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MULTNOMAH COUNTY GRAND JURY
DEATH INVESTIGATION

Deceased:)
BODHI PHELPS) DA No. 2341538
Date of Incident:)
May 24th, 2016) GPD No. 16-29120
Location: SE 189th St./ SE)
Grant Street,)
Portland, Oregon)

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled transcript of GRAND JURY proceedings was heard, commencing at the hour of 9:30 a.m., on Tuesday, June 7, 2016, at the Multnomah County Courthouse, Portland, Oregon.

APPEARANCES

Mr. Donald Rees
Mr. Todd Jackson
Deputy District Attorneys
On Behalf of the State of Oregon.

DEBORAH L. COOK, RPR, CSR
Certified Shorthand Reporter
Portland, Oregon

* * *

PROCEEDINGS

Tuesday, June 7, 2016, at 9:37 a.m.

BRANDON CRATE,

produced as a witness, having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. REES:

Q For the record, Detective, if you would
please state your name and spell your first and last
names for the record?

A Brandon Crate, B-R-A-N-D-O-N, C-R-A-T-E.

Q What is your occupation?

A I am a detective with Gresham Police.

Q How long have you been a police officer?

A I'm currently employed with the City of
Gresham, and have been for just shy of seven years.
Prior to that, I was a deputy sheriff in Phoenix,
Arizona, for six-and-a-half years.

Q Are you a member of the Multnomah County
Major Crimes Team?

A I am.

Q What is that?

A It is comprised of a couple of different
agencies, one being Multnomah County, Gresham, Fairview,
and before Troutdale went over to county, they were part

1 of that as well, along with Oregon State Police.

2 Q How many homicide cases have you worked on,
3 either as the lead investigator or as one of the
4 investigators assigned to the case?

5 A Major roles, about 12 homicides.

6 Q Are you assigned as the lead detective
7 investigating the circumstances surrounding the shooting
8 by police of Bodhi Phelps on May 24, 2016?

9 A Yes.

10 Q What time and date did you receive that
11 assignment?

12 A So it was early in the morning of the 24th.
13 I got a call maybe 3:30, 3:40 a.m. and then responded so
14 I was probably there a little after 4:00 a.m.

15 Q And who made the assignment that you would
16 be the lead investigator?

17 A That was determined by Sergeant Manny
18 Hernandez, who is the detective sergeant in charge at
19 this time of the Major Crime Team.

20 Q And so did Sergeant Manny Hernandez act as
21 the supervisor assigning not only you, but other
22 detectives to various aspects of the investigation?

23 A Yes.

24 Q And then who, in addition to the agencies
25 you mentioned, was also involved in the investigation?

1 Any outside police agencies from outside of the ones you
2 mentioned?

3 A Yeah. So we had Portland Police there as
4 well. Any time there's an officer-involved shooting or
5 if we need other resources, we will call in Portland as
6 we go out and assist with Portland's officer-involved
7 shootings. There was also -- the district attorney's
8 office was there with us, and the medical examiner.

9 Q In terms of the investigation itself, then,
10 was the protocol similar to that which would be followed
11 in any major crime or homicide scene?

12 A Yeah. So the only difference between
13 officer-involved shootings are the officers involved are
14 given what we call gag orders. They are not allowed to
15 speak with anybody, aside from a union rep or their
16 counsel.

17 Q In reviewing the evidence, were the
18 statements taken from the various witnesses consistent
19 with the physical evidence that you found at the scene?

20 A Yes, it was.

21 Q Have you prepared a PowerPoint presentation
22 which gives a summarized -- or a summary of this case to
23 help explain generally the findings that were made?

24 A I did.

25 Q And if you need to move, feel free, and we

1 will begin the presentation. I am going to switch sides
2 here.

3 A So I know there's going to be a lot of
4 working parts -- or moving parts in this investigation,
5 so the best way to explain it is to walk through the
6 case, how it unfolded, what we did to investigate, and
7 that type of stuff.

8 So this is Gresham Police Case No. 1629120.
9 Our suspect and deceased in this case is Bodhi Phelps.
10 The victim in this case would have been Courtney
11 Sherrell, who would have been the girlfriend of the
12 deceased.

13 And then Gresham Police Officer Gavin
14 Sasser, he's been a police officer with Gresham for over
15 seven years. He's currently assigned as a field
16 training officer. He's assigned to the Operations
17 Division, and he's a patrol unit and he works night
18 shift. That night he was assigned to work the Rockwood
19 patrol beat.

20 Gresham Police Officer Kevin Carlson, he's
21 been with us just a little over nine months. Prior to
22 that he was a police officer with the Oregon City Police
23 Department for four years. He, too, was assigned to the
24 Patrol Division, working night shift. And he also was
25 assigned to Rockwood patrol beat.

1 So this is our first 911 caller. This
2 occurred on the 24th.

3 MR. REES: Hang on one second, if you
4 would. Let's make sure everyone can follow along with
5 the transcript that I passed out this morning. And did
6 you notice -- right.

7 Q BY MR. REES: And so, Detective Crate,
8 would this be the call from a person who identified
9 themselves as Khadijah Patterson?

10 A Yes.

11 Q So that should be page one of your packet.

12 A So the initial call came in at 3:04 a.m.
13 We received a call as a disturbance. The caller
14 reported hearing a female screaming, she was unfamiliar
15 with the area, but the closest address we got was 801
16 Southeast 190th. She was identified as Lazhane Hawkins.
17 She first gave her name as Khadijah Patterson, and you
18 will hear from her that she was frightened.

19 Q Let's go ahead and play the call. I think
20 everyone has the transcript.

21 A Everyone ready.
22 (911 call played).

23 A JUROR: Turn it up, please.

24 THE WITNESS: I will start over, and turn
25 it up.

1 (911 call played).

2 DISPATCH: 911.

3 CALLER: Oh, yeah. So there's a girl we
4 hear screaming like for her life. She says she needs
5 help, and I don't know what to do.

6 DISPATCH: Can you tell me where you think
7 she's at, the location? Do you have an address or
8 location?

9 CALLER: She's on one -- she's on one --
10 she's on 190th and Stark in the Rockwood -- in
11 Rockwood -- where the Rockwoods are.

12 DISPATCH: Where the Rockwoods are?

13 CALLER: No, not where the Rockwood
14 Apartments are. It's like, it's on the same street
15 like, but it's on Yamhill.

16 DISPATCH: Okay, so it's apartments nearby
17 the Rockwood?

18 CALLER: Yes. It's on Yamhill, though.

19 DISPATCH: And you're hearing her outside?

20 CALLER: Yes, I am outside right now, but I
21 was out on my back porch when I started hearing her
22 scream, and then I told her if she needed -- I yelled
23 out like, I was like, "Do you need help?" And she was
24 like, Yeah, can you please send --

25 DISPATCH: (Speaking simultaneously) Did

1 you see her at all? Is she inside, or is she like
2 upstairs, or is she on the main parking lot?

3 CALLER: No, she's outside like in the
4 middle of the street with some other person. Some other
5 person's like tryin' to grab --

6 DISPATCH: (Speaking simultaneously) Okay.
7 Can you give me your address so I can reference it for
8 them --

9 CALLER: I don't live -- I don't live
10 nowhere over here on 190th --

11 DISPATCH: Well, you said you talked to her
12 so --

13 CALLER: No, like, I yelled out to her
14 'cause I was on the back porch on my -- I am -- I don't
15 live over here. I was at a friend's house, a family
16 friend's house.

17 DISPATCH: Right. Do you have the address
18 there?

19 CALLER: No, I don't know the address here
20 all I know is (unintelligible).

21 DISPATCH: Okay. Are you at the Rockwood
22 Apartments?

23 CALLER: No, I am at the apartments
24 next-door to that, though.

25 DISPATCH: Okay. So nobody there has the

1 address?

2 CALLER: No, I don't, I just left --

3 DISPATCH: There's lots of apartment
4 buildings around there, and so I am trying to narrow it
5 down.

6 CALLER: It's like 820 -- no, 801 Southeast
7 190th --

8 DISPATCH: Okay. So their entrance is like
9 they're at 190th and Yamhill?

10 CALLER: That's the -- that's the address
11 to like the apartment.

12 DISPATCH: 801 Southeast 190th is the
13 Rockwood Apartments.

14 CALLER: Is that -- (inaudible). It's the
15 police. She said call the police.

16 DISPATCH: Did you see anybody with her at
17 all?

18 CALLER: Yeah, it was some other person
19 that like, he was trying to grab her.

20 DISPATCH: Any description of these two?

21 CALLER: They were -- they -- they just
22 drove up to -- towards Division.

23 DISPATCH: They got in a car?

24 CALLER: Yeah, yeah, the person that was
25 trying to take her had a car -- he was --

1 DISPATCH: (Speaking simultaneously) What
2 kind of car?

3 CALLER: He was -- I don't know what kinda
4 car it is. It's dark outside.

5 DISPATCH: Was it a dark or light colored
6 car?

7 CALLER: It was silver. It was silver.

8 DISPATCH: Okay. And what kind of -- did
9 it look like an American-made car to you?

10 CALLER: Yeah, it sounded like it had a
11 flat tire, too.

12 DISPATCH: Okay. And which direction did
13 it go?

14 CALLER: It went towards 190th and
15 Division.

16 DISPATCH: Okay. All right. And what's
17 your name?

18 CALLER: My name is um, um, Khadijah,
19 K-H-A-D-I-J-A-H.

20 DISPATCH: Okay. And a phone number for
21 you?

22 CALLER: Um, 9 -- um, (971) 999-8116.

23 DISPATCH: All right. (971) 999-8116. All
24 right. We will have officers in the area check it.

25 CALLER: Okay.

1 DISPATCH: Bye now.

2 (End of 911 Recording)

3 MR. REES: Before you continue, Detective,
4 are there any Grand Jurors who need to hear it again, or
5 need a moment to look at the transcript?

6 Q BY MR. REES: Okay. Go ahead.

7 A So our second 911 caller came in at 3:08,
8 indicated that a physical assault was occurring between
9 a male and female --

10 (Interruption at the door.)

11

12 CLIFFORD NELSON, M.D.,
13 produced as a witness, having been first duly sworn,
14 was examined and testified as follows:

15 THE WITNESS: I do.

16 DIRECT EXAMINATION

17 BY MR. REES:

18 Q Doctor, if you would for the record, state
19 your first and last names, and spell your first and last
20 names?

21 A Clifford Nelson, C-L-I-F-F-O-R-D,
22 N-E-L-S-O-N.

23 Q Would you like to move the seat a little
24 closer?

25 A No, I am fine.

1 Q There's a little ambient noise in here with
2 the fan, I think. In terms of context, we're only just
3 beginning, but we appreciate your busy schedule so we
4 made accommodations to bring you in at this time,
5 although it's a bit out of order. So bear with us,
6 please.

7 What is your occupation?

8 A Deputy medical examiner for the State of
9 Oregon.

10 Q And could you give the Grand Jury a summary
11 of your training and experience in the field of
12 medicine?

13 A Sure. Went to college at the University of
14 Portland, graduated in 1984 with a bachelor's of
15 sciences in biochemistry. Went to Oregon Health
16 Sciences University School Of Medicine where I did a
17 student sub fellowship in pathology. At the same time I
18 was going to medical school.

19 Finished that in 1989. Went directly to a
20 pathology residency program, combined anatomic and
21 clinical pathology. I completed that program in 1993,
22 then went to Atlanta, Georgia, and did a fellowship in
23 forensic pathology from 1993 to 1994. Stayed on staff
24 in Atlanta for about six months afterwards.

25 Then came to Clark County, Washington,

1 where I was the first medical examiner for Clark County.
2 I then took a newly created job in Oregon as a deputy
3 state medical examiner, and I have been there ever
4 since.

5 Q Over the span of your career, do you
6 know -- or have an approximation of how many autopsies
7 you have performed?

8 A About 5,000.

9 Q What is an autopsy?

10 A An autopsy is one part of a death
11 investigation, which starts -- the death investigation
12 starts with us getting information about how a person
13 has died, where -- what the circumstances were, what
14 their health history was, then deciding if we need to go
15 any further.

16 The next step would be to have one of our
17 investigators go out to the scene, assess the scene,
18 decide if the body was going to come into the medical
19 examiner's office. If it needs to, to figure out what
20 the cause and manner of death is, or to document
21 something, then the body comes in.

22 At that point a pathologist is going to
23 make a decision on it, if we just need to look at the
24 body, get more clinical information, maybe do
25 toxicology, or if we need to go to a full autopsy, which

1 is basically examining the body externally, as well as
2 internally, looking for any evidence of natural
3 diseases, or traumatic injuries that caused that person
4 to die.

5 And basically make a Y-shaped incision,
6 examine all the organs inside the body, including the
7 brain, so we're opening the head, we're looking at the
8 neck structures, and that's pretty much it.

9 Q And then you write a report of your
10 findings?

11 A Correct.

12 Q In this case, did you perform an autopsy on
13 the body of a person identified as Bodhi Phelps?

14 A I did.

15 Q When was that conducted?

16 A May 24th at about 1:15 p.m.

17 Q Where was that performed?

18 A At the office in Clackamas.

19 Q Who, besides yourself, was present during
20 this examination and autopsy?

21 A Gresham Police Department's Criminalists
22 Grossi and Surplus, yourself, and DA Jackson, as well as
23 Gresham Police Department's Detectives -- "Crate" -- is
24 that -- Crate, something like that.

25 Q I will need to check on that.

1 A Hibbs, and then there's one other person
2 that I couldn't make his name out on the sign-in sheet.

3 Q And this is -- just so people are clear,
4 you are referring to a draft report, right? This is not
5 the final report because of the time frame?

6 A Right. Right.

7 Q What did you observe, initially, during the
8 examination of the deceased in terms of how he was
9 dressed, and what was -- what articles were found in his
10 clothing?

11 A He's pretty much fully dressed. He's got
12 quite a bit of clothing on, all of which is pretty
13 blood-soaked because of the gunshot wounds he has. And
14 the clothing has multiple defects from the multiple
15 gunshot wounds.

16 Q Were any articles of interest found in the
17 pockets?

18 A I will look. An uncapped needle and
19 syringe, tubular antenna with -- that people use for
20 smoking either crack or methamphetamines, one small drug
21 baggy. And then in another pocket an empty drug baggy,
22 as well as a Ziploc baggy, and a Tide To Go pen. What
23 that has to do with anything, I am not sure.

24 Q Stain remover?

25 A JUROR: Stain remover. Wash clothes.

1 THE WITNESS: Yeah. But I don't think it
2 has anything to do with what we're talking about.

3 Q BY MR. REES: The needle and syringe that
4 you mentioned, did that appear to be consistent with the
5 use of street drugs?

6 A Yeah. I mean, it's a diabetic size
7 syringe, which is what most people use for injecting
8 either -- well, injecting whatever. It's pretty much
9 kind of whatever.

10 Q And then during the external examination of
11 the body, did you note any indications or signs of IV
12 drug abuse?

13 A Yeah. Pretty recent. Both of his biceps,
14 he's got a running series of injection sites.

15 Q Inside of his underwear there was some sort
16 of folded mesh bag; is that correct?

17 A Yeah. I am not sure what that was for.

18 Q Have you ever seen that before?

19 A Not -- well, I have seen a bag like that
20 commonly used for -- people use them for carrying
21 swimming gear. But why he had it stuffed in his pants
22 pocket -- or I mean in his underwear. I have got an
23 idea what it might have been being used for, but --

24 Q But --

25 A I don't know. Who knows.

1 Q And then in terms of the autopsy itself,
2 what were your findings regarding the gunshot wounds to
3 Bodhi Phelps?

4 A He's got a series of 11 gunshot wounds, one
5 of which is a -- just a superficial graze on the top of
6 his skin. Of the other ten wounds, there was only one
7 that would have been rapidly fatal, and then one other
8 one that he would have died for if he hadn't gotten
9 medical intervention. The other wounds, although they
10 could become serious later, would have taken quite
11 awhile to cause death.

12 Q Can I ask you to go through, for the Grand
13 Jury, the gunshot wounds that you observed, and their
14 location?

15 A Sure. He's got one of the right thumb,
16 which is basically -- breaks up this bone here
17 (indicating). He has one that's through his left wrist,
18 one that -- of his left abdomen, that basically just
19 goes through the skin underlying fat and muscles.

20 One of the left hip that basically just
21 goes through muscles and soft tissues of the hip. One
22 of his left buttocks, which basically goes through the
23 gluteus muscle. One of the left chest that goes through
24 the chest wall muscles, soft tissues, breaks a rib, but
25 doesn't enter his -- doesn't appear to enter his chest

1 cavity.

2 One of the left scapula and chest that
3 basically crosses from left to right. It goes through
4 his shoulder blade area on the left, externally nicks
5 the inside part of the bone, goes through the muscles
6 surrounding his back or his spinal column, and then
7 lodges in the muscles of his right back.

8 He has another one of the upper left chest,
9 which goes through the left pectoralis muscle, soft
10 tissues over the sternum and lodges in the right
11 pectoralis muscle.

12 Another one of the left chest, and this is
13 the one that would have been rapidly fatal, which goes
14 through the sternum, goes through the anterior
15 mediastinum, which is all the soft tissues right in
16 front of your heart. Goes through the pericardial sac,
17 which is basically the sack that surrounds your heart.
18 Goes through the right side of the heart, goes through
19 the upper lobe of the left lung -- that should be right
20 lung. And then fractures or goes through the right 10th
21 intercostal space. And then because it went through the
22 heart and lung and everything else, he's got a lot of
23 blood in that right side of his chest.

24 Probably the second most serious wound he's
25 got is No. 10, which goes into the pelvis, goes through

1 the abdominal wall, perforates the colon, goes through
2 the lining of the abdominal wall in the back in the
3 pelvis area, and lodges in the muscles of the pelvis.

4 And then the last one is that graze wound
5 over his right breast.

6 Q Other than the one gunshot wound which you
7 described as being rapidly fatal, were any of the other
8 gunshot wounds immediately debilitating, in your
9 opinion?

10 A No.

11 Q Are you able to tell from your examination
12 the order of the gunshot wounds?

13 A No.

14 Q Are you able to determine in this case the
15 distance from the shooting officers to the deceased?

16 A No.

17 Q Are you able to determine at least that it
18 was -- the shooters were a certain distance away from
19 the deceased?

20 A Well, there's no place that he has that it
21 went -- on his body where the gunshot wound enters
22 uncovered skin, except his thumb and his wrist. And on
23 his thumb and his wrist, he's got no stippling or soot
24 that would indicate that it is a close, or what we call
25 an intermediate range, gunshot entrance wound.

1 So that puts away, at least for those two
2 shots, it puts it away from him approximately, depending
3 on what type of ammunition and what type of guns were
4 being used, probably out to two feet --

5 Q Beyond two feet?

6 A Beyond two feet. None of them -- none of
7 the wounds anyplace on his body looked like contact.
8 That is one thing we can tell through clothing, is if
9 somebody has a contact wound.

10 As far as the clothing, it's like his
11 jacket is very dark. I don't remember the color of the
12 rest of the clothing, but since most of the wounds are
13 involving his upper body, it's the jacket that is
14 important. And it would be very difficult to pick up
15 soot or see the small flecks of gun powder on those. I
16 would leave that for the crime lab to look at.

17 Q Some protesters were quoted in the media
18 about this case as stating that Bodhi Phelps was shot in
19 the back.

20 Based on your examination, is that a
21 correct assertion?

22 A There's nothing that enters in his back.
23 It goes -- there's a couple wounds that go side-to-side,
24 and the closest thing to hitting him in the back would
25 be one that goes in his butt. And it basically goes

1 from one side of his buttocks to the other.

2 Q Would the gunshot injuries you observed be
3 consistent with the shooting officers either facing
4 Bodhi Phelps, or standing at some angle to his side?

5 A When the shots were fired, he was either --
6 they were either into his side or from the front.

7 Q Did you recover any spent bullets during
8 the examination?

9 A Yes. Yes.

10 Q Can you describe those?

11 A One was recovered in his clothing, and then
12 the rest of them that were recovered, I believe, were
13 all large caliber, some type of handgun bullets.
14 There's nothing that looked like .223 or small
15 high-powered casings.

16 Q And how many did you recover?

17 A I don't remember. Let's see --

18 Q If you don't mind, just take a moment and
19 look at your notes.

20 A One, two, three, four -- four from the body
21 and one from the clothing.

22 MR. REES: Question?

23 A JUROR: What is a spent bullet?

24 THE WITNESS: Just the bullet part -- well,
25 most people think of ammunition as -- call it a bullet.

1 But what you have got is a case that has a primer in the
2 back, gun powder in the center, and then a bullet that
3 basically caps that cartridge.

4 And so all we're talking about is a bullet
5 that has come out of a gun, and then so it's -- at that
6 point, it's a spent bullet. In his case, it obviously
7 hit something because they are deformed.

8 A JUROR: So it's not the shell casing,
9 it's the part that enters --

10 THE WITNESS: Yeah. It's the part that
11 enters. It's the bullet.

12 A JUROR: Thank you.

13 Q BY MR. REES: You mentioned the terms cause
14 and manner of death. What is the difference?

15 A The cause of death is that disease or
16 injury, or whatever, could be inhalation, it could be a
17 chemical that somebody took, that causes the person to
18 die.

19 The manner of death is one of five things.
20 It's either natural, accident, suicide, homicide, or if
21 we can't figure out which one of those four categories
22 to put it in, we throw it into undetermined.

23 Q In this case, did you form an opinion and
24 conclusion as to the cause and manner of death?

25 A Yes.

1 Q What was the cause of death?

2 A Multiple gunshot wounds.

3 Q And the manner of death?

4 A It's homicide.

5 Q And when you say homicide, to be clear, is
6 that a medical determination, as opposed to a legal
7 determination?

8 A It's a medical determination. We use
9 homicide for any case where one person's actions causes
10 the death of another person, unless it's like a car
11 accident. And then we call it accidental, and that's
12 mainly by convention.

13 But if somebody points a gun for whatever
14 reason at another person and pulls the trigger, and that
15 person is shot and dies, we call it a homicide. Whether
16 it's justified, which would be the legal definition or
17 not, it's different than murder.

18 Q Thank you, Dr. Nelson.

19 MR. REES: Grand jurors, any follow-up
20 questions for Dr. Nelson?

21 Thank you very much for coming in.

22 (Brief recess taken.)

23

24

25

1 ASHLEE DURBIN,
2 produced as a witness, having been first duly sworn,
3 was examined and testified as follows:

4 THE WITNESS: Yes.

5

6 DIRECT EXAMINATION

7 BY MR. JACKSON:

8 Q Have a seat. Could you please state and
9 spell your name for the record?

10 A Ashlee Durbin, A-S-H-L-E-E, D-U-R-B-I-N.

11 Q I want to take you back to May 24th of
12 2016. Do you remember where you were that night?

13 A Like 190th and Yamhill.

14 Q If you look up on the screen here, does
15 this look like 190th and Yamhill here?

16 A Yeah.

17 Q And so what were you doing in that area?

18 A I was at my friend's house.

19 Q Do you recall about 3:00 in the morning
20 seeing an altercation occurring?

21 A Yeah. I heard it. There's a lady -- well,
22 she was on the side, outside of the car, and the man was
23 in the car. And she was like screaming really loud for
24 help. And me and my friend, Aubreanna, heard her, so we
25 got over there. And we are like, Do you need help? And

1 she's goes, like, Yeah.

2 And by the time we got over there, he
3 pulled her in the car and drove off, and then we called
4 the police.

5 Q So you actually saw a male person pull --

6 A Well, didn't -- well, she was being pulled
7 in the car. Who else was in the car, I don't know.

8 Q Okay. And while she was being pulled into
9 the car, what was her demeanor like?

10 A She was trying to not go in the car, but
11 she was pulled in the car, yeah.

12 Q Aside from hearing her calling for help,
13 did she say anything else?

14 A Huh-uh.

15 Q BY MR. REES: When you saw that what did
16 you think was happening?

17 A That she was being kidnapped.

18 Q BY MR. JACKSON: And seeing that caused you
19 to call 911?

20 A Uh-huh.

21 A JUROR: Just to clarify, was she
22 resisting?

23 THE WITNESS: Yeah.

24 Q BY MR. JACKSON: Were they in the street
25 when you saw them or were they --

1 A No, they were in like -- I was in the
2 apartment, so I think -- is this -- yeah, I was in these
3 apartments, and then they were like up there
4 (indicating).

5 Q If you want to come up to the screen and
6 point --

7 A Is this going towards Division?

8 Q Division is down here.

9 A So they were, like, somewhere like right
10 here, and we were like over there.

11 Q Okay.

12 A And then drove away.

13 Q You can have a seat.

14 Did you see which direction they left?

15 A Yeah. They went down Division, to like --
16 that's as far as we could see.

17 Q They went down 190th?

18 A 190th to Division, yes.

19 Q And did you report what you saw to the 911?

20 A Uh-huh.

21 Q BY MR. REES: So why -- maybe you already
22 stated this, but why, exactly, did you call 911 at that
23 time?

24 A Because she was screaming for help, and
25 then by the time we got there, like to -- halfway to the

1 car, he pulled her in the car, and he drove off. So we
2 thought she was being kidnapped.

3 Q And you said that she --

4 A She was screaming for help.

5 Q She was screaming for help?

6 A Yeah. Because I was, like, Do you need
7 help? And she was, like, Yeah. And I said, Does he
8 have a gun? And she said, No. So we went over there,
9 me and Aubreanna.

10 Q Did you have any contact, after you called
11 911, with any police officers?

12 A No, because I don't have a phone.

13 Q And I just meant, did the police officers
14 come to you and say, Hey, what's going on, or --
15 you didn't see anything after that?

16 A No. No.

17 A JUROR: You said you called -- did your
18 friends call 911? You said you didn't have a phone.

19 THE WITNESS: Yeah, I called 911 on her
20 phone.

21 MR. REES: Any other questions? All right.
22 Thank you for coming in.

23 AUBREANNA JUSTICE,
24 produced as a witness, having been first duly sworn,
25 was examined and testified as follows:

1 THE WITNESS: Yes.

2 DIRECT EXAMINATION

3 BY MR. JACKSON:

4 Q You can have a seat. Could you please
5 state and spell your name for the Grand Jurors?

6 A Aubreanna Justice, A-U-B-R-E-A-N-N-A,
7 J-U-S-T-I-C-E.

8 Q Okay. Take you back to May 24th of 2016.
9 Do you remember where you were that night?

10 A Yes.

11 Q Where were you?

12 A I was at my house in my front yard.

13 Q And where is that located?

14 A It's 18837 Southeast Yamhill, Apartment
15 121.

16 Q If we look up on the board here, do you
17 recognize Yamhill and 190th?

18 A Yes.

19 Q Is this the location where you live?

20 A Yes. Yes.

21 Q And it's hard to tell sometimes on these
22 aerial shots, but do you know where your actual
23 residence is on this map?

24 A Yes, it would be right at the corner
25 between 190th and Yamhill on your right.

1 Q Right over here (indicating)?

2 A Yeah.

3 Q So this is the southeast corner of Yamhill
4 and 190th?

5 A Yes.

6 Q And were you -- did you hear an altercation
7 occurring about 3:00 in the morning?

8 A Yes.

9 Q Could you describe for us what you remember
10 hearing and seeing?

11 A I heard a woman yelling at first, and I
12 live on 190th. I didn't really do anything about it at
13 first. I hear yelling all day long.

14 And once I decided to move towards the back
15 of my apartment on my back porch, I heard a woman
16 yelling for help. And that's when it kind of dawned on
17 me, you are yelling for help more than once.

18 So I went to the corner of 190th and
19 Yamhill and asked the young lady, Do you need help? And
20 she yelled back to me, Yes. So I hopped my fence, and
21 ran across the street of Yamhill. My friend Ashlee had
22 yelled, Are you yelling for help? She said, Yes. We
23 said, Does he have a gun? She said, No.

24 So we proceeded to run towards the car, and
25 while we were running towards the car the woman is on

1 the driver's side of the car. And as I can tell,
2 there's a male in the front driver side of the car. We
3 see her get pulled into the car, and they were driving
4 off. We were running towards them to try to get the
5 license plate, but they were driving pretty fast.

6 Q Okay. And so you said you came out through
7 the yard and then crossed Yamhill?

8 A Yes.

9 Q So on this map, where was the vehicle and
10 the people you were helping?

11 A 190th, a little bit more, past Yamhill. So
12 about right there.

13 Q Right in this area here?

14 A Yeah.

15 Q And aside from Ashlee, was there anybody
16 else with you?

17 A No.

18 Q Did you see which direction the car went?

19 A Towards Division on Yamhill -- I mean,
20 towards Division on 190th.

21 Q So south, down 190th, towards Division?

22 A Other way.

23 Q Down towards Division down here?

24 A Yeah.

25 Q What did you think was happening?

1 A My perspective, it looked like he was
2 trying to kidnap her. When I see somebody getting
3 yanked in the car, that's not kind of normal. So I
4 would proceed as that was a kidnapping.

5 Q Did you feel scared?

6 A To a certain extent yes. I wasn't scared
7 completely for my life. I was more scared for her life.

8 Q And did you participate in the 911 call?

9 A Yes.

10 MR. REES: I think there's a question over
11 here, Todd.

12 A JUROR: You said that she was on the
13 driver's side, and there was a man in the seat, and he
14 dragged her in. So who was driving, and how did he drag
15 her into the car?

16 THE WITNESS: She was standing outside of
17 the car, and the driver's side door was open. He pulled
18 her in. I don't know exactly how that would work, but
19 that's what I seen was him pulling her in through the
20 driver's side.

21 A JUROR: Okay.

22 MR. JACKSON: Are there any other
23 questions?

24 Q BY MR. REES: I have one question, just for
25 clarification. Because you were asked something about

1 the night of May 24th, I think. And let's see, May 24th
2 was a Tuesday. Was this the nighttime, or was this
3 actually in the early morning hours.

4 THE WITNESS: I would say -- I made the
5 call at 3:00-ish, so it had happened about 2:20, 2:45 in
6 the morning.

7 MR. REES: Okay. Great. Were there any
8 other questions, folks?

9 MR. JACKSON: Okay. That's it. Thank you.

10 LAZHANE HAWKINS,
11 produced as a witness, having been first duly sworn,
12 was examined and testified as follows:

13 THE WITNESS: Yes.

14 DIRECT EXAMINATION

15 BY MR. JACKSON:

16 Q You can have a seat. Would you please
17 state and spell your name for the Grand Jurors?

18 A Lazhane Hawkins, L-A-Z-H-A-N-E,
19 H-A-W-K-I-N-S.

20 Q We will take you back to May 24th of 2016.
21 Do you remember where you were that night?

22 A Yes. I was on 190th and Stark.

23 Q And who were you with?

24 A I was with my cousin and her friend at my
25 aunt's house.

1 Q And what are their names?

2 A Aubreanna Justice, she was just in here,
3 and then her mom, my aunt. Her name is Miesha Justice
4 (phonetic).

5 Q So about 3:00 in the morning, do you
6 remember an altercation happening on the street?

7 A Yes.

8 Q Could you tell us what you remember about
9 that?

10 A I was standing out back with my cousin, and
11 then we just heard yelling from a girl. And then we
12 asked her if she needed help. And she was screaming
13 like, yes, help me, and stuff.

14 And then my cousin started walking up, but
15 I was scared. So I was like -- I said I was going to
16 call the police for her, and she said, Okay, like
17 yelling it out.

18 And a guy was like trying to pull her into
19 the car, and he wasn't getting her in at first, like she
20 was trying to run away. But he had, like, her arm,
21 trying to pull her into the passenger seat of the car.
22 And then by the time -- and then I left from -- because
23 I was by a fence, and that's how I seen it all. And
24 then I left from the fence and I called 911 for her.
25 And then my cousin and them came back, and they said

1 they drove off by that time.

2 Q So you actually made the call to 911?

3 A Yeah.

4 Q And what did you think was happening?

5 A The guy was trying to kidnap her, like he
6 was trying to take her.

7 Q And did you hear the female making any
8 statements besides "help"?

9 A No, I just heard her say "help" and then to
10 call 911.

11 Q So you actually heard her yell out, "Call
12 911"?

13 A Yeah. Yeah. She was yelling it out.

14 Q Did you see which direction the vehicle
15 traveled?

16 A Towards 190th and Division.

17 A JUROR: I am sorry. To clarify, you said
18 you were at 190th and Stark --

19 THE WITNESS: So like when you turn down
20 190th and Stark, you were at like Rockwood Apartments.
21 I was in the apartments right next to those, but I don't
22 know what those are called.

23 A JUROR: Can you point on the map? Just
24 to clarify, were you on Stark or Yamhill?

25 THE WITNESS: Yamhill. I was in the

1 apartments right next to Yamhill, but everything was
2 happening on Yamhill.

3 A JUROR: I had a question, too. Was the
4 car a sedan or a coupe? Did it have four doors or two
5 doors?

6 THE WITNESS: I am not sure. I wasn't
7 really paying --

8 A JUROR: Because you said passenger seat,
9 so I wasn't sure if it was like the front passenger or
10 the back.

11 THE WITNESS: No, it was the front. But I
12 am not sure what kind of car he was driving.

13 Q BY MR. JACKSON: You said the female person
14 appeared to be trying to get away from him?

15 A Yeah.

16 Q When the 911 -- do you recall the 911
17 operator asking for your name?

18 A Uh-huh.

19 Q And what name did you tell her?

20 A Khadijah.

21 Q Is that your name?

22 A No.

23 Q How come you said your name was Khadijah?

24 A Because I was scared that if I came in and
25 talked to anybody, that the guy was going to probably,

1 like, find out who any of us was, and try to do
2 something. And that's when I talked to the detective,
3 and he told me that that wouldn't happen. So that's
4 when I gave them my real information.

5 Q So you felt scared?

6 A Yeah.

7 MR. REES: Todd, this Grand Juror has a
8 question.

9 A JUROR: You said the man in the car was
10 trying to pull the woman into the car. What side of the
11 car was he trying to pull her in from?

12 THE WITNESS: The driver's seat. He was in
13 the driver's seat.

14 MR. JACKSON: Are there any other
15 questions?

16 A JUROR: Could I just get your name again?

17 THE WITNESS: L-A-Z-H-A-N-E.

18 A JUROR: And your last name?

19 THE WITNESS: H-A-W-K-I-N-S.

20 A JUROR: Thank you.

21 MR. REES: Thanks for coming in.

22 (Brief recess taken.)

23

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RON ATAY,
produced as a witness, having been first duly sworn,
was examined and testified as follows:

THE WITNESS: Yes, I do.

MR. REES: Before you sit down, I am going
to move this chair up a little bit. But Ms. Cook over
here is writing down what you are saying, and so you
will need to speak up a little bit. And then I am also
going to put this board up.

DIRECT EXAMINATION

BY MR. JACKSON:

Q So if you could please state and spell your
name?

A Ron Atay, R-O-N, A-T-A-Y.

Q And do you live here, on this map on
Southeast 189th Avenue?

A We do.

Q Near Southeast Grant?

A Yes.

Q And this yellow arrow indicating -- looks
like the second house down on the east side of the
street, that is your house?

A Yes, it is.

Q So were you home on the night of May 24,

1 2016?

2 A Yes.

3 Q What do you remember hearing that night?

4 MR. REES: And just to clarify, it's not
5 really the night of May 24th. It's the early morning
6 hours of May 24th, correct?

7 THE WITNESS: Correct.

8 MR. REES: It was nighttime, but
9 technically it was early morning on the 24th?

10 THE WITNESS: At maybe 3:00 or so in the
11 morning.

12 MR. REES: That's a Tuesday morning.

13 Q BY MR. JACKSON: Okay. Were you home
14 during that time?

15 A Yes, I was.

16 Q And what do you recall hearing?

17 A I recall hearing a woman screaming, and
18 when I got up my wife was already awake. She was on the
19 phone calling 911.

20 Q Did you look outside?

21 A I walked over to the front door and we have
22 a security door, so opened the regular door. I looked
23 out across the street, and I saw a vehicle, and two
24 people -- well, actually one person, but two people were
25 in the vehicle -- one person was in the vehicle and the

1 other person was standing outside. The person in there
2 was a female, in the car, and a male was standing
3 outside the car on the passenger's side.

4 Q You said you woke up to the sounds of a
5 female screaming. Could you make out what she was
6 saying?

7 A She was just screaming. She didn't really
8 articulate any statements at that time.

9 Q And when you looked outside, you said she
10 was inside the car. Were the windows down, as far as
11 you could tell, of the vehicle?

12 A One window was down. I believe it was the
13 driver's side window was down. The other one was -- I
14 am not quite sure about that. But the ones I could see
15 were up.

16 Q And what was the male person doing outside
17 the car?

18 A He was standing and looking in, and he
19 slammed the door a couple of times. And then walked
20 away. He went northbound on 189th, toward Grant Street.

21 Q And so on this map here, this is your
22 house. So where was the vehicle positioned on the
23 street when you came out?

24 A Pretty much directly across the street from
25 our carport right there.

1 Q Right where this cursor is?

2 A Correct.

3 Q And you said the male walked north toward
4 Grant Street?

5 A And he went out of sight at that time. I
6 knew my wife had already been on with dispatch, and then
7 he returned. When he was returning, the female got out
8 of the vehicle and walked around to the driver's side
9 and started screaming again.

10 Q What was he doing, the male?

11 A He was just walking toward the vehicle.
12 She was -- she said, Nobody loves me. That was one
13 thing she did scream at that time. And then she got
14 back into the vehicle.

15 The male continued on to the vehicle, and
16 attempted to open the door on the driver's side. But I
17 think she held it closed, and so he walked to the back
18 of the vehicle and opened up a trunk. Took out what
19 appeared to be a tire and threw it on the ground. Then
20 retrieved two white shopping bags that appeared to be
21 some kind of shopping bags. And then started walking
22 northbound again on 189th toward Grant.

23 Q What happened next?

24 A At that time an officer showed up. He
25 turned left off of Grant, came onto 189th and contacted

1 the subject just in front of the other houses across the
2 street.

3 Q The officer came down off of Grant onto
4 189th?

5 A Correct. Right there. He put his
6 take-down lights on, and got out of the vehicle and told
7 him to stop.

8 Q Mr. Atay, if you could take a look at the
9 diagram behind you, do you see the red square and the
10 blue square that is here on Southeast 189th?

11 A Uh-huh.

12 Q Does that accurately reflect approximately
13 where you remember the suspect vehicle and the patrol
14 vehicle being located?

15 A No, I think the suspect vehicle was farther
16 south. I think it was located around in this corner,
17 right about here (indicating).

18 Q Okay.

19 A And then the police cruiser came around and
20 stopped about here. This is pretty close, but it should
21 be down just a tad. This is where our carport is, and I
22 could see, coming out of my garage and my door -- front
23 door is right here, looking this direction. So it kind
24 of -- the vehicle, I believe, was right here.

25 Q Are there street lights in this area?

1 A Yes. I had installed a street light on the
2 fence post, which is right on the corner right here.
3 It's a pretty bright light. It's several lumens.

4 Q Was it on that night?

5 A Yes, it was.

6 Q So after the police cruiser pulled in, you
7 said the officer contacted the male individual?

8 A Yes.

9 Q Could you describe what, exactly, happened?

10 A He made contact with him, and the subject
11 started to walk faster. He called out to him a second
12 time, and then the suspect started running.

13 Q When you say he called out to him, what did
14 he call out to him?

15 A "Stop." He mentioned "stop" twice, that I
16 recall. The second time when he said "stop," he just
17 started running.

18 Q The male suspect started running?

19 A The male subject started running.

20 Q What did the police officer do?

21 A He ran after him. He got out -- well, he
22 was already out of the vehicle. He closed the door and
23 just began a foot chase.

24 Q Which direction did the foot chase go?

25 A It went northbound on 189th, and then it

1 turned to go westbound on Grant.

2 Q Around the corner, if we look at this map
3 here, they ran around the corner here?

4 A Yes.

5 Q And then what did you do?

6 A I told my wife to tell dispatch that he's
7 running, the person is running. I knew then that I
8 wanted to assist in some way, so I grabbed some tools,
9 and went out through my garage. Opened the garage door,
10 and I was walking down the carport, I heard shots fired.

11 Q Okay. Do you recognize the sound of a
12 gunshot?

13 A Yes, I do.

14 Q Do you recall, approximately, how many
15 gunshots you heard?

16 A It sounded like maybe five or six, but
17 there's an echoing in there, but I knew it was
18 definitely gunshots.

19 Q Could you tell which direction they were
20 coming from?

21 A From that side of Grant Street. There's a
22 fence that blocks your view from where I was coming down
23 the driveway, or our carport. And then so they went
24 right around the corner on Southeast Grant.

25 Q So gunshots appeared to be coming from the

1 west?

2 A Yes, they were from the west side,
3 somewhere in that direction.

4 Q After you heard the gunshots, what did you
5 do then?

6 A I went down to the vehicle where the female
7 was. I told her to stay put, you are not going
8 anywhere. Stay right here. I asked her to -- well, in
9 the mean time, I had my flashlight. It's a 300-lumen
10 flashlight, and I was shining it inside the vehicle to
11 make sure nobody else was in there.

12 And then I asked her to show me her hands,
13 and roll the window down. And then I asked her to give
14 me her keys to the car. And I told her I was going to
15 put it on top of the roof in case she needed it, but I'm
16 going to secure that. I didn't say I was going to
17 secure it. I just put it on top of the roof. And then
18 I waited to see what happened next.

19 Backed away from the vehicle, and I was
20 expecting the officer to return with the suspect in
21 custody, or the suspect to come back. If it was a
22 suspect, then it was my intention to put him under
23 citizen's arrest.

24 Q What was the female in the car, what was
25 her demeanor like as you were talking to her?

1 A She was crying, but she looked unharmed.
2 She did not have any bruises, or she didn't look like
3 she had been in any kind of physical altercation. She
4 appeared to be frightened, but she was compliant and she
5 was showing a demeanor of being compliant.

6 Q So who ended up coming back around the
7 corner?

8 A The first -- the second officer showed up.
9 I saw another vehicle cruiser come down to the corner of
10 Grant and 189th, so I flagged them down with my
11 flashlight.

12 As he was pulling up toward me, I signalled
13 to him that this -- I was sure he knew what was
14 happening, obviously. This is the vehicle that he
15 needed to be paying attention to.

16 And I didn't say anything until he got out
17 of the vehicle. I explained to him exactly what I seen
18 and heard, and he said, Thank you. And so we walked
19 out -- my wife had already come down. I asked her to
20 take a picture of the vehicle's license plate, because
21 there was a time frame in there. It took awhile. And I
22 wasn't sure that -- who was going to come around the
23 corner. So we wanted to make sure that we took a
24 picture of the vehicle just in case.

25 The officer spoke to both of us at that

1 time, and we backed out and went up to the garage. And
2 just basically kept observing to see if we could do
3 anything else.

4 But by that time, the officer had already
5 secured the scene. Asked the female to get out, and got
6 into his cruiser. And by that time, too, there were
7 three or four other cars that showed up. I am assuming
8 there were, because I could just see their lights. I
9 couldn't see the actual vehicles.

10 Q They looked like patrol cars?

11 A They were definitely patrol cars.

12 MR. JACKSON: Any questions for Mr. Atay?

13 Q BY MR. REES: Mr. Atay, how long have you
14 lived in that neighborhood?

15 A About five years.

16 Q Do you have a background in private
17 security?

18 A Yes, I am a private security armed officer
19 for Phoenix Corporation.

20 Q How long have you done that kind of work?

21 A About 25 years.

22 Q Do you know any of these police officers,
23 personally, who were involved in this incident?

24 A No, I do not.

25 Q And to be clear, when you saw these things,

1 were you acting in your capacity as a private security
2 officer, or as a homeowner on the street?

3 A Both. Yes.

4 Q How does that mean -- how is it both?

5 A Well, because if it's just an argument,
6 or -- it appeared to be an argument. It didn't escalate
7 until I heard the shots fired.

8 But when the subject started running, then
9 he became a suspect. And so that escalated the
10 situation. I wasn't intending on going out there. I
11 knew that the police were going to show up and take care
12 of the problem. But when he started running and the
13 officer started chasing him, that left the vehicle
14 unattended with the female in there. And it was just
15 not a secure situation. So I just wanted to lend
16 assistance.

17 Q While you were standing with the car with
18 the young woman inside, keys on top of the car, did that
19 woman make any statements to you?

20 A To me?

21 Q Yeah, or did you hear her say anything
22 while you and she were together?

23 A No. I don't recall her saying anything.

24 Q What was she doing?

25 A She was sitting in the front seat, had her

1 hands on the steering wheel. And then I asked her to
2 show her hands, and she lifted her hands up.

3 Q So what was her demeanor like? How was she
4 acting?

5 A She was acting afraid, compliant. But it's
6 almost as if she knew the drill, as if she knew how to
7 react to someone that was approaching the vehicle.

8 Q You didn't ask her any questions, I take
9 it?

10 A No, I did not ask her. I just told her,
11 You are not going anywhere, and to give me your keys, I
12 am placing them on top of the roof. And that's the only
13 real contact that I had with her.

14 MR. REES: All right. Thank you.

15 A JUROR: To be clear, she complied with
16 all of your requests?

17 THE WITNESS: Yes, she did.

18 MR. JACKSON: Are there any other
19 questions? Thank you.

20

21 LAURAL ATAY,
22 produced as a witness, having been first duly sworn,
23 was examined and testified as follows:

24 THE WITNESS: So help me God, I do, yes.

25

DIRECT EXAMINATION

1
2 BY MR. JACKSON:

3 Q You can have a seat. Could you please
4 state and spell your name for the Grand Jurors?

5 A Laural Atay, L-A-U-R-A-L, A-T-A-Y.

6 Q Do you live near Southeast 190th and Grant?

7 A We live on 189th, yes. Or I live on 189th.
8 I am sorry.

9 Q And if you look at this board behind you
10 here, do you see this house indicating Ron and Laural
11 Atay?

12 A Uh-huh.

13 Q Is this the house you live in?

14 A Yes, sir.

15 Q And were you there in the early morning
16 hours of May 24th, 2016?

17 A Yes.

18 Q What do you recall hearing that night?

19 A I had fallen asleep on the couch. I had
20 the front door open, because it was warm, and I woke up
21 to blood curdling screams and thumping. And I thought,
22 What the heck? So I got up and I looked. And I could
23 see the car, and I saw a guy outside the car.

24 And I didn't get a good visual on him,
25 because it was dark. About that time -- well, I went

1 and got my phone, and called it in. And then my husband
2 came out, and he went to go outside and --

3 Q Is your husband Ron Atay?

4 A Yes, he is.

5 Q And when you say you called it in, do you
6 mean you called 911?

7 A Correct. Yes, sir, I did.

8 Q Did you look out the window to see the
9 vehicle?

10 A Yes, I looked out our screen door and our
11 window, both.

12 Q And if you look at this board here, do you
13 see this red square?

14 A Yes, sir.

15 Q Is that approximately where you saw the
16 vehicle?

17 A Yes, sir. Yes, sir.

18 Q And what -- you said there were two people?

19 A I didn't see -- I mean, I heard the female.
20 I did not see her, but I saw a male standing outside the
21 car. He had his back to me.

22 Q Okay. What was he doing?

23 A He was trying to open the door. I am
24 guessing that it was locked, because he couldn't get it
25 open. And I heard him say -- sounded like he said, Oh,

1 come on, something to that effect. And that's the only
2 thing that I heard outside of her screaming.

3 Q Was she screaming words?

4 A No.

5 Q Just making noise?

6 A She was just making noise. It was like a
7 three-year-old tantrum with loudness to it.

8 Q So you were on the phone with 911?

9 A Yes.

10 Q And Mr. Atay was moving towards the
11 outside?

12 A Yes, he put up the garage door, and he was
13 going down the garage -- or going down the driveway, I'm
14 sorry.

15 Q And what happened next?

16 A I was still on with dispatch. Ron was
17 going down the driveway, and he said, He's running.

18 Q Who said that?

19 A Ron said that to me. Indicating that the
20 guy at the car was running. Because he had lifted up
21 the trunk and gotten a couple of bags, and he started
22 walking. Well, apparently, when he was walking he was
23 headed northbound on 189th. And about that time PD
24 showed up, the first unit that responded.

25 And the gentleman -- I told the dispatch at

1 that time, PD is here, and she says, Thank you very
2 much, and hung up, ended the call. And I lost sight of
3 the guy, and the next thing I heard were shots. And I
4 was still in the house, and I was going to go out and I
5 didn't know if I should or not, because I didn't want my
6 husband getting mad at me in case something were to
7 happen. And, yeah, it was --

8 Q Do you remember what your husband did?

9 A Yes. He went to the car, and the windows
10 were all rolled up. And I heard him tell the female in
11 the car, just roll the window down a little bit.

12 And he had said, Let me see your hands. He
13 said, You are not going anywhere. So she stuck her
14 hands out, and the way she stuck her hands out,
15 indicated to me she had been through the drill before,
16 because it's the way she stuck them out.

17 Q Do you see him put the keys on top of the
18 car?

19 A I did. I heard him tell her, Give me your
20 keys, because you are not going anywhere. You just stay
21 in the car. And he took the keys and put them on the
22 roof, right above the driver's door.

23 Q So you said that the gentleman, after
24 picking up these bags or something out of the trunk, ran
25 away. Did you see which direction he ran?

1 A He was going northbound on 189th, and then
2 he made a left turn onto Grant.

3 Q Did you see if the police officer was
4 running after him?

5 A I did not see that, but I saw the car show
6 up, and that's when I was still on the phone. And I
7 told dispatch that the officer had arrived, and we ended
8 the call.

9 Q Do you remember how many gunshots you
10 heard?

11 A I think I heard at least five, but they
12 were so quick, I couldn't tell whether it was exchange
13 gunfire or the same. It was just kind of a shock.

14 Q And after that happened and your husband
15 was out and put the keys on top of the car, did more
16 police officers arrive?

17 A There was another unit that showed up.

18 Q And what did you do then?

19 A I just stayed on the driveway. You know,
20 like I said, I didn't want my husband to get mad at me.
21 I didn't know what was going on. My husband did take
22 his flashlight and indicate to the officer what was
23 going on, as far as like the direction.

24 MR. JACKSON: Do you have any questions for
25 Mrs. Atay?

1 A JUROR: What did you think when you heard
2 the five rounds of gunshots?

3 THE WITNESS: I was hoping that the officer
4 was okay, because you can't tell anymore. I was hoping
5 that he was all right.

6 MR. JACKSON: Are there any other
7 questions?

8 MR. REES: Thank you.

9 (Brief recess taken.)

10

11 ELAINE PEER,
12 produced as a witness, having been first duly sworn,
13 was examined and testified as follows:

14 THE WITNESS: I do.

15

16 DIRECT EXAMINATION

17 BY MR. JACKSON:

18 Q You can have a seat.

19 A Thank you.

20 Q Could you state and spell your name for the
21 Grand Jurors?

22 A State it and spell it? Elaine Peer.
23 E-L-A-I-N-E, and then Peer, P-E-E-R.

24 Q All right. Ms. Peer, do you live on the
25 corner of Southeast 189th and Grant Street?

1 A I stay there sometimes.

2 Q Stay there? And if you look at this board
3 behind you, do you see this yellow indicator on this
4 house labeled Elaine Peer?

5 A Yes.

6 Q Is this the house that you stay in
7 sometimes?

8 A That's an interesting view of it -- yes.

9 Q And do you remember if you were there?

10 A Do you have a side view?

11 Q Yeah. Yeah, right there.

12 So on this map, this is Grant Street, and
13 this is 189th here.

14 A Yes. Okay.

15 Q Is that the house you stay in sometimes,
16 the brown one on the corner?

17 A Yes. Yes.

18 Q And were you staying there during the early
19 morning hours of May 24, 2016?

20 A Yes.

21 Q And do you recall waking up or being aware
22 of an altercation happening in the street?

23 A Yes.

24 Q So could you describe what you remember
25 about that?

1 A A female was screaming, and it sounded like
2 somebody was being shoved into a car, a garbage can,
3 there was a lot of thumping. And she was screaming --
4 do you want everything?

5 Q Well, do you remember what she was
6 screaming?

7 A Yeah. She said, I don't have your cell
8 phone. I don't have your cell phone. And I couldn't
9 hear him, because he had a lower voice. Her I could
10 hear. She was screaming.

11 I had the phone in my hand was debating if
12 I was even going to call. I didn't decide to call until
13 she started screaming for help.

14 Q And at that point, you called 911?

15 A Yeah. And the police were there within
16 less than five minutes, it seemed like. She was, Help
17 me. Help me. Someone help me, screaming bloody
18 murder -- bloody murder. And at that point I was
19 fearful for her safety.

20 I'm not in -- I am from a really small
21 town. In my town I might have walked down and tried to
22 help, but I don't know where I am. I didn't know what
23 was going on. It's a safety issue for everyone. You
24 don't want to be another victim.

25 Q Did you look out any of the windows to see

1 what was happening?

2 A Yeah. The bedroom window is on the far
3 side of the house, and it faces where they were at.
4 What we could see, you know, from that window is very,
5 very limited, mostly of what I experienced is hearing.
6 I did see police out there later, but I didn't see the
7 altercation. I only heard it.

8 Q Once the police officers arrived, did you
9 hear a female voice speaking to the police officers?

10 A I heard she was screaming. They showed up,
11 whoop, whoop, they stopped. I heard her say, There he
12 is. And I heard shots, and then it was quiet. That was
13 it.

14 She definitely said, There he is, or Get
15 him. It was something to that effect. There he is, get
16 him, or There he is. I couldn't see, all I could do was
17 hear.

18 Q BY MR. REES: So that was a female voice
19 that said, There he is?

20 A That is a female voice. That is correct,
21 sir.

22 Q Not a male voice?

23 A No. No. And it sounded like her, because
24 she was the one screaming and yelling. It sounded like
25 her voice, but again, without visual, I mean, I don't

1 know how credible that is. I just know what I heard.
2 In my mind, I feel it was her, her directing the
3 officers when they showed up.

4 And if she wasn't screaming for help, I
5 wouldn't have called. I mean, bloody murder. If you --
6 if anyone had been able to be there and hear this, it
7 was terrifying to listen to this woman.

8 And I don't take any of this lightly, but
9 nobody knows. Nobody knows what officers face, nobody
10 knows what that woman was facing. It's a tragedy all
11 the way around.

12 A JUROR: What time was this,
13 approximately?

14 THE WITNESS: I could look at my records
15 and figure it out. But I would say around 2:00, 2:30 in
16 the morning. And the altercation went on for probably
17 10, 15 minutes before I called. It escalated. You
18 know, it started with, I don't have your cell phone, to
19 being knocked around, to screaming bloody murder.

20 So it wasn't like I woke up and I am groggy
21 and tired. I am awake and I am alert, because it's an
22 emergency situation.

23 A JUROR: Did you notice or hear any other
24 neighborhood, like, noise or commotion, or neighbors
25 getting out or anything?

1 THE WITNESS: Unfortunately, I didn't hear
2 anything but those two at that point. What I was
3 hearing was the officers and those two, and that's it.
4 And it was really fast. I'm assuming I was probably not
5 even close to the first person who called in, maybe the
6 last. Because their response time -- if I was the only
7 one who called, it was ridiculous -- I mean, it was a
8 good thing.

9 MR. JACKSON: Are there any other questions
10 for Ms. Peer?

11 A JUROR: I have one. How many shots did
12 you hear?

13 THE WITNESS: Five to eight. I wasn't
14 counting them, but pop, pop, pop, pop, pop -- I mean,
15 honest to God, I wasn't counting them. More than three,
16 less than ten. I don't know. I don't know.

17 MR. JACKSON: Okay. Thank you very much.

18 THE WITNESS: Thank you. Good luck to all
19 of you.

20 (Brief recess taken.)

21
22 NILES KORPI,
23 produced as a witness, having been first duly sworn,
24 was examined and testified as follows:

25 THE WITNESS: Yes.

DIRECT EXAMINATION

BY MR. JACKSON:

Q You can have a seat. Please state and spell your name for the Grand Jurors.

A My name is Niles Korpi, N-I-L-E-S, K-O-R-P-I.

Q Mr. Korpi, do you live on Southeast Grant Street?

A Yes.

Q And if you look at this board behind you here, do you see this house with the yellow arrow and Niles and Donna Korpi labeled?

A Yes.

Q Is that the house that you live in?

A Yes.

Q And were you home during the early morning hours of May 24, 2016?

A Yes.

Q What do you remember happening?

A I remember waking up to a knock, and door bell ringing on my door. It was kind of sudden, and my mother had actually already gotten to the door. So just out of kind of cloudy defense, I followed her down the stairs. Opened the door up, and noticed a tall shadow figure standing at the door.

1 I proceeded to go outside and tell him to
2 leave my property. Get off my property. And I came
3 back in the house. I closed and locked the door, and
4 went into our connected garage with my mother. And
5 shortly after that, heard gunshots.

6 Q So when you saw this shadowy person in the
7 door, did you recognize him?

8 A Not at first. But after the phone -- he
9 had a phone. And after the light illuminated off the
10 phone, I recognized who it was.

11 Q Who was it?

12 A Bodhi.

13 Q Do you know his last name?

14 A I do not.

15 Q How long had you known Bodhi?

16 A About four months, I would say.

17 Q Did you know him well?

18 A No. I wouldn't say well.

19 Q Would you consider him a friend of yours?

20 A No, not a friend.

21 Q How often would you see him in a given
22 week?

23 A In a given week, once, maybe twice.

24 Q So once or twice a week?

25 A Yeah.

1 Q And what kinds of things would you guys do
2 together?

3 A We usually meet up at the Deli Barn, which
4 is a video poker, slash, lounge, I guess you would say.
5 And yeah, when we would meet up, I was and do, drugs.
6 And he was my supplier for that, at the time.

7 Q When he showed up, basically in the middle
8 of the night on the 24th, or early morning hours on the
9 24th, were you surprised to see him?

10 A Yes, I was.

11 Q And what did he say to you?

12 A He said that he was in trouble, he just got
13 in a fight with his girlfriend, the cops are coming, and
14 something about prison.

15 I was still kind of in a morning -- just
16 waking up, and all of this all of a sudden happening.
17 All I remember is that was the -- that was about the
18 time in the conversation, was just him telling me that,
19 and me instantly telling him to, Get off my property.
20 Get off my property. And that's when I proceeded to go
21 back in the house and close the door.

22 Q Had he been to your house before?

23 A He had. He dropped me off one time from
24 the Deli Barn, which is actually right around the
25 corner.

1 Q So he would know that you lived there?

2 A Yes.

3 Q Did it appear to you that he was coming to
4 the door looking for you?

5 A No. It was more of a -- I obviously came
6 to that conclusion that he knew where I lived. I didn't
7 know why he was at my house, or what he was doing there.
8 But like I said, once I recognized who it was and the
9 things that he was saying, I started putting my walls up
10 heavier. And just trying to diffuse the situation,
11 because I was not ready or wanted to deal with it.

12 Q Did you see where he went after you told
13 him to leave?

14 A I did not.

15 Q BY MR. REES: You live there with your mom,
16 correct?

17 A Correct.

18 Q Does your mom know that you use?

19 A She does now.

20 Q But at the time this was happening, did she
21 know that you used?

22 A No, she did not.

23 Q So I am guessing having your drug hook-up
24 show up at your house, unannounced, at 3:00 in the
25 morning with your mom there was an awkward situation?

1 A Absolutely.

2 Q And that you wanted him to get the hell out
3 of there?

4 A Yes.

5 Q Because he was the last person you probably
6 wanted to see. Is that fair to say?

7 A Yes. Yes.

8 Q How would you describe his demeanor? You
9 know what I mean by that?

10 A Yeah.

11 Q His emotional state.

12 A Yeah. He seemed very scared, very just
13 kind of shaky, wet palms, like nervous, talking fast.

14 Q And did you tell the detectives that he
15 said something to the effect of, Let me in the house,
16 because the police are coming and I am going to prison?

17 A He said -- along those lines, yes. I
18 believe that was his objective that he was trying to get
19 to was to get into my house to hide from the police.

20 Q How firm were you with him?

21 A I was very firm, and very direct.

22 Q What did you say?

23 A I said, Get the fuck -- Get off my
24 property. Get off my property.

25 Q You can say it. What did you say?

1 A I said, Get the fuck off my property. Get
2 the fuck off my property.

3 Q What did he respond to that?

4 A He just looked more and more scared. Like
5 I said, it came to a point where I was just so
6 uncomfortable with the situation, didn't know what else
7 to do, that I just kind of -- like I said, I put my
8 walls up, and went to straight defense mode. And I came
9 back into the house and closed the door, and went into
10 the garage with my mom.

11 Q And did you then see the police when they
12 arrived?

13 A I did not see the police.

14 Q Or police lights or sirens or anything?

15 A I -- no, not to my memory. I don't
16 remember any sounds or sirens or anything like that.

17 Q And just to go back for a second on the
18 connection to him, what drug was he supplying you with?

19 A Heroin.

20 Q And is that when your mother said, Who was
21 that guy and why did he come to the house?

22 A That's what we were discussing in the
23 garage.

24 Q So you told her you are using?

25 A Yeah.

1 Q Are you taking steps to get clean?

2 A I am. This has been a very awakening
3 moment for me in a bittersweet way.

4 Q Thank you for coming in. I know that you
5 had some concerns even about discussing the drug
6 connection?

7 A I did.

8 Q But I appreciate you being truthful with
9 the Grand Jury.

10 A Absolutely.

11 Q So I will let Mr. Jackson pick it up.

12 A JUROR: Just, I am sorry, one more
13 question. Can you elaborate a little more on his
14 demeanor when you told him to Get the fuck off my
15 property? Was he scared? Was he shaken?

16 THE WITNESS: He was more aware. Like what
17 you just did, his eyes were opened up more. Like I
18 said, he started shaking a little harder and stuff. And
19 it just got way too uncomfortable for me. Like I said,
20 waking up to that, instantly going from the thoughts of
21 defending my mom, like who's at my door at 3:00, and
22 then finding out who it was, confronting that situation
23 and eliminating it as fast as I possibly could.

24 A JUROR: So when you told him to leave the
25 property, he was pretty compliant?

1 THE WITNESS: He seemed like he was getting
2 the point that I didn't want him there.

3 A JUROR: And as you were going to the
4 garage, as you closed the door and headed to the garage
5 with your mother, how long would you estimate kind of
6 you just hearing shots fired?

7 THE WITNESS: Off the top of -- to my best
8 recollection to that night, my memory of the time span
9 from the time that I closed the door and heard the
10 gunshots was less than a minute.

11 A JUROR: Did you hear the gunshot between
12 you closing the door and you went to the garage.

13 THE WITNESS: I was already in the garage
14 and my mother was about to rip into me. And then we
15 started hearing gunshots.

16 A JUROR: Were you doing things in the
17 garage before your mom started to rip into you?

18 THE WITNESS: No. No. We literally just
19 walked out in there. There's one step that goes down.
20 I was at the bottom step. She came out the door close
21 behind me, and then like I said, she was literally --
22 which I was expecting, or whatnot.

23 And then that happened. And that kind of
24 stopped our situation, and we put our sirens up, and
25 whatnot. We were more focused on what just happened.

1 And like I said, for waking up to this, for my memory
2 and everything, it was very -- it's very hard for me to
3 go back to that exact moment. But I remember a lot of
4 it.

5 A JUROR: Understandable. So to clarify,
6 you go in the garage, you're with your mother, she's
7 ripping into you and then all of a sudden, soon after
8 that, you hear the gunshots?

9 THE WITNESS: Yes.

10 A JUROR: I have a question. You mentioned
11 that Bodhi has his phone with him, his cell phone with
12 him. Did he have anything else with him when he was at
13 the door with you guys?

14 THE WITNESS: Not that I noticed. Just his
15 phone.

16 Q BY MR. JACKSON: So up on the map here, do
17 you recognize this house?

18 A Yes.

19 Q Is that the house you were staying at?

20 A Yes.

21 Q So the garage you were talking about is
22 this garage here?

23 A Yes.

24 Q Are there windows in the garage door?

25 A There are, but they are painted out.

1 Q So you couldn't see through them?

2 A You cannot see through them, no.

3 Q And you were inside there when you heard
4 the gunshots?

5 A Pretty much where the brown door is to the
6 garage door, I was basically almost right in front of
7 where the garage door starts in the garage. So
8 literally right next to. The only thing blocking me
9 from the driveway is the garage door. I am like you,
10 right up on there.

11 Q Do you remember how many gunshots you
12 heard?

13 A To my recollection it was -- they were so
14 fast, it was between five and seven is what I counted.

15 Q After you heard the gunshots, what did you
16 do then?

17 A Instantly from emotions, panic, shock, kind
18 of coming to the realization of what just happened and
19 where it happened at, which was my biggest concern.

20 Q What did you do?

21 A Me and my mom went back into the house. We
22 went upstairs and looked out that window, and saw a
23 police car.

24 Q Did you see police officers?

25 A No, I did not, personally.

1 Q So from your window, you can't see down
2 into the cul-de-sac at the end of Grant Street?

3 A No, I cannot.

4 Q So where was the police car located that
5 you saw?

6 A By the mailbox, my mailbox, kind of like
7 right in between the thing in the ground, the meter.

8 Q Right in this area here?

9 A Uh-huh.

10 Q Did it have its lights on?

11 A Yes.

12 Q Did you hear anything from the outside,
13 voices yelling, anything like that?

14 A The only thing I heard was the gunshots.

15 Q So once you came up to the window and
16 looked outside, did you just watch?

17 A It was more -- yeah, it was more that --
18 kind of in shock. The police were already there, so we
19 don't call 911. Like, what do we do? We don't just go
20 out there and start talking to them. They are in the
21 middle of stuff. So we waited it out.

22 Shortly after that, a police officer, I
23 believe, came up to the door. And yeah, until the
24 detectives came the next day, I just went -- I tried to
25 sleep. I didn't get good sleep, but I tried to sleep.

1 And then I woke up to a knock on the door from two
2 detectives, which I was expecting.

3 MR. JACKSON: Do you have any questions for
4 Mr. Korpi?

5 A JUROR: Just to clarify, too, you said
6 you saw the suspect's phone. Did you see anything else
7 at all?

8 THE WITNESS: No.

9 A JUROR: Nothing like -- not necessarily
10 hands, but around the -- notice anything -- just notice
11 anything else, like with his clothes, or anything like
12 that?

13 THE WITNESS: Huh-uh. No.

14 MR. JACKSON: Thank you.

15

16 DONNA KORPI,
17 produced as a witness, having been first duly sworn,
18 was examined and testified as follows:

19 THE WITNESS: I do.

20

21 DIRECT EXAMINATION

22 BY MR. JACKSON:

23 Q You can have a seat. Please state and
24 spell your name for the Grand Jurors?

25 A Donna Korpi, D-O-N-N-A, K-O-R-P-I.

1 Q Ms. Korpi, I am going to show you this
2 board here behind you. This is Southeast Grant Street.
3 Do you see the house with the yellow line to the box
4 labeled Niles and Donna Korpi?

5 A Uh-huh.

6 Q Is that the house you live in?

7 A Yes, it is.

8 Q Were you there in the early morning hours
9 of May 24, 2016?

10 A Yes, I was.

11 Q What do you recall happening?

12 A My son, Niles, and I had been watching TV
13 in the front room. We have recliner couches, and I
14 guess we both had dozed off. And I heard the door bell
15 ring. And it was just two, three minutes before 3:00 in
16 the morning, and I thought -- so I got up and went down,
17 and realized I probably shouldn't open the door, but I
18 just did.

19 And I saw this person on the front porch.
20 We have a big glass window. And I saw a body, person
21 standing there, with their cell phone illuminating his
22 face. And I wasn't sure if it was one of our normal
23 young men that live around. I figured he was coming
24 home from the bar, because of the timing and all of
25 that.

1 And I couldn't figure out why he was here.
2 So I cracked the door open, and Niles came down behind
3 me and said, Mom, get back. Get back. And he said,
4 Shut the door. And I said, Well, you know -- and he
5 goes, Just step back.

6 And I said, What are you doing ringing my
7 door bell at 3:00 in the morning? Get the F off of my
8 property. Get out of here. And Niles said, Mom, step
9 back.

10 And looked out and he said -- he said,
11 Dude, you gotta get off of here. Go away. And the guy
12 said, I had a fight with my girlfriend. And I said, I
13 am sorry but -- I am sorry for your situation, but you
14 just need to leave. I don't know who you are.

15 And so then -- I don't know if Niles
16 stepped out, or if he just shut the door. But we have a
17 door here to our garage, so I went to the garage and
18 Niles came right out behind me. And we were going to
19 have a cigarette. And all of a sudden, the garage
20 door -- or the garage just lit up with red and blue
21 lights, and I heard what I believe was an officer who
22 said, Stop, you are under arrest. Stop running. Drop
23 it. Drop it. Drop it. And then it was pop, pop, pop,
24 pop, pop, and then total silence. All in less than
25 three minutes.

1 And Niles and I just looked at each other,
2 and our eyes got big. And he goes, That dude is dead.
3 And I said, He probably is. And then I went to open the
4 front door again, and Niles said, No, mom. Let it go.

5 And by that point, my boyfriend had come
6 downstairs and started giving me the riot act. What are
7 you doing opening the door, and blah, blah, blah. And I
8 was like, Did you hear what just happened? And he was
9 like, Yeah.

10 And then I don't remember anything. I have
11 been very affected by this whole thing, and sought
12 crisis counseling and things. And I realized that I
13 literally lost Wednesday. I have absolutely no
14 knowledge of the day of Wednesday. I went to a crisis
15 counselor at Cascadia. It was Thursday, I thought it
16 was Wednesday, and I kept referring to yesterday.
17 Yesterday, for the incident, and she said, No, it's on
18 Tuesday. And I said, Well, today is Thursday. And I
19 was like, what?

20 So when I got home, I asked Dennis and
21 Niles, I said, what did I do Wednesday? And they said,
22 You basically just sat here in the house, but that's a
23 day of my life that just completely -- eliminated.

24 Q So when you looked out the door and you saw
25 the person standing there, did you recognize him?

1 A No. I didn't know who it was. I just
2 saw -- it's one those frosted glass -- I just saw a
3 silhouette. And we have twin brothers that live the
4 next block over. And the one brother, in the past, has
5 done this very same thing. Come to the house, rung the
6 door bell, he's been intoxicated. And Dennis told me
7 when I did it that time, don't. And so I thought maybe
8 it was him.

9 Q Okay. So you didn't recognize the
10 person --

11 A No.

12 Q -- in the doorway?

13 A No. No. That's the only reason I opened
14 the door is because I thought it was him.

15 A JUROR: When you opened the door for this
16 individual, did he seem intoxicated or impaired in any
17 way?

18 THE WITNESS: Yes. His eyes were very
19 swollen and red, like he had been crying, or was very
20 distressed. Being a mom, I just automatically took a
21 moment to hear what he had to say, and he said, I had a
22 fight with my girlfriend. I said, I am sorry. I
23 figured he was a drunk kid. I am sorry for your woes,
24 but you need to get the hell out of here. Just get out
25 of here. And I no sooner shut the door and went in the

1 garage, and that's when it all happened.

2 A JUROR: Besides the cell phone, did you
3 notice any other objects?

4 THE WITNESS: Nothing. I couldn't even
5 tell you really what he looked like, other than he was
6 the same height and hair color as our neighbor boy. He
7 had the cell phone in his hand, and it was illuminating,
8 but I really -- once I recognized that he wasn't someone
9 I knew, I just wanted him to get away from my door.

10 MR. JACKSON: Any other questions? All
11 right. Thank you very much.

12 MR. REES: Thank you very much.

13 (Brief recess taken.)

14 MR. REES: We're going to resume the
15 testimony of Detective Brandon Crate, who is still under
16 oath, and we will pick up where you were when we took
17 our break for Dr. Clifford Nelson, on 911 call No. 2.

18 THE WITNESS: So our second caller came in
19 at 3:08 a.m. indicating an altercation between a male
20 and female, and the male had forced the female into the
21 car and fled the scene.

22 Caller indicated that the vehicle left
23 southbound on 190th Avenue towards Division Street.
24 That caller was identified as Ashlee Durbin.

25 (911 call played).

1 DISPATCH: 911.

2 CALLER: Hello, um I'm on -- what is this?

3 UNIDENTIFIED FEMALE: 190th and Yamhill.

4 CALLER: 190th and Yamhill. This girl is
5 screaming for help, and the guy took her in the car and
6 they are going towards --

7 UNIDENTIFIED FEMALE: Division.

8 CALLER: To Division and 190th and Yamhill.

9 DISPATCH: Okay.

10 CALLER: Couldn't see what kind of car it
11 was.

12 DISPATCH: Okay. Do you have some -- I do
13 have some police officers on their way that way, and
14 you're saying it's at 190 and Yamhill?

15 CALLER: Yeah, it's going towards Division.

16 UNIDENTIFIED FEMALE: They're on Division.

17 CALLER: They're on Division and I'm trying
18 to see what way they're turning. I don't know if
19 they're turning.

20 DISPATCH: So a male put her -- a male put
21 the female in the car?

22 CALLER: Yes, they're turning, um, right --
23 yeah, they are.

24 UNIDENTIFIED FEMALE: (Unintelligible).

25 CALLER: Yeah, they are.

1 DISPATCH: Which way were -- which way were
2 they going? They were going on Burnside.

3 CALLER: No, no, towards Division.

4 DISPATCH: Okay, so.

5 CALLER: They're pulled over on 190th and
6 Division.

7 DISPATCH: Okay, are they --

8 UNIDENTIFIED FEMALE: Turned off their
9 lights.

10 CALLER: Yes.

11 DISPATCH: Are they stopped?

12 CALLER: Yes.

13 DISPATCH: Okay. What kind of vehicle is
14 it?

15 CALLER: They went, uh -- I don't know what
16 kind of car, but they went --

17 DISPATCH: Is it -- is it an SUV? Is it a
18 pickup truck?

19 CALLER: Yeah, yeah, SUV.

20 DISPATCH: Okay. What color?

21 CALLER: It was a four-door. I think it's
22 kinda brownish.

23 DISPATCH: A brown four-door SUV?

24 CALLER: Kind of like a -- yeah --

25 DISPATCH: Okay.

1 CALLER: Took a right on Division and uh --

2 UNIDENTIFIED FEMALE: 190th.

3 CALLER: 190th and Division, towards going
4 to 181st.

5 DISPATCH: Okay.

6 CALLER: She was screaming for help, help,
7 like I was like do you need help? Well, me and my
8 friend were like, do you need help? She said, yes, so
9 we started running, and he pulled her in the car.

10 DISPATCH: Okay.

11 CALLER: Yeah.

12 DISPATCH: And, and what does the -- the
13 guy look like? Is he like white, black, Asian,
14 Hispanic?

15 CALLER: I don't know. We didn't see him.
16 The police are right here. They just went that way to
17 120 -- like 180th.

18 DISPATCH: Tell them that they went
19 westbound on Division.

20 CALLER: They just went westbound on
21 Division, four door.

22 DISPATCH: Are you going -- okay. You
23 pointed at that -- you pointed which way to go, correct?

24 CALLER: Yeah, we did, yeah.

25 DISPATCH: Okay.

1 CALLER: Thank you.

2 DISPATCH: Okay. Can I get your name?

3 CALLER: My name is Ashlee, A-S-H-L-E-E,
4 Durbin, D-U-R-B-I-N.

5 DISPATCH: What is your phone number,
6 Ashlee?

7 CALLER: What's your phone number?

8 UNIDENTIFIED FEMALE: (503) 754 --

9 CALLER: (503) 754.

10 UNIDENTIFIED FEMALE: 0208.

11 CALLER: 0208.

12 DISPATCH: (503) 754-0208?

13 CALLER: Yes.

14 DISPATCH: Okay. Did you get a -- did --
15 did you get a description of the guy and what he looked
16 like?

17 CALLER: No, I did not. He was -- he was
18 in the -- in the car and he pulled her in and they drove
19 off.

20 DISPATCH: Okay. Perfect. All right,
21 well, I am glad you called in, they're getting some --
22 some help. Okay.

23 CALLER: Okay. Thank you.

24 DISPATCH: Thank you. Bye-bye.

25 (End of 911 Call.)

1 THE WITNESS: So both Officer Sasser and
2 Officer Carlson are in the area checking for the
3 vehicle. They both arrive in the area at seven minutes
4 after 3:00 in the morning. This map up here
5 indicates -- the point in the middle is where the
6 initial calls came in at 190th and Yamhill.

7 Q BY MR. REES: Can you point that out,
8 please?

9 A Sure.

10 Q So up here, this is where our callers were
11 calling from initially, where he had actually placed her
12 in the vehicle, and the disturbance was happening. And
13 they said they traveled south on 190th, and west on
14 Division.

15 We actually know -- because it's quite a
16 distance -- that they actually turned here on Grant.
17 This is where the incident happened. But it's very
18 close to Division, and a very long distance. So we
19 don't anticipate -- or we don't assume that they went
20 anywhere else besides this street here.

21 So our third 911 caller calls in at
22 11 minutes after 3:00 in the morning, and that caller is
23 at 2222 Southeast 189th, reported that the vehicle was
24 there, and the male and female were fighting.

25 Q BY MR. REES: Can we go back to that map?

1 A Sure.

2 Q Is this correct that the first two 911
3 calls came from that area marked with the red pin at
4 Yamhill and 190th?

5 A Correct.

6 Q Now, call No. 3 is coming from the area --
7 if you could indicate --

8 A Yeah. This is 189th here, and this is
9 Grant that loops in on 187th. So the call is coming in
10 from this intersection, a couple houses just south of
11 Grant Street.

12 Q And what is the time frame now to this
13 third call from the time of the second call? How much
14 time has passed?

15 A This comes in at 11 minutes after 3:00.
16 The other one was eight minutes after, so just three
17 minutes.

18 Q So just three minutes later for the third
19 call?

20 A Right. So the caller reports lots of
21 banging from inside the car. That individual sees the
22 officer arrive and sees the suspect take off running.
23 That person is identified as Laural Atay. Do you guys
24 have that transcript?

25 (911 Call Played.)

1 DISPATCH: 911.

2 CALLER: Um, hi, I am calling -- there's
3 some girl screaming across the street.

4 DISPATCH: Oh, yes, did you happen to see
5 anything?

6 CALLER: I just heard yelling
7 (unintelligible).

8 DISPATCH: Okay. Where are you at?

9 CALLER: I am at 2222 Southeast 189th
10 Avenue, Portland, Oregon.

11 DISPATCH: Okay. And you didn't see
12 anything?

13 CALLER: No, she was -- I guess, I don't
14 know. She's inside a car and there was all kinds of
15 banging and stuff and since I was trying --

16 DISPATCH: Okay. Are they there now?

17 CALLER: Yeah, they are still outside.
18 It's, um -- it's happening over at 2227 189th.

19 DISPATCH: Okay. And um did you see what
20 kind of vehicle it is?

21 CALLER: It looks -- let me see here -- it
22 looks like it's a gray, silver looking car.

23 DISPATCH: Is it like an SUV?

24 CALLER: No, it's just a tiny car. It is a
25 regular compact.

1 DISPATCH: Sedan?

2 CALLER: I can't see, yeah, I can't see
3 the --

4 DISPATCH: Can you see the plates?

5 CALLER: It's a four-door. And I can't see
6 the -- yeah and it's, um, looks like tinted windows, and
7 it's parked on the -- let's see, the west side of the
8 street.

9 DISPATCH: Okay. And you're not able to
10 see what kind of make or model?

11 CALLER: I can't tell the make or model.
12 It's just -- it's a small, you know.

13 DISPATCH: Okay. It's a compact car?

14 CALLER: Yeah, it's a four-door. I can see
15 it here, from here.

16 DISPATCH: Okay. Okay. And, um, do you --
17 can you see what is happening inside the vehicle?

18 CALLER: Uh, no, I don't hear any screaming
19 now. I don't know if she went in or what the heck's
20 going on --

21 DISPATCH: Okay.

22 CALLER: But there was -- um, it's a lot of
23 screaming, and there was banging. I don't know what,
24 you know -- and there's a, a male trying to talk to her
25 or something. And, you know, she's yelling and

1 screaming -- oh, I don't know. She' -- if it's the girl
2 I am thinking about, she's got some real issues.

3 DISPATCH: Okay. Do you still see the
4 vehicle?

5 CALLER: Uh, yeah, it's stationary. It's
6 not running, or anything like that. So I don't know
7 what the deal is.

8 DISPATCH: Okay. Did you see where they
9 went?

10 CALLER: (Inaudible) -- I think. She's in
11 the car still.

12 DISPATCH: Okay. Do you know where the
13 male is?

14 CALLER: My husband said he's walking
15 around. I don't know -- he went towards Grant.

16 DISPATCH: Okay. So from -- okay, is that
17 from 189? So he was going like -- was he on 189 going
18 north towards Grant (inaudible)?

19 CALLER: Yeah, he was -- yeah, going north,
20 yes, and it's a dead-end street on 189.

21 DISPATCH: Can I get a description of the
22 guy? Is he -- can you tell if he was White, Caucasian
23 or Hispanic --

24 CALLER: It was dark. It was dark. I
25 couldn't see. I know --

1 DISPATCH: Did you see what kind of
2 clothing he was wearing at all?

3 CALLER: Um, I didn't -- no, I didn't. I
4 just went to grab the phone, because I didn't know what
5 the heck was goin' on. Oh, he's there -- he's back now.
6 He's got jeans --

7 DISPATCH: Okay. Tell me what you're
8 seeing.

9 CALLER: Okay. He's getting -- he's trying
10 to get in the car. Now he's getting in the car. He's
11 got jeans, he's got a dark colored shirt on.

12 DISPATCH: Was he white? Can you tell his
13 race?

14 CALLER: He looks like he's white, yeah.

15 DISPATCH: Okay. Could you tell if he's
16 20, 30, 40?

17 CALLER: She's still screaming and yelling
18 now. I'm sorry. Go ahead.

19 DISPATCH: Okay. I'm just updating my
20 responders. They are looking for this person --

21 CALLER: Yeah, and he's right -- he's
22 getting in the trunk right now, so I don't know --

23 DISPATCH: The guy, the guy is getting in
24 the trunk?

25 CALLER: Yeah, he's opening the trunk. I

1 don't know what he's doing in there, and then the
2 girl she's -- I don't know if she's punching or doing
3 something. He -- now he just took something out of the
4 car -- oh, good, the officers are here.

5 DISPATCH: Okay. The officer is with him?

6 CALLER: Yes.

7 DISPATCH: Okay. Perfect. You're --
8 that's great. I am glad you gave me all the
9 information. Can I get your -- your name?

10 CALLER: Oh, sure, Laural, L-A-U-R-A-L,
11 Atay, A as in Adam, T as in Tom, -A-Y.

12 DISPATCH: Okay. And What is your phone
13 number?

14 CALLER: (541) 981-1026.

15 DISPATCH: (541) 981-1026.

16 CALLER: Yes, ma'am. I guess the guy
17 started running.

18 DISPATCH: Okay. Perfect. I'm glad the
19 officers are there. Thank you for all your help,
20 Laural.

21 CALLER: Oh, not a problem. Thank you for
22 responding.

23 DISPATCH: All right. Have a good night.
24 Bye-bye.

25 CALLER: Bye-bye.

1 THE WITNESS: So at 3:12 in the morning
2 Courtney Sherrell, who was the victim in this case, and
3 the girlfriend of the deceased calls 911 from the
4 suspect's phone. Courtney says she needs the police,
5 and her boyfriend is beating her. She puts herself in
6 the area of 190th and Grant.

7 Courtney reported being kicked and punched.
8 She describes the suspect as being on foot, walking
9 towards Grant. She tells 911 that the person's Bodhi
10 Phelps and he has eight felony warrants for his arrest.
11 The phone has an open line, you hear a struggle, and
12 then it disconnects.

13
14 (911 Call Played.)

15 DISPATCH: 911.

16 CALLER: I need your help right now. I
17 need the cops. My boyfriend is beating me.

18 DISPATCH: Where are you?

19 CALLER: I am on 190th between Stark and
20 Division, and we turned off Grant (unintelligible).

21 MR. REES: Can you turn that off for a
22 minute. We need to catch up to the transcripts.

23 THE WITNESS: Want to start over?

24 MR. REES: Yeah, we will start over. It
25 looks like it's towards the back of the Courtney

1 Sherrell, page one of two. Sorry about that.

2 Does everyone have that transcript?

3 Thanks.

4 (911 Call Played.)

5 DISPATCH: 911.

6 CALLER: I need your help right now. I
7 need the cops. My boyfriend is beating me.

8 DISPATCH: Where are you?

9 CALLER: I am on 190th between Stark and
10 Division. We turned off Grant (unintelligible.)

11 DISPATCH: Are you in a vehicle?

12 CALLER: Yeah. Yes, we took our first left
13 and now I'm sitting in the vehicle by myself, and he
14 kicked me and he punched me.

15 DISPATCH: Where is he at?

16 CALLER: He is -- he walked straight on, on
17 Grant. He's still down the street. I need the cops to
18 come as fast as possible or he's gonna get away.

19 DISPATCH: What, what color is the vehicle?

20 CALLER: My vehicle is silver, I'm fine,
21 I'm in my vehicle. He's -- he's on foot, walking
22 towards Grant and (crying) walking on Grant of -- and I
23 need them to be here as quick as possible (crying).

24 DISPATCH: We already -- we already had a
25 call about this, so we have help en route to you right

1 now. Okay?

2 CALLER: No, but seriously, he's got like
3 eight felony warrants.

4 DISPATCH: I understand. Do you have -- do
5 you have -- do you need an ambulance?

6 CALLER: No, I don't. I just -- no
7 (crying).

8 DISPATCH: What's his name?

9 CALLER: Bodhi Phelps.

10 DISPATCH: How do you spell that?

11 CALLER: B-O-D-H-I.

12 DISPATCH: B-O-D-H-I?

13 CALLER: Yeah.

14 DISPATCH: How do you spell his last name?

15 CALLER: Phelps, P-H-E-L-P-S.

16 DISPATCH: Okay. What is his date of
17 birth, please?

18 CALLER: It's 1993.

19 DISPATCH: 1993. What is his -- what's the
20 full date of birth?

21 CALLER: Get away from me, the cops --

22 DISPATCH: Hey, what's his full --

23 CALLER: The cops are on the phone, you
24 better run (inaudible).

25 DISPATCH: What's his full date of birth?

1 What's his full date of birth? What's his full date of
2 birth?

3 CALLER: Get away from me --

4 (End of 911 Call.)

5 THE WITNESS: So caller No. 5 called at
6 3:14, and the caller reports hearing a female screaming
7 for help near 189th and Grant. She's been screaming for
8 about 5 minutes. That caller is identified at Elaine
9 Peer.

10 Let me know when you get to that, and I
11 will start it.

12 MR. REES: It should be right after Laural
13 Atay's transcript. Elaine Peer page 1 of 3.

14 (911 Call Played.)

15 DISPATCH: 911.

16 CALLER: Um, somebody is outside screaming
17 for help.

18 DISPATCH: What address?

19 CALLER: Um, I'm -- we're on Grant; I'm on
20 Grant Street. I don't know the corner street.

21 DISPATCH: Okay. I need the corner street
22 to know where you are at.

23 CALLER: Um what is it? 189.

24 DISPATCH: Okay. On 189 --

25 CALLER: Yes --

1 DISPATCH: -- and Grant?

2 CALLER: Yes. Yes.

3 DISPATCH: Give me just a moment. Where
4 are you hearing the yelling from?

5 CALLER: Outside in the street --

6 DISPATCH: Okay.

7 CALLER: -- a woman's screaming for help.

8 DISPATCH: Yeah, so I got a -- I got a call
9 about a gal screaming from the Rockwood Apartments, like
10 190th and Stark. Does it sound like --

11 CALLER: No.

12 DISPATCH: -- does it sound like it could
13 be that far, or no?

14 CALLER: No.

15 DISPATCH: No.

16 CALLER: No, it's right outside.

17 DISPATCH: Okay. And is it coming from
18 Grant or coming from 189th?

19 CALLER: 189th.

20 DISPATCH: Okay. And what's she yelling?

21 CALLER: Help.

22 DISPATCH: Okay, give me just a moment. Do
23 you hear any other voices?

24 CALLER: No. She's silent now.

25 DISPATCH: Okay. No other voices. How

1 long was she yelling for?

2 CALLER: Maybe five minutes.

3 DISPATCH: Okay. And you can't see her,
4 right?

5 CALLER: No, I couldn't see her.

6 DISPATCH: Okay. What is your name?

7 CALLER: Elaine Peer.

8 DISPATCH: And your call-back number?

9 CALLER: (541) 788-3592.

10 DISPATCH (541) 788-3592?

11 CALLER: Correct.

12 DISPATCH: Okay. I let officers in the
13 area know. Anything changes, you hear somebody yelling
14 about guns, knives, you hear other voices, just give us
15 a call back, okay?

16 CALLER: Absolutely. Thank you.

17 DISPATCH: Thank you so much. Bye.

18 CALLER: Bye.

19 (End of 911 Call.)

20 THE WITNESS: This is our police response.
21 We get our first 911 call at 3:04 a.m. Police are
22 dispatched at 3:05. Police are in the area checking at
23 3:07. They arrived at 189th at 3:14. And the reports
24 of a foot pursuit over the radio are at 3:15.

25 Q BY MR. REES: Does that timeline correspond

1 to the board you have also prepared, marked Time Line,
2 for future reference?

3 A Yes. Yes.

4 Q Brandon, before you play it, what are we
5 actually going to be hearing?

6 A This is our actual dispatch tape of the
7 officers being dispatched by BOEC to their vehicles.

8 Q And when we hear it, this is in realtime as
9 it occurred, or is it compressed time?

10 A So this one is compressed, just because
11 there's 15 minutes. So we took out all the dead space.
12 Once we play the video, you guys will see in a few
13 minutes, that's realtime.

14 A JUROR: Video? That's because police
15 have body cameras on them?

16 THE WITNESS: No, we'll talk about that.
17 There was surveillance video in the neighborhood that
18 captured part of the incident.

19 Q BY MR. REES: So home surveillance videos,
20 is what you are talking about?

21 A Correct.

22 Q But as far as what you are playing now,
23 when you say compressed, meaning, again, if there's any
24 period of time when no one is talking on the radio, that
25 has been eliminated. So we will be hearing the voices

1 back-to-back-to-back. So what really happened over the
2 course of some 15 minutes, it will be like in two
3 minutes or so; is that right?

4 A Right. Correct.

5 MR. REES: Okay.

6 (Radio Dispatch Played.)

7 DISPATCH: 158. (Background noise.)

8 UNIDENTIFIED OFFICER: Stark, 175.

9 DISPATCH: For you and 118 at the Rockwood
10 Apartments, 801, Southeast 190. Caller's hearing sounds
11 of a female screaming, possibly near the apartments on
12 Yamhill, but heard only --

13 A JUROR: This is the wrong one --

14 (Discussion off the record.)

15 THE WITNESS: We will start this over
16 again.

17 (Radio Dispatch Played.)

18 DISPATCH: 158.

19 UNIDENTIFIED OFFICER: Stark, 175.

20 DISPATCH: For you and 118, at the Rockwood
21 Apartments, 801, Southeast 190. Caller's hearing sounds
22 of a female screaming, possibly near the apartments on
23 Yamhill, but heard only.

24 UNIDENTIFIED OFFICER: Copy.

25 UNIDENTIFIED OFFICER: 168, preempt me, I'm

1 with 158. I'll go.

2 DISPATCH: 168 copy, taking the cover. 118
3 can disregard.

4 UNIDENTIFIED OFFICER: 118, I copy.

5 DISPATCH: And at 3:06.

6 UNIDENTIFIED OFFICER: 158, we're both 23.

7 DISPATCH: 158, 23, and at 3:07 --

8 DISPATCH: And for 158, 168, I'm gettin' a
9 message that another caller at 190 Yamhill is reporting
10 a male putting a female in a car.

11 DISPATCH: That's now supposed to be at 190
12 and Division. I'm waiting for a description.

13 UNIDENTIFIED OFFICER: 58, I'll check that
14 out. 68 wants to stay in area.

15 DISPATCH: And the caller is sayin' it's a
16 brown, four-door SUV westbound on Division with the
17 female screaming for help. Our original caller thought
18 there may be a silver vehicle involved, as well.

19 UNIDENTIFIED OFFICER: 58, I was just
20 flagged down by two females that the suspect vehicle is
21 a gold four-door. They went westbound on Division.

22 DISPATCH: Gold four-door, westbound on
23 Division at 3:08.

24 UNIDENTIFIED OFFICER: Will you let
25 Portland know?

1 DISPATCH: Yes doin' it now.

2 UNIDENTIFIED OFFICER: 169, I'm 10-64.

3 DISPATCH: 2-2-4 at 3:08.

4 UNIDENTIFIED OFFICER: 158, tack 1.

5 UNIDENTIFIED OFFICER: Copy.

6 DISPATCH: And for 158 and 168, we're
7 getting a caller at 2227 Southeast 189 saying the
8 vehicle is over there now, and the female's screaming,
9 banging on the windows; cars on the west side of the
10 street.

11 UNIDENTIFIED OFFICER: We both copy. We're
12 almost 23.

13 UNIDENTIFIED OFFICER: 168, I'm 23.

14 DISPATCH: 168 at 3:14.

15 DISPATCH: And the guy involved in this is
16 a white male with a dark jacket and blue jeans. Our
17 call taker can hear the female screaming in the
18 background, said she'd been assaulted by her boyfriend.

19 (End of Recording.)

20 Q BY MR. REES: Before we continue, does
21 anyone have any questions about the codes or anything
22 else for Detective Crate that he can explain before we
23 continue?

24 A JUROR: I don't know what any of these
25 codes mean.

1 A JUROR: Some codes identifying the units,
2 and some codes were identifying --

3 MR. REES: Do you want a copy of the
4 transcript?

5 THE WITNESS: I can go over it. 158 would
6 have been Officer Carlson. That would have been his
7 call sign for that night. 168 would have been Officer
8 Sasser. So anytime they refer to them it would have
9 been those numbers.

10 23 is going to put them in the area. That
11 means they are in the area or arriving on scene. And I
12 think that's pretty much --

13 Q BY MR. REES: Just in case, take a look.

14 A So 118 is another car that they initially
15 dispatched, but Officer Sasser said he was with 158 so
16 to cancel the other unit, and he would take the cover.

17 And then there was a 169 that came through
18 there, but that wasn't associated to this call. It was
19 just another unit clearing during the transmission on
20 the traffic.

21 Q So those are the -- the three-digit numbers
22 assigned to the police officer, do they assign them at
23 the start of the shift, or is that always their unit
24 number?

25 A No, so basically those numbers are

1 associated with beats. So anytime that you pick like --
2 one of our Southeast beats is 128. 8 being a graveyard
3 car, one being a day shift car, that type of stuff. So
4 these were both Rockwood cars. So there was a 168 and
5 158. There was also a 169 and a 159 that night, as
6 well.

7 A JUROR: What is a beat?

8 THE WITNESS: That's a geographical area
9 you are responsible for patrolling.

10 MR. JACKSON: When they say, we're 23, or
11 we're almost 23, what does that mean?

12 THE WITNESS: 23 means we're on scene,
13 or -- obviously, we're almost 23, means they are almost
14 on scene.

15 Anything else?

16 MR. REES: Does that cover it, or any
17 questions about that?

18 Q BY MR. REES: I assume when you work as a
19 police officer it gets easier to follow the radio
20 transmissions that, to us, it just sounds like a lot of
21 numbers back and forth?

22 A Yes. Oh, this doesn't have any audio to
23 it. This video was captured on 18910 Southeast Grant
24 Street, and this is a surveillance system that this
25 house has installed. It's this house right here

1 (indicating).

2 A JUROR: That's the Peer house, right?

3 (Videotape Played.)

4 THE WITNESS: Correct. This rectangle is
5 indicating where the suspect vehicle was at, and this is
6 going to be where Officer Sasser pulls into the area,
7 which you will see on the video here. And then this
8 rectangle here is going to be Officer Carlson. You will
9 see.

10 Q BY MR. REES: For the record, can you give
11 us the address of the location the video was taken from?

12 A Yes, 18910 Southeast Grant.

13 Q And during the investigation following the
14 shooting, did your detectives go to all of the different
15 locations in this area looking for any possible video?

16 A Yes.

17 Q And are we going to see all of that video
18 in your presentation?

19 A Yes. So this is going to be right about
20 middle, top screen of the video is going to be the
21 intersection of 189th and Grant. And a couple slides
22 away from this I will show the camera positioning,
23 because there's two different angles on it. So this is
24 Officer Sasser arriving.

25 He's going to exit his patrol vehicle,

1 direct the person to sit down, which is Bodhi, and he
2 takes off running. And this is Officer Carlson coming
3 into the area on Grant Street from 189th.

4 Q I may ask you to play that again. You
5 mentioned Bodhi running. It happens pretty quick.
6 Maybe you can even go up to the screen and point out
7 where we should be looking.

8 A Sure. And just so you guys know, I've
9 noted here this time stamp is 12 minutes slower than the
10 original time.

11 So Officer Sasser pulls in the area here,
12 activates his emergency lights and spot light. He's
13 going to exit the vehicle here, walk up to contact the
14 suspect there. He's pointing and directing him on the
15 ground, and he takes off running in a northwesterly
16 direction.

17 Q And then the second police car that pulls
18 in?

19 A Was Officer Carlson traveling westbound
20 from 190th on Grant.

21 Q And when you watched that video, was that
22 consistent with what information you had received from
23 other witnesses and the officer witnesses in this case?

24 A Yes.

25 Q In terms of the sequence of events?

1 A Yes. So this next video is going to have
2 the audio attached, which is going to be your other
3 dispatch tape that has to do with the foot pursuit.

4 MR. JACKSON: That one begins with foot
5 pursuit, we're going west on Grant.

6 THE WITNESS: So this is a different
7 position of the same residence. It's a different camera
8 so you see more of the intersection. So this is going
9 to pick up here, Officer Sasser has arrived here, and
10 give you kind of a more overall view of the area.

11 And this does have a dispatch dubbed into
12 it.

13 (Radio Dispatch Played.)

14 UNIDENTIFIED OFFICER: Yeah, we got a foot
15 pursuit. We're goin' westbound on Grant.

16 THE WITNESS: This is realtime.

17 (Radio Dispatch Played.)

18 DISPATCH: Copy, in foot pursuit, westbound
19 on Grant.

20 UNIDENTIFIED OFFICER: We're challenging
21 one. We're in a cul-de-sac.

22 DISPATCH: Challenging one. It's a
23 cul-de-sac west of non-emergency off.

24 UNIDENTIFIED OFFICER: 158, shots fired,
25 suspect down.

1 DISPATCH: Shots fired, suspect is down.

2 UNIDENTIFIED OFFICER: Let's get code 3
3 medical staged. I'll take more units in the cul-de-sac
4 to take the guy into custody.

5 DISPATCH: More units to the cul-de-sac to
6 take the guy into custody, medical's been started.

7 DISPATCH: 3114, did you copy?

8 UNIDENTIFIED OFFICER: 158 to dispatch,
9 could you help us out with the address? We're at the
10 dead-end cul-de-sac, number 190. (Inaudible) like 18708
11 Grant.

12 DISPATCH: Copy 18708 Southeast Grant at
13 that end of the cul-de-sac.

14 DISPATCH: And 3114, confirming you copy
15 the call?

16 UNIDENTIFIED OFFICER: I did. I'm en
17 route.

18 DISPATCH: 3:15.

19 UNIDENTIFIED OFFICER: 168, we're code 4,
20 send medical straight in.

21 DISPATCH: Copy, medical straight in at
22 3:17.

23 UNIDENTIFIED OFFICER: And we're 61 with
24 one. If the other cars can go see the uh, silver sedan
25 parked on uh, 189, just south of Grant.

1 DISPATCH: Other units to the silver
2 vehicle parked 189 south of Grant.

3 UNIDENTIFIED OFFICER: I copy.

4 DISPATCH: 118 (inaudible) 3:18.

5 UNIDENTIFIED OFFICER: And 168, he's not
6 breathing, but he does have a pulse.

7 (End of Recording.)

8 THE WITNESS: Do you want to give me that
9 transcript, and we will go over the radio clips.

10 A JUROR: I am having trouble with the
11 dubbing of the audio, because a lot of it sounds like
12 gunshots. And to me, it sounds like a machine gun,
13 because it's like -- is that the bullet?

14 THE WITNESS: There's no gunshots heard on
15 this audio. It's just the dispatch tapes going through
16 the towers, and it's just how it records. It's very
17 scratchy and grainy. So you are not missing any
18 gunshots, you are not hearing any gunshots. There's
19 none that are heard over this transmission.

20 Q BY MR. REES: It's just radio static?

21 A JUROR: Gotcha. I heard shots, and then
22 there's more shots. So no shots. That was no shots.

23 Q BY MR. REES: Why don't you explain what
24 we're hearing in terms of the codes?

25 A Sure. So we obviously saw the foot

1 pursuit. We saw the other officer arrive on scene.
2 During that initial transmission where the officer,
3 which ended up being Officer Sasser, said, We're
4 challenging one in the intersection.

5 That just means at some point the pursuit
6 has stopped, and they are now challenging the person to
7 give up or surrender, is what the challenge means.

8 During that transmission you can hear
9 Officer Carlson say, Drop it, in that audio recording,
10 which we can listen to again.

11 And then the very next one was 158, which
12 is Officer Carlson saying, Shots fired, suspect down.
13 There's one in here where 3114, that's going to be the
14 on-duty sergeant at the time. They are confirming that
15 he has copied the call, and he said that he was en
16 route.

17 And that last unit that was arriving was
18 118. You kind of heard some transmission status. That
19 means he was saying he was 23 when he arrived on scene
20 there.

21 That was the initial officer that was
22 dispatched with Officer Carlson that eventually got
23 relieved of those duties, because Officer Sasser was
24 there and taking that cover. Does that kind of cover
25 it?

1 A JUROR: Can we listen to it again?
2 Because I notice like at the beginning you see him run,
3 and the car come up. And I was like watching, looking
4 for more, but there's really nothing else happening. So
5 then we can follow in the transcript.

6 THE WITNESS: Sure. And I can kind of show
7 you here. We will get into it in a little bit. We will
8 see the foot pursuit here that leaves the camera view,
9 and then they run all the way around to here, and this
10 is where the incident occurs.

11 A JUROR: So you are telling me when it
12 says Shots fired, suspect down, I didn't hear gunshots
13 in there?

14 THE WITNESS: No.

15 A JUROR: Sounds like you heard one, didn't
16 it?

17 A JUROR: Yeah, that's why I wasn't sure,
18 because then I heard it a lot.

19 THE WITNESS: No, there's no gunshots
20 covered in this recording.

21 (Radio Dispatch Played.)

22 UNIDENTIFIED OFFICER: Yeah, we got a foot
23 pursuit. We're goin' westbound on Grant.

24 DISPATCH: Copy, in foot pursuit, westbound
25 on Grant.

1 UNIDENTIFIED OFFICER: We're challenging
2 one. We're in a cul-de-sac.

3 DISPATCH: Challenging on it's a cul-de-sac
4 west of non-emergency off.

5 UNIDENTIFIED OFFICER: 158, shots fired,
6 suspect down.

7 DISPATCH: Shots fired, suspect is down.

8 UNIDENTIFIED OFFICER: Let's get code 3
9 medical staged. I'll take more units in the cul-de-sac
10 to take the guy into custody.

11 THE WITNESS: So code 3 medical means
12 lights and sirens, like get them here, get help here
13 ASAP.

14 DISPATCH: More units to the cul-de-sac to
15 take the guy into custody, medical's been started.

16 DISPATCH: 3114, did you copy?

17 UNIDENTIFIED OFFICER: 158 to dispatch,
18 could you help us out with the address? We're at the
19 dead-end cul-de-sac, number 190. (Inaudible) like 18708
20 Grant.

21 DISPATCH: Copy 18708 Southeast Grant at
22 that end of the cul-de-sac.

23 DISPATCH: And 3114 confirming you copy the
24 call?

25 UNIDENTIFIED OFFICER: I did. I'm en

1 route.

2 DISPATCH: 3:15.

3 UNIDENTIFIED OFFICER: 168, we're code 4,
4 send medical straight in.

5 DISPATCH: Copy, medical straight in at
6 3:17.

7 UNIDENTIFIED OFFICER: And we're 61 with
8 one. If the other cars can go see the uh, silver sedan
9 parked on uh, 189, just south of Grant.

10 DISPATCH: Other units to the silver
11 vehicle parked 189 south of Grant.

12 UNIDENTIFIED OFFICER: I copy.

13 THE WITNESS: That's trying to raise the
14 sergeant to make sure he copies that traffic.

15 Just a couple more codes. Officer Sasser
16 says that he's code 4 send medical in. That means they
17 are okay at that point. And then he says, we're 61 with
18 one. 10-61 is a radio code for the suspect is in
19 custody. And with one, is obviously one person.

20 A JUROR: Just for clarification, this is
21 where the foot pursuit began, correct, with the officer?

22 THE WITNESS: Yes.

23 A JUROR: And this is the second -- he
24 stopped here. Did he start foot pursuit at this point,
25 also?

1 THE WITNESS: Yes we will explain that in a
2 couple of slides, but that's correct.

3 A JUROR: And it ended up down here?

4 THE WITNESS: Yes.

5 MR. REES: Great question.

6 Q BY MR. REES: And really, I think that
7 concludes the audio portion of your presentation; is
8 that correct?

9 A I believe so.

10 MR. REES: If it does, because that was the
11 problem we were having, we will take our noon break here
12 and resume at 1:30.

13 A JUROR: Just one question. Earlier,
14 before you played the audio for the second time, you
15 said the that officer said, Drop it. But I didn't see
16 that transcribed here.

17 THE WITNESS: You can hear it in the
18 background. It probably didn't get picked up in the
19 transcription, because they weren't listening to it.
20 But if you listen to it, because Officer Sasser is
21 talking -- we can listen to it again, if you'd like.

22 A JUROR: No, that's okay. But my question
23 is, drop what?

24 THE WITNESS: He just says, Drop it.

25 A JUROR: But drop what, though, phone?

1 THE WITNESS: So the only thing we could
2 hear at that point was, Drop it. And a lot of other
3 things will come out farther in this investigation, just
4 so you will -- the part that you are hearing right now
5 is just the audio transmissions.

6 A JUROR: So I guess my point is, just for
7 clarification, as you guys investigate the situation in
8 terms of the comment, Drop it, what do you conclude as
9 to what that meant?

10 THE WITNESS: So the suspect in this case
11 was holding a knife in each hand.

12 A JUROR: Okay. Okay.

13 A JUROR: So when do we find that out in
14 your presentation?

15 MR. REES: We can go off the record.

16 (Lunch recess taken.)

17 MR. REES: For the record, Detective
18 Brandon Crate is still under oath, and picking up after
19 our noon recess.

20 Q BY MR. REES: And go ahead, Detective, we
21 just finished that audio portion, and now we're on to
22 the next slide.

23 A Okay. So you guys remember the first
24 video, it was very cut off and you could barely see him
25 running and stuff? This is going to be the position of

1 the camera on the house. This camera is positioned more
2 down so you can see the front yard in that direction.

3 The second camera is more towards the peak,
4 and it covers more of that side yard. When you see the
5 police lights reflecting off the fence, it's the wood
6 fence separating the front and backyard, and it's more
7 elevated so you can see the street.

8 Q Let me -- let me ask you about the red and
9 blue rectangles which represent cars, correct?

10 A Yes.

11 Q And you created this, right?

12 A I did, yes.

13 Q And the red rectangle on Southeast 189th is
14 to represent the car that Bodhi Phelps and his
15 girlfriend, Courtney Sherrell were in; is that right?

16 A Yes.

17 Q And the blue rectangle above is the police
18 officer's vehicle?

19 A Yeah. That would have been Officer
20 Sasser's vehicle.

21 Q The witness indicated that he thought that
22 this actually -- this vehicle, the red vehicle, was
23 maybe more down here when it came to a stop. So I am
24 wondering, did you base this on any exact measurements,
25 or is that an approximation?

1 A No, I didn't. I just did an approximation
2 on where the houses were at, because it's obviously a
3 zoomed in picture of Google maps. So this is just in
4 the vicinity of how things were laid out so you
5 understand where things were positioned, and whatnot.
6 And we will get into the actual photographs in all of
7 this stuff here in the PowerPoint.

8 Q Okay.

9 A So this is representing -- the red
10 rectangle and the red circle is the suspect vehicle, and
11 suspect. The one directly above that would be Officer
12 Sasser's vehicle, and Officer Sasser and the one to the
13 right of that on the far right side of the screen would
14 be Officer Carlson.

15 So based on their statements, we know a
16 foot pursuit ensued, which we saw in the video. Just
17 after exiting video, they crossed to the north side of
18 the road, up to the bend in the corner as Officer
19 Carlson comes westbound on Grant. And I animated that
20 to show you how it worked.

21 So they are in a chase there. Officer
22 Sasser ends up catching Bodhi at this point. He is
23 actually close enough to touch him, but he's not close
24 enough to grab him or tackle him. So what Officer
25 Sasser does is shove him to try to get him to lose

1 balance and stumble, and they can make the arrest.

2 From this point until the initial contact,
3 Mr. Phelps made no statements to officers, ignored all
4 commands to stop. And after Officer Sasser pushed him,
5 he lost his balance and was able to regain his footing
6 and continue.

7 When he made contact with him, Bodhi tells
8 Officer Sasser that he's going to stab him. Knowing
9 that, Officer Sasser gained some distance to get
10 reaction time up, and whatnot. And then at the same
11 time, Officer Carlson exits his vehicle and starts
12 engaging in the foot pursuit, as well, which this will
13 indicate here.

14 So when Bodhi gets to this location in the
15 cul-de-sac, he conceals his hands in his waist or pocket
16 area in front of him where the officers can't see them.

17 Mind you, it's 3:00 in the morning.
18 There's no ambient lighting, except for porch lights on
19 houses. There's no street lights or anything. Their
20 commands go from, Stop, you are under arrest, to Show me
21 your hands. And we will talk more about that when you
22 guys get to hear the testimony.

23 But at some point, Bodhi turns around, does
24 an about-face directly at Officer Carlson. He
25 brandishes a knife in each hand and starts aggressing on

1 Officer Carlson in that direction, where both officers
2 open fire on the suspect.

3 So we have a blowup of this here, and I
4 wanted to blow it up so you guys could use it as
5 reference as we're going through, instead of just a
6 slide. But the witnesses at the scene, we're going to
7 start with Greg and Virginia Kresek.

8 Greg heard the fight in the car, and the
9 female screaming for help. He saw the police arrive and
10 he witnessed the foot pursuit. He heard officers
11 yelling something, followed by gunshots but couldn't
12 make out what they were telling him to do.

13 Virginia heard the fight in the car and the
14 door slam. She saw a foot pursuit followed by gunshots.
15 She saw neighbor Ron Atay contact the female who was
16 still sitting in the vehicle that was on 189th. He made
17 her stay there until other officers arrived. Actually
18 had her remove the keys from the ignition and put them
19 on the roof of the car.

20 Ron and Laural Atay --

21 MR. REES: We have already heard their
22 testimony, so you can just go through that.

23 THE WITNESS: Have you heard Elaine?

24 A JUROR: Yes.

25 THE WITNESS: Niles and Donna?

1 A JUROR: Yes.

2 THE WITNESS: Christopher?

3 A JUROR: No.

4 THE WITNESS: So Christopher hears a
5 speeding vehicle, which is likely Officer Carlson coming
6 into that area when he was witnessing the foot pursuit.
7 He heard commands to stop and get down.

8 He looked outside and saw an officer in a
9 shooting stance, walking backwards away from the
10 suspect. He then saw two muzzle flashes. His house is
11 obviously positioned right here, which would be in line
12 with where the shooting occurred.

13 Patricia Waggoner is in the lobby, you
14 haven't heard from her. She heard the foot pursuit, and
15 she indicated it sounded like it was passing her house.
16 Which is consistent with everything. She heard officers
17 yelling, Stop and Drop the knife, several times. And
18 she heard gunshots. So that's it for that. So you guys
19 can get a lay of the land on how things were done.

20 So this is the initial scene where -- I
21 will show you. This is Officer Sasser's car, which is
22 going to be the one that we saw in the surveillance
23 video from this house. The vehicle in question is here,
24 is a silver Ford Focus that was occupied by Courtney and
25 Bodhi.

1 We know that Bodhi was carrying something,
2 which was these two cases of beer, when he was initially
3 contacted by Officer Sasser, and he dropped those and
4 took off running. This is standing on the southeast
5 corner of 189th and Grant, looking northwest. This is
6 Officer Sasser's car to the left with the lights on
7 further down Grant. That's where Officer Carlson
8 stopped his vehicle at.

9 Q BY MR. REES: I am guessing that our court
10 reporter would like you to slow down just a little bit.

11 A So this is actually standing in the middle
12 of Grant, looking west. The vehicle with the flashing
13 lights there is Officer Carlson's vehicle. And just
14 note in this area there's no street lights in this
15 entire neighborhood. So the only lighting you are going
16 to get is from porch lights.

17 This is an actual photograph. It's very
18 dark. This is about 5:00 a.m. when they initially
19 started taking these photographs, so two hours after the
20 incident, and that's how dark it still is.

21 So as it lightens up, this is from the end
22 of the cul-de-sac looking northbound. These placards
23 that are here on the left-hand side, you can kind of see
24 two different groups here. Each officer, we know, shot
25 six times each.

1 So based on the position and stuff, the
2 ones in the front are likely Officer Sasser's, and the
3 ones in the back are Officer Carlson's. This is looking
4 south into the cul-de-sac. Again, those are groupings
5 of casings that eject from the firearms when they are
6 fired.

7 And placards -- these two right here are
8 marking the knives that the suspect had. They are here
9 on the ground. One black and one blue. He also had a
10 cell phone next to him, which was his.

11 Q Now, when the criminalists take these
12 photos and put the placards out, has the scene been
13 frozen in place so that everything is as it was at the
14 time?

15 A Yeah. So what happens when we arrive on a
16 crime scene like this, obviously, we first render aid
17 and then we preserve evidence. So once we have either
18 rendered aid or made the scene safe, we will secure the
19 scene, depending upon how large. We had two at this
20 point, because there's one that's at the car where it
21 started, and then one farther down the road where the
22 shooting occurred.

23 So fortunately, it was a cul-de-sac so
24 there wasn't a lot of through traffic. And we made
25 contact with the neighbors explaining that they weren't

1 going to be able to go anywhere in their vehicles. Or
2 if they needed to leave, we had to escort them out on
3 foot so everything was the way it was when we arrived.

4 Q If we can go back just a moment to the two
5 knives that were observed at the scene by yourself and
6 the other investigators, and we see -- go forward, if
7 you would, please, to the appearance of the knife with
8 the blade open. Is that how it appeared when
9 investigators arrived?

10 A Yes.

11 Q How long was the crime scene maintained?

12 A It started at just after this happened at
13 3:00 a.m., and I think we ended up releasing it about
14 7:00 or 8:00 at night. This is a spoon. This, based on
15 my training and experience, is consistent with heroin
16 use, intravenously. It was in the suspect's pocket.

17 So we go back to the car where this
18 initially started. We noted here on the hood there's
19 two dents that were likely created by him jumping on the
20 hood. This shoe impression you can see, it's got some
21 unique characteristics. It's got some things, I will
22 show you, of the suspect's shoes, that are consistent
23 with him causing that stuff to the hood.

24 When we hear people talking about banging
25 and door slamming, and this and that, this is likely

1 what they were hearing. There's three shoe impressions
2 there on the front driver's door.

3 Q Could you point those out?

4 A Sure. There's one here, here, and here.
5 And the unique indicator I was talking about is this
6 kind of, like, a tear drop looking, elongated tear drop
7 in the center of the heel. And then there's one on the
8 back door here as well. The same shoe pattern. This is
9 just a close-up view of it. So two on the hood, three
10 on the front driver's door, and one on the rear driver's
11 side door. And those were the shoes the suspect was
12 wearing.

13 This is Officer Sasser the night that this
14 occurred. What happens during an officer-involved
15 shooting, once people arrive, they are relieved of their
16 duties. Obviously, because they were involved in an
17 incident like this. We transport them back to our
18 office and a representative of our office sits with
19 them, and gets them whatever they need, water, coffee,
20 whatnot.

21 Then we do what is called a round count,
22 and we go through all the ammunition, all the firearms
23 and all of that stuff they are carrying with them that
24 night, so we can account for all of those.

25 Officer Sasser up here in the top, this is

1 how he looked that night. This is hours after this
2 happened, probably not even that long, maybe an hour.
3 This is his firearm he was shooting. It had one round
4 in the chamber. This is the magazine that came out of
5 it. It had 11 rounds in the magazine. So a total of
6 12.

7 These magazines are nine-millimeter
8 handguns, and they house 17 rounds. We know just based
9 on the round count, and speaking with them, that they
10 each fired six times. And what we do is we will load
11 the magazine with 17. We will chamber a round, and
12 we'll take that magazine out, and load another round in.
13 So we backfill them. So these three magazines here that
14 he was wearing on his belt that night all had 17 rounds
15 in them each. So we know he didn't do any magazine
16 exchanges or anything during this.

17 So these placards here, when we do a
18 walk-through with an officer, all the scene stuff is
19 removed. So we just kind of, based on their memory of
20 things that happened that night. And Officer Sasser
21 remembers standing somewhere in this area. He believed
22 that Officer Carlson was somewhere in this area, and
23 this placard is where he believes where the suspect was
24 at the time. So that's his perspective. This is just a
25 different angle.

1 This placard indicates Officer Sasser in
2 the direction he would have been facing the suspect.
3 Officer Sasser is going to talk about this house. He
4 remembers seeing that house in his back drop, and was
5 concerned about it. And Officer Carlson would have been
6 facing the suspect at this point, and the suspect would
7 have been facing him.

8 So this is a picture over the shoulder of
9 what would have been Officer Carlson, and this placard
10 would have indicated the suspect, Bodhi Phelps, in this
11 case.

12 We know, based on the positioning from
13 Officer Carlson, where the body and the casings were
14 found that this occurred within seven to 10 feet from
15 each other. This would have been Officer Sasser's view
16 of looking at Bodhi. Bodhi would have been facing this
17 direction (indicating).

18 Q And to get these pictures, is it correct
19 that you had the two officers who were involved in the
20 shooting, later that day of the shooting, come with
21 detectives to the scene and then show you where they
22 believed they were standing; is that right?

23 A Yes.

24 Q And then you had this particular officer,
25 who is not obviously one of the involved officers, stand

1 in for the purpose of creating the perspective photo; is
2 that right?

3 A Yes.

4 Q And when you learned of the two shooting
5 officer's descriptions of where they were standing, did
6 it appear to match up with the forensic evidence,
7 meaning the bullet casings, the knives, and the blood,
8 with what they were describing?

9 A Yes.

10 So this is just a different view. Now,
11 it's light out looking from the cul-de-sac north. So
12 this would have been Officer Sasser. This would have
13 been Bodhi. This would have been Officer Carlson.

14 So this is Officer Carlson the night that
15 this occurred. This is what he looked like, just about
16 an hour afterwards. He, too, was shooting a
17 nine-millimeter Glock, which had one round in the
18 chamber. His magazine had 11 rounds in it, with one in
19 the chamber, totalling 12 rounds, just like Officer
20 Sasser.

21 A JUROR: Did his gun have something extra?
22 What is that?

23 THE WITNESS: This, it's a flashlight.
24 Both guns have that. Most of our patrol firearms that
25 we use have a magazine light or a light affixed to the

1 tip of them so we can -- when you have a weapon drawn,
2 you can indicate it, and turn it on and off with the
3 touch of a finger. So you can use that as a lighting
4 source, as well. Officer Carlson was carrying three
5 extra magazines.

6 A JUROR: Question. You don't use laser
7 sites?

8 THE WITNESS: No, we don't. We use a
9 Trijicon night site, that if you have questions about we
10 have a firearms instructor coming in.

11 A JUROR: That has like the little
12 reflective fluorescent type of --

13 THE WITNESS: Yeah, so on the back it will
14 have two glowing green dots, and on the tip you'll have
15 one so you can site the firearm in at nighttime.

16 So he was wearing three extra magazines.
17 He was wearing them on an exterior vest here, up on the
18 stomach, left of center.

19 Q BY MR. REES: Are both officers then
20 carrying identical firearms and using identical
21 ammunition?

22 A Yes.

23 Q When I say identical, I mean not only
24 caliber, but same manufacturer?

25 A Yes.

1 Q So they would be indistinguishable, for
2 example, in the autopsy or something?

3 A Correct. So this is going to be Officer
4 Carlson's recollection of things, where people were
5 positioned that night. He believes he was somewhere
6 closer to here. This would have been Officer Carlson.
7 This would have been Bodhi. This would have been
8 Officer Sasser.

9 When he initially contacted him by the
10 driveway, this is the path he would have traveled,
11 according to what Officer Carlson remembers. This would
12 have been where Officer Carlson believed he was standing
13 towards the suspect, and that placard.

14 This would have been where Officer Carlson
15 believes Officer Sasser was standing in proximity to
16 Bodhi. This is a view from the cul-de-sac, looking
17 north of -- obviously, this is where it started, where
18 Bodhi stopped, and the position of Officer Carlson and
19 Officer Sasser.

20 So this is an aerial view of the actual
21 crime scene that we took atop a fire truck with an
22 extended ladder. It gives you the lay of the land.
23 This is the cul-de-sac. Obviously, we have the deceased
24 here.

25 And we have those two groups of casings

1 that we located at the scene. These ones, based on the
2 statements from Officer Carlson and Officer Sasser.

3 Are we going to have the firearms guy talk
4 about ejection and all of that?

5 Q Yes.

6 A So as we're doing the scene walk-through,
7 Officer Sasser said that he saw the knife in the
8 suspect's hand. He was aggressing on Officer Carlson.
9 He thought Officer Carlson was going to get killed, and
10 he fired until the suspect went down. And he fired a
11 total of six rounds.

12 Officer Carlson saw a knife in each of the
13 suspect's hands. Officer Sasser only saw one. He was
14 aggressing towards Officer Carlson, and Officer Carlson
15 was backing away from the suspect to gain a distance.
16 He didn't remember if he was backing completely
17 backwards, or backwards and lateral.

18 He remembered looking, and taking a split
19 second, looking around and not seeing any cover that was
20 viable to put between him and the suspect. He, too,
21 thought he was going to be killed. He fired until the
22 suspect went down. He shot a total of six rounds.

23 So this is Courtney. This is going to be
24 the girlfriend of the deceased. This is her after we
25 arrived. We took her, took her back to the police

1 department to do an interview, and to assess her to see
2 how she was doing.

3 She had obviously been crying. It looks
4 like she has -- her eyes are starting to swell and
5 bruise on either side here from the assault in the
6 vehicle. That kind of gives you a better picture of
7 just under the eyelids here, she's got some bruising and
8 swelling starting.

9 She also has a mark on her upper left
10 shoulder, here. It's obviously fresh. And she has
11 injuries to her back as well, some being older stuff up
12 here, and this being newer stuff.

13 So during Courtney's interview -- and you
14 will hear from her -- some of the key features that
15 stood out in her interview is her statements, he started
16 hitting me. He was so out of his goddamned mind
17 tonight, I have never seen him that bad. Yeah, he was
18 so angry. He was angry at the world. I have seen him
19 mad, but I have never seen him this mad. I've never
20 seen him look me straight in the eye and tell me he
21 wanted to break my jaw. He wishes he could kill me.
22 Talks about suicide about every day. He said that he
23 wants to be like Romeo and Juliette. He wants to die
24 together, but she didn't want to die.

25 So Courtney suspected that Bodhi pulled out

1 a knife, and that's why the police shot him. And her
2 comment to that, And when the cops see that, you can't
3 blame them for wanting to protect themselves. They have
4 families, too. Yeah, yeah, he tried to get the keys,
5 but I fight for them. He's pretty weak. I got my keys,
6 and she snickered. Yeah, I won that battle.

7 I was sitting in the driver's seat. He was
8 fighting me to get my keys. He wasn't fucking getting
9 them. Yeah, I was screaming, and then the neighbors
10 came out. When they asked about Bodhi being armed, she
11 said, no, I mean, besides a knife.

12 So this is the cell phone belonging to
13 Bodhi. He actually had it password protected. It was a
14 swipe pattern that Courtney ended up giving us. I
15 downloaded the cell phone, and I found these text
16 messages on the 23rd of May, about 5:25 p.m.

17 This was from Courtney to Bodhi, I just did
18 my first one and fucking killed it. Her response to her
19 at 5:46 the same day, Good job, Babe. I just did my
20 first armed robbery. And then he tells Courtney, I love
21 you. Come to my funeral, at 5:56. This is the night
22 prior to the shooting.

23 This is between Bodhi and his mom, Shiloh,
24 starting around the same time, 5:40 in the evening on
25 the 23rd. So this is to his mom: Okay. Well, Courtney

1 and I got into a huge fight and -- and she responds,
2 Where are you at, at 5:49. She's a fucking psycho, same
3 time. She will probably call the cops. That was all at
4 5:49. He responds, She said she would. And that was
5 5:56 on the 23rd.

6 So our timeline, which I have printed out
7 here, if you need to look at it, caller one, 911, calls
8 at 3:04. PD is dispatched at 3:05. We arrive in the
9 area 3:07.

10 The second caller is at 3:08. Third caller
11 is 3:11. This is when Courtney calls at 3:12. 3:14 is
12 when caller No. 4 arrives. Pretty much around the same
13 time that the police department arrive. And then 3:15
14 is the foot pursuit, and 3:16 is shots fired. That's
15 all.

16 A JUROR: Those text messages, they were on
17 the same day and earlier in the night?

18 THE WITNESS: So this occurred on the early
19 morning of the fourth -- sorry the 24th, and those
20 occurred -- would have been the evening of the 23rd. So
21 just hours, 10 hours or so before this whole thing
22 happened.

23 A JUROR: But there was a longer fight than
24 just what everyone witnessed on Yamhill?

25 THE WITNESS: Yeah. I am sure Courtney

1 will attest to some of that. But this was an ongoing
2 issue throughout the day between these two. But, yes,
3 this would have been on the 23rd at 5:00, 5:45 in the
4 evening. This happened on the 24th at 3:00 a.m.

5 Q BY MR. REES: Detective, during the
6 investigation did you learn whether there was a history
7 of domestic violence between Bodhi Phelps and his
8 girlfriend, Courtney Sherrell?

9 A Yes, there was.

10 Q In the call to 911, Courtney Sherrell told
11 the call taker that Bodhi Phelps had warrants out for
12 his arrest. Was that true?

13 A Yes.

14 Q Do you recall what the warrants were?

15 A One was a probation violation for
16 possession of heroin, and I don't recall what the other
17 ones were.

18 Q Would you be able to look that up?

19 A Sure.

20 A JUROR: You indicated that the foot
21 pursuit started at 3:15 a.m. Was that when the first
22 officer arrived on the scene, or is that when the second
23 officer started to chase, as well?

24 THE WITNESS: So it's like seconds between
25 the two. So we're basing these times off of dispatch

1 times, off of 911 caller times. We're just trying to
2 get the similarities of it. Whether it's the latter
3 part of 3:15 or the early parts of 3:15 -- the caller is
4 calling at 3:14, but then we have 59 seconds that could
5 go in between the minutes.

6 So, yes, it would have been -- he arrives
7 at 3:14, he steps out of his vehicle, tells the
8 individual, Bodhi, to stop, we see the foot pursuit.
9 The other officer seconds away from him, and then it's
10 not even a minute later from the shots being fired.

11 A JUROR: Okay.

12 MR. REES: We're off the record.

13

14 PATRICIA WAGGONER,
15 produced as a witness, having been first duly sworn,
16 was examined and testified as follows:

17 THE WITNESS: I do.

18 DIRECT EXAMINATION

19 BY MR. JACKSON:

20 Q You can have a seat. Could you please
21 state and spell your name for the Grand Jurors?

22 A I am Patricia Waggoner. And that's
23 P-A-T-R-I-C-I-A, W-A-G-G-O-N-E-R.

24 Q Ms. Waggoner, do you live on Grant Street?

25 A Yes.

1 Q In this house right here on the map where
2 the cursor is? It's hard to see, maybe.

3 A I think that's my house.

4 Q If I go down to the street --

5 A I don't think that's my house. No. I
6 am -- you are going the wrong direction. That's my
7 house (indicating).

8 Q This white one here?

9 A Yes.

10 Q Perfect. And so you live basically on the
11 cul-de-sac where Grant Street ends?

12 A Yes.

13 Q And were you home in the early morning
14 hours of May 24, 2016?

15 A Yes.

16 Q And what do you recall happening during
17 those early morning hours?

18 A I was awakened by hearing a man's voice
19 saying, Stop. I mean, loudly. My window was open and I
20 am on the street side. And so I thought, What is
21 happening? So -- and then I heard, again, Stop. And I
22 stood up, and the window is right above my bed. And I
23 pulled the shade across to look out.

24 But I have, you know, it's three, there's
25 no lights there. I have a porch light, and it was on.

1 But I couldn't see anything at all. So I thought it was
2 my neighbor, maybe somebody was rifling cars.

3 But anyway, I closed the drape again, and
4 then I heard -- I wasn't sure what to do. Then I heard
5 the gunshots, and so then I dialed 911. And she said,
6 This is the -- you know, we know they are there.

7 I just said, I have heard gunshots in front
8 of my house. And she said, Yes, we know. It's the
9 police. So I looked out again, and then there was, I
10 could see a man's silhouette out in the middle of the
11 cul-de-sac. And I knew it was a policeman, because I
12 could see the holster on his hip. And I really couldn't
13 make him out, other than just a silhouette.

14 And then I could also see, there was
15 somebody down toward that other house there, on the
16 ground. And there was one officer that was down there.
17 I heard them say, before that, I heard them say, Drop
18 the knife.

19 And I thought the man was still alive,
20 because I thought he said, You shot me. Like he was
21 surprised. And so I went out into my other room to see
22 if anybody else had heard it. My granddaughter was
23 sleeping on the couch. She had heard a noise, but
24 didn't recognize it as gunshots.

25 Q So you just to clarify, did you hear the

1 statement, Drop the knife, after you heard the male
2 person yelling, Stop?

3 A Yes.

4 Q So that was before the gunshots?

5 A And I knew -- I don't know. It was 3:00 in
6 the morning. I am not exactly sure what all I did hear.
7 I knew the person had a gun, so I must have heard him
8 say, you know, something about having a gun, because I
9 knew the person had a gun.

10 Q You mean a gun or a knife?

11 A No, I knew the person yelling, turned out
12 the policeman -- I knew that that person had a gun,
13 because he told him either, I will shoot, or I have a
14 gun, or whatever, at the person that was -- and I didn't
15 see that person running. When I first saw him, he was
16 down.

17 Q And it was around that time that you heard
18 the officers say, Drop it, Drop the knife?

19 A Yeah. Uh-huh.

20 Q I have a gun, or I will shoot, or something
21 like that?

22 A Well, he said that before the shooting.

23 Q Yeah. Okay. So when you looked out and
24 saw the silhouette of the officer, could you tell which
25 part of the street he was in, or was it too dark --

1 A Well, you know, the officer was standing
2 about where that -- he was standing down from where the
3 curb is on the sidewalk, but the officer I saw was out
4 more in the center. Then there was the other officer
5 down by the body, by the person that was down, and he
6 was kneeling down by that time.

7 Q The police officer was?

8 A Yes. So there were two officers by that
9 time. I only heard one speak. And he said, Stop, about
10 three times.

11 MR. JACKSON: Do you have any questions for
12 Ms. Waggoner?

13 Q BY MR. REES: I got just a little confused
14 about the sequence, so if we can just try one more time.

15 A Okay.

16 Q Of what you heard, the words you heard, and
17 when you heard the gunfire.

18 A Okay. I heard them first -- I heard the
19 voice yell, Stop. And that -- then I heard him -- he
20 said that about three different times. And I had looked
21 out the window then, but I couldn't see anybody.

22 I have trees, so I couldn't see through
23 them. So I didn't see anyone out there. And then I had
24 heard -- I quit looking out the window, and heard the
25 shots then, about three shots. And then I called 911.

1 Q Okay. So -- what is that?

2 A Oh, that's my phone. I am sorry. I don't
3 know how to pause it. They will quit.

4 Q Well, just trying to be clear on whether --
5 you heard someone yell, Drop the knife?

6 A And that was after the shots.

7 Q That's what I am trying to find out. So
8 you believe you heard that after the shots?

9 A Yes. Yes.

10 Q So it would be, Stop, Stop, Stop, gunshots,
11 gunshots, Drop the knife?

12 A Yeah.

13 Q Is that right?

14 A Yeah. That's more -- that's why -- and
15 then I thought the person responded about, You shot me,
16 after he was down. And so I didn't think he was killed.

17 Q And are you -- obviously, you were sound
18 asleep when this first --

19 A Yes. Right.

20 Q So you woke up from being sound asleep, at
21 3:00 in the morning, in the dark. So are you
22 100 percent sure, in your mind, that that was the order
23 that you heard the yelling or not?

24 A Yes. Yes.

25 Q You are? Okay.

1 A I am sure that I didn't hear him say, Drop
2 the knife, before the shooting.

3 Q Okay.

4 A But he had to have said something about
5 having a gun, or I wouldn't have known the person had
6 the gun, and was worried about calling 911.

7 A JUROR: I am sorry. I was getting
8 confused after you clarified. Because the first time I
9 thought you said to drop the knife before the shots were
10 fired. But it was actually shots were fired, and then,
11 Drop the knife?

12 THE WITNESS: That's the way I remember
13 hearing it, yes.

14 A JUROR: You said you heard the phrase,
15 You shot me. Did you hear -- was that before shots, was
16 that after shots, was it both?

17 THE WITNESS: It was after the shots, and I
18 think after the officer was going -- was there, down by
19 him.

20 A JUROR: So after you heard the words, You
21 shot me, were there more shots after that?

22 THE WITNESS: No. I could see out into the
23 cul-de-sac, because there wasn't any trees in front of
24 me there. But I couldn't see -- if they were standing
25 alongside my sidewalk, I couldn't see anything right

1 there.

2 MR. JACKSON: Any other questions? Thank
3 you.

4 A JUROR: Just one thing. When you look at
5 that map, the house on the left, all the way at the
6 bottom, that's your house, right? It's not the
7 second-from-the-bottom, would that be correct?

8 THE WITNESS: No. This is my house here,
9 and this tree precluded me from, upstairs, of seeing
10 anything that was back there. So if there were police
11 cars, I didn't see them until after.

12 Okay. Is that it?

13 A JUROR: It's just a mistake on the chart.

14 MR. JACKSON: That's helpful. Thank you.

15

16 CHRISTOPHER DEHAAN,
17 produced as a witness, having been first duly sworn,
18 was examined and testified as follows:

19 THE WITNESS: Yes, sir.

20 DIRECT EXAMINATION

21 BY MR. JACKSON:

22 Q Could you please state and spell your name
23 for the Grand Jurors?

24 A Christopher DeHaan, C-H-R-I-S-T-O-P-H-E-R,
25 D-E, capital H, A-A-N.

1 Q Mr. DeHaan, do you live on Southeast Grant
2 Street?

3 A Yes, sir.

4 Q And if we look at this board behind us
5 here, is this house, labeled Christopher DeHaan, your
6 residence?

7 A Yes, sir.

8 A JUROR: I am sorry. Could you spell your
9 last name again?

10 THE WITNESS: No problem. D-E, capital H,
11 A-A-N. They spelled it wrong --

12 A JUROR: They missed the first part.

13 THE WITNESS: Yeah, they had it spelled
14 H-E-H-A-A-N, I think, they had it spelled on the paper,
15 but I called and corrected it a little while ago.

16 Q BY MR. JACKSON: And if we look at the
17 street view of Grant Street, do you see which house is
18 yours?

19 A Yes, sir.

20 Q Which one is it?

21 A The one with the gray Honda Odyssey parked
22 in the driveway.

23 Q This one here?

24 A Yes, sir.

25 Q It looks like you have some windows on the

1 garage doors?

2 A Yes, sir.

3 Q And were you home during the early morning
4 hours of May 24, 2016?

5 A Yes, sir, I was.

6 Q And do you recall an incident occurring
7 that morning?

8 A Yes, sir, I do.

9 Q What do you remember about that?

10 A I was actually upstairs where the windows
11 are blocked by the tree. That's my bedroom up there. I
12 had been listening, on my cell phone, to some music and
13 I had one ear phone off. And my window was open, and I
14 heard what sounded like a car pulling up to our
15 neighbor's house, which would be on the right-hand side
16 Dennis', right there --

17 Q This one?

18 A Yeah. He pulled up to about where the
19 black mailbox was. That's what I saw afterwards. It
20 sounded like two people were running, from what I could
21 hear, through this here. And I heard somebody say,
22 Stop, get down now. And I just continued to hear
23 running.

24 So I ran from the top, where my bedroom is,
25 downstairs to the garage, to that very first window.

1 You can see all the way to Ms. Waggoner's house from
2 there. And that's where I saw a couple things happen.

3 Q What did you see happen?

4 A I saw a police officer backing up, and
5 fired two shots out of a -- I believe to be a
6 nine-millimeter handgun. I don't know if anybody else
7 was armed or anything else like that. I just saw
8 somebody backing up, and they were using like a police
9 grip on their weapon.

10 And I saw a flash, twice, that's how I saw
11 the police thing on the back. But other than that,
12 that's all I had seen.

13 I seen what I thought might be another
14 officer on the left side of the van, but I didn't see
15 anything come from him as far as shots or anything. I
16 only saw two.

17 Q Did you also hear the shots?

18 A Yes, there was four to six, but I only saw
19 two.

20 Q When you say you saw them --

21 A I saw the muzzle flash, yeah, boom, boom,
22 like that. And I have been shooting plenty of times, to
23 know, you know. From the way he was standing and had
24 his arms locked out, he was tactically -- or in some way
25 trying to defend himself by going backwards, and pushing

1 his arms out in a certain way.

2 Q So you could actually see that officer
3 backing up?

4 A Yeah, when muzzle flashes went. He went
5 boom, boom, like this. I didn't see, like what he
6 looked like -- the back of his head. All I saw was
7 like -- it looked kind of like mine, on the back of my
8 head, kind of shaved a little bit, but I didn't see his
9 face. I don't know exactly who it was. I wouldn't be
10 able to point him out. I just saw the back of him.

11 Q Well, actually --

12 A Yeah.

13 Q Is this approximately the view from your
14 garage that you would have seen?

15 A Yeah, that's almost perfect, actually.
16 Yeah. Yeah.

17 A JUROR: Was your porch light on?

18 THE WITNESS: I don't honestly remember.
19 Everything happened so fast, I don't remember the porch
20 light being on, no.

21 A JUROR: Was there any other light?

22 THE WITNESS: Just like I said, the muzzle
23 flash from that is what showed me. I don't recall. I
24 am sorry. It was really, really early. But I can't
25 recall if the porch light was on.

1 My mom could have walked by, easily, and
2 turned it off from the inside throughout the day. I
3 think that picture was taken around like 7:00 in the
4 morning. I am not sure.

5 A JUROR: Do you recall any surrounding
6 light?

7 THE WITNESS: I do -- we think we might
8 have some street lights in there. But I -- like I said,
9 don't recall. I don't ever really see anything like
10 that in our neighborhood. Usually, like, our porch
11 light will be on, or the neighbors across the street
12 will have their lights on.

13 Q BY MR. JACKSON: This looks like a lamp
14 post light here?

15 A Yes.

16 Q Is that on, generally, at night?

17 A Yeah, sometimes, if I forget to turn it
18 off. I usually lock up and stuff, and will turn it off
19 at night. But like I said, I can't recall if I did at
20 that moment.

21 A JUROR: Is that what you are referring to
22 as the porch light?

23 THE WITNESS: Yes, ma'am.

24 MR. REES: That's what the grand juror was
25 referring to right, the light in the picture?

1 A JUROR: Uh-huh. That and you say you
2 were saying it was a police officer in a defensive
3 stance?

4 THE WITNESS: Yes, from the muzzle flash.

5 A JUROR: So that's what you saw, was from
6 the flash of the weapon?

7 THE WITNESS: Yes, sir.

8 Q BY MR. REES: In the picture, and feel free
9 if you want to stand up and get up next to the screen,
10 but can you see a group of individuals standing in the
11 cul-de-sac in that picture?

12 A Yes, sir.

13 Q Are they standing in the area around where
14 you saw what you are describing, or not?

15 A I think he was more like -- the cop was
16 more closer towards the middle of the van when he was
17 backing up. So the silver van is right there. He was
18 kind of backing up like this, away from the silver van.
19 That's about where I saw him, was about halfway where
20 the van was, when I finally actually had seen him.

21 Q What about the muzzle flashing?

22 A The muzzle flashes were around -- he was
23 coming back from behind the silver van, like so. And as
24 he started getting closer to the front, that's where I
25 saw the muzzle flashes.

1 So as his back started to come closer,
2 towards the front of the van, that's when I saw both of
3 them. But with a handgun, they can -- you know, shells
4 can fly every which way, depending on how it's loaded
5 and everything so --

6 Q BY MR. JACKSON: And from the muzzle flash,
7 it illuminated the police --

8 A Yeah. I could -- almost all of this, right
9 down to here, from the muzzle flash. But I didn't
10 see -- because he was faced away from me. So his back
11 would be here, this is where I am looking out of the
12 garage. I can just see his back only.

13 MR. JACKSON: Okay. Anybody have any
14 questions about that?

15 Q BY MR. JACKSON: So after that occurred,
16 what did you do?

17 A I stood at the window and continued to
18 watch, the people come through, in and out of the
19 neighborhood. This is what -- I don't know if I am --
20 if it's relevant, but my mother -- because I ran inside
21 because I knew they were --

22 Q Well, let me ask you this question, sir.

23 A Yes, sir.

24 Q When you say, "the people," are you
25 referring to the police officers that came in to

1 investigate the case?

2 A Yes, sir. Well, there was a whole bunch of
3 different people. I don't know who was who, because
4 there was, like, loads of people coming through the
5 neighborhood all day.

6 Q Okay.

7 MR. JACKSON: Does anybody have any other
8 questions?

9 I guess that's it. Thank you very much.

10 THE WITNESS: Thank you very much.

11 A JUROR: Wait. I am sorry. I didn't
12 capture everything that you said the officers said to
13 the suspect -- over what you could hear, besides just --
14 was it just, Stop? What did you hear the officers all
15 say?

16 THE WITNESS: These are the same actual
17 headphones, too. They are quiet, really, really quiet.
18 What I heard was, Stop, get down, right now. That's
19 exactly what I heard, and they are running. Stop, get
20 down right now. That's what initially made me run
21 downstairs to see what was going on was --

22 I remember that specifically. I didn't
23 hear anything else besides, Stop, get down right now.
24 And then, like I said, it sounded like a chase ensued
25 from there. And by the time I got to the garage, that's

1 when it went pop, pop.

2 A JUROR: That's while they were running,
3 though.

4 THE WITNESS: I would assume --

5 A JUROR: You assumed that's while they are
6 running, not necessarily while they were stationed in
7 the --

8 THE WITNESS: Yes, sir --

9 A JUROR: So you were moving -- so you
10 remember moving downstairs, so you saw part of it and
11 you didn't see some of it, because you were moving
12 downstairs?

13 THE WITNESS: Yes, ma'am. Yes, ma'am.

14 MR. REES: Did that answer the question?

15 A JUROR: I didn't know how much he had
16 seen, because he had just said -- that part about, Stop,
17 get down, so I wasn't sure what else he might have
18 heard.

19 THE WITNESS: Any other questions? Just
20 making sure. Thank you.

21

22 GREG KRESEK,
23 produced as a witness, having been first duly sworn,
24 was examined and testified as follows:

25 THE WITNESS: I do.

DIRECT EXAMINATION

BY MR. JACKSON:

Q Sir, could you please state and spell your name for the Grand Jurors?

A I am John Gregory Kresek, and the last name is K-R-E-S-E-K.

Q Do you live on Southeast 189th Avenue?

A That is correct, yes.

Q Do you see this box with your name? And who is Virginia?

A That's my wife.

Q And is this yellow line indicating the correct house on Southeast 189th Avenue?

A Let's see, yes. Yes. Our house is the third one, right there. That is correct.

Q I am just going to pull a map up here real quick. Do you see your house?

A Yes.

Q Which one is it?

A It's the one -- well, the one that is most prominent with the single car in the driveway.

Q This one here?

A That is correct.

Q Were you home during the early morning hours of May 24, 2016?

1 A Yes.

2 Q And what do you recall happening that
3 morning?

4 A I was asleep. It was about 3:00 in the
5 morning, somewhere around there, and I was awakened,
6 hearing a noise, a commotion out in the street. And so
7 I laid there and I listened for a little bit. And then
8 I thought, This isn't right.

9 And so I got up, and I went across the
10 hallway. Our bedroom is in the back of the house, so I
11 went across the hallway, and looked out the window. And
12 across the street I could see a car. And I could see a
13 young man kicking and beating and hitting the car,
14 kicking it with his feet. Beating it with his fists.

15 And just about at that point, I could hear
16 a woman, who was obviously in the car, screaming, just
17 lots of just screaming. And then I heard, Help, Help
18 me, more screaming. So then I awakened my wife, and I
19 said, Come and see this. And so we were both standing
20 there.

21 And then he went around to the trunk area,
22 and opened the trunk. And about that point I said, We
23 need to call 911. And just as we were about to do that,
24 the police came around the corner. So we actually did
25 not call 911.

1 Q So you actually saw the police?

2 A Coming around the corner. The police cars
3 coming around the corner with their lights, yes, we did.
4 Yeah.

5 Q Did you hear -- you described hearing the
6 female screaming and making some statements. Did you
7 hear the male say anything?

8 A I could hear him -- I could hear him
9 answering her, or speaking to her in an agitated way,
10 but I could not hear any specific words, no.

11 Q Once the police officer, the police car
12 arrived, what happened then?

13 A Well, at that point the young man was, like
14 I say, he was doing something in the trunk. The lid of
15 the trunk was up. So from my vantage point, I couldn't
16 see. The lid was covering that area. And then he put
17 the lid down, the trunk lid down, and then he,
18 obviously, saw the police vehicles there.

19 So he's headed down the street to the
20 corner. And then the police officer shouted
21 something -- I couldn't make out what it was. He
22 started to run. He ran around the corner.

23 One of the police officers chased him
24 around the corner. A few seconds later, another officer
25 chased him around the corner. And then we couldn't

1 see -- I couldn't see anything after that. They were
2 out of sight.

3 Q And then did you hear anything that sounded
4 like gunshots?

5 A Yes. A few minutes later, or just a few
6 seconds maybe, short period of time later, I heard four
7 quick shots, sounded like shots.

8 And at that point I looked at my wife and I
9 said, Good Lord, those were gunshots. Somebody was
10 shooting. And then -- so I heard four in rapid
11 succession, and then there may have been one after that.
12 I can't swear to that.

13 MR. JACKSON: Any questions? Okay. Thank
14 you, sir.

15 MR. REES: Thank you.

16 VIRGINIA CHRISTINE KRESEK,
17 produced as a witness, having been first duly sworn,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. JACKSON:

21 Q You can have a seat. Could you please
22 state and spell your name for the Grand Jurors?

23 A My name is Virginia Christine Kresek,
24 K-R-E-S-E-K.

25 Q And do you live in this house here?

1 A Yes. Yes.

2 Q On Southeast 189th?

3 A Yes.

4 Q And is Greg Kresek your husband?

5 A He is. For 50 years.

6 Q Okay. Were you home during the early
7 morning hours of May 24, 2016?

8 A Yes. Yes.

9 Q Could you describe what you saw and heard
10 that morning?

11 A Sure. I was sound asleep. My husband came
12 in and woke me up and said that he heard some noise in
13 the street, somebody screaming for help. And said,
14 Should we call 911? And I said, Well, look out the
15 window, see what you see.

16 So we went to the window, we looked
17 outside. I saw a sort of gray car kitty-corner from us
18 in front of the house across the street. Not directly
19 across the street, but down the street, kind of behind
20 where that black car is.

21 Q Down in this area?

22 A Yeah. Yeah. And I heard car doors slam.
23 The impression I had was that people were getting back
24 into a car. The woman on the driver's side, a man on
25 the passenger's side, but I wear glasses and I did not

1 have them on, so I couldn't swear to that being
2 accurate.

3 Q But that's what you heard?

4 A I heard the car doors slam, and I saw
5 movement into the car. And the impression I had was
6 that the woman was on the driver's side, and the man was
7 on the passenger's side.

8 And my husband said, again, Should we call
9 911? And I said, Well, it's quiet now. Let's wait and
10 see, because we have disturbances on our street in the
11 summer, a lot. And then about that time the first
12 police car pulled up around the corner, pulled up behind
13 the car.

14 And then I saw someone -- I'm assuming it's
15 the man. I thought it was the man -- get out of the
16 passenger's side of the car and head towards the police
17 car. It looked like he had something square in his
18 hand. I have no idea what it was, but something square.

19 And about the time he got to the front of
20 the police car, he started to run and ran around the
21 corner onto Grant. And then I saw a police car come
22 down the street, Grant Street, in the direction that he
23 had gone.

24 And then I heard -- I can't tell you how
25 much time passed, but I heard pop, pop, pop, pop, pop.

1 And my husband said, That's gunshots. And I got upset,
2 and we watched out the window for a little longer. Our
3 next-door neighbor on the right, his name is Ron, came
4 out of his house with a flashlight. He went up to the
5 car and said to the person in the car, Just stay in the
6 car. Just stay in the car. I could hear that, because
7 our windows were open. Just stay right there. Stay in
8 the car. Stay in the car.

9 His wife came out and stood on the front
10 porch. And then he backed away, and then another police
11 car came around the corner, and then a van, a police van
12 came around the corner onto our street. And then a
13 little while later -- again, I am not sure how much time
14 had passed -- a fire truck went down the street toward
15 where the man had run, and that's all I saw. And that's
16 what I remember.

17 MR. JACKSON: Any questions? Okay. Thank
18 you very much.

19 THE WITNESS: Thank you.

20 MR. REES: Back on the record.

21 EXAMINATION CONTINUING

22 BY MR. REES:

23 Q Detective Crate, you are still under oath.
24 During the break were you able to determine what
25 warrants were in the system for the arrest of Bodhi

1 Phelps on May 24th, 2016?

2 A Yes. There was one for possession of
3 heroin, there was one for ID theft, and one for
4 attempted possession of heroin, so a total of three.

5 Q Are those all felony warrants?

6 A Yes.

7 Q And when a warrant is in the law
8 enforcement data system, the computerized data system
9 used by police agencies across the United States, if an
10 officer has contact with a person who has those
11 warrants, is that officer obligated, under law, to make
12 an arrest of that person?

13 A Yes.

14 MR. REES: Any questions about that?
15 Great. Thank you.

16 COURTNEY SHERRELL,
17 produced as a witness, having been first duly sworn,
18 was examined and testified as follows:

19 THE WITNESS: Yes.

20 DIRECT EXAMINATION

21 BY MR. REES:

22 Q For the record, if you would please state
23 your first and last names, and spell your names.

24 A Courtney Sherrell, C-O-U-R-T-N-E-Y,
25 S-H-E-R-R-E-L-L.

1 Q How old are you Ms. Sherrell?

2 A I am 25 years old.

3 Q And what is your occupation?

4 A Currently I am unemployed.

5 Q And what is the reason for that?

6 A I took -- or I resigned from my job a
7 couple months ago.

8 Q Because why?

9 A Because I felt I needed to get some help to
10 do my job appropriately.

11 Q And what kind of help did you need?

12 A I am a drug addict, and I needed to get
13 help, treatment.

14 Q What is your drug of choice?

15 A Heroin.

16 Q And how long have you been using heroin?

17 A On and off since I -- I think I was 19 when
18 I first did it. I have had large amounts of clean time,
19 and I have had relapses.

20 Q And feel free, since she's writing down
21 what you are saying, you could even look at her, even
22 though I am over here.

23 Q When is the last time you used heroin?

24 A The day Bodhi died.

25 Q And you had -- you had shot up with heroin

1 before the police contact, you told Detective Greg
2 Vining, I believe, on the -- really the day before, I
3 believe --

4 A Yes.

5 Q -- this all happened. So then did you use
6 again after Bodhi was killed?

7 A Yes.

8 Q You did?

9 A Yes.

10 Q And then have you been in treatment since
11 then?

12 A I checked into de Paul Treatment Center. I
13 spent three nights there. The trauma was getting to me
14 with -- people like to, what they call war story, where
15 they talk about drugs a lot, and make it sound like a
16 good thing almost. And due to my circumstances, it
17 wasn't good for me.

18 So I went back to my parents' house and
19 finished my detox there, and I take a medication now
20 called Suboxone, which is an opiate blocker just until I
21 have the strength to do it -- Suboxone. It's not
22 Methadone. It's just a blocker, so if I wanted to get
23 high, I could not.

24 Q How did you meet Bodhi Phelps?

25 A We actually met five years ago in

1 treatment.

2 Q And what drugs did he struggle with?

3 A Heroin.

4 Q Did he also dabble in methamphetamine?

5 A Yeah, he did. And also, he -- here and
6 there he would do -- maybe take a pain pill, or this --
7 benzodiazepine, but mainly heroin.

8 Q And he would inject the heroin and smoke
9 the methamphetamine?

10 A Correct.

11 Q Is that right?

12 A Yes.

13 Q The day before this incident, which
14 happened on the early morning hours of Tuesday,
15 May 24th, so the Monday before --

16 A Yeah. The 23rd.

17 Q On the 23rd, had he used methamphetamine?

18 A Uh-huh.

19 Q Yes?

20 A Uh-huh.

21 Q And had he used heroin?

22 A Uh-huh. Yes. Both of them.

23 Q And had he also taken a prescription
24 benzodiazepine? Was that Xanax?

25 A Yes.

1 Q So all three drugs?

2 A (Witness nods head.)

3 Q Wow. Was -- in that time frame, was Bodhi
4 Phelps a heavier drug user than you, or are you matching
5 each other?

6 A We did everything the same.

7 Q So how often a day would that be?

8 A Oh, geez, I would say about four times a
9 day, four or five times a day. We were -- I guess it
10 really would depend on how you ask on the heavy drug
11 part.

12 Q I guess it just depends, doesn't it?

13 A Yeah.

14 Q But at the time, it was four times a day,
15 you think?

16 A Uh-huh. About.

17 Q Was Bodhi -- was he working?

18 A No.

19 Q And where -- when this happened, where were
20 you guys living?

21 A My car.

22 Q And when you say your car, would that be
23 the silver car --

24 A Uh-huh.

25 Q -- that we have seen pictures of?

1 A The Ford Focus.

2 Q And so you are living out of the car, and
3 where would you guys, like, spend the night? In other
4 words, did you have a place you would always park the
5 car, or wherever seemed convenient?

6 A We would -- it sounds so silly. It's kind
7 of embarrassing. We would just kind of put stuff up in
8 the windows, and park just anywhere (crying).

9 Q Just go ahead and take a deep breath. If
10 we need to take a break and step outside, we can do
11 that, too.

12 A Okay.

13 Q Does that box have tissues in it, or did he
14 give you an empty box?

15 A It really does. I swear.

16 Q Just take a deep breath, and I know we can
17 get through this.

18 Now, in the silver car I understand the
19 police found needles, syringes, drugs?

20 A Yes.

21 Q Did those belong to both you and Bodhi?

22 A The needles -- yes. We have a Sharps
23 container in the car. They weren't all in the Sharps
24 container. They should have been, but they weren't. I
25 know that. I believe earlier that day, though, the

1 Sharps container was removed from the car -- yeah,
2 actually it was. But there was still one in the trunk.

3 But yeah, that's so -- the needles were
4 both ours. I don't know what was found in my car
5 drug-wise. I don't think there was really -- I think I
6 saw something about residue. Is that what you are
7 asking?

8 Q Yeah. It's really drug -- what I would
9 call drug paraphernalia and drug baggies?

10 A Yes.

11 Q But I am really just asking to the extent
12 there was any of that kind of thing in the car, was that
13 probably something that belonged to both you and Bodhi?

14 A Yes. He was my boyfriend, he provided for
15 me. So I would -- yes, I guess.

16 Q So let me ask you about now closer in time
17 to this incident --

18 A Uh-huh.

19 Q -- that brought the police in contact with
20 you and Bodhi. And sounds like the afternoon before
21 this happened --

22 A Uh-huh.

23 Q -- if I understand correctly, you and Bodhi
24 had some kind of fight; is that right?

25 A Yes. Yes.

1 Q At about maybe 3:30 in the afternoon on the
2 Monday before this all happened; is that right?

3 A Uh-huh. Yeah.

4 Q What was the fight about? Anything in
5 particular, or was it just a fight?

6 A It was a really odd morning. We were both
7 just kind of on each other's nerves, and I don't
8 remember what the fight was about. But I remember
9 telling him that it was not -- I remember we were saying
10 it was stupid at one point. So to my knowledge, that's
11 all I remember.

12 Q Do you remember where the fight happened?

13 A Yes. In Sandy at the fifth-wheel that his
14 mom and step-dad live in. We had stayed the night there
15 the night before, so would that be Sunday night -- no --
16 yeah, Sunday night.

17 Q Sunday night would be the --

18 A Yeah. We stayed there and woke up that
19 morning, and it actually wasn't morning it was
20 afternoon. And it was like two in the afternoon.

21 Q So the Monday afternoon fight is when you
22 are waking up from whatever was going on Sunday?

23 A Yes. Correct.

24 Q During the fight, did Bodhi hit you?

25 A Yes.

1 Q Can you describe that?

2 A We -- a few times we had -- okay. Yes, at
3 that moment, I don't know exactly what happened, but I
4 know that I got hit in the -- I want to say it was my
5 left -- hold on. Yeah, it was my left eye.

6 And then my boyfriend walked out of the
7 trailer because, you know, I think I am really tough and
8 I tried to hit him back. And it's just not okay. But
9 he walked out, and I think I went out and talked to him
10 after. And to my knowledge, his friend was there,
11 Adrian.

12 Q Yeah. When you talked to the detective on
13 the day of the incident you said you couldn't remember
14 the name. You thought it was Eaton or Aaron or
15 something?

16 A No, it was Adrian.

17 Q Is that a woman?

18 A No, it's a male.

19 Q A male named Adrian?

20 A Yeah. Adrian was there. He said, You guys
21 need to knock this off. Take me home. And Bodhi didn't
22 want to go with me. He took his stuff out of my car,
23 and put it back in the trailer.

24 Q And so in your interview you said at some
25 point -- I am not sure of the time frame on this, but

1 you said he starts hitting you, and you are yelling for
2 him to stop. And he told you that he wishes he could
3 kill you, and get away with it, and all that bullshit.

4 Do you remember that?

5 A No. I don't remember that. Do you guys
6 have a recording of that?

7 Q We do. This is the transcript of the
8 recording.

9 A Okay.

10 Q The part I am referring to is highlighted
11 in yellow.

12 A (Reading document.)

13 Q But I wasn't 100 percent clear if you were
14 saying that was at the trailer in Sandy, or if that
15 happened later on when you and Bodhi reconnected?

16 A So what is going on in this -- before that,
17 and I could tell you. (Reading document.)

18 Q And for the record, I'm showing the witness
19 the transcript of her interview with Detective Greg
20 Vining to refresh her memory.

21 A I think I was at this moment -- actually,
22 no, I don't remember. I think I was maybe nervous about
23 getting myself in some kind of trouble, or something. I
24 am not sure. Because when I read through this it sounds
25 like -- it sounds like I am -- like right here where it

1 says, Eaton or Aaron, I think in my head, at that moment
2 in time, I didn't -- I didn't want to be fully open
3 about everything.

4 Because a lot of these, I do know the
5 answer to. His name is Adrian. We weren't in Oregon,
6 we were in Sandy. I am not positive that's what was
7 going on in my head, but that's what I would --

8 Q Well, let me ask you the question a
9 different way.

10 A Yeah.

11 Q Did he ever say that he wished he could
12 kill you?

13 A I don't think his -- I am going to say I
14 don't know.

15 Q You told the detective that he said that,
16 but now you are saying --

17 A I am going to say I don't know, because
18 there are parts that are fuzzy for me. That seems out
19 of character, though.

20 Q You said that you had PTSD from this kind
21 of stuff. This isn't the first time he's been in jail
22 for domestic violence with me; is that true?

23 A Kind of. Yes. He's done jail time over
24 domestic violence that he was not convicted of. The
25 stuff that -- PTSD for me, is not with him, though.

1 It's something in my past.

2 Q Have you been a prior victim of domestic
3 violence at the hands of Bodhi Phelps?

4 A Yes.

5 Q And you said you were 100 percent sure that
6 he punched you in the eye, plus he pulled your hair?

7 A Yes.

8 Q Is that correct?

9 A Yeah.

10 Q And so you had the argument when you woke
11 up at about 3:00 in the afternoon at the fifth-wheel in
12 Sandy. Did you part company at that point for some part
13 of the day?

14 A Yes.

15 Q Did he stay in the trailer, and did you
16 drive away in your Focus?

17 A Yes.

18 Q Did you reconnect at some point?

19 A Uh-huh.

20 Q And when did you reconnect, and how did you
21 do that?

22 A I don't know the time that we reconnected,
23 but when we did reconnect, he had gotten a ride into
24 town from his mom's friend, Morgan. And -- yeah, I
25 picked him up, and we got back together. And I was with

1 Adrian, and Adrian was driving, and that bothered Bodhi
2 a little bit, because that's his friend. I am his
3 girlfriend, and he's in the back seat and it was
4 uncomfortable for him.

5 And he -- I remember him shaking his head
6 and getting out of the car. We don't need to be
7 together right now. And I got out after him, like,
8 Where are you going?

9 Is this what you are asking?

10 Q Yeah. I am just trying to figure out how
11 you got back together that day, and you are answering
12 the question that you got back together, and it sounds
13 like he got mad.

14 A He got out of the car, and I followed him.
15 And he goes, Why is Adrian driving your car? And I did
16 it to make him mad. I told him to drive my car, because
17 I wanted to get under Bodhi's skin, because -- I guess
18 immature is the thing I could say.

19 Q Do you remember about what time that would
20 have been?

21 A That's where I am kind of fuzzy. I don't
22 know. I would say like probably like not quite -- not
23 night, but maybe evening, when it was getting darker,
24 but I can't give you an accurate answer.

25 Q So then what happens, because the police

1 contact, that's about 3:00 in the morning?

2 A Yeah.

3 Q So what happens between that time, around
4 5:00 leading up to 3:00 in the morning, between you and
5 Bodhi?

6 A We go our separate ways once again, and me
7 and Adrian drive off. And at some point I wanted to be
8 with my boyfriend, and Adrian said, You guys should not
9 be together right now. You guys are obviously fighting
10 really bad.

11 So it's my boyfriend, I want to be with
12 him. Adrian told me we shouldn't be together right now,
13 and I said, Well, I want to be with my boyfriend. So
14 Adrian said, Well, take me -- I don't want to be around
15 you guys. Drop me off somewhere.

16 So I drop Adrian off. I think I dropped
17 him off at a hotel. Yeah, I did. I dropped him off at
18 a hotel, and I met back up with Bodhi at the Deli Barn,
19 which is 181st and Glisan. From the Deli Barn we walked
20 over to the Dollar Tree, and while we're in the Dollar
21 Tree, I get Bodhi's phone. And I am looking at it. I
22 go out, and I am looking at his phone, and I see that he
23 was contacting a girl that he had been sleeping with a
24 few months back, back in March.

25 And I asked him about it. And while I was

1 asking him, I remember voice recording it. And that way
2 I could send it to her, whatever he said, because I
3 wanted her to know that he didn't care about her.

4 And I said so -- I think you guys have the
5 cell phones, I guess, without -- there should be a voice
6 recording in there. I said -- I asked Bodhi -- to my
7 knowledge, I asked Bodhi about it, and he said that he
8 needed her to buy him drugs, because he was going to get
9 sick. If he -- if he's just -- they're not together,
10 and I think I messaged her or something.

11 Yeah, anyway, that's what the fight was
12 about. We started fighting about that. And from the
13 Dollar Tree, in my memory, we go from the Dollar Tree
14 over where we ended up at 190th apartments.

15 I am not 100 percent certain there weren't
16 more stops or more arguing or something. But I am
17 pretty sure we went from there to the apartments where
18 we did our last shot of heroin together.

19 Q So you shot up there?

20 A Uh-huh.

21 Q In the car?

22 A Uh-huh.

23 Q And what happened?

24 A We kept fighting, and Bodhi got out and
25 slashed my tire.

1 Q And what -- so I think most people think
2 that when you shoot up heroin that you feel really good,
3 and you feel a rush, and you suddenly don't maybe feel
4 sick, and maybe you feel happy and -- you know, that
5 maybe you want to make love and not fight, but it sounds
6 like it kind of had the opposite reaction?

7 A Yeah.

8 Q Are those things just not true about using
9 heroin?

10 A I don't think that's completely true.

11 A JUROR: Question. After you both shot
12 up, did you get out and sleep for a while?

13 THE WITNESS: I think the tire popping
14 might have been before the shot. I think he slashed my
15 tire before, because we did fall asleep. And in that
16 situation, if I take my best guess, we fell asleep right
17 after the shot, because when you do heroin that's what
18 happens.

19 Q BY MR. REES: You fall asleep?

20 A Uh-huh.

21 Q Do you think, now that you reflect on it,
22 that he popped the tire before you shot up?

23 A Yeah.

24 Q So how did he pop the tire?

25 A So if you -- I don't know if you guys saw

1 the property list out of my car, but he used the knife
2 that was in the back of the tire -- stuck it in the
3 tire.

4 Q He stuck a knife in the tire --

5 A Uh-huh.

6 Q -- of your car?

7 Why did he do that?

8 A Because he was just being a jerk, and then
9 he felt bad and put my spare on.

10 Q And when did he put the spare tire on?

11 A So this is where I am a little fuzzy, too.
12 I think that he put it on there at the apartments. But
13 I don't know that 100 percent. I can't give you a
14 100 percent answer on that.

15 Q One of the callers to 911 said when the car
16 drove away it sounded like it had a flat tire?

17 A Uh-huh. So it -- what had happened was
18 after we did the shot, we woke up about 2:30 in the
19 morning, and what the heck, it's the middle of the
20 night, and I see headlights behind us.

21 And I don't know if you guys know anything
22 about addiction, but detoxing in jail is not something
23 anybody wants to do, at all. They fear for it. And
24 that's what keeps a lot of people sick, a lot of --
25 anyways, we see headlights behind us.

1 Q Slow down, because we don't know. Why do
2 people fear detox in jail?

3 A I would honestly rather cut my leg off than
4 detox in jail with no medication. It's -- it's that
5 bad. People -- people don't live because they can't get
6 clean, because they don't want to detox. People die all
7 the time from heroin, because of that reason. You get
8 so sick and your body hurts so bad, and you are so cold
9 and projectile vomit. And you will have diarrhea at the
10 same time.

11 If you guys watch somebody detox, you would
12 think that they were dying. It's the weirdest thing.
13 It's the worst thing. I pray to God I never go through
14 that again.

15 Bodhi had warrants out for his arrest from
16 two years back. He had got some trouble when he was
17 little, or when he was younger -- I think he was like
18 18 -- some checks that someone told him, If you cash
19 this check, give me half the money and it worked. You
20 know, an 18-year-old ran with that. He gave all his
21 friends checks after that. And then he was named a ring
22 leader of a fraud of a DHS account.

23 And I guess on paper he was, but if you
24 guys knew Bodhi, you knew he really was just an excited
25 younger boy that was -- found a cool way to make money.

1 And he should have been stopped at it, I guess. I don't
2 know.

3 Q Well, so what happened at those apartments
4 that at some point attracted the attention of some
5 people?

6 A Yeah. Car comes in behind us --

7 Q What car?

8 A The headlights. I see headlights and I
9 tell Bodhi, go, go, go, it's 2:30 in the morning and
10 we're sure it's the police. And he's on -- we're not
11 ready for that. And he goes, Well, those apartments
12 have huge pot holes in the ground. Well, now we only
13 have a spare on and it pops the spare. So we pull out
14 on 190th --

15 Q Was it the cops?

16 A No.

17 Q You were just paranoid it was the cops?

18 A Yeah. Uh-huh. We pulled out on 190th and
19 Bodhi stopped the car, and I am like, What are you
20 doing? And he says that he didn't want to mess up my
21 alignment on my car, because we have a popped tire now.
22 He says, We need to pull this car over. I said, Bodhi,
23 you need to get this car off this road. We're on
24 190th -- we're in Rockwood.

25 It's kind of a rough area. And there's

1 going to be a cop driving by at any time, because that's
2 what they do right there. Cops are always driving by,
3 because it's -- it's the area. You have to keep the
4 home safe. And that's -- do you want me to keep going?

5 Q Yeah.

6 A That's when the fight sparks about, I am
7 saying, Get off this road. He's saying, I know what I
8 am doing. Well, I jumped on his lap, and I made him get
9 off that road. I was ready to drive. And he -- you
10 know, we're already -- there's already a lot of tension
11 between the two of us. And at some point the door
12 opened to the driver's seat, because I was trying to
13 kick his leg off the brakes and push on the gas because
14 I wanted my car off that road. Whereas he's like, What
15 in the hell are you doing, Courtney?

16 And he's telling me, like, Get back in your
17 seat. You know, I am elbowing him, and -- I am elbowing
18 him in the face as he's trying to push me back over to
19 my seat. And at some point, me or him, I am not sure,
20 opened the car door. So I am kind of hanging out the
21 door like this (indicating), and still trying to push on
22 the gas.

23 And I remember somebody yelling down the
24 road, Is he armed? Well, I know that dispatch asks
25 that. That's the first question, Is he armed? And I

1 yelled back, No. And that's when I jumped back to my
2 seat, Go. We got to go. And we go down 190th and we
3 take a right on Grant.

4 Q So before that happened, you said you knew
5 that the first question dispatch asks is, Is the person
6 armed?

7 A Yeah.

8 Q So --

9 A From last summer when he was arrested for
10 the domestic violence in the beginning.

11 Q So meaning that was a call that you made to
12 911 last summer, and the dispatcher asked you, Is he
13 armed? Is that what you are referring to?

14 A Yes. Uh-huh.

15 Q So that was, in your mind, that somebody
16 must be on the line and the cops are coming?

17 A And the cops are on their way.

18 Q Do you remember talking to some young girls
19 or ladies there at the apartments before you sped away?

20 A No.

21 Q Do you remember seeing them, some
22 interaction with them?

23 A At 2:30 in the morning?

24 Q Yeah.

25 A No, I don't recall that. I am sorry.

1 Q So you just remember a voice saying, out of
2 the blue -- or out of the darkness someone saying, Is he
3 armed?

4 A Yeah, uh-huh.

5 Q And that's all you remember?

6 A Uh-huh.

7 Q In the interview with Detective Vining you
8 said that you started driving, and he starts hitting
9 you. You said that He was so out of his Goddamned mind,
10 I have never seen him like that. He was so angry. I
11 have seen him mad, but I have never seen him that mad.

12 Do you remember saying that?

13 A Huh-uh, I didn't -- I think that that
14 interview was unfair. I think that -- gosh, it's just
15 like I can hear myself trying to protect myself from
16 being in trouble.

17 Q So you said those things, but it wasn't --

18 A I don't know. I mean, being clean today is
19 different. Like coming in here with a clear head and
20 knowing what I know today versus right then. I don't --
21 I know some of it. I know I was trying to cover my own
22 ass. I can tell, you know, where I am not sure on some
23 things.

24 Q I don't know. How is it covering your ass
25 to say that he looked you straight in the eye and said

1 he wants to break your jaw?

2 A That, I do not remember saying. I don't
3 know what is going on with that. I am not saying that's
4 covering, but --

5 Q Do you remember the interview with
6 Detective Vining?

7 A Huh-uh.

8 Q You don't?

9 A I do not.

10 Q Do you remember talking to a detective
11 after this happened?

12 A I remember asking if I could call my dad,
13 that's what I remember. And I remember him sitting at
14 the table and doing the interview, I remember that. But
15 I could not tell you what we talked about.

16 Q Do you remember saying that Bodhi talks
17 about suicide just about every day, and that he wants to
18 be like Romeo and Juliette?

19 A We talked about that one time, Romeo and
20 Juliette. But, yeah, he's talked about suicide maybe, I
21 would say, three times. But he -- that he -- maybe
22 almost scared me. Yeah, he put a little bit of fear
23 into me, like I hope he doesn't go there, you know.

24 He had made comments like, you know, as a
25 drug addict, like, I would almost rather die. But

1 there's no, like -- that's only 2 percent of Bodhi.
2 Bodhi is an amazing person, and he's got -- he's a
3 bright person, cheerful.

4 I think -- I guess, I don't know. I don't
5 know where my head was on that morning. I had just
6 heard my boyfriend shot, and I don't have an explanation
7 for some of that.

8 Q Well, let's go back to driving to the place
9 where you ended up parking the Focus. Do you remember
10 that?

11 A (Witness nods head.)

12 Q You do? Why did you drive there?

13 A Because we knew we weren't going to make it
14 far with three wheels, so he pulled off the main road.

15 Q Was there anything particular about that
16 location, though, that drew you there?

17 A Well, a friend of ours lives there, Niles.
18 That -- I am sure -- I can't say I remember saying,
19 Let's go here, because Niles lives here, but my best
20 guess is that's what was on our mind.

21 Q At that point, were you driving the car or
22 was Bodhi driving the car?

23 A I think Bodhi was driving, but I don't know
24 for sure.

25 Q Because he didn't park in front of Niles'

1 house?

2 A No, he didn't. We took the first left and
3 pulled off the side of the road.

4 Q And you didn't get out of the car?

5 A Huh-uh.

6 Q But Bodhi did?

7 A Uh-huh.

8 Q What happened then?

9 A He grabbed beer out of my trunk.

10 Q Before or after he talked to Niles?

11 A That, I am not clear on. I think I was
12 with Bodhi when I called 911. I think he was just
13 starting to walk away. Was it two calls from me?

14 Q There's one call.

15 A There's one.

16 Q Do you remember calling 911?

17 A Yes. Yeah, I do. I don't know exactly
18 what was said, but I think I started to dial it, then,
19 on his phone. And then he said, Hey, let's trade
20 phones, give me my phone back. And he gave me mine
21 back, and then I cleared it. That's why I was asking
22 about the two phone calls. I didn't hit send. I am
23 guessing that then I called on my phone as he was
24 walking away.

25 Q Why did you call 911?

1 A I -- I don't know. Part of me wants to say
2 that I do, but I don't know. I was scared, I was
3 scared. I don't know exactly what's going on in my
4 mind.

5 Q Do you remember telling the 911 dispatcher
6 that the police needed to come right away?

7 A Yeah. Because Bodhi Phelps, he has
8 multiple warrants out for his arrest. I don't know if I
9 said he's hit me, or if he's going crazy, or what. But
10 I think I was so mad at that point, and things had
11 gotten out of hand. They got way out of hand.

12 Q Do you remember Bodhi kicking the side of
13 your car?

14 A Uh-huh.

15 Q And did he kick the hood, or did he jump on
16 top of the hood?

17 A Yeah.

18 Q Why was he doing that?

19 A I don't know. Because he was mad at me.

20 Q And do you remember screaming?

21 A (Witness nods head.) Yeah.

22 Q Do you remember Bodhi pulling a case of
23 Corona and a case of Modella beer out of the trunk of
24 the car?

25 A Yeah, I do. But I can't tell you exactly

1 when that was. To my understanding --

2 Q Don't tell us your understanding.

3 A In my head, what I remember --

4 Q What you remember.

5 A Yes, what I remember was him walking away.

6 I remember my trunk opening, and I remember him walking

7 away. And then I remember him coming back. And I

8 believe that's -- right at that time is when I seen

9 those lights, the cop lights.

10 And I knew this was for real, my boyfriend

11 is going to jail. So I told him to run, and then I

12 would come get him. Because I always come get him, and

13 he knew that. And we make some stupid choices, but --

14 Q Did he run?

15 A He ran. He always runs. Like he -- my

16 boyfriend runs from cops. He sees those lights, and

17 he's like -- like, I said, detox in jail is not fun.

18 Q And did you see the police officer chase

19 after him?

20 A Huh-uh.

21 Q You did not?

22 A No, I actually didn't even think he made it

23 away from the car.

24 Q So what do you remember happening after

25 that?

1 A I saw the lights and I heard shots. And I
2 thought I was shot, but I was sitting there thinking
3 like -- and I think it was -- I want to say it was the
4 neighbor said shots have been fired, put your hands out
5 of the car. But it may have been an officer.

6 Like I said, my memory isn't 100 percent
7 clear. Some things have kind of come in and out.

8 Q Do you remember that person saying, like,
9 turn off the engine and give me the keys?

10 A Yes.

11 Q You are going to wait until the police show
12 up?

13 A Yeah, I do. He took my key and he gave it
14 to the cop.

15 Q You are not sure if that person was a
16 neighbor?

17 A I think it was a neighbor. Wasn't
18 100 percent sure, but I am leaning toward neighbor.

19 MR. REES: Todd, do you have any questions
20 or do any of the grand jurors have any questions?

21 THE WITNESS: Can I, I guess --

22 Q BY MR. REES: All right. Well, look, as I
23 said before you came in, I am very sorry for your loss,
24 and I know this has been a horrible tragedy. And I wish
25 you the best of luck in your treatment.

1 A I appreciate it.

2 MR. REES: Yeah. Good luck.

3 (Brief recess taken.)

4 HUNG NGUYEN,
5 produced as a witness, having been first duly sworn,
6 was examined and testified as follows:

7 THE WITNESS: Yes.

8 DIRECT EXAMINATION

9 BY MR. REES:

10 Q For the record, please state your first and
11 last names, and spell your names.

12 A My name is Hung, H-U-N-G, Nguyen,
13 N-G-U-Y-E-N.

14 Q Sergeant Nguyen, what is your occupation?

15 A I am a police officer with the City of
16 Gresham. Been employed for about 19 years.

17 Q And what is your current rank?

18 A I am sergeant for the department for
19 patrol.

20 Q And when this officer-involved shooting
21 occurred at about 3:00 a.m. on May 24, 2016, were you on
22 duty?

23 A Yes, I was.

24 Q And what's your responsibility as it
25 relates to patrol activities in the City of Gresham?

1 A I was the only Gresham sergeant working
2 that day.

3 Q So does that mean you are responsible for
4 the entire city, and the patrol activities?

5 A Yes.

6 Q And what does a patrol sergeant do, or what
7 were you doing? Were you back at the police station, or
8 were you in the patrol car?

9 A I am back at the police station when I
10 initially heard the call come in. I was reviewing
11 reports at the time.

12 Q What did you do when you had heard
13 information that there had been a shooting? And is that
14 when you first became aware of this, essentially, that a
15 shooting had occurred?

16 A I was listening to the original call that
17 came out, of the disturbance and the vehicle was last
18 seen southbound on 190th. So I was listening to all of
19 that in full, and the update that the vehicle was near
20 189th and Southeast Grant.

21 Then I heard what really caught my
22 attention was Officer Sasser saying he was in foot
23 pursuit, and he was on Southeast Grant. And shortly
24 later, I heard, I believe, Officer Carlson say, Shots
25 fired.

1 Q What did you do?

2 A That's when I got in my patrol car and
3 headed that way. As I was en route, I notified my watch
4 commander, my lieutenant, Lieutenant Peninger, who was
5 at home at the time. And then I respond to the scene.

6 I arrived at 189th and Southeast Grant
7 where I contacted Officer Dressler, who was with the
8 female victim, and he was near the silver Ford Focus. I
9 asked him, Hey, are you okay? He goes, I believe the
10 shooting happened down the street. And that's when I
11 went west on Southeast Grant.

12 Q Now, how far, about, is the Gresham Police
13 Department from where the shooting took place, and about
14 how long did it take you to get there?

15 A Wow. It took me running from the office to
16 my vehicle, a couple of minutes, two, three minutes.

17 Q So this location is fairly close?

18 A Fairly close. The Gresham Police
19 Department is at 123rd and about Burnside area, and the
20 location where it occurred was 189th.

21 Q And if I could ask you to step over here
22 for just a moment. Does this aerial map or diagram show
23 this location where you drove in?

24 A Yes.

25 Q And why don't you stand where I am

1 standing, and then can you show us where you drove in.

2 A This is 190th. I came south on 190th, and
3 I went on Grant. And this is when I noticed Officer
4 Dressler and the Ford Focus. And he told me the
5 incident happened down the street, and that's when I
6 started walking down the street here.

7 Q So you walked down the street?

8 A Right. I parked my car here (indicating),
9 got out of my vehicle, talked to Officer Dressler and
10 then walked down the street.

11 Q And as you are walking on the street, what
12 are you seeing?

13 A I see a patrol car here as I round the
14 corner, and it's dark in this area. I see Officer
15 Carlson standing right here, I see Mr. Phelps on the
16 ground in the middle of the cul-de-sac. And Officer
17 Sasser, I believe, was trying to canvas this area here.

18 Q And you are indicating for the record --

19 A This area, there's a house and a fence line
20 right here, I believe right here. And then there's two
21 houses sitting in there somewhere.

22 Q In the cul-de-sac?

23 A In the cul-de-sac.

24 Q And you can resume your seat.

25 What do you mean, he was trying to canvass?

1 What was he doing?

2 A He was looking for rounds that possibly
3 shot in that direction. He wanted to make sure that
4 there was no additional -- there's no victims, or rounds
5 didn't go through the house, or something. So he was
6 checking on them to see if they were okay.

7 Q What did you do in terms of securing the
8 scene and making any further notifications, maybe all
9 the notifications were made at that point?

10 A Not yet. My first priority was to get
11 medical in there to check on him -- Mr. Phelps. And
12 then I asked for additional officers to show up to
13 where -- my location, where I was at.

14 And as soon as I got additional officers, I
15 removed officer -- I sequestered Officer Carlson and
16 Officer Sasser. And then before I left I had Officer
17 Harris Meyers take photos of them. And then two
18 additional deputies showed up, and then I had them help
19 secure the scene and the evidence. And then when I had
20 time, that's when I contacted Detective Sergeant and
21 advised him of our shooting.

22 Q When you say you removed the two officers
23 involved in the shooting, is that pursuant to your
24 training and the policy of the department?

25 A Correct.

1 Q What is the purpose of doing that?

2 A It's to -- it's a high-stress situation,
3 and people want to talk to them. I want to remove them
4 from the scene, get them calmed down, and get them to
5 basically not make any statements at the time. And then
6 just basically -- at the time we get done -- union
7 representation at that time, so they don't make any
8 statements.

9 Q And are you also keeping them from talking
10 to each other?

11 A Right.

12 Q Talking to other witnesses?

13 A Correct.

14 Q Did you take steps to secure the evidence
15 at the scene?

16 A Yes, I did.

17 Q What did you do?

18 A I assigned two deputies that showed up,
19 basically to clear the evidence. We set up crime scene
20 tape, and started a crime scene log. I assigned
21 additional officers to coordinate and block off both
22 crime scenes.

23 Q And did you end up -- in terms of the crime
24 scene tape, did you close off the cul-de-sac, as well as
25 the street leading into the cul-de-sac?

1 A Yes.

2 Q And then at what point were you relieved of
3 your duties by the investigating detectives?

4 A The MCT, Major Crime Team, came out and all
5 of their detectives came out, and our detectives came
6 out. And once they establish a foothold on the scene,
7 then they relieve me, and then I leave.

8 MR. REES: Any questions for Sergeant
9 Nguyen?

10 Thanks very much, Sergeant.

11 SHAWN DEBLER,
12 produced as a witness, having been first duly sworn,
13 was examined and testified as follows:

14 THE WITNESS: Yes, I do.

15 DIRECT EXAMINATION

16 BY MR. REES:

17 Q For the record, sir, if you could state
18 your first and last names, and spell the first and last
19 names?

20 A Sure. Shawn Debler, S-H-A-W-N, last name
21 is D-E-B-L-E-R.

22 Q What is your occupation?

23 A I am a police officer with the City of
24 Gresham.

25 Q How long have you been a police officer?

1 A I have been a police officer now for
2 18-and-a-half years; 16 with Gresham.

3 Q And the other two?

4 A I was with Washington County Sheriff's
5 Office.

6 Q What is your current assignment?

7 A My current assignment, Gresham is one of
8 those agencies where we're just kind of in between big
9 police departments, small police departments. So a lot
10 of us have had to wear a lot of different hats. It's a
11 full-time canine handler. That's my main job. I work a
12 patrol dog.

13 But my secondary duties have been -- I have
14 been, for quite some time, I am a lead survival skills
15 or use of force instructor for the City of Gresham. I
16 have been state certified in that for 12 years. I have
17 got certifications as a taser instructor, as a use of
18 force instructor, as a city munitions instructor, which
19 is a confrontational simulation training.

20 I have certifications in special impact
21 munitions, which is like less lethal impact munitions,
22 aerosols, OC sprays, and chemical munitions, and things
23 like that. So I have spent a good portion of my career
24 teaching and training.

25 Q Did you train Officers Carlson and Sasser?

1 A Yes.

2 Q How does that training through your agency
3 fit into the training that police officers get through
4 the state Department of Public Safety Standards and
5 Training in Salem, which is the basic Police Academy?

6 A So when we hire a police officer in
7 Gresham, before we send them to the academy, we give
8 them a little bit of what we call a pre-academy. And
9 that usually involves a couple days on the range to
10 teach them cardinal firearms safety stuff.

11 Because a lot of the people we hire maybe
12 have never had a gun before. So we teach them how to
13 safely own, possess and handle a firearm. So there's a
14 few days out on the range. Then they would come to us,
15 and we will kind of lay the foundation down of defensive
16 tactics and use of force applications as police officers
17 that they might come in contact with.

18 There's not a lot of hands-on stuff
19 initially, but they get a lot of classroom. We go over
20 some case law stuff that governs how police officers
21 can, and when they should, use force.

22 So they get about a week of training, and
23 then we send them off to the Police Academy. When they
24 get back from the Police Academy, we give them an
25 additional -- it's about another 40 hours of potential

1 academy training where they get some more firearms.

2 They have to qualify with our department
3 qualifications to carry their firearm on duty. And we
4 give them some real intense confrontational simulations
5 training, which is scenario based training, things they
6 would actually go through out on the street, with their
7 coaches.

8 We get them certified with their tasers.
9 They actually have to go through a taser certification
10 that the company mandates that they go through to be
11 able to carry that product. We teach -- we give them
12 their pepper spray training, and things like that. And
13 they get exposed to it.

14 And then we go ahead and send them off to
15 their coaches, and they go through -- and that's the
16 process. And that process is kind of dependent on the
17 actual recruit officer themselves. Everyone learns a
18 little different. Sometimes people pick it up really
19 fast and they breeze right through.

20 Some guys might have a hard time with
21 geography, some guys might not be the best report
22 writers, or they don't deal all that well, necessarily,
23 with conflict and they need additional training. We can
24 extend their training from there.

25 Sometimes we will get additional training

1 if the coaches recommend it. And then after that, in
2 our police department we try to average about 40 hours
3 of training a year for every officer. The least -- in
4 that 40 hours, get 20 hours of confrontation simulation
5 training, those traffic stops and those --
6 scenario-based type training. And then they will also
7 get another, at least, ten hours of just physical
8 skills, defensive tactics.

9 If they have got any kind of specialty,
10 like if they have been certified to carry a less lethal
11 tool, they will get additional training. If they have
12 rifles, they will get additional training on the rifles,
13 besides what a regular officer gets.

14 Q Is there -- is the training specific to
15 defense against knives, or other sharp-edge weapons?

16 A Yes. They receive that, not just from us,
17 but they also receive that through DPSST, through the
18 academy. And what we teach with edged weapons, or you
19 know, bats, or any impact weapons that could cause
20 serious physical injury, anything that would be defined
21 as a dangerous weapon -- and actually, we define
22 dangerous weapons as a weapon, or device, or instrument,
23 material, or substance which, under the circumstances it
24 is used, or attempted to be used, or threatened to be
25 used is capable of causing death, serious physical

1 injury.

2 And serious physical injuries to us could
3 be defined as a protracted impairment. The loss of a
4 limb, the blinding of an eye, or you know, you are going
5 to walk with a limp for the rest of your life, or
6 something like that. Any weapon that is capable of
7 that.

8 But, yeah, they definitely -- they get
9 training on identifying such weapons as dangerous, and
10 then also starting to realize how they have to be able
11 to react to these kinds of weapons.

12 Q I am sorry to interrupt, but the definition
13 that you gave, that the officers are given, of a
14 dangerous weapon, that's the Oregon legal definition for
15 dangerous weapon in the criminal code.

16 And so any instrumentality that is readily
17 capable of causing serious physical injury, death,
18 impairment of bodily organs, protracted impairment, the
19 physical capability.

20 Is there a size of weapon or length of
21 blade where you would say, that's not a dangerous
22 weapon?

23 A No.

24 Q And specifically, in this case, I believe
25 you have seen the knives recovered at the scene?

1 A Yes.

2 Q They are not big knives?

3 A No, they are not big knives.

4 Q So can a blade like that cause a serious
5 physical injury?

6 A Yes. The way I -- when we talk about blade
7 length, and that's one thing I should mention. I am --
8 one of the classes that I attended and certified in is
9 through Tactical Edge, which is owned by Benchmade
10 Knives. And it's a defensive knife class for law
11 enforcement.

12 Not only how to use one to protect
13 yourself, but also how to protect yourself against edge
14 weapons. And the first thing that they say in there is
15 the number one rule in a knife fight is you are going to
16 get cut. And police officers, I will tell you this
17 right now, none of my police officers that I personally
18 train, are knife fighters. We don't teach that at all.
19 We teach knives as like a personal defense, as a utility
20 tool.

21 But if you -- one of the things that was
22 brought up in that class is one of the largest mass
23 homicides on US soil was a few very, very motivated men
24 armed with box cutters, took over airplanes and drove
25 them into the Towers.

1 Blade length does not matter, because
2 whether it's slashing, you know, you can open up wounds
3 that can get through -- once you get through the base
4 layer of skin, you are well within -- like a quarter of
5 an inch, you are through cartilage, and a quarter inch
6 past that, you are into organs.

7 Things that people target during knife
8 encounters -- I have got some information on it. High
9 blood flow areas. They love to target things like the
10 eyes and the throat. The neck, up into the trap area,
11 have large arteries. That's, of course, where our
12 carotid bleeds. The other place that gets targeted a
13 lot during knife encounters are pelvises.

14 All those areas are not protected by any
15 kind of equipment that we wear, so the size of a knife,
16 the depth of a knife is not going to matter. I can take
17 a half-inch blade and run it right through any ballistic
18 vests that we wear, because our ballistic vests are not
19 designed to stop any edge weapon. They are designed to
20 stop bullets. A knife is going to cut right through it.
21 I can take a screw driver, and it will go through my
22 ballistic vest.

23 And most of us actually carry, as cops -- I
24 can tell you a couple of examples. This knife right
25 here in my department, about 90 percent of the officers

1 carry this as a secondary backup weapon on their weak
2 side in case someone has trapped their firearm, and they
3 can index it. And you can see the blade length on it is
4 maybe about an inch.

5 And it is an extremely effective tool.
6 This was designed by a firearms instructor. That's why
7 it's kind of shaped like a gun. And then also a master
8 knife maker. And it's a very, very effective tool.

9 Q So that blade is about an inch long, but it
10 can seriously injure or kill someone?

11 A Yeah, that is what it's designed and
12 intended to do, is to stop somebody.

13 Q So the two knives in this case, we saw a
14 photo of, and I believe you have seen?

15 A Yes.

16 Q What kind of knives are those?

17 A Those are a cheap knock-off knife of a
18 Spyderco Endura. You can find them at most gas station,
19 grocery stores. They are like key chain knives, but
20 what they were initially designed for was any knife that
21 is open on the blade side when it's folded is so that
22 you can open it easily with your right or left hand.

23 It doesn't have to be folded. It's a
24 one-handed opening, and it's completely ambidexterous.
25 Not a lot of use for tools, and I remember when Spyderco

1 actually came out with this. This knife is 24 years
2 old, and I bought it when I was in the Marine Corp. And
3 it's kind of when knives went from being a utility tool
4 to something that officers and soldiers and Marines
5 could carry as a secondary weapon.

6 So Spyderco developed these, and then other
7 manufacturers have kind of ripped them off and made
8 cheaper versions, and stuff like that.

9 Q So the knives seized in evidence are the
10 knock-offs?

11 A The knock-offs.

12 Q Of this higher quality knife?

13 A Yes, but designed to cut and slash and.

14 Q Is it correct to call it a folding knife --

15 A Yes.

16 Q -- that can be opened with one hand?

17 A One hand, and either hand. And one of the
18 other ones, too, like I said, this is a very popular
19 knife with law enforcement. And that's how long it is,
20 but it's designed to be carried in your boot, and it can
21 do lots of damage.

22 Q So in terms of an officer's defense against
23 knives, are they ever taught to go hands-on with a
24 person to start grabbing or fighting a person who is
25 armed with a knife?

1 A No.

2 Q Why not?

3 A No. 1 rule of a knife fight is you are
4 going to get cut, no matter what. So, I mean, we don't
5 ever say that there's no absolute. I can't say any
6 officers might not decide to do that. As a trainer, I
7 would never tell any of my students to go hands-on with
8 anybody who is armed with an edge weapon in close
9 proximity, that you have to physically touch, because
10 they can do all kinds of damage to you. We are not
11 prepared -- we don't have anything that can defend
12 against slashing and stabbing.

13 Q We know that officers carry a number of
14 different tools they can use for personal defense?

15 A Yes.

16 Q What are the options available, and what
17 are officers trained about whether it would be
18 appropriate to use something like pepper spray, OC
19 spray, taser, something less than a handgun?

20 A Officers -- our officers carry on them --
21 they will carry pepper spray. We call it OC, but it's
22 pepper spray. Again, with someone who is armed with a
23 knife, if you have distance, and you have a lot of
24 time -- because what people don't realize is once you
25 spray somebody with pepper spray, it doesn't immediately

1 work.

2 It's an inflammatory agent, so when it hits
3 your senses and it hits your sinuses, and all that
4 stuff, it takes time. We say you have to let it cook.
5 So you spray somebody, and they don't just fall on the
6 ground. It doesn't work that way. The eyes have to
7 start swelling, all the membranes in the nose start
8 swelling and get inflamed, and the nose starts running,
9 and it -- and everybody is different. Everybody
10 responds to the agent completely different.

11 Some guys, it could take 30 seconds, some
12 guys can go 30 or 40 minutes before they are going to
13 show any of the evident effects of pepper spray.

14 So in a situation where someone is as close
15 as these two officers were with an armed individual with
16 a knife, I don't believe that would be a reasonable use
17 of force tool for them. Not only that, but usually what
18 happens is when we spray that, we then end up, if we do
19 get into a scuffle with this person, end up
20 contaminating ourselves with it, because it's an
21 airborne aerosol. And now we're under the influence of
22 pepper spray, also.

23 Q Is there a situation where -- or situations
24 where OC spray would be an appropriate response?

25 A Yeah. If you had a lot of time and

1 distance, because we can actually use a stream OC that
2 can reach out to about 25 feet, and you have got hard
3 cover and a reactionary gap between you and your threat,
4 and you have multiple officers there that have other
5 tools, in case that thing fails, like a 40 millimeter, a
6 ballistics shield, maybe somebody with a rifle.

7 Once you deploy OC, you can't deploy a
8 taser because the propellant agent in the OC is
9 flammable. So it would be lethal force. You would
10 literally set them on fire. So that's not really an
11 option for us.

12 Q You used a term, reactionary gap. Is that
13 a concept officers are taught?

14 A Yes.

15 Q What does that mean?

16 A DPSST gives them baseline training in
17 identifying threats of edge weapons and bats and things
18 that can harm them, dangerous weapons. What we try to
19 teach them is that us, as human beings, we rely on our
20 senses as we're walking around every day. We use our
21 hearing, our eyes, all of our senses to observe the
22 world around us, and we react to it.

23 Well, that reaction takes time. So we, in
24 law enforcement, it's easy for me to tell it to cops and
25 soldiers and marines, but the best way to explain it to

1 civilians is most of us drive cars or are pedestrians,
2 so we're well aware of how traffic lights work.

3 So when transportation departments are
4 looking at an intersection and how they want to make the
5 lights work, they realize they have to have a
6 reactionary time between how the lights cycle. And they
7 have, throughout the US, they usually say about a second
8 and a half is what it takes for the light to change
9 before you then realize -- or most of us would realize
10 that, Hey, I need -- oh, the light changed, and I need
11 to start slowing my car down. It went from green to
12 yellow, I need to start slowing down. That's just to
13 make the decision to let your foot off the gas. That's
14 not bringing a car to a stop. A second and a half.

15 So we add stress, we add fear, we add all
16 the things that can happen in dynamic situations in law
17 enforcement, and that reactionary gap needs to be bigger
18 and longer because it's that much worse.

19 We teach in Gresham, we use a lot of Force
20 Science Institutes -- there's an institute that has
21 scientists and doctors and professionals throughout law
22 enforcement who have come together, and they run
23 legitimate, scientific testing on how humans deal with
24 extreme stress. One of the things they just put out in
25 2013 -- this one really does talk about reactionary gap.

1 Q Okay.

2 A And all they did is they took 13 males and
3 six females, and they were all in about their mid 20s.

4 Q I would like you to stick to the general
5 concept, actually, instead of getting into the fine
6 details but --

7 A Basically --

8 Q The general concept of the reactionary gap?

9 A Concept of reactionary --

10 Q I am really asking, what the general
11 concept is, if you are able to do that.

12 A Yeah. Basically, is we're always behind --
13 we're always reacting to what we see. We're not the
14 aggressor in any situation. So we're -- when a threat
15 decides to engage us with anything, we have to react to
16 it. The closer that we are to them, the less reaction
17 time you get. So we try to teach, when we can, if you
18 can pre-plan, if you have the ability to pre-plan, the
19 more distance you have from a threat, the safer you are.
20 You are able to come up with more plans, more tactics,
21 different things come into play.

22 When you are up close and personal, and
23 well within a distance of someone hurting you, you are
24 behind it. You are already seconds behind that lethal
25 fight for your life.

1 A JUROR: So just to clarify, you are
2 saying because of the high stressful situation your
3 reaction time is very small?

4 THE WITNESS: It's slower. It's slower.
5 And I can tell -- do you want to talk about why, real
6 quick, or --

7 MR. REES: Only if you are asking that.

8 A JUROR: Why not? Sure.

9 THE WITNESS: So in those high stress
10 situations we have things like audible exclusion, and it
11 happens -- and I can testify to this fact of being in
12 these situations where you could be in an actual gun
13 fight, and you won't even hear your gun going off. But
14 yet you will hear your buddy breathing heavy next to
15 you. Your ears and body does very strange things under
16 stress.

17 We get tunnel vision. So if we are
18 identified with a threat, we will focus on that threat.
19 And a lot of times in training we see that the officers
20 shoot -- whatever the threat has in its hand, they shoot
21 the item, whether it's a gun, a knife, a bat, because
22 you are so tunnel visioned in on it.

23 So because of all of those things, and
24 extreme stress, and all the blood immediately starts
25 going to your vital organs, and you lose your fine motor

1 skills and dexterity. That's why we teach people to
2 fight and fire weapons like we do, because it works when
3 you have all of those stressors. So you add that with
4 short reaction time, and it makes it that much worse.

5 Q BY MR. REES: What about using a taser to
6 stop someone with a knife?

7 A Someone with a knife. Once again, if you
8 have -- we teach that we would prefer that officers
9 deploy tasers with a lethal cover, and that takes time
10 to communicate with that lethal cover, which we want
11 another officer there with another use of force tool and
12 backup plan.

13 Q Why is that?

14 A For us, for our agency, we're averaging
15 about a 50 percent failure rate on taser deployments.
16 And what I mean by failure rate is when that taser is
17 deployed, it's actually doing what it was designed to
18 do, which is cause neuromuscular incapacitation.
19 Sending electric current from one point to another point
20 in the body, causing the body to lock up, and they are
21 physically unable to move, react. They usually fall to
22 the ground. If they are on the ground, they lock up and
23 they are not able to do anything.

24 We, as a department, though, the longer --
25 we have had tasers since, I would say, 2001. So we

1 average about a 50 percent failure rate when we deploy
2 that thing, that it's actually getting neuromuscular
3 incapacitation.

4 So if it doesn't work, and we're in close
5 proximity, we need to have lethal cover there to take
6 care of it.

7 A JUROR: To clarify, you mean by saying
8 lethal cover, there's a backup plan?

9 THE WITNESS: There's somebody there with a
10 firearm in his hand.

11 A JUROR: So in this case, can you speak to
12 why that plan wasn't in place?

13 THE WITNESS: It takes time, to be honest.
14 You go right from a foot pursuit to grabbing ahold of
15 somebody, to being threatened that he's going to stab
16 you, I don't know where you would say, Hey, you have a
17 taser. You've got this. That's not reasonable to me at
18 all. I don't think, to me, you are that close to
19 somebody who has a weapon, and if either officer's
20 perception, whether he's attacking one or you're
21 defending yourself, that's the time to sit and worry
22 about if a taser in your hand.

23 A JUROR: So to arm yourself with a taser,
24 you mentioned time, I think, two or three times. How
25 much time does that take?

1 THE WITNESS: It depends on the officer.

2 A JUROR: What do you mean? I am confused.
3 I don't know what you mean. Do you mean like time to
4 deploy it or what?

5 THE WITNESS: Are you asking me how long it
6 takes to draw it, or to come up with a plan that, Hey --

7 A JUROR: Both.

8 THE WITNESS: I would imagine it'd take a
9 few seconds to communicate to your partner, hey, do you
10 have a taser? Yes. Okay, I have lethal. So I don't
11 know how long that just took.

12 A JUROR: That took about ten seconds,
13 actually.

14 So is there time -- with the taser, though,
15 is there anything you have to do with the instrument
16 itself? Can you explain that process?

17 THE WITNESS: You have to draw --

18 A JUROR: Besides drawing it, is there a
19 difference between drawing a taser versus drawing a gun?

20 THE WITNESS: Yes. In our department you
21 have to be able to draw it, and -- and we can draw our
22 taser. It has to be, it's part of our general orders.
23 So officers are not allowed to carry a weapon, a taser,
24 that they draw with the same hand they draw their gun
25 on. It's just for safety purposes.

1 Nationwide we've had officers claim that
2 they have shot people when they were going for their
3 taser instead. So we, to eliminate that, we put it on
4 the left side. So you already have an instrument that's
5 in a hand that isn't necessarily as dextrous as your
6 strong hand.

7 You have to index it. They have a locking
8 holster, or some of them have a buckle holster, so that
9 takes a little bit of time to unbuckle it, pull it out.
10 They come -- when we carry them, we carry them with a
11 cartridge in them so it's ready to go. So when it comes
12 out, it's ready to fire. You have to put it on fire,
13 because it has a safety. So you have to flip a switch.

14 The reason that we say that we have a high
15 failure rate is because things have to really -- this
16 thing shoots two projectiles, not just one, and things
17 have to align and work real well, to actually get it to
18 work right. This thing comes out at eight degrees, the
19 top one comes out straight, the bottom one comes out at
20 an eight-degree down angle.

21 I have the distances, if you would like to
22 talk about -- I don't want to get them wrong, so I wrote
23 them down. We found on the street the most effective
24 distances are anywhere from 10 to 15 feet is when we
25 have our best success with getting an MI on contact,

1 but.

2 A JUROR: 10 to 15 feet away from you?

3 THE WITNESS: Uh-huh. From your target.

4 But we get one foot of spread of the barbs coming out,

5 or the projectiles coming out, for every seven feet

6 between you and your threat. So at, like, five feet,

7 your spread is nine inches. At ten feet, the spread

8 between the probes is going to be 18. At 15 feet, your

9 spread is going to be 26 inches.

10 And the way the taser is designed to

11 work --

12 A JUROR: When you say spread, you mean the

13 two probes?

14 THE WITNESS: Yeah, you have one going out

15 this way, the other one goes down.

16 A JUROR: So the farther away, the

17 trajectory is wider?

18 THE WITNESS: Wider. And if he's moving,

19 and if your target is a side target, which we don't

20 teach that. That's not a preferred target zone, because

21 then you have moving arms and appendages and legs.

22 We teach our guys to target the back. The

23 back has the largest muscle groups. It's not close to

24 the heart, because taser tells us that if the darts are

25 too close to the heart, it can cause heart arrythmia and

1 heart issues, so we try to eliminate shots that are too
2 close to the heart. So you want to target the back for
3 the most success. Large muscle groups, the clothes fit
4 tighter there across our back.

5 The things that defeat this thing are like
6 large body mass, so people that are obese that have high
7 body fat, it doesn't work as well, because it's not
8 locking up muscles. It's in watered fat instead.

9 Both -- if the probes are too close the only thing that
10 is getting affected is that area in between the probes.

11 So it becomes a pain compliance, then. It
12 just hurts. And I can tell you because I have been shot
13 by this thing way, way, way too many times. Literally,
14 I have been shot by this thing probably 50 times. Even
15 back with the old MIs, when we did all the testing and
16 all that stuff, and I stood in water. And every kind of
17 test we could think of, we ran it through it.

18 When the barbs, when you have a small
19 spread it just hurts. It hurts really bad, but you have
20 full function of your extremities. You can think. You
21 can draw a weapon. If it's dry stun, which means it's
22 actually made contact with the body and deployed that
23 way, your spread is only this big and it just hurts. It
24 hurts really, really, really, really bad, but there's no
25 NMI. We're not getting what that's really designed for.

1 When you do get full contact, and it
2 actually deploys into the skin, and you have a large
3 spread and a large area of muscle being used, then it
4 can be very, very effective. But those are hard to have
5 happen in dynamic real situations. If the guy is like
6 sitting, or lying on a bed, or he's static, yes, these
7 work really, really well.

8 And taser will disagree with me. They come
9 in and say these things work great, but that's because
10 they are selling them and they do all their stuff in a
11 lab, you know, where it's not a real stressful
12 situation. Did I explain that?

13 MR. REES: Did that answer your question?

14 A JUROR: Yeah. Yeah.

15 Q BY MR. REES: Well, are officers taught
16 that they should go through these different tools or
17 different levels of force when confronting a dangerous
18 situation, or are they taught that they can move from
19 one force to the other? How are they taught to make
20 that decision?

21 A They do not -- there's no progression. We
22 teach a reasonableness standard. And the way we explain
23 it is, you know, we don't knife fight with people, so
24 we're not going to pull out a knife and knife fight with
25 people. We tried to teach guys -- we give them lots and

1 lots of tools, lots and lots of techniques on how to
2 defend themselves.

3 So they are trained in taser, they are
4 trained in OC. They are trained in firearms. They
5 trained how to use their hands and their feet. We teach
6 ground fighting. We teach all of these different
7 techniques, and the threat dictates what level of force
8 that you use, the threat's actions.

9 So we teach them to -- the forces needed to
10 overcome and stop a threat. That's why it is utilized.
11 It's not utilized to punish, or anything else. It is
12 utilized to quickly end that fight and take control of
13 that situation as quickly as possible.

14 A JUROR: Now, would the use of a taser,
15 the effectiveness depend on whether or not they are
16 under substance abuse, or --

17 THE WITNESS: Excited delirium. Yes, we
18 have recently had a couple of cases where we thought
19 because they didn't have any clothing on, so there was
20 no disconnect, and we had a fairly wide spread, but they
21 were under -- I don't know -- we really couldn't prove
22 he was under substance, but he was definitely in crisis.
23 Like he was in a mental crisis. This guy was really,
24 really having a hard time, and he literally reached out
25 and ripped them right out, ripped the probes, the wires

1 out of him.

2 It really is case dependent. Every one of
3 those situations is just a little different. Some
4 people react to it right away. We have actually hit
5 guys, and it's been loose in their clothing. So when
6 the clothing moves, they get little shocks, and they
7 screamed like banshees, and fell on the ground, and
8 complied. But wasn't actually a very good deployment.
9 That's not a successful deployment. It did what it
10 needed to do, and the guy actually complied with us, but
11 it did not give us neuromuscular incapacitation.

12 A JUROR: I have another question. Early
13 on you mentioned something about during the training
14 when you are training your officers that they have a
15 coach.

16 THE WITNESS: Yes.

17 A JUROR: Does that coach go out in the
18 field with them, or are they just a resource for the
19 officer?

20 THE WITNESS: No, they ride with a coach
21 for several months. The program -- they have to have a
22 certain amount of rated days with every coach. And it's
23 well over a four-week period he spends with each coach.
24 And he goes between -- it could go anywhere between
25 three coaches up to four.

1 We talked about every student -- or every
2 recruit officer is a little different. Sometimes we
3 have to extend that training phase. But, no, they are
4 always -- until they are put on solo status, they ride
5 with a coach. They don't even really get to go to court
6 without their coaches.

7 MR. REES: Any other questions?

8 Tomorrow morning we are going to have a
9 firearms expert trainer who will also go over some of
10 these same areas, but any questions about knives and
11 defense against knives for Officer Debler?

12 If not, we will excuse you.

13 A JUROR: Wait, will your expert talk about
14 the procedure for when to shoot, like when to stop --
15 okay. He will talk about that.

16 A JUROR: So they will talk about like
17 where, and all of that stuff, where to shoot --

18 MR. REES: When to stop shooting --

19 A JUROR: How they are trained, things like
20 that?

21 MR. REES: Although this witness could
22 probably answer some of those same questions.

23 THE WITNESS: Ryan will know more about
24 ballistics, and the ideology about why we train the way
25 we do with firearms, and things like that. But use of

1 force, as far as when we would shoot somebody and stuff
2 like that, that falls, again, underneath that
3 reasonableness standard.

4 A JUROR: And are you taught to shoot until
5 they go down, or shoot to injure, shoot to kill, or --

6 THE WITNESS: We are taught to shoot until
7 the threat stops being a threat. We're taught to use
8 lethal force in defense of ourselves or another when
9 we're in fear of that that threat is going to either
10 kill us, or somebody else, or they are going to cause
11 you serious physical injury or somebody else serious
12 physical injury.

13 A JUROR: So the aim is never fatal when
14 they make these shots? They are just trying to take
15 them down?

16 THE WITNESS: I don't know how to say that.
17 We teach center mass. We teach center mass for lots of
18 reasons. For one, it's the largest area of the body to
19 aim at, and we talked about how, like under stress,
20 things are hard to do. It's just hard to stand in front
21 of a paper target, for most cops, at 10 yards and shoot
22 a paper target.

23 So -- and that's standing still with no
24 real stress, except maybe an instructor behind you. It
25 takes a lot of training to get the eyes really

1 proficient at that.

2 So in a high stress situation we want to
3 teach center mass, because it's a large target. It
4 allows more forgiveness for -- if it's not the most
5 accurate shooting. I can testify, I've been in some of
6 these situations. It's not like it is on the range,
7 where I point and I see my front site is nice and clear.
8 You are so scared, you are relying on your baseline
9 training, and all of that stuff, and you --

10 A JUROR: I asked that because I think of
11 people shooting someone in the arms or the legs. You
12 see a cop movie, to take someone down they shoot them in
13 the leg so they don't run away.

14 THE WITNESS: That's not really a realistic
15 application for us. It's just as dangerous to shoot
16 them there as it is in the torso. And it's a very small
17 target, and we're not -- to expect a regular police
18 officer, who doesn't get to train that much, to be that
19 skilled would be really, really, really hard.

20 It's a large mass area. It's very
21 forgiving for us. It also allows for if we miss. It's
22 going to hit those other smaller targets. But we shoot
23 to stop what is trying to -- what the threat is, that's
24 our intent.

25 A JUROR: But "stop" is very vague.

1 MR. REES: I think your question might
2 be -- and we can ask the expert tomorrow, as well, but
3 our officers shot to kill or to stop the threat.

4 A JUROR: What is stop, and what is kill?
5 I don't understand the difference, because they are
6 shooting at all of these organs so that's what I don't
7 understand.

8 Q BY MR. REES: So are you able to answer the
9 question, or should I put this to Officer Rasmussen?
10 Are officers taught to kill or stop the threat?

11 A We are taught to stop the threat. That's
12 what we are taught.

13 Q And --

14 A JUROR: And it's to stop the threat by
15 shooting the core where there's organs?

16 THE WITNESS: Center mass. And we will
17 also be trained, and Ryan will talk about this tomorrow,
18 if that doesn't work, we will shoot other places.

19 A JUROR: To me, it's like center mass
20 seems kind of deadly.

21 THE WITNESS: Yes, it's deadly physical
22 force when we shoot somebody.

23 A JUROR: Okay.

24 MR. REES: Thank you very much.

25 (Proceedings adjourned at 4:29 p.m.).

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MULTNOMAH COUNTY GRAND JURY
DEATH INVESTIGATION

Deceased:)
BODHI PHELPS) DA No. 2341538
Date of Incident:)
May 24th, 2016) GPD No. 16-29120
Location: SE 189th St./ SE)
Grant Street,)
Portland, Oregon)

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled transcript of GRAND JURY proceedings was heard, commencing at the hour of 9:00 a.m., on Wednesday, June 8, 2016, at the Multnomah County Courthouse, Portland, Oregon.

APPEARANCES

Mr. Donald Rees
Mr. Todd Jackson
Deputy District Attorneys
On Behalf of the State of Oregon.

DEBORAH L. COOK, RPR, CSR
Certified Shorthand Reporter
Portland, Oregon

* * *

PROCEEDINGS

Tuesday, June 7, 2016, at 9:26 a.m.

RYAN RASMUSSEN,

produced as a witness, having been first duly sworn,
was examined and testified as follows:

THE WITNESS: Yes.

So my name is Ryan Rasmussen, R-Y-A-N,
R-A-S-M-U-S-S-E-N. I am a police officer with the City
of Gresham, and I have been that way for about
11-and-a-half years.

DIRECT EXAMINATION

BY MR. REES:

Q And can you give us a summary of your
educational and professional background?

A Sure. So right out of high school, I
joined the Marine Corps. I was in the Marine Corps for
little over four years. My responsibilities and duties
in the Marine Corps consisted of School of Infantry. I
was an infantry guy, meaning I learned to take down
tanks.

I spent the majority of my time in security
forces, which is we did a lot of ship security in the
Straights of Gibraltar, post 9-11. That's where I spent
the majority of my time.

I got out of the Marine Corps as a

1 sergeant, an E-5. I was supervising about 30 marines
2 when I got out. I transitioned, after about a year,
3 into a law enforcement. I was hired in Gresham in late
4 2004. I attended the Basic Academy, as all police
5 officers do.

6 At the conclusion of the academy, I
7 finished my field training program. A couple years in I
8 started as a firearms instructor. I am also a field
9 training officer, so I train new officers as an FTO. I
10 am on our SWAT team. I have been that way for about
11 two, three years.

12 About seven years ago I took over our
13 firearms program, so I am one of our lead instructors,
14 meaning I am responsible for training. And we will get
15 into more of that in a second. I think that pretty much
16 sums it up. I am an armory, both our handguns and AR,
17 so I'm responsible for maintaining all of our firearms
18 and all of our weapons systems.

19 Q How often are you involved in firearms
20 training with the Gresham police officers, then, over
21 the course of a year, say?

22 A So my primary responsibility is I am a
23 patrol officer. So I work the road about half the time,
24 because I wear so many other hats within the department.
25 I am on the road about half the time. The other half of

1 the time I am usually teaching in some capacity. So I
2 teach the majority of our new hires, the ones that are
3 hired with no law enforcement experience. I am teaching
4 them initial pre-academy marksmanship skills.

5 They go to the academy, they come back, I
6 teach them their post-academy. There's another three
7 days they spend on the range learning more of law
8 enforcement style of shooting. Right now we're in the
9 middle of an in-service, so I was on the range on Monday
10 teaching our normal, regular patrol officers the current
11 in-service schedule that we have going.

12 So I am on the range, a fair amount.
13 Within our SWAT team, I am usually one of their
14 individuals responsible for training. On our firearms
15 days for the SWAT team, I am teaching and instructing,
16 and coming up with class curriculum for those officers.

17 Q How often are individual Gresham officers
18 required to train with the firearms?

19 A So our officers receive quite a bit of
20 training relative to other agencies. A well-trained
21 officer is a very -- will make good decisions under
22 stress. So we put a lot of time into a new hire.
23 Officers that come to us with little or no experience
24 receive three days of training prior to the academy.

25 They go to the academy, they come back, and

1 receive an additional three days. If we deem they need
2 more, they are not quite to our standard, we'll give
3 them additional days of training. Then once they have
4 completed that initial set of training standards, they
5 are released to their field training program where they
6 go out with their coaches, but they are able to make
7 comfortable, confident decisions with the firearms.

8 And then after that, they come out twice a
9 year. So every six months-ish is a day of dedicated
10 firearms training given what the course curriculum is
11 for a specific set of instances. They are required to
12 qualify at least once a year with every weapon system
13 they carry. Every time we come off of the range we
14 shoot a qualification course and they are required to
15 pass that qualification course when they come out.

16 They also can request additional range
17 dates. Whenever I have a new hire out, I'll send an
18 e-mail out to people, Hey, do you want to come out? And
19 officers can come out and receive additional training.

20 We also have a patrol rifle program meaning
21 there are a certain amount of rifles available for
22 officers to carry, and there are a vast majority of
23 individuals that carry those rifles. And that comes
24 with an additional 40 hours of training on that specific
25 weapon system.

1 Q You told me one of the training techniques
2 that the City of Gresham has adopted is SIMCON training?

3 A It's called -- our short is CONSIM, but
4 it's Confrontation Simulations. Confrontation
5 Simulations, and it's probably the best training we do.
6 All of our other programs support that program. The
7 firearms program supports it, our defensive tactics
8 supports it, and it's placing officers in situations
9 that are real-life situations that they have to then
10 deal with appropriately.

11 They have a handgun that shoots marking
12 rounds. It's like colored soap. So when you scrub it,
13 it comes off. They are given their lethal tools and
14 then they are put in environments and scenarios that are
15 actual calls that, as Gresham police officers, we have
16 responded to. Everything from, hey, this is a burglar
17 to this is an armed individual and you have to deal with
18 him appropriately.

19 And you are inoculating that individual to
20 stress. You are allowing that officer to see a
21 situation, process it, get his emotions and his fear --
22 because we're all afraid. But we all make decisions
23 based on what we're seeing. So our officers -- and we
24 do a very good job of it, is we train them so they can
25 make decisions under stress.

1 An officer that is trained well, that is
2 confident in their firearms abilities, their less lethal
3 abilities, their hands' abilities, will make good
4 decisions. They will be able to see and process what is
5 in front of them, process appropriately, and make good
6 decisions.

7 An officer that is poorly trained, that is
8 not confident in their abilities is afraid, and will
9 make poor decisions because they are scared. So we try
10 and negate that with a high level of training.

11 A JUROR: How do you differentiate poor and
12 good decisions?

13 THE WITNESS: Poor and good decisions?

14 A JUROR: Yeah, in terms of training.

15 THE WITNESS: Well, poor training and good
16 training would be differentiated by the amount of
17 training. So some departments only give their officers
18 a day of firearms training. That would be insufficient.
19 So we give our officers at least six. That is on the
20 higher end of the national standard for the amount of
21 training that is given.

22 MR. REES: Did you mean, though, difference
23 between a poor decision and a good decision?

24 A JUROR: In a situation that -- I think
25 what Roberto is getting to, is in a scenario that they

1 are put into for training, how do you differentiate
2 whether they made a good decision or a bad decision?

3 THE WITNESS: Right. Well, we have
4 scenarios that we put people in -- is that what you are
5 asking?

6 A JUROR: Yeah.

7 THE WITNESS: So we have -- and
8 purposefully in training, we put people in situations
9 that they are going to -- that they are going to win, if
10 they make the proper decisions.

11 So if we have, say, an armed individual in
12 a car, that's the scenario, and the officer walks up,
13 approaches the vehicle correctly, positions his vehicle
14 correctly the way we have trained him in order to make
15 that approach as safe as possible, and the individual
16 gets out and engages our officer, and the officer
17 doesn't respond correctly, meaning drawing his weapon,
18 moving off line and engaging that bad guy, that would be
19 a poor decision. That would be against what we're
20 training.

21 Then we would reset and say, hey, look,
22 this is what we're going for. You have identified this
23 individual, you have seen a weapon, he's not responding
24 to your commands, the appropriate way to deal with this
25 would be to use lethal force. He is a lethal threat.

1 He's armed with a weapon that could hurt you. This
2 would be the appropriate response to this specific
3 circumstance. It's a stressful circumstance.

4 And then we would run him or her through
5 that program again, through that scenario again, so they
6 could see what the appropriate response in that specific
7 instance would be. Does that make sense?

8 A JUROR: Uh-huh.

9 Q BY MR. REES: And do you believe that this
10 particular training that the City of Gresham does has
11 actually resulted in a very limited number of deadly
12 force incidents in the City of Gresham, compared to
13 other cities around the country?

14 A Absolutely, yes. I am one of our lead
15 instructors. I work very closely with the other
16 discipline leads. We work very hard. We're very
17 passionate about our decisions.

18 I care about all of my officers. I want
19 them to go out on the street as prepared as possible,
20 and all of that comes through in our training. And if
21 you look at Gresham as a whole, we deal with the same
22 criminalists, Portland Metropolitan area. We deal with
23 the same individuals.

24 And on a use of lethal force scale, we are
25 relatively low. We do not use lethal force in a lot of

1 incidents, and I believe that's because our officers are
2 very well trained. They are making good decisions,
3 because they are not afraid. They are confident in
4 their abilities. They can see what is in front of them,
5 they can make good decisions based on that training.

6 A JUROR: I had a question about the
7 training scenarios. So you don't have like a 20 point
8 check-off list when they are doing it? When they make a
9 bad decision, you stop and reset it? You don't let them
10 finish what they are doing?

11 THE WITNESS: We'll usually allow the
12 scenario to go to conclusion. If we see the scenario,
13 and it's just totally not what we're looking for, this
14 officer is not in the correct place, we will stop, we
15 will have a discussion, and we will run the scenario by
16 again.

17 And then if we identify officers that,
18 sometimes we do, that need additional training --
19 because it's our responsibility as trainers to train
20 people to survive. But it's also, we have to ensure the
21 public safety and the liability of our agency.

22 So if I -- if I see an officer, and they
23 are not performing to a standard that I think is safe
24 and lawful, I am not going to put them on the street. I
25 am going to say, hey, look, I know you can get to where

1 we find you acceptable, but you need more time in this
2 specific area.

3 And that translates to all areas. I was an
4 awful report writer when I started. So I needed more
5 time in report writing. Not all officers are great at
6 every aspect of the job right away, so we find areas
7 that this specific person needs, and we tailor that
8 training to that specific officer.

9 Q BY MR. REES: Let me ask you about a
10 concept that I know you teach in firearms training and
11 defensive tactics, and the concept is called
12 action/reaction. You are familiar with that?

13 A Yes.

14 Q What does it mean?

15 A So action versus reaction we all
16 experience. We all experience on a daily basis. We all
17 walk through our lives and perceive decisions that we
18 have to make. And the process of seeing something, our
19 brain processing it, us making a decision, and then
20 actually doing that is the reaction to the type of
21 stimulus or action that we're perceiving.

22 Everyone knows what a stoplight is. We all
23 have driven, or at least been on the road at a certain
24 time. It's a very simple basic instance that we all
25 understand. If I am sitting at a red light and I want

1 to go, I am waiting for this light to turn green. I
2 know it's going to turn green, and I am conditioned that
3 when it does turn green, that means I can go. So my
4 decision, essentially, is already done. I am just
5 waiting for my stimulus.

6 So when the light turns green, it's not
7 instantaneous. We all sit in traffic and we know that,
8 okay, it takes a little bit of time. That
9 second-and-a-half is a national standard that someone
10 can be at a light, see it go from red to green, process
11 the information, and then begin the action of going. So
12 that's -- that's a basic stimulus that we're all
13 familiar with.

14 Now, when you translate that into law
15 enforcement, the green light, we're already conditioned
16 to, okay. We're going to go. Now, if I have a threat
17 in front of me, I am continually evaluating my
18 decision-making process. There's actually a term for it
19 called the OODA loop, and it's made by -- or it was
20 created by an Air Force colonel, and it's Observe,
21 Orient, Decide and Act. So that's our decision making
22 process.

23 For every decision we make, that's the loop
24 we go through. And it takes a little bit of time. So
25 the more complicated the stimulus, the longer it takes

1 us to decide what to do, and then react to it. So
2 adding stress into that situation, and stress into that
3 environment makes everything more difficult.

4 So if I go from the basic stimulus of a
5 green light, red light, to now I am being confronted
6 with an agitated, potentially severely mentally --
7 mental health individual, someone who has mental health
8 issues, excuse me, who appears to be high or appears to
9 be in some type of crisis, and I have a bunch of people
10 around me that I have to be concerned with, all of those
11 are very difficult and complicated stimulus that I have
12 to perceive, decide and react to in the appropriate way
13 that is going to make sure the public is safe, and I am
14 safe, and this individual that is in crisis is safe. So
15 it takes a little while to work through that biological
16 procedure. And there's a gap, it is their reactionary
17 gap.

18 Q So does that concept, action/reaction and
19 the reactionary gap, tie into how officers are trained
20 to make a decision about when to use deadly force?

21 A So law enforcement by its nature is
22 reactive. We see -- we are dispatched to a problem,
23 we're dealing with a problem, we're observing that
24 problem, and then whatever that issue or problem does,
25 we react to it. We are constantly behind. We are

1 constantly having to react to what we see.

2 So if I have an individual, and he or she
3 has made the determination, made the decision to hurt
4 me, or to hurt somebody else, they are already -- they
5 are already through the OODA loop. They have made their
6 decision as to what to do.

7 So when they decide to try and hurt me, or
8 try and hurt somebody else, I have to perceive their
9 action, presenting of a weapon, advancing, advancing
10 towards somebody else, decide what my action is going to
11 be relative to theirs, and then begin to act.

12 We're constantly behind, even on the range.
13 So when I have a static line, meaning I have officers on
14 the line that I know when they receive a command from me
15 they are going to engage their silhouette. They are
16 going to engage their target. So that decision is made.

17 Even when they get my command to engage
18 their threat, officers are still -- it's about a
19 second-and-a-half, two seconds before they are able to
20 produce through weapon, and put rounds on that
21 silhouette. There's a lot that can happen in two
22 seconds, and that's that reactionary gap on a decision
23 that's already been made.

24 So having to perceive something, decide the
25 best course of action, and act on it can be

1 substantially longer.

2 A JUROR: Would you explain the OODA loop
3 again. How is that, O-U --

4 THE WITNESS: Sure. It's Observe, Orient,
5 Decide and Act. And what that means is if I have a
6 traffic light, I am observing that traffic light. I am
7 oriented to it, because I am seeing it. It turns
8 to red -- excuse me, it goes to green. I decide that,
9 okay, now I can go, and then I act.

10 A JUROR: Thank you.

11 Q BY MR. REES: And so I am going to really
12 boil it down to the point for officer safety, what does
13 that gap mean in terms of your instruction, the fact
14 that there's a delay between when an officer perceives a
15 danger, and when they can react to the danger? What
16 does that mean in terms of your training and the use of
17 deadly force?

18 A So we train to narrow that gap the best we
19 can. And how we do that is we try and maintain our
20 distance. It gives us time to react to our threat. We
21 try and put people in positions of disadvantage.

22 Hey, partner, sit down for me. Until I get
23 more cops here, sit down for me. That way if they are
24 going to harm me, they have to stand and that's giving
25 me some type of warning. I am trying to get behind some

1 type of barrier or cover that if they want to harm me,
2 they have to come around and that shows intent.

3 If I am telling somebody to stop, and they
4 are advancing, and they go around a barrier, that shows
5 this person is not simply trying to flee, this person is
6 trying to hurt me.

7 So those types of trainings that we do
8 helps narrow that gap so we can react more
9 appropriately. We go home, and we ensure the public is
10 safe, as well.

11 Q Is there a certain distance in terms of
12 feet that you teach officers that they should keep in
13 mind to keep between themselves and a threat?

14 A There's no set distance. We don't say, at
15 six feet you can use lethal force. That's not an
16 acceptable standard. It takes everything you are
17 seeing. If you want to use a legal term for it, it's
18 the totality of circumstances, meaning everything we
19 see, everything that we know.

20 My training and my experience as an officer
21 of 11-and-a-half years, I may make a different decision
22 than an officer who has been an officer for two years.
23 I'm seeing different things. So we're using the
24 environment. We're using how many people are around.
25 What is this threat telling us? How are they acting?

1 How are they responding to our commands?

2 All of those indicators decide whether we
3 use lethal force. So if I have a 70-year-old grandma
4 with an axe and she's across the football field, she's
5 not a huge threat. Even if she's saying, I am going to
6 hurt you with this axe, she's not a huge threat to me at
7 that point.

8 If I have a 22-year-old, high on
9 methamphetamine, ten feet away from me with an axe,
10 that's a much more severe and active threat. He's got
11 the intent, meaning he's telling me he's going to injure
12 me. He's got the means, he's got an axe. And he's got
13 the opportunity to injure me, given his proximity. We
14 would react to those two scenarios very differently.

15 Q What are officers trained about when to use
16 deadly force, from a legal perspective, and a personal
17 safety perspective?

18 A So there's -- there's a lot of case law, a
19 lot of policies. There's a lot of rules that dictate
20 when law enforcement officers can use lethal force.

21 A lot of times, officers -- if that line
22 were legal and lawful to use lethal force here
23 (indicating), a lot of officers go beyond that, because
24 they don't want to shoot people. They don't want to use
25 lethal force. They want to protect lives, including the

1 people that we're out there dealing with on a daily
2 basis.

3 So for every officer it's different. If I
4 am an officer that is very capable and confident and
5 able to -- I am able to move, and able to engage
6 directly with my handgun, I am capable in those skills,
7 I may allow a scenario to progress past a point where I
8 am legal and lawful and justified in engaging this
9 person, because I still feel that I can handle the
10 situation without using lethal force.

11 Q Even though you would be legally justified
12 in doing so?

13 A Any officer that has been an officer for
14 any period of time, has scenarios where they walk away
15 from saying, I was legally and lawfully justified in
16 using all lethal force in that scenario. Every one of
17 us has those scenarios. I could have shot this
18 individual, but I chose not to because there was a
19 better way. I used better tactics, more officers, and I
20 used distance to minimize that threat, and I found a
21 better way to resolve that situation.

22 That doesn't happen in all situations.
23 Some incidents, like the one we're discussing here
24 today, things have all -- the officers were put in a
25 position where they felt, based on their training and

1 experience, that they were in the position that they
2 needed to use lethal force.

3 Q Let me ask you some questions about reality
4 versus fiction when it comes to firearms. Because we
5 have all seen movies where cowboys or police officers
6 will shoot a gun out of someone's hand, or shoot them in
7 the foot, or something and the gunfight is over. That
8 does make for an exciting movie, but is that a realistic
9 depiction?

10 A The definitive answer is no, it's not
11 accurate. I will ask you to temporarily forget
12 everything you have seen on a movie or on TV about the
13 realities of two things, really. Is the high accuracy
14 of law enforcement officers and the realistic effects of
15 a bullet on a human body.

16 So it makes for a great movie to see an
17 officer or a cowboy shoot a gun out of somebody's hand.
18 So to the point of accuracy, shooting a handgun under
19 normal conditions on a range is difficult. Handguns by
20 their nature are a defensive weapon. They are not
21 extremely accurate. They are difficult to shoot, and
22 the individual shooting that handgun can induce errors,
23 very simple errors that will dramatically reduce the
24 accuracy of that weapon.

25 Nationwide, officers have about a

1 30 percent hit rate. And given that most law
2 enforcement lethal force encounters are about ten feet,
3 10 feet and in, that demonstrates you have got trained
4 professionals, and there's about a 70 percent hit rate.

5 There's a lot of factors that go into that.
6 We have some departments that poorly train their
7 officers, and they affect that national standard. You
8 have officers under stress trying to engage somebody
9 with fine motor skills, which is what shooting is, is
10 fine motor movement. And we know under stress those
11 fine motor movements diminish.

12 And then you have a moving target, moving
13 threats, your officers are moving, you are fighting for
14 your life, all of those things diminish your accuracy.

15 And then we need to talk about the
16 realistic expectations of a handgun. So what we would
17 be talking about there is terminal ballistics. What the
18 actual projectile is doing inside a human body.

19 So there's only really three ways that a
20 bullet is stopping somebody. The first is the most --
21 the most overwhelming is that they stop, because they
22 don't want to get shot anymore. The person makes the
23 decision that I no longer -- I no longer want to do what
24 I am doing, because I am getting shot. It's not because
25 the bullets stop them. It's not because they are no

1 longer able to advance, it's because they stop
2 willingly.

3 FBI has done lots of studies on that, and
4 that's one thing they are good at and it's ballistics.
5 And that's the most common denominator.

6 The next is somebody who is either high, in
7 some type of crisis, they are not responding to pain
8 like a normal individual would. They don't know that
9 they have been shot, or they know they have been shot
10 and they are not reacting to that.

11 So the projectile has to cause enough
12 damage, and the actual projectile has to cause enough
13 damage that is reducing the blood flow so that person
14 can no longer advance, and that takes time.

15 A JUROR: I have a question about training
16 and gun range, and you know, it sounds like they have
17 required training every so many years, and then there's
18 optional training that they elect themselves.

19 They are at this range, what does their
20 accuracy have to be to pass the training they are doing,
21 either annually or the optional? And you know, why is
22 that -- because you tell me it's different when they are
23 in the high stress, where someone is in front of them,
24 and they don't have the best accuracy. And you stated
25 nationally it's 30 percent.

1 What do they have to do at the gun range to
2 pass your training?

3 THE WITNESS: I think there's a couple of
4 questions there. So first thing is we have a
5 qualification. So we have a set course, under set
6 times, under set round counts, under a set scoring
7 target that we shoot.

8 A JUROR: I would think that would have the
9 best aim --

10 THE WITNESS: And most civilians would
11 think that. And we have a wide breadth of officers. We
12 have some officers that are very, very accurate, that
13 take their handgun training very, very seriously. And
14 then we have some officers that choose to put their
15 skills other places, and the range is not as important
16 to them.

17 They still maintain our standard, but our
18 standard is 80 percent. So on a qualification course we
19 have to score an 80 percent. Now, the Supreme Court has
20 said that qualification is not training. That's our
21 benchmark, that's where we start.

22 Then our training comes into play where we
23 put officers under stress. We have officers shooting
24 moving, we have officers shooting in uncomfortable
25 shooting positions, or around cover. We try and put

1 them in stressful situations as safely as possible so
2 they can get inoculated to that stress, so the accuracy
3 increases.

4 Does that answer your question?

5 A JUROR: Yes.

6 THE WITNESS: So back to the ballistic
7 realities of a handgun round, even somebody that is
8 injured with a lethal threat or a lethal round. Say
9 they have been shot in the heart. Their heart is no
10 longer functioning. They still have enough oxygen in
11 their body to function for 15 to 20 seconds, if you are
12 a motivated individual that doesn't even recognize that
13 you are shot.

14 And then the third way is if you are able
15 to shut down the electrical system of the body, meaning
16 the brain. If we're able to achieve a head shot on
17 somebody that is not stopping, we train through DPSST
18 through all use of force, if what you are doing isn't
19 working, do something else.

20 So how that would translate to here is if I
21 am shooting someone center mass, which is where we train
22 to shoot, and I am putting multiple rounds in them and
23 they are not stopping, we would move to different target
24 areas. The head would be one, the low body mass is the
25 second area.

1 Head is pretty self-explanatory. If we can
2 shoot them there, that shuts down their brain, that
3 immediately stops them from whatever. It's difficult to
4 achieve a head shot, because the head is always moving.
5 Someone else is -- the officer is moving, the threat is
6 moving. Head is a relatively small target, it's
7 protected by the skull, which is a relatively big piece
8 of bone.

9 Low body mass, we train quite a bit, which
10 is our pelvis shoots. Shoot the pockets, which does two
11 things. There's a femoral artery there that if we're
12 able to impact, will speed that person not advancing on
13 us. We'll speed that blood loss so that they can no
14 longer advance on us.

15 And also, if you take out the bone
16 structure, they cannot physically advance on us because
17 their structure won't allow it. So those are the only
18 real ways that a handgun round, or any round, really, is
19 going to stop somebody.

20 There are rounds that do a better job of
21 it. There's a reason the military doesn't go into
22 combat with a handgun as their primary weapon. A rifle
23 is a much more ballistically sound weapon. It's more
24 accurate, easier to shoot, high round capacity. The
25 ballistics are much more devastating. You will stop

1 that individual much faster, but officers can't carry
2 around a rifle everywhere. It's just not practical. So
3 the handgun is what we have.

4 Q BY MR. REES: So are Gresham police
5 officers trained to -- having made the decision to use
6 deadly force, are they trained to shoot to kill?

7 A No. We are trained to stop somebody from
8 doing what they are doing. And it's an important
9 distinction between shooting to kill, and shooting to
10 stop the threat from what we're doing.

11 Q So how many times are they taught to fire
12 their weapons, once they make the decision to use deadly
13 force?

14 A There's no set round count. We train at
15 the range appropriate number of rounds, appropriate
16 number of rounds. We have learned from training from
17 years past in law enforcement, at least we try and
18 learn, old school of thought used to be you draw your
19 weapon, you shoot two rounds, and you put your weapon
20 away.

21 It was a training scar that cost officers
22 their lives. It was an administrative, hey, we're going
23 to save ammunition. We're going to draw and shoot two
24 rounds. And what that was doing is it was training
25 officers, and you had officers in real-life scenarios

1 where somebody is advancing on them with a weapon, that
2 was intent on shooting them, that they would draw, shoot
3 two rounds, and reholster their weapon, and the
4 individual was still coming at them. That's what we
5 call a training scar.

6 Q I couldn't hear what you said.

7 A A training scar. So training scar.

8 Q You don't need to explain it. I wanted to
9 make sure I heard.

10 So you dropped -- the agencies across the
11 United States dropped that concept?

12 A Correct. Now what we train is an
13 appropriate number of rounds. We draw, we engage, and
14 if we see the appropriate response, meaning this
15 individual stops doing what they are doing, we stop
16 firing, we stop shooting. We evaluate that threat
17 constantly. And if more rounds are needed, we're at a
18 position where we can deliver more rounds. If two or
19 three rounds does it, that's all we're going to shoot.
20 If more rounds are needed, we're trained to deliver
21 those rounds until that individual stops doing what they
22 are doing.

23 Q Are officers --

24 MR. REES: I am sorry. Do you have a
25 question?

1 Q BY MR. REES: This is really my last
2 question, I think.

3 Are officers trained to give verbal
4 commands before they use deadly force?

5 A In a perfect world, yes. In a perfect
6 world, we would give commands, warnings, orders before
7 any use of force. Me showing up and telling you to stay
8 in your car is an order. Is some type of -- I am
9 present, you should probably do what I am telling you to
10 do, because I have the lawful authority to do that.

11 If I am telling someone to stop, I am doing
12 it for a reason. And in a lot of situations you have
13 the time and opportunity to do that. In other
14 situations, you don't. And if it's practical, we train
15 to give a warning. But if the scenario or the incident
16 doesn't allow it, it's not required.

17 A JUROR: A couple questions. How big a
18 bullet do they use, what grain?

19 THE WITNESS: So our officers are shooting
20 a 147-grain round. It's out of a nine-millimeter.

21 And then what was your other question?

22 A JUROR: The other question is, I know
23 years ago -- and I don't believe they use it anymore --
24 at one point they used hollow points, some departments.

25 THE WITNESS: Correct. We do use hollow

1 points. One of the areas in law enforcement that has
2 advanced dramatically in the last 15 years has been
3 bullet technology. It's one of the reasons we can use a
4 nine-millimeter over some other calibers, because the
5 FBI, again, has set a protocol for our duty ammunition,
6 and it has to pass the specific protocol.

7 It includes ballistics gel, which is a
8 simulation for the human body. And then that projectile
9 performing through different types of barriers;
10 wallboard, windshield glass, heavy clothing, light
11 clothing. And they have developed this scenario, this
12 protocol saying, if a cop is going to use this round, it
13 has to pass this specific protocol.

14 And the ammunition manufacturers have
15 designed their rounds to do that. So it will penetrate
16 appropriately, that it will have the desired effect of
17 stopping that individual, but it will actually penetrate
18 and then it won't over penetrate, and how they would do
19 that would be through bullet expansion, which would be
20 your hollow point.

21 A JUROR: So it's the shock value of the
22 round?

23 THE WITNESS: No, it's not. Especially
24 with a handgun round. What you are talking about is the
25 kinetic energy transferred from the velocity of the

1 round. So on a handgun, you don't have that effect.
2 The only damage the handgun round is doing is the actual
3 trajectory, the actual path of the projectile.

4 Because our projectiles are about 1,000
5 feet per second. You don't get into effective kinetic
6 energy transfer until 2,000 or 3,000 feet per second,
7 which is a rifle round. Which is why it's a smaller
8 bullet, it's traveling faster, it delivers more energy,
9 that's why it's more of a ballistically sound weapon
10 system to use. But with a handgun, you don't get that.
11 It's also known as knock-down power.

12 Q BY MR. REES: And so I think the
13 connects -- just to go back to Hollywood -- where we see
14 someone shot by the police, and they will blow back
15 through a window, or they will blow out of their chair.
16 Is that the impact and the effect that you see when a
17 person is shot with a handgun?

18 A No. Absolutely not.

19 Q What is the effect?

20 A Sometimes they don't even know they are
21 shot. Sometimes they will continue to advance.

22 Q So the bullet doesn't knock them over?

23 A No.

24 Q Or knock them back?

25 A No, it does not.

1 Q What would be the typical or physical
2 reaction, or does it depend on a person's emotions?

3 A It depends on a lot of factors. Because we
4 have all been trained on Hollywood. Some people, when
5 they get shot, they react like they see in the movies,
6 and they fall down and it's a huge dramatic thing. I
7 have seen lots of videos on it.

8 Other people that are more driven or in
9 crisis, not responding to pain, you will see no
10 reaction. You will see no response. It will be like
11 you completely missed them, and they will continue to
12 advance.

13 Q There's a dash cam video you are familiar
14 with from the Oregon State Police Trooper's vehicle
15 during a traffic stop on I-84 in the Columbia River
16 Gorge a couple of summers ago, in which there's an
17 exchange of gunfire. If we show that video clip, will
18 that illustrate some of the points that you have talked
19 about this morning?

20 A Yes.

21 MR. REES: Let's go off the record for a
22 moment.

23 (Brief recess taken.)

24 MR. REES: Let's go on the record and watch
25 the video. And if you would, explain to us what it

1 shows that really sort of illustrates the concepts you
2 were talking about.

3 THE WITNESS: So I have thrown a lot of
4 information at you. We're going to watch this video.
5 This is obviously a real-life incident that occurred in
6 2013 on I-84 by an Oregon State police officer. We're
7 going to watch it a couple of times. And then we're
8 going to watch it, and I am going to narrate and show
9 you some of the things that I have talked about, and so
10 you can see those things. The traffic stop is for
11 speeding, or it's a traffic violation. And this is
12 simply a traffic stop.

13 (Video Played.)

14 THE WITNESS: Now, here are some of the
15 things I want to pay attention to. Look at the
16 environment. So we're on a busy freeway, traffic is
17 relatively close to the Trooper moving at highway
18 speeds. Look at his demeanor when he exits the vehicle.
19 So he exits the vehicle. He's in fatigues. That's not
20 necessarily a clue, but that would be a red flag for me.

21 When he gets out, which, again, isn't a
22 normal behavior for a traffic stop. When you are pulled
23 over, you don't immediately exit your vehicle. Look at
24 his hands, his stances. He's bladed away.

25 This isn't a normal stance for somebody who

1 just exited a vehicle, and is now confronting a Trooper.
2 Listen to the Trooper's commands. He's telling this
3 individual repeatedly, Get back in the vehicle. He's
4 giving him lawful commands to do that, and this person
5 is not responding to those commands.

6 People have done countless interviews with
7 suspects that have been involved in lethal force
8 encounters. So the other end of the spectrum from law
9 enforcement. And what they found is the number one
10 indicator that this individual is debating on hurting
11 me, hurting the officer, is the noncompliance to simple
12 and lawful commands.

13 If I tell you to sit down, and I am legally
14 and lawfully justified in doing that, and you say no, or
15 you don't, that's an indication to me that you are
16 debating on whether or not you can hurt me or not.

17 So look at his demeanor when he gets out of
18 the car. We're going to move that far, and then we will
19 pause it again. So the Trooper positions his vehicle,
20 immediately bladed stance, I am confronting you, bladed,
21 my right hand is behind my body. Majority of the public
22 is right-handed. Repeated commands, him not doing it.

23 So now -- now I have made my decision,
24 right? So I have got out, I have ignored this officer's
25 commands, and now I am advancing. So now you have a

1 threat on a freeway, surrounded by traffic, bladed
2 stance, concealed hands, not following directions, and
3 advancing on you.

4 A JUROR: And he shuts the door, so he --

5 THE WITNESS: You picked up on that. He's
6 made a decision, okay, this is what we're going to do.
7 So this officer has drawn to probably a low ready. I
8 don't know the exact position of his gun, but his gun is
9 out of the holster. Keep that in mind. Our suspect is
10 coming from a position --

11 A JUROR: The officer's gun is already out
12 of his holster?

13 THE WITNESS: Absolutely. Absolutely.
14 Someone doing that, my gun is out of my holster. I
15 guarantee you this officer's gun was out of his holster.

16 We were talking about narrowing that
17 reactionary gap. He may not be pointing it at our
18 threat. There's a very important distinction between my
19 gun being out and in a low ready, not pointing it at
20 anybody and being on target, ready to shoot. Those are
21 two different things. But my reactionary gap is
22 narrowed if my gun is already in my hand.

23 Q BY MR. REES: Do you mean because of the
24 amount of time it would take to draw the weapon?

25 A Correct. Because our gear, our holsters

1 are what is called a level-three holster. And you have
2 to manipulate a certain -- a lever, a button. Then you
3 have to draw straight out in order to get our guns out
4 of the holster. Because every year a certain amount of
5 officers are killed with their own guns.

6 So we have given officers the tool that
7 keeps their weapons secure. That comes at a cost of
8 time. So we have sacrificed that security for -- but it
9 takes us longer to get our gun out of our holster. In
10 order to narrow that gap, we have to draw to low ready
11 or move behind cover.

12 So watch his reactionary time. Let's look
13 who gets his rounds off first, knowing the officer's gun
14 is already out of his holster.

15 So what you -- you see that our suspect
16 gets rounds off first, even though he has a much farther
17 motion to do, he still gets rounds off before our
18 officer does, because it's that act versus reaction
19 scenario we were talking about.

20 The officer fires seven rounds in this
21 instance, and hits him once. You see the moving
22 laterally of the threat, the officer is probably moving
23 laterally, he probably moved behind his car, because he
24 doesn't want to move in traffic.

25 At this point, this individual is hit by a

1 lethal round. The round that ends up being lethal, he's
2 already shot. And then watch how he moves.

3 A JUROR: Where was he hit?

4 THE WITNESS: He was hit center mass. So
5 that individual, having a lethal shot, was able to
6 recover his magazine that fell out of his gun, maneuver
7 to get another shot on the officer, because that's what
8 he was looking for, gets back in his car, and then
9 drives a quarter mile. And he was found deceased behind
10 the wheel a quarter mile down the road, with his kids in
11 the car.

12 Q BY MR. REES: Does that demonstrate what
13 you are talking about, that the impact of a handgun
14 round, unlike what you see in the movies, is very hard
15 to tell if he's even been hit, and it didn't actually
16 cause him to be deceased until he had raced away on I
17 -84?

18 A JUROR: He didn't even actually react to
19 being hit.

20 THE WITNESS: Correct. So you have seen a
21 very real-life visual of an individual that is hit, and
22 he didn't decide to stop. He decided to fight through
23 it. And he wasn't shot in the head to take out his
24 electrical system. What ended this scenario was the
25 loss of blood, and it took that one lethal round to do

1 that, and it took him driving a quarter mile to do that.
2 That takes a long time.

3 A JUROR: Did he crash at the end of this?

4 THE WITNESS: I think he pulled over and
5 stopped. The children were fine. Even though the
6 Trooper was shot, he was -- he drove down the road, and
7 was able to evacuate those kids from the car.

8 MR. REES: So that was to illustrate,
9 again, some of the concepts that Officer Rasmussen
10 testified about and uses in his instruction with police
11 officers about quick action, reaction, reactionary gap,
12 actual effects of firearms. Any questions about that,
13 or any other questions?

14 A JUROR: I think it was tough for me to
15 tell, like, who shot first and everything, because there
16 was just a lot of action, and I didn't really know where
17 to look.

18 THE WITNESS: You can see the slide of the
19 suspect's gun react before you hear the Trooper shoot.
20 The rounds sound differently, because the Trooper is
21 shooting closer to the mic, because his are louder. But
22 you see the slide of the suspect's gun react, so it's a
23 split second faster.

24 Q BY MR. REES: It does illustrate, though, I
25 think, her comment notes that the speed that this

1 incident occurs is such that I think it's difficult to
2 even tell the number of gunshots. I think you said the
3 Trooper shot seven times, or so, plus gunfire from the
4 suspect. We didn't time it, but it seems to occur in
5 just a matter of seconds.

6 Can a person unload a magazine on a handgun
7 in a matter of seconds?

8 A To shoot seven rounds does not take very
9 long. It's a matter of a couple of seconds. Most
10 officers, from the holster, can draw, engage, and fire
11 six or seven rounds within a matter of three or
12 four seconds, pretty readily.

13 He was already at a low ready, meaning it
14 takes about a second off of that. So split times
15 between a competent shooter between a round going off
16 and another round going off is about a 1/20th of a
17 second. So that's relatively quick.

18 Because we want to, in this instance, what
19 we're doing is we're trying to stop that threat from
20 killing us. It takes a higher volume of fire to achieve
21 that, because we need to do it faster. We don't have
22 the benefit of moving to cover or taking any other
23 roles. Our only defense in this instance is the amount
24 of accurate hits we can get on that threat.

25 Q The Trooper missed every time but one. Do

1 you have an opinion why that would be?

2 A Well, he's getting shot at, which is
3 scarey, and the threat is moving, and the officer is
4 moving. The distances here are a little longer than
5 national standards. There was 20, 25 feet there,
6 because I am sure the officer was moving back behind the
7 car.

8 So you have a suspect shooting at you, a
9 suspect that is moving, and the officer that is moving,
10 all of those things put together make it very difficult
11 to get accurate shots.

12 A JUROR: I am not sure how these guns
13 work, but do you have to pull the trigger every time, or
14 can you hold it down and it goes.

15 THE WITNESS: So what you are talking about
16 is the difference between a semi-automatic weapon and an
17 automatic weapon. What our handguns are -- I don't know
18 if he's got a Glock or a Smith and Wesson, but it
19 doesn't matter. They function the same way.

20 Handguns, semi-automatics, which is what
21 this person is shooting, every time you depress the
22 trigger it sends one round out. It's called a recoil
23 operated handgun, or recoil operated weapon. Meaning
24 when I pull my trigger, a round goes off.

25 And the energy generated from that round

1 functions that slide. So it sends the slide to the
2 rear, ejects the spent casing, and loads another one in,
3 and then the spring in the weapon system sends that
4 slide back forward to seat that slide, so they can fire
5 another round.

6 So every time I release my trigger to a
7 certain point, and then I can pull it again and another
8 round will go off. I cannot pull it and empty the
9 magazine. That is an automatic weapon, and that is not
10 what this officer has.

11 Q BY MR. REES: And is that -- for the
12 Gresham police officers, it's not fully automatic like
13 you said. It's pull the trigger, shoot one round?

14 A Correct. We're shooting Glock
15 nine-millimeter semi-automatic handguns.

16 MR. REES: Did that answer the question?

17 A JUROR: Uh-huh.

18 MR. REES: Any other questions from the
19 Grand Jury? That will conclude the testimony of Officer
20 Rasmussen. Thank you very much.

21 I will check and see if our next witness is
22 ready to go.

23 (Brief recess taken.)

24

25

1 KEVIN CARLSON,
2 produced as a witness, having been first duly sworn,
3 was examined and testified as follows:

4 THE WITNESS: I do.

5 DIRECT EXAMINATION

6 BY MR. REES:

7 Q For the record, if you please state your
8 first and last names, and spell your first and last
9 names.

10 A First name is Kevin, and my last name is
11 Carlson. K-E-V-I-N, and my last name is C-A-R-L-S-O-N.

12 Q How old are you?

13 A I am 25 years old.

14 Q What is your occupation?

15 A I am a police officer.

16 Q How long have you been a police officer?

17 A I have been a police officer in the State
18 of Oregon for four years and two months.

19 Q What is your educational background?

20 A I have a bachelor's of arts degree from
21 Portland State University in criminology and criminal
22 justice. I graduated from Sam Barlow High School in
23 2008, and I finished my --

24 A JUROR: You got a guy smiling over there.

25 THE WITNESS: I graduated from Portland

1 State in 2015 while I was employed as a police officer.
2 I finished my bachelor's degree.

3 Q BY MR. REES: In terms of your training as
4 a police officer, can you briefly describe what that
5 involved?

6 A From the start?

7 Q Yeah. From date of hire, through the
8 present, just a summary.

9 A Okay. Before I was a full-time police
10 officer, I started out as a cadet with the City of
11 Gresham. I was 18 years old when I became a police
12 cadet, received some training, kind of on a fairly
13 regular basis, police-style training. I was a cadet for
14 three years.

15 A JUROR: I am sorry. Can you clarify what
16 police-style training is?

17 THE WITNESS: Sure. I attended the
18 Interagency Academy in Clackamas, Oregon. It's where
19 cadets -- which are volunteers, they don't carry guns.
20 They are 21 and under volunteers that want to gain an
21 interest in police work. They are like interns.

22 For every Saturday for, I believe, 15 weeks
23 give or take a few weeks, but it was a couple of months
24 we attended classes, like criminal law, like a class
25 where DA Rees would teach, where he teaches how to read

1 ORS, versus defensive tactics where we learn to do some
2 control holds, and do a little hand-to-hand style
3 training.

4 There's a firearms portion where we learn
5 how to shoot. There's a portion where we drive a police
6 car and get accustomed with the equipment in the police
7 car so we know how to operate it, if we needed to.
8 That's what I mean by police-style training, basic
9 exposure to the job.

10 Q BY MR. REES: And then you were hired as a
11 police officer?

12 A Initially, as a reserve police officer,
13 which is a 21 and older volunteer, once again,
14 police-style training on a volunteer basis. That was a
15 21-week academy at the same location. Similar type
16 stuff, but more involved. It was Tuesday, Thursday
17 nights for four hours, and eight hours on Saturday for
18 21 weeks. All that stuff I explained initially, but
19 much more in depth.

20 I did that job about six months, and then
21 that's when I was hired by Oregon City Police and
22 attended the basic academy by DPSST, which is a 16-week
23 academy.

24 Q And then you had that training, and then
25 you went to the department in Oregon City?

1 A Correct.

2 Q Did you continue training at that point?

3 A Yes. That's when you start -- once you
4 graduate the basic Police Academy in Salem, you go back
5 to your home agency, or the department that has hired
6 you, and you start what is called FTET. It's an acronym
7 for Field Training Evaluation Program. And it's where
8 you are paired up with a senior officer who has been
9 certified to coach.

10 And it's like, you are the driver as the
11 police officer, and they are the mentor, or the coach in
12 the passenger seat. And for three five-week phases you
13 have three different coaches, and they evaluate you and
14 train you on how to do the job. Literally watch you
15 firsthand, and critiquing you, and team teaching you how
16 to be a police officer.

17 Q And then you went from Oregon City to the
18 City of Gresham?

19 A That is correct.

20 Q And in the City of Gresham, did you have
21 additional police training?

22 A Yes, FTET, Field Training Evaluation
23 Program, you have to do that, also, as a lateral to a
24 new department. It's the same amount of time. There's
25 three five-week phases. You have a coach in the

1 passenger seat critiquing you, teaches you how to do
2 things. But at that agency and that culture, that's how
3 you are trained. And you have to be signed off on
4 during FTEP manual, and approved by supervisors before
5 you are released to solo status, which is one police
6 officer in the car doing their job.

7 Q And have you received any special or
8 additional training in the area of defensive tactics or
9 firearms or weapons?

10 A Not outside what I have been through during
11 academies and department training.

12 Q And have you qualified on the range and
13 done that training? Have you done the, I believe it was
14 the CONSIM training program with the City of Gresham?

15 A Not with the City of Gresham -- actually, I
16 take that back. Yes, with the City of Gresham.
17 Initially, it's at the academy. And CONSIM an
18 abbreviation of Confrontational Simulations where you
19 actually have a gun that fires, like a paint ball gun.
20 It's a Glock, just like we carry, but it fires paint
21 tipped bullets.

22 That, and my initial exposure to that was
23 the reserve academy, additional training at DPSST in
24 Salem. And then part of being a lateral police officer
25 with the City of Gresham, you go through a defensive

1 tactics week, and one or two days during that week was
2 CONSIM training with those firearms and those scenarios.

3 Q Your appearance today before this Grand
4 Jury is voluntary, correct? Meaning you are agreeing to
5 come here, even though you actually have a right not to
6 come in here; is that your understanding?

7 A Yes.

8 Q And you also did a voluntary walk-through
9 of the scene on the day of the shooting with your
10 attorney, Detective Tony Cobb, DA Jackson, and myself
11 and Detective Aaron Turnage, correct?

12 A Yes.

13 Q Although, again, actually you didn't have
14 to do that, but you did voluntarily agree to do that?

15 A Yes.

16 Q And you answered the questions that were
17 put to you by the detectives during the walk-through,
18 correct?

19 A Yes.

20 Q Have you been, following the shooting,
21 subject to a gag order, an order not to speak with any
22 other witnesses in the case?

23 A Yes.

24 Q So let's go now to your shift at the time
25 of the shooting. When did your shift begin?

1 A I work a 12-and-a-half-hour shift, Sunday,
2 Monday, Tuesday nights. And then once a month we have
3 to work an additional day on Wednesday for ten hours.
4 But my regular shift, Sunday, Monday, Tuesday, starts at
5 6:30 p.m., and it's a 12-and-a-half-hour shift that goes
6 to 7:00 a.m. So it's what we call graveyard. We call
7 it graveyard 12s at work, but it's a 12-and-a-half-hour
8 workday that starts at 6:30 p.m.

9 Q On the shift where the shooting occurred,
10 you started work at 6:30 on --

11 A The 23rd.

12 Q The 23rd, Monday evening; is that correct?

13 A I believe it was Sunday -- no, Monday
14 evening.

15 Q Let me just look at the calendar.

16 A It was Monday evening because it was the
17 second day of my workweek.

18 Q Just for clarity, the shooting was about
19 3:00 a.m. on Tuesday, May 24th?

20 A From my memory, yes.

21 Q So your shift began Monday the 23rd?

22 A The 23rd.

23 Q At 6:30?

24 A Correct. That's how it looks on the
25 calendar. Yes.

1 Q Okay. We have had some confusion, or at
2 least I have had, mentally keeping track of night and
3 morning. And your shift obviously covers both?

4 A Correct.

5 Q Prior to beginning your shift at 6:30, was
6 there anything unusual going on with you, you know, in
7 terms of your personal life? Any --

8 A No.

9 Q Anything unusual?

10 A No. No.

11 Q Had you consumed any alcohol or drugs prior
12 to starting your shift?

13 A No.

14 Q How did your shift begin when you started
15 it at 6:30 p.m.?

16 A Shifts begin with getting dressed for work.
17 We have a locker room at work. I got my uniform on,
18 like normal. We attend a -- it's called roll call, so
19 everyone who is working that shift gets in a room
20 together like this. The supervisor makes sure everyone
21 is present, and then we pick a district that night. I
22 worked the 25th district. My unit number was 158.

23 That's not a district that I am assigned.

24 It's one we get to pick based on seniority at the
25 beginning of shift. I set up my police car. Put in my

1 equipment. Logged onto the computer, and then I was
2 available for dispatch calls for service.

3 Q Anything unusual during roll call, or
4 anything come up that night?

5 A No.

6 Q And then what about the beginning of the
7 shift itself? Did you have any unusual calls that night
8 prior to the call that led up to the shooting?

9 A Nothing in -- in my point of view, unusual,
10 no. I had a call where a guy I arrested on some
11 warrants had swallowed some heroin, and I ended up
12 having to drive him to the hospital where he ate some
13 carbon, and had his stomach pumped. That doesn't happen
14 every shift, but for me, that's not necessarily unusual,
15 but I do remember that happening at the beginning of the
16 shift. Maybe unusual for others.

17 Q But otherwise nothing unusual?

18 A It was a normal call for service.

19 Q Per your recollection, what was the first
20 call that you received regarding the situation that
21 eventually led up to the use of deadly force?

22 A The first call that I received, it was a
23 dispatch call where the dispatcher is calling my unit
24 number, and they are saying that there's a call for me,
25 so I respond and say, Go ahead.

1 The call, from my memory -- and there's a
2 CAD printout, so I don't have that. I am not
3 referencing that now, but from memory it was a call, a
4 male versus female fight at the location of 190th and
5 Yamhill in Gresham. The witnesses -- a person involved
6 in the fight was not calling. It was witnesses who were
7 hearing the fight, and from my memory, the dispatch said
8 there was a couple of callers who had reported this same
9 thing, that a female was screaming for help while she
10 was actually being assaulted by a man.

11 And then as an update came in, the man was
12 now forcing her, which it appeared, according to the
13 witnesses, against her will into the car. And then the
14 car was seen driving southbound on 190th, south of
15 Yamhill.

16 Q And when you receive a call like this, are
17 you getting the information over your police radio?

18 A Yes. Over the radio.

19 Q Do you also receive information on the
20 computer screen that is in your police car?

21 A Yes. The information pops up on my screen.
22 It's not necessarily easy to read, but if you know what
23 you are looking at, you can find it. At the same time
24 the dispatcher gets it, so if I feel like there's
25 background noise or I didn't hear a word right, I have

1 the ability to read on the screen and confirm what I
2 heard, because they are literally reading what I can
3 see, as well.

4 Q And the address that you were provided
5 regarding the situation, was that in your district?

6 A Yes.

7 Q And so did you have any initial thought
8 when you heard that call of what was going on, or what
9 your response would be?

10 A You know, it's not -- sadly, it's not an
11 uncommon type of a call to receive. So my job is to get
12 into that area and listen, and because I don't have an
13 actual caller involved in the fight calling to say
14 exactly who they are and what they know, people are
15 calling saying, this doesn't sound normal, and the
16 police need to come and check it out.

17 So my job is to get there and listen, and
18 find out who's involved, and if it's a police situation
19 or not.

20 Q And to your recollection, about what time
21 did this call come out?

22 A The most specific I can be is about
23 3:00 a.m.

24 Q Do you remember where you were, about, when
25 you received the call?

1 A 175th and Stark.

2 Q So where did you go?

3 A I went eastbound on Stark to 190th.

4 Q And did you see anything when you got
5 there?

6 A Well, Stark and 190th is a fairly busy
7 intersection. If you are familiar with Gresham or
8 Rockwood, specifically, it's where Don Pedros is. It's
9 a pretty big restaurant there, if you don't know.

10 So I turned, a southbound turn, took a
11 right-hand turn on 190th from Stark. And I immediately
12 saw two men, one on a bicycle, and another guy, I
13 believe, was on foot. And they were walking away. And
14 they didn't appear to be in distress or angry or
15 agitated. So I rolled down my window, and while still
16 in my police car I said, Hey, was there somebody
17 screaming? And the first guy on the bike said, Yeah,
18 she's down there. And pointed behind him towards
19 Yamhill, exactly where the calls had been coming from.

20 So confirming my dispatch call, this guy on
21 the bike, I don't know if he called police or not. He
22 said, Yeah, she's down there, and pointed behind him,
23 and then continued on as if he didn't want to be talked
24 to. I drove --

25 Q What did you do?

1 A I drove down there where he pointed.

2 Q Did you see anything down there?

3 A Within a few seconds, there was an update
4 that the car was southbound, was actually driving.
5 Because when I first saw that man, the update hadn't
6 come in yet that the car had left. I thought it was
7 still in that intersection area.

8 So about then I got an update saying the
9 car was driving southbound. Well, 190th is very, very
10 straight, and once you get past Yamhill there's
11 basically nothing until Division, so you could see
12 taillights for a long ways. And I didn't see anything.

13 So I hit my gas pedal, and I remember
14 accelerating. When -- between Yamhill and Grant, about
15 mid-span, there's a quarry, a Multnomah County like a
16 dump quarry area. I am not exactly sure where it is on
17 there. It's that big lagoon you see on the map, and
18 south of that you can see the dirt, and basically
19 nothing.

20 Q In fact, if you want to go up to the screen
21 and point out to us the locations you just described so
22 we're all clear.

23 A So my turn from Stark Street was on 190th
24 here, and it was somewhere in this first busy parking
25 lot where I saw the guy on the bicycle. And he said,

1 Yeah, back there, still pointing back toward Yamhill.
2 And as I am driving and listening, I get the update that
3 the car is southbound on 190th towards Division.

4 Well, Division is all the way down here,
5 and like I said, on 190th, it's completely straight.
6 You can see to Division, you could see taillights. It's
7 3:00 in the morning. There's not a lot of cars on the
8 road.

9 So I hit the accelerator when I am about
10 mid span between Yamhill and Grant, somewhere in here.
11 I see two females waving their arms, like frantically
12 waving me down. So I slam on the brakes and roll down
13 the window. They say, The car is silver. It just went
14 that way, and took a right on Division.

15 So basically as I heard that, dispatch was
16 telling me the same thing, the car took a westbound turn
17 on Division and was heading toward Portland from Gresham
18 on Division. I came down here, accelerated once again,
19 fairly heavily, down Division, catch up to some
20 taillights that I saw, but none of the vehicles -- there
21 was three or four of them. None of them matched the
22 description of a silver or gold sedan.

23 And actually drove all the way to 162nd,
24 which is in the City of Portland, looking for a suspect
25 vehicle, or vehicle that matched that description and I

1 was unable to locate anything from 162nd to 190th,
2 driving westbound on Division.

3 Q You said initially when the call came out
4 it's not necessarily that unusual to have a male-female
5 fight.

6 Did your thinking change at all, given the
7 additional information that you had received, and the
8 contact with the folks in the neighborhood or not?

9 A Yeah, it did. I don't know if you guys
10 live locally, or if you live in the City of Gresham or
11 East Portland or Rockwood area. It's just not the type
12 of area, you know, it's not Mayberry. It's not where
13 everyone would call the police if they saw something
14 wrong. It's kind of an area where you might decide to
15 look the other way, and not necessarily call 911.

16 So for that intersection, that area to
17 receive multiple calls, as a police officer that works
18 that neighborhood and is familiar with the culture in
19 that neighborhood, it kind elevated the credibility of
20 the reports. It led me to believe that, wow, this must
21 be bad. Because under typical circumstances, this may
22 not be reported to police in that neighborhood.

23 Q Okay. So where do you go from there?

24 A I get to 162nd, and I decide to turn around
25 and head back to the call location and see if I missed

1 something, because likely the car pulled off either
2 direction, maybe saw the police car, pulled into a
3 parking lot. And now I will drive back kind of slow and
4 just recheck the area I just checked and see if anything
5 pops out that I blew past.

6 There's another officer dispatched to the
7 call, if I didn't mention, Officer Sasser, who was
8 driving behind me. I could see him behind me. So I
9 turned around, passed Officer Sasser, and headed back to
10 the location, the general location between Division and
11 Yamhill on 190th, in that area.

12 As I reach 190th, coming back down Division
13 Gavin, Officer Sasser, Gavin Sasser was directly behind
14 me. And there was an update on the radio that said the
15 car is now at a given address on Grant. It's all
16 100 blocks in that area, so it was basically 18900
17 Grant, and that's where the car was at.

18 And reports were the same as initially.
19 Said there was a male versus female domestic. The male
20 is actively hitting the female, he's actively assaulting
21 her and pushing her into a car.

22 Q So when you are hearing that, did that
23 affect your thinking at all about what kind of call this
24 was, or what your appropriate response would be?

25 A Did it change at that point?

1 Q Yeah. With that additional information,
2 or --

3 A Just as -- I mean, it was a progression
4 from the initial call to dispatch, okay, sounds like a
5 regular run-of-the-mill call, to -- and each update and
6 change that happened, it confirmed that it was something
7 more serious than that. It was an actual domestic. We
8 get calls of domestics where a boyfriend and girlfriend
9 are having a boyfriend and girlfriend type argument,
10 they are just being louder than the people next to them
11 would prefer and they call in. It's not necessarily
12 criminal but the police show up and decide, this is just
13 an argument.

14 This, to me, sounded more like a physical
15 argument where somebody is being injured or kidnapped or
16 being held against their will, being shoved into a car;
17 moved from now Yamhill to Grant, to -- I don't know
18 where that -- is that their home? I don't know yet.
19 But it's all adding more support to the fact that this
20 is a serious -- a more serious domestic than maybe
21 previous domestics.

22 Q Okay. And so where do you go from there?

23 A So I am turning onto 190th from Division
24 when we get the update. Dispatch, as they often do,
25 rattle off an address, and like the question was brought

1 up earlier, can I read it on my screen? Yes,
2 thankfully, because the address I heard was not 18900
3 Grant. Because they initially said, the car is back at
4 the location.

5 So when I heard that, my mind said 190th
6 and Yamhill. I gotta get there. Well, then they said
7 18900 Southeast Grant. Well, that's not -- that's a
8 different location that I hadn't heard yet.

9 So my initial turn was down 190th and then
10 I passed Grant. I actually ended up closer to this
11 empty lot. Gavin Sasser, Officer Sasser was behind me,
12 and was driving a little bit slower, like I said, and he
13 actually made the turn on Grant. He heard the updated
14 address. So when I saw him turn and not following me, I
15 stopped, read my screen and said, Okay, it's on Grant.

16 I know that's behind me, and that's when I
17 did a U-turn on 190th to come back down to Grant Street.
18 So initially I was ahead of Officer Sasser the entire
19 time, up until this point when I drove past Grant,
20 verified the address, and reacquired Grant.

21 Q So now Officer Sasser is ahead of you in
22 the patrol car?

23 A Correct.

24 Q During this time, are you driving lights
25 and sirens or not?

1 A No. And the reason is it's 3:00 in the
2 morning, and there's about four or five cars on the
3 road, and I can get to where I need to get just as fast
4 with lights and sirens as I can without them. And a
5 call like this, where listening is more important than
6 broadcasting that the police are about to show up
7 because we have a situation that is mobile. It's
8 moving.

9 And if I turn on my lights and sirens, it's
10 for sure going to keep moving versus a scenario that is
11 at a house that can't move. Where we might show up, but
12 even then we would turn off our lights and sirens before
13 we got to the front door, so that we can approach and
14 kind of not broadcast that police are there.

15 Because when police broadcast when they are
16 there, that's when the ambushes or attacks happen
17 because they know the police are knocking at their door.
18 It's when they don't expect the police knocking at their
19 door that you have an element of surprise so you can
20 safely encounter these people and figure out what is
21 going on.

22 Q So do you drive to that location now that
23 you have seen it on your computer?

24 A Yes.

25 Q And go ahead and tell us how you came into

1 the neighborhood, and what you observed?

2 A So I came in off of 190th and took a left
3 turn -- or right turn, rather, going westbound on Grant.
4 I had just made my turn when I saw red and blue lights
5 right at the intersection of 189th and Grant on the
6 corner. So I saw Officer Sasser's police car, his
7 overhead lights are on.

8 When I saw him turning onto Grant, his
9 lights were not on. So as I turn the corner, I see that
10 his lights are on, and that's when I decided to activate
11 my lights, too, so that everyone knows that police are
12 coming, if there's witnesses looking out their window,
13 they know we're here.

14 I am about mid span between 190th and
15 189th. I can see Officer Sasser's police car, and it's
16 as if he made a turn down 189th. It's nosed in facing
17 this way. If the front of his police car is right here,
18 he's kind of angled in. Do you have a Match Box car?

19 Q We don't. We have the other diagram we can
20 possibly use.

21 A I don't know if that ruins your diagram or
22 not.

23 Q How about that one right there?

24 MR. JACKSON: This is the timeline.

25 MR. REES: I was thinking of the one we

1 marked with the cars.

2 MR. JACKSON: I can run and grab it. It's
3 in my office.

4 MR. REES: Let's take a momentary break.
5 We will get that other diagram.

6 (Brief recess taken.)

7 MR. REES: Okay.

8 Q BY MR. REES: So we have the street view
9 for you to illustrate your testimony, and then we also
10 have this prepared exhibit to help you explain, also,
11 your testimony.

12 A Okay. So the police car I was describing
13 just before break, Officer Sasser's car, is the one on
14 the right, the blue car. And the red car would be the
15 vehicle we have been looking for, the sedan that was
16 moving around.

17 So and this is -- my back would be to 190th
18 here, driving down westbound down Grant. That's the
19 street view that I saw.

20 So I am about right here in my patrol car,
21 when I see the red and blue lights of Officer Sasser's
22 car parked about here, which you can see on that diagram
23 there. And that's when I turn on my overhead lights.

24 I am still moving this way, but I am not --
25 it's a residential area. It's only one house width. I

1 am slowing down, preparing to stop. And I'm approaching
2 the intersection to help Officer Sasser. And I see
3 Officer Sasser actually exit his patrol car, get out,
4 and he's not walking, he's running in front of his
5 patrol car.

6 If I could go to this diagram, he's getting
7 out of his driver's door here, and running around the
8 front of his car this way (indicating), northbound. I
9 see him as he reaches the front of his car, and
10 broadcasts on his portable radio that he's in foot
11 pursuit. And that's what I am seeing as I am coming
12 down the street here.

13 And I see him in close proximity to a male
14 running this way, northbound, towards the far sidewalk
15 here. So I see them coming around his car across this
16 street, over toward the front of this white pickup.

17 Q And when you see that, what do you think is
18 happening?

19 A That Officer Sasser has located our
20 involved people, and that the male described to dispatch
21 is running upon police introduction. He's fleeing the
22 scene on foot.

23 Q And so what do you do?

24 A So I drive -- as I approach the scene. I
25 am about right here as Officer Sasser is running across

1 the street. And he's yelling, foot pursuit. And they
2 actually end up on this sidewalk. And what's not in
3 this -- well, as I drive this way, I had my lights on,
4 like I said. And I'm in my car, so I get close to them,
5 so about from me to the window here. And I chirp my
6 siren a few times. The suspect is running, Officer
7 Sasser is directly behind him, and I am in a car. And
8 so --

9 Q Chirp your siren, meaning --

10 A I don't let it wail like you hear a siren
11 running down the freeway. I like, whoop, whoop, like a
12 chirp, a couple of times.

13 My idea is the suspect will now knows he's
14 being chased by an officer on foot, now there's a second
15 officer in a car. I am outnumbered, I am overwhelmed,
16 and I am going to surrender. That's my thought process.

17 Q And based on your training and experiences,
18 will people sometimes say, I give up?

19 A Yeah. I am outmanned here, I need to give
20 up.

21 Q Did it have that effect here?

22 A No. No. The suspect was still running
23 full, like a full sprint. It wasn't a jog. It wasn't a
24 fast walk. It was running.

25 So I continued driving from, like I said,

1 this intersection to about the illustration where my car
2 is parked, because this is my patrol car here.

3 Q You are indicating the blue --

4 A This blue rectangle to the left of 189th.
5 Officer Sasser's car, the suspect's car, my drive
6 distance from 189th to here with my lights and my siren
7 chirps, was about there.

8 It was about that point, you can see I am
9 on the right-hand side of the road. I nosed into this
10 driveway as I throw my car in park and get out on foot.
11 This car -- I don't know how -- this can't be an actual
12 photo from that day, but there actually was a car right
13 there, parked, uninvolved where I actually lost sight of
14 Officer Sasser and the suspect as I ran this way. So we
15 actually went on both sides of the car for a short
16 second, and I lost sight of them.

17 A JUROR: You didn't see the suspect stop
18 at a house, or anything like that?

19 THE WITNESS: No. It was a split second.
20 This is a rapidly evolving scenario. They are out of
21 the car, he's gone for a second, and then they are back
22 right here, still chasing one another on the sidewalk.

23 I know that Grant is curving this way, so I
24 decide, as I am running to kind of cut the corner and
25 gain on them, because they are in front of me.

1 While Officer Sasser and the suspect -- and
2 at no point am I ever in front of Officer Sasser. He's
3 directly behind the male suspect right here, and I am
4 behind him. But I am able to see exactly what is going
5 on. I can hear Officer Sasser, and actually watch
6 Officer Sasser push the suspect with two hands while
7 running behind him, say stop, you are under arrest.
8 Stop.

9 I hear him say that and push the suspect on
10 the back. I see the suspect kind of stumble, but then
11 regain his balance and continue running. That happens
12 somewhere in this area as we're making the corner.

13 I am running, like I said, I am cutting the
14 corner to close some distance and join up with Officer
15 Sasser, and maybe catch the suspect. Officer Sasser had
16 been running longer than I had, so maybe I would be able
17 to catch him, being more fresh, just out of my car here,
18 and Officer Sasser has ran all this way.

19 The foot pursuit continues to about this
20 residence, somewhere in this area, as I am in the
21 street. And now we're getting to a point where Officer
22 Sasser and I are getting closer to equal, and we're
23 triangulating. So if DA Rees and myself, I am myself,
24 DA Rees is Officer Sasser, the suspect would be
25 somewhere in this corner near the laptop, so we're

1 triangulating him, at that point, to get him closer to
2 the suspect.

3 Q BY MR. REES: And are you doing that, in
4 terms of your physical positioning, based on your
5 training?

6 A Yes. You would want to triangulate
7 somebody if they turned, and were going to attack one
8 another. You don't want to be standing right next to
9 your partner. Now you are one target. They have one
10 area to focus on. You want to be two targets, so if
11 your suspect turns, he's either aggressing you, or he's
12 aggressing me, but it's very clear where he's going so
13 you have more time to react. You can tell what
14 somebody's intentions are more if they are divided.

15 Q And, of course, this is happening very
16 quickly. You are taking a lot of time to give us these
17 details, but you said they were running, like a sprint?

18 A A full sprint.

19 Q Oh this is happening very quickly?

20 A Yes.

21 Q Do you have in your mind an idea of what is
22 going to happen, or what you are going to do to resolve
23 this situation at that point?

24 A In my mind, because as a police officer
25 every scene you go to you play out scenarios ahead in

1 your head. If you go to a scene, you know where the
2 door is at. If that guy is running, you know where he's
3 going to go, and you are constantly, in your head,
4 playing scenarios so you know what you are going to do
5 once something happens.

6 I think you guys have been told -- or
7 action versus reaction, and have kind of had that
8 explained to you. Our goal is to visualize something so
9 when it happens, we're not shocked, and getting in that
10 delay of reaction.

11 Q So --

12 A JUROR: So what were you visualizing?

13 THE WITNESS: I was going to tackle this
14 guy. I was going to tackle him and arrest him for
15 fleeing from us, and I was going to arrest him for
16 domestic violence.

17 Q BY MR. REES: So what happens?

18 A This is a very dark road. This is very
19 dark. I don't remember any street lights. There's a
20 possibility there's a street light or two, I just
21 remember it being very dark. I wear an external vest
22 where my equipment is on my chest, and I grabbed my
23 flashlight. And I knew I wasn't right behind the
24 suspect like Officer Sasser, so I was going to assist
25 him by illuminating the suspect.

1 So I had my flashlight in my left hand.
2 It's up over here, high and away. And I was shining
3 light on the suspect so we could see him. Officer
4 Sasser, if he was getting fatigued, would be able to
5 focus in on the guy. And we wouldn't lose sight of him
6 in the darkness.

7 It was somewhere between these two houses.
8 I can't be more specific than that. But somewhere
9 between these two houses, the suspect and Officer Sasser
10 are running on the sidewalk. I'm in the street. We're
11 triangulating, and there becomes a point when -- have
12 you guys heard of fight or flight?

13 Where when you are cornered, you have two
14 options. You are either going to fight your way out of
15 it, or you're going to run away from it. The option we
16 prefer is to surrender and investigate, and make the
17 best decisions possible. But it's kind of a primitive
18 mentality, especially when you see an animal. They are
19 either going to fight or fly or they are going to run
20 away. So that's a primitive -- hopefully it was
21 explained better than I just explained it to this Grand
22 Jury.

23 Q Yeah. No. That's fine. So yeah, so you
24 are thinking about that concept?

25 A Yes.

1 Q I think everyone is familiar with that idea
2 of sort of a basic reaction to danger?

3 A Right. Uh-huh.

4 Q So how does that connect to your thought
5 process here?

6 A So running away is very clear, you are
7 running. Your arms are pumping, you are going as fast
8 as you can.

9 Q That would be flight?

10 A That would be flight. Somewhere in this
11 area there was a transition from flight to fight. And
12 what I witnessed was the suspect -- he had some sort of
13 overcoat, whether it was a sweatshirt with a
14 pass-through pocket, or two pockets, I am not sure.

15 But there was a transition from fists
16 pumping to digging or searching for something, and kind
17 of slowing down. Kind of dogging it out. You go from a
18 sprint to a stop, and a search real quick (indicating).

19 So there was a clear transition in my head
20 from a -- I am escaping. I am going to get rid of these
21 guys to, there's a cul-de-sac, so I am not going to go
22 anywhere so I am going to transition from flight to
23 fight. And now I am searching for my weapon.

24 That's what I saw in front of me. My light
25 was illuminating it, and there was a clear change, in my

1 eyes, in my mind, that the suspect was no longer
2 running, but he was going to turn. I don't know what
3 he's going do, but he was slowing down and he was now
4 searching for something. His arms were no longer
5 pumping, he was now in front of himself.

6 Q The court reporter is just asking you -- I
7 should have warned you about this, and this is not --

8 (Discussion off the record.)

9 Q BY MR. REES: Go ahead when you are ready.

10 A Okay. So the area I am talking about where
11 the transition was was somewhere in here, from my point
12 of view. And this is a car with a camera on its roof.
13 But I was maybe a little more to the right than this
14 photograph.

15 But this is the sidewalk that the suspect
16 and Officer Sasser were running on that I was talking
17 about. And it's somewhere between these two houses when
18 that transition starts happening, from the running to
19 the hands in front, digging in pockets.

20 Q So when you made that observation, did you
21 respond to that?

22 A Yes. So when there's a suspect, or anybody
23 in front of you, and you can't see their hands you don't
24 know what they are grabbing. They could be grabbing a
25 cell phone, a gun, they could be grabbing nothing at

1 all. We don't know until they turn around and we can
2 see it and can confirm what it is.

3 But we never assume that it's going to be
4 the cell phone. We always assume the worst. Like I
5 said, in the scenario -- when I say we, I mean police.
6 Me, specifically, as a police officer, I assume the
7 worst so that I am not surprised and that I react
8 appropriately.

9 So when there's a suspect searching for
10 something, who is running from us, he's not listening to
11 Officer Sasser's commands to stop. He was pushed once,
12 and didn't stop. Heard the sirens, didn't stop, that
13 something was going to be in his hands, and I wanted to
14 be prepared for whatever it may be.

15 So at that point I am still moving. My
16 hand goes to my gun, just because I don't know what is
17 about to come out. So instinctively my hand goes to my
18 gun, intentionally my hand goes to my gun, and I wait
19 for the suspect to respond.

20 Where that gold mini van is, the end of the
21 driveway is where the suspect ultimately stops running.
22 If you can see that Honda Odyssey there. The end of
23 that driveway is where the suspect stops running, and I
24 would guess I was somewhere in the location of the
25 garbage can, the bush area, but on the street maybe five

1 to six feet extended from that sidewalk into the street.

2 And Officer Sasser was still on the
3 sidewalk towards the start of the driveway, right about
4 there (indicating). It was at that point the suspect
5 stopped running forward, and then turned and he had two
6 knives in his hands, a knife in his left hand and a
7 knife in his right hand.

8 He was given commands. I don't remember
9 specifically, if I am the one that said, Drop the knife,
10 or if Officer Sasser said, Drop the knife, or if we both
11 said it, but I heard it. Drop the knife. Drop the
12 knife.

13 The suspect then ran towards us once again.
14 I am out in the street, so the suspect made an angled
15 run down towards -- yeah, in that direction, when I shot
16 at the suspect. I was side-to-side with Officer Sasser.
17 He's to my right. If I'm angled this way, the suspect,
18 who is the filing cabinet. Officer Sasser is to my
19 right, where you are seated.

20 And as I shot, I could hear Officer Sasser
21 shooting. I shot an appropriate number of times to stop
22 the suspect, and I watched as he fell to the ground. No
23 more shots were taken. He was given several commands to
24 roll over, to drop the knife. We wanted him to prone
25 himself out, so we knew he was no longer going to attack

1 us with the knives.

2 And our plan was to take him into custody,
3 and render medical aid immediately. The suspect did not
4 respond to any commands whatsoever. He fell down and
5 was facing away from us. He was lying down on the
6 ground, and it appeared that he was injured to a point
7 where he wasn't going to be able to move.

8 So at that point Officer Sasser and I
9 decided so that we could get medical personnel there as
10 quick as possible, we broadcast on the radio, shots had
11 been fired, suspect was down, and we needed medical,
12 code 3, but that means lights and sirens, as fast as you
13 can.

14 Q Let me stop you there. I want to ask you
15 some questions about the sequence of events that you
16 just described.

17 A Yes.

18 Q And you said that you saw the knife in each
19 hand; is that right?

20 A Yes.

21 Q What did you think when you saw that?
22 Because from your testimony, you did not know until that
23 point that he was armed with weapons; is that correct?

24 A Correct.

25 Q So that was the first time that you saw

1 that?

2 A Correct.

3 Q What did you think when you saw that?

4 A There wasn't time to think. It was just a
5 reaction. It was, I saw a knife. I saw a deadly weapon
6 coming towards me in a suspect, one in each hand, not
7 listening to commands, and closing the distance.

8 A JUROR: Just to clarify, was he coming
9 towards you, or was he coming towards Officer Sasser,
10 because just a second ago you mentioned he was going
11 diagonally. In the triangulation of you, you, and the
12 suspect, which direction was the suspect going towards?

13 THE WITNESS: Coming towards me.

14 A JUROR: So towards you. Away from
15 Officer Sasser, directly towards you?

16 THE WITNESS: Yes.

17 What was your question?

18 Q BY MR. REES: I think you were in the
19 middle of answering that. The question was just what
20 you were thinking -- I am sorry.

21 MR. REES: Is it possible to go back on the
22 record?

23 (Record read back.)

24 Q BY MR. REES: So had you finished your
25 answer then?

1 A Yes.

2 Q Thank you.

3 Q In terms of the distance, you haven't
4 measured this out?

5 A No.

6 Q Obviously. What was your perception of the
7 distance, at the time that you made the decision to use
8 deadly force, between you and the man with the two
9 knives?

10 A I believed it to be about 10 to 15 feet.

11 Q What did you believe would have happened if
12 you had not made the decision to use deadly force?

13 A If the decision to use deadly force wasn't
14 made, the suspect would have been able to close the
15 distance, reach me, and inflict serious physical injury,
16 or kill me with the knives.

17 Q And do you believe your shooting was
18 consistent with your police training?

19 A Yes.

20 Q Do you believe that something less than
21 deadly force, whether it be OC spray or a taser, or some
22 other tool at your disposal could have safely been used
23 in this situation?

24 A No.

25 Q Why not?

1 A Safely been used in that situation, with
2 the distance, the rapid evolution of the whole call, it
3 doesn't take long to close 10 to 15 feet. And when you
4 are armed with a deadly, dangerous weapon, OC spray is
5 very ineffective at times. That doesn't stop somebody
6 from moving forward.

7 It may blur your vision, but even that, it
8 takes seconds to set in and cause effect. Tasers are
9 electronical devices that oftentimes fail. They are
10 also very hard to aim. I have never had a successful
11 taser deployment. It's not a tool that you use in a
12 rapidly evolving situation, when you have 10 to 15 feet
13 to save your life.

14 Q And do you know how many times you fired
15 your weapon?

16 A At the time I estimated six to five -- six
17 to four times, I think, is what I told somebody
18 initially. I know there was a round count.

19 Q But at the time, that was your perception?

20 A That was my perception, somewhere between
21 six and four rounds.

22 Q And could you tell whether that was having
23 any effect on the suspect when you were shooting?

24 A It wasn't until my last shot, that the
25 suspect started to fall down, and I could tell that

1 there was an effect on the suspect. He was stopping.
2 He was no longer advancing on us.

3 Q Were you aware of whether Officer Gavin
4 Sasser was also firing?

5 A I was.

6 Q And what was the reason that you made the
7 decision to stop shooting?

8 A Because I noticed the change in the
9 suspect. He was no longer advancing on us, he was
10 stopping, and falling to the ground.

11 Q And is that consistent with your training?

12 A Yes.

13 Q I am guessing you have thought about this,
14 replayed this in your mind since it occurred?

15 A Every day.

16 Q In hindsight, would you have made a
17 different decision, meaning a decision not to use deadly
18 force?

19 A No.

20 Q Why not?

21 A There's no other -- there's no other way
22 that you can play that scenario that deadly force isn't
23 justified. It was justified. And in my experience, in
24 my training, and the emotions I was feeling at the time,
25 it was the only option to protect myself and anybody

1 else on scene.

2 Q First time in your career that you have
3 used deadly force in a situation like this, I assume?

4 A Yes.

5 MR. REES: Any other questions for this
6 police officer?

7 A JUROR: Just a point of clarification.
8 Were you familiar with that area? Had you been over
9 there before?

10 THE WITNESS: Never. I knew that it was a
11 dead end, but I didn't know that it curved. I had not
12 been on that street personally.

13 A JUROR: That brings another question, is
14 why you stopped at the location you did and didn't
15 proceed around the corner with your lights?

16 MR. REES: You mean why he got out of his
17 police car?

18 A JUROR: Right.

19 THE WITNESS: Why did I get out of my
20 police car?

21 A JUROR: At that location, rather than
22 turning around towards the dead end.

23 THE WITNESS: I got out because I knew it
24 was a dead end, and I thought it was more likely that
25 the suspect would choose to go into a backyard or

1 somewhere my car couldn't go. So I thought my most
2 effective use would be to be on foot. And possibly, if
3 Officer Sasser fatigued, I could take over as the lead.
4 It was just -- to me, I wanted to be able to hear and
5 see everything more clearly than driving in my police
6 car. I wanted to be out on foot, and able to address
7 any situation appropriately.

8 Q BY MR. REES: Did you think he might jump a
9 fence or something, and escape that way?

10 A Yes.

11 Q In your experience, do people do that if
12 they get to a dead end?

13 A Yeah. They are jumping in a backyard and
14 jumping a fence, getting out onto Division Street.

15 A JUROR: Did you hear the suspect say
16 anything? Did he say anything about being shot, or
17 anything?

18 THE WITNESS: No, I never heard him say a
19 word.

20 A JUROR: When you discharged your weapon,
21 was he still advancing towards you?

22 THE WITNESS: Yes.

23 A JUROR: Can you -- it's probably hard to
24 approximate, but do you know how many feet he kind of
25 covered?

1 THE WITNESS: The distance he closed once
2 shots started?

3 A JUROR: Yeah.

4 THE WITNESS: One thing you asked, if I
5 could tell that Officer Sasser was shooting as well. It
6 was simultaneous. It wasn't -- I heard a gun shot, and
7 then said, oh, I should shoot, too, and brought my gun
8 out. It was literally as I pulled the trigger, I could
9 hear two guns going off. It was that simultaneous.

10 And they were fast. I mean it was five
11 shots that probably took less than two seconds to fire,
12 and I would guess the suspect had moved three or four
13 feet in that amount of time.

14 A JUROR: But once you discharged your
15 weapon and Officer Sasser discharged his weapon, the
16 suspect was still advancing towards you?

17 THE WITNESS: Correct.

18 MR. REES: If there are no further
19 questions, looks like there are none, we will excuse
20 this officer. Thank you for coming in this morning.

21 (Lunch recess taken.)

22 GAVIN SASSER,
23 produced as a witness, having been first duly sworn,
24 was examined and testified as follows:

25 THE WITNESS: Yes, I do.

DIRECT EXAMINATION

BY MR. JACKSON:

Q Could you please state and spell your name for the Grand Jurors?

A My name is Gavin Sasser. My first name is spelled G-A-V-I-N. My last name is spelled S-A-S-S-E-R. I am a police officer with the City of Gresham, and I have been for almost eight years.

Q How old are you?

A 29.

Q What education do you have?

A I have a bachelor's in business management from Eastern Oregon, and high school and everything before that.

Q You said you have been a police officer for the City of Gresham for eight years?

A In August, it will be eight, yes.

Q And have you had your whole law enforcement career with the City of Gresham?

A Yes, I have.

Q Could you describe the training you went through to become a police officer, and then the subsequent training while being a police officer?

A Yes. So our first training that we go to is the academy. It's 16 weeks where we learn laws, we

1 learn tactics, we do confrontational simulation,
2 physical training, things that we might encounter on the
3 road. From there -- that gives us the basic training.

4 From there with Gresham we do additional
5 training on defensive tactics, use of force. And then
6 every year we have in-service to kind of refresh this
7 training. And that also includes defensive tactics,
8 updates in law, use of force, taser, different kinds of
9 recertification, like first aid, DUI, confrontational
10 simulations, which is part of defensive tactics, use of
11 force.

12 They are basically scenarios that we might
13 face on the street from burglary to active disturbance
14 to incidents with weapons, things like that. And we are
15 basically an officer who then deals with those incidents
16 in a training environment with Simunition rounds, and
17 blunt objects, fake batons, things like that.

18 Q Okay. Do you also use a rifle, or have a
19 rifle at your disposal?

20 A Yes, I do.

21 Q And did that require additional training to
22 be authorized for that?

23 A Yes, it does. It required four full days
24 at the range. And since it's a different weapon,
25 there's different reloads, different scenarios,

1 different ways to carry, building searches and things
2 like that. Because when you were doing things with a
3 rifle, it's a lot different than just a handgun.

4 Different retention, which is like if someone -- if you
5 need to take someone into custody, what do you do with
6 your rifle to do that. It's a whole different -- so
7 that's the four days training. And that, also, we get
8 recertified on to make sure that we're up on our
9 qualifications.

10 Q So you went through, personally, the full
11 battery of trainings that Gresham -- the Gresham Police
12 Department has to offer?

13 A Yes.

14 Q And did you pass all of your certifications
15 and qualifications?

16 A Yes.

17 Q Officer Sasser, you are here voluntarily?

18 A Yes.

19 Q And you understand that you don't have to
20 appear in front of the Grand Jury?

21 A Yes.

22 Q But you are choosing to?

23 A Yes.

24 Q After the incident on May 24, 2016, you led
25 the detectives on the case on a walk-through; is that

1 right?

2 A Yes. Correct.

3 Q And you also understood at the time you did
4 not have to do that?

5 A Right.

6 Q You did that on a voluntary basis?

7 A Yes.

8 Q Since the May 24th incident, have you been
9 subject to a gag order?

10 A I don't know what you mean.

11 Q Have you been allowed to freely discuss the
12 details of the incident with fellow police officers,
13 command staff, anything like that?

14 A I haven't been able to discuss it, no.

15 Q Is that by order of your chief?

16 A I think so, yeah.

17 Q So let's now talk about May 24th -- I am
18 sorry, May 23rd, 2016, in that day leading up to the
19 incident. So how did that day begin for you?

20 A Just as any other day. We get logged on.
21 We go out to our district. My district was 168, which
22 is the Rockwood District that goes up to Marine Drive,
23 and the southern part is Glisan.

24 And I was on my way out to Rockwood when I
25 saw a car with its flashers on in the street, and

1 basically it was trailing a dog that was in the street,
2 trying to keep it from getting hit. So that's how my
3 day started. I helped try to keep a dog out of the
4 street, from getting hit. And wasn't able to catch it,
5 but it got into a neighborhood so it got off the busy
6 street. And then from there, just normal calls for
7 service.

8 Q What was the shift you were working that
9 day?

10 A It was night shift, so we start at 6:30 at
11 night. We get on the road about 7:00, and I am
12 scheduled to work until 7:00 the next morning.

13 Q In the hours leading up to you beginning
14 your shift, did anything in your personal life happen
15 out of the ordinary?

16 A No. Just an ordinary day.

17 Q When you say you logged on, what does that
18 mean?

19 A We go out to the back lot where we have
20 cars. We aren't assigned a car, so we have to find one.
21 All of our gear is kept in the department in the
22 mailroom. So we load our gear in the car. We make sure
23 that there's nothing in the back seats, make sure it's
24 got the proper equipment, lighting equipment, flares,
25 just things for our normal workday.

1 Q And before your shift started, did you take
2 any drugs or use any alcohol?

3 A No, I did not.

4 Q During your shift?

5 A No, I did not.

6 Q After the incident with the dog --

7 A Yes.

8 Q -- did you have any other calls that seemed
9 out of the ordinary to you?

10 A Not out of the ordinary. I remember the
11 call right before this incident was a drunk lady who had
12 lost her phone, but by the time we got there, she had
13 found it, and she -- she ended up being fine. So that
14 was -- I don't remember any of the other incidents.

15 This kind of took most of, you know, my
16 memory for that night. Just normal, normal stuff, you
17 know, to us, over eight years is disturbance and thefts
18 and things like that.

19 Q So let's talk about the incident we're here
20 for.

21 Do you recall how you got first information
22 about it?

23 A Yes, I do.

24 Q How was that?

25 A So we were just -- I was actually with

1 Officer Carlson on a previous call at 175th and Stark,
2 and he was dispatched to this call because it was in his
3 district. And do you want me to walk through on the --

4 Q Sure. If you want to come up to the
5 screen, yeah.

6 A So here's 174th and Stark. 175th is this
7 one that runs north and south. So Officer Carlson and I
8 were leaving this location. Since I was with Officer
9 Carlson and he got dispatched, I volunteered to go with
10 him.

11 And it was a disturbance, and the call was
12 dispatched as a female screaming, and screaming for
13 help. And it was called in at 801 Southeast 190th,
14 which is going to be over here. 801 is about -- 801 is
15 about this block here. It's on the west side of the
16 street. It's an apartment complex, and there's a big
17 apartment complex just to the south, and then also just
18 to the east. So the initial call was heard only. So
19 we --

20 Q What does that mean?

21 A When someone hears a disturbance they might
22 not know where it's coming from, especially in two large
23 apartment complexes. They don't know which apartment
24 complex it is, or which specific unit because there's
25 100 or so complexes right around there.

1 So when it's heard only, it means that the
2 person is calling because they hear it. That allows us
3 to go into the area and try to find where this
4 disturbance is coming from. So that first caller was
5 801 Southeast 190th. We both went Stark -- I went Stark
6 and then south on 190th.

7 As we were coming into the area we were
8 getting more calls. The next call that I remember
9 dispatch advising was it was someone who saw a female
10 who was screaming and yelling for help, and there was a
11 male that had forced her into a vehicle.

12 And what I remember is other people were
13 now starting to call on the same disturbance. And I
14 remember a silver sedan, it could have been a silver
15 sedan. Also, there was an update about a brown SUV
16 vehicle.

17 And as we were getting into the area
18 another update was that it left south on 190th from this
19 area. This is where all the calls were generated from.
20 It's the East Park Place Apartments, and then also the
21 Grant View Apartments. So it originated somewhere
22 there.

23 The car left south on 190th. The next
24 update is that it went west on Division -- it went south
25 and then west on Division. We don't know how far. We

1 don't know where that was, just what an update had said.

2 Q Let me jump in here. So as these updates
3 are coming to you, what is going on in your head?

4 A I am thinking it's a disturbance, a female
5 screaming and yelling for help, being forced into a
6 vehicle, that it's a kidnapping, and we need to find
7 this vehicle before they go somewhere and disappear.

8 So I told dispatch, I asked them to let
9 Portland know, because Portland is -- borders our city
10 to the west. So just to get as many people knowing
11 about this car, because we need to find it because of
12 that possible kidnapping situation.

13 Q Did you have your lights and sirens on as
14 you were coming into the area?

15 A I did not.

16 Q Why is that?

17 A Because it wasn't -- it's late at night.
18 There was no traffic. It's not one of those situations
19 that we were already in the area, so we want to look for
20 the vehicle. And we don't want the possible suspect to
21 see our lights and pull into somewhere, or dark out and
22 pull into an alley, or parking lot, or something.

23 So this tactical approach without lights
24 and sirens is appropriate for this situation when we're
25 trying to find somebody, because otherwise with lights

1 and sirens they will hide, is the general --

2 Q Do you remember about what time it was?

3 A I don't, not off the top of my head. About
4 midnight, or shortly after.

5 Q So records indicate you were dispatched out
6 to Southeast 190th and Yamhill at about 3:05 in the
7 morning. Does that sound about right?

8 A Yes. Yes.

9 Q And you got into the area about 3:07?

10 A Yes.

11 Q It seems like it only took a couple of
12 minutes to get from Stark and 175th into the area?

13 A Right. Right. There is a little bit of
14 delay as the calls are coming in, in order for people to
15 call, to get routed through dispatch, and then to us.
16 There's a little bit of a delay there.

17 So as I came into the area, I actually, on
18 190th, I went west here on Yamhill. This is Yamhill.
19 This big through-street here, because I wanted to get
20 over to 181st, which turns into 182nd right here. This
21 is a main through-street. And this street also leads to
22 the freeway. We have a lot of people that will get to
23 84, I-84. They have access east, west, Washington.

24 I actually, what we call parallel. I
25 paralleled west on Yamhill, and then south on 182nd to

1 see if the vehicle was going to pass me heading to I-84.
2 I made it all the way past Division, and I didn't see it
3 either way on Division. I kept going south, and I
4 almost made it to Powell. Once I could see Powell,
5 which is farther south, right here, so 26, this is also
6 Powell. There's a little hill here.

7 Once I saw that there was no vehicles on
8 this stretch, I turned around to go back to the initial
9 area of calls. The car that was reported, we couldn't
10 find it anywhere. Officer Carlson was also in the area
11 looking. He took a different route than me.

12 As I was going back north on 182nd there
13 was an update in our calls that hadn't been dispatched
14 yet. And the call was at 2227, I believe was the
15 address, on Southeast 189th, was a silver sedan. There
16 was a female inside banging and screaming, and it was --

17 I was talking with Officer Carlson on one
18 of our tactical radio channels, where what that is is
19 it's not the main dispatch network for the whole area.
20 We have tactical channels where we can converse in plain
21 talk.

22 So we communicated with each other. Did
23 you see the update? And he was still kind of in the
24 area, as well. And instead of going back to the
25 original area of the calls near 190th and Yamhill, we

1 agreed to go to the location of the silver sedan with
2 the female banging in the car, yelling for help and
3 screaming, stuff like that.

4 Because it was -- I'll show you on the map
5 here. So I went back on 182nd. I went east on Division
6 right to 190th, and then you can kind of zoom in on that
7 whole area there. I went -- 189th is right here, and
8 2227, I pulled it up on the map, and it was the second
9 house south of Grant, on the west side of the street.
10 And that's where the car was supposed to be parked, the
11 silver sedan.

12 Sometimes these are situations -- so I am
13 approaching from the north on 190th. These are
14 situations that we have to decide, based on the
15 situation, also our use of other officers and things
16 like that, whether we approach by ourselves alone,
17 without backup, or we wait.

18 In this situation, I decided to go in
19 because of a female yelling and screaming for help, and
20 a probable kidnap situation. I didn't want it to get
21 mobile. I didn't want them to take off again, and then
22 now we have this car trying to get away. I don't know
23 how injured the female is. I don't know the situation.
24 I don't know how many possible suspects there are, but
25 at that point in time, I decided to do what I could to

1 intervene and make whatever was going on stop.

2 Q Did you know where Officer Carlson was
3 located when you made that decision?

4 A I did not. I knew that he said he was in
5 the area looking for the car, so I knew that he was at
6 least within proximity, but 190th you can see the whole
7 length of here.

8 A JUROR: He wasn't in front of you?

9 THE WITNESS: No, but --

10 A JUROR: But when you were heading back to
11 Grant Street, or Grant Court, whatever the street is, he
12 wasn't in front of you?

13 THE WITNESS: No, he wasn't. Not that I
14 know of. There was -- when I turned north here, I did
15 see a car, but I didn't know if it was him or not. And
16 there was no cars coming towards me that I could see,
17 and there was no cars behind me that I could see. So if
18 he said he was going to meet me there, I expected him to
19 be coming towards this address. And I didn't see
20 anybody there that would be coming to help.

21 Q BY MR. JACKSON: But you did see the
22 taillights of a vehicle in front of you on 190th?

23 A Right. Right. But it was going north, and
24 it wasn't going over here to this location. So when I
25 said that we were going to meet back at that location,

1 there was no cars coming in my direction. So I -- when
2 I turned west on Grant, I slow -- I didn't have my
3 lights on at this time. I slowed -- can you zoom in
4 slightly?

5 Q Do you want to go to street view?

6 A Sure. That will work. So I turned down
7 here, this is Grant Street. This is 190th that we're
8 viewing, right there. So you can see how long it is. I
9 didn't see any cars coming towards me, and I didn't see
10 any cars behind me. So I knew I was going to be alone
11 for at least the time that it would take somebody to
12 make it that distance.

13 So I -- I knew that the location was going
14 to be on the west side, two houses, south on 190th here.
15 So I slow rolled in, and I kind of took it wide so that
16 I could see the angle on this house over here. And
17 somewhere in this section here (indicating) there was a
18 silver sedan. And I figured, okay, that's the car. It
19 was still parked there. I didn't want them to leave.

20 As I turned around the corner here, I
21 turned on my overhead lights, which means the police are
22 there. And I turned my spotlight onto the car to
23 illuminate. And I saw a white male that was walking
24 away from the car, and he was on the sidewalk.

25 So I turned the corner, and I angled my car

1 right here with my spotlight on, and I said, Stop.

2 Q Let me jump in here. So if you look at
3 this map right over here --

4 A Yeah. So I turned here, I angled in, I
5 shined my spotlight. There was a male walking on the
6 sidewalk, and he was walking towards my car on the
7 sidewalk. He had big eyes, just staring right at me.
8 And I told him to stop, and he kept walking, he had -- I
9 think they were like cases of beer in his hands on the
10 sidewalk.

11 At that time I saw the female. I don't
12 know if it was the driver door or the passenger side
13 door. It was a female and she had this really
14 frightened look on her face, and she started pointing at
15 the male. And I told the guy, Have a seat, because
16 there was a curb there. Whenever we approach these
17 situations by ourselves, we want to try to split parties
18 up and get in situations of control. And having someone
19 sit down is a good way to judge their cooperation, but
20 also a good way to get control.

21 At this time --

22 Q Is that something that you were trained to
23 do?

24 A It's something that I have used over the
25 years, and it works, generally. And if it doesn't, if

1 they don't make that motion to sit, then you know that
2 you need to get other cars there, because they are not
3 going to comply with what you are saying.

4 Q At this point in the encounter, what was
5 your kind of risk or threat assessment like?

6 A I don't know if he's the only subject. I
7 know there's a female and there's a male. I haven't
8 been able to check the car. I don't know if someone
9 else is in the car. I don't know if there's another
10 victim, or subject. It was just the car and the two
11 people.

12 I wasn't able to tell if there was anybody
13 else still sitting in the car, but after -- after I
14 told -- and the car had been there for quite some time
15 with the updates and things. I didn't know if someone
16 may have already walked away from the car, and was in
17 along this sidewalk here. Like I said, I didn't know
18 how many people were actually involved and where they
19 were at. I just had two of the people.

20 I knew that guy was involved based on the
21 female's frightened look and pointing, pointing at him.
22 And told him to stop. Told him to sit down. After he
23 just stared a hole straight through me, I raised my
24 voice at him again. I was still standing over towards
25 my driver's side, so that I would have some sort of

1 separation, and the spotlight if I needed it.

2 I started walking around the front of my
3 car, and I told him, Take a seat. And he's still just
4 staring straight through me. And he dropped the cases
5 of beer right by my tire here, and started running north
6 on 189th.

7 Q So if you want to come back to the street
8 view here, you said that he was running -- he started
9 running?

10 A From the sidewalk, running north, yeah.

11 Q What did you do then?

12 A I went around -- so my driver's side of the
13 car, I hadn't quite made it to the front of my car, so I
14 ran to the back of my car. And I yelled at him, Gresham
15 Police, Stop, get on the ground. You are under arrest,
16 Gresham Police, and he kept running.

17 I got right about the middle of the
18 intersection here. He ran across and turned west on
19 Grant Street. That's when I got on the radio after I
20 had told him to stop multiple times. I got on the radio
21 to say, Foot pursuit, westbound on Grant from 189th.

22 And whenever you say that, you don't need
23 to ask for code 3, which is lights and sirens, police
24 response, we need help.

25 People know that if you are in a foot

1 pursuit, there's a possibility, obviously, for
2 uncooperative people, possibility for a perimeter. If
3 we were -- we're trained not to chase when they go out
4 of sight if they round a corner, because they could be
5 waiting for you. So in those situations we need lots of
6 cars in the area for perimeter to help apprehend the
7 subject.

8 So I continued west, if you want to use --
9 and we went across Grant, northbound. Like somewhere
10 through here we got up on the sidewalk, and I remember
11 seeing a giant, like, it was a crack in the concrete
12 because it's dark. It's lit by street lights -- not
13 street lights, the porch lights. So there's some porch
14 lights. There's some light, but there's not very much.

15 I am still yelling at him, Gresham Police,
16 Stop, get on the ground. You are under arrest. And
17 he's not listening, he's not stopping, and not slowing
18 down.

19 Q When did you become aware of Officer
20 Carlson coming into the area?

21 A His lights and stuff, when I was -- it was
22 about through this section here, right before we turned
23 the corner is when I realized that he was behind me,
24 because of the lights.

25 A JUROR: Lights of --

1 THE WITNESS: The car, the police car. The
2 overheads.

3 Q BY MR. JACKSON: You mean Officer Carlson's
4 patrol lights?

5 A JUROR: So you noticed Officer Carlson's
6 lights right about this --

7 THE WITNESS: Right before this corner.
8 And the reason I remember that is I was almost catching
9 up to the subject. And instead of grabbing onto him, I
10 decided to try to gain control by pushing him.

11 A JUROR: So where -- so this house right
12 here, where exactly is this house? Is that 189th?

13 THE WITNESS: It's right before this corner
14 on Grant. So right before that corner I had just enough
15 momentum, and I was gaining ground, that I tried to push
16 the guy to use his momentum so that he would go to the
17 ground instead of grabbing onto him and trying to throw
18 him to the ground.

19 What that would do is allow me advantage
20 and control to where I would have time to then possibly
21 have Officer Carlson catch up, and we go hands on, which
22 just means grabbing on to gain control of this guy. It
23 also would allow me time for transitioning to a taser or
24 something, a different tool, like baton, if necessary,
25 or OC. But a taser is what I wanted to use at that

1 time.

2 Q BY MR. JACKSON: And OC is the pepper
3 spray?

4 A Pepper spray. But really it would have
5 allowed time for Officer Carlson, for the two of us to
6 be able to engage this guy on the ground, instead of
7 running.

8 Q Why didn't you just shoot him with the
9 taser while he was running away from you?

10 A When you shoot somebody with a taser, and
11 the time that it actually works -- a lot of times they
12 don't even work based on clothing, and the angle.
13 Because the taser, one goes straight and the other is a
14 down angle. It's an 8 percent down. So if you have the
15 taser turned at a slight angle, the top one will go
16 straight, but the bottom one will go at that angle and
17 you might miss.

18 But what happens when you tase somebody is
19 their muscles tense, and it would make them, at this
20 forward momentum, not be able to stop themselves as they
21 hit the ground. This retaining wall, the sidewalk, the
22 post, basically with that guy's forward momentum, if I
23 were to tase him and it actually worked, he wouldn't be
24 able to stop himself as he's going to ground, and that
25 would have caused him to hit his head. It could have

1 caused serious injury.

2 So that's why I wanted to get him on the
3 ground so that I could essentially use that kind of
4 tool, and allow time for Officer Carlson to catch up and
5 help.

6 Q BY MR. REES: So your answer seems to
7 suggest very strongly that at that point you didn't feel
8 that it would be justified to use that level of force,
9 which would have resulted in serious physical injury or
10 death to him by hitting the pavement or something?

11 A Yeah. Right. That is correct, at that
12 point. Do you want me to go ahead?

13 Q So after you shoved him --

14 A JUROR: So to clarify, by you thinking --
15 by you wanting to use the taser, you also didn't think
16 it was necessary to use deadly force?

17 THE WITNESS: At that point, correct.
18 Because that's what -- yeah, that's our level of force,
19 someone running and using a taser, it could cause
20 serious physical injury or death. Whereas, if you push
21 somebody when they are running, they still have the
22 ability to stop themselves and use their hands and
23 stuff, things like that.

24 So that's how we try to gain control of
25 someone enough to then lower the risk of injury to the

1 subject, so that we can't use a tool like that. So
2 after --

3 MR. JACKSON: Any other questions about
4 that?

5 Q BY MR. JACKSON: So after you pushed him
6 what happens after that?

7 A So he hadn't said anything up to this
8 point. Just from that initial contact, he just stared
9 wide eyes, a hole right through me. Right after I
10 pushed him, he had kind of lost his balance a little
11 bit, but my momentum wasn't enough to make him fall to
12 the ground.

13 And I remember him saying, I will stab you.
14 And from -- he went from running with his hands, you
15 know, at his sides in a running motion, to disappearing
16 to the front of his body, I could not see his hands
17 anymore. I did not know if they went into his pockets,
18 I did not know if they went to his front waistband.

19 What I did know is he said, I will stab
20 you. And I didn't know if he was going to come out with
21 a gun at that point. He disobeyed every single command
22 I had given him up to this point, and I was preparing
23 myself for possibly having to defend myself from a gun.

24 And so I backed off a little bit. I gave
25 him some more space, as I kept running. At this point,

1 my commands --

2 Q Let me jump in. Why, once he made that
3 statement and his hands disappeared, why did you decide
4 to give him more space?

5 A Reaction time. If it was a knife -- I was
6 preparing myself for a gun, because he would have been
7 able to get multiple rounds off at me before I could
8 even react. Reaction time to be able to find cover on a
9 tree, or a car. Or if it was a knife, at least if he
10 did decide to turn around or stop, I would have that
11 space to react, because we're always behind the curve.
12 Our actions are always dictated by the actions of the
13 subject.

14 Q BY MR. REES: When he said, I will stab
15 you, why did you think, possibly, he was going to pull a
16 gun instead of a knife?

17 A Because he's not listened to any commands.
18 He's now verbally demonstrated that he wants to harm me,
19 and I was preparing myself for the worst so that I would
20 have time to react, basically.

21 There's always that chance that any kind of
22 weapon -- I think a gun would be the worst, because it
23 can reach from farther distances. So mentally, we have
24 to prepare for any possible situation.

25 Because we don't know what is going to come

1 at us. We always have to react. So I was preparing for
2 a gun, and that's just preparing for the worst. I also
3 prepared for a knife, giving distance, giving space so
4 that I can react to him turning around and charging at
5 me.

6 All of these things, whenever we're in a
7 situation, we have to prepare and think for any possible
8 thing that can happen. If you don't prepare, then you
9 might not be ready, and you might be caught off guard,
10 which then your reaction is slower to it.

11 A JUROR: So why are you preparing for any
12 type of thing when he's clearly said, I will stab you,
13 which indicates, I think, to most people a knife, versus
14 a gun?

15 THE WITNESS: Options. When people reach
16 to their center waistline, their pockets, we don't
17 always know what they are going to come out with. I may
18 have had -- and this is one of those situations where we
19 prepare for everything. And when someone is not
20 listening to you, and they verbally demonstrated that
21 they want to do violence against you, I prepared for a
22 knife mentally. I also prepared for a gun, because we
23 just don't know. We never know.

24 He may have changed his mind at the last
25 moment, pulled out a gun instead of a knife, and if I am

1 not prepared for a gun, what am I going to do if I am
2 presented with a gun? Then I am behind the curve, and I
3 wouldn't be preparing myself mentally. So we have to
4 prepare ourselves for anything, really, so that's why.

5 Q BY MR. JACKSON: So he makes that statement
6 to you, you started backing off and giving him space.
7 What happened then?

8 A I am preparing, at that point, because
9 we're going to this dead end around the corner. I am
10 preparing my mind, now he's -- probably has a weapon.
11 He's not listening to commands. He's verbally decided,
12 or verbally shown me that he wants to do harm to me.

13 I am thinking, when this guy disappears,
14 then it's going to be one of those perimeter thing
15 situations that I am talking about, because I know that
16 he's coming up to this dead end. And there's nowhere to
17 go, and I am not going to chase him into darkness.

18 So when he told me, I will stab you and
19 starts reaching into his pockets at that corner, my
20 commands to him, instead of Gresham Police, Stop, Get on
21 the ground. You are under arrest. Show me your hands.
22 Gresham Police, Stop, Show me your hands. Show me your
23 hands. Because his hands are what is going to do damage
24 with whatever comes out.

25 And he didn't listen to any of that. He

1 didn't pull his hands out. He kept his hands in front
2 of him. I couldn't see them. We're running down the
3 sidewalk. I know that Officer Carlson is now running to
4 my left, also, and I am still chasing the guy, yelling
5 at him, Show me your hands.

6 Right up here in the corner of this
7 cul-de-sac, he stops. I believe it was right around
8 this area, he stops, and so I stop.

9 Q Where did you stop?

10 A I don't know where it was specifically,
11 here, but it was from about me to the desk, or to where
12 you are sitting, sir. Not quite to the wall. That's
13 how much space that we had.

14 And I know that Officer Carlson was over
15 here to my left. Maybe a little bit farther than where
16 you are at, sir. The subject, he had this sweatshirt,
17 this gray sweatshirt on, blue jeans on, and he just
18 stopped -- and he kept facing away, hands to his front.
19 Still couldn't see his hands. This is when I stopped
20 running. I pulled out my gun and was challenging him.

21 And what that means, I radioed to dispatch,
22 We're challenging. What that means is we're yelling at
23 a subject and trying to get them to comply with our
24 commands. And this was, Show me your hands. Gresham
25 Police, Show me your hands.

1 Q You said you, at that point, decided to
2 actually draw your firearm?

3 A Yeah.

4 Q How had the situation changed from earlier
5 when you were considering drawing a taser and using
6 that, why were you now drawing your firearm?

7 A Threat of violence to me. And since he had
8 threatened violence towards me, then also to Officer
9 Carlson, since we're trying to apprehend the subject, so
10 there's a threat of serious physical injury and death
11 with, I will stab you, to not knowing if he's going to
12 present a gun or knife. And that's what escalated the
13 situation, is him not following commands, and also him
14 saying that he wants to do bodily injury to us.

15 Q So you radio, We're challenging one in the
16 cul-de-sac. What happens then?

17 A So he turns around, the subject turns
18 around, and he doesn't look at me. He turned around
19 this way, and he saw Kevin, and started walking towards
20 Kevin.

21 Q Officer Carlson?

22 A Officer Carlson, yeah. I saw something in
23 his right hand. It was a shiny object in his right
24 hand. He was holding it out in front of him, walking
25 towards Kevin, staring at him. And it doesn't register

1 to me quite at that time, but I heard Officer Carlson
2 yell, Drop the knife. And I yelled, Drop the knife.
3 Drop the knife. And he kept walking towards Kevin --
4 sorry, Officer Carlson.

5 Officer Carlson took a few steps back, and
6 the subject was still gaining on him. And he's still
7 holding that object out in front of him. And I am
8 yelling, Drop the knife. Drop the knife.

9 A JUROR: Was there one knife or two
10 knives?

11 THE WITNESS: I only saw the one out in
12 front of him like this. And he was gaining on Officer
13 Carlson. As the subject is approaching Officer Carlson,
14 we're out in the middle of this cul-de-sac towards this
15 angle. I am over here.

16 There's no cover. There's nothing to get
17 behind. There's nothing to slow the subject down.
18 There's nothing for us to -- for me to be able to get
19 behind as a barrier. A lot of times we can use cars or
20 dumpsters, or something, just to allow us more time. In
21 this case we didn't have that.

22 As he's gaining on Officer Carlson, who had
23 taken a few steps back, trying to keep up with this, I
24 start moving this way. So all I have is a profile view
25 on the guy, which goes back to -- in this case it

1 happened really fast. I didn't have time to transition
2 to a taser, which -- what that entails, what that
3 requires, is to put my gun away and to pull my taser,
4 switch it to my right hand, turn it on, get target
5 acquisition, and then to fire. There was no time for
6 that.

7 And with the side profile, the chances of
8 that even connecting, which means like I talked about,
9 that slant, when you have one dart going straight and
10 the other one at an angle. Even if it's a target as big
11 as this file cabinet, if I have -- if you have a taser
12 slightly slanted, the first one will go straight and the
13 next one will come down at an angle, and miss your
14 target altogether. And that gap is separating, based on
15 your space.

16 Q BY MR. JACKSON: And if both probes don't
17 connect with the skin, the taser is completely
18 ineffective?

19 A Correct. They are little barbs. I have
20 seen them work mostly on people without shirts. If you
21 have any sort of layering, any sort of loose -- even in
22 my T-shirt, any sort of loose clothing, that dart can go
23 into and get stuck in the clothing and not connect with
24 the skin. And it's the muscular system that that works
25 with, and locks up the system.

1 Q And what would it take to fire another
2 taser shot?

3 A So once you spend one cartridge, my next
4 cartridge is in my cargo pocket. It's got a little
5 plastic cover on it, so that any sort of electro -- you
6 know, activity, electronic activity won't set the probes
7 off.

8 So I would have to discard the original
9 cartridge, go to my cargo pocket, take off the plastic
10 top on it, reload it, turn it back on, acquire target
11 again, and then get another chance at something that may
12 or may not work.

13 Q So given the scenario that you are
14 describing, that was not a feasible option?

15 A That was not an option, no.

16 Q What happened next?

17 A Once the subject got to about, maybe, me to
18 the wall, it was two or three steps, and this also the
19 subject was walking -- he wasn't even running, he was
20 walking at a fast pace. So at any moment, if he decided
21 to take two leaping lunges, if he decided to start
22 running, if he decided to do anything other than keep
23 the pace that he was already gaining on Officer Carlson,
24 it would have been about two steps, which is a matter of
25 a split second.

1 And contrary to what some people might see
2 in movies and things like that, someone with a forward
3 momentum with a deadly or dangerous weapon carries that
4 momentum forward until something decides to shut down.
5 They don't get blown back. They don't just
6 automatically stop. They carry that momentum.

7 And so at that point, he was well within
8 the 21 feet, which is the idea of someone running at
9 you, your reaction time, getting a couple of rounds off,
10 that forward momentum, he was well within that space for
11 us to be able to react had his momentum changed the
12 slightest.

13 And that's when I decided to shoot to
14 protect Officer Carlson from this subject, who had the
15 knife in front of him, going straight towards Officer
16 Carlson.

17 Q What did you think would happen to Officer
18 Carlson if you did not shoot?

19 A He would have sustained serious physical
20 injury or death. I was worried about death. He already
21 said stab. People who get stabbed can bleed. We also
22 have this unknown around the corner. We haven't dealt
23 with the car. We don't know how many more people.
24 We're focused on this guy who is presenting this deadly
25 threat to us.

1 And we aren't even able to use anything
2 else to know what is going on back at the car, or
3 knowing if someone else is going to be coming from a
4 driveway, or a tree, or something. And so we have all
5 of these unknown threats around us, as well. But he was
6 presenting that deadly threat to Officer Carlson, and so
7 we had to stop that threat.

8 Q How many times did you fire?

9 A When his forward momentum stopped and he
10 started to fall to the ground, that's when I stopped
11 shooting. He -- his forward momentum stopped. He
12 started to fall to the ground, still yelling at him,
13 Drop the knife.

14 At that point when he -- he fell down and
15 laid on his back, and he was still moving. He had a
16 knife in his left hand, and then there was a knife at
17 his head that I saw on the ground. So he was -- still
18 had that knife in his left hand, and he was still
19 moving. And I was yelling at him, Drop the knife.
20 Throw it away. Throw it away.

21 Because if someone is still alive, and he's
22 still that deadly threat, if we were to approach, we're
23 not going to then put ourselves in that position. After
24 we stop the threat, now we're able to have some sort of
25 control of that scene.

1 I remember Officer Carlson had advised that
2 shots were fired, and then that's when I also got on the
3 air. The radio and asked them -- asked dispatch to
4 start AMR code 3, which is their quickest response. And
5 to have AMR staged, because once we did get this subject
6 in control, then we were going to want to get him
7 medical assistance as soon as possible.

8 And so through those transmissions I yelled
9 at him, Throw the knife aside. Drop the knife. Because
10 there was that one towards his head.

11 When he stopped moving, I told officer --
12 Officer Carlson and I worked it out to where we would
13 still watch our 360, because it was still just the two
14 of us at this point. And we don't know who else is
15 going to be showing up.

16 So Officer Carlson -- I watched his back as
17 he moved the knives away, took the subject into custody.
18 And so I was watching the surrounding area to make sure
19 nobody else was going to be approaching us, no other
20 threats.

21 The female, I mean, controlling someone who
22 was involved -- I knew there was the female. I didn't
23 know if she was going to be running over and us having
24 to control her.

25 So when Officer Carlson got the subject in

1 custody, I -- we transitioned. I had him -- I had a
2 safety belt cutter on my drop holster, and so I went to
3 first aid. Officer Carlson watched as I was tending to
4 him, got him in the recovery position, which is on your
5 side, legs up, room for -- to breathe, and I cut his
6 shirt off.

7 At that time, I thought I could still feel
8 a pulse, but he wasn't breathing. And so I advised
9 medical that -- send medical in. And it still took
10 them -- seemed like forever to still get there. But so
11 I cut his shirt open to expose where I saw most of the
12 bullet holes. There was no bleeding. We're trained in
13 first aid to do tourniquets, compression, all of that.
14 And that only works on things that are actively
15 bleeding, but there was no bleeding.

16 So I exposed all of his chest. I didn't
17 see any breathing. There was nothing more that I could
18 have done with him. I just kept him in that recovery
19 position, and then that's when another officer had
20 arrived, and I told him to go deal with the car because
21 nobody had gone over there yet.

22 Q The silver car?

23 A The silver car. And then when medical got
24 there, then they took over.

25 Q Okay. You can have a seat, if you would

1 like.

2 Was this the first time in your career that
3 you have had to use deadly force?

4 A Yes.

5 Q Did you think, when you became a police
6 officer, that this was going to be something that happened?

7 A I know the probability is low, but I know
8 that there is that possibility, and we train for it.
9 And we prepare others for a situation like this, because
10 that's just part of our job. We deal with a lot of
11 situations that we may only encounter a couple times in
12 our career, this being one of them. But we prepare for
13 them so when they are presented, we know how to handle
14 them.

15 Q And do you feel the actions you took in the
16 early morning hours on the 24th were consistent with
17 your training?

18 A Yes.

19 A JUROR: I have one quick question. When
20 you -- Officer Carlson, you said, took him -- took the
21 subject into custody, what does that entail when the
22 suspect is down?

23 THE WITNESS: Sure. When the suspect is
24 down, we don't know if they are going to -- No. 1, if
25 they are faking, or they come back to life -- we don't

1 even know if he's dead. So what we do is we make --
2 it's our job to make the scene safe, so that medical
3 personnel can get to him. Because we have to not only
4 make sure that the scene is safe for us, but also for
5 medical personnel when they arrive, they want to make
6 sure it's safe. When we say, Send medical in, medics
7 know that the scene is safe, and it's okay for them to
8 come in.

9 Q BY MR. REES: I think he's asking, what did
10 he do to take him into custody?

11 A Oh, on his side, handcuffed behind his
12 back, like we would anybody else, just like our policy
13 is.

14 A JUROR: Thank you.

15 THE WITNESS: Thanks for the clarification.

16 MR. JACKSON: Are there any other questions
17 for Officer Sasser? I don't see any.

18 Do you have anything, Don?

19 MR. REES: No.

20 MR. JACKSON: That is it.

21 MR. REES: Can we take a five-minute break?

22 (Brief recess taken.)

23 MR. REES: So let's swear in the witness,
24 please.

25 BRANDON CRATE

1 produced as a witness, having been first duly sworn,
2 was examined and testified as follows:

3 THE WITNESS: Yes.

4 EXAMINATION CONTINUING

5 BY MR. REES:

6 Q Detective, please identify yourself again.

7 A Brandon Crate, C-R-A-T-E.

8 Q A question from a grand juror after the
9 break was, were there any body cameras in this case?

10 A No, there was not.

11 Q And is there a reason for that?

12 A Our agency doesn't have body cameras, at
13 this point.

14 A JUROR: I have a question. Were there --
15 was there a dash cam from Officer Carlson's car when he
16 had parked on Grant Street?

17 THE WITNESS: None of our vehicles are
18 equipped with dash cameras, either.

19 MR. REES: Are you asking that, because we
20 do see some?

21 A JUROR: So you had a video from an Oregon
22 State police car, so I wasn't sure if Gresham Police
23 cars had the dash cams.

24 THE WITNESS: No, we don't.

25 Q BY MR. REES: Because we did see the Oregon

1 State Police video that was a dash cam, and in the
2 PowerPoint presentation we saw two different camera
3 angles. So just remind us, where did that video come
4 from that you had?

5 A That was -- came from the house that was
6 located on the southeast corner of 189th and Grant.

7 Q And was that a home video surveillance
8 system?

9 A Yes, it was.

10 MR. REES: Any other questions about that?
11 Thank you, Detective.

12 Great questions. Get it on the record, and
13 people are talking about body cams, obviously, and they
14 don't have them yet in Gresham.

15 (Proceedings concluded at 2:05 p.m.)

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1 STATE OF OREGON)
2)ss
3 COUNTY OF YAMHILL)
4

5 I, Deborah L. Cook, RPR, Certified Shorthand
6 Reporter in and for the State of Oregon, hereby
7 certify that at said time and place I reported in
8 stenotype all testimony adduced and other oral
9 proceedings had in the foregoing hearing; that
10 thereafter my notes were transcribed by computer-aided
11 transcription by me personally; and that the foregoing
12 transcript contains a full, true and correct record of
13 such testimony adduced and other oral proceedings had,
14 and of the whole thereof.

15 Witness my hand and seal at Dundee, Oregon,
16 this 27th day of June, 2016.

17
18 



19
20 DEBORAH L. COOK, RPR
21 Certified Shorthand Reporter
22 OREGON CSR #04-0389
23 CALIFORNIA CSR #12886
24 WASHINGTON CSR #2992
25

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