
15 they smell, you know, a fear scent they call it, they
16 will notify us right away that there's maybe somebody in
17 the house. I think the decision was to at least check
18 out the house further to see if there was anybody else
19 in there.

20 Q When that decision was made, where were you?
21 Had you moved from the staging location over to the
22 house?

23 A Yes. I had been initially called over to cut
24 a lock on a fence or yard that we needed to check, and
25 the supervisors carry the tools to do that.

1 So I left my perimeter spot, come to the
2 location just to the east of that house, cut a lock, and
3 then I was just staged sitting in my vehicle.

4 I had previously contacted Lieutenant De
5 Land by phone to kind of throw out the idea of
6 activating the SWAT team, SERT team. So I was doing
7 things on my computer, doing things on the phone. Kind
8 of managing the call just from my vehicle.

9 Q What was -- where were you when the suspect
10 was identified?

11 A I was still parked -- there's a parking lot
12 just south of the location and a little bit east kind of
13 kitty-corner from the location. I was parked in the
14 driveway facing north.

15 Q We have a diagram map there.

16 Could you stand up and show us where you
17 were parked?

18 A Okay. So this was on Hancock. So this is the
19 location of where we eventually had contact with the
20 suspect. I'm parked in this parking lot here. There's
21 a driveway right here. And I'm parked in that, facing
22 north right there.

23 Q And that's where you were when the suspect was
24 originally initially located?

25 A Yes.

1 Q What happened -- feel free to return to your
2 seat.

3 What happened -- what did you do when you
4 learned that a suspect had been found?

5 A I'm a rifle operator and also I'm a rifle
6 instructor. We teach two-person tactics with the rifle.
7 We usually have one person as primary and one person to
8 support them.

9 So I went up with my rifle to support
10 Officer Hearst since he was lethal cover for the arrest
11 team that was getting put together there. I made
12 contact with Sergeant Helfrich who had been in charge of
13 that search team.

14 So we had a conversation about I would
15 back up Officer Hearst. Sergeant Helfrich would take
16 care of the custody part of what we were planning to do.
17 So we actually switched positions and started giving
18 commands to the suspect.

19 Q Where were you -- where was -- where were you
20 located on this picture that we have on the screen and
21 where was Officer Hearst? If you need to stand up and
22 maybe point to it.

23 A It looks a little bit out of a fish eye angle.
24 I remember the driveway was a little bit wider. I
25 remember that Officer Hearst was standing somewhere

1 around here.

2 I had initially came up here, had a
3 conversation with Sergeant Helfrich, and I moved over to
4 here. I gave a couple of commands to the suspect, and
5 then we all started backing up.

6 And I was kind of moving around officer
7 Hearst's left shoulder. I initially was over here, I
8 said, but I started to move around.

9 As the custody team -- as we start to back
10 up -- we kind of started backing up and over this way.
11 So most of the officers started moving this way, which
12 is what made me step around to the left side to kind of
13 get out of their way but still maintain eyesight on the
14 suspect.

15 MR. REES: Does that help with the angle
16 better?

17 THE WITNESS: Yeah.

18 BY MR. AUXIER:

19 Q Can you demonstrate how you were holding your
20 weapon at the time of this contact?

21 A I'm left-handed, so we have it on a sling
22 (indicating.) Basically I just control the rifle with
23 holding on a pistol grip here, which puts my muzzle kind
24 of pointing this way, which is another reason for me to
25 step around to the left side so that my muzzle is not

1 pointing at any of the other officers as we're backing
2 up.

3 Q The way you're demonstrating it, I would
4 describe it as being against your torso and facing
5 downward; is that correct?

6 A Yes. We call it kind of low ready position.

7 Q The low ready position.

8 Was it ever aimed at the suspect?

9 A No.

10 Q And you said when you joined the group
11 contacting the suspect, that at least I believe you said
12 you shouted some commands at some point.

13 A Yeah. There was, um, a point when no one was
14 giving commands to him. And I have a very large voice,
15 as you noticed, and I wanted to make sure that he knew
16 what was expected of him.

17 We were having a little bit of trouble
18 with him keeping his hands up, so I yelled at him to
19 crawl out on his hands and knees very loudly.

20 What that does is two things. That keeps
21 these hands occupied. If he would go for a weapon, it
22 would be very difficult for him to do it without giving
23 us some kind of notification that he was going to do it.
24 It gets him to move out of that alcove to a position
25 where we can take him into custody.

1 Q Did he comply with that command?

2 A No. He kind of kept walking out on his knees.
3 His hands, his hands kind of kept going up and down, and
4 he would not, he would not keep them in one position.

5 Q Did he say anything back to you?

6 A Nothing intelligible to me, no.

7 Q Do you recall him saying anything at all?

8 A I remember his mouth moving as if he was
9 saying something, but I didn't hear anything.

10 Q And you said at one point you walked behind
11 Officer Hearst and to the left.

12 A Yes.

13 Q What happened when you did that?

14 A As I did that, shots were fired.

15 Q Were you -- you were in a very close proximity
16 to Officer Hearst specifically when he used his weapon?

17 A I was pretty much shoulder to shoulder with
18 him at that time.

19 Q What did that -- how did that impact you?

20 A It kind of rung my bell. Rifles, if you know
21 or you may not know, are extremely loud. And he fired
22 three times, and it was like getting punched in the ear.
23 I basically had to, had to step back, and I mean, step
24 out of the situation for a few minutes because I
25 couldn't, I couldn't focus.

1 Q As a result of that, not heavily involved in
2 the post-shooting activity?

3 A No. No.

4 Q Backing up a little.

5 How many officers would you say are
6 involved in this contact with you that are along the
7 same sort of half circle of officers contacting the
8 suspect?

9 A There was me -- myself and Sergeant Helfrich.
10 Officer Hearst was lethal. Officer Mele was less
11 lethal. Then we had a K-9 officer and maybe two or
12 three more officers as a custody team. So talking seven
13 or eight.

14 Q How many of those officers were pointing their
15 guns at the suspect?

16 A The only one I know for sure was Officer
17 Hearst. I know -- I would not expect the arrest team to
18 have their weapons out. That's just not the way we
19 train. They are there to basically holster up, glove
20 up, and be ready to take somebody into custody.

21 Q There were other officers behind you, at least
22 we know now. I don't know if you were aware of that at
23 the time. But there were other officers behind you,
24 staged behind vehicles.

25 A I knew of a few of them at the time.

1 Q Would they have their guns out?

2 A I would hope not.

3 Q Because you are in between?

4 A Yeah. I would not expect any of my officers
5 to fire past me. There would be no reason for them. If
6 we were going to take somebody into custody, there would
7 be no reason for them to have their guns out.

8 I mean, we were on a perimeter. We don't
9 stand around with our handguns out unless it's a known,
10 you know, like somebody that's already fired shots or
11 something like that. That's not something that we do.
12 So I would really hope that they wouldn't have their
13 guns out behind me.

14 MR. AUXIER: Any questions from the Grand
15 Jury?

16 A GRAND JUROR: Yeah.

17 When you get that shot comes out, is it
18 like being concussed?

19 THE WITNESS: It is -- they call it an
20 overpressure injury, because the blast of the gun raises
21 the air pressure so much, it's like a blast injury.

22 I had pressure in my right ear for about
23 two and a half, three weeks afterwards. Kind of like,
24 you know, you need to equalize your ear in an airplane.

25 I did get checked out, and luckily, I

1 don't have any permanent hearing damage. But it's -- if
2 I think about it, I've still got kind of some weird
3 pressure in there. The doctor says it's inflammation on
4 the other side of the eardrum or something like that.
5 It won't go away.

6 A GRAND JUROR: So some of the other
7 officers might have --

8 THE WITNESS: Yeah. I know several of us
9 were going to get our ears checked out. So
10 unfortunately, it is a side effect of carrying rifles.

11 A GRAND JUROR: Did you see what, um,
12 caused Officer Hearst to fire his weapon?

13 THE WITNESS: I did not.

14 You know, I remember out of the corner of
15 my eye -- you know, I talked about him not keeping his
16 hands up. I remember his right hand lowering, but I did
17 not see where it went or whatever caused the shots to be
18 fired. I did not see that part.

19 A GRAND JUROR: Did you hear other
20 officers besides yourself giving the suspect commands?

21 THE WITNESS: Yes. I believe myself and
22 Officer Hearst kind of alternated giving him some
23 commands.

24 A GRAND JUROR: And we've heard testimony
25 from other officers that they also were giving commands,

1 and commands that kind of were countered to what Officer
2 Hearst and yourself were giving, like not to crawl, you
3 know, quit crawling and put your hands up.

4 THE WITNESS: I don't remember that.

5 A GRAND JUROR: I'm just wondering if you
6 think that there could have been a leveling of confusion
7 in his hand movement because he might have been getting,
8 um, conflicting communication?

9 THE WITNESS: I know that they initially
10 were telling him to keep his hands up. And when that
11 wasn't working, that's when I gave the command to try to
12 get him to crawl. But if he did not, since he did not
13 do that, you know, I only gave like maybe two commands.
14 I'm not sure of the actual order.

15 They may have switched commands to give
16 him something else, which is not uncommon. But I don't,
17 I don't think that we ever gave him a command at the
18 same time that was contradictory. I don't remember
19 anything like that.

20 A GRAND JUROR: Thank you.

21 BY MR. AUXIER:

22 Q Do you recall anyone saying, "Don't crawl"?

23 A No.

24 MR. AUXIER: Thanks, Sergeant Nice. Thank
25 you.

1 THE WITNESS: Thank you.

2 A GRAND JUROR: Thank you.

3

4

5

JEFFREY A. HELFRICH,

6

a witness called on behalf of the State, having been

7

first duly sworn, was examined and testified as follows:

8

9

EXAMINATION

10

BY MR. REES:

11

Q Once you're seated, for the record, could you

12

please state your name first and last name and spell it?

13

A Jeffrey A. Helfrich, J-E-F-F-R-E-Y. Helfrich,

14

H-E-L-F-R-I-C-H.

15

Q Thank you.

16

What's your occupation?

17

A I'm a sergeant with the Portland Police

18

Bureau.

19

Q How long with the bureau?

20

A Twenty-four and a half years. I'll have 25

21

years on in July.

22

Q And how long have you been a sergeant?

23

A Since 2004.

24

Q And are you currently assigned to East

25

Precinct?

1 A Yes, I am.

2 Q What shift do you work?

3 A I work the day shift.

4 Q February 9th, 2017, was that a regular workday
5 for you?

6 A Yes, it was.

7 Q And what time did you begin your shift?

8 A That would have been, Thursday I think it was,
9 so my start time would have been 7:00.

10 Q Okay. And do you recall at what point did you
11 become aware of the series of calls regarding an armed
12 subject in the neighborhood along and east of 82nd
13 Avenue in between Schuyler and Hancock?

14 A We had broke roll call. At 7:00, 7:15, roll
15 call was done. 7:25, 7:30, my sergeant said there was a
16 call progressing, a man with a gun, robbery, or
17 something like that.

18 It was the night sergeant. Then Sergeant
19 Nice and I were in the office. He briefed us briefly on
20 that. And then I grabbed -- a little bit later, a few
21 minutes, I don't know the exact time frame, but we got
22 in our cars and started rolling that way.

23 If I speak too softly, please let me know.
24 Sometimes I'll kind of ground out a little bit or I'll
25 talk too fast, and I apologize.

1 A GRAND JUROR: She's the one you're going
2 to have to apologize to.

3 BY MR. REES:

4 Q Now, sergeants in the precinct don't respond
5 obviously to every 911 call that patrol officers are
6 dispatched on; right?

7 A Correct.

8 Q So what's the reason why you decided to go out
9 to the area where these calls were coming from that
10 morning?

11 A Those type of calls are -- a person with a gun
12 or perimeter set, one, they are resource intensive, but,
13 two, they are very unpredictable. You don't know what's
14 going on.

15 So they want the bureau -- we want to have
16 people there. Start to slow down the calls. Evaluate
17 what's going on and have enough resources there to have
18 a safe resolution to whatever the event is.

19 And so our job is to respond to those
20 calls, help manage the scene, because our view is a
21 40,000-foot view of everything that goes on. We're
22 supposed to be the eyes and ears and helping make
23 decisions and relay information. That's our job.

24 Q And that morning, do you recall what
25 information you had generally about what was going on in

1 terms of the suspect and in terms of what crimes he
2 might have committed and whether they were armed or not?

3 A At that point, yeah. The radio traffic was
4 pretty heavy at that time. They got out the original
5 call with the robbery, and then progressed that they
6 found the person, and then they tried to challenge him,
7 and then he -- the suspect then went over a fence.

8 So they stopped once they tried to
9 challenge him and he was not cooperative, and then he
10 disappeared behind the fence.

11 Q Was it your understanding that this was the
12 subject you believed to be armed with a handgun?

13 A Yes.

14 Q What was that based on, do you recall?

15 A Witness statement of the victim. And that is
16 what the officer relayed.

17 Q Okay. And so can you show us on the
18 photographic diagram where you went that morning?

19 A So I originally responded from the precinct.
20 Sergeant Nice was ahead of me in his vehicle. So I
21 originally -- this is the Les Schwab.

22 I originally took a position -- came into
23 the neighborhood, kind of assessed where the perimeter
24 was set. And I took an initial perimeter position of 84
25 and Tillamook.

1 Q Okay. And what did you do at that
2 intersection?

3 A Um, I used my patrol vehicle. I noticed it
4 was very windy and very rainy. Squalls were coming
5 through. I just took a position along the bush line
6 just so I could take the observation down.

7 Eighty-four is not a through street right
8 here. It looks like it ends in an alleyway. I could
9 look this way and this way. As I was sitting there, I
10 could hear what -- for me what it sounded like was
11 somebody trying to go over a fence, a chain link fence.

12 That to me is an indication that this
13 person is running or it could have been a tree falling
14 down on the fence. It could have been a cat jumping
15 over something. But it was enough of a rattling fence,
16 when you've scaled fences yourself or you've heard
17 fences being scaled, it was that evident.

18 It was a strong enough indicator. And I
19 thought I saw some movement, but I just couldn't be sure
20 if it was the wind blowing the tree around. The weather
21 conditions were horrible at that point.

22 So I let that information go on the radio.
23 And I was concerned because I didn't see anything that
24 could go through here -- or I didn't see anything go
25 through here.

1 But at that point I knew the general
2 boundaries that we had for what we call our perimeter,
3 our northern boundary and our southern boundary. And
4 our western boundary was 82nd. So this was -- our
5 eastern boundary was 84.

6 So I asked for more units to respond to
7 cover the 82nd boundary line in case that was a person
8 that jumped. I didn't see it. They moved beyond our
9 perimeter containment.

10 Q How long did you stay at that location?

11 A Five, ten minutes before I called for another
12 officer to come once I heard that.

13 Q Okay. And then at some point you left that
14 perimeter location; correct?

15 A Yes.

16 Q And what triggered you to leave that location?

17 A So we're bringing the K-9 in and another part
18 of the search team. Then I briefed the officers where
19 they last saw this person at.

20 So I asked for another car to come take my
21 position so I could confer with them, confer with the
22 other sergeant what we had going on, what our options
23 are.

24 And that I had enough resources with us
25 with that search team to go into the blocks to

1 adequately search to make sure we could come to kind of
2 a basically peaceful resolution to whatever this event,
3 how it's unfolded.

4 Q And did you become part of what's been
5 described as a five-person team with the K-9 officer?

6 A Yes, I did.

7 Q And do you recall who else was a part of that
8 group?

9 A Initially, so the two officers that I had were
10 the two officers that were traffic officers that were
11 assigned to us, Sorenson and McGill or McHugill.

12 Q McHugill?

13 A I always get his name wrong.

14 So Officer Sorenson left. And McHugill
15 went with me and Officer Higginbotham and myself and the
16 K-9.

17 We originally searched where Officer
18 Ferner was at. And he said this was -- I don't know the
19 exact address where -- I can't recall the exact address
20 where he said that he last saw the suspect, but I
21 grabbed that group.

22 Talked to the K-9 officer, where we're at,
23 what we want to do, how we want to search, and what
24 points do we pause to reevaluate, if it needs to be a
25 SERT call-out.

1 We don't know if he's gone into a house or
2 he's locked into a shed and he's noncompliant, how we go
3 about doing that. I had officers bring other tools with
4 them or other weapons systems that we have to have a
5 longer stand-off, so we can have an ability to
6 communicate and have those options available to us.

7 So we went into that yard, and K-9
8 searched around the house. It was, like, a flag lot.
9 There was a car that was there that had the doors that
10 were opened. There was -- looked like the car got
11 broken into at some point and stuff was -- a car prowler,
12 if I remember right. The door was opened. That was
13 sitting in this long driveway.

14 We went around the house, the outside of
15 the house. At the house we searched the backyard, the
16 side yard that was enclosed by a fence.

17 And the dog was tracking to a point where
18 we observed what we thought was a point of egress that
19 the person went to climb over a fence. There was a
20 fence that was kind of mossed over, weathered, wet. It
21 was under some trees. And we -- you could see where
22 there was a foot mark that pushed down on that.

23 And at that point we didn't want -- we're
24 kind of looking to try to see to get over that fence.
25 It didn't -- we couldn't do it safely. We couldn't put

1 the dog over, put us over and get us over the fence.

2 So we egressed out. And then the K-9
3 said, "Hey, I think we can get to another yard that we
4 can cut through to come back into this yard."

5 At that point I picked up two other
6 officers. And then Mele and Hearst -- Hearst had our,
7 what we call are long gun or an AR. And Mele had a less
8 lethal shotgun, which deploys beanbag rounds.

9 Q All right. And we understand that eventually
10 the track led to the house that's pictured here at 8301
11 NE Hancock.

12 A Uh-huh. Yes.

13 Q Is that right?

14 A Yes.

15 Q Did you go to that location?

16 A Yes.

17 Q You can resume your seat.

18 And so what I want to ask you now as we
19 move forward is your recollection of what occurred once
20 you got to this location that we're looking at.

21 When you first arrived here, where did you
22 go?

23 A We had searched houses to the east of there,
24 the K-9, and came back in.

25 Q That would be that direction?

1 A Yes. Yes.

2 And we had a cursory search around the
3 front of the house and then we took the K-9 to the back
4 of the house.

5 And there was -- in the back of the house
6 the entry was -- I remember the box, and I remember
7 seeing -- in the corner there in the window, you'll see
8 an alarm sticker. That's what made me aware that there
9 was -- the place had an alarm.

10 That was registered with the city. And
11 then there was an actual placard itself and then the
12 alarm system that was on premise.

13 Q You mentioned a box. You're talking about
14 this box in the front?

15 A The parcel box, yes.

16 Q Did it look like there was a delivery at the
17 house or something?

18 A Yes, a delivery, and either it was delivered
19 that morning or the night before, something to that. To
20 me, it was indicating that nobody was there in that
21 house.

22 Q And you saw the alarm.

23 I guess, is this the alarm placard you are
24 referring to?

25 A There's one there, and I believe there's one

1 more towards to the front of the yard, too.

2 Q Okay. You saw that and then you went to the
3 backyard.

4 A To your -- pan to the right, and then there's
5 that gateway that goes through there.

6 Q Right.

7 A And then that gate will take you behind the
8 garage and then to the open area.

9 Q Okay. What did you observe back there?

10 A Large yard. A lot of things you find in a big
11 backward. A hot tub, a shed, just general things that
12 would be in somebody's backyard. Nothing different than
13 what would be there.

14 We had the dog search that area. The dog
15 did show interest in a shed that was back there. The
16 dog cast quite a bit. The handler said he had been in
17 here.

18 We saw a tarp. Something was under this
19 tarp. We called to it. Called to it. I mentioned that
20 he kind of pick something up to throw on to it to see if
21 it moved. It didn't. It was just stuff laying in the
22 shed. And the K-9 was pretty sure that he'd been in
23 there, the way the dog was acting.

24 Then my officers thought they heard
25 something across another house across the way. And they

1 were hearing something with a chain link fence. And
2 then somebody brought my attention to the backyard
3 where, hey, there's a window broke out, and the door
4 down here.

5 And there's -- it would be on the back of
6 the house. There's a stairwell that goes down into the
7 basement -- goes to the basement door.

8 And I remember looking at that door and I
9 had earlier heard breaking glass or something when we
10 were a block away. That now makes sense. Where it was
11 is there's this glass that was on the ground, and there
12 was an expanded metal that was on the door, on the
13 inside to keep people out. It was pushed in in the
14 upper right-hand corner back there.

15 What didn't make sense, what I was
16 thinking was nobody was in the house or I wasn't sure if
17 anybody was in the house because I noted that the alarm
18 was there. And the calls were made to the alarm.

19 I had radio check to see if that was an
20 active, valid alarmed house and we would respond to it.
21 And none of that -- there was no indication that
22 somebody had broke into that house and the alarm was
23 sounded. All of the doors were secured.

24 Q So after observing that, what did you do?

25 A We then saw that. The K-9 wanted to come back

1 out and search the yards to the west. Came back. At
2 that point there was nothing going on. We went in back
3 and searched other yards, other houses.

4 I had talked to the commander at the time
5 that was there. The lieutenant that was there was
6 acting captain and Sergeant Nice. Kind of said what I
7 had. I explained what I had in the back, and that I
8 don't know if anybody is in that house, if it's a fresh
9 sign of a burglary or it happened the night before.

10 If we need to search it, what I would like
11 to do is take a dog. And we have a camera they can put
12 on it, and the officer can wear a little wristband. It
13 has a microwave kind of setup. And you can send the dog
14 in the house, and he will search to see if there's
15 anybody in the house without having to push a
16 confrontation. Just let the dog see what's in there.

17 So the commander was -- we weighed our
18 different options that were there. We agreed to do
19 that. But I said I wanted to go search the rest of
20 these places over here because we had containment on the
21 house at that time.

22 We searched the other locations and up
23 into the house that was all of the way to the west.
24 Came back. So we went back around the backside of the
25 house again to see if -- I wasn't convinced anybody was

1 inside the house.

2 One, the alarm didn't go off; two, when I
3 had looked, I saw the glass that was -- that fell out
4 into the cement area that was -- as you walk down the
5 stairwell, the fence was pushed in -- or the grating was
6 pushed in. I'm looking. It didn't seem like you could
7 fit through that.

8 It didn't -- in my mind I couldn't unless
9 you were a teeny tiny person to go through there. And
10 the -- it didn't seem like there was the ability to do
11 that.

12 My officers went down there. They were
13 kind of looking. They didn't see anything. I asked if
14 they saw mud, if they saw any type of tracks. If it was
15 a bare floor or a lighter-colored floor, you should be
16 able to see something.

17 We had a discussion. He would like to go
18 in just to secure this or move back. I didn't feel
19 comfortable putting my officers in there. They tried to
20 push the door open, and there was something that was
21 blocking the door.

22 I don't know if it was locked or if it was
23 something that was there. There was something that was
24 hitting that door. About the time they really started
25 to wiggle on it is when the alarm went off inside the

1 house.

2 Q Audible alarm?

3 A Audible alarm.

4 Q So you heard it?

5 A I heard the audible alarm from the back.

6 Radio says, "Alarm just went off." Then another officer
7 had mentioned that they are hearing clicking sounds back
8 and forth, like it was a fire alarm going chirp-chirp or
9 something like that.

10 Q Like -- if I can interrupt.

11 So you hear the audible alarm.

12 A Yes.

13 Q Then you said a radio said there's an alarm
14 going off.

15 A Yes.

16 Q So did you know how, how that's connected --
17 how does radio know the alarm is going off, or do you
18 know?

19 A So, well, the alarms, if they are permitted
20 with us, they will go to whatever provider the security
21 provider is for the house.

22 Q The alarm company?

23 A The alarm company. If they get a trigger,
24 then they, hey, we got a trigger at this house and then
25 they call dispatch. We just had an alarm activation at

1 this house.

2 Q The alarm company calls 911 and it's broadcast
3 to you?

4 A Yes.

5 Q So do you hear that around the same time that
6 you are hearing the alarm going off?

7 A Just a few moments later. It was a few
8 moments later. Yeah. I remember earlier, asking him
9 earlier on the radio if there was any alarm trips in the
10 house, and there wasn't any at that time.

11 Q And if I may, just -- you don't know, of
12 course, whether the police tripped the alarm when they
13 were kind of checking out that basement door or whether
14 the subject was inside the house had tripped the alarm;
15 right?

16 A Right.

17 Q I mean, all you know is it's tripped?

18 A I made the assumption because at that time
19 they pushed hard on that door that we caused that alarm.
20 That was my assumption.

21 Q That was your assumption.

22 And then did you request the alarm company
23 cut or reset the alarm?

24 A No.

25 Q Did the alarm stop --

1 A I don't know.

2 Q -- the audible alarm?

3 A I remember hearing something, but then I'm not
4 sure that sequence -- I can't remember to that detail of
5 that sequence what happened. But I remember I wanted to
6 go back out and talk to the commander at the time where
7 they were at saying this is what we have now. I'm
8 pretty sure there's nobody in this house because I think
9 we caused that alarm.

10 Q Okay. And so that's what you did.

11 Where did you do that?

12 A So we went from the back of the house,
13 egressed through -- along the backside and then through
14 the gate where we entered right here.

15 Q This red gate.

16 A Yes. We came back through here. K-9 was
17 ahead of me. I was next in line or somebody was real
18 close in front of me.

19 And that as we rounded this corner,
20 somebody says, "Hey," and it brought my attention, and I
21 looked in. You can zoom out.

22 Q I'll give you another angle, if I can.

23 A Okay.

24 Q Is that about right?

25 A Yes. So we came out through here. The K-9 --

1 our movement comes to the south and was -- we're
2 sweeping around. Somebody says, "Hey," referring to
3 this window being open.

4 Then I stopped and think to myself, I
5 remember that window being closed. I don't remember the
6 screen laying on the ground. I don't remember all that.

7 Then there was officers over here started
8 telling somebody to get their hands up. Get their hands
9 up. Get their hands up. There's all these commands
10 going on.

11 The K-9 moved out. I moved out and other
12 officers came through. For a moment, I didn't know -- I
13 remember this hole being solid here in the backside for
14 a second when I was here. But there -- I wasn't sure if
15 it was solid or not. I kind of came back. Quickly came
16 around while everybody was challenging.

17 Q By "solid," do you mean you didn't know
18 whether someone could really actually run between the
19 house and the garage?

20 A Right. At first I didn't -- I couldn't
21 remember if somebody could or not. But I wanted to get
22 in the backside to let them know in case there was an
23 avenue to go back, an escape to go back through the
24 backside. I remember it was solid. Then I came back
25 around and we ended up in here.

1 Q So you kind of swept your hand across the
2 driveway.

3 A Uh-huh.

4 Q Do you know about where you ended up?

5 A I want to say I was right in here, about mid
6 on the garage. We had officers here, the K-9 officer.
7 I think Officer Higginbotham would have been closest to
8 the house.

9 Officer Hearst, the K-9 and myself
10 initially when, when they began giving him orders back
11 in here once I repositioned myself here. Then I had
12 other officers -- I believe three officers that were
13 here that had an angle this way. And I had officers
14 with an angle into the suspect -- the subject, and then
15 other officers that could have an angle, line of sight
16 along the garage where they had more of a position --
17 had an advantage position there.

18 Q And could you see on that window you pointed
19 to, on the side of the house by the garage, could you
20 see that it appeared that something had happened to the
21 screen or the sliding window?

22 A I noticed the window was opened. It wasn't
23 before. I'm remembering when I came across, I don't
24 remember that being open. And then there's a screen
25 laying on the ground.

1 Q And do you remember who at that point was
2 giving verbal commands?

3 A I don't remember who exactly. I remember
4 hearing voices and seeing, but I remember there's
5 officers here that were instructing him, giving him
6 commands, getting his hands up, and there was this back
7 and forth.

8 Q And did you have your weapon drawn at that
9 point?

10 A I think I had my weapon. I think I had --
11 initially, had my weapon out. And I holstered my weapon
12 and kind of stepped back to manage this custody team
13 that we were getting ready to form.

14 Q So you holstered your weapon.

15 A I can't remember whether I did. I want to
16 think I did, but I just don't remember if I had it out
17 or not.

18 Q Based on the team that you had formed when you
19 began the dog track, do you remember who was the lethal
20 cover person here versus who was on the custody team?

21 A That would have been Hearst.

22 Q Officer Hearst would be lethal cover?

23 A He had his AR, and that would give us a
24 standoff opportunity.

25 Q Were you able to see him visually in the

1 driveway?

2 A Officer Hearst?

3 Q Yes.

4 A I remember him to my left.

5 Q To your left.

6 A I remember him to my left. There was the K-9
7 officer, and Officer Hearst was to my left, and I
8 believe it was Officer Higginbotham was to my left.

9 Q Did you believe that Officer Hearst was in a
10 position to provide lethal cover in this situation?

11 A Yes.

12 Q Okay. You can resume your seat, Police
13 Sergeant.

14 And then when you are ready -- if you
15 could just pick up then where we were as you now moved
16 to the driveway. You said you could hear commands.
17 Officer Hearst is the lethal cover.

18 What do you see happen?

19 A As I come around and I see the subject there,
20 I see his face. I see the hoodie that he had on. His
21 eyes were really big and his hands were going up. His
22 hands were going down.

23 And I told him to stay on his knees and to
24 come out, and then he got up to kind of walk out. We're
25 ordering him, "No, to get your hands up and to get on

1 your knees to come out." And that allows us to have a
2 better advantage when we're taking somebody into
3 custody.

4 Q Did you believe that person to be the subject
5 --

6 A Yes.

7 Q -- of the search?

8 A Yes.

9 Q Why?

10 A The description they had was -- the clothing
11 matched the description. It matched the general overall
12 view of this person, who it was, and everybody else was
13 part of that.

14 Q And did you believe this person to be -- did
15 you assume them to be armed?

16 A Yes.

17 Q With a firearm?

18 A Yes.

19 Q And why would that be?

20 A Um, it fit the description. We went through
21 areas with the dog that didn't locate any of these
22 articles if he tried to ditch a gun at that point in
23 time.

24 The dogs do track or do article searches.
25 And those article searches will find if they have

1 clothing, weapons that they've used before and have
2 tried to hide them and conceal them. And that dog had
3 followed where that person had gone to.

4 Q And so when you were looking at this and you
5 said that you sort of, I think you said, stepped back to
6 watch the scene. You are the sergeant. Others are
7 actively engaging.

8 What are you thinking in your mind when
9 you're seeing this happen in terms of threat, danger,
10 officer safety when you are looking at this?

11 A When I had came around the corner, we were
12 very surprised that there was somebody there. I thought
13 that we missed a search. I thought that we missed this
14 person hiding in the corner.

15 In fact, I couldn't understand how this
16 person got there. I was trying to catch up in my mind.
17 We have him there. And Sergeant Nice had his AR, and he
18 came from behind me and started giving the person
19 instructions.

20 At that point I knew there was enough
21 people there telling him what to do. My job, and what I
22 wanted to do was to orchestrate this custody team that
23 we've done hundreds of times and hundreds of times over
24 of bringing people into custody.

25 And I saw that I had my officers at the

1 corner of the garage that had a variety of weapon
2 systems there that we could use if needed.

3 And I saw the officers to my left, and I
4 knew that they were covering that person and giving them
5 instructions. I wanted to ensure we didn't end up in a
6 crossfire where we would have, if we ended up shooting,
7 we would have a crossfire where we have bullets flying a
8 bunch of different directions.

9 I wanted to make sure we were secure in
10 that scene. That's my job is to manage that, and I
11 stepped back from that.

12 As I'm looking over to make sure that we
13 don't have -- somebody is not in front of the barrel or
14 in front of a muzzle they didn't know was pointed down
15 range, that they weren't endangering themselves in this.

16 I look over, and I'm stepping back and
17 kind of I'm managing that, I hear one large gunshot,
18 another one and a third one. And I'm -- as I'm looking,
19 I remember my head just ringing, just horrible with a
20 gunshot. I remember snapping my head over real quick.

21 And I remember Officer Hearst was down in
22 a shooting position. And I remember watching, I think
23 it was probably the last shell ejected as I looked over.

24 And then I looked to the subject, and I
25 saw him. He had come out and he had slumped down. His

1 face was falling forward. He had one hand in -- his
2 right hand was kind of to his right, on his right side
3 around his waistband. His other, left hand, as he fell
4 forward, slumped forward, his other hand was right at
5 his waistline. Then he went there.

6 I remember pausing for a second and just
7 kind of assessing what we had. I immediately grabbed
8 Hearst and had him extracted out of there because of
9 what had just happened.

10 Somebody announced on the radio, "Shots
11 fired and the subject was down." A few seconds later, I
12 called for code three medical. And we were assessing.
13 And then we made a quick plan to get the person that was
14 there, get the subject into custody and provide any
15 medical treatment that we needed.

16 So we were able to grab one of our
17 ballistic shields that we keep in our sergeant cars.
18 And we developed a plan to come up. And one officer
19 would hold him and another officer would handcuff one
20 side and the other officer would handcuff the other
21 side. And the other person would provide lethal cover.

22 And then I could see there's some blood
23 kind of pooling underneath him. And I instructed my
24 officers to handcuff him, put him in the post-shooting
25 position. Check on him.

1 To me, it was -- obviously, he had -- he
2 was deceased, but that's a medical call that was made,
3 the doctors. But we put him in the post-shooting
4 position. He was handcuffed in the post-shooting
5 position.

6 And at that point in time, somebody
7 pointed out that there was a firearm that was next to
8 him within arm's reach, somewhere right around -- he was
9 laying here. I just don't remember the distance. But
10 he's here, and just to his right, right around here is
11 where this is, right in this edge line.

12 Q That's when you saw the gun?

13 A That's when I saw the gun.

14 At that point because it was raining and
15 all these things were going on, knowing that the
16 investigation was there and we're all witness to this, I
17 had Officer Higginbotham at least just take general
18 pictures of the area with his iPhone because that was
19 the quickest way to document the scene.

20 Then we started processing it and getting
21 the tape up, getting ready for medical to come up. Once
22 medical got there -- it was Officer Higginbotham had
23 medical come and check on the person.

24 And then my job as a supervisor in a
25 deadly force encounter as happened before is to separate

1 the officers. Don't talk about the incident. I
2 remember going to Hearst. And his eyes just -- I went
3 to check on him just to make sure you're okay and tell
4 me you're okay.

5 Unless you've been involved in deadly
6 force encounters, you just -- you don't -- it's hard to
7 describe. And there's nothing I could do. I couldn't
8 talk to him about anything. I couldn't do anything.

9 Just gave him a hug and told him you are
10 going to be okay, and we're going to get you everything
11 that we need here, to talk with him about it, and talk
12 to other officers and try to -- with the supervisors
13 that are there at the scene to make sure that we go
14 through our post-shooting protocols and make sure this
15 scene is secured.

16 Make sure that everything that's there is
17 safe for the investigation and safe. There's -- nobody
18 is talking about what's going on. So it was very
19 difficult to do that.

20 But we got more people to the scene and
21 the other sergeants arrived, and we were able to get
22 detectives there. Through our protocols and everybody
23 responding, we eventually got back to the precinct.

24 Q Okay. How was Officer Hearst in terms of his
25 demeanor after the shooting?

1 A Very emotional. It was very impactful to him,
2 like anybody would.

3 I mean, there's a difference when you
4 use -- we go into this job knowing that it could happen.
5 It's just a matter of when. But it's just -- it does
6 happen. And you don't want to, but there's a line where
7 it happens.

8 Everybody has that line in their mind
9 where they have to use -- where the force is at. I've
10 been to that, up to that threshold, and it's -- you make
11 sure everybody is safe and you are doing the right
12 thing.

13 We're reacting to what other people do, to
14 their actions even though we are instructing them to do
15 things.

16 MR. REES: I have one more question. You
17 could take a quick break.

18 (Brief recess.)

19 BY MR. REES:

20 Q If I could just go back to those seconds
21 before Officer Hearst used deadly force in this case.

22 My question was really, if you can answer
23 this for us as non-police, as lay people, when you are
24 there in the driveway, and you are hearing these
25 commands from the officers, and now you're seeing the

1 subject between the house and the garage, for you as a
2 police sergeant, what are you thinking about this
3 situation in terms of danger to officers and the public?

4 Is this a dangerous situation or not? And
5 are you thinking this is a situation where deadly force
6 might be used or are you thinking that, you know, it's
7 not that kind of situation? If you can answer that
8 question.

9 A This person was involved in an armed robbery.
10 And our job is to keep citizens safe. Our job is to go
11 through and make sure that people don't get injured. We
12 have a responsibility to get people into custody that
13 commit these crimes.

14 And I believe, and everybody else there
15 believes that that was the right person. We had
16 identified him. Those can be high risk. They are
17 called high risk custody for a reason.

18 Because there was a potential that this
19 person or a person may not listen to you. May not abide
20 by your commands. May try to flee. May try to escape.

21 I remember looking at his eyes. I
22 remember him watching. I remember him -- I can replay
23 hundreds upon hundreds of people we've taken into
24 custody on high risk scenarios, when they are coming out
25 of a stolen car, if they are coming out of a house that

1 we've challenged.

2 You have the overwhelming resources of all
3 that we have there, and they are, like, what do you want
4 us to do? Their hands are up. They come out. They are
5 very compliant with that. He wasn't that way.

6 He was looking. He was thinking. He was
7 trying to formulate a plan, I believe in his mind. I
8 can't read minds; I can read actions. I can read
9 people's verbal/nonverbal.

10 And most -- a high percentage of time when
11 we do a high risk stop like this, people listen. People
12 comply, and they are taken into custody. No force is
13 used.

14 But I believe his intent was something
15 different. And that is why I can't speak for what
16 Officer Hearst, why he made the decision where he was
17 at. But in my mind, there was a reason why he did. And
18 it was to keep us safe and to keep the officers safe
19 because he posed a clear threat to us.

20 Q One other question.

21 We heard from Detective Kammerer who
22 explained just by way of the protocol that's in place
23 after a shooting.

24 Detective Kammerer explained one of the
25 things that happens is that a communication restriction

1 order is then put in place immediately.

2 A Yes.

3 Q Afterwards, right, restricting on who
4 witnesses to a shooting like yourself who can talk to
5 about the incident?

6 A Correct.

7 Q Until a decision is made by a Grand Jury.

8 A Correct.

9 Q And so is this the communication order that
10 you were presented with on the day of the shooting and
11 that you signed?

12 A Yes.

13 Q Okay.

14 A I have complied with this outline in here, who
15 I can and who I can't talk to.

16 Q And so it allows you to speak to your spouse,
17 a member of clergy, a therapist, but not to discuss to
18 other witnesses in the case or bureau members; correct?

19 A Correct.

20 Q And so as a result of this, it's the case,
21 isn't it, that unlike other situations you're involved
22 in, you only know what you saw, what you heard.

23 You haven't had the opportunity to look at
24 other reports or talk to other people about what
25 happened; correct?

1 A Yes. I've adhered to that. And then I really
2 try to isolate myself from the news media reports.
3 Sometimes you just -- you just look on your phone, it's
4 like, what's this? I wish I wouldn't have read that, or
5 the comments and things like that. It's just -- yeah.

6 Q So that would be -- knowing that these orders
7 are put in place -- I just kind of want to follow up on
8 what you said about your contact with Officer Hearst.

9 You knew you really couldn't get into a
10 huge conversation with him or anything at that point
11 because of this order?

12 A No. Well, knowing that, one, it's pending
13 but, two, the policy is to separate witnesses and not
14 have them talk about it. That is my job as a sergeant.

15 So I'm just -- you know, he knew I
16 couldn't talk about it. He goes, "I know you can't tell
17 me what's up there. I know that."

18 I said, "You're right, I can't. But
19 you're going to be okay. We're going to get through
20 this."

21 And I just gave him a hug, and we
22 discontinued that and had somebody sit with him that was
23 not involved.

24 MR. REES: Okay. Any other questions from
25 the Grand Jury?

1 A GRAND JUROR: Yes. You said he was in a
2 shooting position.

3 Does that mean they go down on one knee
4 when they use their long rifles?

5 THE WITNESS: No. They train in a variety
6 of stances depending upon from laying on the ground to
7 standing up. He was in a standing position, but he was
8 just leaning forward, bracing himself (indicating).

9 A GRAND JUROR: All right.

10 MR. REES: All right. I'm not seeing any
11 other questions, Sergeant. Thank you very much for
12 coming in this morning.

13 A GRAND JUROR: Thank you.

14 THE WITNESS: Thank you for doing your
15 service. It's an honor for you guys to do these things.
16 It really is. It's tough when I get it, but thank you
17 for doing it.

18 A GRAND JUROR: Thank you.

19

20

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25

1 DANI TSUBOI,
2 a witness called on behalf of the State, having been
3 first duly sworn, was examined and testified as follows:
4

5 EXAMINATION

6 BY MR. AUXIER:

7 Q All right. To start out, can you state and
8 spell your name?

9 A Yes. My name is Dani Tsuboi. First name is
10 D-A-N-I. Last name is T-S-U-B-O-I.

11 Q And what do you do for work?

12 A I work as a forensic scientist for the Oregon
13 State Police Crime Lab.

14 Q How long have you been working as a forensic
15 scientist with OSP?

16 A I've been at this laboratory for about seven
17 years.

18 Q What did you do before that?

19 A I was a forensic alcohol analyst for the Los
20 Angeles County Sheriff's Department.

21 Q And tell us about your educational background.

22 A I have a Bachelor of science degree in
23 molecular and cellular biology from the California State
24 University at Long Beach. And I have all of the
25 required class work to be a qualified DNA analyst under

1 FBI quality assurance standards.

2 Q Talk to us about that additional training.

3 What do you do to become qualified to be a
4 DNA analyst?

5 A Well, you have to have specialized classes in
6 genetic molecular biology, biochemistry, biological
7 statistics. We have to have annual training outside of
8 what we do in the laboratory.

9 I do things like attend classes in
10 population genetics. Do workshops in mixture
11 interpretation. I go to conferences. I go to software
12 trainings. This has to be done at annual events.

13 So we are constantly getting new
14 education. And we also have requirements of being
15 educated in literature reviews. So we want to see what
16 new scientific technologies in our field is happening.

17 So every month we go over scientific
18 articles as a group in the DNA section to kind of see
19 what's up and coming in DNA technology.

20 Q When you joined the Oregon State Police seven
21 years ago, did you go straight to the DNA analysis
22 section?

23 A Yes, I did.

24 Q And what sort of training did you do with OSP
25 when you joined the DNA section?

1 A So the DNA section has a modular style
2 training program. You have an assigned coach. You go
3 through practical exercises that's close to case work.
4 And it is a yearlong program, six months to a yearlong
5 program in which you go through practical exercises,
6 written exercises, discussions with your coach.

7 You go through all of the sections in the
8 laboratory and see what they do. You have to pass a
9 written exam, a written final exam, a competency test
10 and annual proficiency test and a moot court to make
11 sure that you are proficient and competent in DNA
12 analysis.

13 Q And can you estimate how many cases you've
14 worked on in your seven years?

15 A I haven't tracked, but I'm pretty sure it is
16 over 1,000 at this point.

17 Q And we're here to discuss the analysis you did
18 with respect to this officer-involved shooting, and
19 specifically the analysis you did on a replica firearm
20 that was seized by the Portland Police.

21 Can you tell us what the Oregon State
22 Police Crime Lab did upon receipt of this gun in terms
23 of DNA analysis?

24 A Sure.

25 Q Maybe beginning with Brittany Breshears?

1 A Brittany Breshears is our latent print
2 examiner. She's a forensic scientist in the latent
3 print section.

4 So she took that firearm. And before
5 doing her latent print examination, she swabbed the
6 textured areas of the handle of the firearm. Those are
7 the areas where it's kind of raised and kind of
8 scratchy.

9 So that surface isn't very good for latent
10 print examination. And that's also a very good surface
11 to leave DNA, so she swabbed those on sterile swabs,
12 repackaged them and gave them to me.

13 I also received blood standards for
14 Quanice Hayes from the Portland Police Bureau to use in
15 the comparison of the DNA that I received.

16 Q When a forensic scientist swabbing a gun for
17 DNA conducts that procedure, what steps do they do to
18 make sure that they have a good, workable sample that's
19 not contaminated in any way?

20 A We have techniques and procedures, the entire
21 laboratory to make sure that there's no contamination
22 and to assure quality samples.

23 So in Brittany's work area, she cleans all
24 of the surface areas and her tools with bleach and then
25 ethanol to kill any residual DNA or any chemicals that

1 might be on it that might affect the DNA.

2 She opens sterile swabs, which have been
3 packaged and processed in a clean and sterile
4 environment to make sure that there's not DNA from
5 that -- from that process. And she also uses gloves,
6 laboratory coats, eye protective wear.

7 Sometimes I don't know if she does, but
8 some people wear face masks. And they also work in a
9 contained area where people can't just come in and out.
10 It's a locked area specially used for the laboratory
11 examinations.

12 Q When a forensic scientist swabs a gun for DNA,
13 does the scientist avoid areas that may be contaminated
14 with blood or other bodily fluids?

15 A If there's -- they'll do a visual examination
16 first to see if there's any kind of discoloration that
17 might be consistent with a bodily fluid or even a
18 toolmark.

19 And they'll avoid that if that area needs
20 to be analyzed further for specific blood DNA or
21 serology of blood, saliva, semen, et cetera.

22 She did not see any discoloration
23 according to her notes. So she just swabbed that
24 textured area that looks pristine rather than with some
25 kind of discoloration or toolmark.

1 Q And what kind of DNA then are we looking for
2 when we swab that area?

3 A We are looking for nuclear DNA. There are two
4 types of DNA that can be analyzed forensically:
5 Mitochondrial and nuclear DNA. We do not do
6 mitochondrial DNA analysis. That's what you would find
7 in your fingernails or shafts of your hair.

8 Nuclear DNA is found in almost all of the
9 cells in your body. That's your DNA blueprint, which
10 kind of puts all of your bodily functions, your physical
11 characteristics together, and so that is unique to you.
12 And that is the type of DNA that we're looking for.

13 Q When the scientist is avoiding areas of bodily
14 fluids in their swabbing, that suggests to me that they
15 are looking for epithelial cells that have been left on
16 the handgun?

17 Can you explain what that is?

18 A Epithelial cells are your skin cells. And
19 then there's also, not just your skin cells, but the
20 sweat cells or sweats -- oils that can be associated
21 with that, anything besides saliva or, or blood or
22 semen.

23 Q And by reviewing the notes, everything
24 suggests that Ms. Breshears was able to give you a valid
25 testable sample that complied with all of the protocols

1 from your office?

2 A Yes.

3 Q And talk to us about your analysis of those
4 DNA swabs that Ms. Breshears took.

5 A Sure.

6 So after I took the swabs, it goes through
7 the DNA analysis. We use what is called Polymerase
8 Chain Reaction Based Short Tandem Repeat Typing.

9 It is a DNA process. So we're not looking
10 at your genes. We're looking at the spaces in between
11 your genes.

12 So this DNA profile that I might be able
13 to develop from anyone will not tell me anything besides
14 whether the contributor might be male or female. So
15 in -- and these spaces in between your genes are
16 repeating patterns.

17 And each person has a variable number of
18 repeat units. So we can count those repeat units in
19 these spaces and develop what is called a DNA profile
20 that is unique to this piece of evidence.

21 The whole process, we will first -- with
22 this swab, I try and get all of the biological material,
23 all of that by a chemical process which breaks open any
24 cells that might be on there and releases all of the
25 DNA.

1 We collect that DNA with robotics, which
2 acts kind of like a magnet dragging through sand, which
3 picks up all of the iron filings and leaves all of the
4 sand there, and we purify it that way.

5 And then we use a quantification step,
6 which allows us to see how much DNA we might have
7 recovered. And that will also optimize the next step,
8 which is an amplification step.

9 So the amplification step targets 15 of
10 those locations, those repeating locations. And it
11 copies them over and over again until it allows us to
12 have enough fragments of those repeating patterns to
13 see -- to actually visualize them in another instrument
14 which acts kind of like a Coinstar machine.

15 So all those fragments are thrown into
16 this instrument, and it separates them out by the size
17 and number of repeating patterns, and then we can
18 develop a profile.

19 So once we have that DNA profile from the
20 evidence, we can do that exact same process with a known
21 standard, a known DNA standard of someone. Then we can
22 compare their known DNA profile to the evidence profile
23 to see how likely that person contributed to that
24 evidence profile.

25 Q So you used that procedure to develop a DNA

1 profile off the blood standard that was collected from
2 Mr. Hayes?

3 A Yes.

4 Q And then you also developed DNA profiles off
5 of the DNA swab from the gun?

6 A We still considered just one profile from the
7 evidence. It's just -- it was a mixture. So there
8 was -- we can tell that there was more than one
9 contributor in that DNA profile from the evidence. But
10 it's still one profile.

11 Q And you compared the DNA profile from the gun
12 to the DNA profile taken from Mr. Hayes' blood standard?

13 A Correct.

14 Q Were they a match?

15 A I wouldn't call a match, but the DNA profile
16 from the blood standard could not be excluded as a
17 contributor to that mixture profile.

18 So in some picture profiles, there are
19 different amounts of DNA. Then we can kind of see that
20 one person might be a major contributor and one might be
21 a minor contributor or we might have predominant
22 contributors, but this profile had at least four
23 individuals.

24 And because of the mixture complexity and
25 the amount of DNA there, we couldn't discern a single

1 contributor. So in that sense, I can't say that that
2 standard profile matched. But that standard profile
3 could not be excluded as a contributor from that
4 evidence profile.

5 Q You articulate the likelihood that -- the
6 probability that it is Mr. Hayes' DNA profile.

7 A Yes. So we use frequency estimates. We can't
8 test everyone on the planet for their DNA. So what we
9 do is we use statistics to see how rare or how common a
10 DNA profile is.

11 The FBI has compiled a database of how
12 frequently some of these repeat patterns would appear in
13 a population. And we use all of those frequency
14 estimates to calculate a statistic, a likelihood ratio
15 to see, given this piece of evidence, this DNA profile
16 evidence, how likely it is that Quanice Hayes and three
17 other individuals might be rather than four unknown
18 individuals.

19 So in this case, it is at least one
20 billion 360 million times more likely that the DNA
21 profile is from Quanice Hayes and three unknown,
22 unrelated individuals rather than four unknown,
23 unrelated individuals.

24 Q Is that a pretty high probability that it was
25 Mr. Hayes' DNA profile?

1 A I think it shows strong support.

2 Q And there's a database called CODIS?

3 A Correct.

4 Q Can you explain what that is?

5 A Yes. CODIS is our Combined DNA Index System.

6 And it's a database of known profiles of known people
7 that have been either ordered by law or have voluntarily
8 put their profiles into the database to search for
9 missing persons to solve unsolved cases.

10 So we have a state level database where we
11 have profiles that have -- that contain profiles that
12 have been ordered by the state or voluntarily given and
13 forensic profiles of profiles from evidence that we can
14 put into the database to search against either those
15 known profiles or other evidence samples.

16 And then some of those samples, if they
17 qualify, go up to the national level, which is still the
18 CODIS database, but it's the national database. And
19 they get searched nationally to see if there's any
20 matching individuals or other matching forensic
21 profiles.

22 Q And the profile that you drew off the gun, it
23 wasn't suitable for entry into that database?

24 A No. There's strict requirements to enter
25 samples into that national database and the state

1 database.

2 Because this is a profile of four
3 contributors, if we were to enter that in, it's just too
4 complex for that software to really handle, and it might
5 give spurious hits or it might even not qualify because
6 of -- because of that mixture complexity.

7 Q But the DNA profile from the gun was suitable
8 for a direct comparison with the blood standard DNA
9 profile for Mr. Hayes?

10 A Correct.

11 Q And there was strong probability that
12 Mr. Hayes' DNA was on the gun?

13 A Yes.

14 MR. AUXIER: Any questions from the Grand
15 Jury?

16 MR. REES: I don't know if you can put
17 this in a layperson's language, but it sounds as if you
18 found a mixture of DNA on the gun.

19 THE WITNESS: Correct.

20 MR. REES: Four different individuals?

21 THE WITNESS: Correct.

22 MR. REES: None of those profiles were of
23 such a quality that they could be entered into the CODIS
24 database?

25 THE WITNESS: Correct.

1 MR. REES: But when compared against the
2 standard from Quanice Hayes, there's an extraordinarily
3 high probability that he is one of the four
4 contributors.

5 THE WITNESS: That you would see that's
6 evidence of DNA profile if he and three others were
7 contributors, rather than just four random people.

8 MR. REES: Right.

9 THE WITNESS: And not just -- we don't
10 just compare him, but we also compare the entire
11 laboratory staff, too. It goes through -- to make sure
12 that there's no contamination.

13 Because sometimes -- DNA technology are so
14 sensitive. You can have two cells and develop a
15 profile. So we want to make sure that we're getting
16 quality data. So we go through our -- the staff has a
17 database to make sure that there's no contamination.

18 A GRAND JUROR: Is there any way of
19 determining how old that other DNA was?

20 THE WITNESS: We cannot determine the time
21 of any of that DNA.

22 MR. REES: The source of the DNA as you
23 explained could be a single skin cell, right, that
24 contains full genetic makeup of a person?

25 THE WITNESS: Yes.

1 MR. REES: The nuclear DNA?

2 THE WITNESS: Yes.

3 MR. REES: And those skin cells can be
4 transferred by touch. Can be from some contact at
5 sometime in the past by some individual. It could even
6 be transferred from one individual to a surface after
7 they have contact with other persons; right?

8 THE WITNESS: Correct. That's not as --
9 we haven't seen as much evidence that -- of that, but
10 studies have shown that you can -- that transfer can
11 take place.

12 MR. AUXIER: Thanks, Dani. That's it.

13 A GRAND JUROR: Thank you.

14 A GRAND JUROR: Where is your lab located?

15 THE WITNESS: We have five laboratories in
16 the state. Our laboratory is the only laboratory that
17 does DNA is in Clackamas.

18 (Luncheon recess 11:30 a.m. to 1:00 p.m.)

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1 degree to be a forensic scientist. It can be chemistry
2 or biology or whatever, but then we also have
3 specialized training within the different fields we work
4 in that we have to complete.

5 Q And what specialized training have you had in
6 order to become a firearms examiner?

7 A Yes. So we have a training, it's managed by
8 an organization called the Association of Firearm and
9 Toolmark Examiners. It's an international body that
10 oversees this type of forensic work.

11 So it's about a two-year, a
12 year-and-a-half, two-year program to complete the
13 training program where it is training that's provided by
14 our laboratory staff under that training program.

15 Again, that was almost 18 years ago. But
16 then we also go to continual education training by
17 different fire manufacturers -- ammunition
18 manufacturers. And then we go to regular training
19 conferences sponsored by -- such as the Northwest
20 Association of Forensic Scientists, the Association of
21 Firearm and Toolmark Examiners.

22 So there's the initial training and then
23 there's a continued training that we all participate in.

24 Q And do you have access to a collection or
25 library of firearms, as well as the ability to look at

1 manufacturer's materials related to different firearms
2 that they produce?

3 A Yes. We actually maintain a reference
4 collection of firearms. So we have about 1500 different
5 firearms, of different handguns, rifles, shotguns that
6 we keep in a vault in our laboratory.

7 We use those for training, for education.
8 We also use them for our case work if we need to.
9 Substitute a similar type of gun or do some type of
10 testing, then we will use that type of firearm.

11 But then we also have a lot of kind of our
12 reference collection of reference materials by the
13 different firearm brochures, firearm magazines, all of
14 the different publications that come out with that to
15 keep us kind of -- it's the best way to keep abreast of
16 the industry that's continually changing.

17 Q In this case, related to an officer-involved
18 shooting, were you asked to examine a Colt AR-15 rifle
19 submitted by Detective Erik Kammerer?

20 A Yes, I was.

21 Q And does this photograph show a Colt AR-15
22 semiautomatic rifle?

23 A Yes, it does.

24 Q All right. And is that, in fact, the rifle
25 that you examined?

1 A Yes. I mean, I can't see -- I do recognize
2 East Precinct, the weapon's number on the stock of it
3 here. But, yes, that looks like their version or their
4 picture of it that was taken before it was submitted to
5 our laboratory.

6 Q Okay. I'll pass this photo around to the
7 Grand Jury.

8 Just tell us a little bit about the
9 characteristics of that rifle.

10 A Yes. So, so it's a rifle manufactured by the
11 Colt Manufacturing Company. AR-15 is the model of it.
12 That stands for the Armalite Model 15. That was the
13 original inventor of the firearm was the Armalite
14 Company. So a lot of people think that's automatic
15 rifle or something like that, but it stands for that.

16 Initially, it was a military firearm
17 designed for the United States military. It first came
18 out in the '60s, early '60s, late '50s, early '60s.
19 It's a very popular firearm with law enforcement because
20 it's easy to train on. It's accurate. It's easy to
21 maintain by different departments on that.

22 It holds -- it can be configured anywhere
23 from a 10 to 30-round magazine, so it is a semiautomatic
24 gun. The cartridges are loaded into a magazine. And
25 then the magazine gets fed into the gun and then it's

1 semiautomatic. So every time you pull the trigger, the
2 rifle is going to shoot another cartridge out.

3 This fires a cartridge that's called the
4 .223 Remington. It's the caliber of the cartridge of
5 that. It's a small, small bullet, about approximately
6 .22 inches in diameter, about 25 millimeters in our
7 metric system.

8 It's, like I said, it's a very popular law
9 enforcement firearm. In fact, our own agency, the
10 Oregon State Police, carries those as well, too.

11 Q Is it correct that one of the primary
12 differences between this rifle and, say, a .22 caliber
13 handgun, which would shoot about the same size cartridge
14 is that the rifle sends the bullet out at a much higher
15 velocity or speed than the handgun?

16 A Yes. So they are -- both would be -- like
17 when we say "caliber," we say -- it is about .22 inches
18 in diameter. That's part of the story. That's the
19 diameter of the bullet.

20 But when we say a .223 Remington, that
21 gives us also some indication of the size of the
22 cartridge. So the cartridge is like an individual unit
23 of ammunition that gets loaded in the gun.

24 So the cartridge for this type of gun,
25 it's a bigger cartridge, holds more gunpowder. And that

1 gunpowder is -- when it burns, it pushes the bullet out.

2 So that's what's going to push the bullets
3 out. This rifle is a lot faster than, say, like just a
4 .22, like a plinking rifle or something like that that
5 you see for squirrel hunting.

6 Q In addition to the rifle, what other items of
7 evidence were submitted to the lab for your inspection
8 related to the rifle?

9 A Yes. Let me refer to my notes here.

10 So when a Portland police officer sends us
11 a list of the evidence and then requests what he wants
12 examined.

13 So in this I received a rifle, three fired
14 cartridge cases. So that's going to be that --
15 basically we have the bullet that goes out the barrel.
16 The cartridge case, when this gun fires, will be ejected
17 out the side of the fireman, then it will load the next
18 cartridge in.

19 So I had three cartridge cases. Then I
20 also had three fired bullets that were recovered during
21 the autopsy process. I was asked to compare the bullets
22 and cartridge cases back to this particular rifle.

23 Q And can you explain how you do that? How do
24 you make that comparison?

25 A Sure. A little bit different process between

1 bullets and cartridge cases.

2 So bullets are fired out the barrel.
3 Basically a rifle -- what a rifle means is that it has
4 rifling on it. So those are grooves that are carved
5 into the barrel when it is manufactured. That's so when
6 the bullet comes out, it's spinning, kind of like a
7 football, so it's spinning in flight for stability.

8 That process to make the barrel and put
9 those lands, which are the little raised portions of it
10 that grips it and then it has a twist to it, all those
11 machining processes are going to leave microscopic
12 imperfections on the bullet.

13 And when each gun is manufactured, that
14 tooling to make that particular barrel is going to be a
15 little bit different from barrel to barrel to barrel.
16 So they are all unique amongst themselves.

17 What we will do with the bullets is we
18 have a range in our laboratory. We test-fire the rifle
19 in our range to collect our known specimens. And we
20 have a microscope that's called a comparison microscope.

21 This is basically like two microscopes
22 with one set of eyepieces that you can look at two
23 different objects next to each other. It has a fine
24 dividing line.

25 So we will take our knowns, and we look at

1 how much corresponding unique striations that are left
2 on the bullets. They'll produce patterns on the
3 bullets.

4 So we'll look at our test-fires and we'll
5 see that reproducible pattern. Then we look at our
6 unknown bullet, and we try and see if those same
7 markings are on the unknown.

8 Similar fashion with the cartridge case.
9 When the firing pin hits the base of the cartridge and
10 causes it to fire, a lot of the internal parts of the
11 firearm are going to leave those same imperfections on
12 the cartridge cases.

13 In this case we do the comparison process.
14 I look at them side by side. I have to give an opinion
15 whether it's a positive match. I could exclude it or
16 it's inconclusive. So it's going to be one of the
17 three.

18 Then when I come up with the conclusion, I
19 give the evidence to another firearms examiner. They
20 will actually do their own comparison to either confirm
21 or refute what I found under the microscope. Then we
22 write a report. Then the report gets technically
23 reviewed and then released.

24 Q So what were your findings and conclusions in
25 this particular case?

1 A In this particular case, I compared the three
2 fired cartridge cases back to the firearm, and I
3 identified that they were all fired from the AR-15
4 rifle.

5 The bullets, however, I did not do the
6 microscopic comparison at this time. I examined those,
7 measured the caliber, the rifling widths, the width of
8 the lands and the grooves.

9 And so the bullets have the same rifling
10 characteristics as this bullet -- as this rifle, but at
11 this point I didn't confirm them at this time.

12 And it's just kind of like an order of
13 efficiency. It takes a long time to do the bullet
14 comparisons. And typically, unless we have multiple
15 guns that are used, lots of times there's no indications
16 there was another gun that was used in this type of
17 shooting situation.

18 Q Okay. So given the time frame, you haven't
19 done that. The three brass casings collected at the
20 scene and transferred to you were fired from the rifle.

21 A That's correct.

22 Q Then did you also operate the rifle itself and
23 examine it for functionality and to make sure that it's
24 operating normally?

25 A Yes. So what we do is we'll -- we take the

1 rifle to our range. Before we test-fire any guns in our
2 laboratory, we go through kind of a thorough examination
3 of the gun.

4 We document the condition of the safeties,
5 the magazine release, the internal components. There's
6 a lot of internal safeties the firearms have to make
7 sure that they are working correctly.

8 We measure the trigger pull, which gives
9 an indication of how the gun is operating. That's
10 basically how much force it takes to actually release
11 the hammer and cause -- when I pull the trigger, to
12 release that.

13 In this case I found that the firearm
14 essentially was working as it was designed to do. There
15 was no malfunctions to it. It had a trigger pull of a
16 normal typical range. About six and a half pounds is
17 what it would take to -- so it's not like a gun that's
18 going to go off accidentally.

19 Q So it sounds like you found in every way the
20 firearm operated appropriately?

21 A Yes.

22 Q Is that right?

23 MR. REES: Okay. I'm going to ask Mr.
24 Samuelson next about the C02 pellet gun that was found
25 at the scene.

1 Before I do that, are there any questions
2 about the AR-15 he examined?

3 A GRAND JUROR: I have a curiosity
4 question.

5 I'm not sure whose -- who maintains
6 their -- are the officers in charge of maintaining their
7 own weapons?

8 MR. REES: If you don't know the answer.

9 THE WITNESS: I would just say, in
10 general, typically, they have an armor that's going to
11 be in charge of maintaining them and then releasing them
12 out. That's the past practice.

13 We used to be co-located with Portland
14 Police in their building, so we have some experience
15 working with those people, but there was generally
16 somebody that was in charge of maintaining those.

17 MR. AUXIER: Mr. Samuelson, I've got a
18 question for you about the casings.

19 When they get ejected from the AR-15, do
20 they go in a certain direction more or less every time?

21 THE WITNESS: In general, they are going
22 to go to the right of the firearm and typically to the
23 rear of it.

24 MR. AUXIER: Drastically to the rear or
25 with a side angle to it?

1 THE WITNESS: No. I couldn't put --
2 because it's -- there's a lot of randomness to that.

3 MR. REES: Okay.

4 BY MR. REES:

5 Q Let me ask you now then about a CO2 powered
6 pellet gun that was also submitted to you at the Oregon
7 State Police Forensic Lab for inspection.

8 Did you receive that gun?

9 A Yes, I did.

10 Q And did you bring it here to the Grand Jury?

11 A Yes, I did.

12 Q Why don't you show us and explain to us what
13 kind of gun this is.

14 A So this is --

15 A GRAND JUROR: They let you bring that
16 through?

17 THE WITNESS: It's not a firearm.

18 A GRAND JUROR: Who's to know?

19 THE WITNESS: Good question. We do
20 actually go through the employee side. I do have to
21 produce my ID to show that I can come in with it.

22 A GRAND JUROR: Okay.

23 THE WITNESS: This is an airsoft BB gun is
24 what it is. It's designed -- this is made by the ASG
25 Corporation, Action Sporting Goods.

1 What they do is they manufacture replica
2 firearms. So they actually go to the manufacturer. The
3 licensed manufacturer for this particular gun would be
4 the CZ Corporation. I would try and pronounce it, but I
5 really can't. It's Ceska Zbrojovka. It's --

6 A GRAND JUROR: German?

7 THE WITNESS: Croatian.

8 MR. REES: I think I've been saying Czech
9 Republic, but it's Croatia?

10 THE WITNESS: Um, well, I think, I think
11 it is the Czech Republic, not Croatian.

12 MR. REES: You can look.

13 THE WITNESS: I think this one actually
14 says assembled in the Czech Republic, so I stand
15 corrected.

16 BY MR. REES:

17 Q Just to clarify, this replica gun that you are
18 holding says manufactured in the Czech Republic?

19 A But it also says "Made in Taiwan."

20 Q But it is actually made in Taiwan. But as
21 part of trying to appear real, it says it's made in the
22 Czech Republic.

23 A Right.

24 Q Because the gun that it is based on is
25 manufactured in the Czech?

1 A Is made in the Czech Republic. I stand
2 corrected about Croatia. I was thinking about a
3 different one.

4 What they do is they license the designs,
5 the features from the firearm manufacturer, in this
6 case, CZ, the airsoft pellet gun. And then they will
7 take those same drawings and they will go and they'll
8 produce nearly identical copies of that that are
9 designed to shoot airsoft plastic BB's on that.

10 Typically they'll have an orange tip on
11 the end of it to signify that it is. This particular
12 one has it. It's been cut off. Someone has actually
13 taken a saw and cut that tip of it off, which actually
14 makes it even more realistic because then it looks to me
15 an approximately 9-millimeter or could be -- actually a
16 .40 caliber, a .40-inch diameter hole that looks like
17 it's actually a barrel of a firearm.

18 Q What are some of the features of this replica
19 gun that may yet appear to be an actual, real
20 9-millimeter handgun?

21 A So I have it locked (indicating.)

22 So with the handgun, semiautomatic, just
23 in general, this is the slide. It's designed to slide
24 back and forth. That actually -- that process of
25 sliding it is what would actually cock the firearm, load

1 the next cartridge into it.

2 In this case, by sliding that, this
3 actually loads the next BB into the barrel to be fired.
4 We have an exposed hammer, so I can actually pull it
5 back with my thumb or during the loading process.

6 It has what we call an ambidextrous
7 safety, so it's on both sides of the firearm. I'm going
8 to say firearm because this -- if I was to have the
9 actual CZ firearm, all these parts would be in the same
10 location. It has a magazine release button there
11 designed to release the magazine.

12 Now, so what we do with the airsoft gun
13 is --

14 A GRAND JUROR: That's a CO2 cartridge?

15 THE WITNESS: Yes. The airsofts are
16 driven by a gas-powered cartridge, so it is carbon
17 dioxide in a little cylinder. The BB's are loaded into
18 it in a stacked magazine here. It holds about 25. So
19 this -- the cartridge with the CO2 and the BB's are all
20 loaded as one into the firearm.

21 A couple other features with this one.
22 This has an accessory rail, so you can mount the
23 flashlight. You can mount lasers on it. But it's the
24 same rail specifications as used on an actual firearm
25 manufacturer.

1 So all of the different mounts, lights,
2 accessories can all be mounted on this one, just like
3 they could on an actual firearm.

4 BY MR. REES:

5 Q And the action of the gun, the movement of the
6 slide upon firing the gun, are those the same as an
7 actual semiautomatic pistol?

8 A Yes. It's going to have a slightly different
9 trigger feel to it because it's not an actual -- there's
10 not a cocking mechanism that's required to hit --
11 there's no firing pin.

12 But the hammer, actually what it does is
13 it -- as I -- if I was to pull the trigger on it, the
14 hammer is going to come forward just like it was
15 actually fired. It's going to release some gas out of
16 the valve and cause the BB to come out. So that's
17 similar in that fashion.

18 But as I fire it, actually the gas is
19 going to cycle the slide to the rear, load the next BB
20 in, and then have it cocked and ready to go. So in that
21 case it's actually mimicking or replicating that cycle
22 of fire that the actual firearm would have.

23 So some of the features again that this
24 one has is it actually fires, the trigger, magazine
25 release, focusing slide, and then the slide stop lever,

1 which is this other big black one that's used to lock
2 the slide to the rear manually.

3 Q This replica firearm is a desert camo color?

4 A Yeah. Several call it a black slide desert
5 tan. Someone referred to it as an O.D. green, depending
6 upon the tone. I mean, to me it looks more tan, but
7 different brochures will market it with different terms.

8 But then again, what this firearm is is
9 they will reproduce everything down to the trademarks on
10 the grips are the same as the CZ brand, the grip
11 surfaces. I mean, every detail of this.

12 A GRAND JUROR: This isn't made by the CZ
13 Company, though.

14 THE WITNESS: No. But it is under license
15 from them, so it's using their patents and their designs
16 to -- the removable grip. So this actually is designed
17 to come out, and then you can replace different size
18 grip panels, like the CZ P-09.

19 In fact, even the pin locations to take
20 the gun apart are in the exact same locations as the
21 actual firearm would be, so...

22 BY MR. REES:

23 Q So it really wouldn't be correct to call this
24 a toy gun. It's a replica gun.

25 A It's a replica. I mean, yeah, kids buy them

1 and play with them. But they also are manufactured and
2 marketed to law enforcement as training firearms, as
3 well, too, where they can go in and shoot in a training
4 scenario as close replica because if I was to have the
5 actual CZ P-09 and we held them, we could feel that they
6 are both about 1.8 pounds. They are about eight inches.
7 So the dimensions, the weight, the feel of them are all
8 very close to the actual firearm.

9 Q Do firearms manufacturers make semiautomatic
10 pistols in colors like that?

11 A Yes, they do.

12 Q Is that, is that a popular look on the market?

13 A It is, yeah. You'll see a lot of tan and
14 black combination is pretty popular.

15 A GRAND JUROR: So where do you buy these
16 things?

17 THE WITNESS: Um, some sporting goods
18 stores locally will sell them. Not this particular one,
19 but other copies of -- like, for example, like a Smith
20 and Wesson or maybe a Colt, you'll see copies of these
21 at Walmart, Bi-Mart, different -- I would not be
22 surprised to see one in like a Toys "R" Us section that
23 would have those.

24 BY MR. REES:

25 Q Did you bring with you a photograph of the

1 actual Czech-made 9-millimeter gun?

2 A Yes, I did.

3 Q Can you show the jury, please?

4 A Yes.

5 So one of the things I did was I had -- I
6 examined this. I looked up the specifications of the
7 airsoft gun manufacturer on the Internet, compared their
8 size dimensions of it. This is just right off the
9 website of the CZ P-09.

10 Q This is what we're looking at in this
11 photograph that I'm going to pass around.

12 This is the real or actual 9-millimeter
13 gun; is that right?

14 A Yes, that one is. This is -- this next
15 picture I'm showing is the cover of CZ's 2014 product
16 brochure that they sent out that introduces all their
17 new firearms. I did a side by side of their cover gun
18 versus the airsoft gun here.

19 A GRAND JUROR: This is the real deal?

20 THE WITNESS: That's the real one.

21 BY MR. REES:

22 Q Then this second exhibit, you've put a
23 photograph of the gun delivered to you by the Portland
24 Police Bureau, the evidence in this case, side by side
25 with the manufacturer's literature and photo of the

1 actual gun; is that right?

2 A Yes. This is one just to show the orange tip
3 that normally would come on the firearm. That would be
4 the only thing visually, I think, that you would see at
5 a distance just to, you know, quickly clue you in that
6 that is actually a replica, that it has an orange tip on
7 there.

8 Q Well, so you're a firearms expert. You've
9 spent 19 years doing this work. You've looked at, I
10 guess, hundreds or thousands of guns.

11 Just looking at this replica firearm, not
12 in the lab, but just looking at it, would you be able to
13 tell that it was not a real firearm?

14 A No. No, I don't think I could, especially any
15 kind of -- like if it's in a person's hand, you know,
16 under lighting conditions or anything that would make
17 you -- particularly with this one with the tip cut off
18 so that you can actually see where this one -- we can
19 pass this around.

20 A person can hold it and feel it. You can
21 see where the manufacturer of this one actually has
22 small lands and grooves into the tip of the barrel to
23 actually make it even appear more realistic. When that
24 tip is cut off, you can see those very easy.

25 Q Like that feature you just described, that's

1 all part of making it look as real as possible really
2 isn't related to its actual function?

3 A Right. It's just for the realism.

4 MR. REES: Okay. Unless anybody has a
5 concern, if Mr. Samuelson says it's safe, can we pass
6 that around?

7 A GRAND JUROR: The magazine is out?

8 THE WITNESS: The magazine is out.
9 There's no BB's in it. Again, it's just locked to the
10 rear so you can get an idea of the weight and the heft
11 of it.

12 BY MR. REES:

13 Q With the magazine it would obviously be even
14 heavier?

15 A It would even be heavier.

16 Q Let's pass that around separately.

17 A Sure.

18 Q This is designed to look like a magazine that
19 holds cartridges?

20 A Right.

21 A GRAND JUROR: The magazine is heavy,
22 too.

23 BY MR. REES:

24 Q And maybe you said, but is the size of the
25 frame, is that the same as the actual 9-millimeter?

1 A Yes. I actually have it -- I did just like a
2 comparison. I think it might be on those pages that I
3 just passed around.

4 So the overall length of the actual CZ is
5 8.1 inches. The airsoft version is 8.7 inches, so
6 within a half inch. The weight is 1.8 -- 1.8 pounds and
7 the airsoft version is 1.8 pounds, so nearly identical
8 weights.

9 Q The same weight and the difference in size is?

10 A Is a half inch, but I think that's probably
11 the half inch is including the orange tip, which has now
12 been cut off.

13 Q So then it would be 8.1 inches and 8.1 inches
14 between the two, so the same size.

15 A Yes.

16 Q There was a request from a Grand Juror to take
17 a look at a real semiautomatic pistol, and so you've
18 brought a 9-millimeter Glock pistol.

19 A We have a Glock, yes.

20 Q If you would show us that and maybe just
21 explain the features.

22 This is a real semiautomatic.

23 A This is a real firearm. I don't have any
24 ammunition with me. The magazine is separate. I'm
25 going to cut this tab off so we can see some of the

1 features of how it works.

2 So this actually is a slightly different
3 gun. It's a Glock. So a different manufacturer. They
4 operate a little bit differently.

5 But the first thing I want you to notice
6 is just looking at the -- with again, that barrel has
7 been cut off, but look at the size of the hole at the
8 end of it. Look at how close that is. Having that
9 orange tip cut off, that normally would keep that from
10 being exposed.

11 But generally, so this is a semiautomatic
12 firearm. Operates similar to what I was showing you.
13 The slide actually goes back and forth across the top.

14 It's steel. This actually is a black
15 plastic frame. This is actually a plastic frame, too,
16 with a black steel -- actually I think this is actually
17 zinc, but it's a slide that houses the barrel inside it.
18 So inside this slide of this gun is the barrel that you
19 can see comes through.

20 A couple features. Again, this one is
21 designed to have a magazine that gets fed into the base
22 of the gun. There's a button right here to release the
23 magazine to let it drop out of the gun. It has a slide
24 stop lever, which is designed to lock that back to the
25 rear.

1 This one is a little bit different. It
2 doesn't have the external safeties like this one has on
3 it. That's just a design feature. It has a different
4 safety mechanism. Not that it's less safe. It's just
5 they are internal, the safeties are versus having one
6 that works your thumb.

7 The Glock does not use a hammer on the
8 back of it as well, too. It has an internal system that
9 works a little bit different. But, in general, size are
10 going to be pretty close. So -- and then the overall
11 heft of the gun, the weight of the guns are pretty
12 close. The thickness of the guns are pretty close, too.

13 Q Okay. There's no magazine in the 9-millimeter
14 Glock. You've cleared the slide, the chamber.

15 Would that be safe to pass around to the
16 Grand Jury?

17 A Sure.

18 Q Okay.

19 A If you want to look at both of them side by
20 side just to get a feel of the size.

21 MR. REES: As we're passing those around,
22 that I think concludes my questions.

23 Are there any questions from the Grand
24 Jury or from you, Jeff, for Mr. Samuelson?

25 Any other questions? Okay. Thank you.

1 A GRAND JUROR: Thank you.

2 MR. REES: I will excuse the witness.

3 Thank you, Mr. Samuelson.

4 A GRAND JUROR: Thank you for coming in.

5 THE WITNESS: Thank you.

6

7

8 CURTIS EUGENE GILLOCK,

9 a witness called on behalf of the State, having been
10 first duly sworn, was examined and testified as follows:

11

12 EXAMINATION

13 BY MR. REES:

14 Q Officer, if you would, please, when you are
15 ready, for the record, state your first and last name
16 and spell your name.

17 A My first name is Curtis Gillock, C-U-R-T-I-S.
18 My middle name is Eugene, E-U-G-E-N-E. Last name is
19 G-I-L-L-O-C-K. But I go by Gene.

20 Q Sir, are you a Portland police officer?

21 A I am.

22 Q How long have you been a police officer?

23 A I've been a police officer for just over 21
24 years.

25 Q All right. And what's your current

1 assignment?

2 A I work patrol at East Precinct.

3 Q And do you work a particular shift there?

4 A Yes. I work day shift.

5 Q All right. And so on the date of the
6 officer-involved shooting, February 9th, 2017, was that
7 a regular workday for you?

8 A Yes, it was.

9 Q And do you recall when you began your shift
10 that day?

11 A Yes. 7:00.

12 Q 7:00. Okay.

13 And what do you recall about the incident
14 that eventually led up to officer use of deadly force in
15 terms of how you learned about these reported crimes in
16 the neighborhood?

17 A Okay. I was working -- I think I was working
18 991, which is the south end. It's like next to the
19 Clackamas border that morning.

20 Q That's the number of the district?

21 A Yes, the district number.

22 And I heard the first call. That was an
23 armed robbery down around 82 and Halsey, Tillamook area
24 there at a motel. I think it came in from the motel
25 that somebody had been robbed at gunpoint.

1 And then shortly after that there was
2 another call right in that very same proximity of an
3 attempted car jacking.

4 So I wasn't on a call at that time. So I
5 put myself on that, on that call to go down and help
6 because it stated that the subject in the armed robbery
7 had ran. And so I knew that they were going to need
8 people, so I put myself on it.

9 Q So when you say you "put yourself on it," does
10 that mean you drove your patrol car to the area?

11 A Yes. I dispatched myself and I drove down
12 there. And I was initially placed at like 82 and
13 Tillamook, because they had a perimeter that they were
14 setting up.

15 Q Okay. Would you be able to show us, if you
16 walk over to the photographic diagram, where you went
17 that morning?

18 A I was right here originally.

19 Q That's the intersection of 82nd and Tillamook?

20 A Yes.

21 Q What did you do then at that location?

22 A I just took up a point of watching the street
23 and the houses right there.

24 Q All right. And you can resume your seat.

25 Thanks.

1 Did you have a general understanding of
2 the suspect description and whether this person was
3 reportedly armed with a gun or not?

4 A Yes. Right.

5 Q To both questions?

6 A Yes.

7 Q You had a description and you believed they
8 were armed?

9 A Yes.

10 Q Okay. And at some point, as I understand it,
11 you left that perimeter location and you moved to a
12 different location.

13 A Yes. Dispatch at the request of one of the
14 sergeants asked for a couple of us to move up to
15 86th and Tillamook, which was four blocks east. And
16 then we were eventually requested to move to the
17 location of 8301 Hancock.

18 Q Now, this is the address, 8301 NE Hancock
19 Street.

20 A Correct.

21 Q Did you immediately approach the house from
22 the perspective we're seeing here or from a different
23 direction?

24 A No, from across the street because we needed a
25 point of cover. So there was vehicles on the other side

1 of the street.

2 Q So we're turning --

3 A Yeah. That yellow SUV is that truck there.

4 Q Okay. Did you stand --

5 A I stood behind it.

6 Q So on the opposite side where we're seeing,
7 you took position there?

8 A Right. Yes.

9 Q Is that correct?

10 A Yes.

11 Q And so this is down the driveway. It's --
12 we're looking at I believe south --

13 A Yes.

14 Q -- of the residence?

15 And was there a particular reason why you
16 went behind that parked SUV parked on the street? Is
17 there a reason why you took position there?

18 A Yes. Well, because again, the call stated
19 that the subject was armed. And you know that you
20 always want to be behind a point of cover for your
21 safety.

22 So, you know, at that point it was
23 believed that the subject was in that house or behind
24 that house. And so myself and I think Officer Dick and
25 eventually Sergeant Nice were on this front side. So

1 because that's a big vehicle, it provides good cover,
2 that's where I took cover at.

3 Q All right. And from that location, what did
4 you see happen?

5 A Well, I didn't see anything going on at that
6 point. They were doing the dog track, so they were
7 tracking, trying to track the subject with a K-9.

8 I mentioned to Sergeant Nice that I was
9 going to go to that house right there, I think the one
10 right behind that yellow SUV, and see if I could find
11 somebody with a phone number for that house, because we
12 weren't sure if anybody was -- a resident was in the
13 house or not.

14 Q Find a phone number for the house that was
15 possibly the site of the burglary?

16 A Yes. Right. And I was able to get three
17 phone numbers for her, the people that lived there, and
18 I believe that they already had tried contacting one of
19 the numbers.

20 Q So what happened after that?

21 A Um, I am kind of walking back across the
22 street from behind the SUV. And the officers that had
23 been tracking behind the house had come back around.

24 There had been an alarm that, I think,
25 that came in on this house right here, 8301. They

1 weren't sure if it was from them going in the basement
2 because there was an open window in the basement.

3 So they eventually came around the front
4 of the house, that driveway. And I'm crossing the
5 street, and I'm just entering the driveway when Officer
6 Hearst and Officer Mele, I think, first saw the subject
7 in that tiny alcove. I think you had a picture of it.

8 Q I'll rotate the view so we can see down the
9 driveway.

10 A Okay. So that -- so we're walking up this
11 driveway, just entered, and they come around from that
12 right side where that wooden fence is. And Officers
13 Hearst and Mele, I think first saw the subject there at
14 that alcove.

15 Q How did you know they saw someone there?

16 A Because they started yelling, giving him
17 commands. And I had been looking to the left, you know,
18 as I was walking over there. So I was kind of surprised
19 that I hadn't seen him as I was walking up.

20 Q Previously?

21 A Yes, because there's a small window there in
22 that alcove on the left side. And so, you know, there's
23 voices that are shouting commands to him. Officer
24 Mele -- I mean, Officer Hearst was giving him commands.

25 And then at the same time or close to the

1 same time, Sergeant Helfrich was trying to coordinate
2 the officers that were there in that driveway, you know,
3 into a custody team.

4 And, you know, he's looking to the right
5 where I was at because I know I was behind. Officer
6 Hearst and Officer Mele I think were in front. And so
7 Sergeant Helfrich is, like I said, organizing, you know,
8 who is going to be in the custody team.

9 And I knew that there were -- had been
10 some other officers that had come around because I knew
11 that Officer Dick had been then in front of the house,
12 but I didn't recall seeing her, you know, in that
13 immediate group. I wasn't sure who else was behind us.

14 So I looked to the right because I didn't
15 want to step in front of somebody's gun barrel. I
16 wasn't sure if someone had their guns out that were
17 behind me.

18 And they were giving him commands because
19 he was trying to get up. And somebody was yelling at
20 him, you know, "We want you to crawl." And I'm not sure
21 who, you know, whose voice that was.

22 Officer Hearst kept telling him, you know,
23 "Don't reach," you know.

24 And as I said, as I turned my head to the
25 right to see if there was somebody coming up behind me,

1 you know, that's when I heard bam, bam, bam.

2 Q Could you tell who fired the shots?

3 A Um, just because of the gun that was involved,
4 yes. And Officer Hearst was the only one with the AR.

5 Q The sound of the report, the gunfire made you
6 think it was a rifle?

7 A Yes. And because, you know, in this situation
8 he was the point person, you know, in this because he
9 had the rifle.

10 Q Prior to that, could you hear Officer Hearst,
11 and I apologize, maybe you said this already, but could
12 you hear Officer Hearst giving verbal commands?

13 A Yes.

14 Q And what happened after you heard those three
15 gunshots?

16 A People kind of parted either to the right or
17 to the left to take points of cover. So some folks
18 moved over there where the blue barrel is. And Officer
19 Hearst and Officer Higginbotham moved over here to the
20 left, to the corner of this house.

21 Q And what happened after that?

22 A Officer Hearst kept saying, you know, "I told
23 him not to -- you know, I told him not reach for it.
24 Why did he do that? Why did he do that? I want to make
25 sure."

1 guys, for giving up your time to do this.

2 A GRAND JUROR: It is an honor for us.

3 Thank you very much.

4 (Recess.)

5

6

7

ANDREW HEARST,

8

a witness called on behalf of the State, having been

9

first duly sworn, was examined and testified as follows:

10

11

EXAMINATION

12

BY MR. REES:

13

Q Officer, for the record, please, if you would

14

state your first and last name and spell your name.

15

A Hello. My name is Andrew Hearst. And that's

16

spelled A-N-D-R-E-W. H-E-A-R-S-T.

17

Q Officer Hearst, do you understand that your

18

appearance before this Grand Jury is voluntary? It's

19

not compelled. You have the right to refuse to answer

20

any questions brought to you by the Grand Jury.

21

A I understand that.

22

Q Understanding that, nonetheless, do you wish

23

to proceed and testify before the Grand Jury?

24

A Yes, I do.

25

Q Okay. Thank you.

1 If you would, for the record, state your
2 occupation.

3 A I'm a police officer with the Portland Police
4 Bureau.

5 Q And how long have you been a police officer?

6 A I was sworn in 2010.

7 Q And what is your educational background?

8 A I graduated from Multnomah Bible College over
9 on 82nd and Glisan actually in 2009.

10 Q And did you have prior employment, prior
11 employment to being a police officer?

12 A Yeah.

13 Before that, when I moved over here from
14 Idaho, that's where I grew up, my folks still live
15 there, I became an assistant apartment manager for a
16 short time, trying to get on as a police officer. But
17 before that, I was a director at a camp in a little town
18 in Idaho called McCall, Idaho.

19 Q And then once you became a member of the
20 Portland Police Bureau, if you could just tell us
21 generally what kinds of training did you receive, law
22 enforcement training?

23 A We receive a lot of training. It began at the
24 advanced academy down in Salem -- excuse me, not the
25 advanced, the basic academy. That goes for four months.

1 And at that time I was staying there and
2 my fiancée was up in Portland, and we would commute back
3 and forth on the weekends, but I did training at the
4 basic.

5 And then after four months of doing that,
6 I went to a three-month advanced academy that the police
7 bureau puts on. Then after that -- that's kind of
8 comprised of the 18-month probationary period.

9 So then it's hitting the street with a
10 coach and learning the job, lots of training, lots of
11 new experiences.

12 From there, you know, in-services every
13 year. An in-service is like an annual, annual training
14 that the police bureau provides to all of the officers
15 and detectives and everyone in the bureau, so a lot of
16 training.

17 Q And then you've had some special training.
18 One of the areas that you volunteered to do, as I
19 understand it is ECIT.

20 A That's right.

21 A few years ago we started a program in
22 the police bureau called the Enhanced Crisis
23 Intervention. And everybody at the basic goes through
24 Crisis Intervention training.

25 But we wanted to create a team of officers

1 that had gone through extra training. And the goal of
2 that was to have officers on the street in a patrol
3 capacity that could go to calls that involve suicide,
4 people wanting to harm themselves, calls that involved a
5 mental illness of some sort or a behavioral health
6 issue.

7 And so, yeah, I volunteered to do a part
8 of that team. Went through the extra training for it.
9 And then now on the street, if there's a call with a
10 person in mental health crisis, I go there to help as
11 kind of the first negotiator, the first person to start
12 talking to the person.

13 Q Do you know how many Portland police officers
14 are trained up to do that work as ECIT members, about?

15 A I'm not a hundred percent sure of the exact
16 number, but I would estimate it to be around 100
17 officers. There's quite a few. But on the street, on
18 the typical shift that I work, there might be maybe one
19 or two in East Precinct during the day shift.

20 Q And that would be 100 out of about 1,000 sworn
21 members?

22 A That's correct. And it's probably less than
23 100.

24 Q Okay. But that's a volunteer role that you've
25 taken on.

1 Have you had an opportunity to use the
2 skills that you were taught in the ECIT training on the
3 job?

4 A Yes. I go to a lot of calls as what we call
5 ECIT. An officer will request an ECIT member.

6 One that stands out in my mind, it was a
7 big call. It was a woman who was chronically depressed.
8 She was in her late 40's and had been struggling with
9 severe depression for a couple decades.

10 And she was finally done dealing with it,
11 and she called us. And she had a knife. And she had it
12 up to her stomach. And she said she's going to kill
13 herself.

14 So I talked to her on the phone for about
15 an hour, and then the phone died. So we kind of walked
16 in and got within earshot. And I talked to her for
17 probably another 15, 20 minutes. And she finally put
18 the knife down and we were able to get her to the
19 hospital. It was a really good outcome, yeah.

20 Q You also are a member of the Neighborhood
21 Response Team.

22 A That's correct.

23 Q Which I guess the acronym is NRT?

24 A Yes.

25 Q What does that involve?

1 A So the Neighborhood Response Team, we call it
2 NRT is the acronym, is kind of how it sounds. Our
3 primary function is to help the neighborhoods we are
4 given with chronic nuisance issues and livability
5 concerns.

6 So it's a very large gambit of issues that
7 come to our office. But our goal is to kind of help the
8 neighborhoods with issues and concerns that affect them
9 every single day.

10 Q Also, you are certified to carry the AR-15
11 rifle.

12 A That's correct.

13 Q Correct?

14 And what training is involved to receive
15 certification to carry that rifle?

16 A That's another 60 hours of training. You go
17 through training, just marksmanship, learning how to use
18 the device well. And then we go through scenario-based
19 trainings, which involve scenarios where you do fire and
20 don't fire.

21 And the biggest part of the AR-15 training
22 is your ability to make critical decisions in very
23 stressful situations and in time frames that are very
24 short. And if you can't do that, the police bureau
25 won't allow you to have a rifle.

1 Q When you're certified to carry the rifle, you,
2 by definition, are going to be put in the role of being
3 lethal cover in certain situations.

4 You are going to be called upon to bring
5 the rifle because it might be needed; correct?

6 A Correct.

7 Q So is that the reason why there's additional
8 training on the issue of when it's appropriate to use
9 deadly force and when it would be inappropriate?

10 A Correct.

11 We have to make a decision, you know, even
12 before coming on to the scene or at the scene, what is
13 the best tool for this situation.

14 And I would say actually more often than
15 not, when I go to a call where a rifle is needed,
16 oftentimes there's another person there that has those
17 same skills and a rifle with them.

18 And so since I'm also ECIT certified, I
19 actually more often than not step into that role as a
20 negotiator versus the rifle operator is kind of what we
21 call it, a rifle operator.

22 Q When did you receive your certification to
23 carry the AR-15?

24 A It was about three years ago.

25 Q And since then, have you gone through any sort

1 of recertification process?

2 A Yes. Every year, we go through another
3 in-service training. And that's a few days where we go
4 and again shoot and kind of refresh our marksmanship
5 skills, but then really try to hone in on our
6 decision-making skills and our ability to observe things
7 going on and process, and then make the most appropriate
8 decision on whether to use the weapon or not or to carry
9 whatever course needs to be conducted after that.

10 Q Currently, are you assigned to East Precinct?

11 A Yes, I am.

12 Q And what shift are you assigned to?

13 A I work a day shift.

14 Since I'm on the Neighborhood Response
15 Team, we actually adjust our shift just a little bit so
16 we have an overlap with the night shift. So they can
17 come in and talk to us and share concerns that are going
18 on in the neighborhoods they are overseeing. So I start
19 pretty early, at 5:30, and I get done at 3:30 in the
20 afternoon.

21 Q So on the day of the shooting, February 9th,
22 2017, is that when you began your workday as of 5:30 in
23 the morning?

24 A Yes, it was.

25 Q And prior to the call that brought you to the

1 neighborhood where the shooting took place, were you
2 involved in any particular work activities?

3 A Yeah. My partner and I, Ryan Mele, we were
4 actually dealing with a parking issue, another
5 neighborhood concern around SE 75th and Center.

6 So we were working with some neighbors,
7 some frustrated neighbors and some -- the owners of a
8 couple of cars that were parked blocking the roadways.
9 So we were trying to deal with that situation first.

10 Q Prior to beginning your shift, had you used
11 any drugs or alcohol?

12 A No.

13 Q Had you received adequate rest prior to your
14 shift?

15 A Yes. I have to go to bed pretty early to get
16 up at, you know -- to be ready at 5:30. But, you know,
17 at home, the bedtime routine is put the little ones
18 down. I have a three-year-old and a five-month-old.

19 So it's putting those little guys down to
20 bed, and then I do a little bit of reading, and then I'm
21 to bed 8:30 or 9:00. So I had adequate sleep that
22 night.

23 Q So you were fully rested and you were
24 physically healthy?

25 A Yes.

1 Q And when you work, do you wear your Portland
2 police uniform and drive a marked patrol car?

3 A That's correct. I'm always in uniform. We
4 drive a police car. It's all black. But it does have
5 emergency lights and sirens on all of the sides.

6 Q And you mentioned your partner in the car.

7 Do you always work with that partner?

8 A I do. Ryan and I have been working together
9 for about two years.

10 Q And he testified that he is qualified to carry
11 a less lethal weapon, as he described, a shotgun that
12 shoots bean bags.

13 And so does he work in tandem with you
14 because of that?

15 A Yes. I'm also certified to use the less
16 lethal shotgun. But we make a very good team, because
17 we bring a lot of different skills and talents to the
18 table between the two of us.

19 So, yes, we work -- we work well together
20 dealing with calls like this or calls where he needs to
21 be on a less lethal shotgun and I'm negotiating with a
22 hostile person.

23 Q Let me direct your attention now to the call
24 or the calls that brought you to the area that's seen in
25 the photographic diagram on the other side of the room

1 from us.

2 Do you recall what you first heard about a
3 situation that was unfolding in the area of 82nd Avenue
4 and Schuyler?

5 A The first information I heard on the radio was
6 there was an armed car jacking. And for whatever
7 reason, it didn't go right. And what I took that to
8 mean is that the suspect wasn't able to get the car. So
9 that was the first information I heard over the radio
10 about something going on up in that area.

11 Q And did you immediately respond, or were you
12 doing something else at that time?

13 A No. I didn't immediately respond, because
14 Ryan and I are dealing with this 75th and Center parking
15 issue.

16 And I know that there are other patrol
17 officers kind of on the northern -- we call this the
18 northern end of East Precinct -- that are going to deal
19 with that situation. 75th and Center is quite a ways
20 south of that area.

21 Q Did you receive additional information over
22 the radio in terms of what was happening in that
23 neighborhood?

24 A That was the first bit of information. But
25 then later on, I recall an update on the radio that a

1 woman called 911 saying that somebody was banging on her
2 back door. And the only way somebody could have gotten
3 there is if they had jumped a fence. So that was the
4 second bit of information that I recall.

5 And then after that, I remember hearing an
6 officer up in that area saying that there was a person
7 running from them. There was a foot chase. And the
8 person was jumping fences and he was holding his
9 waistband. He was holding his waistband.

10 Q What does that mean to you?

11 A Well, oftentimes when suspects are armed with
12 a firearm, they will hold their waistband because that's
13 usually where it's stored. More often than not, they
14 are going to put it in their waistband. So as they are
15 running, they don't lose it.

16 They will hold that waistband, which is
17 also a secondary concern is if they are running from the
18 police, and they are not trying to get rid of the gun,
19 throw it on a roof or in the bushes, but they are
20 retaining it, that tells me that this is an extra
21 dangerous situation because the person is keeping that
22 weapon with them.

23 Q Did you receive -- before responding, did you
24 receive any other information that you recall?

25 A I recall the officers, I believe, talking on

1 the radio, something about all of these situations were
2 all connected; that the person who was banging on the
3 back door was the same person who did the car jacking,
4 who was the same person that had just run from the
5 police officer, holding his waistband.

6 So I knew all of those were the --
7 connected, and it was the same suspect involved.

8 Q What led you then to respond to the
9 neighborhood?

10 A Well, I think as all those tidbits of
11 information were coming out, the sergeant, sergeant on
12 scene was asking for a rifle operator to come to the
13 scene and help with the K-9 search for the suspect.

14 And I was kind of, you know, in the middle
15 of this parking issue, so I didn't think I could -- I
16 couldn't respond at that time. So I was kind of hoping
17 that there was another unit nearby that had the same
18 abilities that could go take care of it.

19 But then it was probably, I'm going to
20 estimate five minutes later, that I heard them come on
21 the air again still looking for a rifle operator. I'm
22 looking at Ryan going, you know, "Are they still looking
23 for a rifle?" I was surprised that we hadn't found one
24 yet.

25 And so I realized, okay, as much as we

1 need to take care of this parking issue, there's a big
2 issue going on on the north side. And at that point I
3 realized we could probably wrap up this situation we're
4 in in about a minute.

5 So I got on the air and said that we would
6 go, we would help out. And it would take us just about
7 a minute. Because I definitely wanted to make sure that
8 those citizens in that neighborhood felt like I wasn't
9 just, see you later, I don't care about you, but we were
10 able to wrap that up quickly and then start heading that
11 way at the request of this sergeant.

12 Q And en route to that neighborhood, you said
13 you were a little bit of a distance from it.

14 As you are driving to the scene, did you
15 receive additional information in terms of what was
16 going on in that particular neighborhood?

17 A Yes. So I, I have -- I take it upon myself,
18 if I'm going to get out of the car and deploy my rifle,
19 then I know every shred of information that's available
20 to me.

21 And so Ryan is driving, and I'm on the
22 computer, going through the call, making sure I know
23 every single update. I know all of the officers that
24 are there and all of the different pieces of information
25 that would affect the call and my decisions as I get out

1 of the car.

2 Q If I can interrupt, just so we understand.

3 A Yes.

4 Q Is it correct that information for the police
5 officers is both broadcast over the air, on the radio,
6 and then it is also posted on the computer screen in the
7 police car; is that correct?

8 A Yes, that's correct.

9 Q The information isn't always exactly the same?

10 A That's correct.

11 Q And why is that? Why is there different
12 information on the screen maybe than what's being
13 broadcast?

14 A Oftentimes call takers are getting an
15 overwhelming amount of information from citizens in that
16 neighborhood or that are witnessing a crime happening.
17 And when that information then goes to the dispatcher,
18 they are not able to broadcast all of it. But all that
19 information is getting put in the call.

20 So oftentimes you'll find -- yeah, you'll
21 find information in the call that wasn't necessarily
22 broadcast. It's just for the volume of information
23 coming in. And the reality is you can't put it all out
24 on to the broadcast air.

25 Q So I interrupted you.

1 Are you en route? Are you both listening
2 to the radio and then reading what's being posted on the
3 computer?

4 A Yes. And that's why it's very handy to have a
5 partner, where I can focus on the radio and the
6 computer, and Ryan can focus on getting us there quickly
7 and safely.

8 Q He's driving the car?

9 A Correct.

10 Q What information do you learn about the
11 situation?

12 A Well, I learned that actually this whole
13 situation began with a car prowl. I didn't know that
14 that's where it really started, that there was a woman
15 had spooked off a suspect prowling her car and he had
16 run away.

17 And with that information, I got the
18 description of the suspect. He was a male,
19 African-American. He was about 5'7", thin. He had an
20 olive drab jacket on with a black hood. And at this
21 time I can't recall the color of his pants, but he had a
22 white belt on.

23 So I learned that information, the car
24 prowl information. And I'm rereading some of the
25 information that I already know about that he had run

1 from the -- run from the officer; that he'd been holding
2 his waistband; that he was banging on the woman's door
3 and had to jump a fence to get there. I'm rereading
4 that information.

5 But another bit of information that did
6 come over the air was there was a description of the
7 gun. Desert camo frame and a black slide or a black
8 frame, something like that.

9 To me that was big, because that told me
10 it wasn't just like somebody had seen this in passing or
11 seen just a little bit of the gun, but this guy
12 absolutely has a gun. We know the color of it. It's
13 just not a black gun. It's a desert camo frame with a
14 black slide. So it, it made it very certain that this,
15 this person definitely has a firearm.

16 Q So you had that information en route to the
17 scene. And you believed, in sum, that this is an active
18 situation with an armed described suspect; is that
19 correct?

20 A Yes. And Ryan and I are kind of going back
21 and forth conferring with each other. Did you hear
22 that? Yeah. Okay. This is the guy we're looking for.
23 These are the crimes.

24 We're talking about, wow, this is quite
25 the crime spree that this guy is on. We're talking

1 about we need to be really careful because he's got a
2 gun. Let's be smart about this. Let's be controlled
3 and make very wise decisions when we get out of the car
4 because this is a very dangerous situation. We're
5 talking back and forth, making sure we're both on the
6 same page.

7 Q Can you show us, Officer Hearst, on the
8 photographic diagram, feel free to walk over to it, show
9 us where you went?

10 A So the sergeant told us to go to -- I think he
11 gave us an address. I can't remember the exact address,
12 but I knew it was about 83 and Tillamook.

13 So we're coming from Southeast Portland
14 driving straight north on 82nd. We come up into this
15 area. We hang a right on NE Tillamook. We park right
16 about here on the map, about a block to the east of 82nd
17 on Tillamook on the south side of the road.

18 Q All right. Thank you.

19 A GRAND JUROR: Was there a perimeter up
20 at this point?

21 THE WITNESS: There is, yes. There's a
22 perimeter. I can't remember the exact boundaries of it.
23 I think it went from 82nd to 84th, but I'm not a hundred
24 percent sure on the north and south boundaries of it.

25 BY MR. REES:

1 Q What do you do when you arrive at that
2 location you just showed us?

3 A We stopped there because we saw a team of
4 officers on the, on the south side of the road standing
5 in kind of a driveway of a house. And I get out of the
6 car, and I get my rifle out of the locked rack that it's
7 in.

8 When we drive around, just a normal day,
9 it's, it's not loaded. So I do what's called chambering
10 a round. I cycle a round into the chamber and keep the
11 safety on. I don't take that off until I'm actually
12 ready and in the process of firing it, and I sling it
13 over my shoulder.

14 And then we go over to the other team of
15 officers that are standing in the driveway. And Ryan
16 has his less lethal shotgun with him.

17 Q And what do you do from there?

18 A So we connect up with the team of officers,
19 the sergeant, a K-9 unit, and then another officer
20 there, the three of them. And immediately we get out of
21 the car and walk over to them.

22 I'm expecting, you know, we'll get kind of
23 a quick, you know, summary of what's happened thus far.
24 But we immediately start hearing a chain link rattling
25 or some kind of commotion coming from right behind the

1 house.

2 And it's very clear to, like, the group of
3 us, I don't know if we talked about it or what, but the
4 likelihood that that was our suspect was high. So we
5 kind of very quickly split and go to the corners of the
6 house.

7 I remember looking south, kind of through
8 the trees and the bushes, and it's really kind of
9 congested view, and we're trying to see if there's
10 somebody there. I'm telling Ryan, like, "Ryan, be
11 careful. This guy has got a gun. Stay close to the
12 house."

13 So we're looking. But we can't, we
14 can't -- we don't see any movement. We can't see
15 anyone. So after a few moments of that --

16 Q I'm sorry to interrupt.

17 A That's all right.

18 Q Do you have an idea of the time frame when you
19 arrive from when this suspect had fled from the other
20 police officers at the residence?

21 Do you have a sense if that was something
22 that happened, you know, immediately before or several
23 minutes before?

24 A I think it was probably about five minutes,
25 five to ten minutes. I knew some time had passed

1 between those two events, yeah.

2 Q Okay.

3 A So after that kind of commotion, that noise,
4 we can't see anybody, we get back together as a group
5 and we start doing the dog track. And we start working
6 our way east along the street, checking the yards on the
7 south side of Tillamook.

8 And the dog is not hitting on anything,
9 you know. That's a term that the K-9 handlers will use.
10 Meaning the dog is not sensing any presence of a person.

11 So we conclude our time on Tillamook. We
12 head back out to 82nd and kind of loop around the block
13 to Hancock, and start again working the backyards of
14 those homes on the north side of NE Hancock working
15 east, which leads us to 8301, where we go into the
16 backyard.

17 And the backyard is a really busy
18 environment. There's, like, a gazebo in the middle.
19 There was some grapevines in the back. The backyard is
20 almost trellised. There's a shed in the corner. And
21 there's -- just really busy. I remember just being,
22 like, there are a lot of places we need to check.

23 And the dog went over to the shed, and the
24 doors were opened on the shed. And it was, it was
25 hitting on the -- on the shed heavily. So the K-9 was

1 like -- the likelihood that he was in the shed is high.

2 So as we're kind of standing there, I'm
3 kind of looking at the house, and I walk up kind of to
4 the back of the house, and I see some stairs that go
5 down to a basement door.

6 And I see on that basement door that the
7 window has been broken out, and that behind the window
8 was like this metal security grate. And that had been
9 kicked or forcibly pushed in. It was large enough that
10 somebody could have climbed through.

11 So I told the sergeant about it. We're
12 looking at that. Then I think, I better go see if
13 somebody is home.

14 So I walk around the front of the house,
15 and I noticed that there's a lockbox on the door handle.
16 And there's a package on the front door sill. The
17 lights are, the lights are off in the house.

18 So I'm kind of thinking nobody is home and
19 this house might be in some kind of state of being sold
20 or something, and I ring the doorbell. And -- or I
21 knock on the door and nobody answers. So I go around,
22 back around to the back of the yard and tell them I
23 don't think anybody is home.

24 As I start looking at the door a little
25 closer, I noticed there's, like, muddy boot print marks

1 around the deadbolt, like somebody had been kicking on
2 it. Then I also noticed that there's this hand print in
3 the moss on the railing.

4 And the home is -- it's built kind of odd.
5 It looks like it's been added on to a couple of times.

6 So in the backyard, the only way you can
7 go down these stairs is actually if you enter in almost
8 like the sun room. And then after you go into the sun
9 room, you can open a side door, and that will lead you
10 down the room. So you have to jump over the railing to
11 get into this stairwell. It looked like somebody just
12 put their hand and just hopped over.

13 So we start kind of talking about, is this
14 our suspect or is this a burglary that happened the
15 night before, two nights ago? And we decide, since
16 we're not a hundred percent sure, let's, let's go back
17 and finish clearing with the dog a couple of yards that
18 we hadn't cleared yet so we can kind of isolate this
19 house and know that he's got to be here.

20 So we walk out front. We go back to the
21 west a little ways, and there's a large lot next to this
22 house to the west. And we clear it and don't find
23 anybody. We go to the house next to that. Nobody is
24 there.

25 So we decide, well, let's go back to this

1 house and take another look at this door and try to
2 figure out what we're going to do next.

3 So we go in the backyard again. And we
4 decide let's have two officers go down the stairway and
5 look at that mud. Is it wet or is it dry? So two
6 officers go down the stairwell.

7 I'm over them kind of providing cover if
8 somebody is right there in the doorway. And they look
9 at the mud and they say, "It's fresh. It's fresh mud."

10 And as they were down there, they kind of
11 pushed on the door a little bit, and they couldn't fully
12 open the door, but it had about four inches of play.

13 To me, it looked like somebody had been
14 kicking on it and the door was damaged, but couldn't get
15 it all of the way open.

16 As they were doing that, the alarm goes
17 off in the house. So --

18 Q This an audible alarm?

19 A An audible alarm. It's not real loud, but
20 it's very clear there's now an alarm going off inside
21 the home.

22 Q The sound is coming from inside of the house?

23 A Correct.

24 Q Is it -- sometimes houses have horns or alarms
25 on the outside to alert the neighborhood. Was it like

1 that, or was it just inside the house?

2 A Just inside of the house.

3 And so in my opinion we're kind of as a
4 group kind of using some deductive reasoning skills
5 here. Okay. If we just pushed on the door and the
6 alarm went off, if the suspect were to crawl through the
7 window, the alarm should have gone off then, as well.

8 So we called the alarm company and asked
9 them, "Is this your first alarm and only alarm or is
10 this your second alarm, or what's the situation on the
11 alarm?" And they tell us that it's the only alarm.

12 And I recall they described it as like a
13 main motion alarm. So we decide let's go clear one more
14 yard that we had bypassed and we'll come back to this
15 house.

16 So that's when we start walking around to
17 the front of the house. And I come around the corner
18 where in the picture you can kind of see that recycling
19 bin. I come around there, and I believe it's the K-9
20 officer shouts. He shouts, "He's right here," something
21 to that effect.

22 He says, "Show me your hands. And he's,
23 he's going to the back." And I noticed that the window
24 was opened on the side of the house. I knew it wasn't
25 opened before.

1 And so I'm thinking, oh, he must be inside
2 the house and he must be running to the back. So I turn
3 and I start going towards the backyard. And Ryan is in
4 front of me with his less lethal.

5 Something inside of me says to turn back
6 around, to not go to the backyard. So I turn around and
7 come into the driveway. And I can see that this suspect
8 is in this recessed area between the house and the
9 garage.

10 And I can't, I can't see all of him. I
11 can see about half of him because now I'm kind of up
12 against the K-9 officer who is to my left.

13 Q If I can interrupt you.

14 A Absolutely.

15 Q Just so we can kind of have a visual on this.

16 This is a photograph that was taken
17 sometime after this incident specifically to show the
18 view into the recessed area or alcove.

19 Does that show the area that you are
20 describing?

21 A Yes.

22 Q Would you be able to indicate, and I'll pass
23 the photo around, where you saw the suspect?

24 A The suspect was standing just slightly deeper
25 than the face of this garage, kind of about where the

1 electrical conduit comes down, kind of in the middle,
2 just back a little bit.

3 Q Okay. At this point, and maybe I'm jumping
4 ahead here, are you able to see this individual in the
5 alcove?

6 And did you, did you believe that that was
7 the suspect that you were looking for at that point or
8 not yet?

9 A No. I believed it was him.

10 Q Why did you believe that?

11 A Two things. He matched the description to a
12 tee. Height, weight, the clothing that he was wearing
13 and just the fact that we're looking for a suspect in
14 this specific area, he matched the description. There
15 was no doubt in my mind that this is the person we're
16 looking for.

17 Q This I assumed because you said you had
18 already been up on the front porch.

19 A That's correct.

20 Q You've been in the driveway. You've been in
21 the backyard. You've been around the house. Now this
22 person is suddenly in the alcove.

23 So safe to say that was a surprise to see
24 him there?

25 A Yes. I'm thinking he probably just climbed

1 out of this window and we kind of surprised each other.
2 And so I'm bumping into kind of the shoulder of the K-9
3 officer trying to gain a better view of the suspect.
4 And I remember just kind of being frustrated.

5 And I kind of lower my rifle and step
6 around him and take a position kind of in the flower
7 bed, because that's all rock that kind of runs along the
8 side of the house into that recessed area.

9 And so I take a stance there, and now he
10 and I are looking right at each other. And I'm only
11 about 15 feet away from him.

12 Q And again, here's a photo that shows that side
13 of the house.

14 Would you be able to indicate maybe even
15 with this pen about where you were about if you're able
16 to do that?

17 A So I'm standing in the rocks just in front of
18 this hose reel for the garden hose in the rocks. And
19 he's about 15 feet in front of me, in that same kind of
20 rocky flower bed that just tucked back in that recessed
21 area.

22 Q It looks like from the photograph there's no
23 cover, there's no place to hide in that location, is
24 there?

25 A No, for neither of us.

1 Q Is that, is that a consideration for you at
2 that point in terms of officer safety or not?

3 A It is. Absolutely. But as, as we form a
4 team, that five-man team, my role is to provide lethal
5 cover. That is my role and responsibility.

6 The other officers there provide a less
7 lethal role and then hands-on capabilities to put him in
8 handcuffs or do whatever needs to be done with your open
9 hands. Then a sergeant is there also to kind of direct
10 the people where they should go.

11 So I'm focused on providing lethal cover
12 for the officers and also the citizens in the homes
13 behind me.

14 Q You said that you, you believed, based on the
15 description of the person you are seeing, was the
16 suspect that you were looking for.

17 Did you believe that you had probable
18 cause to arrest this person for any felony crimes?

19 A Yes. There was no doubt in my mind that the
20 individual I was looking at was the individual that had
21 done the car prowl, the armed car jacking, that had
22 jumped the fence and banged on the back door of the
23 woman's home, that had fled from the officer, and that
24 was holding his waistband, who had a gun. There was no
25 doubt in my mind the person that I was looking at had a

1 gun.

2 Q At that time you thought it was reasonable to
3 believe that he was still armed with a gun?

4 A Yes.

5 Q And why was that?

6 A The multiple accounts of citizens saying that
7 this person had a firearm, and that they had seen it to
8 the degree -- or an officer had seen it to a degree,
9 that he could actually describe the color of it.

10 And then the piece that he was retaining,
11 that he wasn't trying to throw it away. When he was
12 running from the officer, he kept it with him. So there
13 was no information that would lead me to believe he
14 doesn't have a weapon.

15 Q And so safe to say this is a rapidly evolving
16 dynamic situation now. Things are happening quickly, I
17 take it.

18 A Very much so.

19 Q And so where do you go now that you are seeing
20 this person in the alcove?

21 A Well, you know, just like you said, it's very
22 quickly evolving. Our job is to try to slow that down
23 as much as we can.

24 And so as I take a position of lethal
25 cover, I can tell that the sergeant and other officers

1 are behind me, kind of putting the pieces in place to
2 safely take this person into custody.

3 And so the K-9 officer starts giving
4 commands, you know, "Keep your hands up." And as I'm
5 looking at him, he's standing and he has his hands up,
6 but they aren't fully up. They are kind of halfway, in
7 between a 90-degree bend at the elbow and straight up
8 (indicating), which to me is just disconcerting.

9 It makes me feel uncomfortable because to
10 me, if an officer is pointing a firearm at you, they
11 would be fully extended without question.

12 But anyway, he's standing there with his
13 arms up to a degree. And officers are moving in in
14 positions behind me, getting ready to take him into
15 custody. K-9 officer is giving commands. The first
16 one, of course, is to "Hands up," and then there's kind
17 of a lull for a moment.

18 And I tell him -- you know, we are eye to
19 eye, looking at each other. I tell him, "If you reach
20 for your waistband, I will shoot you."

21 Q And why did you give that command? I mean, is
22 that a command that you're trained to give?

23 A It is. It's a command that offers me, um, in
24 the situation a lot of things.

25 It tells, first and foremost, the

1 individual, this officer is serious. I'm giving you a
2 warning that I think you have a gun, and I know it is in
3 your waistband, and if you reach there, I'm going to
4 shoot you. And I have to shoot you because I know if
5 you get that gun, you are going to shoot me.

6 It also provides me immediate feedback,
7 because in my mind, if an officer is looking at me
8 saying if you reach for your waistband, I'm going to
9 shoot you, I'm going to have my arms extended as far
10 away from my waistband as I possibly can because I know
11 the situation we're in is incredibly serious and
12 incredibly dangerous. We're not joking around in any
13 way, shape or form.

14 So I'm trying to give him a warning. I'm
15 trying to give him an opportunity to show compliance and
16 to actually in a way to deescalate the situation we're
17 in because this thing is ramping up out of control.

18 So that's, that's some of the reasons why
19 I say that.

20 Q All right. So you made the command.

21 Did you say that in a loud, firm voice?

22 A Yes. There was no doubt in my mind with the
23 proximity that we were at, the tone of my voice, how
24 loud I was, there's no construction or road noise there,
25 he heard what I said. And we are looking at each other

1 eye to eye.

2 A GRAND JUROR: Can I ask?

3 THE WITNESS: Yes. Yes.

4 A GRAND JUROR: At that point when you
5 were in that position, you were eye to eye, was he
6 standing up or had he -- was he on his knees at that
7 point?

8 THE WITNESS: Still standing up. Yeah.

9 A GRAND JUROR: Thank you.

10 BY MR. REES:

11 Q Any response to your command?

12 A No, no response.

13 So then we begin telling him. And I say
14 we -- I should say I believe the K-9 officer standing to
15 my right begins giving him commands that he's to go down
16 to his -- down to his knees and keep his hands up.

17 So he does that. But as he's doing it, he
18 doesn't, he doesn't keep his hands all of the way up.
19 He kind of drops them slightly towards his waistband.

20 It just raises my internal anxiety of why
21 can't you just keep your hands up all of the way. But
22 he goes down to his knees.

23 And then we begin telling him what you are
24 going to do is you are going to start to crawl out to
25 us. We want you to keep your hands way out in front of

1 you. And you are going to crawl out into the driveway.

2 And kind of before and after that command
3 is given, there's some kind of pauses, you know, to make
4 sure is he hearing us? Is everybody on the same page?

5 And somewhere in there I tell him again,
6 because I want this -- him to understand what my
7 response is going to be. I tell him, "If you reach for
8 your waistband, I will shoot." I feel like I need to
9 tell him again because he's, he's not keeping his hands
10 away from his waistband.

11 When he dropped down to his knees that
12 first time, he let them kind of casually fall. This is
13 not a casual situation we're in right now.

14 So the command is then given, "Okay. Go
15 ahead and start crawling out to us." Instead of
16 crawling, though, he jumps up very quickly. His hands
17 are still up, but he jumps up.

18 And I remember -- I think it caught all us
19 off guard. You know, we kind of almost jumped
20 ourselves. Because it was so very clear and obvious
21 what we asked and told and went over -- what we told you
22 to do.

23 Q Up on his feet or raising his whole body or
24 torso?

25 A Up on to his feet. He's now standing. So

1 we've gone from standing to kneeling and now we're back
2 up standing again.

3 And somebody else, "We told you to crawl.
4 You know like, how could you have gotten that wrong?"

5 And he kind of offers to me, I perceived
6 it as kind of this false excuse that he knew wasn't
7 real, but he gave it anyway. He said, "Well, you told
8 me to come out to you, so I'm coming."

9 And then we told him again, "But we told
10 you to crawl." And so there's again, as these
11 instructions are given, there's kind of pauses in
12 between them. So in one of those pauses, I order him
13 back down to his knees, and he goes back down to his
14 knees.

15 Then we begin going over the instructions
16 again. "You are going to crawl out to us. Hands out in
17 front of you. Don't reach for your waistband. Now
18 begin to crawl."

19 So then he starts crawling. But as he's
20 crawling, he again is not keeping his hands way out in
21 front of him. As he picks up one hand, instead of
22 putting it -- continuing it straight out in front of
23 him, he's drawing it back towards his waistband again.

24 And to me, I perceived it as possibly this
25 guy is getting ready to pull the gun; that he's, he's

1 almost practicing, 'cause I know if, if he's got a long
2 jacket on that's covering his waistband, he may be
3 trying to get a feel of where does the jacket lay
4 against the weapon? How am I going to draw? What is
5 this fluid motion going to look like?

6 So it's creating more anxiety, more
7 nervousness in me. What is this individual going to do
8 because he's not compliant and definitely not
9 appropriately compliant given the seriousness of the
10 situation we're in.

11 So he starts crawling and he's doing this
12 along the way. And I may have -- I told him at least
13 three times what I would do if he reached for his
14 waistband. As he was crawling, I may have said it
15 again.

16 But he gets a little ways out into the
17 driveway and we tell him to stop, and he stops. And he
18 sits back up on his -- kind of vertical. So he's on his
19 knees, vertical, with his torso. His hands are up in
20 the air. Still again not appropriately extended,
21 somewhere between a 90-degree bend at the elbow and
22 fully extended.

23 And we start giving him commands -- let me
24 stop for a moment.

25 I -- as he has crawled out, I have also

1 stepped out of the flowerbed and am now also in the
2 driveway right in line with him. And we start telling
3 him, "Now you are going to go down to your face. Hands
4 out in front of you. Slowly go down to your face."

5 As he does -- as we give those commands, I
6 start noticing that he's looking around. And I
7 perceived it as either he's -- you know, this is the
8 final moment. He knows he's about to go into handcuffs.
9 At least that's my perception.

10 So when he's looking around, I'm thinking
11 either he is looking for an avenue of escape to run or
12 he's looking at a target, an officer, to shoot.

13 And as he's doing that, he takes his right
14 hand and he drops it to the small of his back
15 (indicating.) But immediately, as he kind of puts it
16 down, he pulls it back out.

17 It's like a fluid motion. And it just
18 took my breath away. And I just remember, oh, I almost
19 shot you. Do you not realize what's about to happen? I
20 was just reeling from this reality that I almost shot
21 this person.

22 But the second that that emotion kind of
23 just went through me, in the same kind of fluid
24 movement, once it's brought out front, he reaches to the
25 front of his waistband, and I fired my rifle. I hear it

1 go off three times. Boom. Boom. Boom. And he
2 immediately falls to his face.

3 Q Do you want to take a break for a moment?

4 A No. I'm good. Thank you.

5 Q On the last time that he made that gesture
6 that you just demonstrated for us, would you say that
7 was a casual, an accidental-type motion on his part, or
8 did it appear to be intentional and deliberate, if you
9 could tell?

10 A I perceived it to be very intentional and very
11 deliberate.

12 Q And your use of the AR-15 on your part, was
13 that, was that accidental or was that intentional and
14 deliberate?

15 A I knew that if he were to get to his gun, I
16 would not be able to react fast enough before he was
17 able to shoot one of us.

18 So it was absolutely a conscious decision
19 on my part to defend myself, my coworkers and any
20 citizen that might be behind me from the threat of him
21 getting that gun out and shooting us.

22 Q Because you carry the AR-15, did you believe
23 any other officers were in a position to use deadly
24 force at that time, or did you believe that was your
25 responsibility?

1 A I believed it was my responsibility. And I
2 knew that -- I was kind of at the front of this team of
3 officers. I don't know of any other rifles present or
4 any other pistols out that could provide that type of
5 cover. I know that was my responsibility.

6 Q You didn't, to be clear, you didn't see, as I
7 understand your testimony, you did not actually see a
8 gun in his hand at the time that you pulled the trigger
9 in your rifle; is that correct?

10 A That's correct. I did not see.

11 Q And why not wait until you see a gun pointed
12 at you or see a gun?

13 A I can't wait, because if I let him get his
14 hand on his gun, he will be able to pull that gun out
15 and shoot me or my coworkers before I'm able to react to
16 it.

17 I just -- I can't perceive what he's
18 doing, have that go through my thinking process and then
19 make a decision faster than he's able to shoot me.

20 Q And how do you know that?

21 A All through the training from basic to
22 advanced and then seeing it on the street. There's this
23 action-reaction reality.

24 Q You've seen that in scenario training?

25 A I've seen it in scenario training, yeah, and

1 I've seen it on calls on the street. That if a person
2 has independently decided to take an action, it takes
3 more time for a person to perceive that action and then
4 make an independent decision and appropriate reaction to
5 it.

6 So it's an action-reaction, and we do
7 drills with it. And it's very clear that if a person
8 gets a gun in their hand, an officer will not be able to
9 respond faster than that person making the decision to
10 shoot you. They will win every time.

11 Q When you made the decision to fire at the
12 suspect, where did you aim?

13 A I aimed at the largest portion of him,
14 somewhere between his shoulders and his waist.

15 Q And how many times did you fire the gun?

16 A I fired three times.

17 Q And why did you stop shooting?

18 A I stopped until I started to see him fall on
19 his face until I knew that he couldn't get that gun.

20 Q And was that pursuant to your training?

21 A It is.

22 Q You undoubtedly have thought about this a lot
23 since February 9th, 2017.

24 A Yes.

25 Q In, in thinking about the events of that

1 morning, in reflection, do you believe in that moment,
2 based on what you understood at the time, that you made
3 a reasonable, a reasonable decision to use deadly force
4 that morning?

5 A Yes. With all of the information I knew up to
6 that moment, there was no doubt in my mind he had a gun.
7 And through his actions in those final moments, I
8 believed that he was going to pull that gun on us. And
9 to defend myself and my coworkers, I knew I needed to
10 fire my weapon.

11 So, yes, I believe that my actions were
12 appropriate for that situation.

13 MR. REES: All right. Thank you, Officer
14 Hearst.

15 Are there any follow-up questions from the
16 Grand Jury?

17 All right. So I'm seeing no questions
18 from the Grand Jurors, we'll excuse Officer Hearst then.

19 Thank you very much for coming in this
20 afternoon.

21 A GRAND JUROR: Thank you.

22 THE WITNESS: Thank you.

23 (Proceedings concluded.)

24

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1 State of Oregon)
)
2 County of Multnomah)

3

4 I, KAREN M. EICHHORN, C.S.R., C.R.R., a
5 Certified Shorthand Reporter for the State of Oregon, do
6 hereby certify that I reported in stenotype the
7 proceedings had upon the hearing of this case,
8 previously captioned herein; that I thereafter had
9 reduced my stenotype notes by computer-aided
10 transcription; and that the foregoing transcript, all
11 inclusive, constitutes a full, true, and accurate record
12 of the proceedings had upon the hearing of said cause to
13 the best of my knowledge and ability.

14 A transcript without an original signature, a
15 conformed signature, or digitally signed is not
16 certified.

17 Witness my hand, this the 27th day of
18 March 2017, Portland, Oregon.

19

20

21

22 /s/

23

24 _____
25 Karen M. Eichhorn, C.S.R., C.R.R.
Certified Shorthand Reporter
Certificate No. 05-0395
My Certificate expires: 6-30-18