

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF MULTNOMAH

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5
6 **GRAND JURY No. 1 PROCEEDINGS**

7 **Case No. 28**

8 Conducted by:

9 Don Rees, Chief Deputy District Attorney

10 Todd Jackson, Deputy District Attorney

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13 May 9, 2018

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15 DA Case No. 2380019

16 Re: PPB Case No. 18-114856

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21 Katie Bradford, CSR 90-0148
22 Court Reporter
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25 Proceedings recorded on wma audio recording;
transcript provided by Certified Shorthand Reporter.

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1 (Volume 4, Wednesday, May 9, 2018, 10:31 a.m.)

2 P R O C E E D I N G S

3 (Whereupon, the following proceedings were
4 held in Grand Jury No. 1:)

5 MR. REES: All right. We're back on the
6 record DA 2380019, Grand Jury No. 1, Case No. 28. And
7 after we broke yesterday I believe our alternate
8 foreperson had a question about distance and
9 measurement at the shooting scene, so we're going to
10 recall Detective Kammerer to answer that question.

11 (Pause in proceedings, 10:32 a.m.)

12 MR. REES: Swear him in again.

13 ERIK KAMMERER

14 Was thereupon called as a witness; and, having been
15 first duly sworn, was examined and testified as follows:

16 EXAMINATION

17 BY MR. REES:

18 Q Okay. Just for the record, Detective, if
19 you could state your name again.

20 A Erik, E-r-i-k; Kammerer, K-a-m-m-e-r-e-r.

21 Q All right. And, Detective, one of the
22 questions from the grand jury yesterday was as to the
23 dimensions of the room at Cityteam Ministries at
24 526 Southeast Grand Avenue.

25 And I understand that you have the -- the

1 blueprint for that location and you have the -- the
2 dimensions for the location; is that correct?

3 A I do.

4 Q Okay. And could you go ahead, please, and
5 state for the record the dimensions of the room?

6 A It's roughly 50 feet wide by about 77 feet
7 deep for that portion of the room.

8 Q All right. And is that the room -- and
9 this, of course, behind you is not to scale, but is
10 that the -- the room depicted on the -- on the
11 diagram?

12 A Yes. So it'd be about 50 feet wide here and
13 then about 77 feet to the back wall here.

14 MR. REES: All right. Are there any
15 questions about that?

16 A GRAND JUROR: Why is it not to scale?

17 THE WITNESS: The diagram?

18 The diagrams aren't done to scale because it
19 quickly becomes exceedingly difficult to get to exact
20 scale, so they're done to a -- a rough scale.

21 A GRAND JUROR: Okay. So it's more of a
22 square -- not a square room, but it's, like, wider
23 than -- than it appears on that?

24 THE WITNESS: Yeah, it's -- it's
25 rectangular.

1 A GRAND JUROR: 55 -- or 50 by 77.

2 BY MR. REES:

3 Q All right. And then there's another
4 question about measurements and, as I understand it,
5 you used two known, fixed positions and then measured
6 using the -- the Leica scan of the room to -- to get
7 a -- a fixed distance; is that correct?

8 A That's correct, yes.

9 Q All right. And so could you explain to us
10 what you used as your positions for the measurement?

11 A So this pillar right here --

12 Q And, Detective, if I could have you stand to
13 the side of the --

14 A Sorry.

15 Q -- board and -- so you don't block
16 everybody. Okay.

17 A So this -- this pillar right here, it's most
18 likely a load-bearing pillar. So it's fixed, it
19 doesn't go anywhere. It stays there as long as the
20 building is upright.

21 So we measured off of that to the location
22 of this table, which is -- from the east side of this
23 pillar to the west side of this table is roughly
24 30 feet. And then, again, from the east side of this
25 pillar to the location where Mr. Elifritz was on the

1 ground to roughly his belt line was 14 feet.

2 MR. REES: Sir, did you have any additional
3 questions about that or --

4 A GRAND JUROR: Yeah. And there's really no
5 way to determine the actual location of the -- the
6 deceased when the first shots were fired, right?

7 THE WITNESS: No.

8 A GRAND JUROR: Okay.

9 THE WITNESS: Between 30 feet and 14 feet.

10 A GRAND JUROR: So he traveled roughly 16
11 feet from the time when he's coming around that table
12 to the point he dropped?

13 THE WITNESS: That's correct.

14 MR. REES: All right. Any other questions
15 for Detective Kammerer?

16 A GRAND JUROR: I -- I've got one.

17 MR. REES: Okay.

18 A GRAND JUROR: Just -- this is your
19 experience on a situation like this, you know,
20 obviously, this guy's coming at you pretty fast. Out
21 of the 19 shots fired, there were 9 hits -- 17 shots
22 fired, sorry.

23 THE WITNESS: Mm-hmm.

24 A GRAND JUROR: There was nine hits. So,
25 you know, fortunately, in my mind, there was 17 shots

1 fired because, I mean, there was a number of those
2 that were no hits. So would that be typical? I mean,
3 this is, obviously, not a very typical situation, but
4 would that seem reasonable that out of the 17 shots
5 fired --

6 THE WITNESS: Yeah. I mean, I -- in my
7 experience -- I can speak to my experience. In a
8 stressful environment, you don't have a lot of fine
9 motor control.

10 I know when I've been through scenarios
11 where it quickly becomes very chaotic and you have to
12 address a threat, you know, you lose your fine motor
13 skills. So unless it's something you constantly train
14 on, it could be an issue for you to actually, you
15 know, acquire a target and strike it with a bullet.

16 It's hard enough to do it on a consistent
17 basis when there's no stress involved. So when you
18 inject the stress, then it becomes even more
19 difficult. But that's -- that's my experience.

20 A GRAND JUROR: Sure.

21 BY MR. JACKSON:

22 Q And, Detective, is that in part why
23 consideration of the backdrop or what is behind your
24 target becomes so important, in case there's a miss or
25 a pass through?

1 A Absolutely.

2 MR. REES: All right. I see no further
3 questions. We will excuse Detective Kammerer. Thank
4 you.

5 (Pause in proceedings, 10:39 a.m.)

6 THE WITNESS: Good morning.

7 MR. REES: Could raise your right hand,
8 please.

9 JOSHUA HOWERY

10 Was thereupon called as a witness; and, having been
11 first duly sworn, was examined and testified as follows:

12 EXAMINATION

13 BY MR. REES:

14 Q And I'm going to grab a cup of water, but
15 I'll ask you to state and spell your name.

16 A All right. My name is Joshua Howery,
17 J-o-s-h-u-a, H-o-w-e-r-y.

18 A GRAND JUROR: Can you say that again?

19 H-o-w --

20 THE WITNESS: E-r-y.

21 A GRAND JUROR: E-r-y.

22 BY MR. REES:

23 Q And what's your occupation?

24 A I'm a police officer with the Portland
25 Police Bureau. I am currently assigned to our

1 Training Division full time. I've been there since
2 2012. I am the lead control tactics instructor.

3 Q How long have you been a police officer?

4 A I've been a police officer for 17-and-a-half
5 years.

6 Q All right. What's your educational
7 background?

8 A I have a bachelor of arts from George Fox
9 University.

10 Q And as a police officer, prior to your
11 current assignment, did you have various assignments
12 in the city?

13 A Yes. I worked regular patrol shift on night
14 shift, afternoon shift and day shift. I was assigned
15 to the prostitution coordination detail for a certain
16 amount of time.

17 I was also assigned to detectives for
18 juvenile sex trafficking, the Human Trafficking
19 Division. And then I'm assigned to SERT, our Special
20 Emergency Reaction Team.

21 Q What do you do in your current assignment?

22 A With my -- at the Training Division, my
23 current assignment, what I'm supposed to -- what --
24 what I do is I teach the advanced academy, which is an
25 academy that we bring all of our new recruits through.

1 It's about ten weeks right now.

2 After they've done the basic academy in
3 Salem they do some time on the street and then we
4 bring them back for another ten-week academy. I teach
5 the control tactics discipline there, which has to
6 do -- it's formally called defensive tactics.

7 And so all of our hand-to-hand control,
8 takedowns, handcuffing and then up to and including
9 lethal force.

10 Q All right. And is the training a
11 combination of classroom instruction and
12 scenario-based, hands-on type --

13 A It is.

14 Q -- activities?

15 A It is. I teach also, like, our -- several
16 blocks of lecture for use of force because we
17 integrate use of force, the policy, the law and then
18 -- then with the physical tactics.

19 Q All right. And at what stage in their
20 career are police officers run through this -- this
21 program that you teach?

22 A The advanced academy, the officers are in
23 the first 18 months of their careers. So their first
24 18 months, they're on probation. They're required to
25 complete the basic academy in Salem and the advanced

1 academy that we run them through.

2 Q Now, these topics are also covered in the
3 initial basic academy in Salem as well, right?

4 A That's correct.

5 Q Before we get into some of the -- the
6 questions I think the grand jurors may have about use
7 of force and use of deadly force, are you familiar
8 with the concept of duty to act?

9 A Yes.

10 Q What -- what is that?

11 A The -- the concept would be that, hey, the
12 police are here to help people, right? We have the --
13 in life, in society, there's confrontations that need
14 to be resolved.

15 Part of what - why we exist is because
16 people are not always able to resolve those
17 confrontations themselves. Some -- some of those
18 situations are dangerous. And so as part of our jobs,
19 it's -- that's part of our job, is to actually stand
20 between some people and protect other people.

21 Q So that's the duty to act, the legal duty
22 that police officers have to move towards danger
23 instead of away from danger --

24 A Yes.

25 Q -- is that right?

1 A That's correct.

2 Q All right. Does the Portland Police Bureau
3 have a component in its training regarding the value
4 and the sanctity of human life?

5 A Yes.

6 Q What -- what is the -- what's the core
7 principle?

8 A The core principle is that all -- all life
9 is valuable. That we have due regard for -- for life.
10 And that, you know, whenever possible, our job is to
11 protect life. That's why we are there.

12 Q And what about a duty to avoid creating a
13 situation or precipitating a situation that would lead
14 unnecessarily to the -- the loss of life?

15 A Right. Our -- in our policy, it's -- it's
16 actually expressed in the policy that a member should
17 not precipitate a use of force by placing themselves
18 in jeopardy, using bad tactics or anything outside of
19 the training, right, that would cause them to use --
20 use force when they don't have to.

21 Q I -- I know in some departments nationwide
22 they've had situations where officers have reached
23 into vehicles, for example, and the driver speeds
24 away, officers arm is caught inside the window, and
25 they use deadly force. And so some departments have

1 taught officers don't reach into cars.

2 Or officers have been killed chasing
3 suspects, coming around a corner and being shot by a
4 suspect. So some departments have said don't -- don't
5 chase people around a corner because you -- you might
6 get killed. Are those -- are those types of scenarios
7 or situations that Portland is addressing?

8 A Correct. We would -- our training would be
9 consistent with that. We would -- we -- our goal
10 would be to give officers tactics to be able to still
11 accomplish a goal, still, in some cases, catch a
12 suspect who's running away, or, you know, keep -- keep
13 a person there at a traffic stop, whatever it would
14 be, without placing themselves in extra danger.

15 We understand that some of our job is
16 dangerous; however, you know, if we can do things a
17 little bit better to keep ourselves safe to do that,
18 we shouldn't place ourselves in danger and that's in a
19 place that we would have to then use force to get
20 ourselves out of that situation.

21 Q As part of the training that you provide, is
22 there any discussion about trying to -- the term being
23 used now is deescalation, like --

24 A Mm-hmm.

25 Q -- by -- but, generally speaking, you know,

1 trying to calm people down as opposed to kind of
2 amping them up?

3 A Yes. You know, and that's one of the things
4 that goes through a lot of our different training, not
5 just defensive or control tactics, but it's also
6 control tactics, all of our CIT training. You know,
7 we -- we're -- we're integrating that, you know?

8 It's like, hey, if we can do some things, if
9 we can make some decisions early on when we have time
10 and then use some of those tactics, right, a
11 deliberate attempt, if you will, to try to reduce the
12 amount of force used or the necessity of force used,
13 you should do that.

14 Now, on the other hand, we also teach
15 officers that, hey, you do that when you have time to
16 do that. In the middle of the confrontation when
17 things are rapidly evolving and they are happening to
18 you right now, you may not have time to do that.

19 There -- there is a time that you need to
20 act, both to protect yourself and to protect other
21 people. But, again, if we have the time and we can
22 try to, you know -- sometimes those are words,
23 sometimes that's position. If we can use some of
24 these things to calm the situation down, then that's
25 what you should do.

1 Q And are you -- are you familiar with the
2 U.S. Supreme Court case of Graham v. Connor that talks
3 about the reality, recognized by the U.S. Supreme
4 Court, that police officers often make split-second
5 decisions about the amount of force necessary in a
6 particular situation?

7 A Yes.

8 Q And so then in terms of the use of deadly
9 force --

10 A Okay.

11 Q -- what -- what are officers trained in
12 terms of when deadly force may be reasonably used?

13 A Officers are trained, per our policy, that
14 they may use deadly force to protect themselves from
15 what they reasonably believe -- that's the legal
16 standard, reasonable belief -- reasonably believe to
17 be an immediate threat of death or serious physical
18 injury to themselves or another person.

19 Q And is that concept or policy actually more
20 restrictive than what the U.S. Supreme Court has
21 recognized as justified use of deadly force?

22 A Yes.

23 Q And why -- why has the Bureau set a standard
24 that is actually short of the -- the absolute legal
25 limit?

1 A I believe that the -- the Bureau set that
2 standard so that -- we didn't have any -- we don't end
3 up with the deadly force situations that are right on
4 the edge of, well, that could be legal, that could not
5 be legal, but that we want to stay well within the
6 legal area.

7 And so the -- that -- if an officer is
8 trained to the policy, to a certain way, and they are
9 following the policy a certain way, then there's not
10 even any question whether their actions were legal or
11 not, it would be a matter of whether it was in policy
12 or not.

13 Q And you could have an officer go outside of
14 policy who would nonetheless be acting legally?

15 A Yes, absolutely.

16 Q Okay. You teach the policy in the Training
17 Division?

18 A Yes.

19 Q Okay. Does the training cover, the training
20 that you do, how to deal with a person armed with a --
21 with a knife?

22 A Yes, it -- it covers some of that, yes.

23 Q And, well, so what do you teach the officers
24 about that? What's the -- what's the danger posed by
25 a knife?

1 A The danger posed by a knife is -- can be
2 real and can be a deadly -- deadly threat. You know,
3 distance plays a part in knives, right? If a person
4 is really close to you with a knife they are, you
5 know, that -- that threat is right there in front of
6 you. It's very, very immediate.

7 The further you get away from a person with
8 a knife, we start to get some options there, right?
9 And so maybe we're able to have some stand-off
10 distance and start to employ -- it gives us more time
11 and so we can employ different options there.

12 However, just based on how humans are able
13 to physically move, a distance can be covered rather
14 quickly. And so while some distance gives us some
15 options, more distance would give us better options.

16 Q Okay. Would -- would an officer ever be
17 trained to go, you know, hand to hand with a person
18 armed with a knife? I mean, we've seen in the movies,
19 you know, Steven Seagal or James Bond just grabs
20 somebody and twists and then they drop the knife. But
21 do you teach that? Is that real life?

22 A No, that's -- that's based on fiction.
23 Those are -- those are very highly choreographed moves
24 in a movie. Real life, things happen very violently,
25 they happen very quickly. Knives are very, very

1 dangerous. They're designed to cut. They cut through
2 flesh very easily.

3 I believe we had an incident a year ago
4 where three people on the MAX were stabbed and two of
5 them died and it happened in a split second. They
6 were all three stabbed in the neck and two of them
7 died there and the other person was safe, but time was
8 of the essence there as well. And, you know, that
9 attack happened with a very small knife and it
10 happened very, very quickly.

11 Q Are you familiar with a concept called
12 action, reaction?

13 A Yes.

14 Q And do you teach that in the Training
15 Division?

16 A I do.

17 Q Well, what is that?

18 A The way we define the action-reaction
19 principle is that in a contest of time the initiator
20 of an action has an advantage over a person who has to
21 react. Do you want me to go into how -- how I teach
22 that?

23 Q Yeah.

24 A Explain it a little bit?

25 Q Yeah, if you could.

1 A Okay. So, again, it -- it's a matter of
2 time and it's a matter of human performance. Just
3 physiologically, what can a human accomplish when they
4 actually see something happen and they have to react
5 to it? And some -- sometimes the example we use is a
6 stoplight, right?

7 If you're driving down the road, down a
8 highway and you come toward a stoplight and you see
9 that green light turn to yellow, right, legally you're
10 supposed to stop for a yellow light, right? We know
11 that.

12 There's some time lag built in by the
13 engineers of -- that -- that have put that streetlight
14 in for how long that yellow light is going to last
15 before it turns red. And there's a reason that that
16 yellow light exists.

17 If it just turned red and you were expected
18 to stop, it takes some time for the mind to, one,
19 process that something has changed. And then it takes
20 more time for the mind to tell the body what to do.
21 In this case, take your foot off of the accelerator
22 and put it on the brake.

23 And, typically, they -- they give about
24 two-and-a-half or more seconds for that to happen,
25 right? Your mind, as you see something change, it

1 just takes at least a quarter second to be able to
2 recognize that that happened.

3 And then the -- the motion to tell -- tell
4 the body to make a decision what to do can take up to
5 a second before the foot actually even goes to the
6 brake. It can take up to one-and-a-half seconds just
7 for you to start to put your foot on the break when
8 you see that the light has changed.

9 Conversely, if you're -- if you're sitting
10 at a red light and the -- and you're waiting for the
11 light to turn green, you don't go as soon as the light
12 turns green. Even if you look at the side lights and
13 you're waiting for it to turn red and you're
14 anticipating that your light is going to turn green,
15 you still wait for that light to turn green and when
16 you do, there's still -- there's some time before
17 you're able to actually react to that.

18 And the same things with humans. If -- the
19 person who is making the first action, they don't have
20 to react to anything. They're the person that makes
21 the action. They start everything in motion. The
22 other person, in many cases the police officers,
23 they're waiting for the -- the subject to make the
24 action and then they have to react to it.

25 And it takes some amount of time. Sometimes

1 thinking, hey, I know that I'm at a disadvantage based
2 on this principle, so what are some things I can do to
3 try to work that advantage back in my favor, right?
4 And in some cases get more distance, right? That'll
5 give me more time to react.

6 In some cases, putting something between me
7 and the subject and so then that -- again, maybe they
8 can't see as well, maybe they have -- they would have
9 obstacles to get around before they were to be able to
10 get to me. Those type of things to, again, try to get
11 that advantage back.

12 Q And so how -- how does it relate to a person
13 who's armed with a -- with a weapon?

14 A Mm-hmm.

15 Q And who -- who may or may not be about to
16 use that weapon against a police officer?

17 A In some cases, I would advise an officer to
18 draw their own weapon and have it ready to use, versus
19 having to make a decision and then take the time to
20 draw weapons, right, 'cause those -- those actions
21 also take time.

22 And so, again, we -- if we can, if we have
23 time in the beginning, we make plans. If we don't, we
24 see that there's a potential threat and there's no way
25 to get further away, I may say, "Hey, you know, go

1 ahead. Yes, please be ready, you know, with your
2 tools, your weapons, whatever you need to -- to do to
3 make sure that you and other people are safe."

4 Q So, again, I think the -- the Hollywood
5 movie depiction is, you know, that the good guy
6 doesn't pull their weapon until maybe the weapon's
7 been pointed at them or they've even been shot at. Is
8 that -- is that realistic?

9 A No. Because, again, if the -- if the
10 weapon's already pointed at them and they have to
11 react to that, if they have to wait for a shot to be
12 fired at them, those are -- those are actions that --
13 to process that in the mind, it would take time. The
14 bullet's already there.

15 The bullet is already at its target by then.
16 And then the officer may not even have a chance to
17 respond to that if they wait for a bullet to be fired.
18 Same thing with the -- somebody pointing a gun at you
19 already, that person has a decided advantage if you're
20 trying to react to what they're going to do next.

21 Q Is an officer required to be shot or stabbed
22 before they use deadly force, given those realities
23 and given the policy and the law?

24 A No. Because if that was the requirement,
25 the -- the officer -- in -- in some cases, the officer

1 would already be dead. They would not be -- or have
2 received a fatal wound. They would not be able to use
3 any amount of force to actually protect themselves or
4 anybody else. It would have -- the damage would have
5 already been done.

6 Q You -- you mention that distance is a factor
7 in confronting someone armed with a knife?

8 A Yes.

9 Q Obviously, because the person has to be
10 close to stab someone?

11 A Correct.

12 Q Unlike a gun that can be used to cross a --
13 a further distance, right?

14 A That's right.

15 Q So is there a set distance that you teach
16 that's safe or not safe? How does that -- how does
17 that work?

18 A No, we don't teach a set distance. We have
19 not taught a set -- a set distance since before I came
20 to the Training Division.

21 What we have been teaching is a reactionary
22 gap. And the idea that, hey, when you have time to
23 plan, you need to plan in a reactionary gap before you
24 just go charging in to deal with whoever you're
25 dealing with, especially with a knife, with a threat.

1 And the way we -- we look at reactionary
2 gap, and I've already explained it a little bit, is
3 distance equals time equals options. And so if I can,
4 in general, get more distance, it will give me more
5 time to react. It will give me more time to come up
6 with a plan and get options, right?

7 Now, if something changes and they have to
8 react, all the planning in the world may not help that
9 and they may have to actually start to act before the
10 plan's fully in place. But, in general, we -- we try
11 to get more distance if we can.

12 Q Okay. So given that there's no set
13 distance, how -- how's an officer supposed to judge
14 the point where they'd be justified in using deadly
15 force or not against someone armed with a knife?

16 A Well, and, again, that can change based on
17 how ready they are, right? If their gun's in their
18 holster and their hands are in their pockets, that's
19 going to, you know -- that person's going to be a
20 threat a little bit further away if they have to
21 react.

22 You know, we -- there's -- there's been
23 studies done about how far a person can move in a set
24 amount of time, and then there's been studies done how
25 fast it takes an officer to draw their weapon and

1 fire. But, on the other hand, if the officer already
2 has their weapon out, then that -- that distance may
3 be shorter for them to be able to react.

4 Q Okay. So it just depends on a lot of
5 different factors?

6 A Everything. Yeah, it depends on the -- the
7 entire environment and the situation at hand.

8 Q Now, of course, you weren't part of this
9 response on April 7th, 2018, that led to officer use
10 of deadly force, correct?

11 A That's correct.

12 Q And you're here testifying as an expert
13 witness?

14 A Yes.

15 Q You -- you have an understanding that in
16 this case, generally, the officers were confronting a
17 suspect armed with a knife who was known to have
18 committed a carjacking and had held someone at knife
19 point later. And there's a crowd of people in the
20 room and there's one primary entrance and -- and exit.

21 Is that a scenario, situation that you
22 cover? Probably not specifically, but how -- how
23 would address that in training to then try to deal
24 with this unfolding situation?

25 A Okay. Lots of factors going into this

1 situation, right? Large room full of people; person
2 with the knife committed the crime, carjacking;
3 actually threatened somebody else with a knife
4 earlier. All those things play into what do the
5 officers have to do? What are the officers trying to
6 accomplish there, right?

7 They go in -- if they're going into this
8 room, right, it -- does it make sense, is it
9 reasonable for them to go into the room and confront
10 this person? Yes, because if there's people in that
11 room, they -- there's a duty for them to protect those
12 people, too, right?

13 And so they go into the room to try to
14 keep -- get people out of the way, try to keep --
15 maybe try to get people to start filtering outside so
16 they're not in danger of this person who's already
17 committed a crime and holding everybody back with a
18 knife, which -- in the manner it's used as a deadly
19 weapon, definitely a dangerous weapon.

20 The officers go in, they have to do
21 something. They can't just stay outside and let
22 everybody not be able to get out, if that makes any
23 sense.

24 Q Mm-hmm. And so what would be the -- what --
25 what would be the -- the means for training of

1 addressing the -- the person with the knife?

2 A Well, so, the training would be to try to
3 isolate that person in a part of the room where, one,
4 they couldn't hurt anybody, right? They would -- the
5 officers would be making plans at a very rapid rate in
6 their minds, of how are we going to keep this person
7 away from the other people and if they do -- and start
8 to come up with other plans.

9 What happens if this person goes towards a
10 person with a knife? What happens if they come toward
11 us with a knife, right? We would start thinking about
12 less lethal munitions, right?

13 Trying to keep the person at bay with a
14 less-lethal tool such as a 40 millimeter sponge round.
15 Because, again, that still gives them distance without
16 having to get so close where using some of the other
17 tools such as a Taser, which they have to be a lot
18 closer for, right?

19 Because, again, if they close that distance
20 then that person becomes a higher amount of threat,
21 right? The officers, as they go into the room, they
22 want to keep as much distance as they can, but they
23 still have to get into that room to actually
24 accomplish what they're trying to accomplish.

25 So, you know, they're using some of these

1 munitions, some of these other tools to keep this
2 person at a further distance so they maybe don't have
3 to use force and they can start to get their plan in
4 place to get people out of that -- out of that room.

5 So, again, in some cases trying a different
6 tool, right, which may not be as effective, may not be
7 effective at all as well. But also that causes the
8 officers to have to close distance, may actually raise
9 the amount of threat, which may lead to them having to
10 use more force.

11 We're trying to keep that from happening
12 without, you know, in -- in this case, unfortunately,
13 there was a higher level of force used, but not
14 because the officers decided to close the distance
15 and -- and raise that threat. That was based on
16 something else.

17 Q Again, in the movies we've all seen this,
18 like, 100 times.

19 A Yeah.

20 Q You know, police would shoot somebody in the
21 hand and foot or shoot a gun or a knife out of
22 somebody's hand.

23 A Mm-hmm.

24 Q Is that realistic? Is that trained?

25 A No, we don't train that. When we talk about

1 deadly force, using deadly force is to stop an
2 immediate threat of death or serious -- serious
3 physical injury. The -- the main part of using deadly
4 force is that you need to make a hit to use deadly
5 force.

6 And so in times of non-stress, when
7 somebody's standing on a range, they're trying to hit
8 center mass of the target, which is the highest chance
9 of making a hit on that target.

10 Q When you say center mass, do you mean the
11 upper body --

12 A I --

13 Q -- the middle part of the body?

14 A I mean the middle of the target.

15 Q Okay.

16 A Like, actually, whatever you have as a
17 target, trying to hit the center of that because if --
18 the smaller area that you try to hit, if you miss,
19 right, that round is -- again, shooting a handgun,
20 shooting a rifle, shooting in a static situation can
21 be challenging to even hit a smaller target anyway.

22 And then you start throwing in stress and
23 movement and all the other things that are happening
24 here, right? This is a tense, uncertain and rapidly
25 evolving event, then hitting a smaller target, the

1 accuracy becomes much more difficult, right?

2 And now, if we aim for a small -- a small
3 target that's off the main part and there's a miss
4 that happens there, where does that bullet go, right?
5 And are we -- you know, then that can cause other
6 problems and so -- and it can fail to be effective in
7 a use of deadly force.

8 And so if the officer decides to use deadly
9 force, we want to give them the best chance for that
10 deadly force to be effective, meaning they have to
11 make it hit to get them -- to get that subject to stop
12 doing what they're doing.

13 Q This is the last time I'll refer to the
14 movies, it's just --

15 A Sure, no --

16 Q -- always so vivid, I think --

17 A Yeah.

18 Q -- we've seen, right, people, like, blown
19 back very dramatically through windows and things when
20 they get hit by bullets.

21 A Right.

22 Q Do bullets really do that, do they force
23 people back?

24 A They don't. So, you know, when we talk
25 about the -- like, the -- the energy that a bullet

1 carries into the body, you know, physics still
2 applies, right? So the amount of recoil of the gun,
3 right, is about equal to the amount of force that the
4 person on the receiving end of that bullet would --
5 would be feeling as well.

6 If the bullet was -- had enough energy and
7 momentum to actually shove a person backwards and
8 knock them off their feet, the person firing the gun
9 would also be feeling that same amount of energy and
10 they wouldn't be able to shoot the gun. They -- they
11 would be knocked down themselves.

12 Q So do you know, based on shootings in -- in
13 the line of duty, what -- what the percentage of
14 accuracy is for officers, if they -- I think you asked
15 that question earlier, but -- in -- in other words,
16 how often officers, under stress, shooting at a moving
17 target -- you know, how often are they actually
18 hitting a suspect?

19 A I believe nationally it's about 30 percent.

20 Q You mean, they're missing 70 percent of the
21 time?

22 A Yes. Because of the stress involved; and,
23 you know, just lighting; ranges; movement, I believe
24 it's about 30 percent nationally.

25 Q So if an officer makes the decision to use

1 deadly force, do you teach a -- a number of times that
2 they are to pull the trigger?

3 A No. There's not a set number of times that
4 we teach to shoot. If an officer needs to use deadly
5 force, again, and the reason would be because that
6 person poses an immediate threat of death or serious
7 physical injury, we expect the officers to constantly
8 assess what -- where that threat is, what is happening
9 with that threat.

10 And so if that threat is still there and
11 they need to continue using deadly force, then they
12 should continue to use deadly force. But we also
13 expect them to also keep assessing what's happening.

14 And as that person becomes less of a threat,
15 then they should think about not using deadly force
16 and transitioning to something else or stopping
17 whatever force they are using.

18 Q You -- you know that in this case there --
19 there are six officers using deadly force at the same
20 time?

21 A Yes.

22 Q Is there training about that type of
23 situation and -- and, you know, maybe just saying,
24 okay, we'll just have one -- one officer will be kind
25 of the shooting guy and everybody else will do

1 something else or how is that addressed?

2 A In some cases, if there's time to make a
3 plan and time to make, like, a directed plan with less
4 factors, we may set up a -- a team where we have
5 somebody designated as less lethal, somebody
6 designated as a lethal cover, somebody designated as
7 hands on.

8 In some cases there are so many other people
9 around, there are so many other things going on
10 that -- like in this situation, the officers go in,
11 they're almost forming a wall of protection for the
12 other people to be able to get out behind them.

13 In that case, the plan to -- to go and make
14 custody, that's not the plan right now. The plan is
15 to -- is to create that safety corridor for people to
16 be able to get outside of that -- that room. Once
17 that person's truly isolated, now, maybe we can start
18 to make other plans to back out and slow this -- slow
19 this situation down.

20 But as they go in and as they spread out to
21 start to kind of form walls and, you know, just kind
22 of, like, protect other people, those folks in the
23 front, they end up having their guns out.

24 And I think that that would be appropriate
25 because, again, a -- with multiple people, now there's

1 multiple potential victims and so we want to start
2 angling off and getting different angles to be able to
3 protect people from different -- from different
4 positions.

5 Q What are the officers taught to make an
6 independent decision as to the use of deadly force
7 versus sort of a group decision?

8 A Absolutely. There's never -- we don't teach
9 that, hey, if one person shoots, you're going to
10 automatically shoot. That's not how we train. We --

11 Q What do you teach?

12 A We train that each individual officer --
13 that they are responsible for using deadly force under
14 the policy. That that individual officer reasonably
15 believes that the person all of a sudden becomes an
16 immediate threat of death or serious physical injury
17 to either themselves, or another person.

18 Which could be another officer or it could
19 be another -- it could be a citizen, it could be
20 anybody else other than themselves or it could still
21 be themselves.

22 Q Do you know how quickly a -- a trained
23 person, under stress, can pull the trigger on a -- on
24 a gun, on a semi-automatic gun?

25 A Yes, it's about a quarter-second per shot,

1 .25 per shot.

2 Q So about -- you -- potentially, someone
3 could fire a gun four times in one second?

4 A That's correct.

5 Q And do you know -- yesterday, Leland
6 Samuelson said -- kind of off hand, I think, but he
7 said, "Well, a shotgun maybe" -- I think he said,
8 "Once every two seconds," or something. But does that
9 sound right to you or not?

10 A No, I would think that you could -- you
11 could fire a -- a shotgun still within once every half
12 second or -- or faster.

13 Q Including racking the gun?

14 A Including the racking the gun.

15 Q Which is a very -- a very, very rapid
16 process?

17 A Yes, that's -- that's correct.

18 Q And so -- and does that tie into the kind of
19 action, reaction, perception? I assume, right, if
20 you're pulling the trigger that quickly and then
21 you're looking --

22 A Yes.

23 Q -- and then you have to make a decision and
24 you stop, but you may have fired several shots in
25 rapid succession?

1 A Yes. Just physiologically, it takes some
2 time for the brain to process what they -- what it
3 sees and then to tell the body to stop doing an action
4 that it was doing. And so in some cases, that can be
5 another half-second to a second.

6 And then -- you know, so it takes some time
7 to judge what happens, start to shoot, and then to see
8 what the reaction is and then stop shooting.

9 Q You -- you saw the surveillance video from
10 the cameras inside --

11 A Yes.

12 Q -- the building when the shooting happened,
13 in this case April 7th, right?

14 A Correct.

15 Q Were you able to observe the sort of action,
16 reaction, reactionary gap process occurring on
17 the video?

18 A Yes.

19 Q And -- and can -- what did you see?

20 A At the time of the shooting, it appeared the
21 suspect was further back in the room, off to the right
22 from where the officers were at the door. And they
23 weren't all the way back at the door, they were just
24 slightly forward. They were letting some people start
25 to get out that door.

1 But the officers are not, like, charging in
2 toward him. At some point the -- the suspect -- or
3 subject decides to run at the officers with a knife.
4 And what was telling to me about that reactionary gap
5 and the fact that there was some action, reaction
6 going there, the officers are ready.

7 They're -- they're -- they're there for
8 protection, to protect themselves, to protect other
9 people. That person gets up to quite a bit of speed
10 before the officers are able to react with deadly
11 force, right? That person actually covers some amount
12 of ground.

13 It wasn't that as soon as he just started to
14 move his foot the first step that any officers fired,
15 but it was actually -- it looked like at least seven
16 to ten feet that he was able to start running before
17 anybody even reacted to that.

18 And then there was -- the officers perceived
19 the threat, they shoot, the person goes down and each
20 individual officer is still -- they're -- they're
21 responsible for assessing that situation and assessing
22 that threat. And on their own, all within a very
23 short amount of time, they fired and then they all
24 stopped.

25 And what I know about being on the firing

1 line, having done a lot of training on -- on a range
2 with other officers next to you when you fire, you
3 can't tell when somebody else stops shooting because
4 if you're shooting, it's too loud. And so there's not
5 that indication, oh, everybody stopped shooting, I
6 better stop shooting.

7 The officers aren't looking to see what
8 their -- what the other officers are doing. They're
9 making individual assessments of threat for
10 themselves, each -- each one of them. And each one of
11 them that fired processed the threat in that -- in the
12 amount of time that was very close to each other.

13 And they processed the fact that that threat
14 had actually ceased and stopped firing, all within a
15 very, very short amount of time.

16 MR. REES: Are there any questions from the
17 grand jurors?

18 A GRAND JUROR: I have a question about
19 the -- the policy or the training with the foam
20 rounds.

21 THE WITNESS: Okay.

22 A GRAND JUROR: The foam. You said that
23 it -- it's less accurate if you're -- it's more
24 accurate to aim at the center --

25 THE WITNESS: Yes.

1 A GRAND JUROR: -- of the person, the
2 torso --

3 THE WITNESS: That's correct.

4 A GRAND JUROR: -- than arms and legs
5 because that would be less effective.

6 THE WITNESS: That's correct.

7 A GRAND JUROR: So would the training --
8 what would the policy or the training be in this
9 situation where a person armed with a knife is lunging
10 towards police? Should they be shooting at his torso
11 or just any -- is it -- what would the training say to
12 do in that --

13 THE WITNESS: I'm sorry, as far as the foam
14 rounds?

15 A GRAND JUROR: Yeah.

16 THE WITNESS: Or as far as the --

17 A GRAND JUROR: Yeah.

18 THE WITNESS: -- lethal rounds?

19 A GRAND JUROR: No, the foam.

20 THE WITNESS: The foam rounds. So the foam
21 rounds are used in a less-lethal capacity, right, when
22 a person is not necessarily posing a lethal threat at
23 the time.

24 A GRAND JUROR: Mm-hmm.

25 THE WITNESS: And so to use a -- use that

1 tool in a less-lethal manner, there are certain target
2 areas that we -- that we train are preferred to
3 accomplish that goal of less-lethal force.

4 A GRAND JUROR: And what are those target
5 areas?

6 THE WITNESS: It's typically below the
7 waist. And then the -- so any -- and -- and then the
8 extremities.

9 A GRAND JUROR: Even if he has a knife and
10 he's got potential hostages?

11 THE WITNESS: And -- and, in that case, that
12 would be a lethal -- a lethal situation, if he has
13 hostages and a knife and that sort of thing. But,
14 again, we're trying to use less force when we can and
15 so with the lethal -- with -- with the -- I'm sorry,
16 with the less-lethal rounds going ahead of time,
17 right?

18 A GRAND JUROR: Mm-hmm.

19 THE WITNESS: Maybe to keep him back, keep
20 him at a distance, get him to comply, get him to put
21 the knife down, right? We're trying to lengthen out
22 this -- this process so we don't have to use deadly
23 force if we don't have to, right?

24 At the time that he starts to run and
25 becomes a lethal threat, right, the -- the less lethal

1 option is -- that may be still going on, right, the
2 person that has the less-lethal tool in their hands.
3 However, officers are -- have also made a decision
4 that, hey, this person now poses a deadly threat to me
5 and I'm going to use deadly force.

6 A GRAND JUROR: So if -- if an officer uses
7 the less lethal, shoots at legs, thighs --

8 THE WITNESS: Uh-huh.

9 A GRAND JUROR: -- and it doesn't work --

10 THE WITNESS: Uh-huh.

11 A GRAND JUROR: -- would the training say,
12 now try going towards his torso because he's not
13 complying, he's not --

14 THE WITNESS: No. We would not -- we would
15 not immediately say --

16 A GRAND JUROR: It's not effective.

17 THE WITNESS: -- start using that in a more
18 lethal way, right?

19 A GRAND JUROR: So we should use the lethal
20 guns instead?

21 THE WITNESS: But that's not what happened
22 here. They -- they didn't use lethal guns up until
23 the person actually charged them and became a lethal
24 threat. The threat actually changed at that point.

25 A GRAND JUROR: Okay.

1 THE WITNESS: When the person is back and
2 not charging the officers, yeah, we can still use
3 less-lethal means to try to accomplish a goal there.
4 However, when he becomes a lethal threat, the -- the
5 situation changes.

6 And then -- I mean, the time to be able to
7 say, "Now try it a different way before I try this," I
8 mean, we're talking a matter of split seconds.
9 There's no way to communicate that between officers.
10 There's just not enough time when the person's
11 charging at that -- at that speed.

12 A GRAND JUROR: Okay. And I have one more
13 question. So what's the training for suicidal people,
14 people that are -- have a knife to their neck and the
15 police are talking to them and -- what would -- what
16 -- what would police be trained to do with suicidal
17 people?

18 THE WITNESS: This --

19 A GRAND JUROR: And there's plenty of time
20 to -- you know, there's no imminent threat to police
21 or anyone else at that moment --

22 THE WITNESS: If --

23 A GRAND JUROR: -- it's just that person
24 with the knife.

25 THE WITNESS: So if there was a person in a

1 building by themselves, isolated, and we had all the
2 time in the world, the -- the training would be to try
3 to talk to that person, try to get different resources
4 there, try to get more distance from that person.

5 But, again, each situation is different and
6 every -- every change in a situation dramatically
7 changes the situation and the response.

8 A GRAND JUROR: So a man walking down the
9 street with a knife up to his neck, the police
10 encounter him, is there, like, partner agencies to
11 call? Like, this guy seems like he needs help or --

12 THE WITNESS: We would certainly be calling
13 other resources to -- to try to help with that. And
14 we would be doing what we could do to try to lengthen
15 out that event, if that makes any sense, right? Try
16 to give us time to get options to safely resolve
17 that -- that confrontation.

18 A GRAND JUROR: Would -- I mean, is that
19 part of your training? You're -- you're the trainer,
20 so is that part of your teaching? Do you -- do you
21 get -- do you have anything to do with the mental
22 health resources or is it mostly the arm -- the -- you
23 know, your -- the weapons and how to use them?

24 THE WITNESS: Well, our training has become
25 very, very integrated. And so, yes, we -- we tried --

1 you know, we used CIT skills, right --

2 A GRAND JUROR: Mm-hmm.

3 THE WITNESS: -- in situations. We use
4 tool-based solutions in some cases, too, right? But
5 those are integrated options; and so, again, yeah,
6 we -- we would call --

7 A GRAND JUROR: So who would be called in
8 that kind of situation?

9 THE WITNESS: We would call some of our ECIT
10 folks.

11 A GRAND JUROR: Would that --

12 THE WITNESS: We would call --

13 A GRAND JUROR: -- be, like, the next day or
14 would it be, like --

15 THE WITNESS: No, we would call them on --

16 A GRAND JUROR: -- while the person's
17 walking around the street?

18 THE WITNESS: -- on duty.

19 A GRAND JUROR: Okay.

20 THE WITNESS: We would ask on the radio for
21 other resources, "Can I get, perhaps, an enhanced --
22 enhanced crisis intervention team" --

23 A GRAND JUROR: Mm-hmm.

24 THE WITNESS: -- here, member. Can I get a
25 behavioral health unit here," right? At the -- as

1 long as we can, right? If we can keep that scene
2 safe, right, for other people, right, we would
3 absolutely try whatever we could to calm that
4 situation down.

5 But, again, the -- the trick is that
6 isolation part. If we can isolate that person to
7 where nobody else is in danger, absolutely.

8 A GRAND JUROR: Is it easier to just let
9 them go?

10 THE WITNESS: In -- in some cases that's
11 happened.

12 A GRAND JUROR: And they wouldn't be a
13 danger to society walking around with a knife with --

14 THE WITNESS: And it --

15 A GRAND JUROR: -- blood on their neck?

16 THE WITNESS: -- it absolutely can be.

17 A GRAND JUROR: Yeah.

18 THE WITNESS: Which is, typically, like --
19 again, each situation is different.

20 A GRAND JUROR: Well, do you know if in this
21 situation anyone was called?

22 THE WITNESS: In this situation I believe --

23 A GRAND JUROR: Earlier in the day?

24 THE WITNESS: In this situation, I believe
25 that the police had actually contacted this person

1 once or twice before. They -- then this person
2 actually escalated their behavior and committed a
3 carjacking, threatened a person with a knife and then
4 ran into a building full of people.

5 A GRAND JUROR: Mm-hmm.

6 THE WITNESS: That person wasn't isolated,
7 right? At that point, the immediate response is to
8 try -- or the immediate goal would be to try to
9 protect all those other people that are inside that
10 building. And so the police go in there and they --
11 that's -- that's the immediate goal.

12 Now, once they can stabilize that scene and
13 I believe have had -- you know, if that person hadn't
14 caused that use of force, right, by their actions, by
15 trying to charge the police with a knife, had that --
16 had that been able to be a stalemate a little bit
17 longer, I think that we -- the police would have been
18 able to isolate that individual and then form a
19 different plan to try to change the nature of the
20 engagement.

21 A GRAND JUROR: Yeah. I just have -- I
22 think it -- it's an observation, a personal
23 observation that I had. I mean, I don't think for a
24 minute that this would have changed the outcome of
25 that particular situation.

1 You know, I -- I think it's interesting you
2 talk about a controlled situation versus uncontrolled.
3 And -- and, you know, obviously, this room is chaotic.
4 But you might want to consider future training -- I --
5 and, again, I don't think this would have changed the
6 -- the outcome at all, but I think having that barking
7 dog in that room --

8 THE WITNESS: Hmm.

9 A GRAND JUROR: -- only added to the
10 confusion.

11 THE WITNESS: Okay.

12 A GRAND JUROR: Just something to consider.
13 'Cause I don't know whether he had an actual purpose
14 in that, what he could have -- at what point during
15 that whole event, what that dog could have possibly
16 added to the -- as a tool to the situation.

17 THE WITNESS: Okay.

18 BY MR. REES:

19 Q Is that -- if -- if I could ask just a
20 followup to your question, some of the officers have
21 mentioned, like, not yelling commands because they
22 didn't think that would really help. That everyone's
23 -- so do you -- do you kind of address that situation
24 of, like, how many -- how many people should yell,
25 "Drop the knife"?

1 A Yeah, we train about -- you know, hey, you
2 know, you have a subject and he's one person, if
3 everybody yells commands and all the commands are a
4 little bit different, the person doesn't hear
5 anything. They just hear a bunch of yelling.

6 So, you know, the point is certainly taken
7 as far as the barking dog. I -- I -- you know, I can
8 only speculate, but I would imagine that the dog went
9 in there to provide that extra option, right, if they
10 were going to be able to -- as another -- as another
11 means to resolve this, again, if the opportunity
12 arose.

13 Q Sure.

14 A And then they wouldn't have to wait for it,
15 it would be right there. But, yeah, we -- you know,
16 we teach that, hey, you know what, one person giving
17 commands would be ideal.

18 You know, you'd get officers in there -- if
19 we -- again, if we have the time initially to make the
20 plan and go in and say, "Hey, you're going to be the
21 guy that talks," that's great, right?

22 But about the time that you -- your hand is
23 forced, if you will, to say, hey, you need to take
24 action here to start -- you know, to be able to ensure
25 safety for other people.

1 Sometimes little -- sometimes those check
2 boxes, if you will, get missed and officers go in and
3 then they have to start dialing it back and still
4 adapting to the situation and understanding, oh, yeah,
5 yeah. I'm not going to give commands right now.
6 Somebody else is already giving commands and I'll -- I
7 could add to the confusion.

8 I think it -- it shows that if, you know,
9 there's other officers that have -- that are going in
10 there saying that, it's -- I think that's evidence
11 that our training is starting to -- is taking some
12 effect, right?

13 That -- that officers are thinking about
14 this kind of stuff. They've -- they've gone through
15 training scenarios. They're like, "Oh, yeah. Not
16 everybody needs to be yelling and screaming right
17 now."

18 A GRAND JUROR: And that was the case in
19 this situation?

20 THE WITNESS: Mm-hmm.

21 A GRAND JUROR: Do you provide training for
22 area check public procedures?

23 THE WITNESS: Area checks?

24 A GRAND JUROR: Yeah. When -- when you have
25 a number of policemen circumnavigating an area looking

1 for a subject or suspect?

2 THE WITNESS: We do provide some of that
3 training, yes.

4 A GRAND JUROR: So it seems like in this
5 situation all the officers -- I mean, we're -- we're
6 talking about a couple square blocks over five to ten
7 minutes this whole thing was happening.

8 THE WITNESS: Uh-huh.

9 A GRAND JUROR: And there's a number of
10 officers in that area cruising. Do they ever -- are
11 they trained to ever get out of their vehicles and
12 start to, you know, walk the streets at all when
13 they're trying to find somebody?

14 THE WITNESS: Ah, yeah. Usually, you know,
15 when you have that many officers, they're scanning the
16 streets, they -- they're trying to stay mobile. And
17 so the -- when they're in their cars, when somebody
18 finds something they're able to converge on that and
19 help out a little bit quicker.

20 A GRAND JUROR: Right.

21 THE WITNESS: But, yeah, I mean, depending
22 on the circumstances, right? "Hey, this -- there's a
23 alley. I can't get my car back here. I want to check
24 around back here." I might grab another person and
25 actually go look behind some dumpsters or trash cans,

1 whatever it may be.

2 Yeah, there's -- there's places that you
3 can't see with the car and there -- there -- in some
4 places get out and look.

5 BY MR. JACKSON:

6 Q Oh. Aside from some of the tools that
7 you've described, what protective gear do police
8 officers wear when they're out on patrol?

9 A On patrol we issue just a basic
10 bullet-resistant vest, body armor, soft body armor.
11 It's rated to stop basically handgun bullets. That's
12 the rating of it. It is not designed to stop sharp --
13 sharp weapons, (indiscernible) weapons. Knives and,
14 like, ice picks and those things will actually
15 penetrate through that -- through that armor.

16 Q So is there any actual protective gear or
17 equipment that police officers wear against knife
18 attacks?

19 A No.

20 A GRAND JUROR: And no body cams at all on
21 any of the officers?

22 THE WITNESS: I don't believe any of them
23 did, no.

24 MR. REES: Okay. Any other questions? All
25 right.

1 Thank you, Officer.

2 (Pause in proceedings, 11:33 a.m.)

3 MR. JACKSON: Just stand right here. We'll
4 wait for, like, just one moment.

5 All right. Could you raise your right hand,
6 please?

7 **GABERI HERTZLER**

8 Was thereupon called as a witness; and, having been
9 first duly sworn, was examined and testified as follows:

10 **EXAMINATION**

11 BY MR. JACKSON:

12 Q Okay. You can have a seat.

13 Can you please state and spell your name.

14 A Gaberi Hertzler, G-a-b-e-r-i. And then
15 Hertzler is H-e-r-t-z-l-e-r.

16 Q Where are you employed?

17 A The Portland Police Bureau.

18 Q What do you do for the Police Bureau?

19 A I am a police officer and am currently
20 assigned to the Police Bureau's Training Division.

21 Q And how long have you been a police officer?

22 A Ah, 14 years.

23 Q And how long have you been in the Training
24 Division?

25 A Coming up on five years. Maybe just shy of

1 five years.

2 Q And what's your educational background?

3 A I ended up going to Western Oregon
4 University and have a degree in criminal justice and a
5 minor in forensic chemistry.

6 Q And aside from your standard training to
7 become a police officer, what additional training did
8 you receive for your current position?

9 A My current position, I'd gone to a number of
10 classes and instructor schools on rifle instruction,
11 teaching people how to shoot patrol rifles. Some
12 conferences on less-lethal impact munitions, which is
13 the area of my speciality within the Training
14 Division.

15 In addition to that, ones of note, I am
16 assigned to the Bureau Special Emergency Reaction
17 Team, so with that comes a host of other things. I'm
18 an instructor in -- in work -- our work group there,
19 so different rescue rote trainings. Once the -- yeah.

20 Q Okay. A variety of things.

21 A Correct, yeah.

22 Q And are you actually in charge of the
23 Portland Police Bureau's rifle program?

24 A Correct.

25 Q And what does that mean?

1 A So I'm the lead instructor and program
2 developer for the Police Bureau's patrol rifle program
3 as well as the impact munition program.

4 Q Could you describe what the program is for
5 the Portland Police Bureau.

6 A Sure. The -- the patrol rifle program is
7 a -- it's a volunteer program that people request or
8 put in to become a member or a part of. As part of
9 that they are -- they go through kind of a vetting
10 process, internal vetting process, where people do --
11 or, like, the Training Division staff in attendance
12 there will do an evaluation based on, you know, their
13 work product history, any complaints they've had,
14 anything like that, and just kind of do a 360
15 evaluation of the candidate prior to coming to the
16 training.

17 After they're accepted and they get a
18 recommendation from the unit they're assigned to, for
19 -- for example, like East Precinct would say, "Yes,
20 this is an employee that works out of here. We think
21 they'd be a good fit for this program." Then they'd
22 go to a patrol rifle school.

23 And that school is 60 hours long. It is a
24 mix of a classroom. Obviously, the actual functioning
25 or the use of using a rifle, functioning a rifle,

1 learning to shoot it, and then scenario-based training
2 for part of that.

3 At the culmination of that, if they pass the
4 class and pass the written test and everything
5 associated with that, then they're -- or part of their
6 normal job while on patrol would be to carry an extra
7 piece of equipment, which would be a patrol rifle.

8 Q So it's a selective process that not every
9 police officer would be certified and qualified to
10 carry?

11 A Correct.

12 Q Okay. And do you have a sense on a typical
13 shift, patrol shift, how many rifle operators would
14 be out?

15 A Yeah, that can vary. It range depending on
16 who's working that day, days off. We always try to --
17 from the -- you know, the Training Division side, make
18 sure there's adequate number of rifles on a shift
19 (indiscernible) of having a tool out there.

20 The problem with a bureau as large as we are
21 is people switch shifts. They switch days off. And
22 so it does vary. There's time where I know there are,
23 you know, a limited number, maybe one or two, or, you
24 know, a handful throughout the city.

25 And there's other times where, depending on

1 how the individual officers, what their assignments
2 are, days off align, someone's not on vacation, there
3 may be, you know, a handful of them available.

4 Q Okay. And do patrol officers who are out
5 generally know who the rifle operators are so they can
6 call them in if they're needed?

7 A Yeah. It's -- it's something that people
8 normally keep for a good amount of time. It's not
9 something that -- you know, a fleeting tool that they
10 have for a while. When people ever go through the
11 process, it is -- it requires a lot of effort from
12 them. So, you know, it's something that they have.

13 So amongst the shift, you would know who
14 would have a -- certain select tools and one of those
15 tools would be a patrol rifle.

16 Q Okay. And you said that you're part of the
17 Training Division.

18 A Correct.

19 Q So what is the training that you provide
20 with regard to the use of rifles?

21 A So, you know, with -- with any tool comes
22 pros and cons for their use. You know, the rifle,
23 some -- we talk a lot about, you know, advantages and
24 disadvantages of this system. It is a rifle, so it's
25 a larger tool than, say, some other -- like, a

1 handgun.

2 So it requires two-hand operation. So a
3 downside of that would be your ability to, say,
4 effectively take physical control of a person while
5 utilizing a patrol rifle would be -- would be limited
6 or it would encumber your ability to do so. Same with
7 things like when you're jumping a fence or a lot of
8 the other things.

9 You know, some of the pros of the tool is it
10 is a far more accurate tool than a handgun. And so
11 your ability to shoot with a very high level of
12 precision is greatly elevated by the deployment of a
13 rifle as opposed to a handgun.

14 Another part about the patrol rifle which is
15 an advantage is the ballistic characteristics of the
16 actual bullet that it's firing. It fires a very
17 lightweight round. It's a 55-grain round. And grain
18 being a weight measurement, opposed to a handgun
19 round, which is 147 grains for the Bureau's handgun
20 round.

21 And so it's a very lightweight round, but it
22 is going at a very high velocity, more than twice the
23 speed of a handgun round. And what that equates to is
24 a round that has -- it -- upon impact it has less
25 over-penetration or less penetration characteristics

1 than a handgun round would.

2 What that translates to for -- for a rifle
3 operator deploying a rifle would be that, you know,
4 things that we're obviously concerned of when pushed
5 into a position where a member is using deadly force,
6 would be, you know, concern about, like, what is the
7 backdrop?

8 Like, are we worried about this, like,
9 projectile penetrating, going somewhere where we don't
10 want it to go? And so a very accurate system, but
11 also the ballistic characteristics of the round make
12 it a round we wouldn't -- that would not be as large
13 of a concern. Always a concern, but not as large of a
14 concern with the -- a handgun round.

15 You know, another downside to the rifle is
16 they are very loud. It's a -- you know, different in
17 report and how the volume is. And so, you know, when
18 the shooting those or we -- you know, at the indoor
19 range at the Training Division and, you know, shooting
20 those indoors is very loud, to the point that I'd
21 rather shoot outdoors in the rain than indoor in the
22 dry just because of the nature of how loud they are.
23 That would be another thing we're talking to them
24 about would be a disadvantage of the system.

25 Q Okay. What is the training in terms of when

1 a rifle operator is going to respond to a call and
2 what their purpose is going to be?

3 A Sure. So, you know, we give them the
4 information on the pros and cons of its use. There's
5 no, "Hey, you can only bring a rifle out in these set
6 scenarios." We don't lay that out.

7 We -- you know, we try to train our officers
8 to make good decisions on understanding the
9 capabilities of a tool and then bring it out when
10 appropriate. So there is no hard and fast rule on why
11 we bring it out.

12 We hope that they would make a decision
13 based on, "Hey, this is a scenario where I think that
14 there's going to be a degree of precision may be
15 needed with this tool, that I would potentially bring
16 that."

17 Another thing and one of the big emphases on
18 having, you know, rifles in patrol and where it kind
19 of came from is we can think back to the North
20 Hollywood bank robbery. That video -- I think it was
21 in '97 -- and so that's been around for a while now.

22 And it's, like, you -- that's kind of where
23 a lot of the emphasis in that came to, you know,
24 dealing in a scenario where there's precision needed.
25 And also another advantage of the -- a patrol rifle is

1 the fact that it -- it does have the ability to defeat
2 body armor.

3 Q Okay. And so just in -- in case we're not
4 familiar with --

5 A Sure.

6 Q -- that North Hollywood --

7 A Yeah.

8 Q -- incident, what -- what -- what happened
9 there?

10 A He was a -- two bank robbers who went into a
11 North Hollywood bank robbery. They were armed with
12 automatic rifles themselves, fully automatic rifles
13 themselves as well as a body armor that was -- it
14 ended making it very limited for the police officers
15 to end up using force against them.

16 So they were being shot with handgun rounds
17 with having no effect. Towards the end of this,
18 fortunately, no one was killed, but a lot of rounds
19 were fired during this. And at the end -- at the end
20 of this a North Hollywood group who had rifles ended
21 up showing up and ended up getting them into custody
22 at that point.

23 And it involved an officer-involved shooting
24 related to that. That was kind of some of the
25 emphasis on patrol rifles translating into law

1 enforcement, just seeing the need for a precision
2 system with a limited penetration characteristics and
3 the ability to defeat body armor.

4 Q But is the presence of body armor on a
5 suspect a preliminary requirement or a condition
6 precedent to the rifle coming out and being used?

7 A Absolutely not.

8 Q Okay. And why is the training not to wait
9 for that type of a situation?

10 A There's a -- many more scenarios where the
11 use of a rifle would be advantageous not just related
12 to body armor. That's one of the things that it does
13 or potentially can do, but that's not the only thing
14 that would make the deployment of a rifle to be an
15 advantage.

16 Q Okay. Are you familiar with the events the
17 evening of April 7th of 2018 at the Cityteam
18 Ministries?

19 A Yes.

20 Q Okay. Is it your understanding that
21 multiple police officers responded to that location,
22 including a number of rifle operators?

23 A (No audible response.)

24 Q What would the training be in terms of how
25 many rifle operators would respond to a scene

1 like that?

2 A I think it's going to depend based on the
3 scenario. So in a -- in a general training point, we
4 want everyone to be looking for a job, to have a role
5 to fill. And something that I would be concerned
6 about was if there was, say, two -- two officers and
7 two rifles and no one else to do anything else.

8 Because we know there's some limitations on
9 its ability to, say, take physical control of someone.
10 But if you have -- there's no limitations on how many
11 we would -- say, "Hey, we only take this many to this
12 scene or this many to this scene."

13 It's going to get the officers to look at
14 the scenario, try to figure out, you know, a good
15 solution for dealing with that. And then making sure
16 they had the adequate number of tools there to do it.

17 Q Okay. And have you actually seen some of
18 the videos from the incident itself?

19 A Yeah.

20 Q As you watched that, were you aware or could
21 you see that there were multiple rifle operators in
22 the room?

23 A I did see that.

24 Q And from a training perspective, what did
25 you think about the presence of those multiple

1 operators, given the scenario and the scene?

2 A In looking at the scenario, definitely
3 chaotic. Things that just jumped out immediately.
4 There's a lot of people in the room and so in looking
5 at that, things like foreground issues, like
6 potentially having someone between you or something
7 between you and a potential target.

8 It could be a problem as well as the
9 backdrop issues could be a -- a problem for sure
10 for -- once again, worried that if I'm in a position
11 where I'm forced to use deadly force and now I have a
12 -- someone in the backdrop would be a concern for me.

13 I think, you know, when you -- when you
14 think about bringing those officers in there, I think
15 the more you could have in there in that instance --
16 and seeing there's other people there to take on
17 different roles, those three -- three rifle operators
18 could be formally in a plane.

19 Or be in a position where they could move
20 into a -- move into a location in order to -- a spot
21 within the room where one person maybe would be
22 limited based on the terrain or something in front of
23 them and another one would be in a position where they
24 would potentially be able to use deadly force if
25 called upon.

1 Q Okay. And how would that coordination
2 occur?

3 A You know, that's something that I -- you
4 know, would be communication. If we, you know, move
5 into a room, you're evaluating a scene which is
6 obviously chaotic and then just working through some
7 communication on trying to figure out, you know, hey,
8 what's the best place, where are we on the scene.

9 And sometimes that's something that evolves
10 over time. You may move into an area, start to figure
11 out what's going on, get a lay of the land and then,
12 at that point, you know, as things change, have the
13 ability or the tools or people there to move into
14 other -- you know, to accomplish different goals.

15 Q And does that type of coordination take
16 time?

17 A Absolutely.

18 Q And so what -- from a training perspective,
19 what would you expect the officers to do if there
20 isn't that time to coordinate and set up a plan with
21 designated roles and things like that?

22 A I think -- you know, you're always -- in a
23 scenario like this, you're always moving in with --
24 you know, especially this one when you're looking at
25 it, well, you know, a bunch of limited time. I think

1 you move in, you fall into a role.

2 You try to do -- if you haven't had time to
3 make that communication, start to get that really
4 established plan, just start to, you know, look at
5 your surroundings, making decisions based on what you
6 see and -- and what you're evaluating in front of you.
7 And then as time goes on, as we have more time to
8 coordinate a plan, then we can maybe, you know, better
9 that plan.

10 But as we move in, it's like we'll start out
11 with, say, you know, Plan A. And as we have time to
12 establish it and make that better, maybe move to
13 Plan B. That does take time and it does take -- or
14 takes communication.

15 Q Okay. You're also in charge of the
16 less-lethal program?

17 A Correct.

18 MR. JACKSON: For the Portland Police
19 Bureau. So I'm going to transition to that topic.

20 But before we do, is there any questions
21 about rifle operation or the training associated with
22 that?

23 A GRAND JUROR: Oh, you said the role zone,
24 so if somebody has, like, one of the special tools,
25 are they automatically supposed to go up front and

1 take, like, that wall? 'Cause it seemed like
2 everybody that had, like, the AR or the shotgun were
3 all up front.

4 THE WITNESS: I think, you know, if -- if
5 your goal when you're deploying a rifle in a scenario
6 like that and you're trying to put yourself in the
7 position where you'd be able to deploy it. And so you
8 would not -- you know, you wouldn't want to be further
9 back with people in front of you.

10 So if your goal was to deploy that and you
11 potentially put yourself in a position to use a tool,
12 you know, with a rifle, we'd want to make sure that we
13 are in front of everyone else; that there could --
14 people have room to be behind us, not in front of us
15 'cause obviously that would cause some potential
16 problems for us for sure.

17 A GRAND JUROR: All right. So that's --
18 it's not part of the training, but that's just where
19 they move?

20 THE WITNESS: As far as in this individual
21 scenario?

22 A GRAND JUROR: Yeah.

23 THE WITNESS: Well, again, it's -- it'd be,
24 like, what they were thinking, like, as part of that.
25 You know, as they moved up, I think if you had -- you

1 know, if you're dealing with other officers in there,
2 you would definitely want to make sure that you're
3 forward of them. And then with people behind you, not
4 the other way around.

5 BY MR. JACKSON:

6 Q And just to ask one follow-up --

7 A Yeah.

8 Q -- question on that.

9 A Go ahead.

10 Q It is part of training, though, not to
11 position yourself where you will have people standing
12 in front of you if you're going to be, like, lethal
13 cover, for example?

14 A Yes.

15 Q Okay. And so with that understanding and
16 that training, would a person providing lethal cover
17 position themselves to the front so that nobody is in
18 front of them?

19 A Correct.

20 MR. JACKSON: Okay. Any other questions
21 about -- about that? Do you -- okay.

22 BY MR. JACKSON:

23 Q So could you now explain what the
24 less-lethal program is for the courtroom, please?

25 A Yeah. So the less-lethal program, I'm the

1 less-lethal impact munitions, so a specific role of
2 the less-lethal program. We could think of
3 less-lethal tools and things like, you know, a baton,
4 pepper spray, Taser and those aren't in my purview.

5 But I am the lead of the less-lethal impact
6 munition, which is the -- our 40-millimeter launchable
7 baton rounds and their launching system there. So
8 that is a -- it's a single-shot, 40-millimeter impact
9 system.

10 And it's a recent transition to that tool
11 from a -- it used to be, as even, you know, four or
12 five months, a 12-gauge shotgun that fired a sock
13 round that was full of a lead shot. The transition to
14 a better tool -- we feel it's a better tool and a
15 safer tool, which is this 40-millimeter impact module.

16 Q How does the launcher operate?

17 A It is a single-shot system, so it's -- if --
18 if you open it, if you're any familiar with, like,
19 a -- a -- an over-under shotgun or -- where you open
20 the breach and you physically open the barrel, you
21 insert a round, close it and then, at that point, if
22 you pulled the trigger, it'd fire.

23 You'd be required to open it again, remove
24 the spent casing or the spent back of the round that
25 you'd fired, insert a new one, close it and then

1 repeat back through there.

2 Q So in order to fire repeated rounds, you
3 wouldn't even be able to keep the -- the launcher on
4 target? You'd have to actually drop it, open it, take
5 your attention away from whatever was in front of you,
6 be able to reload and then reacquire the target?

7 A Yeah. We try to -- obviously try to keep as
8 much situational awareness as possible, but you would
9 not be able to do that while keeping that at your eye,
10 correct. It'd be some sort of bringing it away from
11 your eye, you know, open it, some sort of manipulation
12 there to get it reloaded to redeploy.

13 Q About how long does that process take?

14 A You know, I think some of that depends on,
15 you know, the situation you're in. I think, you know,
16 a couple seconds probably to do that, to -- a couple
17 to a few seconds.

18 Q Because of that delay in being able to fire
19 repeated rounds, what is the training to deal
20 with that?

21 A Yeah. So one of the transitions we made
22 from the 12-gauge launcher we had before where it
23 carried six rounds, so loading another round was as
24 quick as cycling the action of the 12-gauge. This
25 requires an individual reload of each one of those

1 rounds. So that's definitely a difference in the
2 systems.

3 So one of the ways we worked around that is
4 working with two less-lethal operators, so people who
5 are certified to carry a less-lethal launcher, and
6 using them in conjunction where, say, one of them
7 would be, say, a primary, would arrive there and --
8 and their plan would be to fire the first rounds.

9 I would maybe have a launcher and acting as
10 a secondary. So I'd be watching the scenario as they
11 do. They'd fire a round if justified to do so. And
12 while they're working through that reload, I would be
13 in position with a functioning launcher so that I
14 could quickly readdress if needed.

15 Q Okay. And are all police officers equipped
16 with these 40-millimeter launchers?

17 A They are not.

18 Q What is the process to become certified to
19 operate one?

20 A Similar to the rifle program, there is an
21 evaluation done at the precinct level and
22 recommendations are made and people who would do a
23 good job at deploying it and taking on the
24 responsibility of learning that different tool.

25 You know, a 360 evaluation is done on them

1 on use of force and internal complaints and things
2 like that that our lieutenants do at the -- the
3 Training Division level.

4 And once they come -- when you're selected
5 to come to the program, they come for 20 hours. It's
6 a -- you know, again, a mix of classroom; some range
7 time with, you know, understanding how the system
8 works and getting comfortable with the reloads.

9 And then a -- you know, a vast majority of
10 that is the -- that kind of second day -- the first
11 and the second day, it's a lot of scenario-based
12 training where we take them into the scenario village
13 at the Training Division.

14 And -- which is a, you know, mock city, so
15 we have a street and a bunch of buildings there. And
16 they can -- we run scenarios. And so we can, you
17 know, put them into a situation, have them with the
18 tools and then they can deploy them, not with the live
19 rounds, but with a -- you know, a training round,
20 which fires, like, a small paint projectile.

21 So we can use that against -- in, like, an
22 actual scenario mode, so we can evaluate their, you
23 know, ability to target appropriately; and, you know,
24 correct use of force in different scenarios.

25 Q Okay. You are familiar with the Portland

1 Police Bureau's policy on use of deadly force --

2 A Correct.

3 Q -- right? How is the authorization for
4 permissible uses of a less-lethal launcher different?
5 I guess what I'm asking is how are the scenarios where
6 that would be an appropriate use of force different
7 than a deadly use of force?

8 A Yeah, so there's four times -- excuse me.
9 There's four times we can use less-lethal impact
10 munitions as part of a -- it's in our policy. One is
11 when facing an act of aggression.

12 And are you familiar -- have we talked about
13 act of aggression or I think you said it's, you know,
14 a person who has the ability and the means to cause
15 injury to you, either by physical or verbal means and
16 you believe them to be doing, so would be one of the
17 times to prevent suicide or self-harm if other options
18 are not available.

19 To avoid using a higher level of force would
20 be a time that we would. And then, also, if a person
21 is leaving your span of control or trying to flee from
22 you and you can articulate that their fleeing from you
23 would be a -- would place a person in immediate risk
24 of physical injury, then you could use it then.

25 Or, if based on a person's prior actions and

1 information you know about them, them fleeing from you
2 would potentially cause a danger of physical injury to
3 someone, then we can use it. So those are the times
4 that we can use less-lethal tools; and, specifically,
5 into the impact munitions to -- during
6 (indiscernible).

7 Q Okay. And because they're being used in a
8 less-lethal capacity as opposed to a lethal capacity,
9 where are officers trained to target?

10 A Yeah. So, you know, these are our
11 less-lethal munitions, so the goal is to not -- not
12 have significant physical injury with them. There is
13 definitely -- I mean, they're an impact munition,
14 which is, you know, a pain-compliance tool.

15 And so we want to make sure that we're
16 impacting people in an area where it is as low or like
17 -- or least -- small likelihood as possible for
18 causing, like, protracted injury. The -- our policy
19 is at seven yards and in. So for seven yards and in,
20 we're aiming at the legs.

21 So areas of the legs, large muscle groups.
22 Seven yard and out, we're aiming at an area below the
23 waist with the exception of the groin. And we're
24 defining waist as, like, anatomical waist, like area
25 below the rib cage and the narrowing of the abdomen.

1 And so a good reference point for us and
2 what we teach and how our less of the -- or
3 qualifications are conducted is, normally, beyond
4 seven yards we aim at the belt line; area of the belt
5 line that puts us in a good margin below the waist.
6 And then seven and in we'd be looking to impact those.

7 Q Okay. And what are some of the risks
8 associated with those impact rounds hitting other
9 parts of the body?

10 A Yeah. There's been cases in the -- across
11 the country where people have been shot, say, in the
12 upper chest areas. You know, we have more internal
13 organs up high, they're important. So, you know,
14 impacting the chest is something that both the
15 manufacturer and we believe is not a -- a good idea.

16 There's been cases of people with different,
17 you know, surgical implants and things to the chest
18 that caused -- and -- or one of them was a -- like, a
19 post-surgical, like, incision that they had where
20 there have been penetrations through the chest wall.

21 As well as there's been cases of definitely
22 serious physical injury or death related to shooting a
23 person in the head, neck, throat with them as well.
24 So because of that, we want to use this as a
25 less-lethal tool; and, you know, limit the amount of

1 injury that it's going to cause.

2 We aim, you know, as we do, in the area
3 below the waist, with the exception of the groin, and
4 unless we're at seven yards and in, we're aiming for
5 the legs.

6 Q Okay. And are you -- or is it your
7 understanding that less lethal 40-millimeter rounds
8 were used in the incident on the 7th of April?

9 A Yes.

10 Q And have you reviewed the video concerning
11 the use of the less-lethal rounds?

12 A Yeah. I saw them in the video
13 (indiscernible).

14 Q Okay. And so what is your opinion as a
15 trainer of the circumstances in which they were used
16 there?

17 A I think, you know, it falls within what we
18 would expect them to be doing as far as a less-lethal
19 operator, just based on my watching the video of the
20 scene. A person armed with a knife, you know, causing
21 harm to themselves and also being in the area where
22 there's definitely people who are in danger.

23 That, you know, the use of less-lethal
24 munitions at that point would fall within the
25 guidelines of our training.

1 Q Okay. And what is the training in terms of
2 rounds or projectiles hitting a person and having no
3 apparent effect?

4 A Yeah. You know, the -- the less-lethal
5 40 millimeter, it's a pain-compliance tool. And so
6 what you're relying on is that, you know, the pain
7 associated with being hit by one is going to, you
8 know, change behavior, deter behavior, gain
9 compliance, which is obviously our goal.

10 And the energy on those, they're -- you
11 know, they weigh only about 26 grams. But they're
12 going about 375 feet per second. And you start doing
13 the math, it gets pretty close to the same energy
14 that's coming from, like, a, you know, upper-90s
15 fastball if you're familiar with baseball.

16 And so, you know, if you've seen baseball
17 and kind of watched the effects, it's, like, so what
18 are some of the reactions that we get when a batter's
19 hit by a pitcher? You know, sometimes you see them
20 crumble into the ground. Sometimes they walk away as
21 if nothing happened and then sometimes they charge the
22 mound.

23 So it -- it -- there just really is --
24 there's no control tool with it. So what we teach is
25 that under -- like, to our operators that would point

1 it -- is that this is a tool. There's -- we -- we
2 feel it's a really good tool, but it is going to have
3 a limiting effect and prepare for that.

4 So if we hit a person with one of them and
5 don't have an effect, it's -- like, that's not
6 something that would be out of the realm of
7 possibilities.

8 At that point they would, you know, do an
9 evaluation like they would be doing on any force with
10 that where they're continuing to evaluate what's going
11 on and trying to work through if, you know, another
12 round is appropriate.

13 Q And, I mean, if a person is hit with one of
14 these rounds and it doesn't seem to have an effect,
15 could it be appropriate or consistent with the
16 training to fire another round at the person?

17 A Yeah. We've had cases in the city where
18 we've had, you know, upwards of -- you know, our --
19 our average round counts and what we normally see is,
20 you know, about 1.6 to 2, but we've had ones in the
21 city where we've had, you know, upwards of nine. And
22 at some point, we've gained compliance out of that.

23 So -- you know, so the less-lethal operators
24 are continuing to evaluate their justification for use
25 of the tool and feel like there is some sort of

1 benefit that they're gaining or they're kind of out of
2 other options for, like, just trying to gain
3 compliance, then, you know, firing multiple rounds
4 would be appropriate.

5 Q Okay. Would it ever be consistent with the
6 training to shoot someone in the targeted area -- the
7 thigh or the hip or something -- and see it has no
8 effect and just start kind of working your way up
9 higher and higher, where it -- it could be more and
10 more painful to try to gain that compliance?

11 A Yeah. I think, you know, as -- as we -- you
12 were talking working away outside of our preferred
13 target area?

14 Q Correct.

15 A I think, you know, some of that -- in our
16 training, no. And we would maintain to our preferred
17 target area unless we could articulate that deadly
18 force would be justified. And, at that point, I
19 think, aim for negative impact areas, which would be
20 upper chest, head, neck, throat.

21 And I could do that if I was justified in
22 using deadly force. One of the things with the pain
23 is, you know, it's -- it's all -- it's all relative.
24 You know, what pain is to me could be pain different
25 for someone else.

1 And, you know, the -- the physics related to
2 this, if I'm standing here and was -- head is mentally
3 strong enough, I could get shot with one of the 40s --
4 40 millimeters right now and walk off.

5 It's -- there's -- it's not enough energy to
6 knock me over. It's not enough energy to -- to cause,
7 like, the inability to use a limb. And as we move up
8 the body, it's, like, just because I say would make a
9 decision to impact in the chest, would not necessarily
10 mean that it hurt more.

11 Q Mm-hmm.

12 A So, you know, we -- we maintain our
13 preferred target areas unless we can articulate that
14 we would be using deadly force and then we would
15 change.

16 Q So, basically, if you're going to aim
17 outside of that preferred target area, you would need
18 the same justification as if you had fired your
19 handgun or a rifle or a shotgun?

20 A If we were targeting -- if we're targeting
21 the head, neck or throat, yes.

22 Q Okay. Let's see. Under the -- the Police
23 Bureau training, somebody who's not complying after
24 being struck with multiple 40 millimeter rounds, would
25 it -- would it be ever appropriate to switch to a

1 handgun or a rifle or a shotgun and fire warning shots
2 into the ground, in front of them?

3 We see in the movies, you know, firing into
4 the ground to make them jump around and try to gain
5 compliance that way.

6 A No.

7 Q Okay.

8 A That wouldn't be part -- that wouldn't be
9 authorized under our policy to do that.

10 MR. REES: Okay. Excuse me.

11 Any questions?

12 A GRAND JUROR: Yes.

13 MR. JACKSON: Well, okay.

14 A GRAND JUROR: Okay. So I know you said
15 there was a specialized training program for the
16 rifle --

17 THE WITNESS: Mm-hmm.

18 A GRAND JUROR: -- and the less lethal, but
19 I didn't hear anything about the shotgun, if you had a
20 specialized training program for that or how someone
21 becomes authorized to carry that.

22 THE WITNESS: Sure. Everyone in the Police
23 Bureau is authorized to carry a lethal 12-gauge
24 shotgun. It's part of the firearms program from, you
25 know, the -- the -- the new students in the academy

1 right now, they're -- they'd go through the training
2 program and be trained on the use of the shotgun.

3 And they would be authorized to carry it and
4 it is a system that everyone is required to qualify on
5 during our sessions. And so everyone in the Bureau
6 would be qualified to carry that tool.

7 A GRAND JUROR: Okay. And --

8 THE WITNESS: And that's part of the
9 integrated, like, firearms program.

10 A GRAND JUROR: Oh, okay. So I know you
11 said the AR is more accurate for a longer distance.
12 So what would the shotgun role play, like, in that
13 scenario?

14 THE WITNESS: In the scenario we're speaking
15 of today or in --

16 A GRAND JUROR: Well --

17 THE WITNESS: -- in the --

18 A GRAND JUROR: In -- in this incident.

19 Sorry, that would probably help. So they had the AR
20 there --

21 THE WITNESS: Mm-hmm.

22 A GRAND JUROR: -- for more longer --

23 THE WITNESS: Mm-hmm.

24 A GRAND JUROR: -- accuracy in case the
25 backdrop, you know --

1 THE WITNESS: Mm-hmm.

2 A GRAND JUROR: How you said the bullets are
3 lighter. I guess I'm just trying to figure out why
4 would someone need to take a shotgun versus their
5 regular --

6 THE WITNESS: Sure. In general, a -- you
7 know, if we wanted -- if we wanted to kind of work
8 through our most-to-least accurate systems, a rifle
9 would be the most accurate. A shotgun would be behind
10 that. It's a more accurate system than a handgun just
11 based on, like, the points of contact we have with it.

12 The fact that we can brace it against your
13 shoulder, have both hands on it, would lead to
14 increased accuracy of that. Below that would be a
15 handgun where, you know, we -- you're holding it out
16 in front of you. So there's -- it would be a more
17 accurate system than our handgun, but not as accurate
18 as a rifle system.

19 A GRAND JUROR: Okay. There's different
20 levels of accuracy in case of somebody that --

21 BY MR. JACKSON:

22 Q And what -- what about the range of a
23 shotgun as opposed to a handgun? In terms of its
24 accuracy, I guess, are those related?

25 A Yeah. I mean, accuracy and range -- like,

1 all these -- these rounds are going to go way farther
2 than our ability to accurately control them. But the
3 -- which is why, you know, making sure that we have,
4 you know, good backdrops is there. You know, I think
5 it -- it is going to be a more accurate system.

6 You know, the -- the rifle, by far, like I
7 mentioned, is the most accurate system we have.
8 Shotgun, you know, it is -- it's definitely a
9 different tool than the rifle, but it would have
10 increased accuracy and the handgun generally.

11 A GRAND JUROR: I have a question about --

12 THE WITNESS: Sure.

13 A GRAND JUROR: Back to the launchable foam
14 baton rounds, whatever you call it. So should the
15 head, neck, throat area be targeted before lethal
16 rounds are used -- or it seems that, in this case, it
17 was all or nothing. Like, shoot at his legs. That
18 didn't work, so now we're going in with the guns.

19 Isn't there, like, a protocol or a training
20 that would say, well, like -- like you just said,
21 should you work your way up, that's not working and
22 even though, yes, that's potentially more lethal to
23 hit in the chest, you know, broken ribs are still
24 better than death.

25 I mean, guns will definitely kill you or

1 more likely to than the beanbag in the chest. So I
2 mean, is -- it seems, from what I've heard, that
3 officers didn't want to go above the belt line.

4 THE WITNESS: So that's restricted. I mean,
5 that's our -- that's our policy. That's what the
6 manufacturers are saying they're used and this is
7 designed to be used. You know, if an officer were to
8 intentionally target the head, that -- there are
9 definitely cases of that causing death or serious
10 physical injury by doing that.

11 And so, you know, per our policy, unless
12 just -- unless deadly force is justified, we would not
13 be authorized to target the head, neck or throat.

14 A GRAND JUROR: Well, would -- at the chest,
15 it could potentially stop and they'd feel it, you
16 know?

17 THE WITNESS: I think if we are talking,
18 like, you -- you believe that it would hurt, you know,
19 to intentionally --

20 A GRAND JUROR: No. I'm just wondering
21 if --

22 THE WITNESS: -- the chest and neck?

23 A GRAND JUROR: Are they supposed to keep
24 going up, in your training?

25 THE WITNESS: No.

1 A GRAND JUROR: No. So you're only supposed
2 to shoot below the --

3 THE WITNESS: Correct.

4 A GRAND JUROR: -- belt?

5 THE WITNESS: And we target preferred target
6 areas because those are the areas that are the safest
7 to use. They're the safest to deploy these rounds
8 against and --

9 A GRAND JUROR: Are there --

10 THE WITNESS: -- when to --

11 A GRAND JUROR: Are there exceptions to that
12 preferred target area?

13 THE WITNESS: If we -- if we get to the
14 level of using deadly force, then we can target the
15 head, neck, throat. And then, you know, the -- like,
16 when we start talking about the chest and upper-chest
17 area, that -- that would fall outside of our training
18 on where we would be intentionally targeting based on
19 the potential for increased injury related to that.

20 BY MR. JACKSON:

21 Q So just to piggyback on --

22 A Sure.

23 Q -- back on that. If -- if an officer were
24 going to target one of those locations --

25 A Mm-hmm.

1 Q -- outside of the preferred target area --

2 A Mm-hmm.

3 Q -- would the situation have to change to,
4 now, we're not talking about one of those four
5 justifications --

6 A Mm-hmm.

7 Q -- you spoke of. You know, stop a suicide,
8 stop a fleeing suspect. You know, now we're -- it
9 would require a situation where there is a perception
10 of immediate or imminent risk of death or serious
11 physical injury to the police or another person?

12 A Correct. For -- for the -- when we're
13 speaking of, like, the head, neck, throat for our
14 restricted areas, then, yes. We would -- it would
15 change our -- it wouldn't fall into those four times
16 we're using less-lethal tools.

17 Q So if -- if the situation did not change to
18 where there is this perception of, you know, a risk of
19 death or serious physical injury, would not be an
20 authorized use of the less-lethal launcher to target
21 those areas?

22 A That's correct.

23 MR. JACKSON: Okay. Is that --

24 A GRAND JUROR: Can you repeat that? What
25 you just said.

1 MR. JACKSON: Well --

2 A GRAND JUROR: Counsel didn't understand
3 my --

4 BY MR. JACKSON:

5 Q Could -- could you repeat that?

6 A Yeah. So --

7 Q Yes. Thank you.

8 A So in order -- if we were to -- the use of
9 less-lethal tools, if we're going to say I'm using a
10 less-lethal tool for the means of using it as a
11 less-lethal tool, we need to fall within our policy on
12 when we're going to do that.

13 If things change and my intent was to target
14 the -- say, the face or the head, then I would need to
15 be able to articulate and justify the use of deadly
16 force. And so that would fall outside of, you know,
17 our -- the -- the times we would -- with our
18 less-lethal policy, using it as a less-lethal tool.

19 We'd be -- now be using a less-lethal tool
20 in the manner to potentially cause death or serious
21 physical injury. And kind of -- and move us into the
22 deadly force.

23 A GRAND JUROR: Well, I think at that point,
24 when those weapons were being used, the non-lethal
25 were being used, it was to stop him, to --

1 THE WITNESS: Mm-hmm.

2 A GRAND JUROR: -- have him comply.

3 THE WITNESS: Yes.

4 A GRAND JUROR: Just drop their knife.

5 THE WITNESS: Mm-hmm.

6 A GRAND JUROR: So I would think, if I'm --
7 am I -- I'm asking if they had aimed it higher at his
8 abdomen, might that have been more effective in
9 getting him to comply?

10 THE WITNESS: I -- I have no -- in -- in my
11 training and experience, I have not found that --
12 like, targeting -- you know, and we're talking area
13 below the waist. I mean, targeting an abdomen would
14 be -- fall within that. So that would be an area that
15 you could target.

16 In fact, in my -- in my training and
17 experience, like, targeting the chest is not gaining
18 us any more effectiveness in the tool. Alls it is
19 doing is increasing the potential risk of injury
20 associated with the deployment.

21 A GRAND JUROR: All right.

22 BY MR. JACKSON:

23 Q So kind of the bottom line is if -- if
24 they're going to aim higher up on the body, they could
25 kill him?

1 A Potentially.

2 Q And so -- and they're not going to do that
3 or put a person at that risk of injury unless they can
4 justify it by the use of deadly force?

5 A Correct.

6 MR. JACKSON: Okay.

7 A GRAND JUROR: Hmm.

8 MR. JACKSON: Is that -- are there any other
9 questions on that? Yes.

10 A GRAND JUROR: So, you know, out -- out of
11 the -- there are about nine -- nine foam shots --

12 THE WITNESS: Mm-hmm.

13 A GRAND JUROR: -- between the two guys and
14 they'd gone and -- well, they reloaded every time.
15 And then you had the old beanbag, which is a -- like a
16 pump --

17 THE WITNESS: Yeah.

18 A GRAND JUROR: -- shotgun. It seems like
19 it's -- you're limited in a situation like this where
20 if you had the old beanbag or they could -- probably
21 would have kept firing at him, right, with the
22 non-lethals?

23 THE WITNESS: I -- I think it depends. So
24 just like the -- the -- just because we had a 12-gauge
25 unloaded six rounds wouldn't mean that we could just

1 fire six. We're individually justifying each
2 deployment.

3 And so, you know, it's -- it's just, you
4 know, we could all -- or, you know, you can see a
5 person unload six rounds of a shotgun in relatively
6 short order.

7 The big piece of that is the articulation,
8 justification for the use of force. And so, you know,
9 in -- in this instance, would they have fired faster
10 if they had a different system? I don't know.

11 You know, one of the limitations when we
12 look at the pros and cons of a system in making the
13 transition from the 12-gauge to the 40 millimeter is,
14 you know, the pros of the 40 millimeter, they're far
15 more accurate -- as in far more accurate compared to
16 the 12 gauges, which definitely lacks in accuracy.

17 These foam rounds are hitting a little bit
18 harder, but are also far safer to be shot with because
19 there's not lead shot inside the -- the actual bag
20 that's flying, which potentially could rip open, cause
21 more penetrating injuries. So we have a lot of pros
22 in the 40-millimeter category.

23 The con there is that it's a single-shot
24 launcher. And that's something we knew going into it,
25 which is why we kind of work through the -- the

1 training on, hey, we've never talked about two
2 officers deploying together in coordination with the
3 single-shot systems because it's never been a problem.

4 So we're trying to, you know, tailor our
5 response and tailor our training to meet kind of this
6 limitation that we're seeing with the 40-millimeter
7 system.

8 A GRAND JUROR: So do -- they don't make a
9 40-millimeter foam rifle that has multiple -- where
10 you can fire off multiple rounds?

11 THE WITNESS: They do. They make -- they
12 make -- different companies with varying degrees of
13 success make four- and six-shot versions of it. Some
14 of the downsides with those is they are large enough,
15 if you can imagine the -- you know, the cylinder.

16 It's kind of like a large cylinder,
17 revolver-style cylinder that's on these launchers,
18 where it limit your ability to carry them in the cars.
19 And so, you know, we -- they're definitely more
20 expensive than these systems by about threefold.

21 And then an officer cannot have one up in
22 front of the car where it's easily -- easily
23 accessible or easily secured in the trunk. And so you
24 kind of -- our decision to go with the single-launch
25 -- launch system was because it -- it fit the needs,

1 it fit the kind of infrastructure we had.

2 They do make multiple -- multi-launchers.

3 But we just, on a patrol level, do not deploy

4 (indiscernible).

5 This is a -- a program that we're -- you
6 know, like I mentioned, this is a recent transition to
7 this and it's something that we're -- you know, as we
8 get more deployments out of it, we're continuing to
9 evaluate, you know, kind of the equipment and training
10 needs coming from it.

11 A GRAND JUROR: So in -- in a given year --

12 THE WITNESS: Mm-hmm.

13 A GRAND JUROR: -- how many non-lethal
14 situations are you in where you're actually firing a
15 non-lethal -- lethals here in Portland?

16 THE WITNESS: The less-lethal impact --

17 A GRAND JUROR: Yeah.

18 THE WITNESS: -- munitions?

19 A GRAND JUROR: The less lethal.

20 THE WITNESS: I can -- I pull up the numbers
21 just 'cause I printed off a bunch of reports to read.
22 And I think there was -- and I want to say it was
23 maybe 2016, it was maybe 18 of them. 18 in Portland.
24 So, you know, a relatively limited number.

25 A GRAND JUROR: And the majority of those

1 are effective?

2 THE WITNESS: I'd say we see the majority of
3 them being effective. And, you know, we see
4 effectiveness -- gauge effectiveness in whether that's
5 a person they could take with one and they, say, stop
6 doing what they're doing, whether it's, like, you hit
7 a person and they stay in an area.

8 For, like, an area denial, like, it's very
9 dangerous for them to move from Point A to Point B, so
10 we can get them -- keep them in a position. So we --
11 we see them in predominantly being effective.

12 MR. JACKSON: Any other questions?

13 A GRAND JUROR: I had one, but I can't
14 really remember what it was. I -- oh. With the less
15 lethal, you said it was (indiscernible) a few months
16 before this incident?

17 THE WITNESS: Mm-hmm.

18 A GRAND JUROR: So do you know how many
19 times it has been used before this incident, if that
20 makes sense?

21 THE WITNESS: Yeah. This -- this specific
22 tool?

23 A GRAND JUROR: Mm-hmm.

24 THE WITNESS: It has been used -- and I --
25 my number's going to be close. Let me think. 'Cause

1 there's -- in putting them out there, we're kind of
2 keeping track of those. Two. This is probably either
3 the fourth or fifth deployment of the 40-millimeter
4 system.

5 This, like, round itself, the round that
6 we're using has been used within specialty that's in
7 the Bureau for longer than they've been assigned to
8 patrol. So we've had a little more, like, user
9 history with it than just these five engagements.

10 But since the -- excuse me -- the transition
11 to the program from the 12-gauge to the 40 millimeter
12 on the patrol side is about -- I think this is either
13 the fourth or the fifth, I believe.

14 A GRAND JUROR: Okay.

15 THE WITNESS: That's going to be close. It
16 may not be exact.

17 A GRAND JUROR: And in those previous --

18 THE WITNESS: Mm-hmm.

19 A GRAND JUROR: -- deployments, do you know
20 if compliance was gained?

21 THE WITNESS: I do not know the specifics on
22 all the incidents. So I can speak to a couple of them
23 where I -- they say they were effective. One of the
24 incidents ended with a less-lethal deployment, which
25 ended up -- ended being, like, physical -- taking

1 physical control and custody of the person.

2 The other one, the same thing where it
3 was -- you know, the impact munitions were fired. It
4 ended being still a physical encounter. Like, it
5 wasn't a -- they weren't overly compliant at the end
6 of that, but we're taken -- physically taken into
7 custody.

8 And they said that the -- you know, the
9 experience was that the 40 millimeter allowed them the
10 opportunity to do that. And the other ones I cannot
11 speak to about that. I haven't got reports on all
12 those.

13 A GRAND JUROR: Okay. I guess I'm just
14 trying to figure out how do they it's more effective
15 than the --

16 THE WITNESS: Sure.

17 A GRAND JUROR: -- beanbag?

18 THE WITNESS: Yeah. Yeah. And that's
19 something where it is -- this is such a -- you know,
20 the -- the -- such a specific to the encounter, to
21 the -- to the person you're using against, that
22 it's -- if you are, like, you know, a person who is
23 mentally strong and has a high pain tolerance, this is
24 a pain-compliance tool.

25 So it may work, it may not. If a person's,

1 you know, impaired to the level that they're not
2 feeling pain, then that can. Or if it's -- you know,
3 it just really -- it -- there's a huge gambit of that,
4 a huge, broad spectrum to that.

5 So it truly is a tool that is a very
6 specific tool and I think it is an effective tool.
7 But whether or not it's going to be, like, effective
8 all the time, it's -- I'd say we train for it not to
9 be effective because we know that there's limitations
10 within the system.

11 It doesn't have the ability, like, you know,
12 a police canine, which would go up and take physical
13 control of a person. Like, this can't do it. You're
14 pretty much hitting them with a foam projectile, which
15 is going to induce some pain and -- and we could hope
16 to gain compliance.

17 But it truly is on the subject to comply.
18 Like, there's no control that we have to force them to
19 do so besides that (indiscernible).

20 A GRAND JUROR: And does clothing -- does
21 that -- is there some factor --

22 THE WITNESS: Yeah, absolutely. Clothing.

23 A GRAND JUROR: -- what they're wearing?

24 THE WITNESS: Yeah. If you -- heavier
25 clothing would -- could be -- definitely would be, you

1 know, more stuff that the impact round would hit.
2 It -- you know, it's a -- it's a soft foam projectile.
3 (Indiscernible) and squeeze the top of it.

4 A GRAND JUROR: Mm-hmm.

5 THE WITNESS: It looks like half of a
6 racquetball, which is soft. And so, you know, if we
7 had heavy clothing on there, it definitely could
8 reduce the effectiveness or reduce the -- the energy
9 that would transfer to a person being hit by one.

10 A GRAND JUROR: Mm-hmm. So -- sorry.

11 THE WITNESS: No.

12 A GRAND JUROR: So when you guys did the
13 test thing, did you test it against different
14 material, like jeans versus --

15 THE WITNESS: Mm-hmm.

16 A GRAND JUROR: -- jackets versus sweaters?

17 THE WITNESS: We have -- there's been a lot
18 of testing done with this round.

19 A GRAND JUROR: Mm-hmm.

20 THE WITNESS: I have -- the -- the testing I
21 have personally been involved in has been -- we -- I'm
22 trying to think what we shot with it. I've been at
23 testings where we shot ballistic gel with it. We even
24 shot ballistic gel with -- if you don't know,
25 ballistic gel is -- they use it to test ballistics.

1 It's supposed to be, you know, a -- not an
2 analogue for water content of the human body. So you
3 try to -- it's -- it's more of a control medium to use
4 in testing ballistics.

5 But would put, say, a layer of jeans over
6 the ballistic gel and shoot it with the impact
7 munition and, say, put a piece of -- what else would
8 we use? It was almost -- it was neoprene. Like, a
9 heavier neoprene over that and hit it with that.

10 And just to see what the different
11 effectiveness is of that. If they have any sort of
12 clothing that you put on top of a person, whether
13 that's -- you know, I'm trying to think for -- any
14 tool we have, it's going to, you know, affect the
15 effectiveness of the round.

16 If that answers your question. I'm sorry
17 if --

18 A GRAND JUROR: Okay. Well, yeah. I guess
19 not all my --

20 THE WITNESS: Yeah.

21 A GRAND JUROR: -- I don't know, materials
22 was valid 'cause it's from the belt down. So, like,
23 jeans, sweatpants --

24 THE WITNESS: Mm-hmm.

25 A GRAND JUROR: -- maybe that was a better

1 comparison.

2 THE WITNESS: And -- yeah. And we talk
3 about that in -- you know, in our -- in our training
4 on, you know, some of the, you know, pros and cons --

5 A GRAND JUROR: Okay.

6 THE WITNESS: -- and some of the limitations
7 to the system for sure.

8 A GRAND JUROR: Okay.

9 MR. JACKSON: All right. Any other
10 questions?

11 All right. I don't see any. And why don't
12 we go off the record for our lunch break.

13 * * *

14 (Noon Recess taken at 12:21 p.m.)

15

16 ***AFTERNOON SESSION***

17 (Grand Jury No. 1, 1:36 p.m.):

18 MR. REES: Thank you. This is going to be
19 our afternoon session. Our next witness is
20 Officer Polas.

21 Officer, if you'd please raise your
22 right hand.

23 **ANDY POLAS**

24 Was thereupon called as a witness; and, having been

25 first duly sworn, was examined and testified as follows:

1 MR. JACKSON: Please state your name and
2 spell your name for the record.

3 THE WITNESS: Andy Polas, A-n-d-y,
4 P-o-l-a-s.

5 EXAMINATION

6 BY MR. REES:

7 Q How are you employed?

8 A With the Portland Police Bureau.

9 Q How long have you been with the Police
10 Bureau?

11 A A little over 14 years.

12 Q All right. And what's your educational
13 background?

14 A I attended -- I got a bachelor's degree from
15 Western Oregon University.

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

18 A I'm currently assigned to the Gang
19 Enforcement Team, which I've been on for eight years.

20 Q Was Saturday April 7th, 2018 a regular work
21 day for you?

22 A Yes.

23 Q And what -- what shift do you work?

24 A I work swing shift, which is 4:00 p.m. to
25 2:00 a.m.

1 Q And with the -- the assignment that you
2 mentioned, are you working out of a particular
3 precinct or do you work city-wide?

4 A Our unit is under what's called a Tactical
5 Operations Division. It's, essentially, a precinct
6 within a precinct. Our office is at North Precinct
7 and our unit goes city -- we have city-wide coverage
8 all the way out towards Gresham.

9 Q How did you get involved in this call
10 involving John Elifritz?

11 A So my partner and I, Officer Fender, we were
12 down in the Central Precinct area in downtown
13 monitoring Central Precinct radio net because we were
14 on a followup, doing some follow-up investigation on a
15 previous incident from a few months prior.

16 And we were right down by the PGE Park,
17 where the Timbers play. So we were just on the west
18 side. We were pretty much completing that followup.

19 Q Unrelated to John Elifritz?

20 A Totally unrelated. Normally, at that time
21 of day we wouldn't have been in the Central
22 Precinct --

23 Q Oh.

24 A -- area. And so we were listening to
25 Central Precinct radio dispatch and that's when we

1 heard the initial call of the stolen car that was used
2 in a car jacking at knifepoint crash at MLK and Stark.

3 Q And so did you -- did you respond to that
4 call or -- or -- or not?

5 A Yes, we did. And we -- we were pretty much
6 finishing up our -- our followup at the time when the
7 call came out. And when that call came out, it
8 sounded like a pretty serious call. A stolen car
9 crashed in the middle of the street and a suspect was
10 reported to have carjacked somebody at knifepoint.

11 And my partner and I were like, "We're just
12 on the opposite side of the bridge. We're -- as soon
13 as we get over the Burnside Bridge, we'll be right in
14 the area of that call. Like, let's -- let's head to
15 that call and see if we can find that suspect who took
16 off running."

17 So we -- I was driving and we -- we would
18 have been, again, going lights and siren eastbound on
19 Burnside and crossed over the bridge and we're right
20 in the area.

21 Q Okay. So that would have been just a matter
22 of -- of minutes probably --

23 A Correct.

24 Q -- or -- or less than that even to get
25 across the bridge.

1 A Correct.

2 Q Did -- what did you see when you -- when you
3 got to the east side of the river?

4 A When we got to the east side, the last
5 update was he had -- was seen running eastbound with
6 no shirt on. We immediately began checking the area,
7 trying to search anywhere we could possibly think to
8 find him. Those blocks are small, industrial blocks.
9 A lot of places people can hide or doorways people can
10 dip into.

11 And so we were -- we were checking as many
12 areas as we possibly could trying to find this guy.
13 And we -- we searched for quite a while with no luck
14 in finding him. But then that's when additional calls
15 kind of started coming in of -- of separate incidents
16 that he was doing that kind of, like, led us in -- in
17 even more of a chase trying to find this guy.

18 Q All right. And do you -- without going into
19 all the details, but do you remember, generally, the
20 types of calls you were hearing related to John
21 Elifritz?

22 A Yes.

23 Q And what -- what -- what -- what was that?

24 A The first one was at the Jacksons mini-mart
25 down on MLK, a little further south on MLK, of him in

1 the doorway of the Jacksons holding a knife to his
2 neck. And the employees were scared he was going to
3 hurt himself, hurt customers or hurt them.

4 And so my partner and I are thinking that
5 this -- this has got to be the same guy. So we
6 immediately drive to the south now to try to locate
7 him down there.

8 Q Okay. Any other calls?

9 A While -- once we got down there we began
10 checking all those blocks, looking around as much as
11 we could trying to find him. And while we were
12 checking down there, that's when the next call came in
13 back further up north. Same kind of call.

14 Guy in a doorway of a -- you know, I -- I
15 don't remember the type of business it was. But guy
16 in a doorway holding a knife to his throat. People
17 were scared what -- what -- that he was going to do
18 something aggressive with this knife.

19 So we're like that's -- that's got to be
20 him. So we went -- now, we went back up north and
21 began trying to search for him back north where that
22 call was. Of course that call was right across from
23 the homeless shelter where the incident happened.

24 Q Now, so how -- how did you learn that
25 John Elifritz was actually inside of the homeless

1 shelter that's on the east side of Grand Avenue,
2 across the street from the -- the very last call that
3 you got?

4 A Yeah. So once Officer Fender and I got in
5 the area, there was a -- there was two other patrol
6 cars that had beaten us there, so we were -- I think
7 we were the third car there.

8 And so we're checking. We were just slowly
9 going northbound on MLK, looking to the -- to the west
10 in all the doorways when this call had come out,
11 thinking, like, okay, maybe he's tucked in one of
12 these doorways, hiding in here. We're looking and we
13 don't see him.

14 And we get to -- pretty much get to right at
15 MLK and Stark and we -- I stop. I'm driving and --
16 and Fender and I are having a conversation. We're
17 like, "Okay. We've checked so many areas. Where --
18 where should we look next? Where should we try to
19 find this guy? Where do you -- where do you think
20 he went?"

21 So we're kind of trying to, like -- like,
22 decide which way we want to go next. And while we're
23 having that conversation, we both hear on the radio
24 dispatch an officer saying, "I've got him. I've
25 located him. He's in this homeless shelter at MLK and

1 Stark."

2 And they said the name of it, but we were
3 like, "That's right -- we're -- that's right here.
4 It's right across the street from us." So I
5 immediately put the car in park, both Officer Fender
6 and I jump out of the car and literally run across the
7 street to where that officer was.

8 Q And what do you -- if you could kind of give
9 us a word picture, what are you seeing and hearing as
10 you cross the street?

11 A Yeah. So as -- as we're jumping out of the
12 car to run across the street, I hear the officer on
13 the radio say, "Start Code 3 medical," which is, you
14 know, immediate medical response. "This guy stabbed
15 himself in the neck. He's bleeding badly and I'm
16 worried he's going to take hostages."

17 So I'm immediately -- my -- my concern level
18 immediately goes up, like, wow, this guy just hurt
19 himself. He's -- he's maybe going to take hostages
20 inside the building.

21 I can see -- when I'm running up, I just see
22 one officer at the time -- I'm assuming the officer
23 who gave out the update -- standing in the doorway. I
24 run up, join up with him. Pretty much simultaneously,
25 multiple other officers join up with us, including the

1 less-lethal operator.

2 Q Did -- did you take a particular weapon with
3 you from your patrol car?

4 A I did not.

5 Q And -- and -- and why not?

6 A I don't have any other weapons.

7 Q Okay. So your -- you had your -- your
8 service handgun, that was your --

9 A Yes.

10 Q -- firearm; is that correct?

11 A Correct. That's correct.

12 Q Okay. And so where -- where do you go then
13 to approach the -- the shelter?

14 A Yeah. So I'm -- I'm right at the doorway.
15 It's a -- it's kind of a big double door. There ended
16 up being a row of three or four officers in front of
17 me, including the less-lethal operator, who I was
18 standing directly behind two officers. One kind of
19 directly in front of me and one a little off center to
20 my left, who was the less-lethal operator.

21 So I was -- essentially, had kind of gotten
22 moved to I guess what would be the second row of
23 officers who were all in this doorway now, the front
24 row giving him direct commands to drop the knife and I
25 could see directly -- the officer in front of me was

1 shorter than me, so I could see direct -- I had clear
2 line of sight in there what Mr. Elifritz was doing.

3 And I could see all the people hiding in the
4 corner. It -- it just was chaos in the room.

5 Q Did you hear the commands --

6 A Yes.

7 Q -- telling him to drop the knife? Could you
8 see Mr. Elifritz?

9 A Yeah, I could see him the entire time.

10 Q What was he doing?

11 A He was -- he looked extremely agitated. I
12 could see -- I could see he was bleeding everywhere.
13 I mean, there was -- to me, it looked like there was
14 so much blood. Like, just his entire neck was covered
15 in blood. His jacket had blood all over it from the
16 blood dripping down from his neck.

17 And he had what looked just like a really
18 big, jagged, sharp knife in his hand. And he was
19 yelling at us. He was -- he was making sounds that
20 were almost animalistic-type sounds, like growling.
21 And I distinctly hear him yelling, "No," when we were
22 telling him to drop the knife.

23 There was one point in particular where --
24 'cause you -- he was going back and forth. He was
25 pacing back and forth. And there was a group of

1 people what I thought was, like, 15 to 20 people who
2 appeared to be trapped in the corner, it would be the
3 northeast corner of this room.

4 Because he kept moving towards them. And I
5 remember seeing two guys specifically who had --
6 they -- there was chairs with legs on them and they
7 both picked up the chairs and were, like -- like --
8 'cause he was getting close to them. And I was
9 thinking, like, oh, my God.

10 This guy's going to try and stab one of
11 these people or this guy's going to take a hostage or
12 do something. He's going to try and kill one of these
13 people.

14 And a couple guys, like, had literally
15 picked up chairs and were, like -- like, ready to,
16 like, fight this guy and, like, defend themselves and
17 defend the group or the rest of the people who were
18 trapped in the room.

19 And so I'm thinking, like, oh, my God, we're
20 going to have a horrible situation here if this guy
21 stabs one of these people or if he starts stabbing
22 them 'cause now our backdrop to shoot him is going to
23 be innocent people. And so I'm thinking we got to --
24 we got to do something to -- to -- to stop this
25 threat. This guy's going to kill somebody.

1 Q What was your -- your -- your stress level
2 would you say at that --

3 A At that -- at that point, very high. I was
4 extremely concerned that -- there was a minute where I
5 was -- I was pretty convinced that he was going to go
6 start stabbing people. And so --

7 Q Okay.

8 A Yeah, I was very worried.

9 Q At some point, you went inside the building,
10 right?

11 A Yeah. Yeah. So why -- why --

12 Q What -- what went to that?

13 A Yeah. So while we're in that -- in that --
14 that -- in the doorway, an additional less-lethal
15 operator had shown up on scene. And so now they were
16 alternating rounds, discharging less-lethal rounds at
17 him. And those -- those are -- are pretty painful
18 rounds.

19 And I -- it was, like, I could see -- from
20 my vantage point, I could see every individual round
21 fire from that -- from the less-lethal -- the
22 less-lethal gun. And I could see each round bounce
23 off his body.

24 And like any -- any person who's in their
25 right mind, who's feeling pain, that's going to drop

1 them. It's going -- they're going to have some sort
2 of reaction. It's going to be extremely painful.

3 And this guy didn't even blink. I watched
4 every round hit him center mass and he didn't even
5 flinch. And I was, like oh, my God, this guy is not
6 feeling anything. This guy -- this is not good.

7 This is not working whatsoever on this guy.
8 And so at the point when he started, what looked to
9 me, aggressively moving towards that group of innocent
10 people in the corner or the guys with the chairs up,
11 that's kind of when the entire group of officers moved
12 into the room.

13 I think everybody was kind of on the same
14 page. This guy's going for these people. The
15 less-lethal rounds are not working on this guy. We
16 got to get in there to -- to do something to try to
17 get him away from these people, do something 'cause
18 what we're doing right now, these rounds, it's not
19 working. He's going to kill somebody if we don't get
20 in there.

21 Q Did you have any thought that he had
22 something going on as far as being under the influence
23 of drugs?

24 A Yeah. I -- I -- in my mind, I thought for
25 sure that he was high on meth.

1 Q What was that based on?

2 A I -- I've seen -- in my career, I've been a
3 cop for over 14 years now and I've seen -- dealt with
4 a lot of people high on methamphetamine. I've dealt
5 with a lot of people who have mental illness. And in
6 my opinion, there's a distinct difference.

7 I've seen people on methamphetamine do
8 things that are so irrational, so out of their mind.
9 Stuff that no mental illness would cause somebody to
10 do. Extremely violent behavior, shredding off every
11 -- every piece of clothing they have, hurting
12 themselves, feeling no pain.

13 Just such high anger levels; and, in my
14 mind, his behavior is -- is very conducive to what
15 I've seen in my experience as a police officer for
16 people who are high on methamphetamine.

17 Q So you -- you move inside; is that right?

18 A Correct.

19 Q And what -- when you go inside, what were
20 you thinking your -- your role is going to be, 'cause
21 -- well, there's a lot of police officers there,
22 right?

23 A Yeah.

24 Q So do you have a thought in mind in what --
25 what you're doing?

1 A Yeah. So there -- there was a lot of us
2 there, so -- but then there were just so many moving
3 parts to it. There was such chaos inside. We knew
4 that -- that him as the -- the threat needed to be
5 addressed.

6 And the group of people who seemed to be
7 pinned down in this corner that -- that were scared
8 or, for whatever reason, we're not getting out of this
9 corner. Felt that if they moved, this guy was going
10 to cut them off and attack them.

11 So we needed to -- we needed to have a way
12 to get these people out of this corner, out the door
13 and towards us, towards safety, away from him. So the
14 way -- everything just kind of naturally took a --
15 took a position I guess.

16 Like, when we pushed into the room, officers
17 kind of -- a group kind of went to the left and a
18 group of us went to the right. And the group to the
19 left was yelling at the people like, "Get -- get back
20 here. Come with" -- you know, "Get over towards us,"
21 like, yelling at these people like, "Come towards us."

22 And we could see that by them moving to the
23 left, it kind of flanked this guy, so he was going
24 back and forth on the -- on the east end of the -- of
25 the building. It pushed him away from the people.

1 So now, he -- he -- it -- it almost kind of
2 worked, but we -- what -- what the plan was to --
3 like, it -- it made him go to the corner away from all
4 of the people in the -- in the northeast corner of the
5 building. So now he's in the southeast corner of the
6 building.

7 And so that kind of separated -- the
8 officers on the left were now able to continue to yell
9 at these people to -- to bring them back towards us.
10 And the group of us to the right were able to keep our
11 eyes on him. I had my -- my pistol drawn at that
12 point.

13 And we were able to address the threat,
14 continuing to give him commands to drop the knife,
15 ready to react based on what he was doing.

16 Q And did you see additional rounds from the
17 40-millimeter less lethal fired at him?

18 A Once we were to the right --

19 Q Do you recall that?

20 A I don't recall.

21 Q Inside. Once you went inside, did -- did
22 you see that?

23 A I -- I don't recall.

24 Q Okay. And you said you drew your -- your
25 weapon. You didn't immediately begin to -- to fire

1 your weapon?

2 A No. No.

3 Q And why not?

4 A There was -- at that point, there was
5 distance between us. He was in the corner. He was --
6 he was -- I mean, he had a very aggressive stance. He
7 had the knife in his hand and he -- he kept yelling,
8 "No, no," and with every -- for every time we yelled,
9 "Drop the knife," it was, "No," and -- and just weird
10 growling noises.

11 And he was very aggressive and angry
12 looking, but he hadn't -- he wasn't, like, charging at
13 us or anything at this point. We had distance in
14 between us. At that point there was no reason to
15 discharge my firearm.

16 Q So, initially, you didn't believe you'd be
17 justified in using deadly force against him at that
18 point?

19 A At that point, no.

20 Q Now, obviously, at some point you did use
21 deadly force?

22 A Correct.

23 Q What -- what changed?

24 A So when he was in that corner, he -- he was
25 still going back and forth. He still had that -- that

1 aggressive look in his face, angry. Still had that
2 knife in his hand and he -- and he kind of had it --
3 the way he was holding the knife, he was -- like, he
4 was holding it like -- like, kind of -- like -- like,
5 aggressive, like, almost like a fighting stance.

6 But he had it, like, towards his own neck.
7 And it was, like -- it was, like, this defining moment
8 for me, for him, where, like, it was -- it was like he
9 almost said in his mind, like, F it. Here I -- this
10 is it. And he, like, lowered that knife, like, to,
11 like -- like -- like, an attack position.

12 And he just started coming, like -- like,
13 to -- in my mind, what I saw was big steps. He
14 started coming aggressive towards us. And, in fact, I
15 was like this -- this guy's going to stab us. This
16 guy's going to try to kill me or kill one of these
17 other officers.

18 And I was like this -- this is it, he's --
19 he's coming. And he -- he came aggressively. And, I
20 mean, I remember he was pretty dang close when I fired
21 my duty weapon at him.

22 Q And when you fired, did you do that
23 independently or did you do that, you know, based on
24 what other officers were doing? Were you aware of
25 other officers?

1 A No, it was -- my -- my independent action to
2 do that.

3 Q And how many times did you fire?

4 A I fired six rounds.

5 Q And why did you stop shooting?

6 A Because -- I stopped shooting because I saw
7 him fall down to the ground. And once he fell down to
8 the ground I did not perceive him -- he wasn't
9 charging at me anymore. I did not perceive him to be
10 a direct threat that I needed to discharge my duty
11 weapon anymore at him.

12 Q And did you perceive that he was coming
13 towards you or to other persons or both or --

14 A I thought both, but I -- to me, when he --
15 that look in his face and at that -- that defining
16 moment that I described, it looked to me that he
17 looked me right in the eye.

18 That, like, that it was, like, I'm coming
19 for you and I'm -- and it was, like, this, like --
20 we -- it was like we had, like, made eye contact and
21 this -- this evil look that he gave me, that he was
22 coming and he was going to stab me.

23 It was -- it was very personal for me.
24 Like, I thought he was going to -- I thought he was
25 going to try and stab me or maybe stab somebody else

1 if he was coming.

2 Q Any thought of waiting another second,
3 another two seconds to see what was going to happen or
4 -- or not?

5 A I -- I -- no. I -- I felt that -- that I --
6 if I waited any longer, he would have -- action,
7 reaction time with -- if -- if he had any more
8 opportunity to advance on us, that he would have been
9 able to severely wound one of us or kill one of us if
10 I didn't do what I -- what I did.

11 Q You've been placed -- as soon as this
12 happened, you were placed under a communication
13 restriction order not to talk to other -- well,
14 witnesses. And you've been on administrative leave,
15 right? You've been off the job?

16 A Correct.

17 Q You have a lot of time to think about --
18 since April 7th -- what happened that night, correct?

19 A Yes.

20 Q Any thought that you could have done
21 something different or -- or would have done something
22 different in terms of using deadly force in that
23 situation?

24 A Yeah. I -- I mean, obviously, like, it's a
25 pretty traumatic incident for all of us to be involved

1 in. And I thought about it over and over and over and
2 lost sleep about it. And just, you know, thought
3 about a lot of things.

4 And -- and there is -- there is -- looking
5 back on it and just replaying everything in my head,
6 there's nothing I could have done differently. He --
7 in my mind, he -- he forced our hand. He -- his
8 actions, he was going to try and kill one of us if he
9 -- if we didn't -- if we didn't do what we did.

10 If we would have stood there, I think there
11 would be multiple dead cops and -- and I -- I had no
12 other option to do what I did, after thinking about
13 over and over again.

14 MR. JACKSON: Questions? Any additional
15 questions from members of the grand jury?

16 Okay. I'm seeing no -- no questions.

17 All right. Officer Polas, thank you for
18 coming in this afternoon. We'll excuse you.

19 THE WITNESS: All right. Thank you.

20 MR. REES: Thank you.

21 A GRAND JUROR: Thank you.

22 MR. JACKSON: And that concludes our
23 presentation of evidence, so we can go off the record.

24 * * *

25 (Court adjourned, Volume 4, 5-9-18 at 1:57 p.m.)

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REPORTER'S CERTIFICATE

I certify, by signing below, that the foregoing is a correct transcript, of the audio record in the above-entitled cause, as recorded on CD and transcribed to the best of my ability and in accordance to the quality of the audio CD.

Katie Bradford, CSR 90-0148
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