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MULTNOMAH COUNTY GRAND JURY  
OFFICER USE OF FORCE INVESTIGATION

Injured: Donald Allen Perkins )  
Date of Incident: February 9, 2017 ) PPB No.  
Location: SE 22nd Avenue & ) 17-40263  
SE Lafayette 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 8:30 a.m., on Tuesday, March 14, 2017, at the Multnomah County Courthouse, Portland, Oregon.

APPEARANCES

Mr. Brian S. Davidson  
Deputy District Attorney  
On Behalf of the State of Oregon.

\* \* \*

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

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P R O C E E D I N G S

Tuesday, March 14, 2017

MR. DAVIDSON: Good morning, everybody.

We're going to go ahead and call our first witness in this review. With that, we would call Brad Clifton.

Go ahead and introduce yourself and state and spell your full name for us.

THE WITNESS: Brad Clifton, B-R-A-D, Clifton, C-L-I-F-T-O-N. I'm a detective with the Portland Police Bureau.

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

5

6 EXAMINATION

7 BY MR. DAVIDSON:

8 Q All right. You've introduced yourself  
9 already. Please tell the Grand Jury a little bit about  
10 your current state of employment.

11 A I'm currently assigned to the homicide  
12 detail in the detective division with the Portland  
13 Police Bureau. I've been employed with Portland Police  
14 for 18 years. I've been a detective almost ten years.

15 And prior to my assignment in the homicide  
16 detail, I was a detective in the Gang Enforcement Team  
17 for over seven years.

18 Q Okay. And prior to becoming to police  
19 officer, did you go to college? Do you have a degree  
20 in anything?

21 A Yes. I have a Bachelor of arts in criminal  
22 justice and a Master of arts in criminology and  
23 criminal justice as well.

24 Q And during your time as a detective, what's  
25 been, I guess, your primary type of investigation that

1 you've conducted?

2 A Person crimes, attempted murder, murder and  
3 then robberies as well, and then kind of whatever else  
4 came about.

5 Q Okay. I imagine a lot of those  
6 investigations related to gang crimes; is that right?

7 A Yes.

8 Q All right. It's my understanding that you  
9 were assigned as the lead detective to investigate the  
10 officer-involved use of force that occurred the evening  
11 of February 9th of this year; is that right?

12 A Yes, I was.

13 Q All right. Why don't you just tell us kind  
14 of how you first became aware of this occurrence.

15 A February 9th, 2017, the homicide detail,  
16 which investigates all officer-involved shootings in  
17 the City of Portland, we were paged out to the area of  
18 22nd, SE 22nd Avenue between Powell and Lafayette on an  
19 officer-involved shooting. Shooting occurred at about  
20 1722 or 7:22 hours -- 1922 hours, so 7:22 in the  
21 evening.

22 We arrived on scene. We didn't know a whole  
23 lot of details. And then once we arrived on scene, we  
24 meet up as a group and then are briefed on the known  
25 details at that time at the scene.

1           Q       Okay. My understanding is you've obviously  
2       been engaged in an ongoing investigation of this  
3       incident since that time; is that right?

4           A       Yes, I have.

5           Q       And I'm going to hold up this binder, which  
6       you gave to me. This is I guess the sum of the police  
7       reports and disks of evidence and such in this case at  
8       this point?

9           A       Yes, it is.

10          Q       All right. So you've I think prepared a  
11       PowerPoint presentation for us to kind of give us an  
12       overview of what your investigation revealed about what  
13       occurred during that incident; is that right?

14          A       Yes.

15          Q       Okay. If you would like just to go ahead  
16       and walk us through that, that will be great.

17          A       Okay.

18          Q       To let you know, I've seen the video since  
19       this happened at night, and there is video -- some of  
20       the video is quite dark. So maybe at that point it may  
21       be easier for us to see what happened, we may want to  
22       turn the lights off. If you want them on for now,  
23       that's fine.

24                    Detective Clifton.

25          A       Okay. Like I said before, we were paged

1 out. Officer-involved shooting occurred on  
2 February 9th at approximately 1722 hours -- 1922.  
3 Again, sorry about that, at SE 22nd Avenue and  
4 Lafayette Street, which again Lafayette is just south  
5 of Powell Boulevard.

6 We arrived on scene. Obtained a briefing  
7 from one of the on scene supervisors, and learned that  
8 the involved officers were Officer Bradley Clark and  
9 Officer Roger Walsh.

10 When I say "involved officers," I mean the  
11 officers that fired their weapons. And the subject that  
12 was involved was Don Perkins. We've learned that he'd  
13 been struck by possibly two to three rounds and had been  
14 transported to OHSU to receive aid for his injuries,  
15 which at that time we were not sure if they were  
16 life-threatening.

17 This is a slide just to give you a general  
18 overview of the view. Again, I'll have some aerial map  
19 shots for you to have a better reference point.

20 But that front police vehicle you're seeing  
21 right there, that's Officer Clark's SUV. And the red  
22 van, which again you are looking from this slide due  
23 north along 22nd Avenue, that's the east sidewalk, and  
24 that's Powell Park to the right there.

25 The red van is where Mr. Perkins was living

1 and where he was at when the officers contacted him.

2 Q Detective Clifton, there's a lot of  
3 illumination in this photograph.

4 Is that the illumination that was present at  
5 the time the incident occurred or is this special  
6 illumination that was done by people taking the  
7 photographs of the scene?

8 A Yes. So what you are going to see there,  
9 there's obviously a flash on the camera there of the  
10 police vehicle. So it's not going to be as -- from  
11 that vantage point as bright, so it appears brighter  
12 there.

13 This is Mr. Perkins, Don Allen Perkins, male,  
14 white, 4-22-60. You are going to hear these 911 calls  
15 in a second of 1829 or 6:29 p.m. He places his first  
16 911 call where he says he's going to commit suicide if  
17 he can't get a hold of his doctor because he wants a  
18 prescription refilled.

19 This is Mr. Perkins' van that you saw in the  
20 brief slide. Again, it's parked on 22nd Avenue there.  
21 It's facing northbound on the east curb there. We spoke  
22 to several residents in the area. And we did a search  
23 warrant, and we'll talk about that later, on the van.

24 It appears that he's living in the van, and  
25 neighbors confirmed that it had been there off and on



1 for six months or more.

2 And this is going to be a view from the front  
3 side of the van again looking to the south. The door,  
4 when the officers engaged Mr. Perkins and when the shots  
5 were fired, was opened like that. It was not closed.  
6 That's how it had appeared.

7 You will see Placard 11, and we'll go into  
8 more detail on that later. That is a handgun, a replica  
9 handgun that Mr. Perkins dropped out of the van. And  
10 again, we'll get better pictures of that.

11 You can also see Officer Clark's vehicle  
12 again to the south there. And that's where he and  
13 Officer Walsh and Officer Cioeta were at the back of  
14 that vehicle as well as Officer Schroeder, who is on the  
15 other side.

16 This is Officer Clark here, Bradley Clark.  
17 He's an 11-year veteran with the Portland Police Bureau.  
18 He works D shift out at Central Precinct, 6:00 p.m. to  
19 4:00 a.m., so he had just come on shift when this call  
20 came out.

21 He's an ECIT officer, which they'll go into  
22 that, I'm sure more later. It is a training course for  
23 officers that are specialized in dealing with people  
24 with mental health problems or that are in crisis. So  
25 they get dispatched or will respond, you know, to calls

1 of someone in crisis.

2 Q When was this photograph taken?

3 A This photograph was taken that night at the  
4 scene, obviously post-shooting.

5 Q Is that just one of the standard  
6 investigation techniques to take a photograph of what  
7 the officer was wearing and how he looked?

8 A Yes. Yeah. That's just so you all can have  
9 an idea of how he presented that night. He is also --  
10 Officer Clark was the AR-15 operator on the call.

11 Q And for those who may not be fully versed in  
12 firearms, what is an AR-15?

13 A The AR-15 is like a military-style rifle,  
14 police rifle.

15 This is Officer Walsh. He was with Officer  
16 Clark. They both work again out of Central Precinct, D  
17 shift. He's also an 11-year veteran.

18 It will be important when we listen to the  
19 911 calls, he's unit 746. So each officer, when they  
20 get their shift assignment for the night, you'll have  
21 the district assign a number. Instead of saying Officer  
22 Clifton or Detective Clifton, I'm 4657, so you'll hear  
23 on the radio -- when you hear 746, that's Officer Walsh  
24 and 716 is Officer Clark.

25 Again, if you have questions on that, we'll

1 talk -- I can refresh your memory on who's who.

2           These were the witness officers that were on  
3 scene when the shooting happened or who were in the  
4 position where they were present for that.

5           Sergeant Jerry Cioeta is assigned to Central  
6 Precinct. He's assigned to C shift, which is 4:00 to  
7 2:00 a.m., and he's unit 3812. Again, you'll hear that  
8 on the 911 calls as well.

9           Officer Quyen Duong, she was there as well.  
10 She was operating a MAV car. I'll explain that here in  
11 a second, but she is also C shift. She's unit 715. She  
12 was operating that MAV car and is working a partner car  
13 with Officer Fox, who was actually at a community  
14 meeting. The two of them were working together.

15           Why that's important is Officer Fox has the  
16 audio for the MAV car. The MAV car records audio and  
17 video, and there's cameras in the car and it records  
18 audio when the lights are activated.

19           The officers who worked that car are then  
20 also equipped with a microphone on their uniform.  
21 Officer Fox had the police car and responded. Officer  
22 Fox was at a community meeting, and he ends up coming  
23 from the community meeting to the shooting after the  
24 shooting has occurred. And you'll hear the audio kick  
25 on when you watch the video, so that's why that happens

1 because you have to be at a certain range of the car for  
2 that to kick on.

3 Q Detective Clifton, and not every PPB car is  
4 MAV equipped; is that right?

5 A Correct. There's only a handful of them.

6 Q That program is still kind of in, I guess, a  
7 pilot phase, is that right, as far as it equipping PPB  
8 vehicles with audio and video?

9 A Yes. It is an extensive project, which from  
10 my understanding which isn't great, but financially,  
11 and then also the data and how to handle all of that,  
12 they are trying to basically figure it out.

13 Q Okay.

14 A Then the last officer there, witness officer  
15 will be Officer Matthew Schroeder. He also again works  
16 C shift. He's unit 714. He's also operating a MAV car  
17 as well.

18 He parks -- again you'll see him arrive. He  
19 parks blocking the intersection at 22nd and Lafayette  
20 and then walks out of camera sight to the north where  
21 the shooting actually occurs. But you'll hear some of  
22 his audio.

23 Q On that same topic, we've pointed out which  
24 cars are MAV cars. But I think it's correct to say  
25 that neither Officer Clark or Walsh's vehicles were

1 equipped with the MAV package; is that right?

2 A Correct.

3 So this is an aerial view of the actual  
4 scene. Again, we'll get into more specifics on where  
5 things are. This is just to give you an overview of  
6 that area.

7 So to the north there with a yellow line  
8 running at the diagonal, at the top of the screen is  
9 Powell Boulevard. The park baseball diamond, that's  
10 Powell Park. That's to the east.

11 The road running right next to the park  
12 there, north-south is 22nd Avenue. And then that little  
13 street on the bottom of the screen of the south end of  
14 the street is Lafayette Street.

15 Q What's that large parking area to the right  
16 of the photograph?

17 A It is -- I think it's for some type of  
18 business or something like that, yeah, or maybe even  
19 for the park. It is where we parked our staging area  
20 when we arrived.

21 So here, like I said before, we're going to  
22 listen to the first 911 call, which initiated this  
23 event.

24 Mr. Perkins calls from his cell phone at 1829  
25 or 6:29 p.m. in the evening. Makes his first 911 call.

1 Calls from a cell phone number 503-752-2917. It is a  
2 Sprint number. He calls and says he's going to kill  
3 himself, is having problems with his doctor in not  
4 refilling a prescription, and again you'll hear that.

5 He never gives his location and is combative  
6 and uncooperative with the 911 dispatcher, and you are  
7 going to hear that.

8 He makes a second 911 call approximately 19  
9 minutes later at 1848 hours or 6:48. Again, this time  
10 and -- the first call he says he's going to take 30  
11 pills, and then take more at a certain time increment if  
12 they don't get this prescription filled.

13 He calls back at 1848. And again, he's  
14 uncooperative. He sounds a little more lethargic on  
15 this call, but again he hangs up before giving any  
16 valuable information for them to find him.

17 During this time dispatch is doing emergency  
18 pings off of his cell phone to try to locate him. And  
19 they get a general hit in the area of 22nd and  
20 Lafayette, right around in there. So officers are  
21 dispatched into that area and, and do an area check, and  
22 that's how they get into that area.

23 Q So you said "emergency ping." I don't know  
24 what that means to everybody.

25 What does that mean exactly, "emergency

1 ping"?

2 A So the cell phone, his cell phone -- under  
3 emergency life saving exception there, the cell phone  
4 company is able, through 911, they are able to give a  
5 GPS coordinate or hit off the cell tower and put that  
6 phone in a certain area. So that's what they did.

7 You know, he's threatening to harm himself.  
8 So they pinged his phone, as kind of a law enforcement  
9 term for that, which gives a general area of where his  
10 cell phone is located at.

11 So we're going to go ahead and listen to the  
12 first 911 call.

13 (911 call played.)

14 PERKINS: "Yeah. My name is Don Perkins.  
15 My birthday is 4-22 of '60.

16 DISPATCHER: "Let's start with what you're  
17 actually calling for right now, sir.

18 PERKINS: "My doctor is a piece of shit and  
19 I'm going to kill myself. I took 30 pills. In 15  
20 minutes, I'll take 30 more until she calls me.

21 DISPATCHER: "Well, I can't help you.  
22 Hello."

23 (Conclusion of 911 call.)

24 BY MR. DAVIDSON:

25 Q So now, that's the first call and that's

1 what the officers get. So that gets put out. Dispatch  
2 puts that out and then they start their process through  
3 his phone. These are the attempts you'll hear of  
4 dispatch trying to call him back, and he never picks  
5 up.

6 (911 call played.)

7 BY MR. DAVIDSON:

8 Q And is there more coming, Brad?

9 A I know there's several attempts. I don't  
10 think so.

11 MR. DAVIDSON: And just so you guys know,  
12 we're going to be listening to calls and radio traffic  
13 and looking at videos through the course of this  
14 PowerPoint presentation.

15 If there's any point you guys want to listen  
16 to something again or back something up to hear a  
17 particular piece that you may have missed, just let us  
18 know and we can do that, okay?

19 THE WITNESS: So again, they made numerous  
20 attempts to get a hold of him. He never takes their  
21 call during that time.

22 Dispatch is communicating with the officers  
23 saying we're getting -- you know, the phone is pinging  
24 in this area and sending officers. Specifically 716,  
25 Officer Clark, and 746, Officer Walsh, are in that area



1 doing an area check for him.

2 BY MR. DAVIDSON:

3 Q Do you know how Officer Clark was selected,  
4 and was it because specifically he was ECIT trained?

5 A Yes.

6 Q Okay.

7 A That's my understanding.

8 The second 911 call, again, comes in at 1848  
9 hours. We'll listen to that here.

10 (911 call played.)

11 PERKINS: "Hello.

12 DISPATCHER: "911.

13 PERKINS: "Hello.

14 DISPATCHER: "911.

15 PERKINS: "Yeah, um -- hello.

16 DISPATCHER: "Sir, can you not hear me? You  
17 said hello four times. 911.

18 PERKINS: "I took 30 pills.

19 DISPATCHER: "30 pills of what?

20 PERKINS: "In 15 minutes.

21 DISPATCHER: "30 pills. What kind of pills  
22 are they?

23 PERKINS: "30 more.

24 DISPATCHER: "What kind of pills?"

25 (Conclusion of 911 call.)

1           THE WITNESS: That's it. That's all he  
2 says.

3           Again, they make several attempts again to  
4 call him to get him to try to pick up, and he never  
5 picks up.

6           (911 call played.)

7           All right. So the next -- so when you call  
8 dispatch or 911, so you create that call. Dispatch,  
9 when you speak with them, that's obviously recorded, and  
10 that's what you've just heard.

11           Also, when police and dispatch communicate,  
12 it's also recorded. So simultaneously to this recording  
13 going on, there's another dispatcher that handles the  
14 direct communication with the police, fire, medical.  
15 Well, that line is also being recorded.

16           So what you are going to hear here is this is  
17 the dispatch that we were -- recording of the dispatch  
18 between the police and the dispatcher that occurred  
19 during that time.

20           Of importance between 1906 and 1921 hours, so  
21 Officer Clark and Officer Walsh are doing that area  
22 check. At 1906, dispatch broadcasts that they get a  
23 very good hit or a ping on his cell phone, which was  
24 25 meters, which is very close. That's a really good  
25 hit in the area of 3363 SE 22nd Avenue.

1           So that gets put out at 1906, so that gives  
2 the officers a very good ballpark of where Mr. Perkins  
3 had called from or at least where that cell phone was.  
4 So they head to that area.

5           At 1913 hours, so seven minutes after that  
6 25-meter hit comes out, Officer Walsh, 746, comes on the  
7 air and says that they've located Mr. Perkins in a van  
8 on 22nd Avenue, mid-block between Powell and Lafayette,  
9 and that they believe he's got a gun. I'll let you  
10 hear -- we'll play those recordings.

11           So these are various updates. Again, Officer  
12 Walsh is 746. Again, it's my belief or understanding  
13 from listening to the calls is that -- and my experience  
14 as a police officer, you will typically have -- when you  
15 have two officers on a scene, you'll have a cover  
16 officer and a contact officer. Kind of they'll play  
17 various roles.

18           From what I can hear on the 911 call is that  
19 it sounds like Officer Walsh is the cover officer in  
20 this situation, and he's giving the majority of the  
21 updates on the radio.

22           And I can hear Officer Clark, and you will be  
23 able to hear him as well communicating with Mr. Perkins  
24 in the background, which makes sense concerning --  
25 Officer Clark is the ECIT officer.

1           So unit 746, Officer Walsh broadcasts at 1913  
2 that he located Mr. Perkins. He thinks he has a gun.  
3 He updates then that at 10:10 minutes, that's into this  
4 disk is how I did that for a reference point, that Mr.  
5 Perkins threw a pill bottle out of the van.

6           He updates that Mr. Perkins is sitting in the  
7 door of the van and that he threw a gun down. And then  
8 at 1919 hours, Officer Walsh broadcasts that Perkins  
9 shut the van door and says he's got another gun.

10           (Recording begins.)

11           DISPATCHER: "746.

12           WALSH: "Go ahead.

13           DISPATCHER: "For you and 734, 3206 SE  
14 Francis, uh, was an agitated caller saying he's gonna  
15 kill himself since he couldn't get in touch with his  
16 doctor.

17           "Said he'd taken 30 pills. Could continue to  
18 take 30 more in 15 minutes 'til he heard back from his  
19 doctor. Refused to answer questions and hung up.

20           "The phase two from the GPS in his cell phone  
21 put him at 21 and Lafayette. This address is based on  
22 his name and date of birth from, I think, from RegJIN.

23           "Haven't started medical since we have no  
24 idea if he's at this address or not.

25           WALSH: "Okay. Could you start a ECIT,

1 please?

2 CLARK: "716. I'll go. You can clear 734.

3 DISPATCHER: "734. 10-8.

4 WALSH: "Okay.

5 DISPATCHER: "And it looks like this is the  
6 address on Lafayette.

7 WALSH: "This is 746. Is 21 and Lafayette  
8 the address his phone matched, too; is that right?

9 DISPATCHER: "21 and Lafayette is where the  
10 GPS in his phone put him at the 3206 on Francis is  
11 where his OP and RegJIN show him. That's his address.

12 WALSH: "Okay. 746.

13 DISPATCHER: "746.

14 WALSH: "So we located this guy. He's in a  
15 van. We're on 22nd, about mid-block between Lafayette  
16 and Powell. When we made contact with him, we hear  
17 something like maybe he has a gun. So can you hold the  
18 air, please?

19 DISPATCHER: "Copy. 22 between Lafayette  
20 and Powell. Do you want another car?

21 WALSH: "Yeah. We'll take a couple more  
22 cars if they come in from the south. We got guns  
23 pointed northbound.

24 DISPATCHER: "Okay. 724, 714, start for 22  
25 and Lafayette coming from the south. And we're gonna

1 have nonemergency off the air.

2           WALSH: "And, and if we can, uh, probably  
3 shut down Powell, (muffled yelling in background,) 24,  
4 22 or maybe 21, "cause we got guns pointed up towards  
5 Powell. He just opened the door and threw something  
6 out. Maybe a pill bottle. He's coming out.

7           DISPATCHER: "Copy. Coming out.  
8 Non-emergency still off."

9           (Conclusion of recording.)

10 BY MR. DAVIDSON:

11           Q       Detective Clifton, before you go to the next  
12 sound file, so when this is being recorded, as far as  
13 the radio traffic between the police in the field and  
14 the dispatcher, it's not a live mic all of the time; is  
15 that right? It's only being recorded.

16                   I'm asking, because I'm not sure, when the  
17 microphone the officer has on his vest is keyed; is that  
18 how that works?

19           A       Yes. Yes. It's a standard, like a  
20 walkie-talkie would if people are familiar with -- you  
21 have to press the button to transmit. Once you let it  
22 off, it doesn't come across.

23           Q       So these particular recordings wouldn't  
24 necessarily capture all the verbal exchanges between  
25 the officer at the scene and Mr. Perkins?

1           A       No, they would not.

2                       (Recording begins.)

3           WALSH: "746. He's sitting in the door  
4 screaming at us. He says he threw a gun down on the  
5 sidewalk. We heard something click out, but we don't  
6 know what it is. We can't tell. He is noncompliant,  
7 and he wants us to, to approach, so we're just sitting  
8 tight back at our car.

9           DISPATCHER: "Copy. Noncompliant.

10          WALSH: "746. He, he just shut the door.  
11 He claims to have another gun in the van, but he's not  
12 compliant at all.

13          DISPATCHER: "Copy. Possibly another gun in  
14 the van. Noncompliant."

15                       (Conclusion of recording.)

16          THE WITNESS: So in this next call here, you  
17 are going to hear at 1921 hours or 7:21. Again, this  
18 is for a reference point, they locate him at 1930  
19 hours.

20                       At 1921 hours, Sergeant Cioeta, 3812, arrives  
21 on scene. And then at 1922 hours, you'll hear shots  
22 fired broadcast over the radio.

23                       (Recording begins.)

24          WALSH: "746. He just opened the door  
25 again.

1 CLARK: "Hey, Don?"

2 DISPATCHER: "Copy. Just opened door.

3 WALSH: "746. We can see one of his hands.

4 He's got something in it. Can't tell what it is.

5 DISPATCHER: "Copy. Something in one of his  
6 hands.

7 CIOETA: "3812. I'm on scene.

8 DISPATCHER: "Copy.

9 UNKNOWN: "Shots fired.

10 DISPATCHER: "3812. Copy shots fired."

11 CIOETA: "3812. Suspect is still alive.

12 DISPATCHER: "Copy. Suspect still alive.

13 CIOETA: "We need -- block traffic to the  
14 north of us still.

15 DISPATCHER: "Copy. Someone to the north.

16 UNKNOWN: "3812. Page out SERT, CNT.

17 DISPATCHER: "Paging CNT and SERT, copy.

18 UNKNOWN: "3012. He crawled to the front of  
19 the van. We don't have a visual of him anymore. We  
20 heard him, uh, 20 seconds ago and nothing since.

21 DISPATCHER: "Okay. Crawled to the front of  
22 the van. No visual."

23 (Conclusion of recording.)

24 THE WITNESS: So what you are looking at on  
25 this slide -- and we'll talk about this picture in a



1 minute -- you are going to see various videos we  
2 obtained.

3 And you'll hear -- there's a Daniel Kaleta  
4 and a Michelle Clemmer. They are civilian citizens that  
5 were in the area. They videotaped this on a cell phone.

6 This to the south. You can see Mr. Perkins'  
7 van illuminated there. That's illuminated from the  
8 police lights on the vehicle. And that's -- so where  
9 they are filming is south and left of where his van is.

10 And then you can see Officer Clark's police  
11 SUV with the driver's side door opened there up on the  
12 top of the picture there.

13 BY MR. DAVIDSON:

14 Q So this is a still -- this is actually a  
15 still from the video?

16 A Yes, just to give you a reference point.

17 Q Taken by Daniel Kaleta?

18 A Yes.

19 Q Detective, I heard some references in  
20 that -- in the police radio traffic about an EMT and/or  
21 SERT.

22 What are those references?

23 A CNT.

24 So SERT team is our SWAT team, Special  
25 Emergency Reaction Team. And then the CNT is a Crisis

1 Negotiations Team. So at that point, officer-involved  
2 shooting, someone they believe is armed or had been  
3 armed at that time, he broadcasts that he thinks he's  
4 alive.

5 They call them out, essentially the SERT team  
6 and the Crisis Negotiation Team to -- on situations like  
7 this to assist in taking that person into custody who  
8 they believed is armed.

9 And then the Crisis Negotiation Team is  
10 equipped and trained to deal with these type of  
11 situations if there's -- you know, if he's up behind the  
12 van and is refusing to come out or something like that,  
13 they'll negotiate or have a conversation with him, and  
14 they are specifically trained for that. So that's what  
15 he's asking for right at that point.

16 Q Who made that call?

17 A That's Sergeant Cioeta, 3812.

18 Q He would be the supervisor on scene at that  
19 point?

20 A Yes.

21 So you are going to hear some more updates  
22 from Sergeant Cioeta.

23 (Recording begins.)

24 UNKNOWN: "3812. We're going 61. You can  
25 cancel SERT.

1                   DISPATCHER: "3812. Going 61. Canceling  
2 SERT, 1925.

3                   HELZER: "3816. I want Powell closed at  
4 17th.

5                   CIOETA: "3812. I need to have a crime  
6 scene put up one block to the south of me, one block to  
7 the north of me, and medical can come straight in.

8                   DISPATCHER: "Copy. Crime Scene tape one  
9 block to the south and north end, sending medical in."

10                   (Conclusion of recording.)

11                   THE WITNESS: So as far as the timeline  
12 goes, the shots were fired at 7:22, 1922 hours. He  
13 initially -- you heard Sergeant Cioeta call right away  
14 for the SERT team and for CNT.

15                   Well, during that time, he's actually  
16 communicating with Mr. Perkins back and north, and Mr.  
17 Perkins is alive. He makes a decision -- again, you'll  
18 hear from him. The decision was made that they were  
19 going to go ahead.

20                   And you can hear it and see it on some of the  
21 videos to give Mr. Perkins commands to come out to the  
22 street, which he does, and they take him into custody,  
23 and then call for medical to render him aid.

24                   They put a tourniquet on his arm and did  
25 various things to render aid to him at the scene.

1 That's what you are hearing there.

2 At 1925 hours, Sergeant Cioeta broadcasts  
3 that they've taken Mr. Perkins into custody. They  
4 cancel SERT and CNT and then send medical to give him  
5 aid.

6 BY MR. DAVIDSON:

7 Q Did I hear him say, "We're going 61"?

8 A Yes, you did.

9 Q Is that police code for something?

10 A Yes. "61" is taking him into custody.

11 Q And this photograph that we are seeing here,  
12 this still, where is that from and what's the  
13 perspective there?

14 A Okay. So what you are seeing here, that's  
15 from Officer Duong's MAV car and Officer Fox. You'll  
16 see some diagrams here in a second.

17 Post-shooting, once the shooting had  
18 occurred, Officer Duong moved her vehicle, which was  
19 parked essentially back to the south and on the east  
20 curblineline. She pulled it forward, I believe, and again,  
21 you'll hear from her, to give a better perspective from  
22 the MAV car.

23 So you're seeing that. Her vehicle is facing  
24 northbound there. It's in the middle of 22nd Avenue.  
25 You are seeing the officers there as they approach to

1 take Mr. Perkins into custody.

2 So this is the aerial view again that you saw  
3 earlier, but I've inserted where the vehicles were  
4 positioned just so you have an idea of what you are  
5 looking at.

6 So Mr. Perkins' van is right here, the red  
7 pin. Officer Clark's SUV is this blue pin here,  
8 followed by Officer Walsh's SUV. Again, all these  
9 vehicles were parked facing northbound on 22nd Avenue.

10 Officer Duong, initially when she arrived,  
11 she parks back here, but then she moves after the  
12 shooting her vehicle to where that white pin is located.  
13 That was the vantage point you just saw on that previous  
14 photograph.

15 And then Officer Schroeder who was operating  
16 the other MAV car, when he arrives, he comes into the  
17 area. If I can get this to work. He's down here.

18 And he positions his car and it's blocking --  
19 it's this intersection, and the front of the car is  
20 facing westbound here on 22nd Avenue.

21 There's cameras on the corners of the cars so  
22 you can see to the north, but it doesn't pick up all of  
23 the way down here where the officers were at when the  
24 shooting occurred.

25 So these are some photos from the scene.

1 We'll just go through them. I'll try to orient you.

2 Again, you saw this vantage point earlier.

3 This is on 22nd Avenue. That's the east sidewalk there  
4 butting up to Powell Park. You can see Mr. Perkins' van  
5 there and Officer Clark's SUV.

6 Q So there's a vehicle interposed between  
7 Officer Clark's SUV and Mr. Perkins' van; is that  
8 right?

9 A Yes, that little blue Toyota.

10 MR. DAVIDSON: Just as a housekeeping issue,  
11 we've got a lot of testimony. Does anybody need a  
12 break at any point? Just let me know. It's not a  
13 problem.

14 THE WITNESS: What you are seeing here is  
15 this is the rear of Officer Clark's SUV.

16 Officer Clark and Walsh were standing in this  
17 area with Sergeant Cioeta when the shots were fired. We  
18 collected at the scene -- this is how our forensic  
19 evidence division labels evidence at the scene.

20 We located ten spent shell casings in this  
21 area. There were four .223 rounds, which are the rounds  
22 or shell casings fired in the AR-15 rifle that was  
23 carried by Officer Clark. And then there were six  
24 9-millimeter shell casings. So you have ten placards  
25 here. And Officer Walsh fired his Glock 9-millimeter.

1           This is a same view just looking essentially  
2 in a south direction from the front of Officer Clark's  
3 SUV. You can see Officer Walsh's police SUV is right  
4 back here. There's a car in between him, but that's  
5 where those shell casings are landed and where they were  
6 located.

7           Again, for a right-handed person on a  
8 semiautomatic firearm, which a Glock handgun and the  
9 AR-15 both are, if you are facing that way, the shell  
10 casings from where my understanding is of where the  
11 officers were at, that's where those shell casings would  
12 be ejected and would land if you were shooting north.

13           A GRAND JUROR: Do you know where Mr.  
14 Perkins was?

15           THE WITNESS: Yeah. I'll show you. You are  
16 going to see video.

17           So again, that just gives you a different  
18 angle of that from the sidewalk. You can see the  
19 placards are labeled. These are the four .223 rounds  
20 from the rifle. One through four on the placards and  
21 then five through ten on the 9-millimeter rounds.

22           This is where -- again, a side view looking  
23 from the south to the north of Mr. Perkins' van. He was  
24 seated. You heard the officers broadcast that. He was  
25 seated in that middle area of the van, right here, and

1 then he gets out of the van.

2           You can see here, this is the gun he dropped.  
3 It's a replica Walther PPK C99 handgun. You'll see  
4 pictures of that and actually see the real gun.

5           Over here -- so that Placard was 11 for the  
6 replica gun. Then 12 and 13 placards there are also  
7 evidence at the scene were Earthquake malt liqueur beer  
8 cans. They were discarded on the sidewalk there.

9           We, also on the following day, and you can  
10 actually see it when they were there at the scene inside  
11 Mr. Perkins' van, there was one of those beer cans in  
12 the back of his van as well. They are 24-ounce cans.

13           Then you also have a No. 14 was a pill bottle  
14 resting up against the fence here.

15           This is a picture of the gun. It is a  
16 Walther C -- it is a P99. This is a replica of that  
17 firearm. So it is an airsoft BB gun. This is just a  
18 better angle of those two beer cans and the pill bottle.

19           So at the scene --

20           A GRAND JUROR: Can I take a quick break?

21           MR. DAVIDSON: Absolutely. Yes.

22           (Recess.)

23           THE WITNESS: So at the scene following  
24 officer-involved shooting, the officers will come into  
25 the command post and they will do a weapons countdown.



1           And what we do there, that's where you saw  
2 the photograph of Officer Clark and Officer Walsh. And  
3 we take from them at that point their duty weapon, and  
4 then we count the rounds down, and then all of that gets  
5 submitted into evidence.

6           So you can see here, this is Officer Clark's  
7 AR-15 that he had with him on scene and that he fired.  
8 We did the weapons countdown. It's photographed to  
9 document the countdown as well.

10           He had one .223 round in the chamber, which  
11 was ready to go, so he ejected a round from the chamber.  
12 The magazine that we removed from the AR-15 contained 13  
13 .223 rounds. Then he had a spare or a backup magazine  
14 on the .223 -- on the AR-15 that's stored on the butt of  
15 the gun in a pouch, and that magazine contained 18  
16 rounds in it.

17           The AR-15 magazines that the officers carry,  
18 it's standard for them to load the magazine with 18  
19 rounds.

20 BY MR. DAVIDSON:

21           Q       So we can assume that Officer Clark's rifle  
22 was loaded with 18 rounds at the beginning of this  
23 incident, and there were four rounds fired, and there  
24 were 14 rounds left in the gun between the chamber and  
25 the magazine, and that would account for all of the

1 rounds; correct?

2 A Yes. Like I said before, we located four  
3 spent .223 shell casings at the scene, so it matched  
4 up.

5 This here, Officer Clark, we also inspected  
6 his 9-millimeter handgun that he was carrying. He had  
7 one 9-millimeter round in the chamber, 17 9-millimeter  
8 rounds in the magazine. Then he had two backup  
9 magazines on his belt. Each of those had 17  
10 9-millimeter rounds in there as well.

11 All of those magazines in the gun were loaded  
12 to capacity. So those are 17 round magazines on the  
13 9-millimeter handgun. And then you have 17 and then one  
14 extra when you load your gun. So you put one in the  
15 chamber and then you load the magazine back to 17. So  
16 you'll have 18, 17 and 17. So all of his rounds were  
17 accounted for in his handgun.

18 Q It does not appear that Officer Clark fired  
19 his sidearm?

20 A Correct.

21 This is Officer Walsh's Glock 9-millimeter  
22 handgun. He had one 9-millimeter round in the chamber.  
23 He had 11 9-millimeter rounds in the magazine that we  
24 removed from the handgun. And then he had in his backup  
25 pouch again, he had two backup magazines, and each of

1 those contained 17 9-millimeter rounds.

2 So based off of his -- the rounds in his  
3 handgun, if it's loaded to capacity, he was missing six  
4 rounds which was consistent -- we located six  
5 9-millimeter spent shell casings at the scene.

6 Q Did you get a chance to speak with the  
7 ballistics expert at the crime lab?

8 A I did, yes.

9 Q Okay. And is that a different slide in this  
10 presentation, or do you want to talk about that now?

11 A We can talk about that now.

12 Q Okay.

13 A So I submitted both of the guns, Officer  
14 Clark's AR-15, along with a spent shell casing at the  
15 scene, as well as some of his duty rounds. And then I  
16 also submitted Officer Walsh's Glock handgun and  
17 9-millimeter spent shell casings at the scene to the  
18 Oregon State crime lab, to their firearms experts.

19 Travis Gover is the forensic scientist that  
20 did the examination of those firearms for me. I spoke  
21 with him yesterday. And he said he compared the  
22 firearms I submitted to the shell casings we collected  
23 at the scene.

24 And he said the Glock that I submitted,  
25 Officer Walsh's Glock handgun matched the shell casings

1 at the scene. So his gun fired those shell casings.

2 Then the AR-15 that Officer Clark had, I  
3 submitted. He tested that against the .223 rounds,  
4 shell casings that we collected at the scene. And he  
5 said that matched as well; that those were the guns that  
6 fired those shell casings.

7 He tested the firearms as well for how they  
8 operated, if they were operating normally. He said they  
9 were. The triggers were good. He said the firearms  
10 were functioning properly.

11 Q So all of the shell casings that were  
12 recovered from the scene corresponded to either the  
13 AR-15 of Officer Clark or the 9-millimeter pistol of  
14 Officer Walsh?

15 A Yes.

16 Q So there are no unaccounted for bullets or  
17 shell casings at the scene?

18 A Correct.

19 So after -- we did that. We processed the  
20 scene. We collected -- here -- we're going to go  
21 through on this. We collected the Walther CP99 compact.  
22 That's the black BB gun that's Placard 11. And then we  
23 collected these items as well.

24 It's the two beer cans, which were Placard 12  
25 and 13, and then the pill bottle is Placard 14. They

1 were all listed. These are the receipts. They were  
2 submitted into evidence. And the item is just how it's  
3 listed on our property receipts is different sometimes  
4 than what the placard is. The placard is just for a  
5 reference point in the photographs.

6 Q And the prescription pill bottle, what was  
7 the prescription for?

8 A Cyclobenzaprine.

9 A GRAND JUROR: Flexeril. It's a muscle  
10 relaxer.

11 MR. DAVIDSON: Okay.

12 THE WITNESS: Okay. Thank you. This would  
13 make sense, 'cause in the interview he talked about  
14 taking Flexeril.

15 This is again just Placard 11. This is the  
16 replica handgun that was collected. This is a different  
17 angle.

18 This window here, that's glass. It was shot  
19 out during the gunfire.

20 Again, just another photograph of the gun.

21 So as mentioned earlier during this  
22 interaction, Officer Clark and Walsh, they contact Mr.  
23 Perkins at 1913 hours. So there's probably nine to ten  
24 minutes before the shots are fired. Well, during that  
25 time there's a police presence there. There were

1 several civilians that observed this and then began  
2 recording.

3           The first person we're going to talk about is  
4 Mr. Kale Heily. He lives at 3363 SE 22nd Avenue.  
5 That's where that address got mentioned before because  
6 the ping came back really close to that.

7           His house is essentially directly across the  
8 street or perpendicular to Mr. Perkins' van. And he  
9 videotapes this up from his living room. And that's  
10 what you are going to see, his vantage point.

11           The video on his cell phone is approximately  
12 13 minutes. The quality, it's kind of dark, but he does  
13 a great job of almost creating like a story -- or a word  
14 picture of what's going on. He narrates essentially  
15 what's occurring, so you are going to hear that.

16           He was interviewed out at the scene by  
17 Detective Hollins, and Officer Eugenio collected that  
18 video. We're going to play the video. There's some  
19 significant time increments in there.

20           He comes in and he starts talking about what  
21 he's seen. So he was out walking his dog and talks  
22 about how he sees these officers making contact at the  
23 van, and then they fall back. And then once he gets in  
24 his house, he starts recording this incident.

25           At 2:25 minutes into his video clip, you can

1 hear Mr. Perkins, "It is your call. Shoot me, bitch.  
2 Shoot me. Kill me."

3 Approximately 6:36 minutes into the video is  
4 when the shots are fired. And you will hear -- there's  
5 one shot fired, and then you hear Perkins say, something  
6 to the effect of, "You're going to have to kill me,  
7 bitch." And then more shots are fired.

8 So we're going to go ahead and just play this  
9 video for you.

10 MR. DAVIDSON: Again, I'm going to turn the  
11 lights off for this one because it's kind of dark.

12 (Video played. Reporter transcribes  
13 narration.)

14 MR. HEILY: "So I don't know what's going on  
15 across the street. So there's a red van right there.  
16 You can't really see it. Usually homeless guys hanging  
17 out in there.

18 "The -- I was walking the dog. I came home  
19 and saw a couple of officers looking at a tent over here  
20 right behind him where a homeless guy usually stays. I  
21 think his buddy is usually in the red van, and he's -- I  
22 know he stays in there a lot. So I don't know who's in  
23 that van."

24 MR. DAVIDSON: Is that too loud for anybody?

25 A GRAND JUROR: A little bit.

1           MR. DAVIDSON: It seems a little bit loud.  
2 Maybe I'm overly sensitive.

3           THE WITNESS: So you can orient yourself.  
4 The green pin up there, that's Kale Heily's residence  
5 there. So you can see where in relation to Mr. Perkins  
6 his vantage point is.

7           (Video replayed.)

8           MR. HEILY: "So I don't know what's going on  
9 across the street. So there's a red van right there.  
10 You can't really see it. Usually homeless guys hanging  
11 out in there.

12           "The -- I was out walking the dog. I came  
13 home and saw a couple of officers looking at a tent over  
14 here right behind him where a homeless guy usually  
15 stays. I think his buddy is usually in the red van, and  
16 he's -- I know he stays in there a lot. So I don't know  
17 who's in that van.

18           "But the cops went up and talked to him  
19 and -- so he was shining the flashlights in the van.  
20 They open up the front door. They were, I heard them  
21 yelling something. I couldn't understand what it was.

22           "Then they both -- someone opened up the side  
23 door. I don't know who it was. But the side door was  
24 opened up, and then the cops kind of jumped back. Both  
25 drew their guns. They went to the car. Put on, looks



1 like safety gear.

2 "I see one of them now -- I think there's two  
3 cop cars here at the moment. Looks like one of the  
4 officers is on his radio, the one closest to my house.

5 "I make them out a little bit there. Um, but  
6 they -- initially, they retreated back behind -- there's  
7 kind of a dark blue car, a dark blue sedan behind the  
8 van. Looks like they are shining their flashlights  
9 around. Kind of -- let me open my window a little.

10 "Let me see what's going on there. Oh, my  
11 God. It sounds like the homeless man is screaming,  
12 'Kill me. Shoot me.' I don't know if you can hear  
13 that. 'Shoot me, bitch. Kill me.'

14 "The cops are yelling back at him. Saying,  
15 'Come get me. Come get me, bitch.' I think I heard the  
16 man scream -- where it is -- it sounds like it might be  
17 the guy that stays in the tent. Sounds like his voice.

18 "Um, I think I heard him say don't ever --  
19 don't pull the gun, or something along those lines. I'm  
20 not entirely sure. I know this is really hard to see.  
21 It's really dark.

22 "I'm going to stay over here. Police  
23 officers now. It seems like -- I don't see any more  
24 police officers, so I don't know exactly what's going  
25 on.

1            "There seems to be some sort of standstill.  
2            There's a lot of flashlights around. They have their  
3            weapons drawn. There's some kind of light, a bright  
4            light on the back of the vehicle. There's the red van.  
5            You can kind of see that now. Bright lights on it,  
6            flood lights.

7            "The door just opened to the van. Talk to  
8            us -- asking him if he has anything in his hands. The  
9            guy in the park says he doesn't have anything.

10           "Oh, Jesus. Shots. Gunshots. I think they  
11           shot him. Someone is on the ground. It looks like -- I  
12           hear sirens. It looks like it might be the homeless guy  
13           that's on the ground.

14           "I went -- I moved back from the window. Oh,  
15           fuck. I heard one shot, then I heard, 'Shoot me. Shoot  
16           me.' I believe the shot came from the van, the first  
17           shot.

18           "And I believe the police officers after that  
19           opened fire after he -- I believe it was a gunshot that  
20           shot first. That's what it sounded like to me.

21           "Oh, my God. Still recording. The guy on  
22           the ground is moving. Oh, my God. The guy just got  
23           shot. The guy is screaming, 'Can you hear us?' He  
24           screamed, 'Yeah.' The cops are telling him to crawl  
25           towards the road.

1           "Right now he's in the -- he's in front of  
2 the van. He's standing up. His hands are up. His  
3 hands are up. He's moving towards the -- he's in the  
4 street now, I think. Looks like he's doubled over.

5           "Lots of sirens. He's down on the ground.  
6 The police officers are asking if he's going to stay  
7 calm. They are screaming, 'We can't see your hands.  
8 Put your hands where we can see them.'

9           "His hands are up as much as he can be. Four  
10 police -- five police officers walking towards him. All  
11 of them with their weapons drawn.

12           "Jesus. Jesus. I thought they handled that  
13 really well. Now they are checking on him. I think the  
14 police handled that really well. God, he shot first, or  
15 at least it sounded like a shot. I don't know. I  
16 didn't actually see, see him with a gun, but it sounded  
17 like a gunshot to me.

18           "The police officers are checking him over.  
19 They are checking him. Do you see some red on his  
20 shoulder. It could be a bruise. It could be some  
21 blood. I don't know.

22           "The ambulance just arrived. I heard,  
23 'Gunshot wound to the abdomen. Tourniquet right arm.  
24 Gunshot wound to the abdomen. Tourniquet right arm.'

25           "Hello.

1 "Hello.

2 "Hey.

3 "Do you know what's going on?

4 "Yeah. I just fucking recorded the whole  
5 thing. I just fucking recorded that whole thing that  
6 just happened. Yeah. Come inside. Yeah. The  
7 paramedics are here."

8 MR. DAVIDSON: Lights are coming back on,  
9 guys.

10 BY MR. DAVIDSON:

11 Q I have a couple of quick questions,  
12 detective.

13 So Mr. Heily, it's his impression that Mr.  
14 Perkins fired the first shot?

15 A Yes.

16 Q And do you have an opinion about the  
17 veracity of that?

18 A No. Mr. Perkins did not fire the first  
19 shot.

20 Q As far as we know, Mr. Perkins was not in  
21 possession of an actually functioning firearm?

22 A No. We did not locate a gun other than the  
23 replica gun.

24 A GRAND JUROR: It was an airsoft gun?

25 THE WITNESS: Yes.

1 A GRAND JUROR: Was the airsoft gun loaded?

2 THE WITNESS: No, it was not.

3 A GRAND JUROR: Okay. It was a C02 charged  
4 airsoft.

5 THE WITNESS: Yes.

6 A GRAND JUROR: So it was not even a C02  
7 cartridge?

8 THE WITNESS: No.

9 A GRAND JUROR: So no capability of making a  
10 sound?

11 THE WITNESS: No.

12 BY MR. DAVIDSON:

13 Q And maybe I'm unclear on the definition --  
14 distinction between an airsoft and a BB gun. I think  
15 of an airsoft as having, like foam, round foam bullets.

16 A GRAND JUROR: Plastic.

17 MR. DAVIDSON: Plastic, I guess.

18 THE WITNESS: This is a BB gun, a C02 BB  
19 gun. We have it here. We'll look at it. All of you  
20 will be able to see it.

21 BY MR. DAVIDSON:

22 Q All right. The other question I have,  
23 Detective, was what approximately was the time that  
24 transpired between when the shots were fired and when  
25 the ambulance arrived to render aid to Mr. Perkins?

1           A       I think three to four minutes or so.

2           Q       Okay. So they were there fairly quickly?

3           A       Yes.

4           Q       Do we know if it had already been staged,  
5 the ambulance, or did it just arrive I guess after the  
6 fact?

7           A       I'm not positive. I think it was staged. I  
8 believe it was staged.

9           Q       Okay. Meaning it was standing by?

10          A       Yes.

11                 MR. DAVIDSON: Does anybody else have any  
12 questions about this?

13                 A GRAND JUROR: It's my understanding that  
14 the BB gun was tossed out before and then he closed the  
15 door; is that correct?

16                 THE WITNESS: So you'll hear on -- from what  
17 you hear on the dispatch from Officer Walsh, he  
18 broadcasts that he's thrown something out. Says it's a  
19 gun. He says on the recording he's not quite sure what  
20 it is. But that as he shuts the door, he says he's got  
21 another gun inside the van.

22                 And then his next broadcast, before the shots  
23 were fired, he says that he's got something in his hand  
24 'cause he's opening the door. That's that last  
25 broadcast.

1           A GRAND JUROR: Right.

2           THE WITNESS: And then the shots are fired.

3           So that's what -- what you --

4           A GRAND JUROR: Right.

5           MR. DAVIDSON: And just to remind you, we  
6           will hear the direct testimony from the two officers  
7           tomorrow, so we'll have additional clarity about kind  
8           of how this all went down.

9           BY MR. DAVIDSON:

10          Q       Do you want to continue?

11          A       Yes.

12                 Again, we talked about -- that's where he was  
13                 filming that from right in this area here, Mr. Heily.

14          Q       Was he inside his house?

15          A       Yes.

16          Q       The upper floor, lower floor?

17          A       It is a raised -- like a front porch,  
18                 elevated. And then that's Officer Clark's SUV. So,  
19                 yeah, he was from this area here to there. That was  
20                 the vantage point where you were seeing.

21                 The second witnesses you are going to hear  
22                 from are Daniel Kaleta and Michelle Clemmer. You saw  
23                 earlier a snapshot or a photograph from their vantage  
24                 point when the shots are fired.

25                 They record two videos. One is the --

1 actually gets the shooting. We'll watch that here  
2 first. He records that on his cell phone.

3 And then after that shooting occurs, he goes  
4 and grabs another, like, recording device. It is a Mino  
5 flip device is what it was called. I've never seen  
6 anything like it. It was kind of, like, a little, small  
7 handheld recording thing. Officer Eugenio collected  
8 both of those items.

9 Daniel Kaleta and Michelle Clemmer, their  
10 address, where they were at, was 3427 SE 22nd Avenue.  
11 Again, I'll show you where that is in relation. So I'm  
12 going to -- I'm going to play the video.

13 This is where they were, down in this area on  
14 the street when he records that. Right in this area.  
15 And that's the view you saw from the southwest. This is  
16 their address right here.

17 Q That's not a residence.

18 What's going on there exactly?

19 A It's like a warehouse. Essentially, I think  
20 they have a trailer, and they were, like, squatting  
21 there is my understanding.

22 This is Mr. Heily's residence, Kale Heily,  
23 which you just saw that video. And they were down here,  
24 more in this area right here when they recorded their  
25 video.



1           So the video, when it starts, they have it  
2 upside down and then they correct it. So it is 44 -- it  
3 is one minute and four seconds long video, the first  
4 one.

5           (Video played.)

6           MR. DAVIDSON: Do you guys want to see that  
7 again?

8           A GRAND JUROR: It sounds like there's  
9 something said between the first shot and the cluster.

10          THE WITNESS: So we'll stop that there, and  
11 I'll tell you what I hear, and then you can listen to  
12 it again. There's a few things. I wish I could pause  
13 this for you.

14          So in the video, focus on the red van.  
15 You'll see Mr. Perkins come out of the van. You'll see  
16 a movement, and then he moves out of the van. There's  
17 an initial shot fired as he -- after he comes out of the  
18 van.

19          What I hear -- I've listened to this numerous  
20 times -- after that first shot's are fired, follow that  
21 tree, there's essentially the van. There's this tree  
22 and then the fence line. You can see him over at the  
23 fence line. And I hear him say something to the effect  
24 of, "You are going to have to kill me, bitch."

25          And then he moves back towards the van area

1 where you saw the door and where Placard 11, where the  
2 replica gun was. That's what I see watching this video.

3 We'll stop it and pause it. You'll also try  
4 to focus on some of the commands and things that you are  
5 hearing. That's Officer Clark's voice is speaking to  
6 him.

7 And then you'll also see Sergeant Cioeta in  
8 that quick frame. He's arriving and walking up to where  
9 they are at. So there's a lot going on there in that  
10 short clip, but I will -- I'll see if I can pause it. I  
11 don't think I'm going to be able to pause it.

12 (Video played.)

13 MR. DAVIDSON: Were you guys able to see Mr.  
14 Perkins kind of between the van and the tree?

15 THE WITNESS: So this is where --

16 A GRAND JUROR: No.

17 THE WITNESS: Again, it's tough. Focus  
18 right up in this area, right there and right there.  
19 You'll see him.

20 Again, I've had the opportunity to watch this  
21 numerous times. It is difficult to see, but if you can  
22 focus on that area. He will come out of the van, and  
23 there's that first shot fired and then there's that  
24 pause, and then you hear him say something to the effect  
25 of, "You are going to have to shoot me, bitch." Then he

1 moves back, and that's when there's more shots fired.

2 So I wish -- let me see if I can get the  
3 curser to help.

4 A GRAND JUROR: Do you know who initiated  
5 the first shot?

6 THE WITNESS: I do not.

7 (Video played.)

8 THE WITNESS: This is Sergeant Cioeta  
9 walking in right here. Officer Clark and Walsh are  
10 over on this side of the vehicle. If you look right up  
11 in here, trying to look right -- it's hard with it  
12 moving, right in that area. Do you see there?

13 I'll try showing it again. Did you see that?

14 A GRAND JUROR: There was a movement out.

15 THE WITNESS: That was the first shot.

16 (Video replayed.)

17 Do you see him right there? So that's his, I  
18 believe his left shoulder looking towards the officers  
19 there.

20 A GRAND JUROR: "Kill me, bitch."

21 THE WITNESS: Does everybody see that?

22 A GRAND JUROR: He's hiding behind that  
23 tree, it looks like.

24 THE WITNESS: Does anybody want to see that  
25 again slowed down or paused at various spots? We're

1 good. Okay.

2 So after that shooting then, Michelle Clemmer  
3 and Daniel Kaleta go up and grab this other device and  
4 they start recording on this one.

5 It is the second one is ten minutes and 52  
6 seconds of video, and it's all post-shooting. This is  
7 when the officers are going out to take him into  
8 custody, so there's a lag there while they come inside.

9 (Video played.)

10 BY MR. DAVIDSON:

11 Q So before we move on to the next video clip,  
12 Mr. Kaleta -- Daniel Kaleta and Michelle Clemmer are  
13 the two individuals who captured this video; correct?

14 A Yes.

15 Q And they were interviewed by detectives?

16 A Yes, they were.

17 Q Okay. The video was recovered.

18 Were they originally -- I guess, did they  
19 disclose that they had the video or did they disclose to  
20 the police originally the extent of the video that they  
21 captured, or how did that play out at the scene?

22 A It wasn't -- Officer Law responded. He  
23 interviewed Daniel Kaleta and Michelle Clemmer. And  
24 initially they didn't -- they said they were getting  
25 ready to leave after they had interviewed them and

1 everything. They didn't say anything about the video.  
2 And then it was like an aside, like, oh, we have this  
3 video.

4 Q So when they were originally interviewed,  
5 they didn't mention the fact that they had actually  
6 captured some aspects of this on two different video  
7 recording devices?

8 A Yes.

9 Q So it was only later that they revealed  
10 that?

11 A Yes.

12 Q And you've reviewed the interview that they  
13 gave; correct?

14 A Yes.

15 Q And I think in their interview they claim to  
16 have been able to see activities that were going on on  
17 the other side of the van; is that accurate?

18 A Yes.

19 Q Including what Mr. Perkins was doing, you  
20 know, what he had in his hands, things of that nature?

21 A Yes.

22 Q Okay. After having reviewed this video and  
23 noted kind of the perspective for which they were  
24 watching the events unfold, in your opinion could they  
25 have seen the things that they claim to have seen

1 occurring during the incident?

2 A No.

3 Q And why is that exactly?

4 A Just from their angle, from their  
5 perspective and their vantage point of where they were  
6 at when the shooting occurred, they wouldn't have been  
7 able to see Mr. Perkins at the side of the van there  
8 until he moved further east. That wasn't possible from  
9 that angle.

10 Q Okay. All right. Please continue.

11 A In that video they -- there is more to that  
12 video, and they made some other comments on there that  
13 might be important to hear. I don't know if that got  
14 clipped off or it didn't play the whole video, but we  
15 might need to watch that video --

16 Q Okay.

17 A -- in its entirety.

18 Q Let's run through the rest of the  
19 presentation and we can revisit that.

20 A Okay.

21 MR. DAVIDSON: Let's take a quick break.

22 (Recess.)

23 BY MR. DAVIDSON:

24 Q Okay.

25 A All right. So you've seen that aerial slide

1 of where Daniel Kaleta was. Again, right in this area.

2 I'll move on.

3 The next video clip you are going to see is  
4 we contacted -- following the shooting it's standard  
5 procedure, we canvass the area just for additional  
6 witnesses and also for additional videos, surveillance  
7 videos.

8 We located -- at 3357 SE 22nd, we went out  
9 there on the 10th, the next day in the daylight.  
10 There's a business directly to the north of Kale Heily's  
11 place. And it's like a warehouse-type building. And it  
12 had a couple of cameras on the exterior of the building.

13 We made contact there. Contacted Mr. Todd  
14 Carlson. He was not there at the time of the shooting,  
15 but he had a Nest surveillance system, and provided us  
16 with that video from the time of the shooting.

17 A GRAND JUROR: I have a question.

18 So the first two witnesses, did you collect  
19 those videos that night?

20 THE WITNESS: Yes.

21 BY MR. DAVIDSON:

22 Q Do you want to run through?

23 A Okay. So we might make note of this, the  
24 times. I took almost an hour-worth of video because I  
25 wanted to see if that van was there at the onset of

1 this call.

2 So it's my belief, and then talking to Mr.  
3 Perkins, he was in the van when he called 911 at 1829.  
4 That van never moved, and we saw that on the video.

5 So there's an extended period of video that I  
6 collected from them. Detective Hopper might have  
7 clipped this down. But at 31 minutes and 50 seconds  
8 into the video that I collected is when you see Officer  
9 Walsh and Officer Clark arrive at the van.

10 You can see their flashlights looking around,  
11 and they focus in on the van. You can see that -- this  
12 video again is taken from the west looking east. But  
13 you can see them on the east side of the van and their  
14 lights shining in the van.

15 At 32:05 minutes into the video, the two  
16 officers are at the van. At 37:30 minutes, this video,  
17 this Nest video is again one of these higher quality  
18 surveillance systems. It also has audio. You can hear  
19 a muffled -- what I hear is like, "Shoot me. Kill me."

20 At 41:40 minutes into this video that we  
21 pulled, the shot was fired. And then again, you can  
22 hear something along the lines, "You're going to have to  
23 kill me, bitch," before those additional shots are  
24 fired.

25 This video, what you'll see here gives us a



1 different vantage point, a perspective because it only  
2 covers from the front end of the van.

3           So you'll actually see after Mr. Perkins is  
4 shot and when he runs out of view from the south, this  
5 video actually picks it up to the north. You'll see him  
6 come out in between the van -- in between the van and  
7 the car in front of him out to the street where the  
8 officers take him into custody. So it gives you that  
9 perspective.

10           And then this is the timeline on the video.  
11 44 minutes and 11 seconds into the video, Mr. Perkins  
12 stands up and moves to the street. And at 45 minutes  
13 and 30 seconds, he's taken into custody. And then a  
14 short time later, 47 minutes and 10 seconds into the  
15 video, the ambulance arrives.

16           Q       So as far as or time lapse between shooting  
17 and the ambulance arriving, it's around six minutes?

18           A       Yes.

19           Q       All right.

20                    (Video played.)

21           A       So it starts here. There the officers are  
22 at the van. Here, one of them goes up here and he  
23 comes back. Now they are both at the van right now.

24                    So there will be a lapse in time. You saw  
25 the officers at the van. According to my conversations

1 with Mr. Perkins and what I've seen is they are at the  
2 van. The lights are flashed into the van. Something  
3 occurs at the van, and then the two officers move to the  
4 back.

5 Right now the officers have moved back behind  
6 their patrol car, the patrol SUV.

7 MR. DAVIDSON: Folks, the rest of the video  
8 is what you have seen before. The EMT's are there  
9 providing care. We can continue to watch it if you  
10 like. If you don't want to see that again, we can just  
11 move on to whatever is next.

12 A GRAND JUROR: Next.

13 A GRAND JUROR: We can move on.

14 MR. DAVIDSON: Okay. Great.

15 BY MR. DAVIDSON:

16 Q Lights back on.

17 A All right. So that surveillance camera that  
18 you were watching was right here filming right over  
19 there right to the east.

20 So the next video you are going to see as  
21 mentioned earlier, Officer Matthew Schroeder is assigned  
22 to unit 714. He was operating one of the MAV cars as  
23 well.

24 He arrives. Responds to the shooting. He  
25 marks on 22nd Avenue at Lafayette and blocks the

1 intersection, and you are going to see that. He's going  
2 to exit his patrol car. The video stays with the car,  
3 but the audio goes with him. So you are going to hear  
4 his interaction at the scene.

5 Q When you say he responded to the shooting,  
6 he didn't respond to the shooting, he responded to the  
7 incident prior to the shooting?

8 A Correct. Yes.

9 (Video played.)

10 MR. DAVIDSON: Okay. The rest of the video  
11 is a lot of this. If you guys want to hear the rest of  
12 it, you can.

13 A GRAND JUROR: I have a question at the  
14 beginning.

15 MR. DAVIDSON: Let's pause this.

16 A GRAND JUROR: At the beginning it sounded  
17 like he said something about, if you reach for it,  
18 we'll shoot. Can we hear that part again?

19 Obviously, it's the first time for us, many  
20 times for you. Did they ever specify what he would be  
21 reaching for, or do we just have -- if you reach for it,  
22 we'll shoot, okay?

23 A GRAND JUROR: Or do we have to ask the  
24 officer?

25 A GRAND JUROR: I'm asking, like, if there's

1 something on the video that shows -- or the audio  
2 track.

3 THE WITNESS: On the audio --

4 A GRAND JUROR: From what you can remember.

5 THE WITNESS: No.

6 A GRAND JUROR: Okay.

7 THE WITNESS: Well, he said he drops  
8 something out of the van is what we've heard on the  
9 video. He says they believe he has a gun. He says he  
10 drops something outside the van.

11 Walsh then later broadcasts he's shutting the  
12 van door and then says he's got another gun inside the  
13 van.

14 The next broadcast is that the van door is  
15 open and he's got something in his hand, and I don't  
16 know what it is, or something like -- similar to that.  
17 And then right after that, the shots are fired.

18 So I know on scene, the door was open. I was  
19 told the van door was open, and that had stayed that way  
20 after he got out of the van. And right where that gun  
21 was located, the replica BB gun, that's where Mr.  
22 Perkins said he dropped the gun. And that's what I know  
23 at this point.

24 (Video replayed.)

25 THE WITNESS: This is Officer Clark. Again,

1 just from listening to this so many times, I know his  
2 voice. That's him there saying that.

3 I hear him saying, "Don, we're not going to  
4 come up there. We think you have a gun" is the first  
5 thing I hear. We can stop that and you guys can listen  
6 to it again. And he then makes the comment, "If you go  
7 for it, you will be shot," something. And again, we can  
8 listen to that again.

9 A GRAND JUROR: Thank you.

10 THE WITNESS: Sergeant Cioeta is on scene.

11 (Video replayed.)

12 MR. DAVIDSON: So do you guys want to hear  
13 any of that again?

14 A GRAND JUROR: "We're not going to come up  
15 there. We think you have a gun. If you reach for it,  
16 you will be shot, okay." Reach for it. Single shot.  
17 "You are going to have to kill me, bitch." Cluster.

18 MR. DAVIDSON: Are we good on this video?

19 A GRAND JUROR: Thank you very much for  
20 that.

21 THE WITNESS: You're welcome.

22 THE WITNESS: So we have another MAV car.  
23 This one again is the one that's driven -- it's Officer  
24 Duong and Officer Fox who are working together that  
25 night.

1           Officer Fox has the audio affixed to his  
2 uniform, but he's at the community meeting. So when  
3 Officer Duong, you are going to see her respond, there's  
4 no audio. Once she gets out of the car because Officer  
5 Fox has that on him, and then he ends up arriving  
6 post-shooting, and then his video -- his microphone  
7 engages once he's in range.

8           (Video played.)

9           She's parked northbound on 22nd Avenue. This  
10 is Officer Walsh's SUV. Her vehicle is the third one.  
11 Officer Clark's SUV that they are behind is in front of  
12 that SUV there.

13           That was Mr. Kaleta filming over there.

14           Can everybody see Mr. Perkins there?

15           MR. DAVIDSON: We're at the point in the  
16 video where there's not a whole lot going on. We're  
17 going to skip forward where Officer Fox does arrive,  
18 and there's the audio from the MAV that picks up, and  
19 there's some conversation with Mr. Perkins.

20           It's kind of hard to hear conversations. But  
21 if that's okay with you guys, we can continue to watch  
22 that or we can skip to that more relevant portion.

23           A GRAND JUROR: Let's skip.

24           MR. DAVIDSON: The vote seems to skip  
25 forward.

1 (Video replayed.)

2 THE WITNESS: Officer Fox has arrived. You  
3 can hear his audio. This is Officer Fox. He rides to  
4 the hospital in the ambulance. That's pretty much it.

5 What happens here is as soon as the ambulance  
6 starts to take off, he goes out of range again. You  
7 lose the audio. You'll hear from Officer Fox, but you  
8 heard he makes comments about the gun being fake and  
9 apologizes for the incident.

10 MR. DAVIDSON: Okay. This is our last  
11 video, I think.

12 THE WITNESS: Yes. This is a map of where  
13 her vehicle was when the shooting occurred. You saw  
14 her run back and forth several times. She was going to  
15 go back to the car to get her less lethal shotgun, then  
16 all those things happened. And then following the  
17 shooting, she moved it forward.

18 Shall we go on?

19 BY MR. DAVIDSON:

20 Q Yes.

21 A That night out at the scene, we secured the  
22 van there, and then Detective Lawrence wrote a search  
23 warrant for the van. We had it towed that evening out  
24 to our storage facility and secured. And then the  
25 following day, Detective Hopper, Criminalist Lackey and

1 I served the search warrant on the van.

2 These are just some exterior photos of the  
3 van. These -- this is the interior. This is this main  
4 compartment. It's, it's essentially where he was living  
5 here.

6 There's his little laptop that was set up.  
7 There's food, a variety of personal items, clothing,  
8 bedding. There's a bed in the back here, like a  
9 mattress on the ground.

10 Obviously, there's a lot of his stuff.  
11 There's his pile in the back there. You can see just a  
12 little -- a better picture. That's that same beer can  
13 that was thrown outside the van. These items are --  
14 this item will be significant here in a minute. It ends  
15 up being another fake BB gun in that case.

16 Q What is in the orange container?

17 A BB's.

18 Q Okay.

19 A That's the Earthquake High Gravity malt  
20 liqueur can.

21 A GRAND JUROR: Ten percent. Pretty --

22 THE WITNESS: I found a variety of  
23 prescription pills inside the van, all made out to Don  
24 Perkins or prescribed to him. So we collected those  
25 items. We collected the gun from the van, as well as



1 the prescription pills.

2 So then on the same day, on the 10th at  
3 approximately 7:20, 1920 hours in the evening, Detective  
4 Hopper and I contacted Mr. Perkins up at OHSU, and we  
5 interviewed him regarding the incident.

6 The interview was recorded. His Miranda  
7 rights were given. We identified ourselves obviously as  
8 police officers. He wasn't under arrest or in custody  
9 by us being there. And him not being mobile, we advised  
10 him obviously of his rights. We discussed what  
11 happened.

12 BY MR. DAVIDSON:

13 Q Before you go on, you read him his Miranda  
14 rights?

15 A Yes.

16 Q And did he acknowledge and understand them?

17 A Yes, he did.

18 Q And he was willing to talk to you?

19 A Yes, he was.

20 Mr. Perkins, you know, said he remembered  
21 calling 911. He said he was extremely upset. He's been  
22 having -- went in, kind of explained his relationship  
23 with his doctor, and that he was in chronic pain, had  
24 back and neck pain.

25 He said his doctor had quit prescribing him

1 some medicine. He kind of bounced around back and forth  
2 a little bit. Kept just saying pain medicine.

3 Then I asked -- you know, tried to get a  
4 specific on it. If it was the Flexeril, and he  
5 mentioned it was a Norco or Narco 325, which I looked  
6 online, and it appears to be like a pain, pain pill,  
7 acetaminophen and hydrocodone. And then she wasn't  
8 prescribing -- he wasn't prescribing that medicine. He  
9 was extremely upset about it.

10 He said his plan was when he called 911, that  
11 he thought that by calling 911, that if he said he was  
12 going to kill himself, that somehow he was going to get  
13 these pills. And that was going to happen.

14 He said he called. He remembered calling,  
15 making the phone call. He said he took -- I asked  
16 him -- he indicated on that 911 call that he had taken  
17 30 pills and would take 30 more.

18 He said -- initially, he said he took five to  
19 six Flexerils, he remembered, and then later changed it  
20 to 10 to 12, somewhere. He said the Flexerils are like  
21 a muscle relaxer. He says that he hung up the phone.  
22 He said the phone calls were all made in the van. He  
23 was living out of the van, and that it was parked where  
24 we located it.

25 He said after he made that 911 call, he said

1 he remembered making the second one. And then after  
2 that, he said he laid back down -- laid down in the van  
3 to go to sleep.

4 He said sometime later again, the timeline  
5 was difficult for him to give specifics, but he said he  
6 remembered seeing two police officers at the van. He  
7 remembered seeing their flashlights.

8 Again, at that time when you saw the  
9 photograph, he tells us that he's in the back part of  
10 the van where the mattress was, in that area.

11 And then at some point, he wasn't exactly  
12 sure, one of the officers, he believed, opened up the  
13 side door that you saw that was opened. He said he was  
14 seated up at that time in the rear of the van there.

15 When the officer looked inside the van, he  
16 had the Walther replica gun, which he said looked like a  
17 real gun. Anybody would believe it was a real gun. He  
18 said he had that gun in his hand.

19 And when the officer opened up the van and  
20 looked inside, he said he pointed the gun at the officer  
21 and said, "Not this time." He said the officer, he  
22 believed, saw the gun. It was at that point the two of  
23 them backed out and moved out of his sight, he assumed,  
24 to the rear.

25 A GRAND JUROR: I missed the first part.

1       Could you back up?

2                    You said that he had pointed the --

3                    THE WITNESS:   Yes.

4                    He said one of the officers had opened the  
5       van door, the side door, and was looking inside.  He  
6       said he put the pistol up and pointed it at the officer  
7       and said, "Not this time."

8                    And when he did that, he said the officers  
9       backed out and moved out of his sight.  He assumed, you  
10      know, back behind him somewhere.

11                   Again, time frame or times weren't real clear  
12      with him.  He said at some point he remembered closing  
13      the door back to the van, the van door, and then trying  
14      to lay back down like to go to sleep.

15                   He said the officers were essentially  
16      annoying him, and he could hear, you know, talking.  He  
17      couldn't hear what they were saying.  He said at some  
18      point he opened the van door back up and that he threw  
19      the pill bottle out of the van.  And his explanation was  
20      that was to show the officers what he had taken or what  
21      he had.

22                   He said after that -- he said he was yelling  
23      at the officers or told the officers that he had a BB  
24      gun; and that he was seated on the side of the van; and  
25      that he dropped the gun out -- or tossed the gun out in

1 front of him in the van -- or to the side where we see  
2 the van. He said he estimated it to be about a yard  
3 outside of the van, three feet or so where he dropped  
4 it.

5 He said he remembered shutting the van door  
6 back to go back into the van. And then he later says  
7 that when he opened the door to the van, he exited the  
8 van and was going to pick up the gun to show the  
9 officers that it wasn't real.

10 He then indicated -- and we talked about that  
11 action. He ultimately said he wanted to die that day,  
12 and it was that the police were going to shoot him and  
13 that's what he wanted to happen. He said he wanted to  
14 die.

15 He said that on top of his chronic neck and  
16 back pain, he had -- his wife had passed away a couple  
17 of years ago, and that he was suicidal.

18 BY MR. DAVIDSON:

19 Q So what he described to you essentially was  
20 an attempted suicide by cop, as they refer to it as?

21 A Yes.

22 Q Was he completely consistent, as far as his  
23 accounting of what occurred, or was his story -- did he  
24 contradict himself sometimes?

25 A Yes. It was -- his story somewhat evolved,

1 as well like I touched on. Initially, he said he took  
2 five to six Flexerils, then it was 10 to 12.

3 He initially was very clear that he pointed  
4 the gun at the officers and said, "Not this time. Not  
5 this time."

6 When I pushed him -- or we talked more about  
7 that to try to get more clarification on how he was  
8 holding the gun and things like that, he later said  
9 that, well, he wasn't actually pointing it at him. He  
10 was just holding the gun out in front of him, pointed  
11 down. So there were things like that that were, you  
12 know, consistent.

13 Q Then at the various points during the  
14 interview, he changed his story and denied that he  
15 actually wanted to die, that he just wanted the police  
16 to go away?

17 A Yes. He did that as well.

18 Q Okay. Anything else relevant from his  
19 interview?

20 A I don't think so.

21 MR. DAVIDSON: Okay.

22 A GRAND JUROR: Excuse me, could you -- what  
23 time -- how much time had lapsed since -- did you see  
24 him after this event?

25 THE WITNESS: It was the following day, so

1 roughly 24 hours. It was right at almost 24 hours.

2 MR. DAVIDSON: Your next slide.

3 THE WITNESS: So that's Mr. Perkins when  
4 he's admitted into OHSU. They took him into  
5 exploratory surgery.

6 Any type of again, abdomen wounds, I think  
7 it's pretty normal. The gunshot wound to the arm, and  
8 there were two, which they weren't sure if one was a  
9 through and through.

10 That's his shirt, possibly two bullet holes.

11 So that's the gun we collected at the scene.  
12 That was thrown on the ground. So this is the gun that  
13 we collected at the scene.

14 This is the -- what I referred to as the BB  
15 gun or airsoft replica. So this is the actual clip from  
16 the Internet that's produced by Umarex. You look for  
17 the unique line and the distinctive shape of the P99  
18 replica as a trademark of Walther. So they advertise  
19 it. This is the real Walther P99.

20 A GRAND JUROR: So the replica is  
21 manufactured with no indicator that it is, in fact, a  
22 replica to be seen from a distance?

23 THE WITNESS: Sure.

24 A GRAND JUROR: No orange protrusion at the  
25 muzzle, nothing like that?

1           THE WITNESS: No. That's how, that's how --  
2 that's the Internet, how it's advertised and sold. And  
3 that's the replica BB gun on the left and the real  
4 thing on the right.

5           A GRAND JUROR: The difference is -- but  
6 obviously nothing that can be seen right now at first  
7 glance. Switched the pictures of it.

8           THE WITNESS: Yes. Without holding it and  
9 manipulating it.

10 BY MR. DAVIDSON:

11           Q       So what became of Mr. Perkins after he was  
12 taken to OHSU?

13           A       As far as the procedure?

14           Q       Not a medical procedure. But what happened  
15 in regards to his being detained on a hold?

16           A       Okay. So based off the information that we  
17 had and then speaking with him about him being  
18 suicidal, we believed he was a danger to himself.

19                   Based off of that, he was referred to the  
20 Multnomah County Health. They have their own people,  
21 and they did an evaluation on him. And then there was a  
22 hearing that was held to determine if he needed to be  
23 held on a psychiatric hold. And he's been held since  
24 then.

25           Q       He was deemed a danger to himself and others



1 potentially?

2 A Yes.

3 Q By a judge; is that accurate?

4 A Yes.

5 Q You, in fact, testified at that hearing, I  
6 think.

7 A I did.

8 Q To the best of your knowledge, is he still  
9 being detained at OHSU pursuant to that psychiatric  
10 hold?

11 A Yes, he is.

12 Q And I think you had also brought with you  
13 the actual firearms -- well, replica firearms that were  
14 recovered.

15 A Right. Yes.

16 Q We're going to bring them out. I can tell  
17 you they were made completely safe so you can see them.

18 A The first one you are going to see is the  
19 Walther. There's a safety tie on this. It's been made  
20 safe. You can all see that. I'll just show you that's  
21 where the cartridge goes in the back. I'll send that  
22 around. You can feel the weight of it.

23 Q This is made of -- appears to be made of  
24 solid metal?

25 A Yes.

1 Q Just out of courtesy to everybody, let's  
2 make sure we don't point it in the direction of  
3 anybody.

4 This is the one that was recovered at the  
5 scene?

6 A Yes. That's Placard 11.

7 A GRAND JUROR: Other than actually saying  
8 "BB," it doesn't even say replica?

9 THE WITNESS: Yes.

10 This is the BB.

11 BY MR. DAVIDSON:

12 Q When you asked Mr. Perkins about where he  
13 had obtained these replica firearms, what did he tell  
14 you?

15 A He said he bought them at the same sporting  
16 goods store. He couldn't remember what it was. He  
17 said he bought them for target practice.

18 Q Did he tell you when he purchased it?

19 A He said it wasn't too long ago. And this  
20 one is cheaper. Again, you can see this is where the  
21 CO2 cartridge goes on this one. The handle just comes  
22 back. This is the one that was recovered in the van.  
23 So the safety is on. It's safe, but don't pull the  
24 trigger. There's no air cartridge in it.

25 MR. DAVIDSON: Let's break for lunch now and

1 come back at 1:00.

2 That is the majority of the presentation for  
3 this morning for Detective Clifton. I think Detective  
4 Clifton will be around again to supplement the record.

5 When you hear the rest of the testimony from  
6 the other witnesses and we have specific questions,  
7 follow-up questions that we want Detective Clifton to  
8 answer, he'll be available for that.

9 Is there anything that you have for him right  
10 now given what you've heard?

11 A GRAND JUROR: If he has anything to add,  
12 anything pertinent that hasn't already been covered.

13 THE WITNESS: Not now.

14 MR. DAVIDSON: Anything else?

15 A GRAND JUROR: Initially, when the police  
16 approached the van for the first time and they opened  
17 the door, did they knock on the door, let him know that  
18 they were police?

19 MR. DAVIDSON: That is a question that will  
20 be probably best answered by Officers Walsh and Clark.  
21 You'll get a chance to ask them those questions  
22 tomorrow, so they will be the best ones to answer.  
23 Let's make sure we ask. They'll probably tell us.

24 A GRAND JUROR: Right.

25 MR. DAVIDSON: Anything else?

1

That's it for now.

2

(Luncheon recess, 12:00 p.m. to 1:00 p.m.)

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

5

6                                    EXAMINATION

7 BY MR. DAVIDSON:

8            Q        Please state and spell your full name for  
9 us, please.

10           A        Jerry, J-E-R-R-Y, Cioeta, C-I-O-E-T-A.

11           Q        And how are you employed?

12           A        I'm employed as a sergeant with the Portland  
13 Police Bureau.

14           Q        How many years of law enforcement experience  
15 do you have?

16           A        It will be 20 in June.

17           Q        And all of that with Portland?

18           A        Negative. A year with Salem and 19 and  
19 change with Portland.

20           Q        Okay. And what is your current duty  
21 assignment?

22           A        I work as a sergeant for patrol on afternoon  
23 shift at Central Precinct.

24           Q        And what area does Central Precinct cover?

25           A        Cesar Chavez till the end of Portland and

1 from the end of like Tigard, Portland, Lake Oswego  
2 border to, you know, to the bridge.

3 Q Okay. And you said you work the afternoon  
4 shift?

5 A Yes.

6 Q And what are the times for the afternoon  
7 shift?

8 A 4:00 in the afternoon to 2:00 in the  
9 morning.

10 Q Okay. And how long have you been a  
11 sergeant?

12 A Fifteen months.

13 Q All right. And what are the kind of  
14 assignments you've had with the bureau since you've  
15 been with PPB?

16 A I've been a school resource officer. I've  
17 done a lot of patrol. I've done the sex offender  
18 registration detail. I've done bike patrol, rapid  
19 response team. I've done undercover missions, drug  
20 missions, prostitution missions, livability issues.  
21 I've done lots.

22 Q Okay. And did you attend college before  
23 becoming a police officer?

24 A Yes. I have a Bachelor's degree.

25 Q And in what topic?

1           A       Political science, pre-law.

2           Q       And what school did you attend?

3           A       Portland State University.

4           Q       All right. Thank you.

5                    So what are your duties as far as being a  
6 sergeant/supervisor during police shift?

7           A       Monitor the officers. I monitor calls for  
8 service. I monitor I, I do scheduling. I do  
9 vacations, the street side of things. Monitor calls.  
10 Go to the calls that may require additional resources  
11 and help provide those resources. I'm essentially a  
12 resource for the street officers.

13          Q       And during an average shift, how many patrol  
14 officers would you be supervising?

15          A       Anywhere from a minimum of 24 to a maximum  
16 of 35.

17          Q       Okay. So were you on duty, in uniform, and  
18 displaying a badge on the evening of February 9th of  
19 this year?

20          A       I was.

21          Q       And did you hear the call go out relating to  
22 this 911 call from Don Perkins that Officers Walsh and  
23 Clark ended up responding to?

24          A       I didn't hear the call itself. I was at the  
25 precinct, and I heard Officers Clark and Walsh saying

1 things over the radio that alerted my attention to  
2 their call.

3 Q Okay. Why don't you just walk us through  
4 what occurred from your perspective moving forward.

5 A I was at Central Precinct taking care of  
6 some administrative duties. I knew that dispatch had  
7 dispatched two officers to an ECIT call, an Enhanced  
8 Crisis Intervention call. And so -- it always kind of  
9 alerts my ear anyway.

10 And then at one point I heard --

11 Q Let me stop you for a second.

12 What is it about an ECIT call that catches  
13 your ear and why is that important?

14 A Um, it's important because the mental health  
15 crisis in our city is substantial. We have a lot of it  
16 especially at Central Precinct. And those calls tend  
17 to require more resources than most other calls.

18 Q Okay. Please continue.

19 A So I heard at one point either Officer Clark  
20 or Officer Walsh, I don't know which, say they had a  
21 subject at gunpoint.

22 Putting two and two together, knowing that  
23 there was an ECIT call in their area and knowing that --  
24 hearing that they had somebody at gunpoint, I  
25 immediately left the precinct and went to that call.



1           And then on the way to the call, I wanted to  
2 make sure that we had as many resources available to us  
3 to go to that call.

4           So I asked for -- I knew that Officer Clark  
5 had a long gun rifle, an AR-15, but I wanted another one  
6 on scene because I also know that one of those two is an  
7 ECIT officer. I don't know which. And so having the  
8 additional resource of a extra long gun would allow them  
9 to concentrate more on the ECIT thing, less on the rifle  
10 aspect of that particular call.

11           I also requested a second ECIT officer again,  
12 just for additional resources. Oftentimes one ECIT  
13 officer can have, I don't know, for lack of a better  
14 term, better luck than one or they can switch off or  
15 bounce ideas off of each other, that kind of thing.

16           So got those things going. When I arrived, I  
17 saw Officer Clark and Officer Walsh on the passenger  
18 side behind their SUV.

19           Q       I'm going to interrupt you just briefly.

20                    Where did you understand, I guess, the call  
21 to be occurring at?

22           A       Oh, it was -- I'm sorry. It was -- they did  
23 a really good job of that. It was at 22 and Lafayette  
24 on the southeast side of the river, SE 22 and  
25 Lafayette.

1           They said they were facing northbound. I  
2 know that Powell is to the north of there. And they  
3 wanted us to come in from the south because we would be  
4 facing north.

5           Q       Is that how you approached?

6           A       Yeah. I came from behind them from the  
7 south. And when I got there, I parked quite a ways --  
8 not quite a ways, but a little ways away from them, but  
9 I could see where they were at.

10           And I saw the two of them, Officer Walsh and  
11 Officer Clark, on the passenger side of their SUV behind  
12 it. And then I saw -- they were to the passenger side  
13 looking, looking north along the passenger side of their  
14 car. And then I saw Officer Duong basically where the  
15 license plate is on the SUV.

16           So I went up. I know that Officer Duong is a  
17 less lethal operator, a beanbag gun operator. She  
18 didn't have it in her hand. I thought that was a  
19 resource that we may want to utilize. So I instruct her  
20 to go back to her car and get her less lethal gun.

21           She came back. Sometime in there, I'm not  
22 sure when, Officer Schroeder was still there. Right  
23 after I talked to Officer Duong, I walked up to Officers  
24 Clark and Walsh asking them what they had.

25           Officer Clark said the subject threw a gun

1 out of the van. It's on the ground. He shined his --  
2 the flashlight of his AR on to the gun. I could see it.  
3 And it was, it was in the parking strip right next to  
4 the van, right next to where he was at.

5 Q So if I can understand this.

6 Officer Clark's AR-15 has like a flashlight  
7 or spotlight attached to the barrel?

8 A Correct.

9 Q He used that to highlight for you what he  
10 said was a gun?

11 A Correct.

12 Q What did you observe?

13 A I saw a black handgun.

14 Q Okay. To your eye, it looked like a  
15 handgun?

16 A Correct. There was no doubt it was a  
17 handgun.

18 Q No doubt?

19 A Yeah.

20 I saw Mr. Perkins sitting a lot like I'm  
21 sitting here on the passenger side. The van had two  
22 doors. It opened like French doors. It was an old  
23 style, probably '70s van.

24 I noticed that one door was opened. I  
25 couldn't tell you which door it was. He was sitting on

1 the floorboard of the van with his feet out on the curb.  
2 And officer, I don't know if it was Officer Clark or  
3 Officer Walsh, was engaged in conversation with him.

4 And on the way to the call, they were saying  
5 that he was coming in and out of the van. While I was  
6 there, he was on the outside of the van, sitting like I  
7 described.

8 And there was communication between the  
9 officers and Mr. Perkins. Mr. Perkins kept saying,  
10 "Come to me. Come to me." And the officers kept  
11 saying, "We want to help you. You need to come to us."

12 And at one point while I was there, Mr.  
13 Perkins said that he had a second gun in the van. So we  
14 had multiple threats. We had threats inside the van,  
15 outside the van, and we have traffic. And so Officer --  
16 Sergeant Holzer is trying to block off traffic so we  
17 don't have anything down range.

18 I'm trying to coordinate a team to handle Mr.  
19 Perkins safely. We've got the two threats of the gun  
20 that we see on the ground and the potential of a second  
21 gun inside the van.

22 Q At this point how would you characterize Mr.  
23 Perkins', I guess, demeanor?

24 A Confrontational.

25 Q Okay.

1           A       Um, so while we were trying to establish a  
2 plan, Mr. Perkins made a very sudden assertive action  
3 to the handgun, and that is when shots were fired.

4           A GRAND JUROR: Which, which handgun, the  
5 one on the ground?

6           THE WITNESS: Correct, the one outside.

7           A GRAND JUROR: Okay.

8 BY MR. DAVIDSON:

9           Q       So you saw Mr. Perkins move towards the  
10 handgun that was on the ground?

11          A       Correct.

12          Q       And you said shots were fired.

13                   Do you know who fired the first shots?

14          A       So I've been an AR-15 operator, I don't  
15 know, for most of my career. And I've heard AR-15  
16 rounds. That's what I thought was fired.

17                   I was later told that both the AR-15 was  
18 fired from Officer Clark and handgun from Officer Walsh.  
19 I only heard AR-15 rounds because they are so much  
20 louder than a handgun round. It just drowned out the  
21 noise.

22          A GRAND JUROR: Okay. Did Officer Clark  
23 fire that initial shot or was it Officer Walsh?

24          THE WITNESS: I couldn't tell you. My eyes  
25 were focused down range. I don't know who fired first

1 to be honest with you. I'm sorry.

2 BY MR. DAVIDSON:

3 Q And did you yourself have your sidearm  
4 unholstered at that point?

5 A No, I did not.

6 Q Okay. And was it Officer Doung -- or  
7 Officer Schroeder who was up at the car where they were  
8 in relation to all this? And if you don't remember,  
9 that's fine.

10 A I don't remember where they were at. I know  
11 there were two volleys of gunfire. And I know that  
12 immediately after the gunfire was over, Mr. Perkins had  
13 disappeared in between his car and the car that was  
14 parallel parked right in front of him, so he was in  
15 between those.

16 I didn't know if he'd been hit or not, and I  
17 didn't know what his condition was. I initially  
18 activated SERT and CNT. There was so much unknown, that  
19 I didn't, I didn't -- I wanted to get to him, and I  
20 wanted to get to him safely, but we have the gun on the  
21 ground. We've got the gun in the van -- potentially the  
22 gun in the van, and he's gone, and I don't know if he's  
23 hit or not.

24 He was trying to -- it was very clear to me  
25 by his demeanor and what he was saying that he was

1 trying to get us to come to him, and I didn't want to  
2 get sucked into another fight.

3 And so I went around to the passenger side --  
4 I'm sorry, the driver's side of the SUV and I was  
5 talking to Officer Schroeder, so I know he was there. I  
6 just don't know when. And we started establishing a  
7 plan.

8 We were talking about whether the SUV -- some  
9 of our SUV's have ballistic doors in it, and we were  
10 trying to figure out whether this one was that.

11 Q When you say "ballistic door," what is a  
12 ballistic door?

13 A It stops gunfire. So in a normal car door,  
14 gun bullets just go straight through.

15 A GRAND JUROR: So like a reinforced door?

16 THE WITNESS: Yeah. I don't know what they  
17 are made of. They are new to us. I know they are  
18 really heavy.

19 So we were establishing a plan and trying to  
20 figure out whether we were in a safe spot or not. I  
21 instructed the officers to yell at him to see if he was  
22 still alive or hurt.

23 So one of the officers started yelling out  
24 "Don. Don." And after the second or third attempt, he  
25 yelled back at us that he was hurt. So I knew he was

1 alive.

2           And so we wanted him to crawl out so we could  
3 see him so that we could render first aid. We already  
4 had an ambulance staging in the event that we needed it  
5 for one of a million reasons.

6           So I knew the ambulance was close. And I  
7 knew that if we could get to him, our ability or  
8 opportunity to save his life was substantially higher  
9 than if we didn't.

10           So we instructed him to crawl out with the  
11 ability to see his hands from between the two cars. He  
12 did that really relatively quickly. And it was very  
13 obvious as soon as we saw him that he was injured. And  
14 I knew that we needed to get to him more quicker than  
15 later. We could see his hands. We talked about it. We  
16 developed a plan. And we all went up together.

17           I don't know who handcuffed him, but he was  
18 eventually handcuffed right away, and we were able to  
19 locate his injuries. I applied a tourniquet. I knew  
20 that one of his arms had been shot. So I didn't want  
21 him to bleed out and lose his arm, so I applied a  
22 tourniquet.

23           Q       Before we continue, I want to ask you, why  
24 was he handcuffed? Let me ask you, what is the purpose  
25 of that?



1           A        Um, it's an officer safety. I mean, I could  
2 see his hands, but he already -- we were already  
3 engaged in, for lack of a better term, a fight. And we  
4 knew there was one gun, and we just didn't want to take  
5 the risk of having another gun or a knife or anything  
6 that could hurt us for his safety as much as for ours.

7           Q        Okay. And as soon as that was done, my  
8 understanding from your testimony is that you began to  
9 offer him medical assistance as you waited for the  
10 ambulance.

11          A        Correct. We got on the radio and said that  
12 ambulance could come straight in, and that's when we  
13 were applying first aid -- tourniquets, and just kind  
14 of assessing his injuries.

15          Q        Okay. Now, was he placed on his back, on  
16 his side, on his front?

17          A        He was on his side.

18          Q        Is there a name for that?

19          A        It's the post-shooting position. It's --  
20 oftentimes if you put a person on their stomach when  
21 they are handcuffed, and they've got adrenaline and  
22 everything going, they can die of positional asphyxia.  
23 We didn't want that to happen. We were trying to save  
24 this guy's life.

25          Q        So you are actually trained to place people

1 on their side?

2 A Correct.

3 Q Now, you indicated you applied a tourniquet.

4 Can you tell me a little bit about how it is  
5 that police officers are equipped with tourniquets, and  
6 for what purpose, and whether you have received training  
7 in that regard?

8 A Yeah. We've received quite a bit of  
9 training. Combat first aid. It's literally to prevent  
10 limbs from bleeding substantially. And there's, you  
11 know, arteries that lead to all your limbs. If one of  
12 those are hit, you know, you can die within minutes.

13 So a tourniquet is applied as far up on the  
14 limb, whether it's a leg or arm, as far as it can go,  
15 and you tighten it down to literally stop blood flow to  
16 that arm.

17 And it stops lots of blood. It prevents more  
18 damage going to that limb. And kind of it's -- you  
19 know, we've been carrying them now for three or four  
20 years. We get training on them. We've had a lot of  
21 training the first year and then we get routine training  
22 every year.

23 Q And that tourniquet would be available to I  
24 guess anybody who suffered a gunshot wound, be it  
25 someone like Mr. Perkins or an officer, for example?

1           A       Correct.

2           Q       Or just a civilian who was shot in a crime  
3 of some sort.

4           A       Yeah. Anybody. I had a guy try to kill  
5 himself by cutting his arms, and applied tourniquets to  
6 both arms. That saved his life.

7           Q       Okay. So you applied the tourniquet. And  
8 at this point are you just waiting -- was the ambulance  
9 called in at that point?

10          A       We had called the ambulance as soon as the  
11 handcuffs went on. It's safe for everybody. And while  
12 we were applying first aid, the ambulance got there.

13                   We noticed that he had a wound to his  
14 abdomen, and we were talking about addressing that. And  
15 the ambulance was there so they could address it at that  
16 point. And that's when the ambulance took over the care  
17 for Mr. Perkins.

18          Q       Okay. And were you guys having any kind of  
19 conversation with Mr. Perkins while this was all going  
20 on, or is he saying anything?

21          A       As soon as we put the handcuffs on him, he  
22 said that it was a fake gun or a toy gun. I can't  
23 remember what he said. But he said, "It's not real.  
24 The gun is not real." He was talking about being hurt.

25          Q       He seemed like he was in a fair amount of

1 pain?

2 A Yeah.

3 Q Okay. Now, I imagine as a police officer,  
4 you've probably encountered airsoft pistols and things  
5 like that.

6 A Yes.

7 Q And they often have that orange tip on them;  
8 correct?

9 A Yes.

10 Q Did you get a chance to look at this gun  
11 that was dropped outside the van at all prior -- any  
12 time during this -- except from a distance, it appeared  
13 to you that it was a real gun?

14 A Correct.

15 Q Did you get a chance to take a closer look  
16 at it?

17 A No.

18 Q Okay. But as far as you were able to  
19 discern from your distance, it appeared to be a real  
20 firearm?

21 A Absolutely. There was no question in my  
22 mind.

23 Q Okay. All right. So at some point Mr.  
24 Perkins goes in the ambulance and is off to the  
25 hospital.

1           A       Correct.

2           Q       At that point --

3           A       I put an officer with him to stay with him  
4 the entire time.

5           Q       That was Officer Fox?

6           A       Correct. I instructed an officer to stay  
7 with the gun because I knew where it was at and I could  
8 direct them to it, and I separated the officers  
9 involved, and that's when Sergeant Holzer and  
10 Lieutenant Wheelwright came and took over.

11          Q       And taking a step back.

12                   Prior to the first shots being fired, did you  
13 hear either Officer Clark or Walsh give directives to  
14 Mr. Perkins?

15          A       Yeah. They kept telling him they needed him  
16 to show us his hands and come to us, and that's when he  
17 was already, you know, you come to me. It was just  
18 this back and forth confrontational.

19          Q       Okay.

20                   MR. DAVIDSON: All right. Well, I think  
21 those are pretty much all of the questions I have for  
22 Sergeant Cioeta.

23                   Anybody have any questions for Sergeant  
24 Cioeta?

25                   A GRAND JUROR: Yeah. I do.

1           So you've been an officer for 20 years, a  
2 sergeant for a little more than a year. So you are  
3 pretty familiar with the policies of the department?

4           THE WITNESS: Yes.

5           A GRAND JUROR: So I'm not, so I just wanted  
6 to ask.

7           THE WITNESS: Okay.

8           A GRAND JUROR: Based on that experience,  
9 how would you say that this scenario played out  
10 relative to the policies and procedures of the Bureau?  
11 Were policies followed? Do you feel like it was done  
12 properly, or do you think that things could have  
13 happened differently?

14          THE WITNESS: Well --

15          A GRAND JUROR: It's kind of a really broad  
16 question.

17          THE WITNESS: I hate to say it, but it's  
18 almost a trick question because there's lots of  
19 policies just within this one scenario.

20 BY MR. DAVIDSON:

21           Q       If I can just jump in for one second.

22                   Obviously, Sergeant Cioeta, you have a small  
23 amount of information about what occurred.

24           A       Correct.

25           Q       You know what you know; you have not been

1 part of the broader investigation that's taken place.

2 A Correct.

3 Q So as far as what civilian witnesses may  
4 have seen, you don't know; correct?

5 A I haven't talked to a single one.

6 Q As far as the videos taken by civilians, you  
7 haven't seen anything of that?

8 A No.

9 Q You have not yourself been able to talk to  
10 either shooting officers since this occurred; is that  
11 right?

12 A Correct.

13 Q So I mean, I'm not trying to cut you off,  
14 but I just -- I'm wondering -- I mean, would it be  
15 difficult for you to render an opinion on that? I  
16 mean, you could go on your small piece.

17 A That's what I was going to say. I don't --  
18 it's -- there was -- there's so many aspects to this,  
19 that I could only speculate, and that would be very  
20 unfair to the integrity of the process to be honest  
21 with you.

22 A GRAND JUROR: Absolutely. Thank you.

23 BY MR. DAVIDSON:

24 Q Did you see anything that occurred while you  
25 were there that you were, like, that is contrary to

1 Bureau training and policy?

2 A No, I did not.

3 A GRAND JUROR: Okay.

4 MR. DAVIDSON: It's kind of flipping the  
5 question around.

6 A GRAND JUROR: There we go. Thank you for  
7 helping me out.

8 MR. DAVIDSON: Just to let you guys know, we  
9 are going to have Officer Foxworth in tomorrow morning  
10 from the training division, who is going to kind of  
11 answer those types of questions, because they are --  
12 they are the experts on what PPB policy is in regards  
13 to everything. So he's going to walk us through, and  
14 he'll be able to maybe answer those kind of questions  
15 for you tomorrow.

16 A GRAND JUROR: Okay.

17 MR. DAVIDSON: Anybody else?

18 A GRAND JUROR: I have a few questions.

19 You said that he made several threats. What  
20 were the threats that he was making?

21 THE WITNESS: I didn't think I said threats.  
22 He was confrontational in that the officers wanted him  
23 to come to us because it's safer for everybody. He  
24 kept wanting us to come to him.

25 So -- oh, okay. I see where the confusion



1 is.

2 So I used the word "threat" as in something  
3 as a danger to me, not that he was threatening us or  
4 making threats.

5 So the threats were the threat of a gun that  
6 we saw on the ground, the threat of a potential other  
7 gun or other things that could hurt us in the van. So  
8 threats more as a broader these things could hurt us,  
9 not necessarily a threat that he made.

10 A GRAND JUROR: Okay.

11 THE WITNESS: Does that make sense?

12 A GRAND JUROR: I just want to make sure on  
13 that.

14 And then did he appear intoxicated?

15 THE WITNESS: You know what, I wasn't close  
16 enough to be able to tell. And the communication that  
17 Officer Clark and Officer Walsh had with him was a lot  
18 longer. I mean, mine was such a brief time. It would  
19 be unfair for me to speculate.

20 A GRAND JUROR: Okay. Not a problem.

21 I have one last question for you. So the  
22 AR-15 assault rifles that are used, is that standard for  
23 ECIT calls?

24 THE WITNESS: Well --

25 A GRAND JUROR: You were saying that there's

1 one -- there was already one there, and you wanted  
2 another one there.

3 THE WITNESS: So our AR-15 program, not  
4 every officer carries them. It's a special training.  
5 It's long. It's a 50-hour training initially, and then  
6 it's a two-week training every year, and we have to  
7 qualify four times a year. So not every officer  
8 carries one.

9 The officers that do carry them, like I am an  
10 AR-15 operator, Officer Clark is an AR-15 operator, they  
11 are in our car all of the time. So I knew there was one  
12 there just because I know that Officer Clark carries  
13 one. So that's what I meant by that. They are not on  
14 every ECIT, no.

15 BY MR. DAVIDSON:

16 Q I know your testimony was you wanted -- even  
17 though you knew Officer Clark was an AR-15 operator,  
18 you wanted him to focus his attention, not on the AR-15  
19 aspect of the call, but on the ECIT aspect of the call?

20 A Correct.

21 Q And your purpose in calling another AR was  
22 so that there was an AR officer there who could provide  
23 cover allowing officer -- to free up Officer Clark to  
24 focus on the crisis intervention aspect of what he was  
25 doing?

1           A       Correct.

2           A GRAND JUROR:  So at the same time then  
3 when did the second ECIT team --

4           THE WITNESS:  Never got there.  This  
5 happened too quickly.

6           A GRAND JUROR:  Okay.

7           A GRAND JUROR:  So would it be fair to put  
8 together, based on that little back and forth, that you  
9 wanted the AR-15 as cover because of the firearm  
10 situation rather than the mental health situation?

11          THE WITNESS:  Oh, yes.  It was all because  
12 of the gun, not the mental health.

13          A GRAND JUROR:  Okay.  So you wouldn't  
14 normally call an AR-15 because somebody is having a  
15 mental health crisis?

16          THE WITNESS:  No.  No.

17          I'm sorry, I didn't understand your question.

18          A GRAND JUROR:  That is my question.  Thank  
19 you for clarifying.

20          THE WITNESS:  You are really good at putting  
21 pieces together.  No.  It's not something we do at  
22 every ECIT call.  In fact, it's probably pretty rare.  
23 The AR-15 had nothing to do with the ECIT aspect of the  
24 call, but because of the gun aspect of the call.

25          A GRAND JUROR:  Okay.  Thank you.

1           Then can I ask you to pantomime the assertive  
2 motion he made toward the gun?

3           MR. DAVIDSON: What did you see -- show for  
4 us the movement you saw him make towards the gun.

5           A GRAND JUROR: Can you act it out? Sorry.

6           THE WITNESS: He literally just got up like  
7 that, and the gun was within an arm's reach. So it was  
8 an assertive action toward that gun (indicating).

9           A GRAND JUROR: Okay. Thank you.

10          A GRAND JUROR: Did he appear then to -- was  
11 he trying to keep this moving, you think, trying to  
12 flee as he went in between the van and the car?

13          THE WITNESS: I could only speculate and  
14 that wouldn't be fair. I'm sorry.

15          A GRAND JUROR: Thank you for not  
16 speculating.

17          MR. DAVIDSON: He's actually been a witness  
18 in an actual trial enough; he's been instructed not to  
19 speculate.

20          THE WITNESS: Only one or two.

21          MR. DAVIDSON: All right. Anybody else with  
22 questions for Sergeant Cioeta? No. All right. I'm  
23 going to let him go.

24                 Thank you for your time.

25          A GRAND JUROR: Thank you for your time and

1 thank you for your duty.

2

3

4

QUYEN DUONG,

5

a witness called on behalf of the State, having been

6

first duly sworn, was examined and testified as

7

follows:

8

9

EXAMINATION

10

BY MR. DAVIDSON:

11

Q Please state and spell your full name for

12

us.

13

A Quyen Duong. Q-U-Y-E-N. D-U-O-N-G.

14

Q And how are you employed?

15

A I am a police officer with the City of

16

Portland for five years.

17

Q What's your current duty assignments?

18

A I am assigned to work with Central Precinct.

19

Q And what shift?

20

A Afternoons.

21

Q And do you have any other police experience

22

other than with Portland?

23

A I was a reserve back in California for a few

24

months only.

25

Q And did you attend college?

1 A Uh-huh.

2 Q And where did you go to school?

3 A At San Jose State.

4 Q And what did you study?

5 A Sociology.

6 Q And do you have a degree?

7 A Not yet.

8 Q Okay. All right. I think you know why  
9 we're here. We're here to discuss this incident that  
10 occurred on the evening of February 9th of this year  
11 at -- on I guess it would have been Southeast 22nd,  
12 between Powell and Lafayette.

13 A Uh-huh.

14 Q Were you on duty, in uniform, and displaying  
15 a badge?

16 A I was.

17 Q Were you operating a marked motor vehicle?

18 A I was.

19 Q All right. How did you first become aware  
20 of what was going on in relation to this incident?

21 A I was listening to the radio, the chatter,  
22 and Officer Clark and Walsh were dispatched to a  
23 suicidal male. He was threatening to take pills if we  
24 don't get him help. He was very uncooperative and  
25 wasn't giving us any information as to where he was at.

1 Q Where were you when this call came out?

2 A I was working on another report, parked at  
3 Southeast 6th and Clay in the parking lot.

4 Q And you heard the original call get  
5 dispatched?

6 A Yes.

7 Q And then did you hear that Officer Clark  
8 and/or Walsh just assigned themselves to this call?

9 A They were dispatched.

10 Q Dispatched. Okay.

11 And were you just monitoring their radio  
12 traffic then?

13 A Uh-huh.

14 Q And what caused you to want to respond to  
15 the scene?

16 A Um, I've worked with those two officers for  
17 about four years and I trust them. And when I heard  
18 Officer Walsh get on the radio, and his voice just  
19 sounded different, stressed out. Just not himself.

20 I'm, like, okay, well, I'm going to start  
21 going there. That's what we usually do before we even  
22 get dispatched. We'll start driving there just to make  
23 sure that, you know, we'll be there if they need us.

24 Q And at that point did you hear any mention  
25 of a gun over the air, anything like that?

1           A       Yeah. It was -- I couldn't catch the whole  
2 thing, but it sounded like Officer Walsh said something  
3 about hearing a sound of a gun clicking or -- that's  
4 kind of what I remember. But I heard gun. I'm, like,  
5 okay. Faster.

6           Q       Okay. So were you already en route that way  
7 when you heard about the gun?

8           A       Yes, and then I was dispatched by our  
9 dispatcher.

10          Q       Okay. And how long did it take to get from  
11 where you were to the scene?

12          A       It felt like within a few minutes.

13          Q       A few minutes?

14          A       Yeah.

15          Q       Did you receive any additional dispatches or  
16 updates over the radio?

17          A       Officer Clark had requested for -- it was  
18 Walsh or Clark who requested for additional ECIT and  
19 like another rifle to the scene.

20          Q       Okay. All right. And so what happened when  
21 you actually got there? Which way did you approach the  
22 scene from?

23          A       So they said that guns were pointing  
24 northbound on 22nd. And the safe route would be down  
25 21st. So I head down Powell and go down 21st and



1 Lafayette. Parked my car against the east curbline,  
2 and I jump out, not remembering that I was driving a  
3 MAV car because it's my partner's who held on to it.

4 Q Okay. And who is your partner?

5 A Officer Fox.

6 Q So do you work a two-person car then?

7 A I was.

8 Q You were working a two-person car?

9 A Yes.

10 Q It's a MAV-equipped car. But was Officer  
11 Fox with you at the time?

12 A No. So he had come in earlier to help  
13 with -- just help with taking calls because we had a  
14 shooting earlier that day. So I came in two hours  
15 after he picked me up. And he went to -- I dropped him  
16 off to go to community meeting and then I took over the  
17 driver's seat.

18 Q Okay. And it's my understanding from  
19 earlier testimony that there's, like, a mobile  
20 microphone that is worn in relation to the MAV vehicle.

21 A Yeah. It was on my partner.

22 Q Okay. So you had the MAV car and camera,  
23 and he had the audio part of it on his --

24 A Yes.

25 Q All right. So you arrive without Officer

1 Fox, and you parked your MAV vehicle on the east  
2 curblane facing northbound.

3 A Uh-huh.

4 Q And could you see Officer Clark and Officer  
5 Walsh's SUV's from where you parked? What kind of  
6 vehicle is yours?

7 A Mine is a Crown Victoria.

8 Q Okay. Could you see their parked vehicles  
9 when you arrived?

10 A Yeah.

11 Q Were you the first officer who arrived on  
12 the scene after Clark and Walsh?

13 A Yes.

14 Q So walk us through what you saw when you got  
15 there?

16 A So I pull up, I run out. And I mean, gun,  
17 and I was, like, looking. I'm not going to bring a  
18 beanbag round out there to a gunfight or whatever. So  
19 I run up.

20 I see Officer Clark standing at -- like, at  
21 the back of the first patrol car, number one, closest to  
22 the suspect van. And then Officer Walsh was next to  
23 him. And they both had their -- Officer Clark had his  
24 rifle out and Officer Walsh had his gun out.

25 And then I was, like, "Hey, what do you guys

1 need me to do?" So they told me to watch the driver's  
2 side.

3 Q Driver's side of what?

4 A Driver's side of the van that the suspect  
5 was in.

6 Q If we can just take a step back for a  
7 second.

8 You had mentioned something about not wanting  
9 to bring your beanbag. What are you referring to?

10 A My less lethal.

11 Q And what is that exactly?

12 A It shoots out -- um, it's just another  
13 option for force. It's to stop, like, someone with a  
14 knife or with, you know, with a baseball bat. But we  
15 usually don't do it, take it out for a firearms, I  
16 guess or --

17 Q So if you are confronted with somebody with  
18 an actual firearm?

19 A I wanted to keep my hands free in case they  
20 needed something else.

21 Q Okay. So this is essentially a shotgun  
22 then. Instead of firing slugs, it fires a bag full of  
23 beans or something?

24 A Yes.

25 Q So it's less lethal.

1           A       Uh-huh.

2           Q       And you decided not to use that?

3           A       Yes, because I wanted to keep my hands free  
4 in case they needed me for something else.

5           Q       So they asked you to cover the driver's side  
6 of the red van?

7           A       Uh-huh.

8           Q       So what happened next?

9           A       And then I remember Officer Clark telling  
10 me, "Hey, I'm going to cover you and we got to turn on  
11 the spotlights." They didn't have their spotlights on  
12 yet. So we walked up to the driver's door of our  
13 patrol car. I turn on the spotlight and then the  
14 take-down lights.

15                   Then I don't remember if Officer Walsh was  
16 able to turn on the passenger side or not to light up  
17 the van. So it makes it harder for him to see where  
18 we're at.

19           Q       And these are, I guess, spotlights or high  
20 wattage lights that are out in front of the SUV?

21           A       They are really bright. There's one on top,  
22 the take-down lights and then the two spotlights on the  
23 side for the SUV's.

24           Q       Okay. So at that point there was better  
25 illumination of the van?

1           A       Uh-huh. It just helps conceal us, too, and  
2 makes it hard for him to look back and see where we're  
3 at.

4           Q       Okay. Now, at this point did you see Mr.  
5 Perkins yourself?

6           A       I, I remember -- I think I remember, like,  
7 him popping his head out a little bit and just popping  
8 it back in, like, briefly, very briefly.

9           Q       Okay. And at this point you had already  
10 heard radio chatter about a gun.

11          A       Uh-huh.

12          Q       Did you see the gun yourself?

13          A       I didn't see it personally.

14          Q       Okay. All right. So what happened next?

15          A       And then so we walk back, and I think there  
16 was a car that was, like, driving through on the  
17 street. We're, like, going no, no, no. We tried to  
18 stop them, so they continue.

19                    So I was, like, well, maybe I'll try to move  
20 my car to try to block 22nd and Lafayette right there so  
21 no vehicle traffic can get through.

22                    So I run back, and that's -- I think I made  
23 it to my car when I saw Officer Schroeder pull up to  
24 block the street. I'm like perfect. I run back up.

25                    And then Sergeant Cioeta comes back up --

1 comes up there with Officer Schroeder. And then I think  
2 that's when Sergeant Cioeta directed me to go bring my  
3 less lethal. So I run back -- no, no, no, not yet. So,  
4 sorry. Rewind.

5 Yeah. Actually so I run back. Take the less  
6 lethal out. Bring it back up again. But as I'm running  
7 back, I think that's when I heard the shots.

8 Q Okay.

9 A Yeah.

10 Q So you weren't quite back up?

11 A I didn't make it back up to my car to  
12 retrieve my less lethal before the shots, yeah.

13 Q So you think you were on your way back to  
14 your car to retrieve the less lethal and that's when  
15 you heard the shots?

16 A Yeah.

17 Q Okay. So you obviously weren't out there.  
18 You probably can't tell us who fired the shots.

19 A No.

20 Q Okay. So when you heard shots, what did you  
21 do?

22 A I paused a little bit. Then I was like, oh,  
23 my gosh, should I run back up to help or should I  
24 continue to retrieve my less lethal because I had an  
25 order?

1           I was, like, okay, I need to follow my order,  
2 so I took the less lethal, and that's when I ran back  
3 up.

4           Q       And what did you see -- where did you  
5 position yourself when you ran back up and what did you  
6 see?

7           A       I don't remember where exactly, but I was  
8 behind the SUV. And then I'm, like, "What do you need  
9 me to do?"

10           So we came -- I remember -- oh. I went -- I  
11 remember -- I was close to Officer Walsh and Clark. And  
12 I Officer Clark was asking the subject inside the  
13 vehicle if he was injured, and that we were going to get  
14 him medical help, you know, but he needed to follow our  
15 instructions.

16           Q       Okay. And you said "the subject inside the  
17 vehicle."

18           Do you just mean the guy who was in the  
19 vehicle earlier; right?

20           A       Yeah.

21           Q       You didn't actually see him in the vehicle  
22 at that point, did you?

23           A       I can hear him, like, kind of talking back  
24 to Officer Clark, but I didn't see him at that point.

25           Q       Okay. Prior to the shots being fired while

1 you were there, did you hear either Officer Walsh or  
2 Clark or any other officer giving Mr. Perkins, the  
3 person who was shot, commands?

4 A Yes, but I couldn't tell you all what it  
5 was.

6 Q Okay. But you just remember commands being  
7 given?

8 A Uh-huh.

9 Q Okay. So the shots were fired. You went  
10 back up and heard an officer inquire about Mr. Perkins,  
11 whether he was hurt or something.

12 A Yes.

13 Q Did you hear Mr. Perkins respond?

14 A Yeah. He's, like, "Yeah, I've been shot,"  
15 or something like that is what he told us.

16 Q And then what happened?

17 A And then I think it was Officer Clark who  
18 gave him instructions to exit his van. And I think  
19 that's when I was back on the driver's side of the back  
20 of the van.

21 And then eventually I saw the subject just  
22 kind of come out slowly of the van. I don't remember if  
23 he went through the front of the van or out the driver's  
24 door.

25 Q So you think he --



1           A       But he had his hands up.

2           Q       So you believe he actually exited the van  
3           itself?

4           A       Yeah.

5           Q       Okay. But you're not sure how he did that?

6           A       Yeah. I don't remember. I mean, I was  
7           watching, but I can't remember.

8           Q       Okay. Is it possible that he actually  
9           didn't exit the van, but maybe came out to be in the  
10          space between the van and the vehicle in front of it?

11          A       Yeah. It's possible.

12          Q       All right. So what happened after he came  
13          out into the street?

14          A       So I think I was standing with Sergeant  
15          Cioeta who had his gun out. Um, I still had my less  
16          lethal gun on my person. I was, like, well, I'll be  
17          the custody team.

18                    So we had Officer Schroeder on that side and  
19          then Sergeant Cioeta and myself. And then I think,  
20          well, I'll need to get rid of my less lethal, so I just  
21          dump it in the SUV right there.

22                    Then I think Sergeant Cioeta instructed for  
23          Officer Clark to come in the middle to be our lethal  
24          cover as we approached the subject who was, like, now on  
25          the floor.

1 Q On the ground?

2 A Yeah.

3 Q And what happens when you arrive there? And  
4 are people giving you commands at that point?

5 A Yeah. Yeah. And then, like, I remember it  
6 was just really bizarre how, like, to me it looked;  
7 like he was very surprised that he'd been shot by the  
8 police, you know.

9 He was, like, "I've been shot," but -- anyway  
10 so he went down and he didn't have anything in his  
11 hands. And I remember saying, you know, there's nothing  
12 in his hands -- or maybe I was thinking that.

13 So we approached him. And then I think I  
14 grabbed on to his right arm and Officer Schroeder grabs  
15 his left arm, but we took him into custody. We had  
16 medical come in almost immediately. And Sergeant Cioeta  
17 applied a tourniquet to his arm, his right arm, yeah.

18 Q Okay. And do you remember the subject, Mr.  
19 Perkins, saying anything while you were there?

20 A I just remember him kind of -- I think he  
21 said, "I've been shot," like very surprised. And I  
22 don't remember -- oh, he was telling us where his  
23 injuries were, yeah.

24 Q Okay. All right. And then ambulance  
25 arrived?

1 A Uh-huh.

2 Q All right. And anything else of note occur  
3 in your memory?

4 A No.

5 Q Okay.

6 A But I think I was standing there, and then I  
7 was, like, instructed to go just watch, to make sure  
8 that the gun was still there and the pill bottle on the  
9 ground.

10 Q So what did you see over there?

11 A I saw a little, like, handgun on the ground  
12 and then his pill bottle over there.

13 Q And where was the gun in relation to the  
14 van?

15 A It was, like, right outside the sliding  
16 door. I don't know, within feet, like two feet.

17 Q Okay. And did the gun appear -- what kind  
18 of gun did it appear to you to be?

19 A I'm not a gun gal, so I couldn't tell you.  
20 It was a black handgun.

21 Q Did it appear to be a real gun to you?

22 A It looked like it.

23 Q Okay. All right. Anything additional?

24 A No.

25 MR. DAVIDSON: Okay. I think those are all

1 of the questions I have for Officer Duong.

2 Does anyone else have any questions for  
3 Officer Duong?

4 No. Okay. All right. You are all done.  
5 Thanks a lot.

6 A GRAND JUROR: Thank you.

7

8

9

MATTHEW SCHROEDER,

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

13

14

EXAMINATION

15 BY MR. DAVIDSON:

16 Q Please state and spell your full name for  
17 us.

18 A I am Officer Matthew Schroeder.

19 M-A-T-T-H-E-W. S-C-H-R-O-E-D-E-R.

20 Q And you've already hinted at it, but how are  
21 you employed?

22 A As a Portland police officer.

23 Q And how many years in law enforcement do you  
24 have?

25 A I have ten years and some change.

1 Q And is that all with Portland?

2 A Yes.

3 Q And did you attend college prior to law  
4 enforcement?

5 A I have a Bachelor's degree from Wisconsin.

6 Q From where?

7 A Wisconsin.

8 Q University of Wisconsin?

9 A Yes.

10 Q And what degree is it in?

11 A Biochemistry.

12 Q All right. And what is your current duty  
13 assignment with the bureau?

14 A I am a patrol officer. So I drive a marked  
15 car. I wear a uniform. Take calls from service.  
16 Basically what everyone thinks of as a cop on the  
17 corner.

18 Q And what district or precinct are you  
19 currently assigned to?

20 A I work out of Central Precinct. I work 714,  
21 which is inner Southeast Portland, lower Burnside. So  
22 the river to the west and out to about 20th, give or  
23 take, to the east. From I-84 to the north and  
24 Hawthorne to the south.

25 Q And what shift do you work?

1           A       C shift, which is 4:00 p.m. to 2:00 a.m.

2           Q       All right. I think you know why we're here.

3 We're here to discuss this incident that occurred on SE

4 22nd between Powell and Lafayette in the early evening

5 hours of the 9th of February of this year.

6           A       Yes.

7           Q       Were you on duty, in uniform, and displaying  
8 a badge?

9           A       I was.

10          Q       And were you, in fact, operating a marked  
11 vehicle?

12          A       I was.

13          Q       All right. How did you first become aware  
14 that there was something going on at that location?

15          A       I was at the precinct. I was typing up a  
16 report, and I heard Officer Clark and Walsh get a  
17 dispatch trying to find a report of a suicidal guy.

18                   They had some phone geo location information  
19 on him, so they were attempting to go find where he was  
20 at. I was only kind of half paying attention. It  
21 wasn't my call.

22                   We have, like, a police radio ear that you  
23 kind of monitor what's going on to kind of keep track of  
24 where guys are. But to be honest with you, I was doing  
25 my own stuff and just sort of half listening.

1 Q Okay. So when did your ears perk up a  
2 little bit more about what was happening?

3 A One of the two mentioned that they heard a  
4 gun. Um, and so they didn't say a gun was shot,  
5 because that would have been a different set of radio  
6 traffic. So what I assumed was they heard a gun being  
7 racked or something similar to that. That's what I  
8 assumed.

9 They didn't say, "Shots fired." They didn't  
10 say that they were taking fire. So I assumed that they  
11 had heard a noise that they thought was a gun, and that  
12 to me meant that there was a gun being racked.

13 Q So what did you do?

14 A At that point in time dispatch sent me and  
15 another car to cover them. So I was coming from the  
16 precinct, and they were at 22nd and Lafayette, which is  
17 a good little drive.

18 Q Just for a refresher, where is Central  
19 Precinct located?

20 A Right over there, 1111 SW Second Avenue.

21 Q So here downtown?

22 A So, yeah, the west side of the Hawthorne  
23 Bridge.

24 Q All right. So you headed that direction.

25 A Headed that direction. Sergeant Cioeta was

1 right behind me the whole drive over.

2           While I was driving, one of them mentioned  
3 they -- again, that they heard a noise indicating that  
4 the guy had a gun.

5           They said that their guns were pointed to the  
6 north. And they said that if you were coming from the  
7 north, which is where all of us would be coming from,  
8 that coming -- that to go south on 21st would be a good  
9 approach.

10           So I went there. I went east on Powell,  
11 south on 21st to Lafayette, which is where I knew they  
12 were approximately at. It's nighttime.

13           So the way you do this when there are guns  
14 pointed is you stop, and you look out, and you hope you  
15 see them because you don't want to drive out in front of  
16 the guns if you can possibly help it.

17           So I look for the reflection of the overhead  
18 lights to see if I can figure out if they are north or  
19 if they are south. I couldn't see any, so I assumed  
20 they didn't have their lights on.

21           So to be safe, I went south again to the next  
22 cross street so that I would come out in front of them.  
23 So I went down. I think it's like an extra long block.  
24 Went down, and then I came north on 22nd. And I could  
25 see them north of Lafayette, maybe a block or so north



1 of Lafayette.

2 Q Okay. Were you the first responding officer  
3 to arrive on scene after Walsh and Clark?

4 A Officer Duong was there when I arrived.

5 Q Okay.

6 A So I parked my car in -- 22nd and -- I  
7 stutter sometimes especially on L's. Lafayette is not  
8 a great location.

9 So I parked my car at an angle, so I could  
10 block as much of that intersection as I could to  
11 discourage people from driving or walking or riding up  
12 and being involved in this thing.

13 Sergeant Cioeta had pulled up and went in  
14 front of me because they were still, like, a block up.  
15 The blocks here in this section are double or even  
16 triple blocks. They are not, like, every single block.  
17 And so I parked my car, locked it, and then I walked up  
18 to the scene.

19 Q Now, is your vehicle MAV-equipped?

20 A It is MAV-equipped.

21 Q I am assuming the MAV equipment was running?

22 A I think I -- so I turned it off during the  
23 drive, which is how we train. Then I turned it on  
24 again when I was walking up, so it would have gone back  
25 a minute from when I reactivated it with the video, and

1 the sound would have activated sometime when I was  
2 walking up.

3 Q Okay. And the camera on the vehicle is a  
4 forward-facing camera; is that right?

5 A It has five cameras technically. There's an  
6 HD camera facing to the front, and that's where mine  
7 was. It can be turned. I didn't turn it. There are  
8 two out each side, and they are kind of fisheye lenses.

9 So I would be very surprised if my side  
10 camera, which would have been in that direction caught  
11 anything visible. There's one out the back, and there's  
12 one that points into the back seat.

13 Q And then microphone setup itself is how?

14 A I had a microphone. So it's like -- it kind  
15 of looks like a pager from the old days. I think all  
16 of us are old enough maybe to remember pagers. And I  
17 wear mine on my right shoulder. Clipped right here is  
18 where I wear mine.

19 Q All right. So you parked your vehicle. I  
20 think you said the front of the vehicle was pointing to  
21 the west.

22 A Yeah, kind of like the northwest.

23 Q Okay. And you went on foot to approach?

24 A I went on foot to approach.

25 Q Describe to us what you observed.

1           A        So I see a police SUV parked on the right  
2 side of the road on the curblineline. Officer Clark is up  
3 against the vehicle. His AR is pointed to the north.

4                   Officer Walsh is sort of -- is slightly  
5 behind him. They are sort of shoulder to shoulder, so  
6 probably Officer -- so Walsh's left shoulder is probably  
7 right behind Brad's right shoulder. And he had his  
8 pistol out and is pointed north as well.

9           Q        And Officer Duong?

10          A        She was on the left side of the vehicle. To  
11 be honest with you, you know, at that point in time,  
12 she had that covered, so I went over here to see what  
13 was going on.

14                   I'm just trying to figure out where I could  
15 be most helpful, which was pretty much my entire  
16 involvement in this thing.

17                   So I went and I looked between them, and I  
18 could see the guy who I knew only at the time as Don.  
19 His -- so he was in a van, like a cargo van. And the  
20 passenger front door was open. And he was sitting in it  
21 so that his legs were out.

22                   So he was facing like he was about to get out  
23 of the van. I could see his legs. I could see a little  
24 bit of his torso, not really well.

25                   And I think at one point in time, I kind of

1 stepped to the right of Officer Walsh, and I realized  
2 that, one, I wasn't going to do any good and, two, I  
3 didn't want to be there. I was just hanging out there  
4 on an edge, so I went back behind the car.

5 I saw Don kind of -- he appeared to me that  
6 he kind of pulled back into the vehicle a little bit.  
7 Maybe that was me walking that gave me that perspective.

8 So I went to the left side of the vehicle,  
9 thinking that I was concerned that he was going to go  
10 into the van and then pop out on the driver's side, so I  
11 went over there.

12 Officer Duong was there. Sergeant Cioeta was  
13 there, I believe. And so basically they had that area  
14 covered. I had, I had actually holstered at that point  
15 in time because if I didn't have anywhere to put my gun,  
16 there's no reason to have it out.

17 So, so I'm just -- so I mean, it seems to me,  
18 like, we're kind of getting in the point of this is  
19 going to be just the -- kind of the standard. We're  
20 going to hold our position. We're going to talk to the  
21 guy, and probably going to be there for a while.

22 Q So at this point, in regards to talking to  
23 him since you arrived, I mean, is somebody giving  
24 commands or is there a back and forth conversation  
25 going on?

1           A       There are commands being given. I have some  
2 auditory exclusion going on here, to be honest with  
3 you. I'm sure you guys have probably heard that term,  
4 and it's weird, but it's real.

5                   I know -- I'm pretty sure that it was Clark  
6 who was talking to him. I remember them talking about  
7 his hands, to show his hands, but I don't really  
8 remember any specifics of what he was saying to him.

9                   I know they weren't yelling. I know it was  
10 not -- it was not, it was not a barking of commands  
11 thing.

12                   Um, I don't remember Don saying anything  
13 until after the shooting. I don't remember if he did or  
14 he didn't say anything. To be honest with you, I don't  
15 remember him saying anything.

16           Q       Okay. So at this point you holster your  
17 weapon?

18           A       Yes.

19           Q       And just walk us through what happens next.

20           A       So I had just gone to the driver's side and  
21 I had taken a look there. And I was just about to --  
22 so I was kind of in the middle of the vehicle, behind  
23 it. It's an SUV, so I can't see over it.

24                   And I hear shots coming from my right from  
25 the two officers. I heard two to three shots maybe.

1 They were pretty quick. Initially, it sounded like they  
2 both shot. But to be honest with you at the time, I  
3 hadn't -- I really didn't know.

4 I turned and looked, and I saw Officer Clark  
5 shoot one more round at least out of his rifle, and then  
6 I could see Don. He was out of the vehicle, and he was  
7 just rounding the open door of his van. And he ran in  
8 front of the van and then he disappeared from my view.

9 Q Okay. So what happened at that point?

10 A Well, he disappeared. And we -- and I'm  
11 pretty sure it was Officer Clark and/or Walsh, I'm not  
12 sure which, were trying to engage him.

13 I mean, we didn't know where he was. We  
14 didn't even know if he'd been shot, if the shots had  
15 missed, if they hit. We didn't know if he was alive or  
16 if he was dead.

17 That went on for a little while. It seemed  
18 like a long time. It probably wasn't all that long in  
19 actuality. And someone, I think it was Sergeant Cioeta,  
20 because I think it might have been the change of voice  
21 that changed it, but I think he said, "Are you alive?"

22 And Don answered, "Yes."

23 And then somebody else asked if he'd been  
24 shot or if he was hurt, and he said, "Yes."

25 And at that point in time, that's when I

1 remember Don's demeanor was very compliant. He was  
2 scared at that point in time. And so he was given a  
3 command, I don't remember exactly by who, to come to the  
4 driver's side of the vehicle into the street.

5 The right of the vehicle had trees, and there  
6 was a fence there, and it was dark. The street was  
7 better lit up.

8 So I moved to the left side of the vehicle.  
9 Officer Duong was there. I remember she had her beanbag  
10 rifle out -- shotgun out at that point in time because  
11 she was trying to get it back in the truck because she  
12 didn't need that.

13 So he came -- so I saw him walking -- he was  
14 kind of hunched over. I could see both of his hands.  
15 He had a buttoned up shirt that was untucked. So I  
16 couldn't quite see his waistband, but I could see his  
17 hands. And he was kind of slouched over. And he was  
18 moving.

19 And we told him to move out a little bit  
20 farther, and he did. And we told him to get to his  
21 knees, and he started to, and then he kind of slumped  
22 over and he kind of fell. So he wound up kind of facing  
23 with his feet towards us.

24 And I lost track of his hands at that point  
25 in time. I told him to show his hands again, and he

1 kind of tried to show his hands. He did the best he  
2 could do.

3 And it was, like -- it was very evident at  
4 this point in time that there was no fight in him. This  
5 was not -- he was, he was -- that we had as much a  
6 compliance as we could get out of him, that we weren't  
7 going to get any more. He wasn't going to be able to  
8 crawl forward and do all of the things that we did train  
9 perfectly to do.

10 So Sergeant Cioeta started to make a plan to  
11 go up and get him into custody so we could get him some  
12 aid, so we could -- and Officers Walsh and Clark came  
13 over.

14 I don't know which of them acted as the gun  
15 cover on this, but, but Officer Duong and I approached  
16 as the custody team. So I was holstered. She put  
17 her -- the -- she approached, too. She was holstered.  
18 I took his right hand. She took his left. We got him  
19 spun around and put him into handcuffs.

20 Q Okay. And could you tell if he was injured?

21 A I could, yes. So I saw one wound to his  
22 right arm below his elbow. It looked like there was an  
23 entrance and an exit wound. And then we started  
24 searching him to see where else he was hit. And we  
25 found one other wound underneath his right pectoral



1 muscle area, right about here.

2 Q And was any first aid administered to him?

3 A We applied a tourniquet to his right arm.

4 Q Okay. And was anything being said to him or  
5 was he saying anything after the custody?

6 A He -- I recall him talking about, you guys  
7 shot me or I've been shot. I remember him talking  
8 about it hurts.

9 We were talking about getting his clothes cut  
10 off, so that was -- so that step was done of the  
11 medical. But as soon as we went into custody with him,  
12 somebody must have said to send him in because they were  
13 there pretty quick.

14 So by the time we got around to cutting his  
15 clothes off, they were on scene, so we let them take  
16 care of that. So they arrived. We unhandcuffed, I  
17 think it was his right arm and got him on the gurney.  
18 Handcuffed his arm to the gurney. Put him up in the  
19 ambulance, and that was the last I saw of him.

20 Q Okay. Anything additional that's relevant  
21 that you want to share?

22 A You know, these situations are kind of tense  
23 enough as it is, and I know there were citizens over to  
24 the left that I always seem to forget about, but they  
25 were a big deal at the time. They were kind of

1 interacting a little bit. And they were just sort of  
2 one extra variable in the whole thing.

3 So I know when I was behind the vehicle, that  
4 was some of the time that I had to split my attention  
5 was to deal with them, to tell them — they kind of kept  
6 creeping up, and they were kind of yelling some stuff at  
7 us.

8 Q Like what kind of stuff?

9 A Um, it, it seemed like dismissive of what  
10 was going on, that we were blowing this out of  
11 proportion. That's what it seemed like. Very typical  
12 for inner Southeast Portland, sorry, to be honest with  
13 you. I mean, that — but it's just one of those things  
14 that sort of adds a little bit to the chaos of the  
15 scene.

16 MR. DAVIDSON: Sure. Okay. All right.  
17 Those are pretty much all of the questions I have for  
18 the officer.

19 Does anybody else have any questions for the  
20 officer?

21 A GRAND JUROR: Did Don Perkins appear  
22 intoxicated to you?

23 THE WITNESS: I couldn't say one way or  
24 another if he was.

25 A GRAND JUROR: All right. Maybe another

1 way to phrase it: Did he seem altered? I don't know.  
2 Drunk --

3 A GRAND JUROR: I just want to know if he  
4 appeared intoxicated, yeah, drunk.

5 THE WITNESS: Ultimately considering the  
6 first thing I remember him -- that I recall him saying  
7 was after he'd been shot. So I mean, I don't think I  
8 was able to say after a guy has been shot twice whether  
9 he's drunk or not.

10 A GRAND JUROR: He didn't smell like heavy  
11 alcohol?

12 THE WITNESS: I don't remember smelling any  
13 alcohol, no, but I also don't remember hearing exactly  
14 what the officers said either. So that's possible that  
15 he was, and I just didn't smell it. I just can't say  
16 one way or another.

17 A GRAND JUROR: Okay. Thank you.

18 MR. DAVIDSON: Anybody else?

19 All right. Officer, you are free to go.  
20 Thanks for coming in.

21 THE WITNESS: Thank you.  
22  
23  
24  
25

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

5

6 EXAMINATION

7 BY MR. DAVIDSON:

8 Q Could you please state and spell your full  
9 name for us?

10 A Kenneth Fox. K-E-N-N-E-T-H. F-O-X.

11 Q And how are you employed?

12 A With the Portland Police Bureau.

13 Q And how many years of law enforcement  
14 experience do you have?

15 A About ten years.

16 Q Is all of that with Portland?

17 A Yes.

18 Q And did you attend college before being a  
19 police officer?

20 A Yes, I did. I went to Portland State.

21 Q And did you obtain a degree?

22 A Four-year degree, yes, in criminal justice.

23 Q In criminal justice. A Bachelor's degree?

24 A Yes.

25 Q Okay. So what is your current duty

1 assignment?

2 A I respond to 911 calls in Central Precinct.

3 Q And what shift do you work?

4 A C shift, so 4:00 p.m. to 2:00 a.m.

5 Q And are you assigned to a particular shift?

6 A 724.

7 Q And where is that about?

8 A It's Laurelhurst, Sunnyside, Kerns area, so  
9 north of Hawthorne, east of 30th essentially.

10 Q So you know we're here to discuss this  
11 incident that occurred on February 9th of this year.

12 Were you on duty, in uniform, and displaying  
13 a badge?

14 A Yes, I was.

15 Q Were you operating a marked police vehicle?

16 A Yes, I was.

17 Q How did you become aware that there was  
18 something going on at the scene, which my understanding  
19 is on SE 22nd, between Powell and Lafayette?

20 A Well, I was at a community meeting and I was  
21 monitoring the radio. I had heard the call about that  
22 they were looking for a suicidal person that was  
23 supposed to be in a van. So I was paying attention.

24 We were in the community meeting, and I heard  
25 one of the officers broadcast that they located the van

1 and where they were at, and they thought what they heard  
2 was a gun inside the van, and they were backing away.

3 Q Okay. Now, maybe we should take a step  
4 back.

5 You normally operate, or at this time  
6 anyways, did a partner car; is that right?

7 A I was working a partner car that night, yes.

8 Q That night. And what was -- who was your  
9 partner?

10 A Officer Duong was my partner.

11 Q We've also heard that that was actually a  
12 MAV vehicle.

13 A Yes, it was.

14 Q But we also learned that you had the  
15 microphone on your person.

16 A I did. I had the microphone on my person.

17 Q And how were you getting to and from this  
18 meeting if Officer Duong had the partner car?

19 A So I drove to the meeting, and I put myself  
20 out of service and she stayed in service. So I went  
21 into the meeting, and she was just going to be  
22 available for calls while I was at the meeting because  
23 it was expected to be a long meeting with a bunch of  
24 commissioners and a mayor and such. So I was there  
25 with the lieutenant and a couple of the other officers.

1 Q So you were in a separate patrol vehicle?

2 A So I was just -- I was in the Multnomah  
3 County building completely separated, and I got to this  
4 location via the lieutenant's vehicle. I rode with him  
5 there.

6 Q Okay.

7 A GRAND JUROR: Where, where was the  
8 community meeting?

9 THE WITNESS: 501 SE Hawthorne. So it's  
10 basically Grand and Hawthorne.

11 A GRAND JUROR: Okay.

12 BY MR. DAVIDSON:

13 Q So you were at this meeting. Did you have  
14 your earpiece in for your radio?

15 A Yes, I did.

16 Q Did the lieutenant as well?

17 A As soon as I heard the call, I advised him  
18 of what was going on so he could monitor the call as  
19 well.

20 Q And which lieutenant was it?

21 A Wheelwright.

22 Q So what were you hearing over the radio that  
23 was catching your attention?

24 A Well, initially, what I heard that was  
25 catching my attention was that they found the vehicle

1 and they thought they heard a gun. It sounded like a  
2 gun mechanism inside the vehicle. And they were asking  
3 for additional units, and backing away.

4 Q Okay. And did you continue to monitor this  
5 over the radio?

6 A Yes. I continued to listen. And then  
7 shortly later, I heard the subject had thrown something  
8 out of the vehicle. And then again, shortly there had  
9 stepped out of the vehicle, holding an unknown object.  
10 And then briefly later, there was an update of shots  
11 were fired.

12 Q And you're still at the meeting?

13 A I'm still at the meeting.

14 Q At what point did you and the lieutenant  
15 decide you needed to respond to the scene and leave the  
16 meeting?

17 A Right then.

18 Q Okay. As soon as the shots were fired?

19 A As soon as the shots were fired we left as  
20 quickly as we could get out of the meeting.

21 Q Okay. And you drove directly to the  
22 location?

23 A Yeah. We drove to the south side. We  
24 entered from 22 and Lafayette.

25 Q Okay. And so you got there after the shots



1 had been fired?

2 A Correct.

3 Q And what did you observe when you arrived  
4 there?

5 A I observed -- there's an ambulance already  
6 there. Multiple patrol cars were scattered kind of in  
7 the area. The streets were being blocked off. AMR was  
8 tending to the gentleman.

9 And I got up there, I asked what was needed.  
10 And AMR needed assistance getting him on to the gurney,  
11 so I unhandcuffed him, and we lifted him on to the  
12 gurney, and I handcuffed him to the gurney.

13 Q Okay. Then what happened?

14 A Sergeant Cioeta asked that I go to the  
15 hospital with him, and so I hopped into the ambulance  
16 with the gentleman.

17 Q Mr. Perkins?

18 A Mr. Perkins. There we go, Mr. Perkins.

19 Q Okay. And you didn't question Mr. Perkins  
20 while you were in the ambulance?

21 A I did not.

22 Q I guess we should take a step back.

23 I guess at some point you were in close  
24 enough proximity to your MAV partner car that the --  
25 your microphone transmits to, I guess, the unit in the

1 car; is that right?

2 A Correct. My, my audio mic was on my chest  
3 and did turn on at one point and stayed on while I was  
4 on scene.

5 Q You got into the back of the ambulance with  
6 Mr. Perkins and the ambulance pulled away, and I'm  
7 assuming at some point you got out of range on your  
8 MAV.

9 A Correct.

10 Q So while you were in the back of the  
11 ambulance -- and what hospital were you going to?

12 A We went to OHSU.

13 Q Were you questioning Mr. Perkins?

14 A No.

15 Q But was Mr. Perkins saying things?

16 A He was saying things, yes.

17 Q Sua sponte on his own?

18 A Yeah.

19 Q Did he say anything that was germane to what  
20 had occurred?

21 A Yes, he did.

22 Q What did he say?

23 A Um, while we were still at the scene,  
24 according to my report, he made a statement, "I'm  
25 sorry, I didn't mean to pull it. It was a BB gun."

1 Q He said, "I'm sorry, I didn't mean to pull  
2 it. It was a BB gun"?

3 A Correct.

4 Q Did he say anything else?

5 A After we were out of range, he gave  
6 statements of, "What the fuck did I just do" while he  
7 was made -- when he was talking about the pain, he was  
8 saying -- while he was speaking to AMR about the pain,  
9 he said, "Trying to take the pain."

10 Q And what did you take that to mean?

11 A Trying to take the pain from being shot is  
12 what I had presumed. I noticed he had wounds to his  
13 stomach and his arm.

14 Q Okay. All right. Anything else?

15 A And then he stated, "I deserved it."

16 Q "I deserved it"?

17 A Yes. And that was shortly after he said,  
18 "Trying to take the pain."

19 Q All right. Anything else?

20 A That all happened in the ambulance ride.  
21 And then at the hospital he became verbally  
22 aggressive towards the doctors and nurses while I was  
23 outside of the room. And they requested that I go with  
24 them to the operating room because he was being verbally  
25 aggressive.

1           Q       And did you observe any of that behavior  
2 yourself?

3           A       I was outside of the room and there was a  
4 lot of noise. I was talking to nurses, trying to  
5 provide them information about Mr. Perkins, his name,  
6 date of birth and any information that I had.

7           Q       So you didn't observe the behavior that  
8 caused the medical staff concern yourself?

9           A       No, I did not.

10          Q       That was going on?

11          A       Inside the room, and I stepped out trying to  
12 give them as much information as they were trying to  
13 prepare Mr. Perkins.

14          Q       Okay. Did you, in fact, respond to their  
15 request and go and provide security, I guess it was?

16          A       Yes, I did. I walked with them to the  
17 operating room.

18          Q       Okay. During that time did you observe him  
19 being confrontational or combative?

20          A       He was making multiple statements. He  
21 stated, "Just stop and let me die." And then he stated  
22 to me as he stared at me, "You're dead. And what goes  
23 around comes around."

24          Q       In your mind did he appear to be under the  
25 influence of anything?



1 THE WITNESS: He was still sedated, so...

2 A GRAND JUROR: Did he have a breathing tube  
3 in his mouth?

4 THE WITNESS: I believe he did, but he was  
5 also sedated, so he wasn't even awake, so...

6 MR. DAVIDSON: Okay. Anybody else?

7 All right. Thank you, Officer Fox. I'll  
8 take your report, and you are free to go.

9 Let me see if our next witness is here.

10 (Recess.)

11

12

13

KALE HEILY,

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

17

18

EXAMINATION

19 BY MR. DAVIDSON:

20 Q Good afternoon. Thanks for coming.

21 Go ahead and state and spell your full name  
22 for us on the record.

23 A Kale John Heily. K-A-L-E. J-O-H-N.

24 H-E-I-L-Y.

25 Q Okay. Thanks for coming, Kale.

1                   And, Kale, how old are you?

2           A        I'm 35.

3           Q        And do you live here in the Portland area?

4           A        I do. I've been here for about 12 years.

5           Q        Okay. Now, obviously, we're going to  
6 discuss an incident with you that occurred basically  
7 mid-block on SE 22nd, between Powell and Lafayette.

8           A        Uh-huh.

9           Q        My understanding is you reside in a house on  
10 that street.

11          A        I do. I'm at 3363 SE 22nd, a little red  
12 house right next to the park.

13          Q        Okay. How long have you lived there?

14          A        I've been there about four and a half years.

15          Q        And do you rent it? Do you own it?

16          A        I rent.

17          Q        You rent it.

18                   Okay. You live there currently?

19          A        Yes, I do.

20          Q        What do you do for a living?

21          A        I'm a set lighting technician. I work in  
22 film and television in the area.

23          Q        Okay. Anything that we've heard of, if  
24 you're allowed to discuss it?

25          A        I worked on Grimm for six years. I worked

1 on Leverage. I worked on Librarians.

2 Q Cool. It's probably very interesting work,  
3 I would think.

4 A Yeah. It's very interesting. It's good  
5 stuff.

6 Q Great. Okay. Does anybody else live with  
7 you at that residence?

8 A Yeah. My fiancée lives with me.

9 Q And what's your fiancée's name?

10 A Her name is Amanda Lynch.

11 Q How long has she lived there?

12 A She's been there for about a year and a  
13 half, I guess, a year and a half, two years.

14 Q Again, we're going to discuss this incident  
15 that happened on February 9th and it involved an  
16 individual who apparently has been living in a red,  
17 kind of custom van across the street from your house.

18 A Uh-huh.

19 Q Now, it's my understanding from watching  
20 your video that perhaps that van and that person had  
21 been kind of living there for quite a while.

22 A Yeah. He'd been there for, you know, kind  
23 of off and on for six to eight months. We get a lot  
24 of, you know, people living in cars there by the park.  
25 Yeah, he's been around a while.



1 Q Okay. Have you ever, like, personally  
2 spoken to him?

3 A I have a couple of times. I -- yeah, he was  
4 a nice guy.

5 Q A nice guy?

6 A Yeah.

7 Q Did you know what his name was?

8 A He'd given it to me. I had gotten it, but I  
9 didn't remember at the time of the incident.

10 Q We've determined his name is Don Perkins.  
11 So Don Perkins.

12 You also made reference in your video to  
13 another person, perhaps a transient person or a homeless  
14 person that was maybe living in a tent nearby.

15 A Yeah. That is -- what's his name? I can't  
16 remember his name. Yeah, he lives just, you know,  
17 probably 60 feet away.

18 Q It's Danny?

19 A Dan, yeah, yeah, yeah.

20 Q He resides in a tent?

21 A Yeah. He's been there probably about the  
22 same amount of time.

23 Q Okay. And as far as Mr. Perkins is  
24 concerned, you said you never had, like, a negative  
25 interaction with him necessarily.

1           A       No. No. I never did. You know, he would  
2 every once in a while, like, you know, some guys out  
3 there would drink a little too much and get a little  
4 rowdy. But, no, I never personally had any kind of  
5 issues with him.

6           Q       Okay. Well, let's talk about the actual  
7 incident date. My understanding is you were at your  
8 home.

9                        So what were you doing kind of immediately  
10 before this occurred and how did it catch your  
11 attention?

12           A       So I was taking my dog for a walk. It was  
13 around 7:00. I was coming back home through the park,  
14 and I saw the police SUV shining its, like, vehicle  
15 light around, you know, like, kind of searching around.

16                        I was about halfway through the park. As I  
17 got closer the officers, two officers had gotten out of  
18 their SUV and they had their flashlights over by the  
19 tent, over by Dan's tent.

20                        They were saying something. I couldn't  
21 really understand what they were saying. I didn't see  
22 Dan in the tent, but they were, you know, kind of poking  
23 around in there.

24                        I didn't really pay too much attention to it.  
25 I walked my dog back up to home and I put him inside,

1 and I stepped out to have a cigarette. And I saw the  
2 two officers walking towards the red -- towards Don's  
3 vehicle. Both of them had flashlights out and they were  
4 kind of searching around.

5           They got to the vehicle. One officer was  
6 flashing his light through the front passenger side  
7 window into the back. I couldn't see the other officer.  
8 They were on the opposite side of the van. You know,  
9 the van's passenger door was on the opposite side, so I  
10 couldn't see anything that was going on on the sliding  
11 door.

12           The officer at the front passenger side  
13 opened up the door and shined -- you know, got in,  
14 shined his flashlight in. I could hear them kind of --

15           Q       Just so I understand what you're saying.

16                    So one of the officers opened up the front  
17 passenger door of the van?

18           A       Yes, that's correct.

19           Q       Okay. Is this one of the side doors or like  
20 the front?

21           A       No. This is the front door, the very front  
22 passenger side -- the opposite side of the van from me.  
23 But I saw him, you know, through the window, open up  
24 the door and, you know, kind of lean in with his  
25 flashlight. I heard they were saying something. I

1 couldn't hear it, though.

2 Um, at that point the sliding door opened on  
3 the other side. I don't know who opened that. I don't  
4 know if it was someone in the van or the other officer  
5 opened that door.

6 Um, and you have to forgive me, I have some  
7 nerves right now. I'm not used to this kind of thing.

8 Q Sure. If you want to take a break at any  
9 point just to gather yourself, feel free. Let me know,  
10 and we can do that.

11 A Yeah. Yeah. I'm fine. Forgive my shaky  
12 voice.

13 So they are searching around the passenger  
14 sliding door. Kind of the rear sliding, you know, door  
15 opens up.

16 And then both the officers -- the officer at  
17 the front door closed the front door quickly and they  
18 both kind of head back behind the van. One officer has  
19 his hand on his weapon. The other officer has drawn his  
20 gun and is pointing it down, you know, in a safety  
21 position.

22 BY MR. DAVIDSON:

23 Q So if I can ask you, did they seem like they  
24 are reacting to something unexpected or does this seem  
25 like --

1           A       Very much so, yeah.

2           Q       Okay.

3           A       Before I saw them go back behind the van,  
4 they seemed like they were, you know, calm, you know,  
5 asking questions. I didn't hear them yelling. I  
6 didn't hear them, you know, doing any of that kind of  
7 thing.

8                        So something made them go back behind the  
9 vehicle and, you know, one of them drew their weapon --  
10 had their weapon drawn at that point. The other had his  
11 hand on his gun and soon drew it after that.

12                       There was a little blue sedan behind Dan's  
13 van, and so they went back behind the -- back behind  
14 that car. Both of them with their guns on the van, I  
15 believe. At that point I went inside. You know, I  
16 didn't know exactly what was going on.

17           Q       So at this point you're not videotaping  
18 this?

19           A       No. I wasn't videotaping up to that point.

20           Q       Okay.

21           A       So I went inside and went to my bedroom  
22 window that faces the street.

23           Q       And what level of your house is this?

24           A       This is the first level, but it's raised up,  
25 you know, probably three feet off of sidewalk level.

1 It's up on a little mound. So it's just a one-story  
2 house.

3 And I had my phone on me, so I decided to,  
4 you know, hit "record" because if something, you know,  
5 was happening in the neighborhood, I think it's best to  
6 have some sort of record of it.

7 I went to the window and I started recording.  
8 I'm sorry, right before I started recording, I saw the  
9 officers retreat back behind -- back to their SUV  
10 cruiser, which was a couple car lengths behind the blue  
11 vehicle.

12 I saw one officer putting on a body vest,  
13 pulled it out of the car, put it over himself. I didn't  
14 see the other one put one on, but he was on the opposite  
15 side of the vehicle. He may have or may not have.

16 That's when I started recording. And they, I  
17 couldn't really hear what was going on, so I raised the  
18 window up, you know, just enough to peek my phone out of  
19 it.

20 And I could hear them kind of yelling back  
21 and forth. Don was screaming, you know, obscenities at  
22 them, you know. "Kill me. Kill me. Come get me," kind  
23 of things.

24 The officers were trying to -- trying to calm  
25 him down, you know. "Hey, talk to us," this kind of

1 stuff. Asking to see his hands. Asking to see -- you  
2 know, make sure he didn't have anything from -- is what  
3 it sounded like to me.

4 They were on their radios. They were calling  
5 something in, I assume. Calling in, you know, other  
6 officers to come assist.

7 At that point there was a little pause of,  
8 you know, a few minutes where nothing really happened.  
9 No one was really screaming back and forth.

10 The officers turned on their flood lights at  
11 that point on their -- from the top of their cruiser,  
12 and all of the light kind of, you know, shined up the  
13 area, brightened up the area. It was dark at this point  
14 outside so it was kind of hard to see.

15 Then I heard them screaming back and forth a  
16 little bit about hands. At that point the side door of  
17 the van opened back up, and they exchanged some more,  
18 you know, yelling back and forth.

19 Then I heard what sounded like to me a single  
20 gunshot. It sounded like it came from the van to me.  
21 I've since read in the newspapers that he may not have  
22 had a gun. I don't know. But to me, it sounded like  
23 the first shot came from over there.

24 There was a couple of seconds pause. Then  
25 the officers started firing in quick succession shots,

1 seven or eight shots.

2 At that point I, I dropped down. My dog was  
3 in there with me. I grabbed my dog and went back to the  
4 back of the room, you know. Didn't want to be too close  
5 to a window situation.

6 I tried to continue recording. After the  
7 initial round -- after the round of shots, I looked out  
8 the window from my -- from the back of the room and saw  
9 that Don had fallen down on the ground. He was between  
10 his van and the little red car that was parked in the  
11 front of him. He had crawled away from the police  
12 officers and was laying down between those two vehicles  
13 off of the sidewalk.

14 The police officers were yelling, you know,  
15 "Are you okay? Talk to us. Show us your hands." These  
16 kind of things. He yelled something back. I couldn't  
17 really understand what it was.

18 At that point he stood up. He was doubled  
19 over, you know, favoring his stomach. They had him walk  
20 out to the middle of the street, you know, raise his  
21 arms as best he could, which he did. He fell down on to  
22 the ground.

23 And at that point five officers with their  
24 guns drawn and flashlights, at least a couple of them  
25 had flashlights, approached him and searched him.



1           They eventually got him -- got his hands  
2 behind his back. He wasn't resisting. Didn't appear to  
3 me that he was resisting at all. And, yeah, you know,  
4 kind of just kept him there.

5           They were kind of doing stuff around him. I  
6 assume they were checking his wounds or helping him out  
7 as best as they could. Yeah. The ambulance came and  
8 the ambulance took over from there.

9           When the ambulance arrived, I heard them -- I  
10 heard the officers say that, "A tourniquet for the right  
11 arm and a wound to the abdomen." So I assume those were  
12 the two, two places where he was hit.

13           Yeah, from that, I kind of went back inside.  
14 My neighbor came outside, and I invited her in, and we  
15 went out to the back and had a smoke. That was about  
16 the extent of my experience with it.

17           Q       Did it seem like the ambulance got there  
18 pretty quickly?

19           A       Yeah. Yeah, it seemed like it. You know,  
20 it was only -- you know, in the video, I think the  
21 timeline is a few minutes.

22           Q       Okay.

23           A       You know, so wherever they were, they seemed  
24 to get there fast.

25           Q       All right. And what is your assessment, I

1 guess of how the police conducted themselves during  
2 this, I guess, incident?

3 A From my perception, I thought that they  
4 handled it really well. You know, I don't know about  
5 who fired that first shot. I don't know where that  
6 came from. What it sounded like to me is that it came  
7 from him.

8 And so my perception of the whole thing  
9 was -- is that they were defending themselves. I don't  
10 know if that's entirely accurate because I didn't see  
11 it.

12 But that's, you know -- that was my gut  
13 reaction, which is in the video. I don't know if all of  
14 you saw the video, but my gut reaction was that they  
15 were defending themselves.

16 I thought they did a good job of trying to  
17 communicate with him. They -- he was very aggressive  
18 with them in his, in his tone. And I didn't actually  
19 see him, so I don't know if he was doing aggressive  
20 things, trying to run at them or anything like that.

21 I didn't see anything like that because of  
22 the placement of the van and my perspective. But my, my  
23 initial reaction was that the police handled it  
24 professionally.

25 Q There was some other folks who were out and

1 may have also -- in fact, did also record some aspects  
2 of this from that -- who live along the west side of SE  
3 22nd. There's, like, a warehouse maybe a block or two,  
4 a house or two south of yours, residence?

5 A Yeah. Yeah.

6 Q Are you familiar with that location? Do  
7 people live there? Are folks living out there in an RV  
8 or something?

9 A The people at the warehouse, there are  
10 people that live in that warehouse and work in that  
11 warehouse. And, yeah, I'm familiar with, with who you  
12 mean.

13 Q Okay. All right. So they live and work  
14 there?

15 A Yeah, I believe so. I'm not entirely sure  
16 what their situation is to tell you the truth, but  
17 it -- yeah, I believe, I believe they work.

18 Q In fact, specifically there's Daniel Kaleta  
19 and Michelle Clemmer. Are you familiar with them at  
20 all?

21 A Uh-huh.

22 Q Are they acquaintances, friends of yours?

23 A I wouldn't necessarily say that. We're not  
24 hostile towards each other in any way. But I haven't  
25 really interacted with them a whole lot.

1           Q       They are just on the -- are there a large  
2 group of people living at that location or is it just  
3 those two?

4           A       I think there's one more gentleman. I think  
5 there's one more guy. I think maybe a boyfriend or  
6 something of the woman or not. I'm not entirely sure.

7           Q       Okay. So you're kind of familiar with them,  
8 but --

9           A       Yeah. Yeah.

10           MR. DAVIDSON: Okay. I think those are most  
11 of the questions I have for Kale.

12                   Does anybody else have any additional  
13 questions for Kale?

14           A GRAND JUROR: I just had a clarifying  
15 question.

16                   So you said that you saw an officer open up  
17 the passenger front door, look inside.

18           THE WITNESS: Yeah.

19           A GRAND JUROR: And then you saw another  
20 door open.

21                   Was that on the same side, also passenger,  
22 the back door? Is that on the driver's side back door?

23           THE WITNESS: That was on the passenger  
24 side. You know, vans, they have big sliding doors on  
25 the side, on the passenger side. That was the, the

1 second door.

2 A GRAND JUROR: So both of them were on the  
3 passenger?

4 THE WITNESS: Yes, and I didn't see anyone  
5 actually physically open it. I just heard the door  
6 open and saw through the window that it had opened, so  
7 I don't know who opened that up.

8 A GRAND JUROR: Okay. Thank you.

9 Did you hear if the police had said -- did  
10 you hear if the police had said anything prior to  
11 opening the door? Were you able to hear?

12 THE WITNESS: They were -- they were saying  
13 things. They were definitely speaking to someone  
14 inside, but I couldn't understand what they were  
15 saying.

16 A GRAND JUROR: You definitely heard them  
17 talking, though, prior to opening the door?

18 THE WITNESS: Yeah. I definitely heard them  
19 talking.

20 MR. DAVIDSON: Okay. Anybody else? No.  
21 Okay. I think you are all done, Kale.

22 THE WITNESS: Right on.

23 A GRAND JUROR: Thank you for coming in.

24 (Recess.)

25

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

5

6

EXAMINATION

7

BY MR. DAVIDSON:

8

Q Please state and spell your full name for  
9 us, please.

10

A Daniel Kaleta, K-A-L-E-T-A.

11

12

Q I thought you were Danny Wilmoth. You're  
12 Daniel Kaleta. I was confused. Yeah. That's my

13

13 mistake. I'm sorry, I have the wrong person. I

14

14 thought you were the other Danny. So thanks for coming  
15 in, Daniel.

16

What's -- do you have, like, a workplace  
17 right there?

18

A Yes. We have a double bay shop. It's a big  
19 shop.

20

Q And what kind of work do you do there?

21

A Construction.

22

Q Like?

23

A We have a restoration company. I work on  
24 buildings.

25

Q Gotcha. Who lives there with you?

1           A       Nobody lives there with me. I have Michelle  
2 that stays with me on occasion.

3           Q       And is that Michelle Clemmer?

4           A       Yes.

5           Q       And is she, like, an acquaintance, a friend?

6           A       She's a friend of mine.

7           Q       A friend of yours.

8                    Okay. How long has she stayed there, or does  
9 she stay there on and off?

10          A       She stays there off and on.

11          Q       Okay. All right. Now, do you own that  
12 building or just rent it?

13          A       No. My boss owns it or leases it, one of  
14 the two.

15          Q       And he allows you to stay out front?

16          A       Yes.

17          Q       All right. So you know what we're here to  
18 talk about. We're here to talk about this incident  
19 that occurred on February 9th, and it involved Don  
20 Perkins, who's this individual who was living in that  
21 red van.

22                    Are you familiar with him at all?

23          A       Yes, I am. He's a homeless person that's  
24 been living there for a while off and on.

25          Q       Great. Have you had any conversations with

1 him?

2 A No. I've seen him in passing. That's about  
3 all. I don't know him per se.

4 Q All right. Well, so let's talk about that  
5 evening.

6 What were you doing that evening, and how  
7 does this kind of incident first come to your attention?

8 A We had some tools that went down at work.  
9 Since I was close to the shop, I was the one that was  
10 going to repair them because we couldn't get any more  
11 at the moment.

12 I was in the shop repairing the tools when  
13 Michelle came in and told me, "You ought to come  
14 outside. The cops all got their guns drawn on  
15 somebody." So I went outside, and I decided to take a  
16 video of it.

17 Q Okay. All right. And why don't you walk us  
18 through -- we've actually seen the video. We've got  
19 it. We've seen the video.

20 Actually there was two videos; correct?

21 A Yeah.

22 Q So why don't you walk us through what you  
23 remember having seen.

24 A Well, when I went out there, I seen them,  
25 five or six police officers around a vehicle. They had



1 lights. The street was all lit up.

2 Um, a couple of people running back and  
3 forth, police officers. And then they were talking to  
4 the guy. I don't know what exactly they were saying.

5 I heard him say something to the effect of,  
6 "No, don't do that to me," or something, and then he was  
7 out of view for a minute. Then he came out of view, and  
8 then I heard a shot. Then there was more shots and  
9 there was a couple more shots. It was all so fast. It  
10 was surprising. I didn't expect that.

11 Q Okay. And you were videotaping while all  
12 this was going on?

13 A Yeah.

14 Q Okay. And so you said you heard the police  
15 officers maybe saying some stuff and you heard Mr.  
16 Perkins saying some stuff; is that right?

17 A Uh-huh.

18 Q What exactly -- do you have any greater  
19 recall about what exactly?

20 A You know, the police were giving him orders  
21 of some kind, and he was saying he didn't want to get  
22 hurt or something to that effect. That's all that I  
23 really remember.

24 Q Okay. And from your perspective -- and my  
25 understanding is that you're -- kind of where you were

1 is, I guess, across the street?

2 A Directly across the street from the police  
3 officers.

4 Q And maybe a little bit to the south?

5 A A little bit to the west.

6 Q And south?

7 A Yes, just behind and to the left of them.

8 Q Okay. And so were you able to see what was  
9 going on, I guess, on the east side of the van?

10 A Mostly, yes.

11 Q Okay. So what did you -- when you looked in  
12 that direction, what did you see? Could you see Mr.  
13 Perkins?

14 A I seen Mr. Perkins for a moment come into  
15 view. He had no shirt on. He had no weapons with him.  
16 And then he went back out of view, and that's when the  
17 shooting started.

18 Q He had no shirt on?

19 A His shirt was off.

20 Q So he was just naked from the waist up?

21 A I think so.

22 Q Okay. And so did you have a brief glimpse  
23 of him or did you have --

24 A You know, he ran back in and out of view a  
25 couple of times. I mean, it all happened so fast. I

1 can't really recall what he was doing, but I know he  
2 didn't have anything in his hands.

3 Q Okay. Fair enough.

4 Could you see what was going on, kind of more  
5 at the ground level, as far as like more towards his  
6 feet?

7 A No. I could see his whole body from where I  
8 was at.

9 Q Okay. But it was just in glimpses, I think  
10 you said.

11 A Yeah.

12 Q Run into view for a second?

13 A Yeah. There was a van, there was a tree and  
14 then there was a park. And it was between his van and  
15 the tree that I seen him several times.

16 Q All right. So after the shots were fired,  
17 what happened?

18 A The police asked him if he was hurt, and he  
19 said, "Yeah." And they told him to crawl out into the  
20 street and they would get him some medical attention.

21 Q What did they do at that point?

22 A It took a while, then he got out on the  
23 street. They went down there and handcuffed him, and  
24 the ambulance shown up a little while later.

25 Q How long do you think it took -- when the

1 shots were fired and when the ambulance showed up, how  
2 long do you think it took?

3 A Probably about five minutes.

4 Q Five minutes, okay.

5 You took a video, I think, both on your  
6 cellphone.

7 A One of them was on my cell phone, and then  
8 my cell phone went haywire on me, then I threw it in  
9 the motor home and I grabbed a little flip thing that I  
10 got. It is a little video recording, and I took the  
11 second one on that.

12 Q Okay. The officers -- some detectives came  
13 out and interviewed you about what you had seen.

14 But at the time they did this interview, you  
15 didn't necessarily disclose that you had video of that  
16 until --

17 A I didn't want to get involved in the first  
18 part, and I thought about it, and then I thought, you  
19 know, I should do the right thing. Then I called them  
20 back and I gave them the videos.

21 Q Okay. And they just downloaded the videos  
22 and then gave you your equipment back; is that what  
23 happened?

24 A They gave me my camera -- my phone back.  
25 And they took my camera because they couldn't download

1 it and they would bring it back to me the following  
2 day.

3 Q So you got it back?

4 A Yes.

5 Q And you still got your videos on there?

6 A Well, my phone, I don't have anymore. It  
7 got broke. But I do have video on the video recorder.  
8 And I have the video on Facebook, so...

9 Q You uploaded the video to Facebook?

10 A Yes.

11 Q Okay. Okay. Now, I think at one point, and  
12 I don't think they got to see this part of the video,  
13 but they will, the Grand Jurors, I mean, you and Ms.  
14 Clemmer made some allegation, I think, in the video  
15 that the police tried to plant something on Mr.  
16 Perkins.

17 A Yeah. I think I seen a police officer, in  
18 the second video, a police officer bending over in the  
19 street and taking something out of his ankle holster.

20 Q The police officer took something out of his  
21 ankle holster?

22 A Yeah. He took it out of his ankle holster  
23 or putting it in. I'm not sure which, but I seen him  
24 down digging in his ankle holster in the middle of the  
25 street. It was right after or right before the

1 ambulance arrived.

2 Q Okay. And did you see what he pulled out of  
3 his ankle?

4 A No, I didn't.

5 Q Did you see what he did with it?

6 A No, I didn't.

7 Q So I guess why was it that you -- that you  
8 concluded they were trying to plant a gun on Mr.  
9 Perkins?

10 A Because I was on top of my motor home. He  
11 stopped in the middle of the street, bent down, got  
12 into his ankle holster, pulled something out, put it in  
13 his pocket, and walked off towards the park.

14 Q So as I understand, the police officer bent  
15 down in the street, pulled something out of his own  
16 ankle holster.

17 A Or put it in there. I'm not sure which.

18 Q And then?

19 A And then he got up and put his hand in his  
20 pocket, and he headed towards the park --

21 Q Okay. So --

22 A -- away from everything else going on.

23 Q Do you think that whatever he had in his  
24 ankle holster, the police officer put in his own  
25 pocket?

1           A       Yeah.

2           Q       Why was it that you thought that they  
3 planted something on Mr. Perkins?

4           A       Well, because he went that way towards where  
5 all of the action was at, towards the van.

6           Q       Okay. So do you think they planted a gun on  
7 Mr. Perkins or somewhere else?

8           A       I don't know. I don't know if they planted  
9 it on him or if they planted one for that matter. But  
10 I feel he took something out of his ankle holster.

11           A GRAND JUROR: I have a question. This is  
12 a little hard for me to picture.

13                    Could you draw on the board where the police  
14 was, where Mr. Perkins was, your sight line?

15           THE WITNESS: The van, about four cars down,  
16 the police officers. This is where my shop is at. And  
17 I was right across the street right here. So Mr.  
18 Perkins was up here (indicating).

19           A GRAND JUROR: Okay.

20           THE WITNESS: And the police were all  
21 surrounded around his vehicle here is where they shot  
22 from, right across the street from where I was.

23           A GRAND JUROR: So where did you see the  
24 policeman take something out of his ankle?

25           THE WITNESS: It was down here in the middle

1 of the street, later when the ambulance -- I think the  
2 ambulance was there at the time. The ambulance was up  
3 here dealing with him and the police officer was here.  
4 And I was here on top of my motor home.

5 A GRAND JUROR: And so that's when he pulled  
6 something out of?

7 THE WITNESS: That's when I think he pulled  
8 something out of his ankle holster.

9 A GRAND JUROR: Okay. Thanks.

10 BY MR. DAVIDSON:

11 Q And was that captured on video?

12 A Yes.

13 Q Okay. Okay.

14 A It was on the second video.

15 Q Okay. All right. Terrific.

16 Is there anything else about, you know, what  
17 you observed as far as the police behavior or, you know,  
18 that is concerning to you?

19 A I thought they shot awful lot of times at  
20 him. And I thought they had no regards for the public.  
21 There were cars going by on Powell Boulevard. They  
22 were shooting towards the traffic. I mean, why that  
23 many shots for one guy?

24 Q Okay. So the number of shots is troubling  
25 to you?



1           A       Yes.  It's troubling to me, and the sequence  
2           that they went.  There was one shot, and then it was  
3           quiet for about a minute.  And then there was five or  
4           six shots, and then it was quiet for a couple of  
5           seconds, and then there was two more shots.  It was  
6           kind of weird the way it went off.  It ain't right.

7           Q       Could you see what Mr. Perkins was doing on  
8           the other side of the van when the shots were fired?

9           A       No, not when that happened.

10          Q       Okay.  All right.  So it's possible that he  
11          was doing something that was concerning to the police?

12          A       I don't think it would have been anything  
13          that would have warrant them to shoot at him that many  
14          times.

15          Q       Okay.

16          A       They were all behind protective cover.  I  
17          mean, why did they shoot at him in the first place?

18          Q       All right.  So you were concerned about the  
19          number of shots.  You don't seem to think they should  
20          have shot at all?

21          A       No.  I think that was overkill, way  
22          overkill.

23          Q       Okay.  All right.

24                   MR. DAVIDSON:  Do you guys have any  
25          questions for Mr. Kaleta?  No.  Anybody?

1                   Okay. Mr. Kaleta, do you know -- have you  
2 seen Michelle today?

3                   THE WITNESS: She says she's not coming  
4 today.

5                   MR. DAVIDSON: She's not coming. That's  
6 good information to have.

7                   Okay. All right. Well, I think those are  
8 all of the questions I have for Mr. Kaleta unless  
9 anybody else has anything else they want to ask Mr.  
10 Kaleta. No.

11                   A GRAND JUROR: Thank you.

12                   MR. DAVIDSON: Mr. Kaleta, you are all done.

13                   THE WITNESS: That was painless.

14                   A GRAND JUROR: Thank you very much.

15                   MR. DAVIDSON: Thanks for coming in. You  
16 are free to go.

17                   THE WITNESS: Thank you. Bye-bye.

18                   (Proceedings concluded for the evening.)  
19  
20  
21  
22  
23  
24  
25

## P R O C E E D I N G S

Wednesday, March 15, 2017

9:00 a.m.

DERRICK FOXWORTH, JR.,

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

## EXAMINATION

BY MR. DAVIDSON:

Q And if you could state and spell your full name for us, please.

A Yes. My first name is Derrick, D-E-R-R-I-C-K. Last name is Foxworth. Spelled F-O-X-W-O-R-T-H.

Q And, Derrick, how are you employed?

A As a police officer for the City of Portland. I'm specifically assigned to the training division as one of our lead instructors.

Q And how many years of law enforcement experience do you have?

A A little over 13.

Q Is all of that with Portland?

A Yes.

1 Q And before becoming a police officer, did  
2 you attend college?

3 A I did. I did my Bachelor's program at the  
4 University of Portland.

5 Q And what degree did you obtain?

6 A Public -- my Master's is out -- I also have  
7 a Master's degree. That's in public administration.  
8 My undergraduate work was in business with a minor in  
9 philosophy.

10 Q And were both of those degrees from the  
11 University of Portland?

12 A No. My Master's was at Portland State.

13 Q Okay. And can you tell us a little bit  
14 about kind of your background prior to being in the  
15 training division, what kind of assignments did you  
16 have?

17 A Certainly.

18 I started out in my career working  
19 North/Northeast Portland as a district officer assigned  
20 to the Cully neighborhood. I held that assignment for  
21 about three and a half years.

22 From there, I went and worked with the Gang  
23 Enforcement Team for about four and a half years as an  
24 investigator and then also assigned to our uniform  
25 patrol unit of the Gang Enforcement Team.

1           After that, I've now been a full-time  
2 instructor in the training division for about four and a  
3 half years. And I'm also a member of the Special  
4 Emergency Reaction Team, which is Portland's SWAT team.

5           Q       And how long have you been doing that?

6           A       Three and a half years.

7           Q       Okay. So can you tell us a little bit about  
8 what the training division is within the bureau, what  
9 its special mission is, and kind of what the day-to-day  
10 business of that unit is?

11          A       Certainly.

12                   We have two primary programs that we run.  
13 One is our advanced academy program. And that is  
14 currently about 12 weeks of training for all of our  
15 brand new officers.

16                   So all new police officers will attend the  
17 basic police academy, which is currently housed in  
18 Salem, Oregon. When they come back to Portland, we get  
19 them for another 12 weeks. We build on some of the  
20 contents of the training that they've learned there  
21 before they are sent out to the street on their own.

22                   The other program that we run is our annual  
23 in-service training. That's kind of your maintenance  
24 training, legal updates, defensive tactics updates,  
25 patrol techniques and tactics training. And that varies

1 as far as the hours from anywhere of 20 hours to 40  
2 hours a year.

3 Q Per officer?

4 A Per officer.

5 Q And how many personnel are assigned to the  
6 training division?

7 A Currently, I think we have 26 assigned to  
8 the training division. That would include our command  
9 staff, sergeants, lieutenants and captains as well.

10 Q So sworn officers?

11 A Correct, sworn officers. We do have some  
12 non-sworn civilian employees that assist us with  
13 curriculum development as well.

14 Q Okay. So it's a significant dedication of  
15 resources by the bureau to training?

16 A Yes.

17 Q Okay. So you have been apprised of kind of  
18 the general fact scenario of what occurred on  
19 February 9th involving Officers Walsh and Clark; is  
20 that right?

21 A Yes.

22 Q You and I have had a conversation previously  
23 about the facts of this incident, what appeared to be  
24 the facts?

25 A Yes.

1 Q So you have a general idea of kind of how  
2 things went down.

3 A I do.

4 Q Okay. So you're aware that this call  
5 started out essentially with Mr. Perkins, the subject  
6 who was eventually shot, calling 911 on two occasions,  
7 basically indicating he had taken an overdose of pills  
8 and making suicidal-type statements; is that right?

9 A Yes.

10 Q And you were also aware that Officer Clark  
11 and Officer Walsh were the two officers who were  
12 initially dispatched to the call?

13 A Yes, I am.

14 Q So it's my understanding and our  
15 understanding that Officer Clark is what they call ECIT  
16 certified and trained, and Officer Walsh is CIT  
17 certified, trained and certified.

18 Can you tell us a little bit about what that  
19 means, what those programs look like?

20 A Certainly.

21 The CIT or Crisis Intervention Training,  
22 every Portland police officer gets that training. So  
23 approximately 40 hours of focused training on crisis  
24 communication, recognizing signs of mental illness.

25 A GRAND JUROR: Can you slow down?

1           THE WITNESS: Certainly.

2           Recognizing signs of mental illness,  
3 emotional stress and developing a communication strategy  
4 around that. So that's CIT training, every Portland  
5 police officer has.

6           Our ECIT program, which is our Enhanced Crisis  
7 Intervention Training, that program rolled out about  
8 three, four years ago, and that's an additional 40  
9 hours of training.

10          Police officers have to volunteer to be a part  
11 of that program, and they get additional training,  
12 additional skills on how to better manage situations  
13 where someone is either threatening suicide, or there  
14 might be an issue with mental illness and how to manage  
15 those situations hopefully for a peaceful resolution.

16          Part of the ECIT training does include  
17 scenarios where an officer would be put into a  
18 situation that might be similar to what they could face  
19 on the street.

20          For example, one of the scenarios that we run  
21 during that training is a suicidal jumper. So if  
22 someone is threatening to jump off an elevated  
23 position, so that the officer has kind of the  
24 experience of what does that look like to talk to  
25 someone that is thinking about suicide.



1           That scenario runs about 30 minutes because  
2 some of these types of incidents go on for a prolonged  
3 period of time. We want officers to have an  
4 understanding of how to work through those types of  
5 instances.

6           Q       Sorry. Go ahead.

7           A       Nope.

8           Q       So Officer Walsh -- I'm sorry, Officer Clark  
9 has been through that training to my understanding?

10          A       Yes, to the best of my knowledge as well.

11          Q       Okay. And I think you also mentioned to me  
12 that this training is not necessarily totally put  
13 together programmatically by the police officers, but,  
14 in fact, the bureau retains civilian experts in the  
15 field to assist in the curriculum; is that right?

16          A       Yes. Our lead instructor for our Crisis  
17 Intervention Training and our Enhanced Crisis  
18 Intervention Training is Dr. Liesbeth Gerritsen. She  
19 has her doctorate in psychology. She is responsible  
20 for developing the curriculum around our CIT program,  
21 as well as our ECIT program.

22                   The program I run, which is called Patrol  
23 Tactics, we teach about 16 different topics. And we  
24 cover most of the scenario-based training.

25                   What we've really tried to do is blend our

1 CIT training with our Patrol Tactics training. So that  
2 when officers come to a scenario, they don't know if it  
3 is going to have a communication element, if it's going  
4 to be a defensive tactics element.

5 And that way we have that conversation. We  
6 have our Dr. Liesbeth Gerritsen that can debrief the  
7 communication piece, and then myself and one of the  
8 other instructors can debrief the tactic portion of that  
9 scenario.

10 Q Okay. So knowing what you know about the  
11 nature of the initial call on February 9th, are you  
12 surprised that an ECIT officer was dispatched to this  
13 call?

14 A No. That's part of our policy is that if an  
15 individual is threatening suicide and there's a means  
16 that's been identified, it's an automatic responsive  
17 ECIT officer if one is available.

18 Q Okay. All right. So as you are aware, it  
19 appears that Officer Walsh and Officer Clark were  
20 attempting to locate Mr. Perkins to render assistance.

21 If you have a call like this where someone is  
22 threatening suicide by overdose of pills, I mean, what  
23 would be in the minds of those officers to be looking to  
24 do once they make contact with the suspect -- or  
25 subject, excuse me?

1           A       Yes. The focus of this call is to get this  
2 individual help, whatever that may be. So if there's a  
3 threat of suicide, obviously there's going to be a  
4 concern. Have they taken the pills, so we would be  
5 thinking about medical.

6                   We would also be thinking about potentially  
7 outreach and wrap-around services as well, because we  
8 not only want to deal with the incident right now, but  
9 what does this look like for that person a week later.

10                   Our ECIT trained officers are well depth in  
11 the variety of community partners with regard to mental  
12 health and emotional crisis that we have available. So  
13 a lot of times there's a conduit for that connection for  
14 those services.

15                   So our first goal is just to get this person  
16 help. See if that's -- getting medical treatment right  
17 there right then, potentially contacting Project  
18 Respond, which is also a community partner to start  
19 exploring the mental health component of it as well.

20           Q       Okay. So if a call began in this fashion,  
21 but as it appears in this instance when they did make  
22 contact with Mr. Perkins, he perhaps brandished what  
23 appeared to be a gun at them, how would things change  
24 at that point for the officers in the call?

25           A       Yes.

1           So obviously, the presentation of a weapon is  
2 going to change that call dramatically. It's going to  
3 change it from thinking that there's only a mental  
4 health crisis, only an attempted suicide by medication,  
5 which is how I understand the officers approached the  
6 call initially, to now we have a threat of a weapon.

7           That's going to be potentially obviously  
8 dangerous to the individual that is suicidal. It's also  
9 going to be a danger to the officers, and then also a  
10 danger to any community members that might be in the  
11 immediate area.

12           So what we would expect our officers to do if  
13 they have the opportunity is to, depending on how that  
14 weapon was brandished, it could right there potentially  
15 turn into a deadly force encounter depending upon what  
16 the officers observed.

17           Other options that we would also expect an  
18 officer if they are able to, to gain some distance, to  
19 get to a better position of cover. And cover is going  
20 to be something that's going to shield those officers if  
21 that individual decided to start shooting that firearm.

22           Q       Okay. Now, I had an opportunity to show you  
23 this before. The Grand Jury has already seen this.  
24 This is what we believe to be the firearm that was  
25 potentially brandished or replica firearm

1 particularly -- certainly brandished by Mr. Perkins and  
2 at the officers potentially.

3           Why don't you tell me your thoughts, having  
4 kind of had a chance to take a look at this item.

5           A       Just initially when you handed it to me, it  
6 looks like a black semiautomatic handgun. The weight  
7 of it is consistent with the model that it appears to  
8 be.

9           There's no orange tip that you would  
10 occasionally see on what you might call an airsoft or a  
11 toy gun. This looks as realistic as the actual Walther.  
12 I think if you had them side by side, again without  
13 getting your hands on this weapon and manipulating it,  
14 you wouldn't be able to tell the difference.

15           I certainly was. I was surprised when you  
16 handed it to me at how realistic it looks to the actual  
17 model. It functions similar. The slide operates  
18 similar to how standard semiautomatic handles.

19           The Walthers have what's called a paddle  
20 release on the side down by the frame of the trigger  
21 guard, and this operates similar to that. It is missing  
22 some of the features, but at first glance, even  
23 hands-on, it's incredibly realistic in its form.

24           Q       Okay. All right. I'll take that from you.

25           A GRAND JUROR: So you sound like you're

1 familiar with the actual, the real version of that gun?

2 THE WITNESS: Yes.

3 A GRAND JUROR: So you have that -- we've  
4 only seen the pictures. Do you actually have hands-on  
5 experience with both guns?

6 THE WITNESS: Yes.

7 A GRAND JUROR: And you can, even with that  
8 experience, until you actually had it in your hand, you  
9 were surprised.

10 THE WITNESS: Yes. At a distance at just  
11 looking at it, what's consistent is the weight.  
12 There's a weight behind it.

13 So with some of the airsoft guns, they are a  
14 lighter weight because they are primarily plastic.  
15 There's a lot of metal components to that. So that's  
16 where you start getting that weight balance as well.  
17 It's about five and a half feet from me right now, and  
18 looking at it, it looks like a real handgun.

19 BY MR. DAVIDSON:

20 Q You obviously have considerable training in  
21 firearms. And even to you it appears to be a real gun?

22 A Yes, it does.

23 MR. DAVIDSON: Okay. Any additional  
24 questions at this point?

25 A GRAND JUROR: Yes. I do.

1           So around the training for mental health  
2 provision during, you know, potential suicide, what is  
3 the -- I don't know -- protocol or procedure that is  
4 usually approached with someone when you don't know that  
5 there's a firearm?

6           THE WITNESS: So, yeah. Unknown --  
7 basically unknown risk. Again, the officers are going  
8 to have some information. So the expectation is start  
9 to determining and building a plan based on the  
10 information that you have at the time.

11           So if the information can be based on what  
12 comes in from the call, you know, as far as male or  
13 female. It could be threats of suicide, attempted  
14 suicide in the past. An officer may have prior  
15 knowledge of the individual where they've had contact  
16 with them before.

17           There might be an officer that's familiar  
18 with the individual so they might be able to provide  
19 that information. So all that information that the  
20 officers are getting at the onset is starting to help  
21 them formulate a plan.

22           So with the fact scenario of this call as I  
23 know it, the expectation would be that we're thinking,  
24 hey, we want to get this person help. We want to get  
25 them to the hospital so they can meet and talk to a

1 physician that can help them work through whatever  
2 crisis issue there is.

3           If medical is needed, if they have taken some  
4 medication, we want to also get medical there right  
5 away. So that would be how officers form their plans.

6           If you change the fact scenario a little bit  
7 different where if the threat of a weapon, suicide by  
8 handgun at the onset, now that's going to change it. We  
9 probably wouldn't be training to make phone contact as  
10 opposed to face-to-face contact because of the, you  
11 know, potential danger of a firearm.

12           If medication is potentially the instrument  
13 of suicide, face-to-face communication can be very  
14 effective by helping to develop a rapport with that  
15 individual.

16           So again, it's -- there isn't kind of a  
17 specific plan for every call, but it looks the same as  
18 far as gather information, decide upon a course of  
19 action. And as you get new information, you need to  
20 adopt and change the plan. The goal being to get this  
21 person that's threatening suicide help as quickly as  
22 possible.

23           A GRAND JUROR: So how much time do people  
24 do, you know -- there's -- I think you said there's 40  
25 hours of training.



1 THE WITNESS: Yes.

2 A GRAND JUROR: So how much of that time is  
3 related to -- well, communication is key, right, in  
4 most of this? So how much time is dedicated to this  
5 kind of --

6 THE WITNESS: Specifically with the CIT  
7 training -- and one of the things I want to talk about  
8 is every training that we do, whether it's a  
9 force-on-force scenario, has communication elements  
10 built into it because that's about 90 percent of what  
11 we do.

12 As far as communication hours, I'd have to  
13 consult with Dr. Liesbeth for the specific hours on just  
14 how much communication there is.

15 A GRAND JUROR: Just general percentages of,  
16 you know -- there's so many different scenarios that  
17 you get to deal with that are in crisis-based.

18 THE WITNESS: Yes. I can speak specifically  
19 to the Patrol Tactics program because a lot of ours  
20 start out at crisis.

21 And unless it's an immediate daily force  
22 scenario, there's an element of communication in every  
23 one because that's how we start gleaning information is,  
24 hey, tell me what happened, or, you know, if it's a car  
25 prowl, there's always that initial communication piece

1 that happens. So it's ingrained in all of our training.  
2 It is about 90 percent of what we do.

3 A GRAND JUROR: So I'm thinking about the  
4 suicide -- somebody's ideation plan implementation, so  
5 what do you -- you know, how much time is dedicated to  
6 that kind of --

7 THE WITNESS: I don't have a specific  
8 breakdown for the CIT program.

9 A GRAND JUROR: How about the ECIT?

10 THE WITNESS: The ECIT program, again that's  
11 40 hours. I know some of the communication that they  
12 do on the last day that we help run the scenarios, it's  
13 all communication. That's a ten-hour training day.

14 The other days they have kind of what you  
15 call mini scenarios where they are working through the  
16 same types of communications.

17 So it's someone who is presenting signs of  
18 either suicidal ideation or mental illness and they are  
19 working through those in small groups. That's going to  
20 be a much bigger portion. I'd say that's probably  
21 closer to 50 percent.

22 A GRAND JUROR: Right.

23 THE WITNESS: Okay.

24 A GRAND JUROR: That's good. Thanks.

25 BY MR. DAVIDSON:

1           Q       So at this point if the officers were  
2 confronted with what appeared -- that firearm or what  
3 appeared to be that firearm, as we know they did at  
4 that point did back off and seek cover as you indicated  
5 would be appropriate, what kind of collateral things  
6 are they doing as far as marshaling other resources  
7 potentially at this point as far as what their training  
8 would be?

9           A       Certainly.

10                   So this starts getting into what we call a  
11 critical incident. That's one of the areas that I teach  
12 is our critical incident response. So that is where you  
13 start now going through the list of resources that you  
14 would want to come help manage this scene.

15                   So right off the bat would be extra officers  
16 obviously to help start cordoning off the area, to keep  
17 community members out of this immediate area with the  
18 presentation of firearms. Staging medical would be one.  
19 Again, now we have the threat of a firearm, so the  
20 potential that someone could get shot is likely.

21           Q       And that could be the subject or could be an  
22 officer or could be a civilian?

23           A       All three. That could be the subject. That  
24 could be the officer or a community member as well.

25                   A sergeant would be requested if they were

1 not already on scene or responding. Other things that  
2 we would be thinking about potentially are less lethal  
3 shotgun. It fires a projectile. It's less lethal that  
4 gives us an option as well.

5 So that's just some of the initial steps that  
6 would happen as soon as those officers had gained that  
7 distance.

8 Q What about potentially involving SERT if you  
9 thought you had a barricaded-type situation?

10 A Yes. So if officers attempted communication  
11 with the person that's inside the vehicle and they were  
12 refusing to exit the vehicle, that would at some point  
13 turn into a SERT call-out because we now have a  
14 barricaded individual refusing to get out of the car.

15 That response does take some time. So the  
16 officers would still work that scene until SERT and also  
17 our Crisis Negotiation Team responded. So it's not --  
18 if you call out SERT, you also get our CNT crisis  
19 negotiators who work as one, one unit.

20 Q Is that CNT, is that the same as HNT?

21 A Yes. So it's HNT. But a number of years  
22 back, we recognized that there's a lot of crisis calls  
23 that we respond to, and so we wanted to kind of broaden  
24 our horizons a little bit. We actually don't respond  
25 to a whole lot of true kind of hostage.

1           A GRAND JUROR:  What is the acronym?

2           THE WITNESS:  So the first is CNT.  And that  
3 stands for the Crisis Negotiation Team.  And those are  
4 our negotiators.  They are specifically trained in  
5 negotiations.

6                   And then our SERT, that's our Special  
7 Emergency Reaction Team.  And this group of officers,  
8 and it's a big group that would respond to a person  
9 that's armed inside a car refusing to come out for  
10 whatever reason.

11                   (Reporter asks for clarification.)

12                   So our CNT, our Crisis Negotiation Team, used  
13 to be HNT, which stood for Hostage Negotiation Team.

14                   Over time we recognized that we needed to  
15 make a change in kind of the mindset and what we were  
16 seeing as far as in our community more crisis calls than  
17 hostage calls.

18 BY MR. DAVIDSON:

19           Q        So my question was for you, the individuals  
20 who are assigned to the Crisis Negotiation Team, are  
21 those people who are just ECIT trained or do they even  
22 have an additional level of training?

23           A        Yeah.  They have, they have an additional  
24 level of training.  They train every other week, I  
25 think on Wednesdays as a maintenance, as does our SERT

1 team.

2 Q Okay. So there's CIT, ECIT and then CNT is  
3 the very kind of top of that pyramid?

4 A Correct. Yes.

5 Q So you would expect in a scenario like this  
6 to potentially have SERT and CNT maybe getting ready to  
7 respond?

8 A Yes, that's correct.

9 Q Okay. And medical and less lethal.

10 So again, you I think are aware that at some  
11 point it seemed like the officers were giving commands  
12 to Mr. Perkins. He was not responsive. In fact, he was  
13 combative, defiant potentially. And this firearm was  
14 potentially thrown out of the van.

15 And some of the testimony we've had indicates  
16 that essentially Mr. Perkins was potentially seated on  
17 the floor of the van with the side doors opened, his  
18 feet out, maybe his feet resting on the curb, and the  
19 firearm sitting kind of in the grass strip, maybe a foot  
20 or two from where he was.

21 Can you explain to us what your kind of  
22 assessment is of the threats in that situation and what  
23 would be the appropriate kind of level of response at  
24 this point from the officers?

25 A Yes. So the fact that he threw it out

1 initially, officers might be thinking, hey, we're  
2 making some forward progress. Obviously, because the  
3 person has now distanced themselves from the weapon, so  
4 that would again be something the officers would factor  
5 in, like, hey, we're making forward progress.

6 We would expect the officers, if they hadn't  
7 at this point, to provide some type of warning. Like,  
8 hey, we don't want you to reach for that gun. We want  
9 you to come out towards us with your hands up with the  
10 attempt to get Mr. Perkins into custody safely.

11 We obviously don't want the individual going  
12 anywhere near the weapon for the obvious concern that it  
13 could be used either against the officers, against  
14 himself or a community member.

15 Now, if there's a motion towards that weapon,  
16 now we're potentially looking at a deadly force  
17 encounter.

18 Our policy, and this is what we teach to as  
19 far as when is force -- when is deadly force  
20 specifically authorized, says that an officer may use  
21 deadly force to protect him or herself from what they  
22 reasonably believe to be the immediate threat of death  
23 or serious physical injury.

24 Okay. So the policy now, I'll just repeat  
25 that. It says that an officer may use deadly force to

1 protect him or herself or others from what they  
2 reasonably believe to be the immediate threat of death  
3 or serious physical injury.

4 So when you have a weapon, be it a handgun, a  
5 baseball bat, a knife in close proximity, a person moves  
6 towards that weapon, we are at that threat level because  
7 of what that potential weapon could do.

8 So if this was a training scenario, similar  
9 facts, suicidal subject seated inside a van, tosses a  
10 handgun outside the vehicle, officers provide some  
11 warning. Don't reach for it. Stay where you are at.  
12 And that person then moves towards that weapon.

13 We now have some communication going on,  
14 right. We have this person specifically disregarding,  
15 disobeying the officer's instructions not to move  
16 towards that and making that affirmative movement to try  
17 and retrieve that gun, we would expect officers to use  
18 deadly force to protect themselves or others from that  
19 threat.

20 Q We talked a little bit about this  
21 action-reaction principle. I think some people might  
22 expect that an officer would be trained to wait until  
23 they were shot at to use potential deadly force for  
24 themselves.

25 Can you tell us a little bit about, I guess



1 the best sciences on this and how your officers are  
2 trained?

3 A Certainly.

4 So action-reaction is a concept. It talks  
5 about basically a contest of speed. What it means is  
6 that pure action will always beat any reaction. Okay.  
7 So pure action will always beat any reaction.

8 So kind of a daily example of this is a  
9 traffic signal, right. You are in your car driving  
10 along. The signal changes. So you have to first  
11 recognize that stimulus change in your environment. You  
12 have to then decide what you are going to do about it.

13 You've got a couple of options. You could  
14 maintain your speed. You could accelerate. You could  
15 decelerate, or you could come to a complete stop. You  
16 have to put one of those options into play.

17 So there's a built-in time gap. We call that  
18 the reactionary gap from recognizing the change in  
19 stimulus in your environment to deciding what to do  
20 about it.

21 For the traffic signal example, it's about a  
22 second, a second and a half for you to kind of process  
23 that through your brain. Same exact thing plays in on  
24 the law enforcement side.

25 The stimulus is the presentation of the

1 threat, right. So we talked about that a moment ago.  
2 That could be the handgun. That could be the knife.  
3 Specifically in this case it's obviously a handgun.

4 So an officer has to recognize the change in  
5 stimulus, presentation of a weapon, move towards the  
6 weapon. They have to decide upon a course of action in  
7 conjunction with what does the law say, what does our  
8 policy say, and decide about the best course of action.

9 If we're talking specifically again about  
10 deadly force, they then have to recognize the threat and  
11 then respond to it.

12 Again, there's a built-in time delay.  
13 Studies mostly done by Force Science. We've done some  
14 in-house training as well is that a person can retrieve  
15 a weapon from a pocket, from a waistband, come up on  
16 target and fire in about a quarter of a second.

17 For an officer, again you still have to  
18 recognize that threat, whether they are at what we call  
19 our high ready. We still have to recognize that weapon.  
20 So we are always in this reactionary time gap.

21 And because of this gap, because of the inert  
22 disadvantage or inherent disadvantage of trying to  
23 respond, we would not expect or train our officers to  
24 wait until they were shot for a variety of reasons.

25 One, it's going to be impossible to make up

1 that time gap. And again, we're not talking about a  
2 significant amount of time necessarily. It could be a  
3 half second. It could be a full second. But what could  
4 happen in that half second to a full second is a round  
5 gets fired at the officer.

6           So now you potentially have either an officer  
7 that's deceased or severely injured and are unable to  
8 respond to that. If it's an urban environment like in  
9 our city, that round that's fired from an individual is  
10 going to continue to go until it hits something. So  
11 there's obviously a concern about a person that might be  
12 in the vicinity.

13           Bullets will travel through sheetrock. So  
14 even if there's a house, a round could go through a  
15 house. I've seen that many times working gangs.

16           So that is why we teach our officers about  
17 the reactionary gap and how to do things to mitigate.  
18 Like verbal commands. Like using distance. Like  
19 observing the hands. Again, 90 percent of what we do is  
20 trying to get compliance through communication.

21           So it's just a concept or principle that we  
22 teach again so officers recognize, hey, there's this  
23 small gap, but that gap potentially could be dangerous.  
24 And that's why we don't again expect officers to wait  
25 until they are shot at.

1 MR. DAVIDSON: Could we also discuss -- does  
2 anybody have any questions specifically about that?

3 A GRAND JUROR: No. But I do want to say  
4 that you explained that very well. Thank you very  
5 much. It was very clear, everything.

6 THE WITNESS: Thank you.

7 A GRAND JUROR: I have a question.

8 In your ECIT and CIT programs, is there a  
9 training or education around shooter bias in regards to  
10 crisis?

11 THE WITNESS: Not that I know specifically.

12 MR. DAVIDSON: Can you explain to me what --  
13 so maybe we can all understand what does shooter bias  
14 mean.

15 As far as that term, what does that mean to  
16 you?

17 A GRAND JUROR: Shooter bias is -- usually  
18 it's used more in race than it is with mental illness,  
19 but I can see it as well playing into that.

20 Shooter bias is, like, sort of the inherit  
21 reaction that you have to shooting someone. It's a  
22 program -- I know there is a program that is with  
23 Portland Police, with PSU with shooter bias.

24 But it's sort of like -- if I can explain  
25 this correctly -- it's more common for police officers

1 to shoot at someone of color than it is for someone who  
2 is Caucasian, for example, and assess the situation  
3 wrong.

4 They are more likely to see a cell phone as a  
5 threat and mistake it for a gun for someone of color  
6 than they are for someone of white. So it is called  
7 shooter bias since we have those inherent sort of  
8 biases. We all do. And there's a bias and a stigma  
9 against people with those issues.

10 So that's why I was wondering if there's also  
11 a sort of program or education or training or education  
12 around that within the ECIT and CIT because I can see  
13 mistaking someone with mental health issues.

14 THE WITNESS: Not that I know of  
15 specifically.

16 A GRAND JUROR: Okay.

17 THE WITNESS: Again, just to, kind of a  
18 holistic approach, the thought behind how we manage  
19 these types of incidents is again help.

20 And so unfortunately, we have to respond to  
21 behaviors. And so that's what we talk about a lot of  
22 times. We were looking at there could be a complete  
23 mental health reason to why someone commits a crime, but  
24 if officers present with the immediate threat of either,  
25 we've talked about firearm, knife, dangerous weapon at

1 that moment in time, as an officer, my main concern may  
2 not be what's causing this person necessarily to take  
3 this action. It might be I have to respond to this to  
4 keep either myself or somebody else safe.

5 So that's the approach. I hear what you're  
6 saying. But again, just to understand these things  
7 happen incredibly fast. And so that is what officers  
8 are responding to is the presentation of the threat, not  
9 necessarily someone's demographic, socioeconomic race,  
10 religious, creed, whatever else makeup responding to  
11 that initial threat.

12 A GRAND JUROR: Part of that is also -- so I  
13 understand your point about, you know, the  
14 action-reaction and the presentation of a perceived  
15 deadly weapon.

16 I think a part of that question is how much  
17 of -- I think you phrased it as race, social class, but  
18 social determinants, how that's helping to inform how  
19 the reaction -- the training, I suppose of, you know,  
20 the how you -- how things are done.

21 THE WITNESS: When a deadly force threat is  
22 presented, the race of the individual is irrelevant at  
23 that point.

24 MR. DAVIDSON: Any more questions?

25 Are we good?

1 BY MR. DAVIDSON:

2 Q Okay. Can you talk a little bit also  
3 about -- I don't know -- we refer to it as levels of  
4 force. I know they refer to a variety of different  
5 ways over the years.

6 But, for example, you indicated that you  
7 would expect that a less lethal shotgun to be part of  
8 the deployment. It's my understanding I think that all  
9 PPB officers now carry Tasers.

10 Can you talk about that in relation to  
11 responding to this potential level of threat and what's  
12 appropriate and what's not appropriate?

13 A Certainly.

14 A number of years ago Portland Police Bureau  
15 policing nationally referred to as kind of levels of  
16 force.

17 So if an individual did A, the police would  
18 do B. If they did C, we would do D, and it kind of  
19 worked through that. What that really did not allow for  
20 was independent decision-making and taking in what we  
21 refer to as totality of the circumstances.

22 How many resources do you have available?  
23 How many officers do you have available? We have a  
24 variety of tools, and a lot of them are less lethal  
25 options.

1           So an officer carries obviously their  
2 firearm. They carry pepper spray, which is an eye and  
3 nose irritant. They carry a Taser, which is another  
4 non-lethal option, and a baton, and then I mentioned  
5 earlier the less lethal shotgun. That's an additional  
6 20-hour course becoming a less lethal operator and carry  
7 that tool on the street.

8           Q       Are you talking about specifically the  
9 shotgun?

10          A       Specifically the less lethal shotgun.

11                So what we would expect officers to do is  
12 arrive on the scene, take in what information you have  
13 and then make an independent decision based upon what  
14 you are being presented with and not going necessarily  
15 through, okay, they yelled. I'm going to yell back, or  
16 they punched me, I'm going to punch back. They have a  
17 knife, so I have a gun.

18                We want that holistic approach and making  
19 good decisions throughout that entire force encounter.

20          Q       Okay. So, for example, in this scenario if  
21 an officer had a reasonable belief or fear that a  
22 suspect -- subjects was about to utilize deadly  
23 physical force against the officers in the form of a  
24 gun, would it be appropriate to try and deploy a Taser  
25 at that point or a less lethal shotgun?



1                   Can you talk a little bit about that?

2           A        Certainly.

3                   So as far as the Taser, a couple of things  
4 play as far as effectiveness. So if the individual is  
5 moving towards a firearm, specifically the Taser would  
6 not be an appropriate option because we already have a  
7 deadly force encounter. The Taser does have a fail  
8 rate. It does not work a hundred percent of the time.  
9 So there's the concern for that.

10                   And I don't know if there was a less lethal  
11 shotgun on scene. That might be an option depending  
12 upon how much distance.

13                   So, for example, you're seated about five  
14 feet from that garbage can. If the gun is within that  
15 five feet and you reach for it, it's not going to be  
16 reasonable for me to try and use the less lethal shotgun  
17 to prevent you from getting that.

18                   If I had a greater distance, like 30 or  
19 40 feet, there's a significant span. The less lethal  
20 shotgun might be an option.

21           Q        Do you mean between me and the potential  
22 firearm?

23           A        Correct. Again, our goal is to do  
24 everything that we have to do to not use less lethal  
25 force again to prevent that, that incident.

1           So the fact scenario as I understand them, I  
2 would not expect an officer to use a less lethal  
3 shotgun. I would not expect an officer to use a Taser.  
4 I would not expect an officer to use our pepper spray or  
5 baton when they are presenting with a firearm.

6           Q       Could we also talk a little bit about how  
7 officers are trained to utilize deadly force when it  
8 appears appropriate?

9                   For example, you know, sometimes there's  
10 this, you know, why didn't the officers just shoot the  
11 gun out of the bad guy's hand or, you know, that  
12 question -- or, for example, I mean, are the officers  
13 trained to kill people? Is that what they are trained  
14 to do?

15                   How are they trained to use deadly force when  
16 it's necessary?

17           A       Certainly.

18                   The way we train officers and the goal in a  
19 deadly force encounter is to end the threat as far as  
20 the deadly force threat. That's not to kill. That's  
21 to -- our goal is incapacitation. So we're looking to  
22 stop the person from either their continued use of  
23 deadly force or their attempted use of deadly force.

24                   So specifically with our firearms training,  
25 I'm also a firearms instructor for the Portland Police

1 Bureau. We train three primary target areas. We focus  
2 on the upper chest cavity for the main reason that that  
3 is the largest target area on a person.

4 So when you think about a couple things as  
5 far as firing a handgun in a city environment, one of  
6 the things we teach our officers is that you're  
7 accountable for each and every round you fire. That is  
8 significantly important.

9 One of the other things we talk about with  
10 our officers is you have to be aware of what is what we  
11 call beyond your target or your backdrop. If you miss,  
12 where is that round going to go?

13 So again, by focusing on the upper chest  
14 cavity, it increases the likelihood that an officer is  
15 going to hit what they are aiming at and reduces any  
16 potential for missing rounds.

17 One of the other things that we do train for  
18 as well, because the chest cavity may not always be  
19 presented to us, is the pelvic girdle. Again, that's  
20 the next kind of largest area to focus on. We also do  
21 focus on the head region as well.

22 The reason we don't train officers to shoot  
23 hands or arms is for a couple of reasons. One, in a  
24 deadly force encounter, when the officer is moving,  
25 potentially the person we are planning on using deadly

1 force on is moving. It decreases the likelihood of  
2 being able to actually hit an arm or a hand.

3 The second reason is generally does not yield  
4 incapacitation. About three or four years ago now we  
5 had an officer that was in a deadly force encounter. He  
6 was shot in the hand by the individual. Fortunately, it  
7 did not incapacitate the officer and he was still able  
8 to use that hand.

9 So that's, you know, kind of a prime example  
10 of why we train our officers specifically to focus on  
11 the chest area, pelvic girdle, and then also the head  
12 region as well.

13 To kind of tail in that, one of the other  
14 programs I teach is our tactical medical program, which  
15 we've recently rolled out in the last three years.

16 Every officer is issued a tourniquet. Every  
17 officer currently has in their patrol car an individual  
18 first aid kit. And that kit has an additional  
19 tourniquet. There are chest seals for dealing with  
20 sucking chest wounds if someone has been shot in the  
21 chest. There is a hemostatic gauze agent to help  
22 mitigate bleeding of injured folks.

23 So what we are trying to do is again,  
24 recognize we have this deadly force encounter. If the  
25 situation now changes, the threat level is gone, we can

1 now potentially render aid.

2           What we recognize with major hemorrhaging of  
3 arms and legs, a lot of times medical is staged a couple  
4 of blocks back because it's not safe for them to come  
5 in. So while we are waiting for medical, we can move  
6 in. We can start treating those folks right away. And  
7 that's currently our training protocol as well.

8           Q       Okay. This is a question that sometimes  
9 comes up also.

10           An officer approaches a situation like what  
11 appears in this scenario and are confronted with  
12 suicidal person who is armed with a deadly weapon  
13 potentially, why don't the officers just leave?

14           A       Yeah, um, because we can't. I mean, the  
15 quick answer. Our responsibility as, you know, public  
16 safety officers is to make sure that the public is  
17 safe, not only the officer that's there, but also that  
18 individual.

19           So if we leave and they are still armed, the  
20 potential for them to either harm themselves or someone  
21 else is huge. There is no other specific group or  
22 organization a hundred percent to focus on public safety  
23 all of the time.

24           So that is why officers cannot leave that  
25 situation entirely. We may try and gain distance. We

1 may try other techniques. We may try different  
2 communication strategies, whether that's phone or  
3 whether that's text or whether it's loud hailing. But  
4 we have to manage that situation and make sure it comes  
5 to a resolution.

6 Q So, you know, if, for example, police did  
7 just walk away, what is the potential negative result  
8 as a result of that choice?

9 A Yeah. I mean if you had a suicidal  
10 individual in a city street, like this was, in a  
11 neighborhood area, and somebody walks by, I mean, the  
12 potential that they could harm someone else, someone  
13 else has to then use force on this individual.

14 There's a whole host of issues that could  
15 happen. If they decide to start firing off their  
16 handgun before they decide to take their own life, again  
17 as I mentioned, those rounds are going to go somewhere.

18 Working gangs, I saw many rounds go into  
19 people's homes. As I mentioned earlier, those bullets  
20 will go, and they will continue to go until they hit  
21 something solid.

22 So a threat to community safety is such that  
23 we have to, you know, manage those incidents. And again  
24 with the overall goal of hopefully bringing that to a  
25 peaceful resolution, getting that person connected to a

1 physician that can better assess them.

2 Q Okay. So obviously, in this instance, the  
3 officers fired multiple rounds. Mr. Perkins was struck  
4 and injured.

5 Another question that comes up is, why  
6 don't -- once that has occurred, why don't officers just  
7 immediately run up and, you know, administer aid? Why  
8 is there some caution still at that point?

9 Can you talk about that a little bit?

10 A Yes. Certainly.

11 So that would start getting into our  
12 post-shooting procedure. So you have that initial  
13 deadly force encounter, and the officers need to  
14 determine if it's safe for them to approach.

15 Again, I mentioned incapacitation. If the  
16 person is not incapacitated, the first things that  
17 officers are going to start to think about is they are  
18 going to call out, hey, move away from the weapon. We  
19 want to get you medical aid. You need to move away from  
20 the gun or roll away from the gun.

21 So we're looking for either compliance on  
22 their part or complete incapacitation so that threat  
23 level is basically gone before we start moving officers  
24 closer to potentially an armed individual.

25 Again, we don't want officers to get shot.

1 We don't want that person to start cranking off rounds  
2 in the community as well. So that's why in a lot of  
3 cases there's going to be an initial delay before  
4 officers make their approach to render aid or place the  
5 individual in handcuffs.

6 Q Okay.

7 A GRAND JUROR: I have a question.

8 So to clarify, just kind of what I'm reading  
9 it the way you just said, so like immediately after  
10 firing on a suspect, using deadly force, the command  
11 that immediately follows to move away from the weapon is  
12 also to gauge a level of incapacitation?

13 THE WITNESS: Yes. Exactly. So I mean,  
14 it's a couple of things.

15 One, we're looking for the compliance to  
16 gauge whether or not they are going to obey the  
17 commands. Things we're also going to be looking at are,  
18 you know, we did just have a deadly force encounter. We  
19 did just fire at this person.

20 There is a potential that they are deceased.  
21 So we're also trying to assess whether or not they are  
22 breathing. Determine what types of injuries and wounds  
23 they have. Depending upon where they are hit and the  
24 distance, it could be very obvious the level of  
25 incapacitation.



1           So we're just trying to take that second or  
2 minute, however long it is, to truly assess so we don't  
3 have officers move up and potentially get ambushed on  
4 their approach.

5 BY MR. DAVIDSON:

6           Q       Because I guess at that point the officers  
7 have not yet gone hands-on with the individual. They  
8 don't know if they are potentially armed with a second  
9 weapon?

10          A       Yes.

11          Q       So in this instance, as you know, they  
12 approached fairly quickly. Mr. Perkins is still  
13 conscious. He's speaking. He's compliant apparently.  
14 He's handcuffed, and he's rolled on to his side.

15                   What is that procedure about?

16          A       So it's called the recovery position. So  
17 basically you want to take pressure off the diaphragm,  
18 off the torso to facilitate breathing. Make it easier  
19 for that person. And that's been something that's been  
20 taught to us from the medical profession.

21          Q       Okay. Is it sometimes referred to as the  
22 rescue position?

23          A       Rescue or recovery position, two terms most  
24 commonly referred to.

25          Q       Okay. And you had touched on this earlier,

1 but in this instance I guess it appears that Sergeant  
2 Cioeta very quickly applied a tourniquet to one of  
3 the -- I guess the arm of Mr. Perkins, which is I guess  
4 what the training is.

5 A Yes. That would be expected. The  
6 tourniquet can be applied to the extremity to basically  
7 mitigate external hemorrhaging. The faster we can stop  
8 that bleeding, the better likelihood that person has of  
9 surviving whatever injuries they have.

10 Q Okay. All right. So in your understanding  
11 of the scenario, the actions of Mr. Perkins, the  
12 actions of the officers, you know, both before, during  
13 and after the use of deadly force by the officers, is  
14 there anything in your kind of understanding of what  
15 occurred and what action the officers took that was  
16 contrary in your opinion to their training and bureau  
17 policy?

18 A No, from start to finish, as I understand  
19 the facts.

20 Again, with regard to our policy, their  
21 approach to the call is consistent with how we train.  
22 Their reaction to the initial presentation of the weapon  
23 is consistent with our training and policy. Gaining  
24 distance is consistent with our training and policy.

25 Trying to establish some type of

1 communication and rapport with Mr. Perkins is consistent  
2 with the training that they've had. And then the  
3 implementation and use of deadly force is consistent  
4 with our training and policy.

5 Q And then the action subsequent?

6 A Correct. And the actions with the follow-up  
7 medical attention that Mr. Perkins was provided by  
8 officers on the scene.

9 Q Okay.

10 MR. DAVIDSON: All right. I think those are  
11 all of my questions for Officer Foxworth.

12 Does anybody else have any additional  
13 follow-up questions for Officer Foxworth about any of  
14 the topics that he's covered in the last hour? No, it  
15 appears not.

16 Anything additional that you would like to  
17 add?

18 THE WITNESS: No.

19 Thank you for your time and your service.

20 A GRAND JUROR: Thank you. I can see why  
21 they made you the trainer.

22 MR. DAVIDSON: Okay. Let's take a break.

23 (Recess.)

24

25

1 BRAD CLIFTON,  
2 a witness previously sworn on behalf of the State, was  
3 reexamined and testified as follows:  
4

5 EXAMINATION

6 BY MR. DAVIDSON:

7 Q Detective Clifton has rejoined us.

8 Obviously, Detective Clifton, you were placed  
9 under oath in this matter before this Grand Jury  
10 yesterday. You are still under oath.

11 A Yes, I am.

12 Q Okay. So there was a couple of follow-up  
13 pieces I wanted you to address with the Grand Jury  
14 after Mr. Kaleta's testimony from yesterday.

15 There was some disparities, I think, in his  
16 testimony from some other evidence that we had about  
17 what exactly Mr. Perkins was doing, what Mr. Kaleta had  
18 seen and statements were made.

19 So I asked Detective Clifton to come back in  
20 here and kind of just flesh out a little more about what  
21 we know about what Mr. Kaleta said and was able to  
22 observe.

23 First of all, Detective, if you wouldn't mind  
24 just kind of running us through that night. My  
25 understanding is detectives were aware that Ms. Clemmer

1 and Mr. Kaleta were potentially witnesses that actually  
2 contacted them and had maybe a couple of interactions  
3 with them.

4 If you could just run us through the  
5 detective interaction or police interactions with Mr.  
6 Kaleta and Ms. Clemmer that occurred that evening.

7 A Yes.

8 So the night of the shooting, officers,  
9 detectives are canvassing the area for witnesses.  
10 Officer Law partnered with an OSP trooper, was part of  
11 the officer-involved response, went out and canvassed  
12 the area and located Mr. Clemmer -- Mrs. Clemmer and Mr.  
13 Kaleta.

14 Q Actually before you go on on that point, you  
15 remind me of something else.

16 You mentioned an OSP trooper. When an  
17 incident like this occurs involving a PPB officer, what  
18 is the practice as far as inviting out-of-jurisdiction  
19 investigators to participate in the investigation?

20 A The idea is so as part of our response there  
21 we'll have part of the East County Major Crimes Team, a  
22 couple of detectives from that unit will respond.

23 Again, it's just to have outside eyes, people  
24 from outside of our agency taking part in this process  
25 and again, just to maintain integrity in the

1 investigation.

2 Q So in this particular investigation, you had  
3 I believe detectives from the Oregon State Police?

4 A Yes.

5 Q And the Multnomah County Sheriff's Office  
6 also --

7 A Yes, we did.

8 Q -- who participated in the investigation?

9 A Yes.

10 Q Sorry to interrupt.

11 Please continue with what you were saying.

12 A Yes. So Officer Law and the trooper made  
13 contact during their canvass with Daniel Kaleta and  
14 Michelle Clemmer.

15 When they initially made contact with them,  
16 Mr. Kaleta and Mrs. Clemmer said they didn't see  
17 anything. They said they were inside their trailer,  
18 heard the gunshots, but didn't see any of the events and  
19 only heard it.

20 As Officer Law and the trooper were outside  
21 in that area, Mr. Kaleta ended up re-approaching him and  
22 said, "Well, I actually do have some cell phone video of  
23 the event and I did see some stuff."

24 So at that point Officer Law and the trooper  
25 recontacted the two of them and did -- conducted a

1 recorded interview.

2 Mr. Kaleta explained on the recording that he  
3 didn't want to get involved initially and didn't want to  
4 be a part of it, but he thought since he had the  
5 recording, he had a change of heart and was going to  
6 give that information and provide that to the police.

7 In his recorded statement, he said that he  
8 was inside the trailer, and that Michelle Clemmer came  
9 inside and told him that the police were outside and  
10 that something was going on.

11 He said the two of them at that point exited  
12 the trailer. At that point he could see four to five  
13 officers huddled behind the police SUV. And at that  
14 point he says that's when he started recording the  
15 incident on his cell phone.

16 In the statement he says, from his vantage  
17 point, he hears -- can't discern what the officers are  
18 saying -- or officer. Said one officer is giving  
19 commands. He can hear that. He can't say what the  
20 specific commands were, but said it sounded  
21 authoritative in nature.

22 He says -- at that point he later says that  
23 the police tell the man, the guy who he says is Mr.  
24 Perkins, doesn't know him by name, but that he describes  
25 him as a homeless guy that has lived in that van for

1 quite some time, so he knows him from that.

2 He says that that guy is told to step away  
3 from the van. He says he observes him, you know, move  
4 out from the van. And he's standing between the tree  
5 and the van, and that he can see his upper half of his  
6 body from his viewpoint, and that he doesn't have  
7 anything in his hands.

8 He says at that point the officers are giving  
9 him commands; that he can't exactly understand what Mr.  
10 Perkins is saying, but that he's compliant and  
11 essentially pleading with the police.

12 Q Pleading in what way?

13 A As far as like to leave him alone or that  
14 he's not doing anything. He, he doesn't again say that  
15 he exactly hears it, but that's how he describes it is  
16 like a pleading with the police.

17 Again, describes him as being compliant at  
18 that point. He says at some point there's one gunshot.  
19 He says Mr. Perkins falls to the ground after the one  
20 gunshot, and that he can't see him anymore.

21 And that again, while he's on the ground,  
22 then the officers open fire on him. He says he believes  
23 four officers at least are shooting at him, and  
24 describes it, because he can see their guns, you know,  
25 like moving, you know, up and down, and then possibly



1 all of the officers were firing.

2 Q Okay. Now, you obviously reviewed the video  
3 that Mr. Kaleta took. And there ended up being two  
4 videos, not just one.

5 So when he originally told the officers he  
6 didn't see anything and then he subsequently changed his  
7 story and said he did see something and recorded video  
8 on his phone, and then it turned out there actually was  
9 video on his phone and on a digital recording device, at  
10 one point did he reveal the additional existence of this  
11 second video during the course of his interaction with  
12 detectives that night?

13 A Yes. That was -- so he had given a  
14 statement. At the tail end of their recorded statement  
15 he says, "And I also have this additional video that I  
16 took after the shooting."

17 So he takes the initial video where you see  
18 the shooting occur on his cell phone, and then he ends  
19 up grabbing this other recording device and records the  
20 post-shooting incident.

21 Q Now, we have, and you have reviewed the  
22 videos that Mr. Kaleta took of what he observed.

23 Is his statements that he gives about what he  
24 observed consistent with what you observed in his video?

25 A No, it is not.

1           Q       Do you want to run us through that or do you  
2 want to give us a verbal accounting of what you see to  
3 be the inconsistency?

4           A       Well, the inconsistency that he gives is  
5 that from his perspective or his vantage point, he  
6 doesn't account for that initial movement in the first  
7 shot. What he talks about is Mr. Perkins is standing  
8 there, and then he says there's the one shot and then  
9 he drops to the ground and then the officers open fire.

10                   I've watched this video, you know, probably  
11 20 times or more. You see from his vantage point of  
12 watching it, and I've watched it frame by frame, you see  
13 Mr. Perkins exit the van, which there's the first shot  
14 there.

15                   Then he moves to the fence, and that's when  
16 he makes a statement and he is standing there, "Well,  
17 you are going to have to kill me or shoot me, bitch," as  
18 he moves back towards the van. And that's where the  
19 additional gunfire takes place.

20                   His statement, he says that the officers --  
21 he's standing there. The officers are giving him  
22 commands. There's one gunshot and then he drops to the  
23 ground. And then when he's on the ground, the officers  
24 open up.

25                   From where he's at and just how quick that

1 action, the initial action which caused the first shot,  
2 I don't think he sees any of that, I don't think, from  
3 his vantage point. And again, it happens so quick on  
4 the video, I just don't think he has an idea of what  
5 actually occurred there.

6 And from the officers' vantage point of where  
7 they were at and what they would see, he's not going to  
8 see that from his. He's on the west side of the van,  
9 and the officers can see the east side of the van. He's  
10 not going to be able to see that.

11 Q Okay. And then he also made reference to  
12 this incident where he asserts that he believes police  
13 were planting a firearm on Mr. Perkins maybe. And you  
14 I think reviewed the second video that was taken, I  
15 think, on the digital recorder to try and spot that  
16 instance.

17 Were you able to, I guess, figure out what it  
18 is you think he's referencing?

19 A Yes. On the second video, and it got cut  
20 off yesterday, he makes reference -- there's some  
21 officers -- this is after the shooting has occurred.  
22 The ambulance is there. Medical is there. You've  
23 heard Officer Fox's audio up there when they are  
24 dealing with Mr. Perkins, giving him medical aid.

25 Mr. Clemmer (sic) is still recording on the

1 second recording device that he has. He and Michelle  
2 Clemmer are there, and they are talking about, make a  
3 reference approximately nine minutes into the video or  
4 so about the police, "Oh, do you see that officer?"

5 And there's, there's actually two officers to  
6 the south essentially of Officer Clark's SUV where they  
7 were standing. Mr. Perkins isn't in camera frame, and I  
8 believe he's already gone in the ambulance.

9 He makes reference to, "Oh, do you see that  
10 officer grabbing at his leg? He's putting a piece,"  
11 referring to a gun, "in his sock, and that they are --  
12 they are going to plant that gun on that guy. They are  
13 going to say that's the gun that he had."

14 Well, Mr. Perkins never had a gun on his  
15 person. No one has asserted that. But they go off on  
16 this tangent that the police are going to plant this gun  
17 on Mr. Perkins.

18 MR. DAVIDSON: So, guys, I'll leave it up to  
19 you. Do you think it will be helpful to kind of watch  
20 Mr. Kaleta's video again, either both or either one of  
21 them, the actual shot, footage of the shooting and/or  
22 this kind of stuff that happened afterwards where they  
23 are asserting that a gun was planted on Mr. Perkins?

24 We're happy to do it. It's whatever you guys  
25 desire. Does anybody want to see that again? Concerns

1 about that aspect of it?

2 I'm not hearing -- I've got a maybe smirk  
3 over here. A no. Okay. So if you guys don't feel like  
4 it's necessary, then I won't, you know, utilize your  
5 time to do that.

6 A GRAND JUROR: Good call.

7 MR. DAVIDSON: All right.

8 A GRAND JUROR: Thank you.

9 MR. DAVIDSON: Fair enough.

10 All right. I think that was everything that  
11 we were going to try and cover with Detective Clifton.  
12 I had budgeted a little extra time for Detective Clifton  
13 this morning just in case you guys did want to see that  
14 video.

15 A GRAND JUROR: I do have a question.

16 So in reviewing the tape, I'm going back to  
17 seeing the full body. Did you see a shirt on Mr.  
18 Perkins?

19 THE WITNESS: Yes, like wearing clothing?

20 A GRAND JUROR: Yes.

21 THE WITNESS: Yes.

22 A GRAND JUROR: Okay. Thank you.

23 A GRAND JUROR: I have a question.

24 Do police officers have an ankle holster?

25 THE WITNESS: Some.

1                   It's not real common, but, yeah, I mean -- as  
2 far as the officers that were at that scene, I don't  
3 know. But I do know some that have them, but it's  
4 typically not -- it's not real easy to run with those  
5 on. It's fairly difficult.

6 BY MR. DAVIDSON:

7           Q       Is that allowed by bureau policy?

8           A       Yes.

9           Q       What is that referred to as sometimes?

10          A       A backup, a backup weapon.

11          Q       And that's just -- I guess is it unheard of  
12 that your primary duty weapon will on occasion jam like  
13 some firearms do and leave you without a serviceable  
14 firearm?

15          A       Yes. It has happened in the past.

16          Q       And that secondary weapon is, I guess, just  
17 to insure against that possibility; is that right?

18          A       Yes.

19          Q       Okay. Do you carry one?

20          A       A gun?

21          Q       A backup.

22          A       When I worked the street, I did, yes.

23          Q       Okay. Not now so much.

24          A       No. Now a pencil and a notepad.

25                   A GRAND JUROR: Those are your weapons.

1 MR. DAVIDSON: Okay. So anybody else with  
2 any additional questions for Detective Clifton?

3 A GRAND JUROR: Just to summarize, would you  
4 consider -- was Mr. Kaleta's statement an outlier -- an  
5 outlier from your investigation, like inconsistent with  
6 the rest of it?

7 THE WITNESS: From the evidence that I have,  
8 yes.

9 A GRAND JUROR: Okay.

10 THE WITNESS: Yes. And having reviewed all  
11 these videos talking, you know, to the people there,  
12 yes.

13 A GRAND JUROR: Thank you.

14 MR. DAVIDSON: Anybody else? No.

15 Let's take a break again.

16 (Recess.)  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

5

6                                   EXAMINATION

7 BY MR. DAVIDSON:

8           Q       And if you could state and spell your full  
9 name for us, please.

10          A       My name is Bradley, B-R-A-D-L-E-Y. Last  
11 name is Clark, C-L-A-R-K.

12          Q       And how are you employed?

13          A       I'm employed as a police officer with the  
14 City of Portland.

15          Q       And how long have you been so employed?

16          A       I've been employed there for 11 years.

17          Q       Okay. And did you, prior to coming into law  
18 enforcement, did you attend college?

19          A       Yes, sir. Two years at Portland Community  
20 College and got an associate's degree in criminal  
21 justice.

22          Q       Okay. And your entire law enforcement  
23 career, has that been spent at the Portland Police  
24 Bureau?

25          A       Yes. I also acted in the law enforcement



1 capacity in the United States Coast Guard for four  
2 years.

3 Q All right. So you were -- what is the title  
4 for someone that's in the Coast Guard?

5 A A Coasty. I was a boarding officer and a  
6 boarding team member for a law enforcement team. So we  
7 did a lot of drug trafficking in the Caribbean and  
8 South Pacific.

9 Q Okay. And that's where you were deployed  
10 and not here on the West Coast?

11 A No, not here on the West Coast at all.

12 Q Okay. And are you from Portland originally?

13 A I'm from Pittsburgh, Pennsylvania,  
14 originally.

15 Q You grew up there?

16 A Yes, sir.

17 Q Went to high school there?

18 A Yes, sir.

19 Q And how is it that you ended up in Portland?

20 A My wife, who we began dating in high school  
21 and her mother-in-law -- her mother, my mother-in-law,  
22 lives in San Francisco. She moved to Portland.

23 After I got out of the Coast Guard, my wife  
24 was getting done with college and just said, hey, do you  
25 want to go try, try out Portland, and I said sure, so...

1 Q Okay. How long have you lived in the area  
2 now?

3 A Since 2003, so 15 years.

4 Q Okay. And how long have you been married?

5 A I've been married for 11 years.

6 Q And do you have any kids?

7 A I have two, two little girls.

8 Q Okay. What are their ages?

9 A Five and seven.

10 Q Gotcha. Okay.

11 So what was part of your decision as far as  
12 wanting to become a police officer?

13 A I think it's kind of like everybody else. I  
14 just wanted to help people and kind of be the person  
15 that the people call when they, when they -- there's no  
16 one else to call, that they really need help. That's  
17 really it. Just to help people.

18 Q Okay. And so you applied for and were  
19 accepted into the Portland Police Bureau?

20 A Yes, sir.

21 Q And what was the, I guess, the first  
22 training that you received in order to become a police  
23 officer?

24 A The first training was the basic academy,  
25 and it was in Monmouth at the time. So it was a

1 ten-week training down there. I stayed there during  
2 the week and went home on the weekends.

3 So we had ten weeks there. Came back to  
4 Portland for two months roughly and then went to an  
5 advanced academy that's put on specifically by Portland.  
6 And that was at the time, I believe 16 or 18 weeks of  
7 additional training.

8 Q And when you're first, I guess, in the  
9 field, are you allowed to operate by yourself, or how  
10 does that work?

11 A No. You are with a coach, a training  
12 officer for -- you have phases. You have five phases  
13 of training. You are going to be with a coach  
14 throughout those five phases. They roughly take a year  
15 to get through. So for the first year, you have a  
16 coach, someone there to guide you through everything  
17 really.

18 Q Okay. So you do basic academy, then  
19 advanced academy, and then five -- I'm sorry, about a  
20 year of having, I think they call it FTO, Field  
21 Training Officer?

22 A Field Training Officer.

23 Q And then after that year, you're on your own  
24 as an officer?

25 A Yes, sir.

1 Q Okay. And up to the current day, kind of  
2 what are some of the different assignments you've had?

3 What parts of town have you been assigned to  
4 and what kind of different details have you been  
5 involved in?

6 A I initially worked at Southeast Precinct,  
7 which is at 27th and Burnside, and it covers Southeast  
8 Portland for the most part. That precinct closed down  
9 in 2009, I'd say. I was sent down here to Central  
10 where I worked for three years. And then I went to the  
11 mounted patrol and rode horses for a couple of years.

12 Q What was the thought there?

13 A Just seemed like -- it was a great  
14 experience and something -- a break from the street.

15 A lot of the contacts we have on the street  
16 are negative. And, you know, we've got this uniform and  
17 people don't necessarily see us as people. They see us  
18 as these robots.

19 And it was nice to go down to the mounted  
20 patrol and have positive interactions with people all of  
21 the time. They are almost happy to see you. Just a  
22 very positive experience.

23 Q People like the horses?

24 A People love the horses. They like you  
25 because of it. It was nice.

1 Q Okay. Great. At some point you left that  
2 assignment?

3 A Yes. I left after about two years with  
4 that. Again, kind of to go back to what I was doing.

5 Even though it was a very positive  
6 experience, I felt like I was doing more -- making more  
7 of a positive impact working patrol so I could actually  
8 affect things.

9 Q Okay. So after you left the horses and went  
10 back to patrol, what were you doing? What were you  
11 doing?

12 A I was back at Central Precinct. And that  
13 was in 2014, I came back, and I've been at Central  
14 Precinct ever since.

15 Q Okay. Any other special details or things  
16 you were involved in?

17 A No. No. I'm not -- no. No, sir.

18 Q Okay. So we're going to talk about an  
19 incident obviously that occurred on February 9th of  
20 this year.

21 At that time what was your duty assignment?  
22 What was your district and shift that you were working?

23 A I was assigned to -- the district was 716.  
24 I'm a district officer for that district. It's  
25 basically right across the river, from the river to

1 about 30th, from I-84 to about Hawthorne.

2 So that's my -- the box that I work in or  
3 that I'm personally responsible for the calls that come  
4 out in that district. On the day we had just come out  
5 of roll call.

6 Q What shift were you working?

7 A I was working afternoon shift that starts at  
8 1800 -- sorry, 6:00 p.m.

9 Q And goes to when?

10 A It goes until 4:00 a.m.

11 Q Is there like a letter that's assigned to  
12 that shift?

13 A It's D shift now. So we have an A, B, C, D  
14 and E shift, and this is D shift now.

15 Q Now, before we get into the kind of  
16 specifics of what occurred, let's talk a little bit  
17 more about your training.

18 We had Officer Foxworth in here earlier from  
19 the training division who talked at some length about a  
20 variety of different trainings that are offered to  
21 patrol officers. Some of them mandatory. Some of them  
22 not.

23 Some of, I think, the mandatory ones are  
24 things involving use of force, use of deadly force,  
25 things of that nature.

1                   You've been through all those trainings, I'm  
2                   assuming?

3                   A        Yes, sir. I've been through all of them.  
4                   I've also been through the advanced active shooter  
5                   training, which is -- it's not a mandatory course.  
6                   I've been through the Enhanced Crisis Intervention  
7                   Training.

8                   Q        Before we get into that, I do want to  
9                   discuss that with you, but let's hold on just one  
10                  second.

11                  A        Sure.

12                  Q        And on kind of a general ongoing basis, how  
13                  much additional training in terms of hours are you  
14                  receiving in a year, do you think, for police work?

15                  A        Well, typically, we have a 40-hour  
16                  in-service, so a week long in-service every year on the  
17                  various training, defensive tactics, community  
18                  engagement. We go through scenario training, but  
19                  roughly 40 hours a year.

20                  Q        Okay. So you mentioned ECIT.

21                  A        Yes.

22                  Q        What does that stand for?

23                  A        Enhanced Crisis Intervention Training.

24                  Q        Okay. And what is the general subject  
25                  matter of that training?

1           A       It is dealing with people that are  
2 experiencing a mental health crisis. This was also 40  
3 extra hours of training. It's scenario-based. You  
4 talk with a lot of healthcare providers and  
5 professionals about mental health.

6                   And more than anything, it's about engaging  
7 and communicating with the person that's in a mental  
8 health crisis and trying to deescalate the situation  
9 that they are in, if it's a dangerous situation, as  
10 we're dealing with in this incident.

11           Q       Okay. Now, is that a mandatory training?

12           A       It's not, no. It's something that you apply  
13 for, and there are a few of us.

14           Q       Okay. And so my understanding, as far as  
15 the current status is that every Portland officer is  
16 CIT trained.

17           A       Yes, sir.

18           Q       But ECIT training is elective. And an  
19 officer, such as yourself, would have to want to do it?

20           A       Yes, sir.

21           Q       You apparently wanted to do it?

22           A       Yes, sir.

23           Q       Can you tell us a little bit about why you  
24 want to spend basically a week off of the streets in a  
25 classroom and doing scenarios to pursue this



1 certification?

2 A Kind of the same reason that I became a  
3 police officer, because it's just more training on  
4 helping people that are having a really hard time. And  
5 I didn't realize how many calls before I was a police  
6 officer involved mental health crisis. There are so  
7 many.

8 So if you're out there on the street, for me  
9 I thought I need this training because I deal with this  
10 so often. I felt like it was necessary. And I  
11 wanted -- and that's why I got in the job to do, so...

12 Q Okay. All right. So let's go ahead and  
13 talk about the incident.

14 When did you come on shift that day?

15 A I came on at 6:00 p.m.

16 Q Okay. I'm assuming you were dressed in a  
17 police uniform. Were you wearing a police badge at the  
18 time of this call?

19 A Yes, sir.

20 Q You were on duty, operating some kind of  
21 marked police vehicle?

22 A Yes, sir. It was an SUV, Ford Explorer,  
23 fully marked as a police vehicle with lights displayed.

24 Q And the uniform you were wearing was a  
25 typical Portland Police uniform?

1           A       Typical Portland Police with a badge.

2           Q       And so where were you when this call came  
3 on?

4           A       The call came out. I was roughly at SE 12th  
5 and Milwaukie when the call came out. I wasn't  
6 initially dispatched to the call.

7                   Officer Walsh was dispatched with another  
8 officer, Officer Yee. And the call was a male had  
9 called in to dispatch and said he was -- had taken 30  
10 pills, and that he was going to take 30 more every 15  
11 minutes, I believe.

12                   I'm not exactly sure of the time frame, but  
13 it was something along those lines, and he hung up the  
14 phone. And they had a name for him, but they didn't  
15 have a description. So we got a name of Don Perkins and  
16 a rough birth date.

17                   And they gave a GPS location. Because when  
18 you call in with a cell phone, they can get a GPS  
19 coordinate of where that cell phone -- a rough GPS  
20 coordinate of where that cell phone was making a call  
21 from. And that was at SE 21st and Lafayette.

22           Q       Was the general area of the call?

23           A       Was the general area of the call.

24           Q       When the call came out, were you in the  
25 middle of doing something?

1           A       I basically just crossed the Hawthorne  
2 Bridge to get into Southeast Precinct (sic) just  
3 starting my shift, start patrolling around. And this  
4 was the very first call that came out and kind of we  
5 left.

6           Q       So when you were dispatched, then did  
7 dispatch assign Officer Walsh and Officer Yee, or did  
8 they just self-dispatch to the call?

9           A       No. They were assigned by dispatch to the  
10 call.

11          Q       Okay.

12          A       And I think very quickly Officer Walsh,  
13 given that it was someone experiencing a mental health  
14 crisis, asked for an ECIT officer to be dispatched.

15                   And that's when I got on the radio and said,  
16 "I'm ECIT and I'll go. You can clear Officer Yee,"  
17 because on these calls, they are a two-car response. We  
18 usually send two people to a call like this. We're very  
19 short-staffed, so, you know, we're trying not to tie  
20 everybody up on every call.

21          Q       So assign yourself to this call with Officer  
22 Walsh, and Officer Yee is released from the call.

23                   What was your next course of action?

24          A       So I proceed directly to SE 21st and  
25 Lafayette. I'm not far away. I probably get there

1 within a minute or two to that intersection.

2           When I get there, I basically -- I'm just  
3 going to see if anybody is there, you know, with a cell  
4 phone or just looking like they are having a problem. I  
5 drive through the intersection. There's no one around  
6 at all.

7           Q       Approximately what time is this?

8           A       I would say 6:30 p.m.

9           Q       And what are the lighting conditions at this  
10 point?

11          A       It's kind of an industrial area, so there  
12 is -- there's light from a bunch of businesses in the  
13 area, but it's not -- the streetlights aren't bright.  
14 It's kind of dim and dark, but I can see the streets  
15 and sidewalks clearly.

16          Q       And at this point obviously the sun has set?

17          A       Yes. It is completely nighttime.

18          Q       Okay. So you arrive at the intersection.  
19 You don't really see anybody that seems like they are  
20 involved in this call.

21          A       No. I don't see anyone at all.

22          Q       Is Officer Walsh already there?

23          A       No, he's not there. He was further out.  
24 There was also an address that was given for him, a  
25 previous address that was about ten blocks away. I

1 think Officer Walsh might have been headed that  
2 direction at the time. I'm not, I'm not a hundred  
3 percent sure on that, but I was a lot closer, so I got  
4 there first.

5 Q Okay.

6 A When I drove through the intersection, I  
7 didn't see anyone there. I thought about -- in that  
8 area, about a block and a half away, I know there are  
9 transient camps in that area.

10 Well, I'm thinking maybe he's associated with  
11 some of these transient camps. And it's just north of  
12 Lafayette on 22nd Avenue. So I head that direction.  
13 And I head north on 22nd from Lafayette, and I see that  
14 there's a tent, which I figured there would be because  
15 it's pretty common in that area.

16 So I kind of make a U-turn around and come up  
17 to the tent, just roll my window down, and I just called  
18 out to the tent, and I said, "Don, Don, are you in  
19 there? Just this is Portland Police. Don, are you in  
20 there?"

21 No response from the tent. I thought, okay,  
22 I'll go back to 21st and try to call the cell phone. So  
23 I head back to 21st, and I called twice the cell phone  
24 that called -- that made the initial call, and it goes  
25 to voicemail both times.

1           So I think the phone is off and I relay that  
2 to dispatch. I said, "I called the phone twice, I think  
3 it's off, so I don't think that we'll be able to ping  
4 the phone."

5           What a ping is is basically we can request,  
6 under certain circumstances, that they triangulate a  
7 location on the phone from the cell towers. But if a  
8 phone is off, we can't do that.

9           So that's what I'm thinking. Okay. Well,  
10 now, the phone is off. There's no one around. He's  
11 taken these pills. We are not able to ping, so we're  
12 kind of in a bad spot.

13           And just as I'm going through that in my  
14 mind, dispatch gets on and says, "He called back and we  
15 now have a GPS." He says he taken more pills, and his  
16 GPS location is now 18th and Lafayette.

17           And there at Lafayette, there is -- between  
18 21st and 18th, the rail line goes through, so there's a  
19 pedestrian walkway that goes over top.

20           And I was thinking -- even before that, I was  
21 thinking that was my next -- what I was going to do was  
22 walk over that pedestrian bridge to see if he was over  
23 there, and that just gave me some confirmation.

24           Officer Walsh showed up at that time, and we  
25 together walked over the pedestrian bridge and around

1 the area. We got up on top of the pedestrian bridge and  
2 looked all around. There's just no one around there  
3 either. So we go back to our cars, and we're talking  
4 about it. And we request a ping for the cell phone at  
5 that point.

6 Q So just out ahead of this a little bit, you  
7 know, assuming this went differently and you were able  
8 to contact whoever was making the call, what was your  
9 plan once you made contact with whoever made this call,  
10 assuming they had suicidal ideations and had taken a  
11 pill overdose?

12 A Absolutely. This is a pretty common call.  
13 We go to this kind of call fairly often.

14 Typically, we would just engage with him, and  
15 say, "Hey, Don, you took some pills. We need to get you  
16 some help. Will you go willingly with us?" And  
17 typically, they often do. And we just call in an  
18 ambulance, and the ambulance comes and transports them.

19 And we'll typically go with them and place a  
20 police hold on them, so they are evaluated by doctors  
21 for the mental health, not just for taking the pills,  
22 because you don't want them to be released into the  
23 street to hurt themselves again when they need -- what  
24 they really need is psychological evaluation help.

25 Q Okay. So this had gone kind of -- more

1 typically that was the plan?

2 A Yes. That's what would have happened. And  
3 if he would have disagreed, then we would have taken  
4 him against his will to the hospital, because at that  
5 point, his life is in danger. So we would have put a  
6 police officer hold on him and taken him to the  
7 hospital.

8 Q Okay. So at this point you and Officer  
9 Walsh are, I guess, trying to locate. You asked for a  
10 second ping, I think you said.

11 A Yes. We asked for -- this was the first  
12 ping we asked for.

13 Q Okay.

14 A Yeah. And we get, we get a ping back that's  
15 a really close ping. Sometimes these pings are great  
16 distances, within a mile, and it's just impossible.  
17 You are not going to find something that's within a  
18 mile of a location.

19 But we get within 25 yards of an address on  
20 Lafayette, on 22nd and Lafayette, right by where the  
21 tent is. So as soon as that comes back, I said to  
22 Officer Walsh, "Hey, there's a tent up there. Let's go  
23 and see if he's in the tent." So we head back in that  
24 direction.

25 And basically the tent is on the east side of



1 the street on the sidewalk. I pull up in front of the  
2 tent. And Officer Walsh pulls up -- or is behind the  
3 tent. So we kind of split the tent with our cars and we  
4 get out and go over to the tent.

5 Q Are you parked on the east curblin?

6 A East curb, yes.

7 We approached the tent, kind of tap and say,  
8 "Hey, this is the Portland Police, Don. Are you in  
9 there? We're concerned about you, Don."

10 And I unzipped the tent to see if anyone is  
11 in there. And there is someone in there, in a sleeping  
12 bag that's not responding to us. So I shake him, and I  
13 said, "Hey, Don, Don. This is the Portland Police."

14 And the guy pops up and says, "I'm not Don.  
15 I'm Dan."

16 I'm thinking, okay, this has got to be Don,  
17 but Officer Walsh said, "No, that's Dan." He knew him,  
18 and it was not Don. It was Dan.

19 I asked Dan, "Do you know, do you know Don?  
20 Does he live around here?"

21 He says, "I know Don, but I don't know if  
22 he's around here or not."

23 And so we had been talking to Dan and start  
24 walking northbound on Lafayette toward Powell because  
25 we're still not within 25 --

1           Q       On Lafayette or on 22nd?

2           A       On 22nd, sorry. Sorry. We start northbound  
3 on 22nd toward Powell.

4                   And I know that often there are a lot of  
5 campers and vans and cars in that area. So there are no  
6 other tents, but sometimes people are sleeping in their  
7 cars.

8                   And as we're walking north on 22nd, I see  
9 there's a van. And I see the windows are steamed up,  
10 and so I'm pretty sure there's somebody in there.

11                   I approach the passenger -- we both approach  
12 the passenger side of the van. It has what are known as  
13 suicide doors. They are swing-out doors on the center  
14 of the van, and they are all covered up.

15                   The windows -- I don't know -- they had boxes  
16 or something taped so you couldn't look in. But the  
17 front passenger side window is cracked just a little  
18 bit.

19                   And I looked in and I could see that there  
20 was somebody back in there. I could see an arm and a  
21 leg. And I opened the door and shined my flashlight in,  
22 and I said, "Don, is that you?"

23                   And he acknowledged that -- I think he said,  
24 "Yeah." And he said in just a very -- this was my first  
25 threat -- this was my first feeling of threat in the

1 incident when I looked back in, he said, "You don't want  
2 to be doing that."

3 And just the way he said it, he kind of said  
4 it almost in an aggressive way where it was directed at  
5 me, not, you know, like you don't want to be doing that  
6 or you might -- something might happen to you. That's  
7 kind of what it felt like.

8 Q Just so I'm clear. This is the right front  
9 passenger door. These are not the swing-out doors?

10 A Not the swing-out doors. This is the  
11 door -- the front passenger door and the swing doors  
12 are right behind.

13 So I shined my flashlight in when he says  
14 this because I'm thinking -- right away, I'm worried  
15 about where his hands are. And as police officers,  
16 we're always worried about people's hands and what's in  
17 their hands because that's what is dangerous to us,  
18 right.

19 And he doesn't have anything in his hands.  
20 But I see that there's a pill bottle on the floor, and  
21 it's looks mostly empty, but there are a few pills on  
22 the carpet in front of him on the floor.

23 And as I shine my light, just looking in  
24 there, he says -- excuse my language -- he says, "Get  
25 that fucking light out of my eyes."

1                   And so I turned the light out of his eyes  
2 immediately, but I can still -- there's still enough  
3 illumination, so I can still see and feel safe about the  
4 situation. But I'm not real comfortable. There's this  
5 chair in the way. We can't communicate very well the  
6 way we are. So I step out and --

7           Q       Do you know what Officer Walsh is doing at  
8 this point?

9           A       I think he's just listening. He's behind  
10 me. He has no vantage point to see in the vehicle.

11                   But as I step out, I open the door. Officer  
12 Walsh opens -- I'm not sure who opens the swing doors on  
13 the side of the van, but one of us opens the door, and  
14 Officer Walsh looks in the car. I can't see. But  
15 Officer Walsh sees.

16                   And as soon as he looks in, I hear a  
17 mechanical audible click in the van, which I immediately  
18 associate with a firearm. You know, I've been around a  
19 lot of firearms and have had firearm training. And it's  
20 pretty specific when you hear these sounds. I hear a  
21 click.

22           Q       Can you maybe describe in greater detail, if  
23 you can -- obviously the firearm is a mechanical device  
24 that may make any kind of sort of different numbers of  
25 mechanical sounds, metal sounds.

1                   Can you associate it with any particular  
2 action on a firearm?

3           A        Yes. It could have been a safety coming  
4 off. It could have been a magazine being seated into  
5 place. It could be a hammer being cocked. Any of  
6 those. They are distinct to a firearm. And I was  
7 hearing -- that's what I was hearing.

8           Q        Okay.

9           A        But I didn't see it. I couldn't see in, but  
10 I did see Officer Walsh's reaction. I'm a step back  
11 from him, and Officer Walsh is looking in.

12                   And he immediately startles back away as I  
13 hear this click. He startles back away from the door,  
14 and his hand goes to his firearm. And I'm  
15 immediately -- you know, I'm sure that he has a gun in  
16 there.

17                   And I draw my firearm, as Officer Walsh is, I  
18 believe -- I'm not sure if he drew his firearm or not,  
19 but I know I saw his hand go to his firearm. And we're  
20 moving at the same time.

21                   So basically as soon as this click happens,  
22 he startles back. I'm drawing it. We're kind of  
23 communicating as we're moving back behind the van.

24                   And I'm saying, "I heard a gun. Does he have  
25 a gun? Does he have a gun?"

1           Officer Walsh is saying, "I saw something  
2 black in his hand. I heard it, too. I think it's a  
3 gun." He couldn't tell me for sure that it was a gun,  
4 but we both heard the click, and he saw something black  
5 in his hand.

6           Q       So before you go on, before that happened,  
7 before the incident that indicated to you that he had a  
8 firearm potentially, did you guys identify yourselves  
9 to him as Portland --

10          A       Yes.

11          Q       Where you work?

12          A       When I opened the door, I said, "It's the  
13 Portland Police." I said, "Don, you called about  
14 taking pills. We're here to help you." And that's  
15 when the whole interaction -- that's what I said when I  
16 opened the door and looked back in there initially.

17          Q       Okay. And, you know, when it was -- let me  
18 ask you this question.

19                    What was the decision to open the door in the  
20 first place? Why not just walk away from all this and  
21 just, you know, whatever happens happens?

22          A       Well, because we believed that his life was  
23 in imminent danger. If he had taken 30 pills and 30  
24 more pills, I mean, he could be, he could be gone at  
25 any minute. So there's an urgency here to save his

1 life.

2 Q Okay.

3 A And so I mean, we couldn't just walk away  
4 from that. What would we be if we did that.

5 Q Okay. So back to where you were in your  
6 account at this point. I think you said you and  
7 Officer Walsh are backing away.

8 A Yes.

9 So we're backing away and feeling, you know,  
10 at that moment, I'm thinking he's coming out with a gun,  
11 and we're going to be involved in a shooting right now.  
12 And that's how I'm feeling as we're moving back.

13 Q Which direction are you moving back in?

14 A So we're on the passenger side of the van.  
15 We're kind of swinging back to the very back of the, of  
16 the van, directly behind the van. And we get there and  
17 immediately are not comfortable there.

18 We don't have distance. I don't feel like I  
19 can communicate with him. I don't want to give up where  
20 my position is because I'm afraid he's going to come out  
21 if he hears my voice, and he's going to be, you know,  
22 shooting in that direction.

23 So we're just worried about getting distance  
24 at this point and getting to a place of cover that we  
25 just feel a little bit more comfortable communicating.

1           So we drop back one car behind -- I believe  
2 one car behind. Some of it is -- it's not all  
3 completely clear, but this is generally how I perceive  
4 it.

5           We drop back behind the car that was directly  
6 behind the van and pause for a moment. And Officer  
7 Walsh may have made a radio communication at that time,  
8 hey -- what we would typically say is, "Hold the air"  
9 when there's an event like this going on.

10           And what that means is no one else -- any  
11 other officers on this radio net, no one else talk. We  
12 need our transmissions to be the only ones heard.

13           Q       So when an officer is communicating over the  
14 radio, that's a shared radio frequency that multiple  
15 officers are usually using simultaneously?

16           A       Yes. Exactly. So there could be as many as  
17 40 other officers talking on that radio frequency. And  
18 if we say, "Hold the air," that means no one --  
19 everyone stop talking, and only our transmissions are  
20 going out.

21           So I think maybe at that point Officer Walsh  
22 had said, "Hold the air. We believe this guy has a gun.  
23 We need more units." But I can't say for sure.

24           I know that either happened here or the  
25 next -- at the next place that we moved, so I'm not



1 sure. But we get behind this car. And immediately  
2 again the car is small. We don't have a lot of  
3 distance. Don't feel safe. Don't feel like we're in a  
4 good spot. So again, we move back to my patrol vehicle.  
5 And I have a rifle in my patrol vehicle.

6 Q Before you continue, a lot of these things  
7 are sounding similar to what we heard earlier from  
8 Officer Foxworth.

9 Are these your training pieces kicking in as  
10 far as finding hard cover?

11 A Sure. Absolutely.

12 Q And trying to establish some distance?

13 A Yes. Absolutely.

14 A lot of that isn't even things that you are  
15 doing consciously. You are just -- you are just  
16 reacting to your training and to the experiences you've  
17 had and you are just moving.

18 And you're feeling -- you know, you're  
19 feeling this huge threat response. So what do I need to  
20 do to mitigate this and to resolve this situation as  
21 best we can?

22 So really you are just reacting at that  
23 point. We are reacting with the training that, you  
24 know -- that we were given, which is a positive thing in  
25 my mind.

1           Q       Okay. I think you said you had fallen back  
2 to your patrol vehicle.

3           A       Yeah. At that point we moved back to my  
4 patrol vehicle, where I have an AR-15 rifle.

5                    What this rifle does is gives us more  
6 accuracy at distance. It's a better tool to have if you  
7 are in a situation where you are going to be in a  
8 shooting.

9                    Pistols are very inaccurate at distance or  
10 can be -- well, let's say, the shooters can be very  
11 inaccurate at distance. It's just a lot -- a rifle is a  
12 lot more stable platform, and it allows you to have a  
13 little bit more range.

14          Q       And can you tell us a little bit about your  
15 training with the AR-15? What does that involve?

16          A       It involves an additional week of training,  
17 much like the ECIT. You go through a rigorous training  
18 course and qualification to the AR-15.

19          Q       And is there an annual, kind of --

20          A       And there's an annual. Yes, there's usually  
21 a two-day in-service every year for the AR-15 operator.

22          Q       Okay. So it sounds like you retrieved --

23          A       I retrieved the rifle, and we took position  
24 on the passenger rear side of my SUV. So it's the  
25 best, best position of cover we could get.

1           And at this point I turn on the light on my  
2 rifle, and we're looking down the passenger side of our  
3 SUV and the passenger side of the van, and the doors of  
4 the van slam shut.

5           So now the van is closed up. He's in there,  
6 and we don't have lines of communication other than the  
7 call. And at this point I know Officer Walsh starts to  
8 make radio communications.

9           And we're talking back and forth. Hey, we  
10 need to get these resources here. I want another ECIT,  
11 another rifle, because I'm now in a dual role of rifle  
12 operator and ECIT, which isn't optimal.

13           I would like to be one or the other so I can  
14 concentrate on those roles. But we don't have those  
15 resources here yet, so we ask for them to come.

16           Q       What other resources do you remember were  
17 called for?

18           A       We started talking about containment to shut  
19 down Powell because there was vehicular traffic on  
20 Powell. There's no pedestrian traffic on the sidewalk  
21 that we were on, but we want to get it closed down.  
22 You know, we didn't want people in the area. We were  
23 trying to lock down the area.

24           Q       So at this point, as far as your roles  
25 between you and Officer Walsh, you've got your rifle

1 and you're pointing it down range, I guess.

2 A Yes.

3 Q I don't know if Officer Walsh has --

4 A He has a pistol, and he's right on my -- on  
5 my shoulder basically with his pistol out.

6 Q So is Officer Walsh basically taking over  
7 kind of responsibility -- primary responsibility on the  
8 radio?

9 A On the radio, yes.

10 Q So at this point you -- Officer Walsh rather  
11 is primarily dealing with the radio, and you may have  
12 taken a different role in this incident. Maybe keeping  
13 eyes down range and maybe more primarily dealing or  
14 attempting to deal with Mr. Perkins.

15 A Yes, sir.

16 Q Is that accurate?

17 A Yes, sir. That's accurate.

18 And that's -- Officer Walsh is making the  
19 radio communications, asking for our resources. We're  
20 talking back and forth about, okay, we're just starting  
21 to think, okay, he closed the van doors, how are we  
22 going to deal with this?

23 He's in there. He has the pills, but he has  
24 a gun. So we are in this weird spot where we can't go  
25 and directly intervene with him because we're afraid of

1 the firearm.

2           And at that point the van doors fly open,  
3 almost like he throws them open. And the pill bottle  
4 goes flying across the sidewalk almost into Powell Park.  
5 And something else is dropped out of the van just  
6 outside the van, not thrown. Just dropped in the grassy  
7 median between the sidewalk and the street. And I  
8 believe it's the gun that he dropped out.

9           There's a tree that's set back on that grassy  
10 median that's blocking the view of where he dropped the  
11 object. So there's this little window that we're  
12 looking at between the van and this tree and the door.  
13 So there may be five or six feet there -- the window  
14 we're looking into.

15           Q       What's the illumination like for you at that  
16 point?

17           A       It's very dark. The park is very dark. On  
18 the other side of the street there are some businesses  
19 and some residences, and they have lights on.

20                    So but it's, it's pitch black other than  
21 my -- the flashlight that I have on the front of my  
22 rifle, which is giving us pretty good illumination. But  
23 the object is obstructed by the tree trunk, so it's  
24 behind the tree trunk. So even if we had a clear view  
25 of it, the tree is in the way.

1           But at this point Mr. Perkins comes out, out  
2 of the van, and he's yelling and screaming, and he's  
3 saying things like, "It's too late. It's over." Um,  
4 he's saying "fuck you" to us.

5           I'm communicating back to him, "Don, we're  
6 just here to help you. We're not here to mess with you.  
7 I'm not trying to jam you up," because a lot of times  
8 people are saying you're trying to jam me up. And  
9 that's not -- I was telling him, "No, that's not what  
10 we're here for. We're just here to help you."

11           And I said, "But we believe you have a gun.  
12 So I need you to keep your hands where we can see them  
13 and come back to us."

14           He at that point says, "The gun is right  
15 there," and he points to right where he dropped the  
16 object on the ground. So now -- you know, I thought it  
17 was the gun before, now I'm sure it's the gun.

18           And he starts saying -- I said, "Okay. Well,  
19 just keep your hands up. Come back to us."

20           He's saying, "Fuck you. Come up here. Come  
21 up here." And the way he's saying it, I'm just feeling  
22 like he's trying to get us to come out of cover so he  
23 can retrieve that gun and fire at us.

24           That's my feeling at the time, the way he's  
25 talking and just his gestures and mannerisms.

1 Everything to me is -- of course, I'm not going to come  
2 out -- we're not going to come out of cover with the  
3 firearm so accessible to him. And I told him that.

4 I said, "Don, we're not going to come up  
5 there, man. That's just not going to happen. I just  
6 need you to come back to us. We want to help you.  
7 We're not here to mess with you or hurt you. I don't  
8 want to get hurt. I don't want to hurt you."

9 Those are the communications that are  
10 happening between him and I. And -- go ahead.

11 A GRAND JUROR: Um, I just have a question  
12 because you mentioned his mannerisms and gestures and  
13 his tone.

14 THE WITNESS: Yes.

15 A GRAND JUROR: How were you at the time  
16 classifying those? Just specify a little bit more.

17 THE WITNESS: Agitated. I would say very  
18 agitated and animated.

19 He was standing in between, and his arms were  
20 up, and he was saying, "Fuck you. Come up here. Come  
21 up here," you know, and kind of saying, "I'm not coming  
22 back. Come up here," (indicating.)

23 And just in a way that really is very  
24 uncomfortable, right. You know, you feel like, okay,  
25 why, why do you need me to come up. Why won't you just

1       come -- if there was no -- nothing else, everything  
2       being equal, why would you not just come back to us.  
3       You know, why would he want us to come and leave our  
4       place of cover and come to him.

5                 If this was just a suicide attempt, why would  
6       he be involving us at all? That's the other thing going  
7       through my head, you know. He wouldn't even have called  
8       us. So I'm thinking -- yeah, that's kind of what I'm  
9       feeling at that point.

10                So in that interaction he goes back into the  
11       van and the doors slam again. So he's back inside the  
12       van.

13                And I think at this point resources start  
14       showing up. Other officers start showing up. Maybe  
15       Officer Duong. Maybe Sergeant Cioeta. I can't say for  
16       sure. I know that there were other people showing up.

17       BY MR. DAVIDSON:

18                Q       Your primary attention is focused on the  
19       van?

20                A       Yes. Absolutely. Absolutely.

21                Q       Okay. So Mr. Perkins -- let me ask you just  
22       kind of a question here.

23                Are you familiar with Mr. Perkins from  
24       previous encounters as far as you know?

25                A       Not that I recall. I have thousands of



1 contacts with people. And I can't say for sure that  
2 I've never contacted him, but I can't recall ever  
3 having any significant contact with him in the past.

4 Q Okay. So as you said at that point he  
5 reentered the van and slammed the side door shut.

6 A Yes.

7 Q So what happened next?

8 A So officers start showing up. Officer Duong  
9 for sure showed up. And we moved up as a team together  
10 to the side of the van -- to the side of our SUV to  
11 turn on the spotlights and overhead lights, because it  
12 was so dark, to illuminate the area better so that we  
13 could see.

14 So I basically covered Officer Duong on the  
15 driver's side as we went, and she turned on the lights,  
16 and Officer Walsh turned on the side -- the passenger  
17 side spotlights, and we moved back to the positions we  
18 were in.

19 And again, the van doors fly open, and kind  
20 of have almost -- well, I think at this time when they  
21 opened, he has something in his hand when he -- I'm  
22 not -- forgive me.

23 He might -- this might have happened the  
24 first time he opened the door. But he had something in  
25 his hand initially come out, and I couldn't tell what it

1 was.

2           And Officer Walsh and I were both  
3 communicating. He's got something in his hand. And he  
4 goes back into the van, but then he comes back out  
5 without anything in his hand. He's sitting in the  
6 doorjamb like this (indicating).

7           Q       With his feet on the ground?

8           A       With his feet on the ground and just a  
9 couple feet away from where the gun is.

10           So I start the same communication. "Don," I  
11 think I said, "just talk us to, man. Tell us what's  
12 going on. I just want to help you. Just let us know  
13 why this is happening, you know."

14           I almost felt like he wanted to come down.  
15 You know, like there were these moments where I felt  
16 like when I'm talking to him, that he wanted to  
17 deescalate, but then he would almost shake it off, and  
18 "You know what, come up here, fuck you," that kind of  
19 thing. He would shake it off and get back into that  
20 agitated state.

21           And at some point he says, "I have another  
22 gun in the van." So now, we think there's a gun in the  
23 van and a gun on the ground outside the van. And I at  
24 some point in there, I give a verbal warning.

25           I said, "Don, I don't want to hurt you. I

1 don't want to get hurt, but if you go for the gun, you  
2 will be shot." I gave him that warning.

3 And I told Officer Walsh, over my shoulder, I  
4 said, "If he reaches for that gun, I'm going to shoot,"  
5 because at that point, it's -- he's an immediate threat  
6 of death or serious physical injury to Officer Walsh.  
7 And because -- I don't know if anyone has explained the  
8 action-reaction principle to the Grand Jury.

9 Was that talked about at all?

10 Q Yes.

11 A That's kind of where we're at.

12 If he reaches for that gun, then he has us.  
13 You know, we don't have any time to react after that.  
14 It's over for us. And we're well within the affected  
15 range of that weapon system.

16 Q And I imagine, you know, this is not the  
17 middle of the night. This is in the early evening.

18 A Yes.

19 Q There are pedestrians around. There's a  
20 park right next to you.

21 A Yes.

22 Q I guess whatever rounds, if he were to fire  
23 at you, would potentially strike you or Officer Walsh  
24 or somebody else who just might be walking down the  
25 street.

1           A        Sure. Absolutely. I mean, that's --  
2 absolutely that's absolutely a possibility.

3                    Certainly my concern was specifically for --  
4 not that I'm not concerned for everyone else, but that  
5 was very likely. Pedestrian traffic was very light.

6                    I'm thinking this is him shooting at us,  
7 right. And I know -- you know, in those moments, it's  
8 difficult because, you know, I have a family.

9                    And Officer Walsh I know, he's one of my best  
10 friends in the world, and I know his son really well and  
11 his wife. And so it's, it's -- you know, you fear for  
12 them as much as you do for yourself.

13                    So that's where we were. And so he stands  
14 up, and we're having the same kind of interaction. I'm  
15 saying, "Don, just talk to us," and I gave him the  
16 admonishment.

17                    At that point he reaches down, bends at the  
18 waist -- basically I'm down here -- he reaches down to  
19 the gun, and I fire my first round at the center of mass  
20 I'm trained to fire.

21                    And I don't know if the round hit him, but he  
22 reacts pretty significant to the round. He jumps over  
23 to the other side of the tree and gets very animated  
24 again. And he's yelling, "Shoot me. Shoot me," but  
25 he's not reaching for the gun.

1           That's my line, right. That's the line where  
2 I feel like I can't go any further. And so he's not  
3 doing that right away. He jumps over, and he's yelling,  
4 taunting.

5           I don't even know if I said anything at that  
6 point because it happened really quickly. But then  
7 again, he reaches over to grab the gun, kind of from the  
8 same, the same motion, from the opposite direction, and  
9 I fire again. And I believe -- and, yes, Officer Walsh  
10 fires at that point as well.

11           And he disappears in front -- behind the tree  
12 and in front of the van. I'm not sure if he fell or  
13 walked or stumbled. I couldn't see. It was obstructed.

14           Q       Did you know at this point whether or not  
15 he's been struck?

16           A       I don't know. I believe -- I thought that  
17 he'd been struck, but I didn't know. But then we lose  
18 sight of him. We don't know if he has the gun.

19           And that's what the communication is between  
20 the officers at the scene at the time. I can't see him  
21 over here anymore. He's in front of the van. And I'm  
22 asking Officer Duong and Sergeant Cioeta, "Do you see  
23 him over there?"

24           "No, we can't see him." That's kind of the  
25 communications that are going out, and also radio

1 communications are going out for our SWAT team to come  
2 out for our --

3 Q HNT?

4 A HNT, yes, HNT and SWAT to come out. So a  
5 lot of -- a lot of communication happening right in  
6 those split second moments after it happens.

7 But as soon as that calms down, I called out,  
8 and I said, "Don, can you hear me?"

9 And he replied, "Yeah." It was a strained  
10 voice. So at that point I thought, okay, he's injured.  
11 He said, "Yeah."

12 I said, "Don, I want to get you help, but  
13 what I need you to do is crawl into the street away from  
14 the sidewalk, away from where the gun is. Crawl into  
15 the middle of the street, and we're going to get you  
16 some help."

17 And he complies with that order. He crawls  
18 into the middle of the street. And we form a custody  
19 team, and he's laying in the street with his hands up.  
20 We approach and take him into custody and start tending  
21 to his wounds and getting the ambulance there.

22 Q Okay. And it's my understanding that  
23 Sergeant Cioeta applied a tourniquet to his arm.

24 A Yes. I know someone did. I couldn't say  
25 for sure it was Sergeant Cioeta.

1           Q       What was your role in the custody team? You  
2 were part of the custody team?

3           A       I was the lethal cover for the custody team  
4 because I had the rifle. So if we were to approach and  
5 he were to produce the firearm at that point, that  
6 would be my role to -- yeah.

7                   As we get up there, they are tending to his  
8 wounds, and I walk to the other side of the van and look  
9 and see that there's a firearm, what I believed to be a  
10 semiautomatic handgun laying on the ground.

11          Q       Okay. I guess the point -- we've discussed  
12 this a little bit with Officer Foxworth.

13                   But are there reasons why, you know, as an  
14 officer, you wouldn't run right up to Mr. Perkins after  
15 you thought he'd been shot, hit by gunfire? I mean,  
16 what are the concerns there?

17          A       Obviously -- I don't know that he didn't  
18 retrieve the gun. I don't know if he's lying in wait  
19 up there. It would just expose us to a deadly force  
20 threat, a very significant deadly force threat to just  
21 go up there.

22                   But we got -- he complied with, you know, the  
23 commands within a minute of the incident. I think the  
24 communication happened and he complied with the  
25 commands. We got to him very, very quickly.

1           Q       And did it seem like the ambulance, had it  
2 been staged at that point, do you think?

3           A       I believe it had been staged at that point.

4           Q       What does that mean, to have an ambulance  
5 staged, and why wouldn't the ambulance just be waiting  
6 right there?

7           A       Yeah. We stage -- we call it staging an  
8 ambulance. That's basically just bringing them into  
9 the area, not into the scene, because it's still a  
10 dangerous and volatile scene. We'll stage them a block  
11 or two away and say just wait there. And when we call  
12 you, you can come into the scene.

13                       So as soon as -- I think as soon as we got to  
14 him, someone got on the radio. I might have even got on  
15 the radio and said, send medical right in. And that's  
16 what we'll say, send medical in. They know to leave  
17 staging and just come right in. They were there very  
18 quickly.

19           Q       Okay. So you mentioned that after things  
20 had calmed down and Mr. Perkins was being dealt with,  
21 you walked around to the east side of the van and  
22 observed the firearm.

23                       I'm going to show you this, which we've  
24 previously seen and handled here in the Grand Jury room.  
25 Does this look like the weapon that you saw?



1           A       Yes. It was very dark. So it looks --  
2       yeah. Yes, that's it.

3           Q       Okay. And to you, you know, at the time,  
4       both when it was thrown on to the turf and when you  
5       later found it on the other side of the van, as you've  
6       just testified, did it appear to be an actual, real  
7       functioning firearm?

8           A       Absolutely. When I saw it, just standing  
9       above it afterwards, obviously, I didn't touch it  
10      because it's evidence. I looked at it. And, yeah, to  
11      me, I mean, that's a compact polymer frame  
12      semiautomatic handgun.

13          Q       It actually says Walther on the side.

14          A       Yes. Walther.

15          Q       And to your understanding, is that a  
16      manufacturer of actual firearms?

17          A       Yes, sir.

18          Q       Okay.

19          A       It is.

20          Q       Do you recall exactly how many rounds you  
21      fired?

22          A       I do not. Specifically I believe I -- the  
23      first time I fired, I fired one round. I'm fairly  
24      certain of that, but I could have fired two. But I  
25      believe I only fired one round initially, and then I

1 believe I fired two a second time, yes.

2 Q Okay.

3 A That's to the best of my recollection.

4 Q All right. So Mr. Perkins is put in the  
5 ambulance and he goes off to the hospital. Survives?

6 A Yes, sir.

7 Q I imagine you're grateful about that.

8 A Very relieved, yes, sir.

9 Q And then the whole process kicks into motion  
10 as far as the investigation.

11 A Yes.

12 Q All right.

13 MR. DAVIDSON: I think at this point I'll  
14 open it up to any additional questions that the Grand  
15 Jurors have for Officer Clark.

16 A GRAND JUROR: I just want to clarify  
17 regarding his gestures that you saw.

18 THE WITNESS: Yes, sir.

19 A GRAND JUROR: Inside, outside of the van,  
20 prior to reaching for the weapon.

21 THE WITNESS: Yes, sir.

22 A GRAND JUROR: Did his gestures seem  
23 deliberate as in, like, when he was -- when he moved  
24 forward, he was trying to rather than a drunk stumbling  
25 forward?

1           THE WITNESS: Yes. I didn't see any sign of  
2 intoxication, you know, which I guess, you know, I --  
3 considering he -- I don't know that he took the pills  
4 or not. I still don't know. But he did not -- he was  
5 moving in a very deliberate way. And he seemed to be  
6 completely in charge of his faculties.

7           A GRAND JUROR: So then with that being  
8 said, when you did see him move forward to reach for  
9 the firearm, there was no doubt in your mind that that  
10 was a deliberate motion toward a firearm?

11          THE WITNESS: Absolutely. No doubt.

12          A GRAND JUROR: You had prior told the  
13 victim not to reach for the firearm?

14          THE WITNESS: Yes, sir. I told him clearly  
15 what -- I told him, I said, "Don, do not reach for the  
16 gun or you will be shot." That's what I said. And it  
17 was a very deliberate action.

18                 That's exactly what he was doing. And in my  
19 mind there's no other reason that he was doing that than  
20 to produce that firearm and turn it on us. Yeah.

21          A GRAND JUROR: So when you first -- so when  
22 you get to see the van, that's all steamed up and  
23 stuff, did you knock on the door to let him know?

24          THE WITNESS: I think I called in through  
25 the crack in the door. I think that's when I said,

1 "This is the Portland Police, Don. Are you in there?"  
2 I think, I think before I opened the door, that's what  
3 I said.

4 A GRAND JUROR: Okay.

5 THE WITNESS: I can't -- it's a fog, but I  
6 believe that's how it went.

7 A GRAND JUROR: I was just wondering if --

8 THE WITNESS: No. I don't believe I knocked  
9 on it.

10 MR. DAVIDSON: Okay.

11 A GRAND JUROR: So given -- you said before  
12 that you had perceived an immediate threat to Don by  
13 himself because of the calls about the pills.

14 THE WITNESS: Yes, sir.

15 A GRAND JUROR: Was that the cause for  
16 opening the van and searching?

17 THE WITNESS: Yes, sir. Absolutely. And it  
18 wasn't even a search. It was just to communicate.

19 A GRAND JUROR: I misspoke when I said  
20 "search."

21 THE WITNESS: Oh, not at all. No. It was  
22 just to be able to communicate with him. You know, you  
23 don't communicate through -- to people through doors.  
24 It was just, just to begin the process of helping him  
25 because we believed he had taken these pills.

1           A GRAND JUROR: So under normal  
2 circumstances, you probably wouldn't open the door?

3           THE WITNESS: Depending on the circumstance,  
4 but probably not.

5           A GRAND JUROR: But with the fear of  
6 imminent danger to --

7           THE WITNESS: Exactly, yes, sir.  
8 Absolutely. That's why we were there. That's the only  
9 reason why we were there.

10          MR. DAVIDSON: Anybody else with questions  
11 for Officer Clark?

12          A GRAND JUROR: I have a few questions.

13          THE WITNESS: Yes, ma'am.

14          A GRAND JUROR: When the van initially  
15 opened and the pill bottle and the gun fell out, did it  
16 look like he threw those items out, or did it look like  
17 they accidentally fell out?

18          THE WITNESS: No. No. He deliberately --  
19 they were thrown.

20          A GRAND JUROR: Oh, they were thrown  
21 deliberately. Okay.

22          THE WITNESS: Yeah.

23          A GRAND JUROR: And then do you think that  
24 when you initially woke him, that that might have kind  
25 of like sparked his aggressiveness because he might

1 have just been startled maybe?

2 MR. DAVIDSON: Let me ask you --

3 THE WITNESS: He was sitting up and he was  
4 awake when we contacted him.

5 A GRAND JUROR: Okay.

6 BY MR. DAVIDSON:

7 Q So, to your mind, he was not woken from  
8 sleep by --

9 A No.

10 A GRAND JUROR: Okay. Perfect. Thank you.

11 MR. DAVIDSON: Anybody else with questions  
12 for Officer Clark?

13 No. All right.

14 Thank you, Officer Clark.

15 THE WITNESS: Thank you, folks.

16 A GRAND JUROR: Thank you.

17 (Luncheon recess. 11:45 a.m. to 1:00 p.m.)

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ROGER WALSH,

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

EXAMINATION

BY MR. DAVIDSON:

Q If you could state and spell your entire name for us, please.

A Roger, R-O-G-E-R. Walsh, W-A-L-S-H.

Q All right. And how are you employed?

A I am with the Portland Police Bureau.

Q And in what capacity?

A As a police officer, Central Precinct.

Q And how many years of law enforcement experience do you have?

A A little over 11.

Q And is all of that with Portland?

A Yes, sir.

Q And did you attend college before you became a police officer?

A I did. I went to Portland State. Graduated with a Bachelor of arts in administration of justice.

Q Okay. And are you originally from Portland?

A No. I grew up in Ashland, Oregon, and

1 graduated from high school there, and then moved up  
2 here in the summer of 1990 to go to school.

3 Q All right. So you attended high school in  
4 Ashland?

5 A Yes, sir.

6 Q And you came to Portland to attend school;  
7 is that what you said?

8 A Yes, sir.

9 Q And you live locally here now?

10 A Yeah. I live in Oregon City now.

11 Q And are you married?

12 A Yes. I'm married.

13 Q And how long have you been married?

14 A Twelve and a half years.

15 Q And do you have any children?

16 A Yes, sir. I have a son who is eight.

17 Q And so you graduated. Sounds like given  
18 what you studied in college, maybe you intended to  
19 become a police officer early on; is that right?

20 A Well, originally, I set out to go to law  
21 school. That was the original plan. But when I became  
22 a sophomore in college, I got tired of the reading, I  
23 guess, essentially and the sitting.

24 Q You wanted more honest work?

25 A No, sir. I got tired of sitting at a desk.



1 Q Sure.

2 A Essentially.

3 Q Okay. So police work appealed to you as  
4 another way to kind of pursue that without having to  
5 sit at a desk?

6 A Yes, sir. I was a member of, like, the --  
7 we called them the Explorers in Ashland. I think they  
8 call them Cadets here. Essentially you go volunteer  
9 time and block traffic for parades and help out, go on  
10 ride-alongs, and things like that.

11 Q So, I guess, if you're interested in a law  
12 enforcement career as a younger person, it's kind of  
13 like an opportunity to kind of see what policing looks  
14 like?

15 A Yeah. It's like a reserve sort of program  
16 for people under 21, I believe.

17 Q Okay. Great.

18 So you graduated from college. And then did  
19 you immediately apply to the bureau?

20 A No. Portland was actually on a hiring  
21 freeze. That was my original intention. But I think  
22 '03 to '05, they were on a hiring freeze, so I tested,  
23 and then I just got a job to pay my bills with an  
24 Internet banking company.

25 Q So you did that for a couple of years?

1           A       I did that, that for a couple of years,  
2       yeah. I was actually on a business trip in Florida,  
3       and I got a call from a gentleman at the Portland  
4       Police Bureau asking me if I wanted to talk to him.

5                    And I kind of forgot that -- okay. Are you  
6       still interested in taking or getting your background  
7       started to be a police officer? Yes, sir. It had just  
8       been so long, that I had tried to figure out something  
9       else maybe to do in the meantime.

10           Q       Okay. So you took them up on their offer,  
11       it sounds like.

12           A       Yes, sir.

13           Q       Okay. And can you tell us a little bit  
14       about the initial training that you went through in  
15       order to become a police officer?

16           A       Yup. I got hired in 2006. At that time the  
17       basic academy was in Monmouth. It was ten weeks long,  
18       and so we attended the training.

19                    And you get a broad knowledge of police work,  
20       law classes, but these fit counties like Joseph, which  
21       have two or three deputies and then also trying to fit  
22       Portland as well.

23                    So there's a broad range of topics and a  
24       broad -- you know, a high-risk stop with a single car  
25       there, which I've been to quite a few of them in

1 Portland, and I've never seen a high-risk stop with a  
2 single car here. There's usually like 20.

3 Q So more of a generalized police instruction  
4 for a variety of jurisdictions?

5 A Yes, sir.

6 Q All right. So after you completed that,  
7 what was your next stop training-wise?

8 A So then I was put into what they call the  
9 FTP. You're assigned to a coach, and you're basically  
10 in this program, the Field Training Program for 18  
11 months. So you can -- well, I guess the total from the  
12 time you're hired until you're done with probation is  
13 18 months.

14 So after you come back from the basic, they  
15 send you out to the street with a coach to get some  
16 practical experience about some of the skills that you  
17 learn down at basic.

18 Q Did you attend the Portland Advanced  
19 Academy?

20 A I did, yeah. After few months of being on  
21 the street, Portland does their own advanced academy,  
22 which just really hones in the way that Portland does a  
23 high-risk stop, the way that everyday business is done  
24 in Portland. Just builds on kind of the themes that  
25 you learn at the basic academy.

1           Q       Okay. So after you passed, I guess, through  
2 your probationary period that you just described, what  
3 kind of assignments have you had in the bureau up to  
4 current day?

5           A       I've worked patrol ever since I got off  
6 probation.

7           Q       And always the same area of town or has that  
8 varied?

9           A       Well, when you're on your rotation, you go  
10 to different precincts and you have different coaches.

11                    But when I got off probation, I was  
12 permanently assigned to Southeast Precinct. That would  
13 have been in June, June or July of 2007. And then I  
14 worked at Southeast until it closed in 2009, and then I  
15 was moved to Central Precinct. They kind of divided the  
16 area of coverage.

17                    And I've essentially worked the same area of  
18 town the whole time. Even when I was in Southeast and I  
19 came to Central, and I still worked the same general  
20 area.

21           Q       What is that general area?

22           A       The general area is inner southeast. So the  
23 geographical boundaries go from the river to 39th, I-84  
24 to the City of Milwaukie essentially. We go down a  
25 little bit around Johnson Creek, but I predominately

1 work that area of town, like I said, since I got off  
2 probation.

3 Q So you know that area pretty well then?

4 A I would like to think so, yes, sir.

5 Q Okay. And what is your current -- do you  
6 have a district that you've been assigned to, or is  
7 there a number associated with that, or do you work  
8 various districts?

9 A Currently, I'm assigned to work 746.

10 Q And what is that area?

11 A That area, the district boundary is  
12 essentially Powell Boulevard to the City of Milwaukie,  
13 the river to 39th.

14 Q Okay. And what particular shift are you  
15 assigned to?

16 A It's D shift. It's, it's a swing shift. It  
17 starts at 1800 -- it starts at 6:00 p.m. and goes to  
18 4:00 in the morning.

19 Q And so you've been working that kind of for  
20 a while?

21 A Yeah. We went to this shift configuration  
22 back in February, so probably about a year now.

23 Q Okay. All right. And we've been talking a  
24 lot in this Grand Jury about different trainings. I'm  
25 assuming that, like every Portland officer, you've got

1 training that was described by Officer Foxworth, the  
2 training division that included use of deadly force,  
3 among other things, and also Crisis Intervention  
4 Training; is that right? CIT training; is that  
5 correct? Is that how it's described?

6 A Yes, sir.

7 Q And what is CIT training?

8 A Crisis Intervention Training.

9 Q And did you receive that training?

10 A Yes.

11 Q And that's distinct from the Enhanced Crisis  
12 Intervention Training, which is another class, and you  
13 have not taken that class, though; correct?

14 A No, sir.

15 Q Okay. All right. So let's go ahead and  
16 talk about the date of the incident, which was I  
17 believe February 9th of this year.

18 I'm assuming you were on duty, in uniform,  
19 displaying a badge, and operating a marked police  
20 vehicle that day.

21 A Yes, sir.

22 Q And this call comes out, which you end up  
23 responding to.

24 What were you doing at the time that this  
25 call came out?

1           A        So when I logged on, there's actually an  
2 officer that works at 4:00 p.m. that shares that  
3 district with me. When I logged on, I saw he was on a  
4 call. We kind of try to split the district to share in  
5 equal sort of workload.

6                    I saw that he was on a call in my half of the  
7 district and so I just started to go that way. I logged  
8 on to see if he needed me to come take the report or if  
9 there was something that I could do to help him.

10           Q        So you were in your vehicle en route, and is  
11 that when you heard the call?

12           A        Yeah.

13           Q        Okay. Walk us through, what was the nature  
14 of the call, kind of what was your response to hearing  
15 it?

16           A        So I was actually sitting at the  
17 intersection of SE 17th and McLoughlin, set to go south  
18 on 17th, and the call popped up. And I actually read  
19 the call before I got voice dispatched to it.

20           Q        When you say "it popped up," what do you  
21 mean, sir?

22           A        It came up on the MDT screen. Sometimes if  
23 the dispatcher is busy dispatching somebody else or  
24 taking other traffic, the call will come up in your car  
25 computer, and then you can, you can actually look at

1 the call before it's dispatched.

2 And calls are prioritized. One through four  
3 get voiced dispatched and then everything else, you  
4 would read the call essentially like a, quote, car prowl  
5 or a, quote, burglary. And if it was in your district,  
6 you would be expected to get on that call and take it.  
7 So you can read any call on your in-car computer.

8 Q So you saw it come across the computer  
9 first?

10 A Yes, sir.

11 Q What were the details of the call?

12 A It was coded as a suicidal call. And it was  
13 a gentleman who had claimed to take -- that he had  
14 taken 30 pills. And he was distraught because he  
15 couldn't get in touch with his doctor. He said that he  
16 was going to take an additional 30 pills in 15-minute  
17 increments until he got in touch with his doctor.

18 And then he provided "Don Perkins" and a date  
19 of birth. I don't recall the exact date of birth that  
20 he provided, but it was information. He was calling  
21 about himself, and he provided all of the information.

22 Q Okay. And was there an address to respond  
23 to in this call?

24 A Yeah. So it was a little bit confusing.  
25 The call originally popped up, but the address was -- I



1 believe it was 3206 SE Francis.

2 But in the call, in the text of the call, it  
3 said that the call was made from a cell phone that was  
4 in the area of SE 21st and Lafayette. If you are  
5 familiar with that area, there's only a couple ways in.  
6 You can come southbound from south or north from  
7 Gladstone essentially because of the way that the tracks  
8 run.

9 So immediately when I was dispatched, me not  
10 being ECIT trained, I got on the radio and asked if an  
11 ECIT officer could come because I knew that my cover  
12 officer was not ECIT trained.

13 Q Before you go on, so were you assigned to  
14 this call or did you assign yourself to it?

15 A I was, I was dispatched to it while I was  
16 reading the call, voice dispatched by the dispatcher.

17 Q So the dispatcher came over the radio and  
18 said -- was it 746? Is that your district?

19 A Yes, sir.

20 Q Is that how you are referred to in the radio  
21 traffic?

22 A Yes.

23 Q They dispatched you to this call?

24 A Yes, sir.

25 Q Okay. I interrupted. Please continue.

1           A        So I got on the air knowing that my, my  
2 first cover officer, the original guy that was going to  
3 come cover me, I knew that he was not ECIT trained.

4           Q        What was the name of that officer?

5           A        Officer Yee, and he was 734.

6                    And so I just asked over the air if there was  
7 an available ECIT car that could come cover me on the  
8 call. And Officer Clark, who was 716, said that he  
9 would go.

10          Q        And does he work -- he works a close by  
11 district then?

12          A        Yeah. So 716 is essentially I-84 to roughly  
13 Hawthorne and 30th to the river. For the most part,  
14 that's where it is, so, yeah.

15          Q        Okay. And so did the two of you -- did you  
16 put together kind of a game plan on what you were going  
17 to do, or how did that work out?

18          A        So I got on the air, and I think that I  
19 originally said we would go check 21st and Lafayette  
20 because that's where the phone had actually -- they  
21 call it phase two.

22                    I don't know the way that it works, but  
23 there's a difference between pinging a cell phone, which  
24 gives you a pretty precise location and then a phase  
25 two, which gives you a general idea. I think they base

1 it on cell phone towers or something like that.

2 So the fact that the call was made at 21st  
3 and Lafayette, I just said on the air that we would go  
4 check 21st and Lafayette first before going to the  
5 actual address.

6 Q All right. And did you and Officer Clark  
7 make an agreement to meet at that intersection? Was  
8 that the plan?

9 A That was the plan. While I was en route, I  
10 was still on Holgate, and Officer Clark arrived on  
11 scene, and over the air said that there was nobody  
12 around 21st and Lafayette.

13 So I thought that I would run by the actual  
14 physical address to see if it was actually an address.  
15 Because sometimes the addresses that they give us as  
16 physical addresses aren't physical addresses, if that  
17 makes any sense.

18 Q They are not good addresses?

19 A It's not a good address for an actual  
20 residence.

21 Q The address they gave you for Francis, is  
22 that an address they just had as a historical address  
23 for Mr. Perkins, I would assume?

24 A I believe it came off of his driver's  
25 license hit. And some people don't update driver's

1 licenses when they move. And so some people use  
2 friend's driver's -- friend's addresses on their  
3 driver's license instead of a PO box. So I just  
4 thought to myself, I'll run by the address to see if  
5 that address actually exists.

6 So I just went up Holgate to 32nd. Ran up by  
7 the park and parked at 32nd and Francis, and I got out  
8 of my car. And it's actually a duplex that sits on the  
9 south side of the street there. And I saw that it was  
10 an actual address.

11 But while I'm getting out of my car, they  
12 updated that Mr. Perkins had called back, and now his  
13 phone was in the area of 18th and Lafayette.

14 And the reason why I ran by the physical  
15 address was just to see if we didn't locate him in the  
16 area of 21st and Lafayette, like maybe he was walking  
17 from the store, or he was on his way home from the Max  
18 or something, that we would have another address that we  
19 need to go check before we cleared the call essentially.

20 So as I was walking back to my car to try to  
21 clarify some information with dispatch on if they just  
22 got the address from his ODL or if he had provided this  
23 physical address, they updated that he had called back  
24 and now he was in the area of 18th and Lafayette.

25 So I got on the air and told Officer Clark to

1 hold on and I'll be there and we'll check the area on  
2 foot.

3 Q Okay. And did you respond back to that  
4 location?

5 A Yeah. We parked mid-block between 20th and  
6 21st on Lafayette there.

7 Q Go ahead.

8 A And geographically, it's kind of a strange  
9 place because, like I said, the train tracks run there,  
10 but Lafayette actually has a pedestrian bridge.

11 Q I have a map that captures some of this. I  
12 don't know if this will be helpful or not. Some of it  
13 may be occurring off the -- that's it.

14 A So essentially it's not going to be on the  
15 map here. But here is the train tracks. This is the  
16 dead end here on Lafayette. This is Lafayette. So we  
17 parked here. There's a -- you can actually see --  
18 there's a pedestrian bridge right here that you can  
19 walk across.

20 So with the proximity of the calls being  
21 within just minutes, we just thought, oh, maybe he  
22 walked across the pedestrian bridge before Officer Clark  
23 arrived in the area. Because if you've ever called 911,  
24 there's a triage sort of -- it takes a while for us to  
25 get a call.

1           So it's possible that he walked two or three  
2 blocks before the call was even dispatched and then we  
3 had to drive there. So I mean, time lapse could have  
4 been a few minutes before we even got in the area.

5           Q       Okay. And what did you find in that area?

6           A       We didn't hardly find -- there was nobody  
7 around on the east side of the pedestrian bridge.

8                   As we started to walk up the pedestrian  
9 bridge, I remember there was a gentleman carrying his  
10 bike down. And we asked him, "Hey, did you see anybody  
11 on the other side that looked like they needed help?"  
12 He told us that he didn't recall seeing anybody.

13                   So we walked across the pedestrian bridge.  
14 And when you get -- once you get up on the pedestrian  
15 bridge, there's elevators, but you can see -- I mean,  
16 you can see all of the way out to 17th across the Max  
17 tracks because it's like in between the Tri-Met barn,  
18 and PGE is over there.

19                   But from that vantage point, you can see --  
20 you have a pretty good birdseye view essentially of four  
21 or five blocks there.

22                   So we didn't see anybody. But we still went  
23 down the other side of the pedestrian bridge. And we  
24 checked under the stairs and like the elevator, and we  
25 kind of poked around a little bit. But it was clear to

1 us that there was nobody there.

2 Q Okay. So having established nobody was in  
3 that vicinity, what did you do next?

4 A So I think I got on the air and said  
5 something to the effect of, "Are you still on the line  
6 with Mr. Perkins?" And they told me that they weren't.

7 I asked them then, "If he calls back, can you  
8 just have him give us a landmark or give us a street  
9 sign so that we can go find him and get him help?"

10 I was confident if he said, "I'm by this  
11 building," that I would have a good idea of where he's  
12 at. So I just wanted him to stop and be stationary so  
13 we can go get him help.

14 Q Before we go on with this, you've got his  
15 name at this point, Don Perkins. And I know you've  
16 worked this area.

17 Was he somebody who you were familiar with  
18 from contact or from working that area?

19 A No. He wasn't anybody that I was familiar  
20 with.

21 Q Okay. So what happened next?

22 A So dispatch asked me if I wanted them to  
23 ping the phone, which like I mentioned earlier, it's a  
24 little bit more precise on a location. Like it can  
25 give you within meters.

1                   Sometimes it's thousands of meters. So  
2 that's not necessarily precise. But sometimes it's  
3 within, you know, 15, 20, 30 meters, and then we can  
4 kind of search the new area that he was in. So they  
5 said they would.

6                   So Officer Clark and I, we walked back to our  
7 cars. And we had a similar conversation when we were  
8 walking over the bridge.

9                   He asked me if I had found him. And  
10 basically what he meant was I ran his name and date of  
11 birth, and Officer Clark did, too. I think that the  
12 birthday that he had originally provided or the one that  
13 was originally put in the call didn't end up being his  
14 birthday. And to get a DMV hit, it has got to be  
15 precise with the birthday.

16                   And so he hints that he didn't find -- excuse  
17 me, he didn't find Mr. Perkins. He wanted to know if I  
18 had found a picture of him, and I told him that I did.

19                   Because when you pull up somebody's DMV  
20 history or their DMV record, there's a link in there  
21 that you can push on it. And a lot of times there's a  
22 photo.

23                   So we can see a picture of their last DMV  
24 picture essentially. Sometimes those are 15, 20 years  
25 old. But it's fairly certain that you can figure out if



1 that's the person or not.

2 Q So were you able to locate an accurate photo  
3 for Mr. Perkins?

4 A Yeah. So I told Officer Clark, I said,  
5 "Hey, I found one in my car. Let's go back to my car  
6 and I'll show you the picture while we wait for  
7 dispatch to clear the call."

8 Q So you were able to pull up the photograph  
9 of Mr. Perkins?

10 A Yeah. So on the in-car computer, I sat in  
11 my car and pulled up the screen that had Mr. Perkins'  
12 photograph, and I asked Officer Clark if he recognized  
13 him, and he didn't. And he asked me if I had  
14 recognized him, and I told him that I didn't.

15 And then as we were having this conversation,  
16 dispatch got back on the air and told us that they had  
17 pinged the phone, and I believe it was within 25 meters  
18 of I think it was 3363 SE 22nd.

19 And 22nd, if you are not familiar with the  
20 area, is on the west side of the park, and it's a long  
21 block. It's basically from Lafayette to Powell are the  
22 only through streets of 22nd.

23 So we knew that it was going to be between  
24 Lafayette and Powell. And then an odd numbered address  
25 typically means that it's on the west side of the street

1 or the north side of the street. And 22nd runs north  
2 and south, so 3363 would technically be on the west of  
3 22nd.

4 Q Okay. So armed with that additional  
5 information, what do you do?

6 A And so as we were, as we were getting in our  
7 car, Officer Clark told me, "Hey, there's a tent that I  
8 remember seeing on the sidewalk there just north of  
9 Lafayette next to the park."

10 And so we drove our cars over to 22nd and  
11 parked and got out. There's a tent there. We got out  
12 and checked the tent.

13 Q So you guys are in separate vehicles;  
14 correct?

15 A Yes, sir.

16 Q Can you tell us -- it sounds like you moved  
17 north on SE 22nd and parked your vehicles.

18 Is that what you are saying?

19 A Yes, sir.

20 Q Can you tell us maybe kind of where you  
21 parked in relation to each other and in relation to the  
22 tent?

23 A Sure.

24 Officer Clark pulled -- he was in front of me  
25 when we turned around. He pulled up a little bit north

1 of the tent.

2           There was a civilian car that was, if I  
3 recall, was almost parallel with the tent. And so I  
4 parked -- there was a civilian vehicle between our two  
5 patrol cars.

6           And actually there's a big Fred Meyer  
7 corporate office there. And the back of my car was  
8 sticking out just a tiny bit, so I left my parking  
9 lights on because it was just right at one of their  
10 entrances. I didn't want somebody leaving to clip my  
11 car.

12           Q       Okay. What was the lighting like in that  
13 area at that time?

14           A       It's dark, and I believe it had been  
15 raining. I know that it wasn't raining that exact  
16 moment because I didn't have a coat on.

17           But along, I guess you would say the east  
18 curblineline of 22nd that borders the park, there's a bunch  
19 of giant trees, so the ambient light isn't all that  
20 great either.

21           And the Fred Meyers lot has some lights, but  
22 that's why I left my parking lights on because the SUV's  
23 are painted in a way that the back is dark. So, like I  
24 said, when somebody was leaving, I didn't want them to  
25 clip my car.

1           Q       Okay. So you both parked. Sounds like you  
2 got out with the intent of approaching the tent.

3           A       Yeah. We went to the tent to make contact  
4 with the person in the tent. Then Officer Clark bent  
5 down and was messing with the zipper, and I was shaking  
6 the top of the tent.

7                   And I didn't think that there was anybody in  
8 there because I'm shaking the tent saying, "Hey, hey,  
9 are you Don?"

10                   Officer Clark is talking into the tent, too.  
11 And I'm shaking the tent, like I'm thinking if there was  
12 somebody in here, they are going to be "quit shaking my  
13 tent" or something like that. No response. No  
14 response.

15                   Officer Clark goes, "There's a person in  
16 here." I'm thinking, are you sure it's a person and not  
17 like a bedroll? Like, they are not saying anything.  
18 Like, are you sure? He's, like, yeah.

19                   So we get the zipper -- he hands me a  
20 blanket. I put it up on the tent. He's shaking this  
21 guy's leg, and we're both going, "Are you -- hey, Don."

22                   Because at this point all I know is that  
23 there's a person in here, but I can't see his face or  
24 anything. He's inside of his tent. But I'm thinking if  
25 it's Don, and he's taken 30 pills and maybe more, he's

1 possibly incapacitated. So we're trying to roust him to  
2 see, is it Don? What did you take? Should we get  
3 medical attention?

4 This voice from inside the tent goes, "No,  
5 it's Dan." And being familiar with the area, I know  
6 quite a few people that stay in the area, transients and  
7 residents and everybody.

8 And I'm like, "Danny Wilmoth?"

9 "Yeah." And he's the guy that camps out  
10 around the park. He's always fine. But the fact that  
11 we were looking for Don, and it's Danny, and so I'm  
12 like, do you know -- try to get some information from  
13 Danny.

14 Because a lot of the transients know each  
15 other down there. With me not knowing Don, I don't know  
16 if he has a name that he goes by that people refer to  
17 him as or if he goes by Don.

18 And Danny has been down there for years. So  
19 I told Danny, "It is Officer Walsh."

20 "Hey."

21 "Do you know Don?"

22 "Yeah, I know Don."

23 "Do you know where Don is at?" There's like  
24 a long pause, like, well, the police are asking if we  
25 know who Don is.

1            "No. No. Don is not in trouble. Don called  
2 and said he had taken some pills and he needed some  
3 medical attention. Do you know where he's at?"

4            "No. I don't know where he's at."

5            "Do you know where he stays," because that's  
6 kind of the lingo that's used. If you are a transient,  
7 you have your area that you usually stay in. They are  
8 familiar with other people who stay in the area.

9            So we asked -- I asked him, "Hey, do you know  
10 where he stays?"

11           He said, "No." So we threw his blanket back  
12 on, and headed northbound on 22nd on the east curblin.

13           Q        You are still on foot at this point?

14           A        Yeah. So the next place to look is Powell  
15 Park. Powell Park is right there. And I remember  
16 looking out into Powell Park and thinking, like, I  
17 don't see -- I don't recall seeing anybody in Powell  
18 Park.

19           So what I thought was Don wasn't in this  
20 tent. Don wasn't in the park. There's a flag lot. In  
21 fact, there's a flag lot here. So essentially this is  
22 about where the tent was. And this is the driveway that  
23 I was referring to that I parked in front of.

24           There's this lot here that's a flag lot. You  
25 can see a semitrailer, a couple of them here, but it's

1 not used very frequently. I think that they drop a  
2 trailer and pick another trailer up, but there's hardly  
3 ever anybody here.

4 So to me, when I was thinking 3363, I was  
5 thinking we need to go check this flag lot because we've  
6 contacted people here, which is in the back -- still  
7 this same lot. It goes all of the way from 22nd to  
8 21st. We contacted people back here that have been  
9 camping.

10 And it's out of the way, and nobody would  
11 even know they were there unless there was somebody at  
12 the lot that called about them. Because this is a  
13 mixture of industrial and residential down here. So in  
14 my mind that was the next logical place to go check.

15 Q All right. What do you do?

16 A So we started walking northbound on 22nd.  
17 I'm thinking to myself that the only thing that --  
18 well, the only thing I recall thinking is we're going  
19 to go check this flag lot. And so I'm just walking  
20 along.

21 And I don't know if Officer Clark had ever  
22 been with me to that specific place, but I don't even  
23 remember having a conversation. We're just walking  
24 northbound. And at some point, not too far from the  
25 tent, maybe 50 yards from the tent, Officer Clark kind

1 of alerts me that there's a person in the van.

2 And I said, "In a van?"

3 I remember thinking to myself, I didn't even  
4 see a van because I'm, I'm thinking about this flag lot.  
5 I turn around and here is a van. It's sitting there.  
6 And Officer Clark is standing kind of, I guess you would  
7 say, by the front passenger windshield side and shining  
8 his light in here.

9 I remember him calling to the person in the  
10 van. And I don't know if he said -- I think he said  
11 something to the effect that I can see you inside. The  
12 whole time we're trying to locate Don, so I think he was  
13 saying, "Are you Don," or "did you call?"

14 So all we're trying to do is narrow down the  
15 fact that there's nobody in this area that is Don or  
16 there's somebody in this area that is Don. We either  
17 need to get medical started, because I believe in the  
18 original call, medical wasn't started because there  
19 wasn't an exact location because there were two  
20 different locations.

21 So Officer Clark is on the front passenger  
22 door, and he opens the door. And he's calling in --  
23 he's calling in, and he's asking -- and I don't remember  
24 the specific quote, but it's, "Hey, are you Don? Did  
25 you call? Are you -- do you need help? Do you need



1 medical? Are you Don?"

2           And from where I was standing, the way that  
3 the van is, it had a front passenger door and a front  
4 driver's side door. The front passenger window and the  
5 driver's side window was unobscured. The windshield was  
6 unobscured. The rest of the windows -- I would call it  
7 a cargo van or a full size Econoline, I guess is what I  
8 would call it. Every other window is obscured.

9           And so he's calling in the van. I don't hear  
10 anything from the van. I'm thinking like who -- is  
11 there somebody in this van? And I can't tell if they  
12 are having a conversation or if it's just Officer Clark  
13 talking to a person.

14           So I walk over to the -- they are like the  
15 passenger side, I guess you would say the middle  
16 passenger side doors. And one opens with a handle from  
17 the outside and the other one, you have to, like, flip a  
18 latch to open it up. Then they would both open up like  
19 that.

20           So I asked Officer Clark, "Is this Don?" And  
21 he affirmed -- he either nods or says, "Yeah."

22           So I opened up the passenger door so that I  
23 can hear what's going on, but I don't open it all of the  
24 way. I open it just enough to if there was a dog or if  
25 somebody is standing right there, and I can't see in the

1 window, that I'm not just going to open the door.

2 So I open it enough to where I feel  
3 comfortable there's not a dog. There's not a person  
4 coming barreling out at me.

5 I open the door, and I think I had my  
6 flashlight probably in my left hand because I don't  
7 remember there being a light on in the van. And so I  
8 remember shining my light down at the floorboard of the  
9 van.

10 And it's set up to where there's two seats in  
11 the front compartment. I think he calls it the driver's  
12 compartment, and then there's no seats in the middle,  
13 and then there's, like, a bench in the back of the van.  
14 But with that other door, I never opened that second  
15 passenger door. My view was kind of obscured.

16 So I remember looking at the floorboard and  
17 seeing a pill bottle and maybe a couple of pills on the  
18 floor. Then I poked my head in, but I didn't poke my  
19 head in all of the way because Officer Clark is still  
20 attempting to communicate. I'm still not hearing a  
21 response.

22 Eventually when I'm standing there, I think I  
23 hear something about, you know, "Can you get your light  
24 out of my eyes," or "get the light out of my face," or  
25 something like that.

1           So I just slowly start to poke my head in to  
2 see. And I get to -- I can see that there's a person.  
3 I now see his what would have been -- he was facing me,  
4 his left leg, and essentially like the left side of his  
5 body, I can see.

6           And that was far enough for me. I could see  
7 his face. I could hear what he was saying. I could  
8 read his lips. Because I'm thinking that he's not  
9 responding back, so maybe he's taken these pills and  
10 he's incapacitated and he's slumped over there, or he's  
11 really lethargic and he's not able to answer the  
12 questions clearly or they are not making sense.

13           So I say, "Are you Don? Did you call us?"  
14 Just -- I'm trying to have a conversation with him, too,  
15 and find out if this is Don.

16           As I kind of poke my head in, like I said, I  
17 could see about half of his body. I start to see out of  
18 the corner of my eye, I start to see movement with his  
19 right arm.

20           And so me being curious of what's going on  
21 with his right arm, I poke my head in a little bit  
22 farther, and I see his right arm starting to raise up  
23 perpendicular to me, not out to the side. It's coming  
24 up perpendicular to me.

25           And I have to poke my head in just a little

1 bit farther to see his hand. And I see his hand, and  
2 he's got something dark in it. And as he's raising his  
3 arm, I hear this metallic click.

4 And it sounds to me like the safety being  
5 disengaged from a firearm or a hammer being pulled back  
6 on a revolver. It's just like this sound, that if  
7 you've ever heard it, you would know that that's the  
8 sound that you are hearing.

9 So as his arm is raising up toward me, I hear  
10 that metallic click.

11 Can I tell then exactly what I thought?

12 Q Yeah.

13 A And I think to myself, oh, fuck, he's got a  
14 gun. I jump back, unholster my gun, and back up behind  
15 this tree. It's not a very big tree. But it's a tree  
16 basically sitting parallel to where the bench was and  
17 his van, in the easement between the sidewalk and the  
18 street.

19 And as I'm, as I'm backing up to this tree,  
20 because the tree is the safest thing to stop bullets  
21 from where we are right then, I look over to see if  
22 Officer Clark either heard it or saw me jump back and  
23 like deduced that something had happened. And he's  
24 already moving back to the tree.

25 So we get back to the tree and I have my gun

1 out, and we have some sort of conversation. I don't  
2 know if I ask him, "Did you hear the click?"

3 And he's asking me, "Does he have a gun?"

4 I said, "I don't know." And I said, "I saw  
5 something dark in his hand and I heard that click."

6 But this is the tree that we both can't fit  
7 behind and we're right next to his van. So we quickly  
8 come up with a plan. We decide to move back to where we  
9 know it's safe, which is his patrol car. And there's a  
10 civilian vehicle parked between the van and his patrol  
11 car.

12 So Officer Clark moves over behind the --  
13 between the van and the civilian vehicle. He moves over  
14 to the driver's side and then we start backing up.

15 And we get over to the rear bumper of Officer  
16 Clark's vehicle and both of the doors, the front  
17 passenger door and then the mid -- I guess I'd call it  
18 the side passenger door, they are both still open. So I  
19 see that Officer Clark has got his rifle out. And I'm  
20 fairly confident that he --

21 Q Did he retrieve that from his patrol  
22 vehicle?

23 He didn't have the rifle during this first  
24 part of the encounter you just described; correct?

25 A Right. It would have been in the rack in

1 his patrol vehicle.

2 So as he moved back -- sorry. The rack is a  
3 locking device that you can put a shotgun or a less  
4 lethal shotgun or a rifle in, and then you have to have  
5 a key or have the car on to release it.

6 A GRAND JUROR: Where is the rack in the  
7 patrol car?

8 THE WITNESS: It sits in between the front  
9 driver's seat and the passenger seat.

10 A GRAND JUROR: Okay.

11 THE WITNESS: Kind of behind, I, I guess I'd  
12 call it the console, where the radio -- like our  
13 dispatch radio and the computer sit, right in between  
14 the cage which separates the front and the back.

15 A GRAND JUROR: Okay.

16 THE WITNESS: So that's where he would have  
17 got it from, but I wasn't on the driver's side.

18 When he came around, I saw that he had his  
19 rifle, so, yes, that's where it was. That's where you  
20 would put your rifle or your shotgun.

21 So at this point we still haven't given radio  
22 dispatch any updates that -- because we've been on foot  
23 trying to find Don. So I was confident that Officer  
24 Clark could keep an eye on the two passenger doors that  
25 were opened.

1           So I actually -- I don't know that I told  
2 him. But when you are handling a rifle, you are using  
3 both hands. So it's hard to talk on the radio, keep  
4 your rifle up. And the fact that he's ECIT, I just kind  
5 of -- Officer Clark and I got hired together.

6           We've worked together for quite a while, so  
7 we work pretty good together. So without us talking, we  
8 kind of can figure out what the other one is doing just  
9 based on action.

10           So I see that he's covering the passenger  
11 side and the doors. I know that he's fine there. So I  
12 don't know if I told him or not, but I just stepped  
13 behind -- I holstered my weapon and stepped behind the  
14 SUV, and so now I'm not facing the van at all. I'm  
15 facing southbound on 22nd.

16           And I get on the air to let dispatch know,  
17 "Hey, we've located Don. He's in a van. We're about  
18 mid-block on 22nd, between Lafayette and Powell." I ask  
19 for additional police cars to come.

20           I asked for an additional rifle, an  
21 additional ECIT to start, because standard protocol is  
22 if your, if your job is to be the lethal cover is what  
23 we call it, so your job is to watch for a threat, and  
24 you have your gun up, if, if feasible, we would like  
25 somebody whose sole job is to communicate with this

1 person, so I asked for another ECIT and another rifle.

2 And I also let dispatch know that we heard  
3 this sound. We think that Don is armed with a gun and  
4 to send us, like I said, a couple more cars.

5 Then I let people know, hey, our guns are  
6 pointed northbound on 22nd. So coming down 22nd is not  
7 a good idea. So come down 21st or come north off of  
8 Gladstone. Basically we would call it a safe route in  
9 so they are not coming from down range of where we're  
10 pointing our firearms.

11 So I give the transmission, and then I get my  
12 gun back up. And as I'm getting up shoulder to shoulder  
13 with Officer Clark, both of the doors slam shut on the  
14 van. First the rear door, then the front door on the  
15 passenger side, and there's nothing.

16 And so Officer Clark is trying to have a  
17 dialogue with him. It's just a plain voice. "Hey, Don,  
18 come back to us. Hey, we're not here to hurt you.  
19 We're here to try to get you help. We need you to come  
20 out and talk to us."

21 And he's trying to have a conversation and  
22 just kind of build a rapport with him. And I don't  
23 recall hearing anything like -- I don't recall hearing a  
24 response from the van at all.

25 But I think to myself, I'm like, okay, we're



1 fine. This is a static situation. We're back here  
2 behind the patrol car, which will stop bullets. Don is  
3 contained in his van. He's not running around the park.  
4 So we'll hang out here and we'll wait for more officers  
5 to get here so we can set up a custody team.

6 We can get Powell blocked. Just get -- we  
7 needed to get some additional people there so we could  
8 effectively deal with taking Don safely into custody and  
9 getting him the help that he needed essentially.

10 So as we're there, the side passenger door  
11 flies open, and I see a couple of items get tossed out  
12 of the van. I can't see what the items are. It was  
13 dark.

14 Then with that door open and that tree that  
15 we originally took cover behind, the ambient light that  
16 we're actually seeing through, it's not a lot. I could  
17 just make out that there were -- there was at least one,  
18 possibly more items tossed outside the van.

19 I know that we had this conversation, Officer  
20 Clark and I, "Did you see what that was? Could you tell  
21 what that was?" He thought that maybe one of the items  
22 was a pill bottle. I think he put that out on the  
23 air -- or I mean, over the radio.

24 But I updated the radio that the door had  
25 opened and some items were tossed out of the van. They

1 weren't thrown out and they weren't thrown out like they  
2 were thrown into the park 50 yards. They were just  
3 tossed within close proximity to the van.

4           So then Don gets out -- this is where I'm a  
5 little unclear as to how our first interaction with Don  
6 goes. But my best recollection is Don gets out of the  
7 van, and he's yelling at Officer Clark about -- you  
8 know, he's just upset is his general tone. He's not  
9 responding to Officer Clark. He's just shouting back at  
10 Officer Clark.

11 BY MR. DAVIDSON:

12           Q       What kind of things is he shouting?

13           A       He's shouting things -- and this is just --  
14 these are just statements that he made. I don't know  
15 in what order. But he's shouting things like, you  
16 know, "Fuck you, you guys." He's just upset in  
17 general.

18           And when he's first out of the van, he's kind  
19 of facing us. And he does -- he, he takes a couple of  
20 steps in our general direction. I don't know if they  
21 were straight at us or if they were kind of up toward  
22 the sidewalk but enough that I could, I could see his  
23 hands. He didn't have anything in his hands at that  
24 time.

25           As he takes those couple of steps, I think to

1 myself, okay, what's -- I draw my gun down to low ready  
2 so I can kind of survey more of the area in front of us.  
3 And I think to myself, what's a good threshold to where  
4 I feel confident that I can go up and go hands on with  
5 Don and get him into custody? What's that line going to  
6 be for me?

7           And so he takes a couple of steps. Like I  
8 said, he takes them in a manner where I'm like -- I'm  
9 immediately thinking that, okay, I'll go hands on.

10           Officer Clark will know that I'm going to go  
11 grab on to him. And "hands on" means I'm going to go  
12 grab him and take him down and put him into handcuffs so  
13 we can safely either get him help or find out what's  
14 going on.

15           And so just as I'm starting to do that, he,  
16 he walks back. And, like I said, it's just like a  
17 couple of steps, and he sits down in the doorway of the  
18 van. So he's facing eastbound into the park. So he's  
19 kind of perpendicular.

20           We can't -- I recall not being able to see  
21 his hands. I can essentially see his feet and his  
22 knees. He's kind of hunched over. I can see -- I can  
23 see his head.

24           At this time he's, he's telling Officer Clark  
25 and myself that he wants us to come up and talk to him.

1 Officer Clark is telling him, "No. We need you to come  
2 back here and talk to us. We just need you to walk back  
3 here. We'll get you help."

4 And he wants us to come up. We aren't going  
5 to go up. "No. We aren't going to go up there, Don.  
6 Come back to us."

7 Then Mr. Perkins points basically down at his  
8 feet. "I threw the gun right there." He points  
9 essentially down at his feet. And Officer Clark and I  
10 make sure that each one of us heard that.

11 "Okay. Don, we're not going to come up here  
12 and talk to you. We need you to come back here and  
13 we'll get you help."

14 I recall him saying, "You guys are just going  
15 to need to trust me. You need to come up here and talk  
16 to me." And he gets upset that we're not going to  
17 approach him and have this conversation within close  
18 proximity to him.

19 And he stands up. He turns around and he  
20 says, something to the effect of, "I got another gun in  
21 the van." He jumps in and slams the door shut.

22 Q Let me ask you, Officer Walsh, why wouldn't  
23 you walk up to him at that point if you think he had a  
24 gun right at his feet? It may seem like a silly  
25 question, but let me ask you that question.

1           A        Because we're safe where we're at. He's  
2 going to actually have to take some significant steps  
3 from sitting in the van to standing up and picking up  
4 the gun.

5                    And from where we're at, we're behind  
6 something that's stoppable. It's just standard  
7 practice, based on your training and experience going  
8 through scenarios, that by the time we walk up there,  
9 things can evolve and change, and we're at the safest  
10 place that we can be at.

11                   We're also not going to approach and cause a  
12 confrontation. We're standing back. We're, you know,  
13 20 to 25 yards probably, that was the guess, away from  
14 him.

15                   So we're kind of letting his actions dictate  
16 the way this contact goes. So we're not going to walk  
17 up and force him to do something. And neither one of us  
18 wanted to take our chances that Mr. Perkins is actually  
19 able to pick up the gun and shoot at us before we're  
20 able to do anything.

21           Q        Okay. So you testified Mr. Perkins went  
22 back in the van and slammed the doors.

23           A        Yes.

24           Q        What happened next?

25           A        So I get on the radio and I give radio

1 another update. "Hey, Mr. Perkins says he threw a gun  
2 outside. We heard this metallic clicking. We couldn't  
3 confirm what it was, but he said that he had thrown a  
4 gun out and that he had another one in his van."

5 And so at this point it's just still Officer  
6 Clark and I on scene or at the call. Nobody else has  
7 arrived yet. So after my transmission, I get up next to  
8 Officer Clark, and we have lights on our pistols, but  
9 they are not very bright.

10 So we also carry flashlights that are also  
11 pretty bright. So I told Officer Clark, "Hey, I'm going  
12 to see if I can see anything out on the sidewalk."

13 So I remember moving from cover, because the  
14 van is shut again. Mr. Perkins is inside. It's back to  
15 a static incident where we're just kind of waiting for  
16 more people to arrive so we can go deal with it.

17 I step out to the sidewalk. I shine my  
18 flashlight. I don't see anything. I come back to  
19 Officer Clark. "Hey, I can't see anything out there."

20 And then we have this brief conversation.  
21 "You heard him say he threw a gun right there by his  
22 feet?"

23 "Yes, I heard that." We just confirmed that  
24 we're both hearing and seeing the same thing.

25 And so while the doors are closed, I believe

1 Officer Duong arrives. I remember thinking when -- I  
2 think when I stepped out on the sidewalk, I could hear  
3 sirens. I'm thinking, okay, people are getting close.  
4 There's going to be more people here. It's fine. We  
5 don't need to rush anything. Like I said, he's  
6 contained in the van.

7           So Officer Duong arrives. And we don't  
8 really have any light on his van at this point. Just --  
9 I think we had -- the AR rifle has a light on it. I  
10 don't know if Officer Clark had it on. I don't know if  
11 I even had my flashlight on my gun on.

12           So we make the decision that we're going to  
13 move up to turn on the spotlights on Officer Clark's car  
14 and actually spot light the van so we can try to see a  
15 little bit better.

16           So Officer Duong and Officer Clark move up on  
17 the driver's side, and I move up on the passenger side.  
18 You have to actually get in the car to turn the  
19 spotlights on. So we get the spotlights on the car and  
20 move back.

21           And I think that at this point once we move  
22 back, I think I recall telling Officer Duong, "Hey, if  
23 you can talk on the radio, we'll focus on the passenger  
24 side." Give her a quick synopsis, I guess.

25           It was, hey, there's a guy. We think he's

1 got a gun in the van. We think he threw a gun on the  
2 ground. He's coming out the passenger side every time.  
3 That's where we are on that.

4 So as people are starting to arrive, that  
5 middle passenger door opens again and Don steps out.  
6 And he's standing, he's standing essentially right next  
7 to the van. He's facing into the park, so he's facing  
8 eastbound. And he's -- I just remember him standing  
9 there.

10 And I know that Officer Clark again is trying  
11 to converse with him. "Hey, Don, we just need you to  
12 come back. Get you medical attention. We don't want to  
13 hurt you. We're not here to hurt you. Don't reach for  
14 that gun."

15 I remember at this point I vocalized, too,  
16 "Don't reach for the gun." And so Don stands there, and  
17 it seems like a long time from my recollection, but I  
18 don't think that it was.

19 And so Don starts to bend over at the waist  
20 in the area where the gun was. And I start squeezing my  
21 trigger, and then boom. Officer Clark's rifle goes off,  
22 so I let go of my trigger.

23 And I'm not trying to point at you, sir. I'm  
24 just trying to tell the story --

25 A GRAND JUROR: No, no. That's fine.



1           A GRAND JUROR: You are not going to shake  
2 me. Keep going.

3           THE WITNESS: -- with my finger. Sorry.

4           A GRAND JUROR: You do what you have to do  
5 for your -- do what you got to do.

6           THE WITNESS: Okay. I just want --

7           A GRAND JUROR: Thank you.

8           THE WITNESS: And I remember seeing the  
9 glass in that window -- or something falls out, and it  
10 looked to me like it was glass. So I let go of the  
11 trigger so that I could see what Don, Mr. Perkins, is  
12 doing at this point.

13 BY MR. DAVIDSON:

14           Q       I'm going to stop you for just a moment,  
15 Officer.

16                    So it sounds like, from what you're saying,  
17 both you and Officer Clark reached the same decision  
18 kind of at the same time or probably at the same time.  
19 You were in the process of squeezing your trigger. And  
20 it sounds like Officer Clark squeezed his trigger maybe  
21 fractions of a second before you did.

22                    But it does seem, I'm asking, that you guys  
23 both reached the same conclusion kind of independently  
24 at the same time?

25           A       Yeah. Actually I have this vivid memory of

1 thinking while I'm squeezing my trigger and I hear the  
2 boom, like, wow, it didn't recoil at all. It was  
3 really loud, so I let go.

4           When I let go, if you've ever shot a Glock,  
5 it's got a trigger safety, I guess you call it. So when  
6 you shoot it, you only -- you don't have to do a full  
7 trigger pull, you can let it out just partway. And you  
8 can hear and feel the trigger safety click. And that's  
9 how you know that you've fired a round.

10           So while I'm waiting for it to click, the  
11 safety, it never does. I'm, like, oh, that's why it  
12 didn't recoil, I never shot it. It never went off.  
13 They always tell you in training like be surprised when  
14 the gun goes off. Man, I was surprised. I'm, like, I  
15 thought my gun went off and it didn't.

16           So we were -- they are set at different  
17 pounds of pressure for the trigger. And to keep a  
18 stable shooting platform, you just want to press the  
19 trigger.

20           And you're taught all these times that you go  
21 out to the range, you just press the trigger. Don't  
22 jerk the trigger. Don't pull the trigger. Be surprised  
23 when the gun goes off.

24           So that's all I'm thinking, a side picture.  
25 Squeeze the trigger. Press the trigger. Then the boom.

1 Like I said, it's not recoiling at all. I'm, like, wow,  
2 I feel strong today.

3 So, yes, the long answer to your question is  
4 yes. Within a split second of my gun probably going  
5 off, he fires a round. Within me, within me firing a  
6 round, it's probably a split second sooner that Officer  
7 Clark fires his round.

8 Q So did you -- I thought I understood your  
9 testimony to be that you pulled your trigger and  
10 Officer Clark pulled the trigger on his AR, but you did  
11 not actually fire a round and he did?

12 Am I misunderstanding that?

13 A No. That's exactly right.

14 Q All right.

15 A I just remember -- you asked how, how close  
16 I was to my firearm going off. And I was surprised  
17 that my firearm didn't recoil because I had thought  
18 that I pressed my trigger all of the way when the noise  
19 went off.

20 Q Okay.

21 A I didn't fire originally.

22 Q But you had intended to at the same time  
23 Officer Clark reached the same decision; correct?

24 A Yes, sir.

25 Q Okay. So that occurs.

1                   And is your recollection or remembrance that  
2 Officer Clark fired one round at that point?

3           A        I don't know how many he fired.

4           Q        Okay. So what occurred next?

5                   What did you observe next as soon as that  
6 occurred?

7           A        So I think to myself, I'm like when I saw  
8 the glass in the window fall out from the door, I don't  
9 know if Mr. Perkins is hit or not, but I'm thinking in  
10 my head that hopefully that round hit him and  
11 incapacitated him.

12                   And he kind of stumbles forward to where I  
13 lose sight of him because of the tree for just a split  
14 second. And I couldn't tell if he had slipped and  
15 stumbled and was just regaining his balance or if he'd  
16 been shot and actually went down.

17                   Then he pops out on the east side of the  
18 tree, and I vividly remember him standing there facing  
19 eastbound. And then he does what I would liken to like  
20 an about-face.

21                   Do you want me to show?

22           Q        Sure.

23           A        So he's facing eastbound. I don't know  
24 which way he turns, but he turns back westbound. And  
25 so the tree is here in front of him. And he starts to

1 bend over at the waist again down where the gun is at  
2 (indicating).

3 And I remember thinking that -- the only  
4 thing I can see with him being perpendicular to me, that  
5 is a good target, essentially the biggest portion of the  
6 body that I can see is just his hip. And so I start  
7 firing my rounds at his hip. And I fire rounds until I  
8 no longer see him and then I stop.

9 At that point I can't tell where he went. I  
10 don't know if -- I was pretty confident he didn't get  
11 back in the van. I didn't know if I was blocked because  
12 of the tree or if he had gone in front of the van.  
13 Because our line of sight between the open door and the  
14 tree, it's just a few feet because of the angle that  
15 we're at.

16 Q Do you recall if he was saying anything  
17 during the period of time when you and Officer Clark  
18 were firing shots or during the lull, I guess, there  
19 was when he was behind the tree?

20 A I remember him saying -- if I can back up.  
21 I remember him saying, now that you ask,  
22 something to the effect of, "You are going to have to  
23 fucking kill me" when he's standing before Officer Clark  
24 fires his rifle.

25 And I remember him saying -- like I said, I

1 can't remember the exact wording, but it's something to  
2 the effect of that.

3 Q Okay. When you fired your pistol, when he  
4 emerged from behind the tree and reached apparently  
5 towards this gun, do you remember how many shots you  
6 fired?

7 A I fired six shots.

8 Q Okay. And do you recall whether you  
9 remember hearing Officer Clark firing for a second time  
10 or not?

11 A I, I could only hear my gun going off. I  
12 don't know if he did or not.

13 Q Okay. So at this point I think it's your  
14 testimony that Mr. Perkins is not visible to you and  
15 you are not sure where he is exactly.

16 So what happened next?

17 A So at this time I vividly remember looking  
18 over and seeing a couple more officers at the driver's  
19 side back bumper of Officer Clark's car.

20 And I just remember saying -- I looked, but  
21 I'm still covering the passenger side. And I just  
22 remember verbalizing to them, "I can't see him."

23 And somebody, I don't know who, somebody is  
24 voicing to Mr. Perkins, "Hey, Don, are you hurt?" And  
25 there's no response. And, "Hey, Don, are you hurt?"

1           And, like, I can kind of hear what the person  
2 is saying, but my ears are ringing. People are trying  
3 to make conversation, but I don't recall personally ever  
4 hearing a response.

5           But at some point I'm alerted that he's  
6 crawled out into the street. So he's crawled out on to  
7 SE 22nd, roughly even with the front of his van. And  
8 there's a couple of officers that are going to be --  
9 we're going to form a custody team and go take him into  
10 custody.

11           So Officer Clark and I are told that we'll be  
12 lethal cover. And I remember looking and seeing a  
13 couple of officers that had gloves on.

14           Q       When you say "gloves," what do you mean?

15           A       Like blue protective rubber gloves.

16           Q       What is the purpose of those for police  
17 officers?

18           A       You would put them on to keep everybody  
19 else's fluids, or basically anybody else, anything that  
20 they have on them from getting on you.

21           Q       Including blood?

22           A       Yes.

23           Q       Please continue.

24           A       I remember, before we started to approach, I  
25 just remember telling the other officers that I still

1       couldn't see his hands. "I couldn't see Don's hands."

2                       And the fact that I lost visual of Don for a  
3       little bit of time, that was concerning to me. So I  
4       just wanted to let everybody know that I couldn't see  
5       his hands.

6                       The other officers that were on the driver's  
7       side assured me that he had come out with nothing in his  
8       hands. So we made our approach. And as the officers  
9       each grabbed an arm, I turned my focus to the van. We  
10      still don't know for sure that there's anybody else in  
11      the van at this point.

12                      So as the other officers get Mr. Perkins into  
13      custody, I tell Officer Clark, "Hey, we should go check  
14      the van and see if there's anybody else in the van."

15                      So we walk over to the van. It's not  
16      feasible to check the van with a rifle. So I check the  
17      van with my handgun and make sure there's nobody else in  
18      the van. There's not. It's empty.

19                      And as I turn to tell Officer Clark that the  
20      van is empty, he shouts that, "There's a gun right  
21      here." And by this time, my ears had stopped ringing.  
22      So I'm thinking, like, to myself, I'm, like, why are you  
23      shouting at me? I'm standing within five, six feet, why  
24      are you shouting at me?

25                      And then he actually -- like when my gun went



1 off, it partially blew out his eardrum or something like  
2 that, so that's why he was shouting. He wasn't thinking  
3 that I couldn't hear him, but he's telling me that there  
4 was a gun here. I walked over. And right where Mr.  
5 Perkins was reaching, there was a black handgun there.

6 Q Okay. I'm going to show you this, which  
7 we've seen here several times.

8 Does this look to you like the gun that you  
9 saw at the scene?

10 A Yes, sir.

11 Q Okay. At the time you observed it lying on  
12 the grass there outside of the van, did it appear to  
13 you to be a real firearm?

14 A Yes, sir.

15 Q Okay. Did you learn later that only after  
16 the fact that it's, in fact, just a very realistic BB  
17 gun replica?

18 A Yeah. I learned after my Internal Affairs,  
19 so, like, two days later.

20 Q But again, sitting there to you, an  
21 experienced street cop, even standing right there, it  
22 looked exactly like a real firearm?

23 A Yes, sir.

24 Q Okay. So after you observed the gun sitting  
25 outside the van, what did you do next?



1 applied a tourniquet to Mr. Perkins' arm. But you were  
2 disengaged from that process?

3 A Yeah. I think that -- I think that that was  
4 going on while Officer Clark and I cleared the van. I  
5 think that that's what had taken place. I didn't get  
6 right up next to where -- I left plenty of room for AMR  
7 to come and give him medical attention.

8 Q Did you hear him say anything, "he" being  
9 Mr. Perkins post-shooting?

10 A You know, I think that he said something to  
11 the effect of that maybe he was sorry, and that he'd  
12 been shot. That's really all I recall. I kind of  
13 think that he had said that, yeah.

14 Q And you mentioned some hearing issues that  
15 you had.

16 Have those resolved since?

17 A Yeah. I didn't -- they were just ringing  
18 from the initial time. I didn't have to go to the  
19 doctor or anything like that.

20 Q All right.

21 MR. DAVIDSON: I think those are most of the  
22 questions that I wanted to ask Officer Walsh.

23 Does anyone have any additional questions  
24 they would like to ask Officer Walsh?

25 A GRAND JUROR: I have a clarifying question

1 for you.

2 Was Don warned that if he reached for that  
3 gun, that he would be shot?

4 THE WITNESS: I don't know specifically what  
5 the command was. I think that that's what I said,  
6 because that's what I would have typically said. But I  
7 don't remember specifically what I said, if I  
8 verbalized it, but that's what I would have said.

9 A GRAND JUROR: That's pretty standard as  
10 the phrasing to say?

11 THE WITNESS: Yeah.

12 A GRAND JUROR: You recall yourself being  
13 the one who maybe --

14 THE WITNESS: I can't tell you if I was the  
15 only one, no. It could have been Officer Clark and  
16 myself. It's basically just a warning to let the  
17 person know that, hey, don't do this action or else  
18 this could possibly happen.

19 So the action that was there was reaching for  
20 the gun or picking up the gun. So you say to reach for  
21 the gun, I don't know if I said don't pick up the gun or  
22 you could be shot or don't reach for the gun or you  
23 could be shot.

24 I can't remember exactly, but it was some  
25 sort of warning to not do this action or else this is

1 what could happen, and that action would have been that.

2 A GRAND JUROR: Okay. Perfect. Thank you.

3 A GRAND JUROR: So how would you describe  
4 Mr. Perkins' mannerisms and attitude toward you guys  
5 prior to the shooting in between when you had opened  
6 the van and when you reached for the gun?

7 Like was he agitated? Was he, like, grandma  
8 coming to greet you? Like, where would you put him on  
9 the behavioral scale?

10 THE WITNESS: He was extremely agitated. He  
11 never gave us the indication that he was going to be  
12 compliant with any of the requests that were made of  
13 him. And he was given plenty of opportunity to comply  
14 with the relatively easy come back and talk to us.  
15 We'll figure out what's going on.

16 Besides him taking maybe a step or two toward  
17 us at the beginning, but I didn't, I didn't necessarily  
18 get the feeling that he was walking back to us.

19 I got the feeling that maybe he was trying to  
20 provoke some -- just the manner in which he took those  
21 steps, I think he was essentially trying to provoke some  
22 sort of action. And that's why I immediately thought if  
23 he gets to that point, can I run up there safely and put  
24 hands on him and get into him custody.

25 A GRAND JUROR: And then one other question.

1 THE WITNESS: Sure.

2 A GRAND JUROR: As far as his motions, his  
3 movements, did he seem intoxicated? Did he seem to be  
4 in control of his motions?

5 THE WITNESS: Yeah. The only motion that I  
6 would have said was a stumble after the first round was  
7 fired off. And I don't know if that was because he was  
8 shot or because it was slick in the median there -- or  
9 the easement, I guess it is. But every other action  
10 seemed to be he was fully in control.

11 I don't recall him having slurred speech or  
12 anything like that. And he wasn't incapacitated enough  
13 to get out of the van and stand up and yell at us in and  
14 out of the van, so, no, I don't think that he was.

15 A GRAND JUROR: So you would interpret  
16 his -- based on that and based on everything else, the  
17 experience with the circumstance, you would say that  
18 reaching for the gun was a deliberate motion?

19 THE WITNESS: Absolutely.

20 A GRAND JUROR: Thank you.

21 THE WITNESS: Yes, sir.

22 MR. DAVIDSON: Anybody else with additional  
23 questions for Officer Walsh? No.

24 Okay. Officer Walsh, that's it.

25 (Proceedings concluded.)

1 State of Oregon            )  
                                  )  
2 County of Multnomah     )

3

4           I, KAREN M. EICHHORN, C.S.R., C.R.R., a  
5 Certified Shorthand Reporter for the State of Oregon,  
6 do hereby certify that I reported in stenotype the  
7 proceedings had upon the hearing of this case,  
8 previously captioned herein; that I thereafter had  
9 reduced my stenotype notes by computer-aided  
10 transcription; and that the foregoing transcript,  
11 consisting of Pages 1 to 326, all inclusive,  
12 constitutes a full, true, and accurate record of the  
13 proceedings had upon the hearing of said cause to the  
14 best of my knowledge and ability. A transcript without  
15 an original signature, a conformed signature, or  
16 digitally signed is not certified.

17                               Witness my hand and CSR seal, this  
18 13th day of April 2017, Portland, Oregon.

19

20

21 /s/

22

23 \_\_\_\_\_  
24 Karen M. Eichhorn, C.S.R., C.R.R.  
25 Certified Shorthand Reporter  
Certificate No. 05-0395  
My Certificate expires: 6-30-18