

MULTNOMAH COUNTY GRAND JURY

DEATH INVESTIGATION

Deceased: Patrick K. Kimmons)
Date of Incident: September 30, 2018) DA No.
Location: Southwest Third Avenue and) 2390609-1 & 2
Harvey Milk Street, Portland, Oregon) Volume 2

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled transcript of GRAND JURY proceedings was heard, commencing at the hour of 9:10 a.m. on Tuesday, October 30, 2018 at the Multnomah County Courthouse, Portland, Oregon.

APPEARANCES:

Mr. Todd Jackson
Deputy District Attorney
On Behalf of the State of Oregon

* * *

HEATHER M. INGRAM
Certified Shorthand Reporter
Portland, Oregon

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P R O C E E D I N G S

Tuesday, October 30, 2018

MR. JACKSON: Good morning. We're here for day two of presentation before Grand Jury Number 1 concerning a death investigation following the use of firearms by police that caused the death of Mr. Patrick Kimmons on September 30th, 2018 in the city of Portland.

We'll begin with our first witness today, Sergeant Aaron Schmautz.

SERGEANT AARON SCHMAUTZ

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

EXAMINATION

BY MR. JACKSON:

Q. All right. Could you please state and spell your name?

A. Aaron, A-A-R-O-N, Schmautz, S-C-H-M-A-U-T-Z.

Q. Where are you employed?

A. I'm a sergeant for the City of Portland.

Q. And what do you do as a sergeant for the City of Portland?

1 A. So my current patrol duties, I'm in charge of
2 the entertainment detail. We basically manage all the
3 nightlife, kind of staffing for working around the
4 nightlife at Central Precinct.

5 So daytime Wednesdays and Thursdays, I deal
6 with liquor licensing and managing who can serve alcohol
7 and manage those kinds of places.

8 And then Fridays and Saturdays, we manage all
9 the clubs and nightlife, things that go on on the weekend
10 in downtown.

11 Q. And does that include actually closing down
12 the vehicular traffic, a portion of the downtown area?

13 A. Yeah. So there's a city charter deal down --
14 it's basically Burnside to Everett, Second to Fourth.
15 There's kind of a confluence of nightlife establishments in
16 that location. It's kind of like the hub of where we
17 operate out of. The Old Town Precinct is kind of our main
18 area that we operate out of. There's a lot of bars on the
19 Southeast side as well, but the majority of clubs are down
20 there. So that's where we work from.

21 Q. Okay. What are the times that that area of
22 downtown is actually closed to vehicular traffic?

23 A. We set up barricades at 10 p.m., and all the
24 bars close at 2 a.m. And so there's usually kind of an
25 area of people getting food and lingering out. So about 3

1 a.m. is when we pull them.

2 Q. And how long have you been a sergeant of the
3 entertainment detail?

4 A. The entertainment detail, a year; sergeant in
5 general, since 2015.

6 Q. And how long have you been a police officer?

7 A. Since 2005, February of 2005.

8 Q. And have you worked in the Central Precinct
9 area for most of that time?

10 A. So I was actually on the entertainment detail
11 as an officer from, like, fall of '06, fall of '06 to,
12 like, summer '07 or '08. I get the years combined there.

13 Then I worked Central Precinct patrol for
14 about four years. Then I worked East Precinct patrol for
15 about seven years or so.

16 When I got promoted, I came back downtown and
17 have been at Central since I got promoted.

18 Q. Okay. Were you working on September 30th of
19 2018?

20 A. I was.

21 Q. And what shift were you working that day?

22 A. Entertainment detail, so I start at 6 p.m. and
23 go home at 4 a.m. usually.

24 Q. Could you kind of take us through your
25 responsibilities as a sergeant when you're on shift?

1 A. So I kind of work as kind of triage/dispatch.
2 With the bars, there's a lot of issues that pop up that may
3 rise to the level of a 911 call or kind of a consult.

4 So the majority of the bar owners and security
5 staff have my phone number. So very often, they'll call me
6 as opposed to dispatch and say, Hey, this is what we have
7 going on because, as you can imagine, if there's a
8 disturbance, you may get 20 calls about it from all the
9 different vantage points.

10 So I kind of serve to kind of ease the
11 pressure on 911. They call me, and I'll either send
12 officers or give advice. Security staff, they have
13 abilities to manage trespass, things like misrepresentation
14 of age, those kinds of things. We'll have discussions
15 about that.

16 So I usually am down just right in the core
17 kind of sending officers out to different areas. I just
18 make sure that we're where we need to be.

19 You know, command will call and say, this
20 issue, that issue, whatever else. Ultimately, I'm a
21 secondary dispatcher.

22 Also, if there's an issue or complaint, I'll
23 go and respond to those or manage those.

24 Q. How many officers do you have under your
25 supervision in the entertainment detail?

1 A. Currently, eight. It kind of swells and ebbs
2 and flows depending on the needs of the night.

3 For instance, Halloween weekend tends to be a
4 busy weekend. New Year's is a busy time. Middle of the
5 winter tends to be less busy, so it will be less officers
6 on duty.

7 Full time, I have six officers, and I augment
8 on the weekends with two more.

9 Q. On September 30th -- well, starting the night
10 of the 29th, into the early morning hours of September
11 30th, could you explain for us kind of how that shift was
12 going?

13 A. So it was fairly routine. We had had several
14 fight calls.

15 Towards the end of the night, there tends to
16 be -- on any given weekend, and this was no different,
17 people will come down who may not have been in the
18 establishments, but are coming down to meet friends or just
19 come down. We seem to have a swell of people around, like,
20 1:15 or so through the end of the night.

21 Q. What is the end of the night?

22 A. 3:00. So, I mean, I don't know the science
23 behind why this happens, but there just always seem to
24 be -- you can't tell they weren't in clubs. We'll just
25 have people show up in cars or wherever else, and we tend

1 to have more fights at this time.

2 And so this night, like I said, was no
3 different than any other night. We started having fight
4 calls in Ankeny Alley. Ankeny Alley, there's several
5 clubs. It's on Ankeny, Second to Third. There's an alley
6 there. It's like a -- there's, I don't know, maybe six
7 bars. They're all small, 49-person capacity bars, just
8 little rooms basically.

9 And so they started having fights. If people
10 are going to fight, they'll go there sometimes just because
11 it's an alley. And so unless we're literally standing in
12 it, it's hard to see.

13 So the owner of Fuse, which is right on the
14 corner right by Voodoo Doughnuts there, he calls me a lot
15 because he'll be standing out there. He called twice and
16 said they had had fights and that he was hearing someone
17 say something about having a gun.

18 So we went down there. We were patrolling it.
19 And as per usual, by the time we got there, they were gone.

20 Q. Is that information, when fights are reported
21 and you guys are going to respond, is that information put
22 out over the radio so that the officers in the
23 entertainment detail and anyone else assisting would be
24 aware of what's going on?

25 A. Yeah. So in this case, and, again, as per

1 usual, the owner will call me and say, Hey, there's a
2 fight. This is what I am seeing.

3 I'll get on the radio and say, Hey, there's a
4 fight. This is where it's at. This is information I'm
5 getting.

6 We usually walk. It's a block. It's just --
7 it's hard to get cars around downtown Portland. So we'll
8 walk down there.

9 We did. We got down there. Other cars will
10 show up, but my people always walk.

11 Again, by the time we got there, there was
12 information that they had gone through the alley towards
13 kind of Naito, in that direction. So I asked over the air,
14 Hey, can officers patrol the area, just kind of fly the
15 flag and people can see us, and hopefully that will
16 disburse groups, and we'll look for people that are arguing
17 and see if we can disburse them.

18 Q. Okay. Did you also receive reports of people
19 with weapons during your shift that night?

20 A. Yeah. So the owner had said that he had heard
21 someone say something about a gun. And then when we got on
22 scene, a cab driver said something to me about someone said
23 something about a gun or was going to get a gun or had seen
24 a gun.

25 It's always just a lot of information coming

1 from all these tangential areas. But, yeah, several
2 reports.

3 Q. So when you have information coming out that
4 fights are occurring, that there may be weapons, including
5 firearms involved, how do you respond to that information?

6 A. So we'll usually try to bring as many
7 resources down to the area as possible. You know, I -- I
8 have been doing this job for a long -- the entertainment
9 detail for a long time, both as an officer, as a sergeant
10 and also my officers, it's -- this is a weekend recurrence
11 for us every week.

12 And so the areas that there are typically
13 violence, subjects usually won't bring guns with them to
14 bars because you can't get in because all the bars search
15 people before they go in.

16 And so the parking lots are areas of concern
17 for us because the people who are going to bring guns will
18 usually leave them in their car. And then if there's a
19 fight, they'll go and get the gun and either bring it back
20 or agree to go fight, and bad things happen in the lot.

21 And so, universally, you know, we'll go and
22 send people to those lots to manage those and be kind of a
23 real obvious visible presence. We'll usually have our
24 lights on, so there's no question, like, there are police
25 officers here. Please don't do anything.

1 And that is, I mean, every single weekend.

2 Again, this weekend was no different.

3 There's two main lots that are areas of
4 concern. One is Harvey Milk, by Third and Fourth, and one
5 is on Couch, Third and Fourth. They're huge parking lots
6 where people tend to go for nightlife establishments.

7 Q. So do you recall officers going out to monitor
8 those lots as you approached the end of the night, as you
9 put it?

10 A. Yeah. So after these two -- we had gotten two
11 calls in Ankeny Alley about fights.

12 After that happened, I returned to Fourth and
13 Couch, and a group showed up and started arguing and
14 fighting and pushing each other around.

15 The thing that's challenging with these fights
16 is, I mean, we can't reasonably go and arrest everybody who
17 is just arguing and pushing each other. If there's, like,
18 an assault, we'll deal with that.

19 But just general kind of bar fight, angry
20 behavior, it turns into a crowd control scenario. You can
21 just imagine six police officers trying to wade into a
22 crowd to arrest and decide who's the main person. It's
23 just impossible.

24 So most of our role is tell them to go home,
25 the night is over, that kind of stuff.

1 So an argument took place right at Fourth and
2 Couch, which is a lot right there, and so I sent some
3 officers to that lot.

4 And as soon as the argument there broke off,
5 half of the group began walking northbound -- I'm sorry,
6 southbound on Fourth towards Burnside.

7 There is a club called Golden Dragon, which is
8 on Third and right about Harvey Milk. It is -- it's a
9 juice bar. They don't serve alcohol, so they're open past
10 2:00. That seems to be the place where people go if
11 they're going to stay out because it's the only place open
12 that late.

13 And so that group was walking towards there.
14 I mentioned to my group, Hey, we're going to want to go up
15 to that lot because this group was going up there. If
16 they're not going to the lot at Fourth and Couch,
17 statistically speaking, they're going to the lot at Fourth
18 and Harvey Milk.

19 Q. Okay. Was Sergeant Garry Britt working with
20 you that night?

21 A. Yes.

22 Q. And what about Officer Livingston?

23 A. Yes.

24 Q. Okay. And are they part of your entertainment
25 detail?

1 A. So Livingston -- so every weekend, this
2 weekend, and probably the month and a half prior, I had had
3 Livingston, he works afternoon shift, but I'd been hiring
4 him overtime to stay late. I like to use the same people.

5 Again, when you're dealing with crowd control
6 scenarios, it's nice to have the same people because you
7 know what to expect from each other. It's a real specific
8 skill-set dealing with really angry drunk people every
9 weekend. So I like to know what to expect from my people.

10 And Britt is kind of my sub. He's -- I've
11 been trying to get him trained up and, you know, This is
12 what we do down here.

13 I had a -- in two weeks after this night, I
14 was going out of town, so he was going to be my backup. So
15 I was having him come down weekend after weekend to show
16 him what we were doing.

17 Q. Okay. When you had seen this group kind of
18 heading south towards what you suspected would be the
19 Golden Dragon and the adjacent parking lot at Harvey Milk
20 between Third and Fourth Avenue, do you recall Sergeant
21 Britt offering or telling you that he was going to go down
22 there and monitor the lot?

23 A. Yeah. So we -- we had walked back towards our
24 OTP to take a break for a minute and kind of discuss --

25 Q. OTP?

1 A. Old Town Precinct. It's at Third and Couch.
2 It's kind of our -- it's a little precinct where we take
3 breaks, sit, write reports, whatever.

4 And so I was going back there. And Britt --
5 Livingston is getting towards the end of his shift. He
6 basically stays on overtime until we're done. There's no,
7 like, end time. It's just whenever.

8 So he was going to start driving back towards
9 Central Precinct just to go home and be done, and I heard
10 Britt mention he was going to go down to that lot. And I
11 intended to go with him, but I just walked to the precinct
12 to get water, take a break and head over there.

13 Q. Okay. Was it your understanding that some
14 other officers were going to respond with Sergeant Britt?

15 A. Yeah. And I didn't -- I don't recall, like,
16 listing specifically who he was going to have. We knew --
17 again, because of this fight, we anticipated there being an
18 issue in that lot. We just had been on our feet for four
19 hours, so everyone was just -- the majority of the group
20 who had been walking just went to sit down for a minute.

21 We have to take the barricades down. So
22 there's kind of a process we go through to kind of close
23 that area, and then we'll head over to that lot.

24 Q. Okay. While you were at the Old Town
25 Precinct, were you monitoring the radio?

1 A. I was.

2 Q. What do you recall occurring?

3 A. So I literally just sat down, and I heard kind
4 of like a muffled transmission. I thought I heard gunshots
5 on the radio, and then I heard something about there being
6 a fight and then heard shots fired, something shots fired.

7 Q. Okay. And so just to clarify, you listened to
8 the radio through the earpiece?

9 A. Yeah, yeah.

10 Q. And you could hear what sounded like muffled
11 gunshots?

12 A. Yeah.

13 Q. Do you mean the actual sound of gunfire or
14 somebody reporting the --

15 A. So the actual -- it was weird. Like the
16 initial radio transmission, I heard something about a
17 fight. And I literally I thought I heard popping sounds in
18 my ear. But in our earpiece, you know, you hear goofy
19 things.

20 It's -- I heard what I thought was literally
21 gunshots in my earpiece, which came right after the fight
22 thing, so it kind of gave me pause.

23 I assumed that I had not heard that because
24 that would be -- I mean, just the timing of it, but that
25 part of --

1 Q. You assumed the sounds you were hearing was
2 not gunfire?

3 A. Well, in my brain, it would be random. Again,
4 you know, out of no where you hear the fight and hear this
5 noise.

6 So everybody that was kind of talking kind of
7 stopped to listen, and then I heard the next transmission,
8 which was "Shots fired."

9 Q. Do you know who put that out?

10 A. I believe it was Sergeant Britt.

11 Q. And what did you do in response?

12 A. So I ran out of the precinct. Again, my car
13 was parked still in the middle of the street, because the
14 road had been blocked off, and it -- I was at Third and
15 Couch, and I knew where he was. As soon as -- I knew
16 exactly where he was when he said it because I knew where
17 he was headed.

18 So I drove as fast as I could down to that lot
19 and pulled into just kind of the driveway of the lot and
20 saw that there had been a shooting.

21 Q. When you heard the "shots fired" statement put
22 out over the radio, did you have an understanding at that
23 point what that meant and what that was indicating?

24 A. So, I mean, there's two reasons we say shots
25 fired. One is that you see shots fired, and one is that

1 you shoot shots.

2 Sergeant Britt said, "I'm okay," and so that
3 kind of perked my attention. We kind of have a protocol
4 for things we'll say when we're involved in a shooting.
5 That is one of them, just, you know, making sure everyone
6 knows that the officer is okay. But I wasn't sure if he
7 had been in a shooting or if he had seen a shooting.

8 And I was there -- I mean, it was, like,
9 probably less than a minute. It's not -- I mean, I was
10 driving really fast.

11 So, yeah, I was not 100 percent sure what he
12 was articulating, that he had seen a shooting or that he
13 had been in a shooting.

14 And when I got there, I still wasn't 100
15 percent sure.

16 Q. Did you come south down Third Avenue?

17 A. Yes.

18 Q. If you look at the board behind you, could you
19 indicate for us kind of your path of approach and where you
20 ultimately parked?

21 A. Sure. So I was coming -- again, this is
22 southbound on Third. This is the Golden Dragon, the club I
23 was talking about.

24 I pulled in. My car was not very -- like
25 there's a driveway here. I want to say it was probably

1 right around here-ish. I kind of nosed into the lot and
2 went running up.

3 I could see Sergeant Britt and Officer
4 Livingston were standing -- sorry. Am I blocking your
5 view?

6 So they were kind of in this region here. I
7 remember there was the hotel across the street and, like,
8 the front doors of it, we were just a little bit to the
9 east of that, kind of for point of reference.

10 I could see there was a car, a black sedan. I
11 can't remember what kind of car it was. There were two
12 people sitting in it. There was someone standing right by
13 the hood. I recognized him. I've met him before. I know
14 his last name is Willis, I think.

15 And then there was a gun sitting just to the
16 side of the car, like a little black revolver was just
17 laying on the ground. And I could see that there was a
18 subject who was in the hedgerow just beyond that to the
19 south. He was kind of crawling around on all fours. It
20 was obvious he had been shot. He had a -- he was wearing a
21 white shirt, and it was bloody. There was a significant
22 amount of blood, so it was clear he had been shot. He was
23 crawling around in the hedges.

24 Q. Were you aware of other people in the
25 immediate area?

1 A. I mean, I was mostly focused -- so I did not
2 know who the gun was affiliated with, and it was in fairly
3 close proximity to the people in the car. So I was pretty
4 focused on them and also Sergeant Britt. You know, he was
5 standing right there.

6 There were some other people walking on the
7 other side of the hedgerow that were yelling at us, at the
8 police.

9 Q. On the south side of the --

10 A. So this is the hedgerow right here. There
11 were people on the sidewalk here, and they were yelling at
12 us, just kind of profanities and other things that were
13 angry.

14 And I was yelling at them to get out of the
15 area because we were all pointing -- at this point, people
16 were pointing guns in that direction. So --

17 Q. Officers you mean?

18 A. Officers had guns out. I didn't want, you
19 know, innocent civilians having guns pointed at them. So I
20 was yelling at them to leave.

21 Q. Okay. Once you saw there were people in this
22 sedan or around the sedan, there was the individual down on
23 the ground by the hedgerow, and you had Sergeant Britt
24 there?

25 A. Yeah.

1 Q. Did you also see Officer Livingston there?

2 A. I remember seeing him. I don't remember
3 exactly where he was standing. It's one of those things
4 where, like, I remember seeing his face, and I know he was
5 there. Later, he was kind of over here-ish.

6 But, I mean, my -- 100 percent, my primary
7 focus was the gun, the people and the guy who had been shot
8 because immediately in my mind, I'm, like, Okay. We need
9 to get to him to provide medical, and how are we going to
10 do that with this stuff?

11 I mean, on a situation like this, the
12 sergeant's job is to manage the officers. We're like the
13 tactical people. And so I knew it was going to be my
14 responsibility to manage that. So I just had a million
15 things going through my brain.

16 Q. So what did you decide to do?

17 A. So I knew, again -- I'm going to sit down
18 again.

19 I knew that we needed to get to the person who
20 had been shot to provide medical aid.

21 Q. Can I ask a question real quick?

22 A. Yeah.

23 Q. Are Portland police officers equipped with
24 medical supplies to render aid to people?

25 A. Yeah. So I have a tourniquet. Tourniquets

1 are incredible life-saving things. Basically, if you get
2 shot in the limb anywhere, stopping bleeding is vital. So
3 we have those.

4 We also have what are called IFAK kits. I
5 don't know what it stands for, but it's something medical.
6 And they have, like, clotting gauze that you see in the
7 military; HyFin chest seals, which basically if you end up
8 with a wound in your chest, it covers it up so you don't
9 get air in your lungs. That can be fatal.

10 There's some other nasopharyngeal stuff and
11 gloves and whatever.

12 Q. And do you and other officers have specific
13 training in how to use those tools --

14 A. Yes.

15 Q. -- to try to save people?

16 A. Yeah.

17 Q. And is it one of your responsibilities to --
18 as a police officer to try to save people who are injured?

19 A. Yeah. It's been a point of emphasis over the
20 last several years. I mean, whether or not we are involved
21 in a deadly force encounter or someone is shot by another
22 person or there's traffic crashes, the expectation from our
23 training is that we'll use it as quickly as possible and as
24 safe and render aid.

25 Q. Just by virtue of how responses occur to

1 incidents, are the police generally the first ones on scene
2 in a position to render aid to an individual?

3 A. Yeah. So medical will not come in until it's
4 safe.

5 And the biggest thing is, again, with the
6 tourniquets and other things that we'll be able to stop
7 bleeding. It's very, very critical to do it as quickly as
8 possible. Arterial injuries can bleed out quickly. So the
9 expectation is we'll get there, then have medical come in.

10 But you can imagine, it can take minutes
11 before they can come in, and that can be the difference
12 between living and dying.

13 Q. So how did you react to the situation you were
14 presented with on September 30th?

15 A. So I -- my biggest concern with the people in
16 the car was them going the opposite direction of the gun,
17 obviously, and also have the gun kind of accounted for.

18 So I kind of hastily instructed officers to
19 have the subject outside of the car, just come over to
20 them. Some officers controlled him.

21 And then I instructed a group of officers,
22 Hey, everyone in this car, they're going to need to come
23 out. They're going to need to come to you. It's just --
24 it's yours.

25 We have a different group on the other side of

1 the car. We're going to deal with the gun and the person.

2 I was not -- like everyone in the car was --
3 like the words they were saying, they were saying, We
4 didn't do anything. We just want to get out of here.
5 There was nothing that really raised my concern to them.

6 Both of them, like, had their hands on the
7 dashboard. They were entirely compliant. So I just didn't
8 feel concerned at all about them.

9 So officers began having them come out the
10 driver's side. And I assigned an officer, Hey, we're going
11 to move up. When we move past the gun, that's yours. You
12 just stop. Do not move from that gun because I didn't want
13 someone to grab it or have it, you know, be used in any
14 way. I just wanted it to be completely controlled.

15 So an officer stayed with the gun. And myself
16 and a group of officers ran up to the subject. I didn't
17 have any concern about his -- it was -- it was very obvious
18 that he was very impaired. I mean, he was -- not drunk,
19 but impaired like his body movements, the way he was
20 handling himself, it was clear that he was critically
21 injured and not really physically able to do anything that
22 would be concerning to us.

23 I could see both of his hands, because they
24 were on the ground. So we ran up, and I --

25 Q. Sergeant Schmautz, let me just ask a

1 clarifying question here.

2 So when you're faced with a situation,
3 somebody, as you've identified, was clearly shot, can that
4 person still in that condition present a threat to police
5 officers --

6 A. Yes.

7 Q. -- who may becoming up to render aid to that
8 individual?

9 A. Yeah, definitely could. And, again, the
10 challenge with these situations is you're always kind of
11 looking at the probabilities and possibilities and what is
12 this person capable of because certainly the last thing I
13 want to do is have my officers go rush up and have him
14 access another weapon and have us get into a close-range
15 shooting or an officer hurt or something else happen.

16 I was very confident, based on his positioning
17 and kind of based on the amount of people we had and kind
18 of the way we were able to move up, we moved up from his
19 feet, I was -- I was very, very confident that he was more
20 in need of medical care than he was a threat at that point.

21 I was told that the gun that was -- as we're
22 moving up that the gun was the gun that he had had.

23 Q. Do you remember who told you that?

24 A. I just remember hearing it. I just remember
25 someone saying, The gun was his or, That's his gun or

1 something like that.

2 But, again, his hands were -- both of his
3 hands were out on the ground in front of him. He was kind
4 of crawling. I just -- I had no concerns about moving up
5 at that point.

6 I felt like if we were going to be able to
7 save him, we needed to get to him immediately.

8 Q. Do you recall how many officers came with you
9 to assist?

10 A. I -- four -- three of my guys were with me, so
11 I remember them specifically: Officer Mark Duarte, Joe
12 Bernard and Tim Paolini. They were working with me. I
13 work with them every day. So I remember them coming up.

14 There were, I'm sure, others, but those are my
15 guys. So I know them.

16 Q. And did you and the other officers render aid
17 to Mr. Kimmons until the paramedics were able to come in
18 and take over?

19 A. Yeah. So when we got to him, again, it was
20 not entirely clear where he was bleeding from.

21 So I -- I could see that he had some bullet
22 wounds to his legs. It looked to me like one -- one on the
23 right side, two on his left leg, kind of up high. I don't
24 know exactly how many he had in each leg, but that's what I
25 recall seeing.

1 So I asked officers to put tourniquets on both
2 of his legs. We did two on the left leg because it seemed
3 to be bleeding more. With leg injuries, your legs are big,
4 so you have to -- two is better than one basically.

5 I used my seat belt cutter and cut off his
6 shirt. It was kind of bloody, so it wasn't -- you couldn't
7 take it off, so I cut it off.

8 I could see that he had one bullet wound to
9 his upper back. I'd say it was on the upper left side,
10 kind of about lung height, kind of mid-back, and so I
11 applied a chest seal to that.

12 We rolled him over, and I could see he had --
13 I'm sorry. It was -- yeah, left side. Sorry.

14 And then he had another bullet wound kind of
15 lower kind of hip side area on the right side. That was --
16 those were the only injuries that I saw.

17 We looked at his chest. I didn't see any on
18 his chest. Those were the two -- only two injuries that I
19 saw on his back.

20 Q. When paramedics ultimately came in, did you
21 continue to assist and render aid or did the paramedics
22 pretty much take over at that time?

23 A. Yeah. I mean, in those situations, the
24 paramedics want to get them out and to the hospital as soon
25 as possible.

1 They came over. We told them what we had
2 done. We always mark tourniquet times, so we told them
3 that. We helped lift him onto the gurney, and he was taken
4 away.

5 Q. Okay. What did you do then?

6 A. So I walked over with -- so Sergeant Wuthrich
7 had arrived.

8 I walked over and asked him to confirm that
9 this was an officer-involved shooting, I guess, something
10 to the effect of, We did this? And he said yes. And that
11 kind of launches a large myriad of investigative
12 responsibilities.

13 Obviously, the two situations, if a civilian
14 shoots a gun versus if a police officer shoots a gun,
15 there's different things that need to be done.

16 So I assisted him in kind of coordinating
17 where everyone would go. Our -- we're required to
18 sequester any involved or witness officers, so they can't
19 talk to each other. I assisted him in doing that, making
20 sure they were all separate.

21 Q. And was it your understanding that in terms of
22 involved officers, there were two, Sergeant Britt and
23 Officer Livingston?

24 A. That's correct.

25 Q. And was it also your understanding that there

1 were two identified witness officers, Greg Moore and Todd
2 Harris?

3 A. That's correct.

4 Q. So those individuals were sequestered, as you
5 put it?

6 A. Yes.

7 Q. Were there also civilian or nonofficer
8 witnesses identified?

9 A. Yeah. So, I mean, the people who I mentioned
10 in the car, the female on the driver's side, I believe her
11 name was Ayan Aden, and I -- I have in my report that
12 Aundree Polk was in the passenger seat. Then Michael
13 Willis was the person who was standing in front of the car.

14 My understanding is there were some other
15 witnesses identified that I didn't talk to or know about,
16 but I feel like someone said something about a white SUV
17 that had a person in it.

18 Q. Okay. And it was your understanding that the
19 witnesses were also separated?

20 A. Yeah.

21 Q. To preserve their recollections of what
22 happened?

23 A. Yeah. And, like, the people in the car, it
24 was unclear what their involvement was, if they were
25 involved with the subject, if they had just randomly been

1 in the lot. But they were in close enough proximity that I
2 was, like, Hey, we need to figure out what they saw or if
3 they were involved. We really didn't know at this point.

4 So we stayed with them until detectives
5 determined what their involvement was.

6 Q. Okay. What about establishing a crime scene?

7 A. So initially, we set up our crime scene just
8 in that lot. And then just kind of through the process, we
9 learned that there had been a secondary -- well, a primary
10 shooting that led to the secondary shooting because we had
11 heard, like, right after this happened that some gunshot
12 victims had showed up at Emanuel Hospital.

13 And just given the amount of time that the --
14 the drive time was exactly what it would be to drive from
15 where we were to the hospital and some other reports of
16 gunfire, we started looking around and saw some blood in
17 between the cars in the bike lane on Third.

18 Q. As we look back at our line diagram, kind of
19 this general area?

20 A. 21, 22, 23 and 24. My car was probably
21 towards, like, 19-ish or so.

22 So -- but there was a car parked right around
23 21 and another car parked around 23, and one of my officers
24 came up and said, Hey, there's some --

25 Q. Do you mean patrol cars --

1 A. Yes.

2 Q. -- or just regular cars?

3 A. Patrol cars.

4 One of my officers came up and said, Hey,
5 there's some ID and blood in the street over here outside
6 of our crime scene, so we made it bigger --

7 Q. To --

8 A. -- to encompass that area. We just had not
9 seen it up until that point.

10 Q. Okay. Did you stay on scene until homicide
11 detail detectives arrived and kind of took over the
12 investigation?

13 A. Yeah. So the homicide detectives arrived. We
14 give them -- the sergeants give a briefing on, This is what
15 we know at this point, and then they take over.

16 Q. Okay. Did you participate in that briefing?

17 A. I did.

18 MR. JACKSON: Do you folks have any questions
19 for Sergeant Schmautz?

20 I don't see any.

21 All right. Thank you very much.

22

23

24

25

1 OFFICER TODD HARRIS

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

5
6 EXAMINATION

7 BY MR. JACKSON:

8 Q. Could you please state and spell your name?

9 A. Todd Harris, T-O-D-D, H-A-R-R-I-S.

10 Q. We have a fan going in here, and so if you
11 could keep your voice up and also speak slowly for our
12 court reporter.

13 A. Okay.

14 Q. Thanks.

15 Where are you -- what's your current
16 employment?

17 A. With the Portland Police Bureau.

18 Q. And how long have you been with the Portland
19 Police Bureau?

20 A. For 10 years.

21 Q. What do you do for the Portland Police Bureau?

22 A. I'm a patrol officer at Central Precinct in
23 the downtown area.

24 Q. How long have you been assigned to that area?

25 A. The majority of that time on different

1 occasions.

2 Q. The majority of the 10 years?

3 A. Yes.

4 Q. And what's your current specific assignment?
5 Just general patrol for that area?

6 A. General patrol. Every night when I come to
7 work, I typically work in the downtown area, but the
8 district I work may be different depending on which night.

9 Q. And how are -- just briefly if you can
10 explain, how are the districts actually set up for Central
11 Precinct patrol?

12 A. Well, in the downtown core area, there are
13 five districts, and they typically have one -- at least one
14 officer assigned to work at a district. And sometimes if
15 we have enough officers, we may have two partner up
16 together.

17 Q. Were you working on September 30th, which was
18 September 29th, into the early morning hours of September
19 30th?

20 A. Yes.

21 Q. And were you working by yourself or with a
22 partner that night?

23 A. I was working with a partner, Officer Greg
24 Moore.

25 Q. And which district were you assigned to patrol

1 that night?

2 A. The 837 district.

3 Q. What is that?

4 A. That encompasses from Waterfront/Naito over to
5 Southwest Sixth Avenue and then Burnside south almost to
6 about where the precinct is to around Main or Madison.

7 Q. And so that would be just to the south of the
8 Old Town area or the entertainment area?

9 A. Yes.

10 Q. When you're patrolling that district, will you
11 sometimes respond to calls outside of that district?

12 A. Yes.

13 Q. Fairly regularly?

14 A. Fairly regularly.

15 Q. Okay.

16 A. The downtown area is -- the districts are
17 close enough to where you may be called upon to go to a
18 neighboring one.

19 Q. And so on the 30th, could you kind of explain
20 what your primary actions were while you were patrolling?

21 A. Sure. It was a weekend night. Those are
22 typically the busiest, especially from about midnight until
23 the bar closing time and sometimes after that. It's the
24 largest, I would say, congregation, amount of people in the
25 downtown area. Most are going to nightclubs. A lot of

1 them are consuming alcohol, and it's important to have a
2 good presence at that time of night to keep the public
3 safe.

4 Q. And is there an actual detail of police
5 officers assigned to that specific area, especially on
6 weekends?

7 A. Yes. There is an entertainment detail.

8 Q. And you're not part of that?

9 A. No. I -- I have been before, but not
10 currently.

11 Q. Do you often, based on your assigned patrol
12 area, assist the entertainment detail in responding to
13 calls and dealing with situations?

14 A. Yes.

15 Q. When you work with a partner car, one of you
16 is driving and one is a passenger?

17 A. Yes.

18 Q. Were you driving that night or was Officer
19 Moore?

20 A. Officer Moore was driving.

21 Q. And were you in full uniform in a marked
22 patrol car?

23 A. Yes, just like I am right now.

24 Q. And could you describe what type of a patrol
25 car you were operating?

1 A. It's a Ford Explorer Interceptor-type patrol
2 vehicle that says "Portland Police" on the side. It had
3 red, white and blue lights. It's a marked patrol vehicle.

4 Q. So it's an SUV, not your traditional Crown
5 Victoria?

6 A. Correct, correct.

7 Q. So as the bars begin to close down between
8 1:30 and 2:30 in the morning, is there a marked increase in
9 activity in the Old Town entertainment area?

10 A. Yes, because the hours before, the majority of
11 people are inside the nightclubs. And then when they
12 close, there are hundreds of people that are making their
13 way to drive home, to take an Uber home, to continue to
14 congregate or to go somewhere else.

15 Q. And is there a surface parking lot located at
16 Southwest Harvey Milk between Third and Fourth Avenue
17 that's actually within your patrol district?

18 A. Yes.

19 Q. And is that a location that warrants
20 additional attention by you and other patrolling officers?

21 A. Yes.

22 Q. And why is that?

23 A. It's significant because of the Golden Dragon
24 nightclub strip club, which is located on Southwest Third
25 Avenue. It does not serve alcohol, which allows it to stay

1 open, sometimes as late at 5:00 or 6:00 in the morning.

2 So people that have been in clubs drinking and
3 partying can then -- that's a place where it's typical for
4 them to congregate to afterwards.

5 Q. Throughout your shift on the 29th into the
6 morning on the 30th, had you received information that
7 there had been a number of reports of fights and other
8 violence going on in both your patrol district and the
9 entertainment detail district?

10 A. Yes.

11 Q. What did you do in response to that
12 information?

13 A. If it's something I'm responding to, I go
14 there and try to investigate, figure out if there's a
15 fight, if there's incident of violence.

16 I keep in the back of my mind that there's
17 always the thought that something can continue to happen as
18 the night goes on longer until people have gone home, and
19 then you kind of feel safer at that point.

20 Q. At some point as you approached that 2:30 to
21 3:00 in the morning period of time, did you hear from
22 Sergeant Gary Britt a request for officers to accompany him
23 to that lot at Harvey Milk between Third and Fourth Avenue?

24 A. Yes.

25 Q. And what did you do in response to that

1 request?

2 A. Officer Moore and I, because it's our patrol
3 district, started to head that way. I believe we were
4 handling a call over on the Southeast side at around 35th
5 and Hawthorne.

6 There was a drunk gentleman there who
7 basically they asked for a welfare check on him, and we
8 ended up driving him home. He lived nearby.

9 So that's about the time that that request
10 came out. So because it wasn't our patrol district, we
11 started to drive back towards the downtown area.

12 Q. Do you remember approximately how far out in
13 Southeast you guys were?

14 A. Around 35th and Hawthorne was about where we
15 dropped him off. That's where he lived.

16 Q. Okay. So you guys are responding back to
17 downtown from out in Southeast?

18 A. Yes.

19 Q. Do you recall if the request from Sergeant
20 Britt was specifically to you or just kind of a general,
21 Hey, if somebody is out there, come with me?

22 A. A general request.

23 Q. Did you indicate that you and Officer Moore
24 would assist him?

25 A. Yes, one of us did.

1 Q. And what was your understanding of what you
2 guys were going to do?

3 A. As it was about 2:30, 3:00, that's the time
4 where there's a lot of people congregated specifically on
5 Southwest Third Avenue on the east side of the street, and
6 there are several clubs that are right there.

7 And so the parking lot, people that come to
8 that area are going to park there. So it's important for
9 us to be there with our lights and sirens on to try to use
10 our presence to deter, you know, any kind of assault that
11 could happen, prevent people from committing a crime.

12 Q. You said you sit there with your lights and
13 sirens on.

14 Do you actually have the sirens going?

15 A. Not necessarily, usually just the lights. But
16 sometimes sirens are helpful to disburse crowds or groups
17 that are starting to gather together that may look like
18 they're going to start fighting.

19 Q. Okay. Is it pretty routine for you guys to
20 basically post out in that fashion, lights on, just kind of
21 announcing police presence?

22 A. Yes.

23 Q. When you arrived at the lot, could you take us
24 through -- there's a map behind you here -- what your
25 approach route was and what you saw upon arrival.

1 A. So coming back from the Southeast side, we
2 came north on Southwest Fourth Avenue. And as we turned
3 into the lot right here, just as -- I felt like just as we
4 had turned in the lot and were pulling forward, I noticed
5 that there were two patrol vehicles both with their lights
6 on at that time.

7 I remember reading "supervisor" on the side of
8 the unit that was closest to Southwest Fourth Avenue.

9 Q. Did they have their lights on?

10 A. Yes.

11 Q. And when I say "lights" -- or when you say
12 "lights," do you mean headlights or overhead lights?

13 A. Overhead lights, so red, white and blue
14 lights.

15 Q. Okay.

16 A. So as Officer Moore and I turned east into the
17 lot right here, that's when my attention was drawn to
18 muzzle fire, gunfire, which I took to be in this area
19 closer to the sidewalk over here.

20 Q. Did you know at that point which officers were
21 already on scene in the parking lot?

22 A. Just Sergeant Britt because he made that
23 request, but I didn't know if there were any others that
24 were -- well, I should say there was another car there, so
25 I knew that at least one other officer was there, but I

1 didn't know who.

2 Q. If you look over here on the screen, could you
3 kind of explain what you just kind of went through, but in
4 terms of this actual photograph?

5 A. Okay. So coming -- it's the opposite of that.
6 Coming north on Fourth Avenue and turning into the lot
7 right here, I saw muzzle flash, gunfire, in this
8 approximate area right here.

9 I didn't know who fired or which direction it
10 was coming from. It all happened kind of quickly, but my
11 belief was that there were officers, and I could also see
12 down this direction and groups that were here, but I -- I
13 just couldn't tell who they were.

14 After the gunfire occurred, these groups --

15 Q. So if we switch to this photograph here, which
16 is a still frame looking eastbound across the parking lot,
17 would this kind of generally have been -- actually, let me
18 pull up a different photograph.

19 Would this photograph have generally been your
20 view as you were pulling into the lot with Officer Moore?

21 A. Yes.

22 Q. Okay. And so could you point out kind of
23 where you were perceiving things occurring?

24 A. So muzzle fire at this location right here,
25 along with there were groups of people, several. And once

1 I saw and heard the muzzle fire, the groups then went south
2 kind of behind the vehicles and out of my view.

3 Q. Did you have a sense of how many people you
4 were seeing congregated down there at the east end of the
5 parking lot?

6 A. Eight to 10.

7 Q. Eight to 10 people?

8 A. Total, yeah.

9 Q. You had mentioned that you had at least some
10 awareness that there were police officers there.

11 Could you actually see them out of their
12 patrol cars or not?

13 A. I -- I -- I just believe that they were part
14 of that group that was down there. I had seen their cars.
15 I hadn't seen them in their cars.

16 Turned, faced this direction and then saw
17 muzzle fire. It wasn't lit up quite this well lit. It was
18 much darker, and the red, blues and whites were all going,
19 so it was kind of like shadows to some degree.

20 A GRAND JUROR: May I ask, so how long from
21 you pulling into the entrance until you saw the muzzle
22 flash?

23 THE WITNESS: Almost instantly.

24 A GRAND JUROR: Just like right -- okay.

25 THE WITNESS: It was, like, as we had made the

1 turn to go into the lot and then just the car had come
2 straight. And being the passenger, my eyes were most
3 likely looking between parked cars to look for that --
4 anything that could have been going on there, not directly
5 ahead, but then saw the orange muzzle fire.

6 A GRAND JUROR: Uh-huh.

7

8 BY MR. JACKSON: (Continuing)

9 Q. Did you actually hear gunshots as well?

10 A. Yes.

11 Q. How many, if you remember, did you hear?

12 A. I'd say like six to eight.

13 Q. Okay. That's what you perceived?

14 A. Yes.

15 Q. You said there were eight to 10 people down at
16 that east end of the lot.

17 Once that muzzle flash occurred, did they kind
18 of scatter, or did they all move in one direction? How did
19 they move as you saw it?

20 A. I noticed most of them dispersing. What
21 caught my eye was people dispersing south through these
22 vehicles, in between the vehicles.

23 Q. Okay. Now, you were still in your patrol car?
24 You had just arrived?

25 A. Yes.

1 Q. And Officer Moore was driving?

2 A. Yes.

3 Q. So what did you do once you saw that happen?

4 A. So once the muzzle fire occurred, I believe we
5 drove forward just a few more feet, and then I got out of
6 the passenger side.

7 Q. Now we're looking back at the west-facing
8 still frame of the lot.

9 A. So our patrol vehicle is about right -- I'm
10 about right here.

11 So just as I'm getting out of the passenger
12 door, a subject came running out of this -- along this
13 hedge line right here, a taller African-American male with
14 like a green shirt.

15 I gave him commands to go down. He went down
16 very quickly. He was compliant, went onto his stomach.

17 That's kind of where my focus was. I didn't
18 know what his role was or wasn't. Officer Moore and I
19 approached him and placed him in handcuffs and stood him
20 up, and then Officer Moore walked him back to our patrol
21 vehicle.

22 Q. Okay. And what did you do then?

23 A. So as we were taking this person -- this first
24 subject into custody right here, I saw another male come
25 through the -- well, I shouldn't say. I didn't see him

1 until he came south towards this hedge line.

2 As I'm looking -- as I'm about up to the
3 sidewalk at this point where we had handcuffed this
4 individual and as I'm looking east along this hedge line,
5 another subject came into view and I don't want to say ran
6 for it, but just moved toward the hedge and then went down
7 onto his stomach and kind of actually got up to his hands
8 and knees.

9 I saw that he was bleeding from his left
10 thigh, and I gave some updates on the radio of what I was
11 observing, that he was moving on his hands and knees.

12 Q. Did you hear a second set of gunfire after
13 that first muzzle flashing and sounds of gunfire that you
14 heard when you were still in the patrol car?

15 A. I didn't.

16 Q. Okay. You jump out of the car, and you're
17 focused on this person that is now laying in front of you?

18 A. Running towards us. We have to address that.
19 Yes, we get him handcuffed, stand him up.

20 And as we're dealing with that, that's when I
21 saw the second subject come forward and then eventually go
22 to the ground.

23 Q. Okay. What did you do then?

24 A. So I recognized that after this person had
25 gone to the ground, after this -- I had taken the first

1 person, stood him up and walked him away, it was then I
2 noticed that Sergeant Britt was in my peripheral view to my
3 left.

4 I could see that the second subject was -- I
5 believe he was shot by the way he was laying on the ground.

6 I walked up to Sergeant Britt, asked him if he
7 was okay. He said he was, and we had a conversation about,
8 like, if he was involved, and he said yes.

9 I asked him if I could take his place, and he
10 said yeah. So I switched out with him.

11 Q. Did he have his gun drawn --

12 A. Yes.

13 Q. -- when you saw him?

14 Did you also have your gun drawn?

15 A. I did.

16 Q. Why did you have your gun drawn?

17 A. I didn't know -- this person had been shot. I
18 didn't know what his role was.

19 I also recognized that Officer Britt had his
20 gun drawn on the subject, so it would make sense for me to
21 also do that, especially if I'm going to walk up and take
22 his place.

23 Q. Take Sergeant Britt's place?

24 A. Yes.

25 Q. Had you not drawn your gun when you first

1 jumped out of the patrol car and encountered the other
2 individual?

3 A. I did also then. I had my gun drawn to -- as
4 we walked up and approached him, and then we -- we
5 handcuffed him, yeah.

6 Q. And so you put the gun away at that point?

7 A. Yes.

8 Q. Why did you decide at that time, when you get
9 out of the patrol car shortly after seeing the muzzle flash
10 just down the parking lot, to actually draw your firearm?

11 A. It's a very active situation. You don't know
12 if more shots are going to be fired, if suspects are going
13 to be running towards you. You know that somebody has fired
14 a gun.

15 That's the best defense that I have to protect
16 myself and any others there. It's my job to protect them.

17 Q. Okay. So you address the individual who went
18 down in front of you actually with your gun drawn?

19 A. Yes.

20 Q. Once he's dealt with, you reholstered?

21 A. I don't remember, but I know I helped
22 handcuffing him, so I wouldn't handcuff somebody with my
23 gun drawn. I would have holstered, handcuffed and then
24 drawn my gun.

25 Q. And it was at that point you recall seeing the

1 second individual between the cars moving toward the hedge?

2 A. Yes.

3 Q. And then go down?

4 A. Yes.

5 Q. Did you redraw at that point?

6 A. Yes.

7 Q. Your gun?

8 A. Yes.

9 Q. Okay. And why did you do that?

10 A. It's an unknown threat. He's involved in
11 some -- in some degree.

12 It was almost like the first person --
13 although he wasn't running out at me, he was directly in
14 the direction of the -- the muzzle fire happened, the
15 groups that I saw went south towards that hedge.

16 Usually, if you're a suspect, you're trying to
17 run away from what happened, not just stand there. This
18 person was also moving away from where I was and where
19 other officers were.

20 Q. Once you saw Sergeant Britt and he had told
21 you that he was involved, what did that mean to you?

22 A. It meant to me that he was involved as a
23 shooter. He didn't say he was a witness to what happened,
24 but he had fired his duty weapon.

25 Q. He didn't say those words?

1 A. No.

2 Q. But that's what you understood "I was
3 involved" to mean?

4 A. Correct.

5 Q. Why did you then make the decision to replace
6 him in that position of cover over the individual?

7 A. When you fire your duty weapon, it's a -- it
8 can be a very high energy, traumatic thing.

9 It was important for me, having not been in
10 that situation, to take his place so he could think clearly
11 and also just to make sure that he was okay.

12 Q. Okay. Did you have a sense of where he went
13 after you replaced him?

14 A. No, because my focus was still on the second
15 subject who was down on the ground.

16 Q. Once you did replace him, you said your gun
17 was still out on the individual?

18 A. Yes.

19 Q. What did you do then?

20 A. I gave updates on the radio about the
21 movements of the subject, that he was up on his hands and
22 knees, the location of where the blood was coming from on
23 his leg.

24 At one point, I yelled -- I just yelled if
25 other officers were okay, and I broadcast on the radio that

1 myself and Officer Moore were okay because I'd only seen
2 gunfire down here, and I didn't know if just this person
3 was shot or if others had been -- if any officers had been
4 shot.

5 Q. Any other officers or any other people?

6 A. Or any other people, yes.

7 Q. Okay. If you could point out for us on this
8 photograph, where were you standing when you replaced
9 Sergeant Britt?

10 A. (Pause-referring).

11 Q. If it would help to use this diagram instead,
12 you can do that.

13 A. Thank you.

14 I remember the opening in this hedge right
15 here, and I would say it was about this --

16 Q. This here is the curb-cut entry?

17 A. Yeah.

18 Q. Okay. And then the lot would extend --
19 obviously, this diagram is not to scale.

20 This gap here, you can see this gap right
21 here.

22 A. It seemed like he was behind a darker --
23 alongside a darker-colored vehicle that was positioned a
24 few spots back, so he was near.

25 So I would say about in this area right here.

1 Q. Okay. Behind what's marked on this diagram as
2 V-2?

3 A. Yes.

4 Q. Okay. At some point from your position of
5 cover over the individual, did you notice a firearm on the
6 ground?

7 A. Not from that position. It wasn't until -- I
8 saw Sergeant Schmautz out of my -- to my left, my
9 peripheral, that he had moved forward a little bit. And
10 this is after I'd given him some updates about what the
11 second subject was doing.

12 Up to that point, I had not seen a gun on him.
13 He was still just kind of on his hands and knees moving
14 slowly.

15 And so when Sergeant Schmautz was to my
16 peripheral and was starting to move forward, I walked up
17 with him in kind of a triangle towards his downed subject.

18 Either right after we got up to him or as we
19 were walking up, I remember looking from my left shoulder
20 and seeing something like shiny and silver on the pavement
21 in between the cars, which I thought was a handgun. I
22 never walked up to it to look directly over it, but that's
23 what I thought was a handgun.

24 Q. And when you walked up to the person that was
25 down on the ground, did you and other officers render

1 medical aid to that individual?

2 A. Yes. Another officer had brought a red IFAK
3 kit, which had medical supplies in it.

4 His shirt was taken off. I used my light to
5 illuminate the area on his back where I could -- a chest
6 seal was placed over the bullet hole there.

7 I also saw that there were two -- I saw two
8 bullet hole strikes on his left quad. And someone else had
9 already put a tourniquet on as others were rendering aid.
10 And Sergeant Schmautz yelled for, "I need tourniquets, I
11 need tourniquets."

12 I had one on me. I took it out, and I only
13 saw the two bullet strikes on his left quad, so I put a
14 second tourniquet on. I couldn't get it higher than the
15 first one because the first one was already as high as it
16 could go, so I just tied it down as best as I could.

17 Q. Below the first one?

18 A. Below the first one on the same leg.

19 Q. Okay. Did AMR or paramedics ultimately come
20 in and take over the aid?

21 A. Yes. I asked for them to come in initially on
22 Harvey Milk, as this was already kind of taped down with
23 several officers at this point.

24 They ended up coming in the same way we did in
25 the parking lot, and I helped lift him up onto the -- they

1 put, like, a tarp underneath where they could roll him over
2 and lift him up on the gurney.

3 Q. Okay. And he was taken away to the hospital?

4 A. Yes.

5 Q. While you were still on scene, do you recall
6 receiving an update that a gunshot victim had shown up at
7 Legacy Emanuel Hospital?

8 A. Yes. I didn't know which hospital it was,
9 just that there was a gunshot. I didn't catch the name of
10 the hospital, but at a hospital.

11 That was after this event had occurred, and I
12 was waiting in a patrol car over here with another officer.
13 Then I heard that update.

14 Q. So were you actually shortly after -- well,
15 let me ask a different question.

16 At what point were you identified as a witness
17 officer and sequestered from the scene?

18 A. Once the subject had been taken by ambulance,
19 I had a conversation with Sergeant Schmautz just to let him
20 know that I was a witness officer.

21 Q. At that point, were you removed and placed in
22 a patrol car?

23 A. Yes.

24 Q. So it was while you were sitting in the patrol
25 car that you got the update over the radio that a person

1 suffering from a gunshot injury had arrived at an area
2 hospital?

3 A. Yes, from a vehicle that I recognized.

4 Earlier that night when Officer Moore and I
5 were -- had come down Southwest Third Avenue and gone west
6 through the lot, I noticed a black Camaro, shiny newer
7 Camaro.

8 There were a couple individuals standing by
9 the car, not doing anything, but it just caught my eye as
10 they were in this lot.

11 I did a query on the plate. I remember it
12 started with a 9 and the letter T. As it was broadcast
13 later, I recalled that it was the same.

14 So this update about somebody had dropped an
15 individual off at the hospital and gave that license plate,
16 I recalled that it was the same plate that I ran earlier,
17 the same vehicle that I had seen parked about this location
18 right here.

19 Q. In the northeast corner of the lot?

20 A. Yes.

21 Q. Okay.

22 MR. JACKSON: Are there any questions for
23 Officer Harris?

24 I don't see any.

25 All right. Thank you very much.

1 THE WITNESS: Thank you.

2 (Pause in proceedings: 10:05-10:17 a.m.)

3

4 OFFICER GREGORY MOORE

5 was thereupon called as a witness on behalf of the State

6 and, after having been duly sworn, was examined and

7 testified as follows:

8

9 EXAMINATION

10 BY MR. JACKSON:

11 Q. Could you please state and spell your name?

12 A. Gregory Moore, G-R-E-G-O-R-Y, M-O-O-R-E.

13 Q. Where are you employed?

14 A. Portland Police Bureau.

15 Q. What do you do for the Portland Police Bureau?

16 A. I'm an officer.

17 Q. How long have you been a police officer?

18 A. Just over seven and a half years.

19 Q. And what have been your assignments over that
20 seven and a half year period?

21 A. I've been assigned to Central Precinct for
22 almost that entire time.

23 Q. Within Central Precinct, have you had any
24 specific duty assignments?

25 A. Yes.

1 Q. What were they?

2 A. I have been the district officer for the 830
3 district, as well as foot patrol for two summers.

4 Q. What is the 830 district?

5 A. It's the area from -- it's south of Burnside
6 down to Main, from 6th Avenue to the river on the west
7 side.

8 Q. Okay. Were you also assigned to the
9 entertainment detail for a period of time?

10 A. I -- at that time I was assigned, yes.

11 Q. In your patrol duty in the 830, as you put it,
12 which is the district immediately to the south of the Old
13 Town entertainment area --

14 A. Yes.

15 Q. -- do you often get called upon to respond to
16 calls within the entertainment area?

17 A. Yes.

18 Q. Were you working on September 29th, into the
19 early morning hours of September 30th?

20 A. Yes.

21 Q. And who were you working with that night?

22 A. I was working with Officer Todd Harris.

23 Q. And is Officer Harris somebody that you
24 partner with every shift?

25 A. No. Occasionally.

1 Q. Do you usually work with a partner?

2 A. More often than not, probably no.

3 Q. You work by yourself?

4 A. By myself most of the time, yeah.

5 Q. Was there anything specific or unique about
6 this night that you would have been working with a partner?

7 A. No, no.

8 Q. Just staffing worked out that way?

9 A. Staffing worked out that way.

10 Q. And what district were you assigned to that
11 night?

12 A. 837.

13 Q. What is that?

14 A. It's the night officer for the 830 district.

15 Q. That district immediately to the south of Old
16 Town?

17 A. Yes.

18 Q. And is the surface parking lot on Southwest
19 Harvey Milk between Third and Fourth Avenue within that
20 patrol district?

21 A. Yes.

22 Q. As bars are closing down at around 1:30 to
23 2:30 in the morning, is there a marked increase in activity
24 in both your patrol district and the one immediately to
25 your north?

1 A. Yes.

2 Q. How do you coordinate a response to that
3 increased activity with other officers?

4 A. Typically, officers, including myself, go to
5 those areas and just do increased patrol, address issues
6 that are going on, there's kind of just a lot of us in that
7 area where those people are congregated.

8 Q. And during this shift, were you aware of
9 reports of several fights and other violent acts occurring
10 in both your patrol area and the entertainment area?

11 A. Yes.

12 Q. And were you also aware of reports of people
13 armed with weapons, including firearms?

14 A. Yes.

15 Q. What did you do, if anything, in response to
16 that information?

17 A. We had -- I know I responded to Ankeny Alley,
18 which is part of Ankeny between Second and Third, on
19 several fights and we'd kind of done extra patrols in that
20 area, as well as the lot at Harvey Milk, Third and Fourth,
21 that flat lot.

22 Q. At some point between that 2:30 to 3:00
23 a.m. period of time, do you recall Sergeant Britt
24 requesting additional officers to accompany him to that lot
25 on Harvey Milk between Third and Fourth Avenue?

1 A. Yes.

2 Q. And was that request a general request out, or
3 was it directed specifically to you and Officer Harris?

4 A. It was just a general request, if I remember.

5 Q. How did you respond to that request?

6 A. We responded to the area.

7 Q. Where were you responding from?

8 A. We -- Officer Harris and I had taken a call
9 about a drunk individual on the east side of the river at
10 like 35th and Hawthorne or 25th and Hawthorne, somewhere
11 out of our district. We'd given a drunk gentleman a ride
12 home because he was having trouble figuring things out.

13 We had just given him a ride home, so we were
14 responding from the east side of the river.

15 Q. Okay. And was it your understanding that
16 other officers were also going to be going to the lot with
17 Sergeant Britt?

18 A. Yes.

19 Q. Did you know who those officers were?

20 A. No, I did not.

21 Q. What was your understanding of what you were
22 going to do when you got to the lot?

23 A. My understanding is we were going to do
24 high-visibility patrol, address issues, whether it be
25 fights or violence or other drunk issues.

1 This area, with that parking lot there,
2 there's several bars, including Silverado, Golden Dragon,
3 Club Rouge, food carts, a couple other bars and then a
4 hotel. People tend to congregate there.

5 My understanding is we were going to go there
6 to essentially try and reduce crime. And if people were
7 going to commit acts of, you know, violence or crime, we'd
8 hopefully deter it by our presence.

9 Q. Okay. And how is it that you guys announce
10 your presence when you're going to do that kind of
11 proactive patrolling?

12 A. Typically, we'll do -- we'll park our car --
13 specifically in this lot, we'll park our patrol car in the
14 lot with the lights on. It's a signal that we're there so
15 everyone knows that we're there.

16 Q. When you and Officer Harris responded, were
17 you driving?

18 A. I was driving.

19 Q. If you look at the map behind you, can you
20 indicate for us how you approached the lot and ultimately
21 entered it?

22 A. Can I stand and show?

23 Q. Yes, please.

24 A. So Officer Harris and I were driving north on
25 Fourth, and we came in the lot from the west side going

1 east.

2 Q. And if you look up on the screen here, this
3 still frame, could you indicate here how you guys came in?

4 A. Yeah. So from the right side of the screen,
5 kind of right top side, yeah, right in there, and then we
6 came this way.

7 Q. Okay. And do you recall whether there were
8 other patrol cars already there when you guys pulled in?

9 A. Yes. There was a supervisor car parked there,
10 as well as another patrol car.

11 Q. And did they have their lights on?

12 A. I believe so.

13 Q. When you pulled in, did you immediately just
14 drive through the lot or what -- can you describe what you
15 remember happening?

16 A. Yeah. So we pulled in pretty slowly, the idea
17 being we were going to just kind of creep into the lot and
18 eventually get out and walk around. So we weren't driving
19 very quickly or anything.

20 As we entered the lot at the far east end of
21 the lot towards Third, I saw a black male wearing a dark
22 jacket raise his hand kind of pointing north as in a
23 shooting fashion, shooting stance with his hand kind of out
24 away from his body, and then heard and saw flashes, which
25 to me were gunfire.

1 Q. Did you have an awareness of where -- well,
2 first, whether other officers were already on scene and, if
3 so, where they were?

4 A. Yes. So Sergeant Britt and Officer Livingston
5 were already on scene. And when I first pulled in the lot,
6 I saw them, and they were probably -- they were east of me
7 midway through the parking lot probably.

8 Q. Okay. Out of their cars?

9 A. Out of their cars, yes.

10 Q. This individual that you saw raise his arm in
11 a shooting fashion, could you actually see a gun in his
12 hand?

13 A. I couldn't tell what was in his hand, no.

14 Q. Could you see what he was pointing at?

15 A. I -- I don't recall what he was pointing at.
16 I know it was pointing north, but I don't remember if he
17 was pointing it at someone or if I even saw what that was.

18 Q. Okay. Did you have any awareness of other
19 people in the lot when you pulled in and saw this
20 happening?

21 A. I know there's typically a large group of
22 people both outside of the Golden Dragon and in that lot.

23 I don't specifically recall where people were
24 or how many there were.

25 Q. Okay. Was your attention pretty focused in on

1 this person you saw --

2 A. Yes.

3 Q. -- firing the gun?

4 A. Yeah. Once the gun went off, that was my
5 primary focus.

6 Q. And so was your patrol car still oriented
7 basically straight east at that point?

8 A. Yes.

9 Q. So as you're sitting in the driver's seat,
10 you're looking straight out your windshield seeing this
11 happen?

12 A. Yes.

13 Q. Was the lighting in the lot such that you felt
14 like you were able to actually see accurately what was
15 happening?

16 A. Yes, I could see it, yes.

17 Q. What happened -- before I ask you, as we look
18 up on the screen here, this photograph, is this roughly
19 what your perspective would have been as you were looking
20 out your windshield?

21 A. Yes, roughly.

22 Q. Okay. Could you indicate here where you saw
23 the -- Sergeant Britt, Officer Livingston and also the
24 person with the gun shooting?

25 A. Yeah. So Sergeant Britt and Officer

1 Livingston, I don't know which one was where, but they were
2 kind of in this area probably, kind of walking that way.

3 And then the shooting suspect was probably
4 around in here when I saw that.

5 Q. Okay. And if you could remain here and just
6 kind of point out what you saw happening then.

7 A. So as this subject shot, he then ran this way.

8 Q. And "this way" is to the south?

9 A. Yes, towards the south, like towards Harvey
10 Milk. And Livingston and Britt moved with their guns drawn
11 to address him.

12 There's -- I'm not sure where the cutout is,
13 but it's maybe right here. There's a little driveway.

14 Q. Is there kind of a cutout entryway right here
15 at the end of this hedgerow?

16 A. Yes.

17 Q. After this white truck, kind of between these
18 cars here?

19 A. Yes.

20 Q. Okay. And so what did you do when you saw the
21 individual moving to the south?

22 A. So I turned the car to the south to that
23 little cutout, towards that cutout, thinking that I was
24 going to move to containment to be able to address the
25 subject who just shot somebody or shot at somebody.

1 This is a matter of, I don't know how much
2 time, seconds probably. It was really rapid.

3 We -- as I turned the car that way, I see a
4 subject. I couldn't tell you where in this line, but he
5 goes -- he starts going between two vehicles.

6 And as he goes back, I'm kind of losing sight
7 of his torso. I can still see his head for part of this as
8 we're turning and he's running.

9 And I see him turn back, like, his head turn
10 back towards where Livingston and Britt are, and that's
11 when I heard the -- heard and saw the flash of Livingston
12 and Britt's shooting.

13 Q. Okay. And when he looked back, could you see
14 where his hands were or any other parts of his body?

15 A. No. At that point, I could not because he was
16 going in between the cars.

17 Q. So if we go back to this photograph here,
18 looking straight east through the parking lot, as you're
19 turning --

20 A. So as I'm turning here, I can see him going --
21 again, I don't know which car he ran between. I could see
22 him go, and then I could see his head turn back as he's
23 going between.

24 Q. Okay. And did it turn back, like, kind of
25 partially as if he's looking back, or did it turn all the

1 way around and look at --

2 A. To me, it looked like he was all the way
3 around looking at the officers.

4 Q. Could you see where the officers were in
5 relation to him?

6 A. Again, I can't tell you depthwise, like, how
7 many cars back they were because it was just so dynamic.

8 But they were -- like I said, they were moving
9 towards the back of these cars to address him.

10 Q. Is this individual you saw doing that the same
11 one that you had just seen firing the gun?

12 A. Yes.

13 Q. Okay. Were there other people kind of running
14 around the area, or were you able to see just that one guy
15 who was shooting?

16 A. I was -- I was focused on him and then Britt
17 and Livingston. I mean, I was aware there were other
18 people there, but specifically I couldn't tell you what
19 they were doing.

20 Q. Okay. As you turned in this direction here in
21 the driver's seat, you would have been on the side of the
22 car closest to what was happening?

23 A. Yes.

24 Q. So were you looking straight out your door
25 window to see this?

1 A. Yes. I would have probably looked out the
2 door window.

3 Q. Okay. And Officer Harris, in the passenger
4 seat, would have been on the other side?

5 A. Yes.

6 Q. So if he were looking, he would have been
7 looking across you and out your window?

8 A. Yes.

9 Q. Okay. Did you get out of the car?

10 A. Yes.

11 Q. You can have a seat again. Thank you.
12 When you got out of the car, did you draw your
13 firearm?

14 A. Yes.

15 Q. Why did you do that?

16 A. Well, I just witnessed a shooting, a subject
17 is attempting to use deadly force, and I was afraid I was
18 going to have to confront him, and it would be the threat
19 of deadly force against me being used.

20 And so I had my gun out in case I had to use
21 deadly force to stop him.

22 Q. Okay. Were you aware of where Officer Harris
23 was?

24 A. Yes.

25 Q. Where was he?

1 A. He was to my right. As we exited the vehicle,
2 he stayed to my right, and we moved up.

3 Q. When you say "moved up," which direction did
4 you move?

5 A. So we moved south towards Harvey Milk.
6 There's the Harvey Milk sidewalk and then the hedge line.

7 We moved up toward that cutout towards that
8 area, towards Harvey Milk.

9 Q. If you look up on the board here, if this is
10 the kind of cutout entryway at the end of this arborvitae
11 hedge, were you actually standing on the sidewalk on the
12 south side of the lot or were you still in the lot?

13 A. We were still in the lot because I could see
14 down the hedge line.

15 Q. What do you remember seeing?

16 A. Well, as we -- as Officer Harris and I moved
17 up, moved south towards Harvey Milk, a subject came running
18 and actually fell right in front of us. So we began giving
19 him commands. We didn't know how he was involved, if he
20 was involved, what was going on.

21 We gave him commands. He was compliant. I
22 placed him in handcuffs. And as I was picking him up, I
23 looked left, which would be east down the hedge line, so
24 inside the hedge line, still in the lot, and I could see
25 the torso of the subject -- I had seen the suspect from the

1 shooting, I had seen the same guy.

2 He was kind of on his hands and knees on the
3 ground.

4 Q. Okay. Near the hedgerow?

5 A. Yes.

6 Q. Okay. So you were looking down kind of the
7 nose hoods of the parked cars to see that?

8 A. Yes.

9 Q. Okay. And did you identify the individual
10 that fell down at your feet?

11 A. Yes.

12 Q. Who was it?

13 A. I believe it was Chris Williams.

14 Q. Okay. What did you do with Mr. Williams?

15 A. So I picked him up and immediately took him
16 back to my patrol car. I searched him real quick and
17 placed him inside my patrol car.

18 Q. Did you stay with him until other officers
19 came to relieve you?

20 A. Yes.

21 Q. At what point were you identified as a witness
22 officer?

23 A. I think it was immediately after -- after
24 that, once -- I believe it was Officer Robert came and
25 stayed with Chris Williams.

1 That's when I was immediately -- almost
2 immediately after that.

3 Q. And were you then sequestered --

4 A. Yes.

5 Q. -- from any further involvement?

6 A. Yes.

7 Q. Okay. Did you at any point come up into this
8 area to assist in rendering aid or any other actions with
9 respect to the other person you had seen shooting earlier?

10 A. No. I had no involvement in that, no.

11 Q. Okay.

12 MR. JACKSON: Do you folks have any questions
13 for Officer Moore?

14 A GRAND JUROR: So you pull in, see the flash.
15 When the man came around the corner, you said
16 he turned, you could see him, like, turn back.

17 Is that when the officers were firing, or did
18 he -- did they fire and then he turned?

19 THE WITNESS: He turned back, and it was
20 immediately after that that they fired.

21 A GRAND JUROR: Oh, okay.

22 A GRAND JUROR: So he did a stop and turn to
23 confront the officers?

24 THE WITNESS: He was still moving. Like I
25 said, I couldn't see most of his torso because he was going

1 between cars at that point. I could see his head turn
2 back. I couldn't tell you what he was doing with his
3 hands.

4 A GRAND JUROR: So his head, not fully
5 presenting himself.

6 THE WITNESS: I could only see his head. Like
7 I said, I don't know what his torso was doing. I could see
8 his head turned back towards Livingston and Britt.

9

10 BY MR. JACKSON: (Continuing)

11 Q. Prior to that, had he been moving, as you
12 perceived it, in a -- still in a southerly direction or in
13 a westerly direction through the parking lot?

14 A. At that point, he was still south.

15 Q. Okay. Moving between cars?

16 A. Yes.

17 Q. Did you, from your perspective, at any point
18 see him turn and run to the west toward where you were?

19 A. No, no. I didn't see him run to the west, no.

20 Q. Okay. So as far as you were seeing, he fired
21 the gun and was running to the south?

22 A. Yes.

23 Q. And then as he's disappearing between parked
24 cars, you saw his head turn back?

25 A. Yes.

1 Q. Okay.

2 A GRAND JUROR: Could you hear Officers Britt
3 and Livingston saying anything?

4 THE WITNESS: When he ran between the cars?

5 A GRAND JUROR: Uh-huh.

6 THE WITNESS: No. So I was still in my
7 vehicle, and we're turning at that point.

8 It's -- I mean, we're at the back end of this
9 white car. They're down there. It's quite a distance.

10 I don't recall hearing anything.

11 A GRAND JUROR: Right. And it's chaotic?

12 THE WITNESS: Yeah, it was so fast.

13

14 BY MR. JACKSON: (Continuing)

15 Q. Were your windows up?

16 A. You know, I don't remember. Typically, I have
17 them down, but I couldn't tell you for sure.

18 Q. Okay.

19 MR. JACKSON: Any other questions?

20 I don't see any.

21 Thank you very much.

22 THE WITNESS: Thank you.

23

24

25

1 OFFICER JOSH HOWERY

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

5
6 EXAMINATION

7 BY MR. JACKSON:

8 Q. Could you please state and spell your name?

9 A. My name is Josh Howery, H-O-W-E-R-Y.

10 Q. And what's your occupation?

11 A. I'm a police officer with the Portland Police
12 Bureau.

13 Q. How long have you been a police officer?

14 A. Almost 18 years.

15 Q. Could you go through your educational
16 background?

17 A. Yes. I have a bachelor's degree from George
18 Fox University. That's about where the formal education
19 ended right there.

20 Q. Okay. And did you become a police officer
21 shortly after graduating?

22 A. About three years afterwards.

23 Q. And what have been your assignments over your
24 career with the Portland Police Bureau?

25 A. I worked patrol for about six years, and then

1 I moved to a specialty unit for a prostitution coordination
2 team on 82nd Avenue.

3 From there, I actually moved to the detective
4 division for a short time, investigating human trafficking
5 investigations.

6 I moved back to the street for a couple of
7 years. And then in 2012, I went to the training division
8 full time as a lead instructor for control tactics.

9 Q. Okay. And how long were you with the training
10 division?

11 A. I was at the training division for six years.
12 And then this year, I was -- I recently, about three weeks
13 ago, was transferred from the training division to the
14 full-time Special Emergency Reaction Team.

15 Q. And what is the Special Emergency Reaction
16 Team?

17 A. That's our SWAT team here in Portland.

18 Q. Okay. And so you're full-time assigned to
19 that detail?

20 A. Yes, that's correct.

21 Q. While you were working in the training
22 division, could you describe what your responsibilities
23 were?

24 A. Yes. So I was initially hired there to teach
25 our defensive tactics and control tactics program. So that

1 would be teaching our in-service, that would be all of the
2 members of the bureau, a yearly refresher for our arrest
3 techniques, our searching techniques, that sort of thing,
4 our hand-to-hand combatives that were included in that as
5 well.

6 I was also required to teach the advanced
7 academy. So all of our new recruits would go to the basic
8 academy in Salem. They would come back here to Portland,
9 go out on the street for a few months and then come back to
10 an advanced academy. We'd put them through another 10 to
11 14 weeks of additional training. They would get between 50
12 and 120 hours extra of control tactics and defensive
13 tactics.

14 Q. And you were the primary instructor for that
15 program?

16 A. That's correct.

17 In addition to that, for the advanced academy,
18 I also would teach a use of force decision-making class.

19 Q. Okay. In terms of the actual training that
20 officers receive, how is the information given to them?
21 How are they evaluated and ultimately allowed to go out on
22 to the street as fully sworn police officers?

23 A. As far as the control tactics and the
24 use-of-force training, we'd start in the classroom and give
25 them basic classroom information. And then we would go

1 through certain videos to help them in their
2 decision-making process. We would watch videos of other
3 incidents around the country, that sort of thing, that had
4 been captured, you know, some good outcomes, some bad
5 outcomes.

6 And then we'd talk through those and say, What
7 went good? What went bad? What kind of tactics could have
8 been used to make this a better outcome or, in some cases,
9 could anything have been done to make that -- in some
10 cases, that was not possible, and we'd discuss that.

11 From there, we'd go into the mat room, and
12 we'd learn techniques, concepts, principles, and we'd
13 practice those things, right?

14 Part of what we were doing was actual physical
15 skills that a new person just needs repetition at. And so
16 they would learn how to arrest somebody, how to position
17 themselves to create a safer environment for themselves,
18 how to put handcuffs on somebody, for instance, and the
19 combatives, how to take somebody down, how to defend
20 yourself, how to defend somebody else, that sort of thing.

21 Q. And does that program and training also
22 include learning how to utilize tools and how to determine
23 which tools are appropriate for which types of
24 circumstances?

25 A. Yes. A lot of our instruction there in the

1 mat room would focus on how can you use these tools on your
2 belt and are they a viable option at that time?

3 You know, officers carry a wide variety of
4 less lethal tools and lethal tools on their belt. Based on
5 distance and time and circumstance, some may be
6 appropriate, some may not be appropriate based on that
7 circumstance.

8 And so we would -- we would train them
9 initially just to be able to even use those tools, can they
10 even get it out of the pouch, right, but then also work
11 toward more complicated scenarios where they had to decide,
12 what is the appropriate tool to resolve a confrontation?

13 Q. And so do you actually engage in
14 scenario-based training as part of the program?

15 A. Yes. The advanced academy is broken into
16 specific disciplines; however, all those disciplines
17 eventually come together and -- because police work is a
18 combination of all of those disciplines.

19 They have time on the range where they shoot
20 with firearms instructors, sometimes satellite firearms
21 instructors. They have time in the mat room where they
22 practice the hand-to-hand stuff and the arrest techniques.

23 And then they have time in our scenario
24 village, if you will. We have a mock street, a couple of
25 streets with houses and apartments and things, and they can

1 go in there. And the patrol procedure is discipline, and
2 they can put those things together.

3 So they go and do a scenario, and they don't
4 know what the scenario is initially, but it could be -- it
5 could range from they do a normal traffic stop and nothing
6 happens up to a deadly force incident where they may have
7 to use deadly force, and they will have to put all the
8 skills they've learned in the other disciplines together
9 and successfully solve this scenario, if you will.

10 Q. So as an instructor, how are officers
11 evaluated as they go through that process?

12 A. There are written tests. So the officers have
13 to actually learn certain academic information and be able
14 to recite that back.

15 They are evaluated on their individual skill.
16 Are they able to use certain techniques to control a
17 person?

18 And then overall in those scenarios, we're
19 watching -- you know, each scenario has a learning
20 objective, and the officers are going into that objective,
21 and they're -- they're rated, basically, how they do
22 compared to what we'd consider a normal officer, an average
23 officer, to be able to perform, how that person would solve
24 the scenario, not that everybody would solve the scenario
25 exactly the same, but that it's reasonable.

1 And so we look for that, hey, did the officer
2 come into the scenario, did they resolve that
3 confrontation, and was it with what they did, whether it
4 was a force situation, whether it was a deescalation-type
5 event or whatever it was, were they able to do it
6 reasonably?

7 Q. Is an officer's specific decision making part
8 of that evaluative process?

9 A. Yes.

10 Q. In terms of as they're encountering a
11 situation and making decisions on what to do, how to
12 position themselves, how to interact with the person or
13 threat or whatever is presented, is that being evaluated as
14 well?

15 A. Yes.

16 Q. And then how are officers critiqued?

17 A. At the end of every scenario, at the end of
18 every iteration, if you will, we gather the officers back,
19 and we debrief the situation. We say, Hey, what
20 information did you have going into this? What were you
21 able to process in the amount of time that you had to
22 process that?

23 And then ask them, What decisions were you
24 making? What did you do?

25 And then we ask them, Is there anything else

1 you think now, after everything is done and the stress
2 level has come down, that you thought you could have done
3 better or you would do differently?

4 And then, you know, we have a lot of
5 instructors usually around those. We will also, as
6 instructors, give input, Hey, you know, we've been around
7 for a little while. We've seen other people do this, and
8 offer suggestions. Maybe X, Y, Z would have worked in this
9 situation well. Maybe this skill that you learned
10 yesterday in control tactics would have applied in this
11 scenario today and just try to guide them through different
12 options.

13 Q. So as part of the training, are officers also
14 taught what the actual Portland Police Bureau's specific
15 policies are with regard to how to conduct themselves,
16 certainly in terms of use-of-force decision making?

17 A. Yes.

18 Q. And how is that taught to them?

19 A. Those are taught through a series of different
20 classes.

21 Right from the very beginning, I know that the
22 FTEP instructors also --

23 Q. What is FTEP?

24 A. I'm sorry. Our field training evaluation
25 program.

1 When an officer is first hired, even before
2 they go to the basic academy, they get a series of classes,
3 several weeks of training.

4 One of those is through the field training
5 evaluation program on policy stuff. They give them the
6 policy, and they read the policy to them. They start to
7 explain that to them to set a base of understanding.

8 So the officers are required to read all of
9 those policies. They go to the basic academy, they get
10 their initial training through the State, and then they
11 come back to the advanced academy.

12 We focus mostly on the force directive, 1010,
13 when they come back to control tactics because much of what
14 we do in control tactics has to do with applying force.

15 We also talk about satisfactory performance,
16 and then there's other classes in different disciplines,
17 and they all try to blend together to make sure that the
18 officers, as they come out, have a comprehensive
19 understanding of what the policy is requiring of them.

20 Q. Okay. Is there a concept within the police
21 bureau's training program concerning deescalation?

22 A. Yes.

23 Q. What is that and how is it incorporated into
24 officer training?

25 A. The expectation through the policy is that

1 whenever possible, an officer should try to deescalate a
2 situation when they have the time to do that.

3 Now, when we talk about deescalation, we're
4 talking about an attempt to solve a confrontation using
5 less force or without force.

6 But, again, that happens when we can, right?
7 Not every situation is it possible to solve the situation
8 without force.

9 We tell officers, Look, if you have more time
10 and you have more resources available to you, it probably
11 is more likely that you can use some other type of tactic
12 to try to avoid using force or using less force.

13 As that time shrinks down and the threat level
14 becomes higher, that goes away, and officers are going to
15 be required to act, to intervene in a potentially very
16 violent, very dangerous situation.

17 In that case, there's just not the time to do
18 so.

19 Q. When you say "to do so," do you mean to
20 utilize some of these deescalation tactics or techniques?

21 A. That's correct.

22 Q. And kind of along those same lines, is there
23 also a concept within the police bureau's training and
24 policies establishing a duty to act?

25 A. Yes. Part of that satisfactory performance

1 talks about officers being required to intervene when the
2 police are called. They're required to respond to the
3 call. They're required to help other people when on duty.

4 Q. Is there a policy about the sanctity of life
5 and protection of people?

6 A. Yes. That becomes -- that starts off the
7 entire use-of-force directive. And so it talks about that
8 all life is valuable and that we're -- you know, part of
9 what we're there to do is to protect life.

10 Q. Okay. And so you talked about the duty to act
11 arising in circumstances where the police are called?

12 A. Yes.

13 Q. 911, police are expected and have a duty to
14 respond to that call and render service?

15 A. Correct.

16 Q. How does the duty to act apply in a situation
17 where the police are not necessarily called to respond, but
18 are actually observing an event unfolding in front of them?

19 A. The expectation would be that the -- if they
20 can, they should intervene to stop whatever bad event is
21 happening.

22 So if people are being hurt and they have the
23 ability to intervene and stop people from being hurt or
24 keep other people from being hurt, that would be the
25 expectation. Now, if they can do so, if they can

1 effectively do so.

2 Say, for instance, they were up against a
3 situation that just was not winnable, we would -- we would
4 probably steer them toward a direction of getting
5 additional resources there so they could intervene
6 successfully.

7 But if you were there and this is happening
8 and we have the ability to successfully intervene in a
9 dangerous situation, we should do that.

10 Q. Okay. And the training would actually inform
11 officers to do that?

12 A. Yes.

13 Q. To act and to intervene?

14 A. Yes.

15 Q. I'd like to move now to the use of deadly
16 force policy for the police bureau.

17 What is the -- what is deadly force?

18 A. Deadly force is any force that is likely to
19 cause serious physical injury or death.

20 Q. So deadly force could encompass a use of force
21 that does not cause death?

22 A. Yes.

23 Q. What are officers trained with regard to the
24 use of deadly force?

25 A. It starts from the policy. It says an officer

1 may be -- may use deadly force when they reasonably believe
2 a person poses an immediate threat of death or serious
3 physical injury to the officer or others.

4 Q. You say "poses an immediate threat"?

5 A. Yes.

6 Q. So do the officers have to actually be
7 experiencing deadly force before they're authorized under
8 the policy to respond with deadly force?

9 A. No. That would be an immediate action, right?
10 That would mean the bad thing is already happening to them,
11 and they're responding. They're reacting to that.

12 The policy requires that they have to
13 reasonably believe that the person is an immediate threat
14 of that, that the next thing that is happening is the bad
15 thing, but not that the bad thing is actually happening to
16 them at that point.

17 Q. And does that include threats to themselves
18 and other people?

19 A. Yes.

20 Q. Is that standard you articulated in policy
21 actually more restrictive than the criminal law has
22 recognized as justified use of deadly force?

23 A. Yes, it is.

24 Q. And why does the bureau set a standard that is
25 actually more restrictive in terms of the justifiable or

1 allowable permissible use of deadly force than the law
2 allows?

3 A. The bureau has actually tried to, one -- I
4 think there's a couple different reasons, but, one, they
5 create a buffer zone. If they require our officers to use
6 a higher standard in using deadly force, then when they
7 follow that policy and they still get into the situation
8 where they use deadly force, legally, there's a buffer
9 zone. They're not on the line of being whether it's legal
10 for them to shoot a person or not or use deadly force
11 against a person or not.

12 But their standard is so much higher that
13 we're not even close to that line of, Well, we don't know
14 if it's legal or not. We know that it's legal.

15 And then we get to say, Was it within policy
16 or not? Because our policy is already a higher standard.

17 Q. So is it, therefore, conceivable a person
18 could be using deadly force outside of the bureau's policy,
19 but still be justified under the criminal law?

20 A. Yes, absolutely.

21 Q. Okay. I'd like to now ask you about general
22 threat assessment in terms of firearms.

23 A. Okay.

24 Q. And the threat that a person armed with a gun
25 presents to an officer in terms of what they would be

1 trained to be identifying.

2 A. Okay.

3 Q. So how are police officers trained to deal
4 with a situation involving a subject that is armed with a
5 gun?

6 A. A lot of different ways is the general answer,
7 and the reason why is because just because a person has a
8 gun, they -- they may pose a different level of threat
9 based on what type of gun they have, what they're doing
10 with that gun, what is the distance from that person? How
11 is that person moving or not moving?

12 Does that make sense to everybody? You know,
13 every situation is a little bit different. So what we try
14 to do is teach officers concepts and principles, this is
15 what guns can do. This is what -- this is generally how we
16 should try to avoid being shot or getting other people shot
17 or that sort of thing, and these are general ideas of how
18 we can stop somebody who does have a gun and may be using
19 deadly force.

20 Q. Okay. And so given what you've just
21 described, is there some kind of blanket policy that any
22 time an officer is confronted or presented with an armed
23 individual, they are authorized to use deadly force against
24 that person to just shoot them regardless of what that
25 person is doing?

1 A. No. The officer still has to make an
2 individual assessment, and they have to articulate why they
3 believed that person was an immediate threat of death or
4 serious physical injury to them or somebody else.

5 Q. How, if at all, does the training, in terms of
6 response, change if the subject with the firearm is
7 observed using it against other people?

8 A. That would get into the mind-set of an officer
9 and increase the threat level. It also increases the
10 urgency of that event.

11 If somebody is actively using a firearm
12 against somebody, the officers have this -- the urgency to
13 go and intervene goes way up because without intervention
14 there, people continue to get hurt, and people will -- you
15 know, they -- they could die. They could be seriously
16 injured.

17 Officers are going to be trained that in that
18 situation, if somebody is actively using deadly force
19 against other people and can continue to do that, that they
20 need to stop that threat.

21 Running away would not be a good option for
22 that.

23 Q. You mean the police running away?

24 A. Yes. The police running away would not be a
25 good option.

1 Merely hiding and waiting until everybody is
2 done shooting would not be a good option.

3 The idea is we're trying to preserve life.
4 Closing that distance and actually neutralizing that threat
5 or keeping that threat away from other people would be what
6 we would train folks to try to do in that situation.

7 Q. How does the threat presented by a firearm
8 differ from threats presented by other types of weapons?

9 A. Firearms are typically unique because of the
10 range involved. If, say, a person has a knife or a stick,
11 they can only hurt other people if they're within arm's
12 reach of other people, including officers, too.

13 With firearms, if you take a typical handgun
14 round, accurately, people can fire those maybe up to 50
15 yards. And so they view that as an accurate deadly threat
16 up to 50 yards.

17 If they just start shooting, and bullets start
18 flying up in the air and they come down, you know,
19 somewhere else, that could be up to half a mile or more
20 where those bullets could represent a deadly threat.

21 But, again, the range increases so much
22 substantially just because of the firearm itself.

23 A knife, again, could be a deadly threat
24 typically, has to be within arm's reach.

25 A firearm could be across the street. It

1 could be across the parking lot. It could be -- it can be
2 used in so many other types of ways and still be a deadly
3 threat.

4 Q. If an officer is presented with a situation
5 where they're actually seeing an individual armed with a
6 firearm shooting or firing a firearm either at them or at
7 other people, what tools would they be trained to utilize,
8 or at least prepare to utilize, to respond to that type of
9 a condition?

10 A. We would typically train an officer to respond
11 to deadly force with -- or a deadly threat like that with
12 deadly force of their own.

13 In some cases, we would suggest officers find
14 some -- some type of cover to stand behind to perhaps stop
15 bullets if fire is directed at them.

16 In the case of fire being directed toward
17 somebody else, hiding behind a brick wall will not help the
18 officers very much stop that threat. But actually using
19 deadly force against that threat to stop them would be the
20 recommended way to do that.

21 And the reason why, again, is it gives the
22 officers some amount of distance so they don't have to
23 completely or just totally run up to somebody and try to
24 disarm the person or use a less lethal type method, which
25 may not work.

1 This person is using deadly force against
2 other people. It is the most effective and safest way for
3 officers to actually use deadly force from a distance to
4 actually stop that threat.

5 Q. When you talk about less lethal options as
6 opposed to lethal options, what are you talking about?

7 A. There's -- you know, the officers carry
8 several different types of systems on their belts, and in
9 their cars in some cases, to try to take people into
10 custody using not lethal force. Those can include pepper
11 spray, hand-held baton, the Taser or I guess it's the
12 conducted electrical weapon is what it's supposed to be
13 called, and then the --

14 Q. Commonly referred to as the Taser?

15 A. Also known as the Taser.

16 Q. Okay.

17 A. And then the 40 millimeter projectile that we
18 carry.

19 Q. And are those sponge rounds or what used to be
20 called beanbag rounds?

21 A. Yes, that's correct. It shoots a round a lot
22 slower than a bullet. They're typically much larger. They
23 have some amount of mass, but they're typically soft.

24 And so they're designed to impact a person and
25 cause some amount of pain and have them -- make them stop.

1 Q. Okay. But they're not penetrating; in other
2 words, those rounds would not be expected to cause serious
3 physical injury or death in the manner they're trained to
4 be used?

5 A. That's correct. In fact, they typically don't
6 break bones or anything like that. They hit, and they
7 bounce off.

8 Q. So if you had a situation where a person is
9 armed with a gun and firing it at other people, would it be
10 appropriate or consistent with training for the officer to
11 try to engage that threat using the Taser or the 40
12 millimeter launcher or pepper spray or baton or any of
13 those other tools that you described?

14 A. No. And part of the reason is -- well,
15 there's multiple reasons why we would not use some of those
16 tools to try to stop a deadly force threat as in this case.

17 Most of those weapons are not designed to
18 completely incapacitate a person. They're not going to
19 stop a person who is highly motivated.

20 We have seen multiple times on the street
21 where a highly motivated individual has been hit correctly
22 through our training with the 40 millimeter sponge round,
23 and it had no effect. The person kept walking right
24 through that. They kept running through that. It hit
25 their legs and bounced off, and they didn't react to it.

1 Tasers have a high failure rate.

2 Q. How does a Taser operate, if you could explain
3 that?

4 A. Sure. A Taser has a -- it looks like a big
5 yellow firearm, if you will. It has cartridges on the
6 front, two of them.

7 As the Taser is deployed, two probes out of
8 each cartridge, so each cartridge at a time. So if you
9 deploy a Taser, two probes come out of the cartridge. One
10 goes directly at the line of sight or the aim point of the
11 Taser. The other one comes down at about eight degrees.

12 And then there are -- they have sharp ends.
13 So they -- what they do is penetrate into a person's skin,
14 and they hit -- they fire electrical pulses via wire that
15 are attached to those probes.

16 So when the probe goes in and they both hit,
17 they both connect, what happens is it creates a circuit
18 through the body. So everything between those probes
19 becomes affected by that electrical current.

20 Well, the electrical current is such that it
21 is designed to make the external muscles of a person
22 contract involuntarily.

23 Now, if we are too close with a Taser, those
24 probes get really close together, it doesn't affect very
25 many muscles. And so causing those muscles to

1 involuntarily contract, it may hurt, but it won't actually
2 physically stop a person.

3 If we get too far away, we run out of wire.
4 And so our -- our typical Taser cartridges have a range of
5 25 feet. So anything outside of 25 feet, the Taser is not
6 going to work. Anything too close, up to about seven to 10
7 feet, the Taser is going to be minimally effective.

8 And then we run into other problems, like in
9 Portland when it gets cold and that sort of thing, clothing
10 tends to stop the probes from actually penetrating into the
11 skin.

12 Many times, because you're trying to fire two
13 probes that are going off at an angle, you'll miss with one
14 probe. One probe is not enough to have any effect on a
15 person at all.

16 And so the idea of using this in a highly
17 dynamic situation against a deadly force threat, right,
18 where the person could inflict serious physical injury or
19 death to you or somebody else is not an appropriate tool.

20 Q. When firing the Taser, is it a single shot and
21 then you have to change the cartridge or can you deploy
22 multiple probes? So let's say you shoot, you miss a probe
23 or the probes don't connect, can you just fire again?

24 A. You can fire again with our particular Taser.
25 Each Taser carries two cartridges; however, to do that, you

1 have to turn the Taser off and turn it back on or you have
2 to press a button on the side to make it manually switch to
3 the next Taser cartridge.

4 And so everything comes at a cost of time if
5 you're using a tool like that. So, for instance, if you
6 deploy a Taser, it takes some time. Then you have to
7 realize that the Taser was either effective or not
8 effective. And then under stress, you may need to be
9 turning the Taser off and turning it back on or hitting a
10 button on the side, which is a -- which is a fine motor
11 skill, which may be difficult in a time of stress, to
12 switch to the next cartridge and then deploy it again. All
13 of those things take time.

14 And, again, when we're talking about a deadly
15 force threat, right, a person firing a handgun could
16 continue to fire a handgun at a rate of about one shot
17 per -- I'm sorry, about five shots per second.

18 Q. If the second shot or deployment of the Taser
19 is ineffective, how would an officer go about reloading it?

20 A. At that point, they would have to turn the
21 Taser off. They would have to press a button on the front
22 of the Taser, remove each cartridge, find their pouch of
23 Taser cartridges, if they carry extras, and then reload it.
24 It would take several seconds.

25 Q. What about trying to deploy the Taser, having

1 it be ineffective and then deciding to switch over to the
2 handgun?

3 A. In that case, we would -- the training would
4 be to just drop the Taser and transition to the handgun.

5 It would take -- it takes about one and a half
6 to two seconds to draw a handgun. Under stress, things
7 tend to take a little bit longer. And that's not including
8 the time it takes to actually realize what's happening,
9 make the conscious effort to let go of your Taser and then
10 go to a different weapon system.

11 Q. You're talking about a series of seconds of
12 time lost in that decision-making process to transition
13 between tools?

14 A. Yes.

15 Q. Okay. And how does that play into the
16 training and decision making of which tool to draw as an
17 initial matter when engaging a threat?

18 A. We try to be proportional when we decide
19 which -- what level of force we use, and we also look at
20 what -- what is reasonable as far as how do we solve this
21 situation? How do we resolve this confrontation
22 effectively?

23 And if it takes too much time or we have the
24 chance of now we all get hurt or killed because we chose
25 the wrong thing, then that's not the appropriate tool.

1 Q. Okay. I now want to ask you about the
2 training concerning commands --

3 A. Okay.

4 Q. -- that officers would be expected to provide
5 and the circumstances in which they would be expected to
6 provide them.

7 A. Okay.

8 Q. What is the training concerning commands?

9 A. The training, again, with commands and
10 warnings would be that you're required to give a warning if
11 it is -- if it is safe to do so.

12 At the point it becomes not safe to do so,
13 because usually we don't have the time -- because time,
14 circumstances and safety allow we should give a warning.

15 Again, time compression is a real thing in
16 police work, especially when somebody is already shooting
17 other people, right?

18 At that point, do we want to give commands to
19 make that person stop and wait for the seconds it takes for
20 that person to hear those commands, make the decision
21 whether they follow the commands and then maybe do those
22 commands, or do we want to intervene and actually stop them
23 from using deadly force against other people?

24 Again, safety, if somebody is running at you
25 with a gun, right, giving a command may come out as part of

1 habit. But waiting for that person to actually do that, as
2 they're getting about seven yards closer to you every
3 second at full speed already, now --

4 Q. Is that a kind of average speed?

5 A. That would be about average.

6 Q. Okay.

7 A. At full speed it takes, you know -- a person
8 can cover, say, seven yards at full speed already at a dead
9 run. That person is getting quite a bit closer to you
10 every second.

11 Again, giving a command out, one, they may not
12 hear it; two, the closer they get with a gun, the more
13 likely it is they're going to be able to hit you, right?
14 Accuracy goes way up the closer the distance.

15 And then, again, time is -- time is our enemy
16 at that point. We don't have the time to wait for all
17 these things to happen because the bad things are happening
18 to us at that point.

19 Q. And so given what you've just explained, would
20 there be circumstances where an officer would be within
21 policy to use deadly force without having provided any
22 commands or warnings at all?

23 A. Yes.

24 Q. You said that sometimes commands or warnings
25 will be given as a matter of habit?

1 A. Yes.

2 Q. Could you explain what you mean by that?

3 A. In some of the trainings, in some situations,
4 an officer may have the time or they may be behind a piece
5 of cover where a -- like in a scenario or a real-life
6 situation, they encounter a person who's armed, right, and
7 they have more distance. They have -- the situation may be
8 static. The person may be standing there.

9 In that case, officers are starting to -- they
10 would give commands. They would give warnings even, right,
11 because they have a lot more resources at their disposal.

12 Because we run a lot of scenarios and a lot of
13 training, we do a lot of different calls that are
14 dangerous. There are dangerous circumstances; however,
15 they don't turn into shootings, most of them, right? Over
16 300,000 calls for service in a year, and we typically get
17 into maybe four or five shootings in a year. So the
18 percentage is really, really low.

19 But all those other cases, they were able to
20 give a command. They were able to give a warning, and that
21 situation didn't turn into that because it was static.
22 They did have time.

23 Now, in the cases that all of a sudden it
24 turns and they don't have the time, and this is no longer a
25 static environment, but a very dynamic one, they've also

1 conditioned themselves through all the other calls they've
2 gone into, through all the other training they've gone to,
3 to blurt out that command.

4 So it may still come out, but, again, they're
5 still moving through the threat assessment, and they're
6 thinking, Wait. This is a real threat, and I need to
7 respond now.

8 Q. Are you familiar with the concept of action
9 reaction?

10 A. Yes.

11 Q. How does that concept -- well, first, could
12 you explain what that is?

13 A. Yes. Action reaction is a principle which we
14 teach in control tactics. We actually teach in the
15 advanced academy through several disciplines.

16 It boils down to, in a contest of time, the
17 initiator of an action will have an advantage over somebody
18 reacting to that.

19 It comes down to physiology, right, science.
20 If somebody does something, and the other person is waiting
21 for them to do that, there is -- there's some time there
22 that passes before that person is actually able to, in
23 their mind, observe that action and make the decision to
24 react to it and then actually do something about it,
25 physically make a move, if you will.

1 Q. Okay. And so is it important for officers to
2 understand some of the physical and physiological
3 limitations of the human body as they're out encountering
4 situations and engaging threats?

5 A. Yes, absolutely. We don't use action reaction
6 as a justification for using deadly force, but what we want
7 to teach officers is that it exists.

8 And because there is that disadvantage of a
9 subject you're dealing with, that they decide to make a
10 move and you react to it, you will be at that disadvantage.
11 We want them -- our training focuses on, Okay. Knowing
12 that, what can you do to set yourself in a better position
13 to maybe mitigate that disadvantage, right?

14 Is that getting more distance in some cases?
15 In some cases, it could be. Is it getting behind cover?
16 Could that help? Could it be distracting the person so
17 that when they decide to do something, their attention is
18 divided.

19 But, again, it's not just a blanket, This is
20 why you do things, but it is also a -- it's an idea of,
21 Hey, this exists. Make sure that when you have the time
22 to, start thinking about how do we get some of that
23 advantage back.

24 Q. Are there actual exercises or demonstrations
25 you use in the training to illustrate this principle for

1 officers?

2 A. Yes.

3 Q. What are those?

4 A. The most basic one that we use for action
5 reaction is I'll have one of my students come up in the
6 class. We have training guns. They are Glocks. They are
7 just like our real Glocks; however, they only fire blanks
8 and sim rounds, which is a plastic paintball round, if you
9 will. So they're designed to only do that.

10 The gun itself is exactly like what we carry
11 on the street, so it's a good training tool for the
12 officers. Everything is -- the trigger is exactly the
13 same, so they're -- they're familiar with it.

14 And I'll have the student step up in front of
15 me. It's close, maybe three to five yards away, so they
16 can -- we'll have a conversation. And they have a gun, and
17 I have a gun, and it's loaded with blanks.

18 What we do is we have -- I will have them --
19 I'll tell them, Here's the game. Here's the demonstration,
20 if you will. Here are the rules. You may point the gun at
21 me with your finger on the trigger, and I will have my gun
22 down by my side with my finger off the trigger. When I
23 move to point the gun and shoot at you, you may fire.

24 It would seem they have the advantage.
25 They're already on target. Their finger is on the trigger.

1 All they have to do is move it about a tenth of an inch to
2 the rear.

3 And what happens is when I decide to move,
4 they don't know when I'm going to do it. I bring that gun
5 up and I can get one, sometimes two shots off, before
6 they're able to process that in their minds and just pull
7 the trigger.

8 It takes them -- if everything is going
9 perfectly for them, on average, it will take them a quarter
10 of a second just to realize I've started to move. And then
11 it will take them another .06 to .1 seconds to actually
12 pull that trigger.

13 For me, when I decide to move, there's no
14 reaction time. I just start to move, and I decide to pull
15 the trigger, and it will take me less than a quarter of a
16 second to get that shot off.

17 That would be the first illustration that we
18 do.

19 Q. When a person has made the decision to fire,
20 on average, do you know how fast a person can fire a
21 semiautomatic handgun or revolver?

22 A. It's typically between five and six shots per
23 second. So every .2, .25 shots per second.

24 Q. And so in some of the time that you have just
25 described it takes just to perceive a person is actually

1 moving, make a decision to react to it and then actually
2 act, it can be over a second of time?

3 A. Definitely. And, again, in a second of time,
4 five to six shots could have come up toward you as the
5 officer.

6 So very rarely are we in a situation where we
7 are pointing a gun at somebody with a finger on the trigger
8 and as soon as they move, we've already decided we're going
9 to shoot as soon as that person moves. That situation
10 almost never happens.

11 What's more likely is that something happens.
12 That person already makes the first move, and they decide
13 to employ deadly force.

14 The officer has to do several steps. In many
15 cases, they still need to draw their gun, right? And that
16 could take up to two seconds, including the reaction time.

17 And what we find is that even when we are on
18 the range and we have done demonstrations or we've done
19 practice where the officer knows that a beep is going to
20 come, and as soon as that beep goes, they can draw and fire
21 one round on the target, very often it takes one and a
22 quarter to one and a half seconds for that officer to get
23 one round on the paper. The only stimulus they have,
24 they're waiting for, is that beep, right?

25 Now you put somebody on the street, and now

1 the stimulus is much greater. We're taking in a ton of
2 information through our eyes and our ears, and we're trying
3 to make a decision whether we need to use deadly force.

4 All of that slows down the response. This is
5 not just a simple reaction drill. It is a take in
6 information, process it, make the right decision, decide
7 what you're going to do and then execute it.

8 Q. So how are officers trained to deal with some
9 of those issues you've just identified?

10 A. Part of it is, you know, training. They're
11 trained on physical skills, how to draw faster, how to hit
12 targets, how to do that sort of thing.

13 Part of it they're going to have to visualize
14 what they would do in certain situations. You cannot put
15 every officer in a situation that's actually real and have
16 them do that over and over again to where they get good at
17 it.

18 They're going to have to actually do some
19 training in scenarios where they may get better at reacting
20 to certain situations, but then they're going to have to
21 visualize on their own, how would I react in this
22 situation? How will I -- what type of decisions will I
23 make?

24 Q. So separate and apart from actually using
25 deadly force, in terms of firing their gun, what is the

1 training in terms of when officers should be drawing their
2 guns and how would they be expected to be pointing the guns
3 or utilizing the guns when engaging in a situation like
4 this?

5 A. That also depends on what the officer is
6 perceiving as a threat.

7 If the officer is perceiving somebody as a
8 threat and they are a deadly force threat, we would
9 recommend that you cover them with a firearm.

10 Again, if you --

11 Q. What does that mean you cover them?

12 A. We may point the gun at them. We may have the
13 gun just slightly low so we can actually still see what's
14 going on.

15 What we find a lot of times is if officers
16 have a gun up in front of their face looking down sights,
17 it takes a lot of their vision away. They're not able to
18 see what they need to see as far as threat evaluation.

19 But having that gun lowered just slightly
20 where they're still partially on target and they can very
21 quickly come back up to target, that slows -- that takes
22 away some of their time lag. But, again, that's that
23 officer's decision.

24 And, again, if you have the time to cover
25 somebody, to point that gun in their direction and assess,

1 then maybe we can give commands. Maybe we can see what's
2 going to happen, what that person is going to do.

3 At the point that that person is actively
4 doing something, they may not have the time to do that
5 even.

6 But, again, having that gun out before they
7 make that decision to shoot may actually shrink that time
8 lag down before they make that decision.

9 Q. And so if an officer is faced with an armed
10 subject actually firing a gun at other people, would you
11 expect that officer or officers responding to that threat
12 to actually have their guns out --

13 A. Yes.

14 Q. -- as they're approaching?

15 A. Yes. What I would think an officer would try
16 to do would be they would be trying to get in a position to
17 where they could intervene in that situation.

18 If that decision to intervene includes using
19 deadly force, having your gun in your hand would be an
20 important part of that.

21 Q. I want to go back to something you had
22 mentioned previously about some of the time it takes to
23 perceive threats, make a decision about what to do and then
24 actually do it in response to it, to a threat.

25 How does that also impact the evaluation

1 process and decision to stop using that level of force?

2 A. Again, everything takes time. Officers are
3 taught that if they are using deadly force, they should be
4 continually evaluating whether their use of deadly force or
5 use of any force is effective.

6 And as it becomes apparent that it's
7 effective, officers will probably decide to start to dial
8 down their use of force.

9 Now, again, it's --

10 Q. When you say "effective," do you mean
11 neutralizing the threat or the threat has abated?

12 A. Yes. We're stopping that threat from
13 continuing to be a threat.

14 So as that person becomes not a threat
15 anymore, the officers should recognize that and then stop
16 using deadly force. That all takes time as well.

17 If an officer has decided to use deadly force,
18 and they're continuing to use deadly force because they are
19 watching, they are evaluating the threat and it remains and
20 it remains, and now it's going down and now it becomes --
21 now it is not a threat in their mind.

22 Because of the rapidness of how they may be
23 using deadly force, their mind may take -- may have made
24 that decision. It will take another half second to
25 actually stop. And that's just the way that the body works

1 and the way that the -- the amount of time that it takes
2 that command from the brain to get down to the finger and
3 actually stop doing what it's doing.

4 You know, that includes momentum of the finger
5 and everything else; actually stopping something once it's
6 started, it takes some time.

7 Q. In that half second, based on some of the
8 timelines you've previously indicated, multiple rounds
9 could even be fired after the brain has made a decision to
10 stop firing before the finger actually stops pulling the
11 trigger?

12 A. Yes. And, you know, part of that is just the
13 observation. I see this. I make the decision to stop and
14 then stop the finger from firing. It could be two to three
15 rounds extra.

16 Q. In a dynamic situation that you have been
17 describing and some of the timelines it takes for a person
18 to perceive a threat and react to it, can the body actually
19 move substantially in the time it takes to perceive a
20 threat and act on it?

21 A. Yes.

22 Q. So how can that actually impact, for example,
23 location of injuries or rounds or gunshot wounds on a
24 subject's body?

25 A. If there's -- somebody is moving at a high

1 rate of speed, you know, near the limits of their
2 ability -- again, you know, I would guess that they could
3 run seven to eight yards per second.

4 If it takes half a second to three-quarters of
5 a second to a second to see a threat, realize it's a
6 threat, decide to use deadly force against that threat and
7 then actually start to employ that deadly force, if that
8 takes a half second to a second, we could be talking from
9 three, four yards to eight or nine yards in that case.
10 That's a long ways, right? We're talking about 10 feet to
11 20 feet to more than that, 25 feet.

12 So, again, even though the decision has been
13 made, the threat's been -- the threat is there, it still
14 takes time for the body to actually accomplish the goal,
15 which is to use deadly force to stop that threat.

16 Q. And in that time, could a person, for example,
17 change direction, jump, duck, move, turn around completely?

18 A. Yes. They can do all of those things. In a
19 half second to a second, the body could be several feet
20 away in a completely different position.

21 Q. Okay. Have you actually seen in your
22 training, in your capacity as an instructor for the police
23 bureau, situations where a person is presented with a
24 threat, front facing?

25 A. Uh-huh.

1 Q. And by the time they perceive, decide to act
2 and act, the person has turned around and is actually shot
3 in the back?

4 A. Yes. In fact, one of the demonstrations I do
5 with our academy students and in some cases, the community
6 academy where we run an academy for community members,
7 we'll set it up just like I did before with the person
8 pointing a blank firing gun at me, and I'll have my gun
9 down by my side, but be facing completely away from them.

10 Then the --

11 Q. So you're both facing the same direction?

12 A. We're both facing the same direction, right.
13 They're looking at my back.

14 And the -- the demonstration is the same.
15 When I come up and present the gun to point it at them,
16 they can shoot. And, again, their finger is on the
17 trigger.

18 What mostly happens, probably 99 percent of
19 the time, I can take that gun, turn around, fire a shot
20 back at them. And by the time they actually shoot, my shot
21 is off, and I'm already back facing the other way, the shot
22 being completely in the back.

23 It happens that fast because, again, when I
24 make that first decision to move, I start at zero. They're
25 already starting at least a quarter second behind because

1 of just the reaction. And, again, they have one stimulus
2 that they are looking for, which is me moving.

3 And, again, it is -- the body, it just takes
4 the mind and the body that amount of time that I can
5 actually turn around, get that shot off and turn back
6 around, and I will get hit in the back every time.

7 Q. How does stress impact both the training and
8 some of the timelines that you've articulated?

9 A. Stress just makes everything take longer. You
10 know, in most cases, it -- what it -- what it really slows
11 down is the decision-making process.

12 You know, the officers have to be very, very
13 good at prioritizing what they need to be doing. And if
14 something gets -- when stress comes up, those priorities
15 are not as clear-cut for that officer anymore. And so they
16 may be worried about talking on the radio instead of
17 dealing with the threat that's right in front of them and
18 actually happening to them.

19 And so in some cases, we have to try to teach
20 them through training, Hey, be disciplined in the order
21 that you do stuff. Find out what is the biggest priority,
22 what is the greatest threat and deal with that.

23 Because, again, when that stress rises, those
24 priorities tend to get out of whack, and then everything
25 starts to slow down.

1 Q. And how does stress impact some of an
2 officer's ability to even perform tasks, aside from
3 decision making?

4 A. Very often, an officer's fine motor skills
5 will start to degrade under stress.

6 Under high stress, when an officer may be in
7 fear for their life, in fear for other people's lives,
8 bullets are flying, those fine motor skills may be
9 seriously degraded.

10 And then we look at what are the skills
11 involved that the officers are trying to do? Running
12 towards the threat might be a gross motor skill. Firing
13 the -- firing a handgun involving using one finger and
14 trying to pull the trigger in a nice -- or press the
15 trigger in a nice smooth way might not be something that's
16 as easy to do now.

17 And so one of the first things that happens is
18 accuracy for firearms starts to seriously degrade.

19 Q. Are there actual statistics demonstrating the
20 impact of stress on firearms accuracy?

21 A. Across the country, if you look at larger
22 departments that have done some of the studies on their
23 accuracy, their hit rate during a gunfight where officers
24 were involved with -- involved in deadly force incidents
25 where bullets are -- bullets are coming at them and they're

1 firing back, the numbers that we come up with are somewhere
2 between 18 and 30 percent accuracy rate. So about --

3 Q. Meaning best case scenario, they're missing 70
4 percent of the time?

5 A. Average, they're missing about 70 percent of
6 the time.

7 Q. Okay. And did range play into that analysis?

8 A. Range does play into that. Typically, the
9 closer the encounter, the higher the hit rate is.

10 But in some cases, because of the closeness of
11 that encounter, the stress in some cases goes way higher,
12 and sometimes the accuracy actually gets worse because of
13 that -- just that proximity and then movement and
14 everything else like that.

15 MR. JACKSON: Do the grand jurors have any
16 questions about any of the topics we've discussed so far?

17 A GRAND JUROR: I have a question.

18 Is there any part of the training that brings
19 into -- or maybe discusses an aspect of other people in the
20 surrounding area when the use of deadly force is decided?

21 THE WITNESS: Yes. Part of that is in the
22 policy. It says that an officer's negligent or reckless
23 use of deadly force would not be covered by the policy.

24 We talk about, Hey, Officers, when you decide
25 to use deadly force, they're still accountable for every

1 round that they fire.

2 And so even all the way back to their very
3 first firearm session, what they talk about is safety rules
4 with firearms. And it's not just for the range, but it is
5 for how you handle firearms.

6 Police officers, when they're on duty, all
7 have a firearm. And so we talk about that we treat all
8 guns as if they're loaded. We talk about never point your
9 muzzle at anything you don't intend to destroy, including
10 yourself. We talk about keeping your finger off the
11 trigger and have trigger guard.

12 The last one is know what your target is, know
13 what the backstop is, what would catch the bullet behind,
14 and then know what's beyond that.

15 Now, we can't always, in the moment of stress,
16 all of a sudden start to start thinking, rounds are coming
17 at me. I need to fire back to actually stop this deadly
18 force. What's my target? What's my backstop? What's
19 beyond?

20 We start thinking about that on the front end.
21 If we are approaching and we have the time, that's a good
22 time to start thinking about those things. There's a
23 building over there with a brick wall. Maybe I need to
24 angle myself differently.

25 As I'm approaching, I notice a group of

1 people. Well, they're straight behind my suspect. Perhaps
2 if I take a step to the side, I take that away.

3 So officers are good at doing that because we
4 started to get in -- in our training, start to make them
5 think about those things. What else is behind?

6 In some cases, they are doing it split second;
7 in other cases, they've already seen some of this
8 information, and though they may not have consciously
9 thought about it at the time while they're approaching, it
10 started to make sense as the situation unfolded.

11 A GRAND JUROR: Okay.

12 A GRAND JUROR: Is there any specific guidance
13 in the training on how to treat fleeing subjects with
14 regards to deadly force?

15 THE WITNESS: When we talked about use of
16 deadly force, it stays with is the person an immediate
17 threat of death or serious physical injury?

18 There's a second part of the deadly force
19 policy that says that an officer, to effect an arrest or
20 prevent an escape, an officer can use deadly force against
21 a person if they have probable cause to believe that the
22 person has committed a felony involving the infliction or
23 threatened infliction of serious physical harm to somebody,
24 to another person and the person poses an immediate threat
25 of death or serious physical injury to the officer or other

1 people.

2 A person running away, again, with a firearm
3 can be just as deadly as the person running towards you
4 because, again, it takes no time for them to turn around,
5 and they're able to use deadly force because of the tool
6 that they've decided to employ because they can turn around
7 and fire bullets back at you as fast as they come out if
8 they're running towards you. A person running away with a
9 knife might be a different story.

10 And then the officers are also instructed to
11 consider the totality of the circumstances. If a person
12 has just shot into a group of people and they're running
13 away, is it because they are done or is it because they're
14 finding -- and the officers won't ever know this, but is it
15 because they're going to find another group of people to
16 shoot?

17 We have to start thinking about this person is
18 a major threat. They're still running with their gun. We
19 may have to -- we may have to treat them like they're going
20 to go use deadly force against somebody else, and we're
21 trying to prevent that.

22 A GRAND JUROR: Are officers required to go
23 through any sort of bias training in their just overall
24 education?

25 THE WITNESS: Yes. Implicit bias training has

1 come through the bureau in the last several years through
2 every in-service and the advanced academy.

3 A GRAND JUROR: This is probably -- it's maybe
4 not fitting here 100 percent, but are officers trained as
5 to how -- where to aim if they're encountering a suspect
6 like this? Are they -- is deadly force intent to kill or
7 is it just trying to take away the power?

8 THE WITNESS: I'm glad you asked that.

9 When we use deadly force to stop a threat, the
10 intent is to stop the threat.

11 The way we teach as far as aiming points is we
12 aim for the center of available mass. So what that means
13 is -- because, again, I talk about the effects of stress,
14 and accuracy starts to degrade. It becomes harder to hit
15 what you're aiming at.

16 So we try to find the biggest part of the
17 target and aim for the center of that so that that -- the
18 officer has the highest chance of hitting. If they're
19 using deadly force to stop a threat, they can't stop that
20 threat if they don't hit them.

21 So it really boils down to accuracy. What is
22 the most likely way that we can get an effective hit on a
23 person? It has nothing to do with killing a person or
24 wounding a person or maiming a person or anything like
25 that.

1 But, again, in a time of stress, what's the
2 biggest chance that we can hit -- make a hit to use deadly
3 force to actually stop that threat?

4 If a person was hiding behind a brick wall and
5 only half of them was exposed, the recommendation would be
6 to aim in between the brick wall and the outside of that
7 person and aim for the center of what you have as the
8 target to use for deadly force.

9 If it is merely a hand coming out from behind
10 a doorway firing a gun at you, we would say what is your
11 target? Well, you only have this much of a target. We
12 want the aim center of the available mass, the center of
13 that particular target.

14 So, again, it's not a shoot to kill, shoot to
15 wound or anything. It really comes down to how can we best
16 get a hit so we can effectively use this to stop the
17 threat?

18

19 BY MR. JACKSON: (Continuing)

20 Q. And so kind of to follow up on that, I'm sure
21 we've all seen, in television and movies, people shooting
22 guns out of a person's hand, shooting them in the foot or
23 the leg to kind of stop them from running, shooting tires
24 out of cars as they're driving down the freeway and things
25 like that.

1 First of all, is that realistic; and, second
2 of all, is that consistent with the bureau's training
3 policies?

4 A. No. Smaller targets are harder to hit.
5 Moving targets are much harder to hit. And so if you think
6 about a small moving target, it becomes very, very
7 difficult to hit those things.

8 And, again, so we say, Hey, we want -- if our
9 officers have to use deadly force, we have to give them the
10 best chance of making a hit. So that's to find the biggest
11 part of the target and shoot for the center of that.

12 That way, if they miss by just a little bit,
13 they're still likely to get a hit and maybe actually end
14 that threat.

15 Yeah, again, shooting guns out of hands,
16 shooting, you know, arms, legs, things that are moving
17 increases the chances of a miss.

18 Well, every time we miss, there's a bullet
19 going downrange somewhere, but we don't know necessarily
20 where it might end up, and we would like to minimize that
21 as well.

22 Q. Okay. And I guess also along those same
23 lines, I'll ask a follow-up question about how bullets
24 actually impact the body to stop -- effectively stop a
25 threat.

1 A. Okay.

2 Q. So you described it's ineffective if you are
3 not hitting the target?

4 A. Right.

5 Q. But even if you are hitting the target, how
6 does that actually operate to stop a threat?

7 A. The first way that it stops a threat is
8 psychologically. It penetrates into the body and causes
9 pain, and the person decides to stop doing what they were
10 doing.

11 Now, the energy imparted by the bullet flying
12 through the air and into the human body is not like you see
13 on TV. It will not blow a person six feet back and knock
14 them on their back. If that was the case, if it had that
15 much energy going into the person, the person firing the
16 gun would also be receiving that same amount of energy as
17 far as physics works.

18 And so that's just not the case. There's a
19 little bit of a recoil on the user end. And then on the
20 receiving end, it would be about that same amount of energy
21 transfer.

22 The second way that bullets would stop a
23 person would be hydraulically. We create enough blood loss
24 that the body is not able to function anymore, and then
25 that person stops.

1 We've seen that in several shootings across
2 the nation. There was one in the Gorge not too long ago, a
3 couple years ago now, where a trooper got in a shooting.
4 That guy got shot through the heart, and he was able to
5 reload his gun, get back to his car, get in his car and
6 drive a mile down the road.

7 Q. After being shot through the heart?

8 A. After being shot through the heart, yes.

9 That guy eventually did die. But, again, just
10 because you have a -- what would be a fatal shot through
11 the heart -- that's where all the blood flows through -- it
12 still takes some amount of time for that to actually take
13 effect.

14 On a highly motivated individual, that person
15 can still do a lot of damage. That's happened nationwide
16 several times.

17 Mechanically, if a bullet is able to hit
18 certain bones, it may break bone structure to where certain
19 limbs may not work as well, and that would be a
20 consideration, right? That would stop a person a lot
21 quicker if they're not able to use certain parts of their
22 body.

23 Again, a lot of those areas would be a very,
24 very precise shot and not always feasible by an officer in
25 the situation they're in.

1 And then the last would be an electrical-type
2 stoppage where the brain stem or the spinal cord up high
3 would be severed. And in that case, that would make the
4 body stop instantaneously.

5 Again, very small targets, somewhat protected.
6 The chance of getting a shot like that reliably with a
7 handgun are low.

8 Q. Okay.

9 MR. JACKSON: Are there any follow-up
10 questions on that from the grand jurors?
11

12 BY MR. JACKSON: (Continuing)

13 Q. So now, Officer Howery, we can move to the
14 actual incident that occurred on September 30th, 2018 --

15 A. Okay.

16 Q. -- where police officers used deadly force
17 that resulted in the death of Patrick Kimmons.

18 A. Yes.

19 Q. Were you part of the response to that
20 incident?

21 A. No, I was not.

22 Q. Are you, therefore, testifying here as an
23 expert witness in police training and tactics?

24 A. Yes.

25 Q. As opposed to an actual witness to the

1 incident itself?

2 A. Yes, that is correct.

3 Q. Do you have an understanding of what happened
4 in this case in terms of the officers' actions and
5 behaviors and what actually occurred?

6 A. Yes, I do.

7 Q. Have you also observed surveillance video that
8 captured the sequence of events as they occurred on that
9 night?

10 A. Yes, I have.

11 Q. So based on your understanding of what
12 happened, from a training perspective, how would officers
13 be trained to deal with a situation such as Sergeant Britt
14 and Officer Livingston were presented with on September
15 30th?

16 A. I believe they would have been trained to
17 observe what they observed and go to intervene in that use
18 of deadly force by Patrick Kimmons. They -- they would be
19 trained to go intervene in that and, if necessary, use
20 deadly force themselves to prevent those people, themselves
21 and other people from potentially being subject to a lethal
22 threat.

23 Q. From a training perspective, would it have
24 been consistent with training principles for the officers
25 to have tried to utilize deescalation techniques or other

1 less lethal tools given the scenario you observed?

2 A. I believe once the situation kicked off and it
3 was rapidly evolving, I believe that it would not have been
4 feasible for them to use deescalation techniques.

5 Now, can I talk real quick about stuff that
6 happened just prior to that?

7 Q. Sure.

8 A. I believe that they were trying to avoid any
9 type of shooting occurring by being in the area, by turning
10 on their overhead lights and being in plain view and then
11 walking down the middle of the parking lot toward the group
12 of people initially just to show presence, just so nobody
13 would come out and shoot up the crowd, shoot a group of
14 people, so fights wouldn't break out. They were trying to
15 do that at the beginning.

16 Now, they had no idea that the shooting was
17 about to occur. But that's what their whole purpose was
18 there for was to try to avoid something like this happening
19 and try to be as noticeable as possible.

20 And at that point, all of their -- you know,
21 all of their efforts still didn't have an effect on the
22 suspect in this case.

23 Q. Okay. As you observed the video, you see
24 Mr. Kimmons running towards the officers, and the officers
25 are running towards Mr. Kimmons?

1 A. Yes.

2 Q. Obviously, Mr. Kimmons has just fired his gun
3 at a group of people?

4 A. Right.

5 Q. Would it be consistent with the training for
6 the officers to actually run toward that person as he's
7 running toward them as opposed to trying to seek cover or
8 take some other type of action?

9 A. I believe that they started to run toward him
10 as he started to run toward them. They may have actually
11 not realized how much of a threat that he still posed.
12 They may not have initially seen the gun. I don't know
13 that for sure.

14 But you can see them initially start to move
15 to cover and then decide, Wait, no. We need to go stop
16 this guy. He still poses a threat to people. If he gets
17 away from us, who knows where he's going to go? He just
18 shot into one crowd of people with the police standing
19 there with the lights on, right?

20 That's a pretty bold move. Does he -- is he
21 willing to go out and shoot other people? They need --
22 they're coming in, I think, to stop him from doing that.
23 They realize that he still poses a deadly threat.

24 You see them again almost start to jump for
25 cover for a second and then they decide, No. We need to

1 stop this threat right now.

2 When you see in the small movements, it
3 doesn't take much time, but they're there. You know,
4 they're running. They pause for a second. They're
5 jumping, and then they say, No. We actually need to end
6 this threat right here.

7 Q. And kind of along those same lines, would the
8 training require them to wait for a person like Mr. Kimmons
9 to get within a certain distance from them before they
10 would be authorized under the Portland Police Bureau's
11 policy to use deadly force?

12 A. No. Once they realize that he poses an
13 immediate threat of death or serious physical injury, they
14 can make that decision, if they decided to, at any time.

15 They may have felt there was an advantage of
16 letting him get closer or getting closer because, again, we
17 all know that the closer you are if you're going to use
18 deadly force, your accuracy goes up.

19 They may also have been thinking there's a lot
20 of people around. And so higher accuracy hits that we make
21 are going to be less dangerous for bystanders, that sort of
22 thing.

23 And then, again, getting different angles so
24 that they can get clear shots, those are all factors of why
25 an officer might move to a different position or even

1 closer in some cases.

2 Q. When you have a situation where two officers
3 are engaging a threat, like in this case, is there a
4 requirement that they coordinate somehow their behavior in
5 engaging that threat?

6 Specifically, I'm asking about one officer
7 firing versus the other officer firing versus both firing.
8 Is there a requirement or training in how to deal with that
9 type of a situation?

10 A. No. When the officers are there, if they --
11 if they are perceiving a deadly force threat against
12 themselves, they're authorized to use deadly force to
13 counter that, again, if it's safe to do so and, you know,
14 their backstop is clear and that sort of thing.

15 But the officers are not required to say,
16 Well, it's his turn or it's my turn or anything like that.
17 The way that they each perceive the threat authorizes them
18 to use deadly force themselves.

19 On the flip side of that, they're required to
20 articulate why they felt the person was a threat, why they
21 reasonably believed the person was a threat. It can't be
22 just, Well, he did, so I did. They each individually have
23 to have that belief.

24 But, again, it doesn't require that they both
25 do because of standing even two to three feet apart, angles

1 are different. Sometimes a person is turned just so that
2 one person may perceive a threat and the other person may
3 not until some other type of movement happens.

4 And so that's typically why officers don't
5 fire all at the same time with the exact same number of
6 rounds and then they all stop at exactly the same time.
7 It's because different angles and different perceptions and
8 then sometimes just ability based on those positions. They
9 each happen individually.

10 Q. Okay. And so the decision to use deadly force
11 is personal to the officer?

12 A. Yes, that's correct.

13 Q. In the video of the incident, you can see
14 Mr. Kimmons running towards the officers. And then as they
15 reach kind of the closest they get to each other,
16 Mr. Kimmons turns to the south and begins running down
17 between two parked cars?

18 A. Uh-huh.

19 Q. Is that your understanding?

20 A. Yes.

21 Q. Okay. From a training perspective, how would
22 the threats change, if at all, based on the change in
23 Mr. Kimmons' direction of travel and positioning as it
24 relates to the officers?

25 A. I look at that and I say, I think that it can

1 still be a -- an immediate threat, a very high threat.

2 Now this person is running. In just a few
3 feet, he's going to have maybe cover if he gets to the
4 front of a car to turn and fire, you know, engage in a
5 shoot-out with the officers.

6 The other part is now he's starting to get
7 away to where he could go in it and find other victims to
8 shoot at. He has just shot indiscriminately at a group of
9 people. There's nothing to say that he's not going to
10 continue to do so. So if he gets away, there's still --
11 the threat is still there.

12 As far as the threat to the officers, he's
13 able to, again, based on just time and the tool that he has
14 available, turn around and fire shots at them just as fast
15 as he -- as if he was standing in front of them.

16 Q. Have there actually been shooting incidents
17 where people have been hit by rounds and actually gone to
18 the ground and as officers are approaching that person,
19 they've begun firing again at the officers?

20 A. Yes. In fact, we've had that happen here in
21 the city of Portland where a -- we actually even Tasered a
22 person. They went down to the ground and rolled over and
23 then produced a gun and shot multiple officers.

24 So, yeah, just because a person goes to the
25 ground doesn't mean that that threat is necessarily over.

1 It just -- it takes nothing to roll over and produce that
2 gun.

3 Again, you know, they have to pull the trigger
4 less than half an inch to make it fire again.

5 Q. And so based on your review of the
6 circumstances that are captured in this video, did you see
7 anything jump out at you in terms of the officers' behavior
8 that was -- or struck you as being outside of the Portland
9 Police Bureau's policy and training?

10 A. No, nothing at all.

11 MR. JACKSON: Do the grand jurors have any
12 questions for Officer Howery about anything we've
13 discussed?

14 I don't see any.

15 Thank you very much, Officer Howery.

16 (Pause in proceedings: 12:01-1:10 p.m.)

17

18 SERGEANT GARRY BRITT

19 was thereupon called as a witness on behalf of the State
20 and, after having been duly sworn, was examined and
21 testified as follows:

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EXAMINATION

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BY MR. JACKSON:

Q. Could you please state and spell your name?

A. Yep. It's Garry Britt, G-A-R-R-Y, B-R-I-T-T.

Q. How old are you, sir?

A. I am 32 years old.

Q. And what is your educational background?

A. Well, I grew up in Portland. I was born and raised here. I attended Franklin High School, and I graduated in 2004.

After graduating from Franklin, I went and put myself through the two-year transfer degree program at Multnomah Community College for business.

Then after that, I transferred to Western Oregon University and graduated from there in December of 20 -- 2007.

Q. And what was your major?

A. It was business management.

Q. Okay. And when did you decide to become a police officer?

A. It started when I was in high school, middle school.

So when I was in high school, I learned about the Portland Police Cadet program, which is a volunteer program for high school kids to get experience, and so I

1 did that from about 2003 to 2007.

2 Q. Okay. And did you ultimately apply to become
3 a police officer with the Portland Police Bureau?

4 A. I did. And in June of 2008, I was sworn in as
5 a police officer.

6 Q. And did you go through the standard DPSST
7 academy for new officers?

8 A. I did. I went to the basic academy, and I
9 graduated in 2009. And then shortly after that, I went to
10 the advanced academy for Portland.

11 Q. Did you successfully complete the advanced
12 academy through the Portland Police Bureau?

13 A. I did.

14 Q. And can you briefly take us through what some
15 of the areas of training you received, in both the basic
16 and advanced academy, were?

17 A. Sure. We received defensive tactics training,
18 driving training. We went also through crisis intervention
19 training.

20 Q. What is that?

21 A. It's -- crisis intervention training is to
22 help you teach to some -- or talk to somebody who is in
23 crisis. So it's something that every sworn police officer
24 in Portland goes through.

25 Q. Did you also go through the firearms program?

1 A. I did. I also went through some active
2 shooter training as well.

3 Q. Did that training involve both classroom
4 classes, hands-on training, and also scenario-based
5 training?

6 A. Yes, it did.

7 Q. Did you graduate, in essence, or successfully
8 complete all of that to become an active, sworn member of
9 the Portland Police Bureau?

10 A. Yes, I did. And I went through my
11 probationary period and passed through that as well.

12 Q. What is that?

13 A. It's a period of time after you go through the
14 academy where you are placed with a coach, and they do
15 evaluations on you to see how your progress is going.

16 You have to do some studying and whatnot
17 because there's a booklet you have to go through as well.

18 Q. Okay. And how long is that period of
19 probationary status?

20 A. I want to say about six months to a year, but
21 I'm not exactly sure.

22 Q. You successfully completed that?

23 A. I did.

24 Q. And at that point, were you basically out just
25 doing the job?

1 A. Yes. I was assigned to East Precinct, where I
2 did most of my career up until May of 2018 when I got
3 promoted to sergeant.

4 Q. Okay. So how many years have you been a
5 police officer?

6 A. 10 years.

7 Q. Over the course of that 10-year period, are
8 you required to go through periodic training sessions to
9 make sure you're staying up to date on everything?

10 A. Yes. We do annual in-service training.
11 Typically, it goes between two-days to three-day periods
12 where we'll do various trainings from firearms to law
13 updates to CPR, first aid training, scenario training as
14 well.

15 Q. Okay. Is your appearance here before the
16 grand jury today compelled in any way by the district
17 attorney's office or any other agency?

18 A. No.

19 Q. Are you under subpoena today to testify before
20 this body?

21 A. No.

22 Q. Are you appearing voluntarily because you
23 would like to come and speak to the grand jury?

24 A. Yes, I would.

25 Q. Okay. Following the incident that occurred on

1 September 30th of 2018, were you placed under a
2 communications restriction order?

3 A. I was.

4 Q. And is that still in effect?

5 A. Yes.

6 Q. Okay. Moving now to the day of September
7 29th, 2018, into the early morning hours of September 30th,
8 2018, were you working that day?

9 A. I was.

10 Q. Okay. And what was your job that day to
11 perform?

12 A. I'm a patrol supervisor for Central Precinct.
13 So that pretty much means that me and -- or myself and
14 either two to four other sergeants oversee the officers
15 that work for Central Precinct on the night shift.

16 And so we do various things from do the
17 scheduling to do the roll call, which is our briefing.
18 I'll also take after-action reports for force events.

19 It's kind of that management portion of the
20 precinct.

21 Q. Okay. And during your actual shift, what are
22 your responsibilities?

23 A. During my shift, it's to oversee the officers.
24 So if like a tactical call comes out or a, you know, unique
25 call that's not, you know, a general everyday call, I will

1 go to it.

2 And if it turns into where I need to be an
3 incident commander for it, I will until somebody else
4 relieves me; and, also, just checking in on my officers
5 while they're out doing their job, just to see how they're
6 doing and what's been going on in the shift.

7 Q. Okay. Did your day on -- well, what shift
8 were you working on September 29th, into September 30th?

9 A. The night shift. So it's 10 p.m. to 8 a.m.

10 Q. Did anything out of the ordinary or unusual
11 happen during the day leading up to your shift?

12 A. Before my shift, no.

13 Q. And what time does your shift start?

14 A. It starts at 10 p.m.

15 Q. Okay. And so when do you typically sleep?

16 A. During the day.

17 Q. What time do you usually wake up?

18 A. Give or take, I'll try and get to bed by,
19 like, 9 a.m. and wake up by at least 3 p.m.

20 Q. You have about six or so hours prior to
21 starting your shift?

22 A. Yes.

23 Q. And then you work through the night. And what
24 time do you usually get off?

25 A. I get off at 8 a.m. and drive straight home

1 and try and get some sleep.

2 Q. Okay. So nothing out of the ordinary going on
3 that day in your personal life?

4 A. No.

5 Q. Once you came on shift, were you at any point
6 under the influence of any substances that would materially
7 affect your job functions or decision making?

8 A. No.

9 Q. In terms of the shift itself, did anything out
10 of the ordinary occur as it began?

11 A. Not as it began. But when the night started
12 evolving, some incidents started occurring.

13 Would you like me to get into that?

14 Q. Well, before that, could you kind of take us
15 through how your shift starts --

16 A. Okay.

17 Q. -- on a typical day and as it did on this day?

18 A. Yes. So it typically starts, I'll go in about
19 an hour or two early, work out. I'll go into the
20 sergeant's office. I'll meet with the other sergeants from
21 the other shifts to kind of get an idea of what has been
22 going on that night.

23 If I'm the scheduling sergeant for that night,
24 I'll make sure the roster is all set, if we need to hire
25 people on overtime to meet minimums, and I do roll call as

1 well, which is what I did that night.

2 Q. Okay. And what does that mean to do roll
3 call?

4 A. It means at 10 p.m., we all meet in a -- like
5 a meeting room, and I will go over flyers that have been
6 given to us by detectives or just information of what has
7 occurred on the shift before.

8 I always -- I also give the district
9 assignments.

10 Q. To the patrol officers?

11 A. Yes.

12 Q. So is that kind of a way of having all of the
13 officers that are going to be on duty for that shift on the
14 same page as they go out into the city?

15 A. Yes, it is.

16 Q. Okay. So you were about to start explaining
17 some of the things that you became aware of as your shift
18 progressed.

19 What were those things?

20 A. So Friday and Saturday nights, typically
21 between midnight and 3 a.m., I like to be out patrolling,
22 kind of getting an idea of how the night has been.

23 Working Central, we have a lot of clubs, a lot
24 of bars. We have the entertainment district. And so
25 typically by those hours, we'll end up seeing fights break

1 out, and we've had shootings occur, just because everybody
2 is coming out of the bars and everything at the same time.

3 Q. Okay. And are there particular areas or parts
4 of the town that you'd be focusing on?

5 A. Yes. There's certain parking lots that we've
6 had higher incidents occurring in.

7 And on this night in particular, we had two
8 fight calls that occurred between Southwest Second and
9 Southwest Third and Ankeny, and one of those fights -- one
10 of the callers said that they heard somebody say they had a
11 gun.

12 Shortly after that, there was another fight
13 that broke out at Northwest Fourth and Couch, which there's
14 another parking lot there that we've had issues with in the
15 past. That fight broke up relatively quickly.

16 So, you know, in the history of the area,
17 there's another lot that we've had issues with at Southwest
18 Third and Harvey Milk Street. And so I decided to drive by
19 to see how the parking lot was, if there were individuals
20 in the lot or if the lot was clearing out.

21 Q. Was that in response to a call at the lot, or
22 were you just kind of driving through to monitor and see
23 what was going on?

24 A. I was just driving through because in the
25 past, we've had issues with violent assaults and shootings

1 in that lot as well.

2 Q. Okay. As you went by, do you remember
3 approximately what time that was?

4 A. I believe it was approximately 3:08.

5 Q. Okay. In the morning?

6 A. Yes.

7 Q. Okay. And were you driving down Fourth
8 Avenue? Third Avenue? Oak? Harvey Milk? Which road were
9 you driving down to kind of survey?

10 A. So I was driving from Southwest Third or --
11 yeah. I was driving on Southwest Third southbound, and I
12 approached Harvey Milk Street.

13 As I approached, I could tell the lot was
14 fairly full. There were individuals just kind of loitering
15 about in the lot, and there was a group of about four to
16 six individuals that were kind of congregated in the
17 driveway on the Southwest Third side.

18 And as I drove by, I had my windows down, and
19 I could hear either loud talking or yelling. I can't
20 recall which it was. But when I looked over, it didn't
21 seem like the group was in a disturbance at that time.

22 Q. But based on the noise, it drew your
23 attention? You actually looked over at them?

24 A. It did.

25 Q. Okay. What did you do in response to that?

1 A. So in response to that, I got on the radio,
2 and I asked for two marked patrol units to respond to the
3 parking lot.

4 And everybody who has worked on the shift
5 understands there's this kind of a -- a concept we'll use
6 where we will take marked patrol vehicles with their
7 emergency lights on and park them throughout these parking
8 lots just as a visual indicator that the police are there
9 and to kind of deter any of the fights or the violent
10 activities to, you know, occur and to kind of encourage
11 people to kind of, you know, leave the parking lot.

12 Q. And were you operating a marked patrol car at
13 the time?

14 A. I was.

15 Q. Can you describe it?

16 A. Yeah. It's a marked Ford Explorer with the
17 emergency light bar on top and emergency lights, you know,
18 on the grille and on the back and everything.

19 Q. Did it have any specific markings denoting it
20 as a sergeant's car or a supervisor car?

21 A. Yes. On the -- on both front doors, there's a
22 little logo that says "supervisor" on it.

23 Q. Okay. And would that indicate to other patrol
24 officers that a supervisor is on scene if that car is
25 there?

1 A. Yes.

2 Q. Okay. So what did you do then?

3 A. So after I called it out on the radio, I
4 continued southbound and went around the block to Southwest
5 Fourth and drove northbound and pulled my marked patrol
6 vehicle into the driveway.

7 Q. So if you look at the screen up here, is this
8 an image of the parking lot between Third and Fourth Avenue
9 off Harvey Milk?

10 A. Yes, it is.

11 Q. And could you point up here on the board where
12 you came into the lot?

13 A. So I drove in from up here on Southwest
14 Fourth. And you can see kind of in the distance -- it's
15 kind of hard to see on this screen -- that there's some red
16 lights.

17 That's kind of where my car was parked. So
18 it's just barely into the driveway.

19 Q. Okay. Sergeant, are you talking about this
20 right here?

21 A. Yes, yes.

22 Q. Okay. You can have a seat there.

23 When you radioed out for additional cars or
24 units, did you have specific officers that you made the
25 request to, or was it kind of a general, Hey, whoever is in

1 the area, come respond with me?

2 A. It was a general request, but two -- two
3 manned marked units answered up, and they -- these officers
4 are fairly experienced with working down in this inner core
5 downtown area, and so they were en route to assist me with
6 it.

7 Q. Okay. And so you knew that they were coming?

8 A. Yes.

9 Q. Was one of those units Officer Livingston?

10 A. It was not. Officer Livingston was just
11 driving by and decided to pull into the parking lot to
12 assist me. He called it out that he was out with me over
13 the radio.

14 Q. Okay. Do you recall who the officers were
15 that had indicated they were going to respond to the scene
16 with you?

17 A. Yes. It was Officer Flores, Officer McDonald,
18 Officer Harris and Officer Moore.

19 Q. Okay. And did you have a sense of where those
20 officers were in terms of calculating how long it would
21 take them to actually arrive?

22 A. Yes, because prior to this, I knew they were
23 kind of down in the Fourth and -- Northwest Fourth and
24 Couch area because we have -- between Second and Fourth and
25 Burnside and just north of Couch, we have an enclosure that

1 goes up for Friday and Saturday nights for individuals who
2 are going from the clubs. They can walk freely throughout
3 the street.

4 And so -- and it also helps kind of not have
5 everybody cluttered on the sidewalks, you know, and cause
6 fights.

7 So I knew they were coming from that general
8 area.

9 Q. Okay. But they weren't actually with you when
10 you arrived?

11 A. No.

12 Q. Or were they?

13 A. No, they were not.

14 Q. Okay. Were you the first one to arrive at the
15 parking lot, as far as you knew, from the police bureau?

16 A. I was, as far as I knew.

17 Q. Who was next to arrive?

18 A. It was Officer Livingston.

19 Q. Do you recall, was he in a partner car or by
20 himself?

21 A. He was by himself.

22 Q. And where did he -- was he operating a marked
23 patrol car?

24 A. Yes, he was.

25 Q. And where did he go?

1 A. He pulled his patrol vehicle into the parking
2 lot, and there's a pay booth for the parking attendant.

3 He parked his patrol vehicle next to that pay
4 booth coming in from the Fourth side driveway.

5 Q. When you put out a call for additional units
6 to come for the purpose you were going to the lot for,
7 would you expect those units to be coming in lights and
8 sirens, going through red lights and stuff like that to get
9 to the scene, or would they be coming in a more calm and
10 casual manner?

11 A. More calm and casual because the way I
12 broadcast it over the air, I just asked for two cars to
13 come to the parking lot.

14 And the purpose, you know, we don't -- unless
15 something is actively occurring, we don't want to just come
16 in lights and sirens. We just like to come in, set up our
17 cars and be a visible presence.

18 Q. Okay. Did you turn your overhead lights on
19 for your patrol vehicle?

20 A. I did.

21 Q. And what about Officer Livingston?

22 A. He did as well.

23 Q. Once you were both there, what do you remember
24 seeing going on?

25 A. So just to back up, before Officer Livingston

1 arrived, I observed a parking attendant that was in the
2 parking lot. He was walking around.

3 And so I went up to him and just asked him how
4 the parking lot has been that night, and he said --

5 Q. In or out of your car?

6 A. I was out of my car at this time.

7 Q. Okay.

8 A. And, you know, he said there hadn't been any
9 problems.

10 And so I asked him about the group that I saw
11 and asked if he -- if they were arguing, and he said no.
12 They were just talking loudly.

13 And so shortly after that, Officer Livingston
14 arrived, positioned his vehicle as I described, and I
15 walked over to his position.

16 I don't know if there's a better picture.

17 Q. Okay. And so this is the pay booth here?

18 A. Yeah.

19 Q. Is this Officer Livingston's vehicle parked
20 next to it?

21 A. Yes.

22 And so you can kind of see a shadow of an
23 individual on this -- on the picture. That's where we
24 ended up standing.

25 Q. Okay. Next to the patrol car?

1 A. Yes.

2 Q. And what was kind of the plan at that point?

3 You can retake your seat, sir.

4 A. We were -- we were just assessing the
5 situation. It seemed like as soon as I pulled in, a lot of
6 people started kind of leaving the lot.

7 This group stayed that I initially saw, and
8 they began to move over to the -- the northwest corner of
9 the lot where this -- the black vehicle is in the corner of
10 this picture, but, like, in the driveway.

11 Q. So if we look at this image here, we're now
12 looking east across the parking lot --

13 A. Yeah.

14 Q. -- toward Southwest Third. You can see the
15 Golden Dragon here.

16 Is this kind of the direction that you and
17 presumably Officer Livingston were looking as you were
18 making your assessment?

19 A. Yes, it was.

20 Q. Okay. And so what did you actually see in
21 terms of the movements of the people?

22 A. It seemed like everybody else in the parking
23 lot had kind of moved towards the cars, and I didn't see
24 really anybody else at this time, but I did see that group
25 still.

1 It seemed -- it seemed like they were just
2 talking at first. It didn't seem like there was really an
3 issue.

4 So at that time, we were just -- I was just
5 going to wait for at least one or, you know, maybe both of
6 the other cars to show up to kind of make another
7 assessment if we needed to stick around in the lot or not.

8 Q. Okay. When did that change?

9 A. It changed shortly after Officer Livingston
10 arrived.

11 And so this picture, it actually does a good
12 job of how the lot was lit. So this corner is fairly dark,
13 and these bright lights off of the strip club were kind
14 of -- they were backlighting the group.

15 Q. And for the record, you're indicating the
16 northeast corner of the parking lot?

17 A. Yes.

18 Q. Okay.

19 A. And so when it was getting backlit, I could
20 just see kind of the silhouette, the shadows from the
21 group.

22 And shortly after Officer Livingston arrived,
23 two of the individuals in the group started fighting. I
24 could tell they were fighting because I could see punches
25 being thrown, people, you know, trying to grab at each

1 other.

2 And so our initial thought was, Okay. It's
3 just a fight, so we started walking over.

4 And at this point, things started happening
5 within seconds very rapidly. I got -- I tried to grab my
6 radio just to key up after I saw the fight start.

7 Q. What does that mean "to key up"?

8 A. To actually broadcast over the radio that
9 there was a fight occurring in the lot.

10 Q. Did you actually depress the transmission
11 button as you recall?

12 A. I don't recall if I was even able to. I know
13 I didn't say anything because as soon as I did that, I
14 could tell the group were men, just by their physical
15 structure.

16 One of the males, he broke away from the
17 fight. And at this point, I could see his shoulders and
18 his arms and his legs, and I could see him raise his right
19 hand, chest level with the individual he was just fighting
20 with, and he was within -- he -- it seemed like he was
21 almost touching him, almost like he was pointing at him.

22 Q. Like point blank?

23 A. Yes.

24 Q. Okay.

25 A. And I immediately saw four little flashes of

1 light coming from the tip and simultaneously heard four
2 gunshots.

3 I'm experienced with firearms. I know that
4 these were gunshots.

5 Q. What did you see the other people in that
6 group you described doing in response to the gunfire you
7 were witnessing?

8 A. From what I recall, I just recall seeing him
9 shooting the one individual in what looked like the chest
10 area. I mean, they were rapid, four shots. And then he
11 immediately started running southbound on the sidewalk.

12 And so I started tracking, watching him
13 because at this point, my training just started kicking in,
14 like, this individual just shot somebody, you know, I need
15 to parallel him.

16 Q. Let me ask you another question.

17 A. Yeah.

18 Q. So you saw him shoot the person.

19 Were the other people in that group -- I think
20 you originally described as four to six individuals --
21 still kind of in the general area?

22 A. I don't recall at that point.

23 Q. Okay. Do you have a sense of which direction
24 he was firing?

25 A. Yes. The way his arm was raised, it was in

1 kind of a -- in the north, northern direction. From the
2 way his body was, it seemed like it was maybe north,
3 northwest, but just that general area towards the church.

4 Q. Okay. Could you see whether or not his
5 gunfire had hit anybody at that point?

6 A. Not at that point.

7 Q. Based on your perception of where people were
8 standing and the proximity of him with his arm up pointing
9 what you described as chest height, did you expect that
10 somebody had been hit or could have been fatally injured?

11 A. Yes, just the distance of where he was
12 pointing the firearm at the individual, like you said,
13 we'll use the term point blank. That is like you're
14 touching somebody and firing at them.

15 That's what it looked like to me.

16 Q. Okay. And so as you're seeing this happen,
17 what's going through your mind?

18 A. That I need to parallel him and keep my eyes
19 on him and start broadcasting out, you know, over the air
20 that, you know, a shooting just occurred.

21 But once he started running, I didn't -- it
22 happened within such a short -- like seconds, I started
23 paralleling him.

24 If I can get up, I can show you the direction
25 of travel.

1 Q. Yeah. And while you're doing that, can you
2 explain what it means to parallel somebody?

3 A. Yeah. So I just -- I wanted to keep eyes on
4 him from a safe distance at that point until I had more
5 resources there because, I mean, I know he's armed with a
6 firearm, and he just shot at somebody. So I want to at
7 least have enough officers with me to approach him to take
8 him safely into custody.

9 So he started running on the sidewalk area,
10 and I started paralleling this way towards -- there's a
11 black SUV right here, kind of where the individual is
12 standing on the south side of the lot.

13 And immediately there's a -- there's a
14 hedgerow right up here. As I got to the back of this SUV,
15 he took a quick right turn into the lot.

16 Q. To the west?

17 A. To the west.

18 And so the lighting changed over there. It
19 was a lot more bright. And at this point, I could see the
20 individual, the male with his left hand lifting his shirt
21 up, and with his right hand, he's putting the revolver in
22 the front of his waistband.

23 Q. You just called it a revolver?

24 A. Yes.

25 Q. Could you actually see what type of gun it was

1 at that point?

2 A. Yes. It was a metal-colored revolver, and it
3 was kind of like -- it wasn't a long Western style. It was
4 a smaller one.

5 Q. Okay. In his right hand?

6 A. Yes.

7 Q. Okay. And is that the same hand that you
8 perceived him using to fire just moments before?

9 A. Yes, yes.

10 Q. Okay.

11 A. And so at this point, he's coming -- I -- like
12 I said, I made it to the back of this SUV, and he turns
13 right, west into the lot, and he's coming at a fast pace
14 towards me. I can't remember if he was, like, fast walking
15 or jogging as he's putting the gun in his front waistband.

16 So immediately, I start drawing my firearm to
17 challenge him.

18 Q. Why did you decide to do that?

19 A. Because I watched him as he -- he put the
20 firearm in his front waistband and he redressed his shirt.
21 I could see that there was nothing in his hands.

22 At this point, he's coming towards me at a
23 fast pace, and so there wasn't really any -- I didn't have
24 any cover at that point to get behind.

25 Q. I mean, why did you decide at that point to

1 draw your firearm?

2 A. Because he's coming -- he's now coming towards
3 me, and I know he's armed with a firearm. So I was going
4 to start giving him commands to put his hands up.

5 Q. Okay.

6 A. So immediately, as soon as I see him dress his
7 shirt, I yell at him to get his hands up, and he's still
8 coming towards me at a fast pace. We make eye contact.

9 I look back down, and he's made it to
10 approximately like where the tail lights of this car is,
11 and so I'm at the back end of this SUV.

12 I look back down. And with his right hand, he
13 was taking the revolver back out from his waistband. And I
14 could see the barrel coming out, and it got to about belly
15 button out of his waistband, so I could see the whole
16 firearm.

17 And so at that point, I thought I was going to
18 get shot, too, and so I began to fire my firearm while kind
19 of twisting my body away from him to the right. It was
20 just instinct because I was preparing myself to get shot.

21 I started moving to the left to get, you know,
22 off center with him. I fired until I could tell my rounds
23 were having an effect on him. I could see him kind of
24 stumble and go to the ground.

25 Q. Okay. Have a seat.

1 So as he passes under this kind of spotlight
2 that we see in this image here, that's where you saw him
3 kind of putting the firearm into his pants?

4 A. Yes, his front waistband area, yeah.

5 Q. Okay. And so at the point when you saw him
6 pulling the gun back out, did you have a sense of how close
7 he was to you and how quickly he was moving towards you?

8 A. Yes. He was at the back -- the back end of
9 that vehicle with the tail lights on. So I -- you know,
10 I'd gauge anywhere approximately between five to 10 feet
11 with him advancing while pulling the firearm out towards
12 me.

13 Q. Okay. And you said that you remember issuing
14 a command to put his hands up?

15 A. Yes.

16 Q. Did it appear that he was complying with that
17 command?

18 A. No.

19 Q. When the gun came out, was it pointed at you?

20 A. I just recall it coming out and seeing the
21 barrel coming up out of his waistband. So like if you --
22 you bring your arm or elbow -- you know, make an L shape,
23 it was coming out to there when I started firing.

24 Q. Okay. And you said that you believed that you
25 were going to get shot?

1 A. Yes.

2 Q. In fact, you were preparing yourself to be
3 shot?

4 A. Yes.

5 Q. Okay. Do you have protective gear on in the
6 event that you were to be shot or shot at?

7 A. Yes.

8 Q. What is that gear?

9 A. It's a ballistics vest, and that usually helps
10 protect you from having, you know, handgun rounds penetrate
11 through the vest and into your body.

12 Q. Okay. Does that cover your hips and legs?

13 A. It does not.

14 Q. Does it cover your shoulders and arms?

15 A. No, it does not.

16 Q. Or your upper chest, neck or head?

17 A. No.

18 Q. What about under your arms on the sides, does
19 it cover that portion?

20 A. No, it does not.

21 Q. Okay. So you described kind of turning almost
22 away from the individual who is drawing the gun.

23 Did you have any kind of thought about where
24 your protective vest was covering as opposed to not
25 covering?

1 A. Not at that time. The way I think about it, I
2 think my body was just trying to protect itself because it
3 was happening so fast that it just -- you know, I wanted to
4 make myself smaller, you know, be less of a target.

5 And since this happened so quickly, I don't --
6 I wasn't thinking of, you know, where I'd want to get shot
7 in the vest. Frankly, I didn't want to get shot.

8 Q. Do you remember where your fire was aimed at?

9 A. I don't recall for sure. I know it was at him
10 and fixated kind of on the firearm because that was the
11 thing that was going to hurt me. So that's what I --

12 Q. That's what you were looking at?

13 A. Yeah.

14 Q. Okay. As this was going, did you have a sense
15 of firing more than one time?

16 A. Yes.

17 Q. Do you know how many times you fired?

18 A. I fired six times.

19 Q. That's what you recall?

20 A. Yes.

21 Q. Okay. As you were firing, did you see him
22 moving at all?

23 A. From what I recall, I was twisting and moving
24 to the left to get off center with him. I just remember
25 firing while doing that and then him going down into the

1 parking lot or the -- the stall.

2 Q. The parking stall?

3 A. Yeah.

4 Q. And why did you decide to stop shooting?

5 A. Because I could tell from his body demeanor
6 that -- I mean, he was starting to run away from me and
7 kind of go to the ground at the same time. So...

8 Q. Did you see whether or not he still had the
9 gun in his hand?

10 A. I did not.

11 Q. So when was the last time you remember
12 actually seeing him with a gun in his hand?

13 A. So I remember -- the last time I remember
14 seeing him with the gun in his hand was when it was coming
15 up, like, out of his waistband as he's coming towards me.

16 Q. Okay. As this is kind of unfolding, did you
17 have any conscious thought about your training or were you
18 acting more kind of instinctually within your training to
19 deal with this situation?

20 A. As the shooting was happening or post?

21 Q. As the shooting was happening.

22 A. I think it was both. I think me turning away
23 from him was my body trying to just protect itself.

24 I think me moving to the left to get off
25 center with him, it's a tactic to, you know, kind of move,

1 not be a stationary target type of thing, especially if
2 somebody is going to try and shoot you.

3 So I think it was a little bit of both.

4 Q. You've described this event as happening very
5 quickly.

6 Do you have any kind of sense of what kind of
7 time frame this all occurred within?

8 A. Within seconds. I don't know how many
9 seconds. But it was so fast that, I mean, I couldn't even
10 get on the radio to broadcast the fight because then he
11 started shooting.

12 And then when I was paralleling, the thought
13 went through my mind that I needed to start broadcasting
14 this, and he turns into the lot. At that point, we're face
15 to face with each other. So it was really quick.

16 Q. Okay. Did you know at the point that you're
17 face to face, as he's pulling the gun out on you, whether
18 he had shots to fire, whether the gun still had bullets
19 left in it?

20 A. Not at that time, but I know typically
21 revolvers are six rounds. So in my mind, there's still
22 rounds in the gun.

23 Q. Okay. You didn't have a sense, then, of
24 whether or not that gun was operable and still had bullets.
25 Is that fair?

1 A. I know it was at least operable because I saw
2 that he fired it.

3 Q. Okay.

4 A. But for me to make, you know, that
5 split-second decision to question if the gun is still
6 loaded or not as it's coming out towards me, I don't know
7 if -- you know, if I'd be sitting here to talk to you. It
8 just happened so quickly.

9 Q. And are you trained to assume that all
10 firearms are loaded?

11 A. Yes.

12 Q. For your own personal safety?

13 A. Yes.

14 Q. At what point in this, if at all, did you
15 become aware that there were other people around in the
16 area?

17 A. It wasn't until later because after I saw him
18 go to the ground, I went from the back end of the black SUV
19 to the passenger side and went to the front hood area of
20 that vehicle to get eyes on the male because at this point,
21 I didn't know if he still had the firearm or what his
22 intent was. So I wanted to use that engine block as hard
23 cover to get eyes on him.

24 Q. Were you afraid that he was still in a
25 position to fire on you?

1 A. Yes, or that he still had the firearm still on
2 him.

3 Q. Okay. And so what happened then?

4 A. I started giving him commands to get his hands
5 out where I could see him. I got on the radio and notified
6 dispatch that, you know, shots were fired. I recall
7 hearing somebody get on the air as well saying that they
8 need medical staged. So at this point, my mind was going
9 from the shooting to rendering aid to him.

10 And shortly after I started giving him
11 commands to get his hands out where we could see him, an
12 officer relieved me, and other officers showed up and
13 started giving him medical treatment.

14 Q. Okay. Did you inform some of the other
15 officers that arrived on scene that you were an involved
16 officer in this incident?

17 A. Yes, I did.

18 Q. And were you then sequestered away from the
19 scene?

20 A. I was. But prior to that, I met with another
21 sergeant, Sergeant Wuthrich. That was who I advised that I
22 was an involved member, and we were back between the
23 vehicle with its tail lights on and the Durango, or the
24 black SUV, and I could see his firearm that he had in the
25 parking stall.

1 Q. On the ground?

2 A. Yes.

3 Q. And is that the first time that you saw the
4 firearm again?

5 A. Yes.

6 Q. Was it the same one that you had previously
7 scene in the possession of the individual?

8 A. Yes.

9 Q. Okay. So when did you become aware of other
10 people in the area?

11 A. It was about at that time. You know, I
12 started hearing people yell, you know, and I saw officers
13 interviewing people, and then I was pulled away.

14 Q. When you moved around the SUV, as you put it,
15 to put eyes on the individual with the engine block cover,
16 you said you didn't know where the gun was at that point?

17 A. No, I did not.

18 Q. Why did you decide not to continue firing at
19 that point?

20 A. Because he was being -- he was starting to
21 become compliant at this point. He was laying on the
22 ground, and I could tell he was hit.

23 And so, like, just by training, I told him to
24 put his arms out, and he started, you know, bringing his
25 hands where I could see them on the ground. And so there

1 was, I mean, no reason to.

2 Q. Okay. Fair to say he didn't present a threat
3 to you at that point?

4 A. I mean, he was still -- he was a threat, but
5 he wasn't a threat of imminent death or serious physical
6 injury at that point.

7 I mean, we didn't know where the gun was, if
8 it was still on him. So, I mean, we're going to approach
9 in a safe manner to get up to him, you know, but he wasn't
10 at that level.

11 Q. And so how is that different from what you
12 were presented with when you decided to actually fire?

13 A. At that point, he was pulling a firearm out at
14 me after I told him to get his hands up, after I saw him
15 shot at -- shoot two individuals.

16 Q. Okay.

17 A. Sorry. Shoot at an individual.

18 Q. Okay. Did you later learn that two
19 individuals had been hit?

20 A. I did.

21 Q. Okay. Did you have other force options
22 available to you at the moment that you decided to fire?

23 A. I had other force options, but they wouldn't
24 have been appropriate or effective at the time, especially
25 with me with my firearm out already.

1 Q. And what did you think would happen if you
2 didn't shoot at that moment?

3 A. That I was going to get shot.

4 MR. JACKSON: Are there any questions from the
5 grand jurors?

6 I don't see any.

7 All right. Thank you very much.

8 THE WITNESS: Thank you.

9 (Pause in proceedings: 1:54-1:55 p.m.)

10

11

DETECTIVE DARREN POSEY

12 having been previously sworn, was re-called as a witness

13

14

EXAMINATION

15 BY MR. JACKSON:

16 Q. Detective Posey, take a seat here. You're
17 still under oath from yesterday when you testified before
18 this grand jury.

19 I wanted to ask you a couple of questions.

20 First, as you previously testified, you reviewed the
21 medical records from Legacy Emanuel Hospital for Marcel
22 Branch and Dante Emanuel Hall. Is that right?

23 A. Yes, yes.

24 Q. And within the medical records for Marcel
25 Branch, was there a statement within them concerning what

1 had happened to him that brought him to the hospital?

2 A. Yes.

3 Q. And what was that statement?

4 A. So under the medical records, one of the --
5 one of the staff asked -- talked to Marcel Branch.

6 And while he was being admitted for evaluation
7 of his injuries, he stated to that staff member he was
8 sucker punched by an individual that he did not know. The
9 individual then pulled a gun and started shooting.

10 The patient felt pain in his abdomen, and then
11 he was able to drive himself to Legacy Emanuel Hospital and
12 walked into the ER department.

13 Q. Okay. In the course of your investigation
14 into this incident, were Dante Emanuel Hall and Marcel
15 Branch contacted?

16 A. Yes, they were.

17 Q. And was Dante Emanuel Hall cooperative with
18 the investigative efforts of the law enforcement?

19 A. Dante Hall was uncooperative with the
20 investigation effort and through channels has indicated he
21 will not cooperate with this investigation.

22 Q. What about Marcel Branch, was he contacted as
23 it relates to this investigation?

24 A. Yes. Marcel Branch was contacted. He was
25 initially cooperative with the investigation and talked to

1 investigators, and he continued to be cooperative until
2 this week. But as of this week, he has not responded to
3 calls or texts.

4 Q. Or any other efforts of law enforcement to
5 contact or communicate with him?

6 A. Correct.

7 Q. Okay.

8 MR. JACKSON: Are there any questions of
9 Detective Posey?

10 A GRAND JUROR: Can you give me that quote
11 again that Mr. Branch said to the staff member?

12 THE WITNESS: Yeah. "He states he was sucker
13 punched by an individual that he did not know. The
14 individual then pulled a gun and started shooting. The
15 patient felt pain to his abdomen, and he was able to drive
16 himself to Legacy Emanuel Hospital and walked into the ER
17 department."

18 MR. JACKSON: Any other questions?

19 I don't see any.

20 All right. Thank you.

21 (Pause in proceedings: 1:58-2:00 p.m.)

22

23

24

25

1 OFFICER JEFF LIVINGSTON

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

5
6 EXAMINATION

7 BY MR. JACKSON:

8 Q. All right. Can you please state and spell
9 your name?

10 A. Yeah. It's Jeff Livingston, J-E-F-F,
11 L-I-V-I-N-G-S-T-O-N.

12 Q. How old are you?

13 A. 39.

14 Q. What's your educational background?

15 A. I've got a little bit of college, went to
16 Spokane Falls Community College for a year and then went
17 into the military. I was in the Coast Guard for two years
18 active and six years reserve.

19 Q. Did you grow up in the Spokane area?

20 A. I did.

21 Q. When did you come to Portland?

22 A. My wife and I moved here about three years ago
23 or -- excuse me, four years ago.

24 My wife works for Macy's, and she got a
25 promotion. So we ended up at that point moving us from

1 Spokane to here.

2 At the time, I was working for health care --
3 I was an administrator for a health-care company. So I
4 just transferred from that company here to Portland and
5 picked up and moved.

6 Q. Okay. And when did you decide to become a
7 police officer?

8 A. I was actually at a career fair October of
9 2015, and I was there recruiting kids from the college. I
10 happened to have Portland Police and Washington State
11 Patrol. They were all near us, and they happened to be
12 talking to me.

13 It's been my lifelong dream to be a police
14 officer. So at that point, I think it was October of '15,
15 when I decided to make that career change and really give
16 everything I could to become a police officer.

17 Q. All right. So did you go through the
18 application process?

19 A. Application process. I believe application
20 process and testing started January of '16. I received a
21 call for my background to be picked up and started
22 September of 2016.

23 It was January of 2017 when I got the call to
24 state that I had a letter of offer as long as I passed the
25 psychological and the medical testing, which I did, and

1 then ended up going to the academy March of 2017.

2 Q. Okay. And did you successfully complete the
3 basic academy?

4 A. I did, 16 weeks.

5 Q. And then did you come to Portland Police
6 Bureau's advanced academy?

7 A. I did, September of 2017 through November of
8 2017. It was a 10-week course.

9 Q. Okay. Could you briefly explain for us some
10 of the training you received in the academy?

11 A. Absolutely. So the training that you get is a
12 vast array. It's a little bit of law -- actually, quite a
13 bit of law. There's a lot of, like, defensive tactics, if
14 you've got to go hands-on with individuals. We spent a lot
15 of time in there.

16 We spent, at the academy down in Salem, about
17 a week's worth, so it would have been 40 hours of training,
18 just in the firing range. And then they've got their own
19 little scenario village where you spend an enormous amount
20 of time with your classmates going through dozens and
21 dozens of scenarios.

22 There's medical training, there's report
23 writing training. It's a vast array. They throw a lot in
24 16 weeks. They could probably extend it a little bit more,
25 but there's a lot of information, a lot of training coming

1 through that; as well as in the advanced academy, the way
2 they set it up with Portland is it's a 10-week block. The
3 first six weeks is all law. So you do a lot of your law
4 classes at night.

5 During the day, you split it up between four
6 hours of the range time and four hours of defensive
7 tactics. So we get a lot of that training hands-on for the
8 first six weeks.

9 We come back, which is nice. We get to go to
10 the street, kind of implement what we've learned a little
11 bit for four weeks and --

12 Q. Let me ask you a question.

13 Do you have a coach with you or, like, an
14 officer that has been through this program to kind of
15 supervise you as you go through that?

16 A. We did. As soon as they put you on the
17 street, you start the FTTP, field training program, where
18 you start with a coach.

19 When you first come out of the academy and you
20 go to the street like they sent us, for that brief amount
21 of time you go in phases, phase 1, phase 2.

22 The goal is as you go through those phases,
23 you can slowly have the coach pull themselves back from
24 working on the day-to-day observations and allow you to
25 start working on some of these calls, some of the things

1 that you come through, until you're essentially on your
2 own.

3 So at that time, when I went on the street for
4 the four weeks, I was in entry phase. And then when you go
5 back, you just do all scenarios, everything for four weeks
6 straight. It's all scenarios, things that make you process
7 what's going on.

8 From what I've been told, a lot of the
9 scenarios are everything that's maybe happened on the
10 street before to other officers, and they want to bring
11 that into training as much as possible.

12 Q. Okay. Did you successfully complete all of
13 that training?

14 A. I did.

15 Q. Did you then go on to a probationary period
16 following the completion of your training?

17 A. I did. So the probationary period is 18
18 months. And, again, you're going through that entire FTEP
19 program, phase 0 through phase 5, during that 18-month
20 program.

21 I ended up fulfilling that successfully as of
22 September 2nd, 2018.

23 Q. Okay. And at that point, you were just out as
24 a police officer doing the job?

25 A. Correct.

1 Q. Okay. Is your appearance before this grand
2 jury today a result of any kind of compulsion or subpoena
3 process or anything like that from the district attorney's
4 officers or other law enforcement?

5 A. I guess I don't understand the question.

6 Q. Okay. In other words, are you here
7 voluntarily, or are you being compelled to testify before
8 this grand jury?

9 A. Voluntarily.

10 Q. Okay. You're not under subpoena?

11 A. No.

12 Q. Okay. Following the incident that occurred on
13 September 30th, 2018, were you placed under a
14 communications restriction order?

15 A. I was. After the incident I was, correct.

16 Q. And is that order still in place?

17 A. It is, correct.

18 Q. So now moving to the September 29th, into the
19 morning, early morning hours of September 30th, were you
20 working?

21 A. I was, correct.

22 Q. And what shift were you working?

23 A. I was working C shift, which is our 1600.

24 It's 4 p.m. to 2 a.m.

25 On that particular night, I ended up offering

1 to stay late to help out with the entertainment district
2 for overtime, so I ended up staying past 2:00.

3 Q. Okay. You start work at 4:00. What is your
4 kind of sleep schedule?

5 A. So on an average day, when I get off of work
6 at -- we get off at 1:30, so we can get in and change and
7 so forth. I'll usually leave the precinct at about 2:15 on
8 an average day in the morning.

9 I get home. I have a couple dogs. So usually
10 when I'm coming home, my wife is sleeping. My dogs are
11 restless. I'm taking care of them, letting them out,
12 giving them treats.

13 I usually try to make myself a meal, and I'm
14 usually -- it's hard to wind down at that point, so I
15 usually watch TV for maybe an hour, and then usually I'm
16 starting to get a little tired. So it's usually closer to
17 3:30, 4:00, I'll go upstairs and go to bed.

18 On average, I typically get about six to seven
19 hours. I know that morning, because the night before
20 was -- was not very strenuous. They had me working in the
21 Southwest Hills, which is -- it equates to -- working
22 downtown, there's a lot of call volume. In the Southwest
23 Hills, there is not. I ended up working Southwest Hills.
24 There wasn't a lot going on, so I wasn't overly strained.

25 I remember sleeping pretty well, getting up

1 around 11:00. Then I like to get into the office pretty
2 early. We have to get cars down at the garage. We have to
3 get all of our information, get our gear.

4 So I usually take a quick shower, get another
5 meal, get my dogs situated, and I'm usually leaving by
6 about 12:30 or 1:00 so that I can get down by 2:00.

7 Once I'm down there, I've got my car, I've got
8 my e-mails sent, I've gotten dressed and basically just
9 waiting for roll call, and that's how it went on that
10 particular evening.

11 Q. Anything unusual about that process or going
12 on in your personal life or anything like that?

13 A. Nothing, no.

14 Q. As the shift began, it starts with roll call?

15 A. Correct.

16 Q. Okay. What was the roll call process for that
17 particular shift?

18 A. For that particular shift, I believe, if I
19 remember correctly, we had quite a few folks in there. I
20 say "folks" meaning we had, I believe our new captain. We
21 just got a new captain. He was in there. We had several
22 sergeants in there just to give some updates of what was
23 going on from day shift to the afternoon shift.

24 We had a full roster of individuals on shift
25 that night. I believe they went through their normal

1 protocol as far as going through -- we have flyers, any
2 wanted flyers or anything like that.

3 And then when it was done, that particular
4 shift, one of the sergeants -- we tend to do some
5 debriefing. We try to go through some training and really
6 get our mindset right before we hit the street.

7 I believe that particular roll call, we had a
8 couple videos shown to us as far as a couple of police
9 shootings that had happened across the country.

10 They show that to us, then they replay it,
11 then they stop. We ask any questions that we have, and
12 then we work through it as a group and say what would we do
13 different, what did we like about that officer's tactics
14 and so forth?

15 Like I said, I believe that night, we went
16 over both videos, which took maybe approximately 10 or 15
17 minutes. Once we were done with that, they released us.

18 Q. Okay. When you say "released," you mean?

19 A. Out to the streets.

20 Q. Okay. At any point during your shift, were
21 you under the influence of any substances that would
22 materially affect your job function or decision making?

23 A. I was not.

24 Q. And do you recall what patrol area you were
25 assigned to that night?

1 A. I was. My district was 844. They assign us
2 by district numbers.

3 844 is essentially downtown, and it's from
4 I-405 as your eastern boundary to Southwest Vista as your
5 western boundary; north Burnside as your northern boundary
6 all the way to Jefferson.

7 And on that particular night, I have a partner
8 that usually works with me, a partnering district car that
9 takes 845, and that would have been just east of the
10 freeway.

11 He ended up working a mission that night, so I
12 ended up actually working both districts, which is not
13 uncommon and not typically difficult. It's just a matter
14 of, you know, additional calls throughout the night and so
15 forth.

16 Q. Okay. Do you work with a partner or by
17 yourself?

18 A. By myself.

19 Q. In a marked patrol car?

20 A. Marked patrol car, correct.

21 Q. And are you in full uniform, badge displayed
22 while operating as a patrol officer?

23 A. That is correct.

24 Q. Okay. Do you recall any unusual calls that
25 you responded to during your shift up to the time when the

1 incident occurred?

2 A. Nothing unusual, pretty basic, couple theft
3 calls. We get a lot of unwanted calls from folks in front
4 of businesses and so forth.

5 I think I had a domestic dispute towards the
6 end of the night, nothing out of the norm that we typically
7 get through the downtown calls.

8 Q. Okay. And what time is your shift supposed to
9 end? 2:00 in the morning?

10 A. 2:00 in the morning, correct.

11 Q. You had volunteered, you previously stated, to
12 stay late and assist with the entertainment detail?

13 A. Correct.

14 Q. When was that arranged? As the shift was
15 ending or prior?

16 A. Actually prior. Essentially, with the
17 entertainment district, it's down there on Third and Couch,
18 and it -- on Thursday, Friday, Saturday nights, it's quite
19 busy, especially at about midnight until the time the bars
20 close. It's gets extremely busy.

21 Once the bars closed, people start leaving the
22 area. It floods the street, which is why Portland Police
23 puts up barricades from Second over to Fourth and then from
24 to Davis over on Burnside just so pedestrian don't get hit,
25 so folks don't get hit.

1 When you're driving down there as an officer,
2 it's evident how busy it is, and it tends to -- I can
3 clearly see when certain nights are pretty busy and when
4 other nights are not.

5 That night appeared to be pretty busy. I
6 volunteered several times before to work overtime, so I
7 know the officers quite well that work the entertainment
8 district.

9 I took it upon myself to drive down there and
10 reach out to the sergeant who was working and just ask,
11 Hey, do you need anybody else tonight to stay after my
12 shift is over? And he said, Absolutely, that would be
13 great. It is pretty busy. Just start coming back down
14 here at about 1:00.

15 So I left that area, went back on to patrol
16 most of the downtown area. And when it was 1:00, I just
17 drifted my way over.

18 I put myself on a specific call for Third and
19 Couch, which everybody from the Portland Police side
20 understands in our computer system, that means you're going
21 to be on a specific detail down in the entertainment
22 district versus being available for dispatch to send you
23 everywhere else.

24 Q. Okay. So you did that, started making your
25 way over.

1 And we're talking about 1:00 in the morning
2 now on September 30th?

3 A. Correct.

4 Q. Okay. Did you ultimately end up assisting the
5 entertainment detail?

6 A. I did.

7 Q. So what did you do?

8 A. So what typically happens in that situation is
9 the majority of why we're there is our presence. It's --
10 it's so that we can basically keep the peace. Just having
11 our presence there alone tends to stop any type of
12 fighting, any type of bickering, anybody who is trying to
13 drive home drunk. They walk out of a nightclub and they
14 walk directly across the street to go get in their car,
15 they tend to see us. So they're more opt to grab a taxi or
16 Uber, grab their friends and walk the other way, although
17 there is sometimes fighting that happens.

18 When we're there, we're basically trying to
19 make sure that we keep the peace. If there is a fight that
20 breaks out, we try to break it up. If there's no injuries,
21 nobody wants to press charges, everybody goes on their own
22 way. You basically try to keep it to a minimum at best
23 from anything happening.

24 That night, there were some scuffles. There
25 were, you know, some typical stuff from night goers, but

1 nothing out of the ordinary that -- that I haven't seen
2 specifically down on Fourth and Couch, Third and Couch.

3 Q. Okay. So were you just kind of driving around
4 with your lights on or how did you actually do that or
5 perform that function?

6 A. Great question.

7 No. In this situation, we are actually on
8 foot. What we'll do is we have those barricades, like I
9 mentioned. Several officers, usually you try to work in
10 groups of two or three, are on foot walking through the
11 entertainment district.

12 You're essentially either standing in the
13 street just observing as people are coming out. A lot of
14 the patrons and the people going to these night clubs will
15 stand out and talk for a good hour, hanging out, whatever,
16 grabbing food.

17 You're just essentially, again, keeping your
18 presence on foot. We do have some officers we'll ask to go
19 park their vehicles in one of the neighboring parking lots
20 because as people are going to the parking lots, that's
21 where issues have arose.

22 They see us standing there, so they start
23 going over there to fight or do whatever they are going to
24 do.

25 That particular night, I was on foot, and I

1 stayed in the area of the nightclubs.

2 Q. Okay. Anything out of the ordinary occur
3 while you were kind of walking around patrolling?

4 A. No. Like I said, there were a few scuffles.
5 Again, pretty similar to what we see on a Friday or
6 Saturday night, folks coming out. They may have already
7 had words in a bar. They get in a fight with each other.
8 We break it up, send people home.

9 On that particular night, I believe the crowd
10 from that area had started to leave, and we had it pretty
11 cleared out just before 3:00.

12 Q. And so what did you do then?

13 A. At that point, our sergeant said, I think
14 everyone has gone home for the night, at least the majority
15 of them, so let's go ahead and start picking up barricades.

16 So essentially, we have a truck with a trailer
17 that we drive around and pick up the barricades. It takes
18 us about 10 minutes.

19 Once we got those picked up, I was -- I just
20 know that there's really nothing else for me to do. They
21 ended up going back in. We have our substation there on
22 Third and Couch.

23 Most of the officers walk back to do paperwork
24 or any other follow-up that they have.

25 Q. Is the Old Town Precinct?

1 A. OTP is what we call it.

2 After the barricades were picked up, most of
3 the officers and sergeant had walked over to OTP, and I
4 just know that that's my time to go. There's nothing else
5 they need from me.

6 I think I waved to the sergeant and said, Hey,
7 I'll see you later. Let me know if you need anything else.
8 I was getting into my vehicle knowing that my hour of
9 overtime is over, and it's time for me to go home.

10 At that point, I was starting to get into my
11 vehicle and head south on Third Avenue, just heading back
12 towards the precinct.

13 Q. And where is Central Precinct located?

14 A. The address is 1111 Southwest Second Avenue.

15 Q. And from the courthouse, is it basically just
16 across the park?

17 A. Correct, kitty-corner from where we're at if
18 we come out the main doors of the courthouse.

19 Q. You were going south down Third Avenue toward
20 Central Precinct?

21 A. Yes.

22 Q. What happened then?

23 A. As I was leaving, I get a dispatch call that
24 you hear over the radio. Sergeant Britt had asked for some
25 additional cars to come to the parking lot at Southwest

1 Third and Stark.

2 As I was driving southbound on Third, I was
3 just crossing essentially where that parking lot was when I
4 heard the radio transmission. I had looked over, seen a
5 police car in the -- in the lot with its lights on. I
6 didn't see anybody. I did see a group of people.

7 Q. You did see or didn't see?

8 A. I did see a group of people. I didn't see the
9 officer. I just saw his car.

10 So I know by him asking for some additional
11 units, nobody else has responded yet. So I took it upon
12 myself to drive down to the next street, which is a one-way
13 on Washington. I took a right, and then went up to Fourth,
14 took a right and circled back. I pulled into the parking
15 lot to assist. I pulled into the west entrance of that
16 parking lot.

17 At that point, I pulled in pretty quickly
18 because I wasn't quite sure why he called or what he
19 radioed for.

20 So as I pulled in, I did see a group of
21 people, approximately seven or eight people, that were in
22 the middle of the parking lot just walking eastbound away
23 from where we were.

24 As I pulled in, I just got out of my car
25 pretty quickly, and I just asked Sergeant Britt, Hey,

1 what's going on?

2 And he's, like, No, nothing. There just was a
3 group of people that were arguing. It looked like maybe
4 something was going to get out of hand. I just wanted to
5 get some more officers here.

6 Q. Do you remember where you parked?

7 A. I do. So his car appeared to me to be pretty
8 close to when you pull into the driveway. He basically
9 looked like he just kind of stopped as he pulled into the
10 driveway.

11 And then I pulled in essentially on the side
12 of him and almost at an angle so I could quickly get in and
13 then just hop out and see what was going on. So I was
14 parked at this kind of odd angle in front of this police
15 cruiser.

16 Q. Did you later reposition your car?

17 A. I did. We had -- we did -- we had two females
18 walk up to their vehicle. It looked like they had some
19 bags. They said they were trying to move their car, and if
20 we could move out of the way so they could back up.

21 I was the one that was kind of primarily
22 blocking them, so I backed up and repositioned. I pulled
23 forward eastbound, and I remember seeing a little kiosk
24 where I knew that if I could pull up right and do it just
25 the right way, I wouldn't block any of the cars, hopefully,

1 so if anybody else comes back, I'm not constantly
2 repositioning.

3 I parked there, and then I specifically --
4 because on Third and Couch in some of those parking lots
5 where we ask people to park, we specifically have our
6 strobes on. We specifically have our lights going so we
7 have that presence.

8 I made sure my lights were on, everything was
9 set up. I left my headlights on because we were faced to
10 Southwest Third, and right there is a nightclub called the
11 Golden Dragon, and there's another nightclub called -- I
12 apologize. I don't remember which one it is, but that's
13 next to it.

14 That's a lot of times where folks will come
15 from as far as leaving the club to go to their car. So I
16 wanted to light that area up as much as I could.

17 Q. Okay. So you got out of your patrol car?

18 A. I did.

19 Q. And could you describe what the patrol car
20 looks like?

21 A. A basic police vehicle. It's blue and white.
22 It says "Portland Police" on the side. It's got lights and
23 sirens. It's not like an unmarked car of any kind. It's
24 got a bumper grille on the back.

25 Q. Is it an SUV or a Crown Victoria?

1 A. SUV, yeah, Ford Explorer SUV.

2 Q. Okay. So you parked there. You get out of
3 the car. And then what happened?

4 A. So at that point, I believe I walked around my
5 car. I don't remember if it was to the front or to the
6 back.

7 And being that Sergeant Britt's car was behind
8 me, and he was back there essentially waiting for me to
9 move my car, he walked up to where I was. I ended up
10 walking around.

11 At some point about where my car was, we were
12 standing together just making small chitchat. That was the
13 first time I'd met Sergeant Britt. I actually met him for
14 the first time down at Third and Couch when he was down
15 there observing the area.

16 Q. That night?

17 A. That night.

18 It sounded like that night he was just trying
19 to get a feel for Third and Couch and what the
20 entertainment district entailed because he might be filling
21 in for the other sergeant in the future.

22 So I had just met him briefly at Third and
23 Couch when I ended up trying to assist him over at this
24 parking lot at where Third and Stark was.

25 We were having small chitchat. I was trying

1 to get to know him a little bit when we were looking
2 eastbound and --

3 Q. You guys are still standing next to your
4 patrol car?

5 A. Yes. I believe he's standing to the right of
6 me. I'm to the left. We're faced east. And in the
7 parking lot, there's two rows of cars. I would say
8 approximately the gap of the parking lot is maybe 20 feet
9 as far as, like, the actual gap of where we're standing.

10 Q. Do you mean like the drive aisle?

11 A. The drive aisle, yes. And each of the cars
12 that are in, I would say, the north row that are parked and
13 then there's cars that are parked in the south row, I see a
14 group of approximately five to six individuals walk over
15 into the parking lot, and they're standing at the back of
16 the last vehicle, what appeared to be in the north row.

17 At that point, I see a physical altercation
18 start to happen. You can see fists flying. The group is
19 kind of in a big scrum.

20 I instantly go on to my radio and say, 844, we
21 have a fight at Third and Couch -- or excuse me, Third and
22 Stark.

23 As that fight is happening, I see a black male
24 large in stature step back away from the group and pull out
25 what appeared to be a dark-looking handgun in his right

1 hand. He's approximately three feet from the group, and
2 he's also facing north looking at the group.

3 He opens fire at point blank range of the --
4 of the individuals in that group. And the reason I
5 remember that so well is, one, it was loud; and, two, he
6 was holding it quite high, shoulder height and maybe even
7 higher, as he was firing the gun at the group.

8 At that point, we're -- we're still positioned
9 in the center of the parking lot. I see the subject. I
10 see the gun drop down, and it disappears out of my sight
11 for several moments.

12 He takes some back steps as if he's going to
13 try to take off south, but then he abruptly changes and
14 starts heading westbound in our direction. He starts
15 advancing towards us.

16 Q. Let me ask you another question here.

17 So when you saw this person raise his hand and
18 shoot, you said it was loud?

19 A. Uh-huh.

20 Q. So you heard it?

21 A. Correct.

22 Q. Could you hear whether it was one shot or more
23 than one shot?

24 A. No. It was multiple. I would say
25 approximately four to five shots.

1 Q. Okay. Could you actually see the shooting
2 occurring as well, or were you just hearing it?

3 A. No. I could see it. Like I said, it's
4 probably -- from where we were to where they were, I would
5 estimate it's approximately 60 to 70 feet.

6 So from where we were at, it was evident that the
7 group that was fighting, him stepping back, him actually
8 firing, I could see all of that.

9 Q. Okay. Did you actually see, like, muzzle
10 flashes, or was there some other indication that the gun
11 was actually firing?

12 A. I don't recall. With -- with everything going
13 on and the adrenalin instantly hitting, I don't remember
14 any of the muzzle flash.

15 Q. Okay. You said there was a group of, I think
16 you said, five to six individuals?

17 A. I believe that's about how many I thought I
18 saw.

19 Q. Did you see them reacting to the gunfire that
20 you were witnessing?

21 A. Well, they were essentially behind that last
22 car, and so I don't -- I don't remember, you know, where
23 they went or what happened. I know that they were up
24 against the car essentially or near the car.

25 And, again, my sole focus, I just -- you're on

1 a tunnel vision. When something like that is happening,
2 you're on tunnel vision instantly to him, and I'm trying to
3 track him to see if he's going to run or what he's going to
4 do.

5 I don't recall what happened with the other
6 individuals.

7 Q. Okay. Did you see anybody that appeared to
8 have been injured by the gunfire?

9 A. I couldn't tell, other than the fact that he's
10 standing three feet from them at point blank range with a
11 handgun. I couldn't tell if there were any injuries at
12 that point.

13 Q. Did you suspect that somebody had been shot or
14 possibly even killed?

15 A. I did suspect that, absolutely, yes.

16 Q. What did you do then? You said you had tunnel
17 vision on him?

18 A. Correct.

19 Q. What is it that you did?

20 A. So at that point, we're still near our
21 vehicle. As we saw the fight, we were starting to walk up
22 towards it.

23 And, again, this --

24 Q. This is before the shooting?

25 A. Well, yes. So -- so as the fight came out and

1 I started to put out on the radio, "844, we have a fight,"
2 we're starting to just gravitate towards that, you know,
3 take a couple of steps.

4 This situation was so dynamic and happened so
5 fast that we were only able to get a couple steps in before
6 now we're reacting to the individual itself, and so --

7 Q. The shooting?

8 A. After the shooting, after the subject had
9 fired upon the group.

10 I'm so hyper-focused on him now that I see him
11 go to -- like I said, what appeared to take off southbound
12 and then abruptly stop and then change his direction and
13 start heading west directly towards us.

14 At that point, he's advancing quickly. I see
15 the gun come back out, and it's now pointed in our
16 direction.

17 My gun is out, and I'm giving verbal commands,
18 "Drop the gun, drop the gun." The subject doesn't drop the
19 gun, and he's still advancing towards us.

20 I fire multiple rounds simultaneously with
21 Sergeant Britt. Approximately three to four shots were
22 fired from -- from me.

23 As I'm firing those multiple shots, the
24 subject's direction changes and now puts him south in an
25 open parking spot between a sedan and an SUV.

1 I can see that the subject is taking fire and
2 has been struck by gunfire and is falling down to the
3 ground.

4 I decide to stop shooting. I see that he's on
5 the ground, and the gun that was in his hand, his right
6 hand, is now on the ground between me and him. It's just
7 north of him by about two feet.

8 I remember he was still moving around, and I
9 couldn't see his hands. So at that point, he's still a
10 threat to me because he has access to that gun.

11 I start immediately giving him verbal
12 commands, "Show me your hands, show me your hands."

13 He was on his left side, and I couldn't see
14 his left hand. So I said, "Show me your left hand." At
15 this point, he's being compliant. He rolls over and shows
16 me both of his hands.

17 I say to him, I give him a warning, "Don't
18 move for that gun or you'll be shot again."

19 I hear Sergeant Britt -- in this situation,
20 Sergeant Britt was to my right. At some point, and I don't
21 recall when, he had repositioned himself over to the front
22 of the SUV. I could hear his voice. I could hear him also
23 giving some type of verbal commands. I heard him come
24 across the radio and just say, "Shots fired."

25 With me standing there, I knew that that

1 wasn't enough information we needed to put across the air,
2 especially since we needed additional officers on scene.

3 So I got on the radio and I said, "844, shots
4 fired. One suspect down. Our guns are facing south."

5 The reason we do that is it's critical to get
6 that information out so that other officers that are
7 responding don't come into an area where there's maybe a
8 potential cross-fire. I also did that because we wanted to
9 get additional officers on scene as quickly as we could.

10 While I'm putting that out and still, you
11 know, keeping my eyes and having my gun pointed at the
12 subject, I hear some commotion and yelling and so forth to
13 my left. I quickly observe that there's two subjects in
14 the sedan next to the open parking space. There's a female
15 in the driver's seat and a male in the passenger seat, and
16 there's a male standing in front of the vehicle, which he
17 had a dark item in his hand, which caught my eye quickly.

18 So I went gunpoint to those three and
19 immediately gave verbal commands, "Show me your hands.
20 Keep your hands up."

21 I was quickly able to identify that the
22 subject standing in front of the car had a cell phone in
23 his hand, which is why no additional -- why I did not shoot
24 or any other advancements made on my part.

25 He was moving around a lot. And being that I

1 had an unsecured gun and a subject that I'm also still
2 trying to keep an eye on, I told him, "Don't you move
3 towards that gun. Stay back. Keep your hands up where I
4 can see them."

5 I told the individuals in the car to keep
6 their hands on the dashboard. They were compliant. They
7 were obviously yelling, "Don't shoot, don't shoot. I don't
8 have anything."

9 At that point, I remember seeing out of the
10 peripheral of my left side officers were running up, coming
11 in from the east driveway, officers coming up from that
12 standpoint.

13 I remember Sergeant Schmautz came and tapped
14 me on my shoulder and asked me, "What threats do we have
15 right now? What do we need to address?"

16 I explained to him that we had the subject
17 down near the gun, and we have these three individuals that
18 I don't know if they're affiliated. I don't know what the
19 situation is. We just need to get them into custody before
20 we figure out what's going on next.

21 At that point, I heard Sergeant Schmautz say
22 that he's trying to put a team together so that they can
23 render aid to the suspect -- the subject.

24 I hear him ask for an IFAK kit, which is an
25 advanced first aid kit that we all keep in our cars. I

1 heard him yell for someone to grab that.

2 And then within moments, I see a group -- I
3 hear a group run behind me and I see a group come back
4 around the SUV and start rendering aid. They go hands on
5 with the subject.

6 At that point, I'm now focused solely on these
7 three because I know that they have hands on, and they have
8 him potentially secured, and they were helping him.

9 Sergeant Wuthrich comes up and taps me on the
10 shoulder and tells me to walk forward, keep my eyes on the
11 subject while they pull the individuals out of the vehicle
12 and get them into custody.

13 And then I saw a couple officers come around
14 front, place the subject that was standing in front of the
15 vehicle into custody, which at that point, I looked back
16 over to make sure this was still secure, and it was.

17 At that point, I felt it was safe enough for
18 me to holster my weapon. And then I took a step back, took
19 a deep breath. And the next thing I remember doing is
20 turning around and looking back to where the subjects were
21 behind the car, and I think it was Sergeant --

22 Q. Which car?

23 A. Sorry. The one with the group that had been
24 open fired on.

25 Q. The initial shooting?

1 A. The initial shooting.

2 I had said to Sergeant Wuthrich, "I think we
3 need to go over there and see if there are any victims.
4 That's where the original shooting happened."

5 At that point, he assured me that they were
6 going to check everything. They just wanted me to take a
7 step back.

8 He asked if I was involved. I said I was. He
9 asked me to go sit in the vehicle, and he assigned me with
10 a member as a partner to just make sure everything was okay
11 and for me to go sit by my car, which I did.

12 And then a few moments later, Sergeant
13 Schmautz came back walking over to me. After they rendered
14 aid to the subject, he walked back over with another
15 officer, Officer Heppner, who he said he was going to
16 switch out with Officer Whitmore as being my member to sit
17 with. He advised me to sit in the vehicle and just wait
18 for further instructions, which I did.

19 At that point, I sat in the vehicle until --
20 until they got me out of the area and finished processing
21 me.

22 Q. Okay. So you and Sergeant Britt are out of
23 your vehicles. You see this fight occurring, and you start
24 moving toward it.

25 You described seeing the shooting occur?

1 A. Uh-huh.

2 Q. Did you then begin moving toward the shooter
3 or looking for cover or retreating or what movements did
4 you actually do?

5 A. We're in the middle of, like I had said, the
6 driveway of the parking lot, the thruway.

7 At the time, there's really -- because, again,
8 it happened so fast and so dynamic, there wasn't a thought
9 of getting cover. It's a matter of just now your adrenalin
10 is rushing, you have tunnel vision on the subject. We know
11 he has a gun.

12 We had started to walk forward in the middle
13 of that parking lot, at least I did, taking a few steps to
14 address the fight when that had started.

15 At that point, I didn't have any time to
16 react. What I remember thinking was, I think this guy is
17 going to take off, and I was trying to prepare myself to
18 get in a foot pursuit potentially before he just turned and
19 started coming back westbound at us.

20 So at that point, if I remember correctly, I
21 didn't take but a couple of steps and then have my ability
22 to just be in the parking lot to address, you know, him
23 coming at us and what was going to happen next.

24 Q. So is it your memory that you actually stayed
25 somewhat close to the patrol car?

1 A. Relative, within a few feet. We might have
2 been over to the right a little bit. Just based on our
3 position, when I got out and was talking to Sergeant Britt,
4 we might have been to the right of the vehicle and, like I
5 said, then advanced. But I think we'd be relative within
6 five feet, 10 feet of the car from what I remember.

7 Q. You said that when the shooting occurred, you
8 first saw the person moving to the south and then lost
9 sight of the gun?

10 A. Correct.

11 Q. Is that right?

12 A. Correct.

13 Q. Do you remember where he was when you lost
14 sight of the gun?

15 A. He was relatively close to the group,
16 somewhere in there, because the gun came back down.

17 And then as he was back pedaling, trying to
18 leave southbound, I couldn't see where it was. So it was
19 sometime where he was standing next to the group and trying
20 to potentially take off in that short distance, whatever
21 that distance was.

22 Q. Okay. Do you remember actually seeing his
23 hands empty, or did you just not see his hands at all?

24 A. I just couldn't see at that point, and I don't
25 recall that part of it.

1 Q. Where were you positioned as it relates to him
2 when you next saw the gun?

3 A. So the next time I saw it, I was -- I was
4 facing east. He was advancing west, and I would say we
5 were almost -- almost in a direct line. If not, he might
6 have been slightly to my right based on his positioning of
7 the -- like I said, I think he was trying to head and then
8 for some reason, he just turned on us.

9 So I might have had a couple steps to his
10 right, my left, but it was almost a head-on type of a
11 direction.

12 Q. Was he running down the back of the parked
13 cars in a westerly direction towards you, then?

14 A. Correct. So, again, I had said that there's
15 the north end cars, south end cars.

16 He would have made it close to somewhere to
17 the -- to the back side of the south end of the vehicles.
18 And as he turned, he's essentially running parallel with
19 the back of the vehicles directly at us.

20 Q. All right. So did you move, then, down more
21 toward that line of vehicles in the southern part of the
22 parking lot?

23 A. I don't recall moving that much. I -- I feel
24 like when we got out of our car, we were already, like I
25 said, in the center of the -- center of the parking lot.

1 We may have moved slightly. As his direction
2 is moving, we may have moved thinking that we -- well, me
3 thinking that there was going to be a foot pursuit, and so
4 that my have repositioned me slightly into the parking lot,
5 but I don't remember moving considerably over because I
6 knew at that point I was still pretty vulnerable with no
7 cover, no -- no cars to quickly dip down in and so forth.

8 Q. Okay. When you next saw the gun, do you
9 remember where it was?

10 A. It was -- it was coming out, and I -- I
11 couldn't see if it was coming out of a pocket, if it was
12 out of a waistband, but it came out of somewhere as he was
13 advancing.

14 I'm just hyper-focused, trying to look at him,
15 trying to -- they teach us to watch the hands. You know,
16 hands are such a -- such a crucial part. So I'm trying to
17 look for his hands. I don't recall, again, with the
18 adrenalin and the tunnel vision, exactly where it came out
19 of. I just know that it came out of somewhere, waist,
20 pocket, something with his right hand.

21 A GRAND JUROR: And where was he standing when
22 you noticed that come out again?

23 THE WITNESS: So he's advancing towards us.
24 So he's turning from his south position, and he's coming
25 westbound.

1 At some point as he's coming westbound is when
2 he's bringing it back up, correct.

3

4 BY MR. JACKSON: (Continuing)

5 Q. In his right hand?

6 A. Right hand.

7 Q. Is that the same hand you'd seen him
8 previously using to fire the gun?

9 A. Yes, correct. That's what it appeared from my
10 distance.

11 Q. You saw it come out. He's running?

12 A. Correct.

13 Q. Were his arms swinging in kind of a running
14 motion or something different?

15 A. I think they were because he was advancing on
16 us pretty quickly, but I remember the gun being pointed at
17 us. I remember the gun being specifically pointed in our
18 direction, which is why I was yelling, "Drop the gun, drop
19 the gun."

20 At that point is when I was fearful we were
21 going to start taking rounds.

22 Q. So did you actually think that if you didn't
23 shoot, you were going to be shot?

24 A. Absolutely. And I think when you take the
25 situation that we had of the individual now advancing on us

1 with a gun out and it's pointed at us, he poses the intent,
2 means and opportunity, which is what they train us on.

3 And the fact that he just shot that -- into
4 that group at point blank range and for whatever reason,
5 turns and starts advancing towards us and doesn't listen to
6 our commands, at that point, I absolutely think that it was
7 reasonable for me to shoot because of that.

8 Q. Were you in fear for your life at that point?

9 A. I was. I absolutely was.

10 Q. When you say the gun was pointed at you, do
11 you remember -- how do you know that or what did you see
12 that made you conclude that?

13 A. Well, again, I could -- I could see that
14 during the initial shooting, that it was a dark-colored
15 handgun. It was something of dark color. He was holding
16 it quite high.

17 When the gun came back out, again, that's what
18 I'm looking for is I'm always trained to look for the hand.
19 That's what's -- that's what's going to hurt you the most.

20 So when I saw the gun come back out, I
21 recognized the black gun; similar to the situation of when
22 the individuals that were at that car sparked my attention,
23 I quickly looked for his hands, and I saw that he had a
24 cell phone in his hand and obviously made the decision not
25 to shoot.

1 It was the same aspect. I'm looking to see if
2 he has it, to see where it's at and if it's a threat to me,
3 an immediate threat to me, which at that point, I felt that
4 it was being that it was pointed at us.

5 Q. Okay. When you made the decision to shoot
6 then, was he still advancing towards you?

7 A. He was.

8 Q. You previously testified that in the course of
9 you shooting, you perceived that he changed direction?

10 A. Correct.

11 Q. Why did you continue shooting at that point?

12 A. Because at that point, he was still an
13 immediate threat. He still had that gun in his right hand.

14 And the other thing that we discuss a lot in
15 this -- in training is action versus reaction and the
16 ability to reassess once you've identified that threat.

17 So once I've started firing those multiple
18 rounds, in that matter of a second or two, whatever that
19 timing may be, I don't know, he's changing a direction on
20 us. I'm reassessing to see does he still have that. I'm
21 trained to essentially address and neutralize that threat.

22 When I saw him start to go to the ground and I
23 saw the gun drop, at that point, my reassessment says,
24 Okay. We now have addressed that. Reassess, see what's
25 going to happen next. If he's -- if he listens to my

1 commands, we can move forward with that.

2 Essentially, just the threat itself just
3 needed to be addressed.

4 Q. Okay. And so it wasn't until the point that
5 you saw the gun drop and him start to go to the ground that
6 you felt comfortable ceasing your firing?

7 A. Correct. And, again, it -- I don't know the
8 timing of -- the amount of moments, the amount of seconds
9 that it happened, but it was very quick. It was very
10 dynamic.

11 I remember that we were on the move a little
12 bit. I remember that I couldn't get behind a vehicle at
13 that point because I also had Sergeant Britt to my right.

14 So as he's -- as we're firing, I can't just
15 dip down to get cover because now I'm flagging him. So now
16 I'm essentially changing.

17 It was very fast, very dynamic, and we just
18 had to do what we needed to do to address that threat at
19 the time.

20 Q. Okay.

21 MR. JACKSON: Do the grand jurors have any
22 questions?

23 I don't see any.

24 All right. Thank you.

25 THE WITNESS: Can I just say one more thing?

1 MR. JACKSON: Sure.

2 THE WITNESS: I was just going to say that
3 Portland puts us through an enormous amount of training.
4 They spend a lot of time, a lot of resources, which I
5 absolutely feel was invaluable in this situation.

6 They -- they put us through a lot of
7 scenarios, a lot of training. A lot of times it's in a
8 static and very sterile environment, so they try to do
9 their best to try to recreate that stress in that
10 high-level situation.

11 What I can tell you, and being brand new to
12 this situation, is that the level of fear and the level of
13 adrenalin that I felt that day I had never felt before, nor
14 do I want to.

15 I just hope that in this situation, I'll never
16 have to do that again in my 23 years left on my career,
17 that I'll never have to do that again.

18 I just wanted to make sure that I got that
19 said because it's important for me.

20

21 BY MR. JACKSON: (Continuing)

22 Q. Yeah. And I'm sure over the last series of
23 weeks, you've kind of replayed this through your mind.

24 As you reflect back on it now, do you feel you
25 had another option in terms of your decision making and

1 what you ended up doing?

2 A. I don't. And I -- I objectively think that
3 that -- what had happened -- again, with the situation of
4 us being there to begin with, to keep peace, we're in plain
5 clothes uniform. We're standing in the middle of a parking
6 lot with both our cars on with the lights.

7 For this situation over here with the original
8 shooting happening, we have an assault at best, maybe a
9 potential homicide, a homicide that just happened in front
10 of us.

11 And I think the shock and awe factor as you're
12 standing there as a police officer of what just happened
13 and then now us having the duty to act on that and doing
14 what we can to eliminate that threat, but then for him to
15 advance on us and now we're dealt with, you know, an
16 additional circumstance and us having to deal with that
17 immediate threat, no, I don't -- I don't think there is any
18 other outcome that could have come out of this,
19 unfortunately.

20 Q. Okay. You just said you were in plain
21 clothes.

22 A. I'm sorry. Uniform with a badge displaying.

23 A GRAND JUROR: Thank you.

24 MR. JACKSON: Okay. Are there any other
25 questions?

1 A GRAND JUROR: No.

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

3 (Proceedings adjourned at 2:48 p.m.)

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3 COUNTY OF MULTNOMAH)

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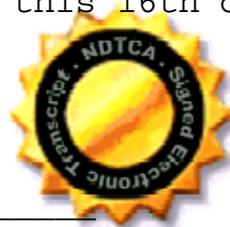
5 I, Heather M. Ingram, Certified Shorthand Reporter for
 6 the State of Oregon, do hereby certify that I reported in
 7 stenotype the proceedings had upon the hearing of this
 8 case, previously captioned herein; that I thereafter had
 9 reduced my stenotype notes by computer-aided transcription;
 10 and that the foregoing transcript constitutes a full, true
 11 and accurate record of the proceedings had upon the hearing
 12 of said cause to the best of my knowledge and ability.

13 Witness my hand at Portland, Oregon, this 16th day of
 14 November, 2018.

15

16

Heather M. Ingram



17

Heather M. Ingram

18

Oregon CSR No. 93-0279

19

Oregon Certificate expires: 9/21/2021

20

Washington CSR No. 2188

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Washington Certificate expires: 9/25/2019

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MULTNOMAH COUNTY GRAND JURY
DEATH INVESTIGATION

Deceased: Patrick K. Kimmons)
Date of Incident: September 30, 2018) DA No.
Location: Southwest Third Avenue and) 2390609-1 & 2
Harvey Milk Street, Portland, Oregon) Volume 2

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled transcript of
GRAND JURY proceedings was heard, commencing at the hour of
9:10 a.m. on Tuesday, October 30, 2018 at the Multnomah
County Courthouse, Portland, Oregon.

APPEARANCES:

Mr. Todd Jackson
Deputy District Attorney
On Behalf of the State of Oregon

* * *

HEATHER M. INGRAM
Certified Shorthand Reporter
Portland, Oregon

PROCEEDINGS

Tuesday, October 30, 2018

MR. JACKSON: Good morning. We're here for
day two of presentation before Grand Jury Number 1
concerning a death investigation following the use of
firearms by police that caused the death of Mr. Patrick
Kimmons on September 30th, 2018 in the city of Portland.
We'll begin with our first witness today,
Sergeant Aaron Schmautz.

SERGEANT AARON SCHMAUTZ

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

EXAMINATION

BY MR. JACKSON:

Q. All right. Could you please state and spell
your name?

A. Aaron, A-A-R-O-N, Schmautz, S-C-H-M-A-U-T-Z.

Q. Where are you employed?

A. I'm a sergeant for the City of Portland.

Q. And what do you do as a sergeant for the City
of Portland?

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A. So my current patrol duties, I'm in charge of
the entertainment detail. We basically manage all the
nightlife, kind of staffing for working around the
nightlife at Central Precinct.

So daytime Wednesdays and Thursdays, I deal
with liquor licensing and managing who can serve alcohol
and manage those kinds of places.

And then Fridays and Saturdays, we manage all
the clubs and nightlife, things that go on on the weekend
in downtown.

Q. And does that include actually closing down
the vehicular traffic, a portion of the downtown area?

A. Yeah. So there's a city charter deal down --
it's basically Burnside to Everett, Second to Fourth.
There's kind of a confluence of nightlife establishments in
that location. It's kind of like the hub of where we
operate out of. The Old Town Precinct is kind of our main
area that we operate out of. There's a lot of bars on the
Southeast side as well, but the majority of clubs are down
there. So that's where we work from.

Q. Okay. What are the times that that area of
downtown is actually closed to vehicular traffic?

A. We set up barricades at 10 p.m., and all the
bars close at 2 a.m. And so there's usually kind of an
area of people getting food and lingering out. So about 3

1 a.m. is when we pull them.
 2 Q. And how long have you been a sergeant of the
 3 entertainment detail?
 4 A. The entertainment detail, a year; sergeant in
 5 general, since 2015.
 6 Q. And how long have you been a police officer?
 7 A. Since 2005, February of 2005.
 8 Q. And have you worked in the Central Precinct
 9 area for most of that time?
 10 A. So I was actually on the entertainment detail
 11 as an officer from, like, fall of '06, fall of '06 to,
 12 like, summer '07 or '08. I get the years combined there.
 13 Then I worked Central Precinct patrol for
 14 about four years. Then I worked East Precinct patrol for
 15 about seven years or so.
 16 When I got promoted, I came back downtown and
 17 have been at Central since I got promoted.
 18 Q. Okay. Were you working on September 30th of
 19 2018?
 20 A. I was.
 21 Q. And what shift were you working that day?
 22 A. Entertainment detail, so I start at 6 p.m. and
 23 go home at 4 a.m. usually.
 24 Q. Could you kind of take us through your
 25 responsibilities as a sergeant when you're on shift?

1 A. Currently, eight. It kind of swells and ebbs
 2 and flows depending on the needs of the night.
 3 For instance, Halloween weekend tends to be a
 4 busy weekend. New Year's is a busy time. Middle of the
 5 winter tends to be less busy, so it will be less officers
 6 on duty.
 7 Full time, I have six officers, and I augment
 8 on the weekends with two more.
 9 Q. On September 30th -- well, starting the night
 10 of the 29th, into the early morning hours of September
 11 30th, could you explain for us kind of how that shift was
 12 going?
 13 A. So it was fairly routine. We had had several
 14 fight calls.
 15 Towards the end of the night, there tends to
 16 be -- on any given weekend, and this was no different,
 17 people will come down who may not have been in the
 18 establishments, but are coming down to meet friends or just
 19 come down. We seem to have a swell of people around, like,
 20 1:15 or so through the end of the night.
 21 Q. What is the end of the night?
 22 A. 3:00. So, I mean, I don't know the science
 23 behind why this happens, but there just always seem to
 24 be -- you can't tell they weren't in clubs. We'll just
 25 have people show up in cars or wherever else, and we tend

1 A. So I kind of work as kind of triage/dispatch.
 2 With the bars, there's a lot of issues that pop up that may
 3 rise to the level of a 911 call or kind of a consult.
 4 So the majority of the bar owners and security
 5 staff have my phone number. So very often, they'll call me
 6 as opposed to dispatch and say, Hey, this is what we have
 7 going on because, as you can imagine, if there's a
 8 disturbance, you may get 20 calls about it from all the
 9 different vantage points.
 10 So I kind of serve to kind of ease the
 11 pressure on 911. They call me, and I'll either send
 12 officers or give advice. Security staff, they have
 13 abilities to manage trespass, things like misrepresentation
 14 of age, those kinds of things. We'll have discussions
 15 about that.
 16 So I usually am down just right in the core
 17 kind of sending officers out to different areas. I just
 18 make sure that we're where we need to be.
 19 You know, command will call and say, this
 20 issue, that issue, whatever else. Ultimately, I'm a
 21 secondary dispatcher.
 22 Also, if there's an issue or complaint, I'll
 23 go and respond to those or manage those.
 24 Q. How many officers do you have under your
 25 supervision in the entertainment detail?

1 to have more fights at this time.
 2 And so this night, like I said, was no
 3 different than any other night. We started having fight
 4 calls in Ankeny Alley. Ankeny Alley, there's several
 5 clubs. It's on Ankeny, Second to Third. There's an alley
 6 there. It's like a -- there's, I don't know, maybe six
 7 bars. They're all small, 49-person capacity bars, just
 8 little rooms basically.
 9 And so they started having fights. If people
 10 are going to fight, they'll go there sometimes just because
 11 it's an alley. And so unless we're literally standing in
 12 it, it's hard to see.
 13 So the owner of Fuse, which is right on the
 14 corner right by Voodoo Doughnuts there, he calls me a lot
 15 because he'll be standing out there. He called twice and
 16 said they had had fights and that he was hearing someone
 17 say something about having a gun.
 18 So we went down there. We were patrolling it.
 19 And as per usual, by the time we got there, they were gone.
 20 Q. Is that information, when fights are reported
 21 and you guys are going to respond, is that information put
 22 out over the radio so that the officers in the
 23 entertainment detail and anyone else assisting would be
 24 aware of what's going on?
 25 A. Yeah. So in this case, and, again, as per

1 usual, the owner will call me and say, Hey, there's a
2 fight. This is what I am seeing.

3 I'll get on the radio and say, Hey, there's a
4 fight. This is where it's at. This is information I'm
5 getting.

6 We usually walk. It's a block. It's just --
7 it's hard to get cars around downtown Portland. So we'll
8 walk down there.

9 We did. We got down there. Other cars will
10 show up, but my people always walk.

11 Again, by the time we got there, there was
12 information that they had gone through the alley towards
13 kind of Naito, in that direction. So I asked over the air,
14 Hey, can officers patrol the area, just kind of fly the
15 flag and people can see us, and hopefully that will
16 disburse groups, and we'll look for people that are arguing
17 and see if we can disburse them.

18 Q. Okay. Did you also receive reports of people
19 with weapons during your shift that night?

20 A. Yeah. So the owner had said that he had heard
21 someone say something about a gun. And then when we got on
22 scene, a cab driver said something to me about someone said
23 something about a gun or was going to get a gun or had seen
24 a gun.

25 It's always just a lot of information coming

1 And that is, I mean, every single weekend.
2 Again, this weekend was no different.

3 There's two main lots that are areas of
4 concern. One is Harvey Milk, by Third and Fourth, and one
5 is on Couch, Third and Fourth. They're huge parking lots
6 where people tend to go for nightlife establishments.

7 Q. So do you recall officers going out to monitor
8 those lots as you approached the end of the night, as you
9 put it?

10 A. Yeah. So after these two -- we had gotten two
11 calls in Ankeny Alley about fights.

12 After that happened, I returned to Fourth and
13 Couch, and a group showed up and started arguing and
14 fighting and pushing each other around.

15 The thing that's challenging with these fights
16 is, I mean, we can't reasonably go and arrest everybody who
17 is just arguing and pushing each other. If there's, like,
18 an assault, we'll deal with that.

19 But just general kind of bar fight, angry
20 behavior, it turns into a crowd control scenario. You can
21 just imagine six police officers trying to wade into a
22 crowd to arrest and decide who's the main person. It's
23 just impossible.

24 So most of our role is tell them to go home,
25 the night is over, that kind of stuff.

1 from all these tangential areas. But, yeah, several
2 reports.

3 Q. So when you have information coming out that
4 fights are occurring, that there may be weapons, including
5 firearms involved, how do you respond to that information?

6 A. So we'll usually try to bring as many
7 resources down to the area as possible. You know, I -- I
8 have been doing this job for a long -- the entertainment
9 detail for a long time, both as an officer, as a sergeant
10 and also my officers, it's -- this is a weekend recurrence
11 for us every week.

12 And so the areas that there are typically
13 violence, subjects usually won't bring guns with them to
14 bars because you can't get in because all the bars search
15 people before they go in.

16 And so the parking lots are areas of concern
17 for us because the people who are going to bring guns will
18 usually leave them in their car. And then if there's a
19 fight, they'll go and get the gun and either bring it back
20 or agree to go fight, and bad things happen in the lot.

21 And so, universally, you know, we'll go and
22 send people to those lots to manage those and be kind of a
23 real obvious visible presence. We'll usually have our
24 lights on, so there's no question, like, there are police
25 officers here. Please don't do anything.

1 So an argument took place right at Fourth and
2 Couch, which is a lot right there, and so I sent some
3 officers to that lot.

4 And as soon as the argument there broke off,
5 half of the group began walking northbound -- I'm sorry,
6 southbound on Fourth towards Burnside.

7 There is a club called Golden Dragon, which is
8 on Third and right about Harvey Milk. It is -- it's a
9 juice bar. They don't serve alcohol, so they're open past
10 2:00. That seems to be the place where people go if
11 they're going to stay out because it's the only place open
12 that late.

13 And so that group was walking towards there.
14 I mentioned to my group, Hey, we're going to want to go up
15 to that lot because this group was going up there. If
16 they're not going to the lot at Fourth and Couch,
17 statistically speaking, they're going to the lot at Fourth
18 and Harvey Milk.

19 Q. Okay. Was Sergeant Garry Britt working with
20 you that night?

21 A. Yes.

22 Q. And what about Officer Livingston?

23 A. Yes.

24 Q. Okay. And are they part of your entertainment
25 detail?

1 A. So Livingston -- so every weekend, this
2 weekend, and probably the month and a half prior, I had had
3 Livingston, he works afternoon shift, but I'd been hiring
4 him overtime to stay late. I like to use the same people.

5 Again, when you're dealing with crowd control
6 scenarios, it's nice to have the same people because you
7 know what to expect from each other. It's a real specific
8 skill-set dealing with really angry drunk people every
9 weekend. So I like to know what to expect from my people.

10 And Britt is kind of my sub. He's -- I've
11 been trying to get him trained up and, you know, This is
12 what we do down here.

13 I had a -- in two weeks after this night, I
14 was going out of town, so he was going to be my backup. So
15 I was having him come down weekend after weekend to show
16 him what we were doing.

17 Q. Okay. When you had seen this group kind of
18 heading south towards what you suspected would be the
19 Golden Dragon and the adjacent parking lot at Harvey Milk
20 between Third and Fourth Avenue, do you recall Sergeant
21 Britt offering or telling you that he was going to go down
22 there and monitor the lot?

23 A. Yeah. So we -- we had walked back towards our
24 OTP to take a break for a minute and kind of discuss --

25 Q. OTP?

1 A. I was.

2 Q. What do you recall occurring?

3 A. So I literally just sat down, and I heard kind
4 of like a muffled transmission. I thought I heard gunshots
5 on the radio, and then I heard something about there being
6 a fight and then heard shots fired, something shots fired.

7 Q. Okay. And so just to clarify, you listened to
8 the radio through the earpiece?

9 A. Yeah, yeah.

10 Q. And you could hear what sounded like muffled
11 gunshots?

12 A. Yeah.

13 Q. Do you mean the actual sound of gunfire or
14 somebody reporting the --

15 A. So the actual -- it was weird. Like the
16 initial radio transmission, I heard something about a
17 fight. And I literally I thought I heard popping sounds in
18 my ear. But in our earpiece, you know, you hear goofy
19 things.

20 It's -- I heard what I thought was literally
21 gunshots in my earpiece, which came right after the fight
22 thing, so it kind of gave me pause.

23 I assumed that I had not heard that because
24 that would be -- I mean, just the timing of it, but that
25 part of --

1 A. Old Town Precinct. It's at Third and Couch.
2 It's kind of our -- it's a little precinct where we take
3 breaks, sit, write reports, whatever.

4 And so I was going back there. And Britt --
5 Livingston is getting towards the end of his shift. He
6 basically stays on overtime until we're done. There's no,
7 like, end time. It's just whenever.

8 So he was going to start driving back towards
9 Central Precinct just to go home and be done, and I heard
10 Britt mention he was going to go down to that lot. And I
11 intended to go with him, but I just walked to the precinct
12 to get water, take a break and head over there.

13 Q. Okay. Was it your understanding that some
14 other officers were going to respond with Sergeant Britt?

15 A. Yeah. And I didn't -- I don't recall, like,
16 listing specifically who he was going to have. We knew --
17 again, because of this fight, we anticipated there being an
18 issue in that lot. We just had been on our feet for four
19 hours, so everyone was just -- the majority of the group
20 who had been walking just went to sit down for a minute.

21 We have to take the barricades down. So
22 there's kind of a process we go through to kind of close
23 that area, and then we'll head over to that lot.

24 Q. Okay. While you were at the Old Town
25 Precinct, were you monitoring the radio?

1 Q. You assumed the sounds you were hearing was
2 not gunfire?

3 A. Well, in my brain, it would be random. Again,
4 you know, out of no where you hear the fight and hear this
5 noise.

6 So everybody that was kind of talking kind of
7 stopped to listen, and then I heard the next transmission,
8 which was "Shots fired."

9 Q. Do you know who put that out?

10 A. I believe it was Sergeant Britt.

11 Q. And what did you do in response?

12 A. So I ran out of the precinct. Again, my car
13 was parked still in the middle of the street, because the
14 road had been blocked off, and it -- I was at Third and
15 Couch, and I knew where he was. As soon as -- I knew
16 exactly where he was when he said it because I knew where
17 he was headed.

18 So I drove as fast as I could down to that lot
19 and pulled into just kind of the driveway of the lot and
20 saw that there had been a shooting.

21 Q. When you heard the "shots fired" statement put
22 out over the radio, did you have an understanding at that
23 point what that meant and what that was indicating?

24 A. So, I mean, there's two reasons we say shots
25 fired. One is that you see shots fired, and one is that

1 you shoot shots.
 2 Sergeant Britt said, "I'm okay," and so that
 3 kind of perked my attention. We kind of have a protocol
 4 for things we'll say when we're involved in a shooting.
 5 That is one of them, just, you know, making sure everyone
 6 knows that the officer is okay. But I wasn't sure if he
 7 had been in a shooting or if he had seen a shooting.

8 And I was there -- I mean, it was, like,
 9 probably less than a minute. It's not -- I mean, I was
 10 driving really fast.

11 So, yeah, I was not 100 percent sure what he
 12 was articulating, that he had seen a shooting or that he
 13 had been in a shooting.

14 And when I got there, I still wasn't 100
 15 percent sure.

16 Q. Did you come south down Third Avenue?

17 A. Yes.

18 Q. If you look at the board behind you, could you
 19 indicate for us kind of your path of approach and where you
 20 ultimately parked?

21 A. Sure. So I was coming -- again, this is
 22 southbound on Third. This is the Golden Dragon, the club I
 23 was talking about.

24 I pulled in. My car was not very -- like
 25 there's a driveway here. I want to say it was probably

1 A. I mean, I was mostly focused -- so I did not
 2 know who the gun was affiliated with, and it was in fairly
 3 close proximity to the people in the car. So I was pretty
 4 focused on them and also Sergeant Britt. You know, he was
 5 standing right there.

6 There were some other people walking on the
 7 other side of the hedgerow that were yelling at us, at the
 8 police.

9 Q. On the south side of the --

10 A. So this is the hedgerow right here. There
 11 were people on the sidewalk here, and they were yelling at
 12 us, just kind of profanities and other things that were
 13 angry.

14 And I was yelling at them to get out of the
 15 area because we were all pointing -- at this point, people
 16 were pointing guns in that direction. So --

17 Q. Officers you mean?

18 A. Officers had guns out. I didn't want, you
 19 know, innocent civilians having guns pointed at them. So I
 20 was yelling at them to leave.

21 Q. Okay. Once you saw there were people in this
 22 sedan or around the sedan, there was the individual down on
 23 the ground by the hedgerow, and you had Sergeant Britt
 24 there?

25 A. Yeah.

1 right around here-ish. I kind of nosed into the lot and
 2 went running up.

3 I could see Sergeant Britt and Officer
 4 Livingston were standing -- sorry. Am I blocking your
 5 view?

6 So they were kind of in this region here. I
 7 remember there was the hotel across the street and, like,
 8 the front doors of it, we were just a little bit to the
 9 east of that, kind of for point of reference.

10 I could see there was a car, a black sedan. I
 11 can't remember what kind of car it was. There were two
 12 people sitting in it. There was someone standing right by
 13 the hood. I recognized him. I've met him before. I know
 14 his last name is Willis, I think.

15 And then there was a gun sitting just to the
 16 side of the car, like a little black revolver was just
 17 laying on the ground. And I could see that there was a
 18 subject who was in the hedgerow just beyond that to the
 19 south. He was kind of crawling around on all fours. It
 20 was obvious he had been shot. He had a -- he was wearing a
 21 white shirt, and it was bloody. There was a significant
 22 amount of blood, so it was clear he had been shot. He was
 23 crawling around in the hedges.

24 Q. Were you aware of other people in the
 25 immediate area?

1 Q. Did you also see Officer Livingston there?

2 A. I remember seeing him. I don't remember
 3 exactly where he was standing. It's one of those things
 4 where, like, I remember seeing his face, and I know he was
 5 there. Later, he was kind of over here-ish.

6 But, I mean, my -- 100 percent, my primary
 7 focus was the gun, the people and the guy who had been shot
 8 because immediately in my mind, I'm, like, Okay. We need
 9 to get to him to provide medical, and how are we going to
 10 do that with this stuff?

11 I mean, on a situation like this, the
 12 sergeant's job is to manage the officers. We're like the
 13 tactical people. And so I knew it was going to be my
 14 responsibility to manage that. So I just had a million
 15 things going through my brain.

16 Q. So what did you decide to do?

17 A. So I knew, again -- I'm going to sit down
 18 again.

19 I knew that we needed to get to the person who
 20 had been shot to provide medical aid.

21 Q. Can I ask a question real quick?

22 A. Yeah.

23 Q. Are Portland police officers equipped with
 24 medical supplies to render aid to people?

25 A. Yeah. So I have a tourniquet. Tourniquets

1 are incredible life-saving things. Basically, if you get
2 shot in the limb anywhere, stopping bleeding is vital. So
3 we have those.

4 We also have what are called IFAK kits. I
5 don't know what it stands for, but it's something medical.
6 And they have, like, clotting gauze that you see in the
7 military; HyFin chest seals, which basically if you end up
8 with a wound in your chest, it covers it up so you don't
9 get air in your lungs. That can be fatal.

10 There's some other nasopharyngeal stuff and
11 gloves and whatever.

12 Q. And do you and other officers have specific
13 training in how to use those tools --

14 A. Yes.

15 Q. -- to try to save people?

16 A. Yeah.

17 Q. And is it one of your responsibilities to --
18 as a police officer to try to save people who are injured?

19 A. Yeah. It's been a point of emphasis over the
20 last several years. I mean, whether or not we are involved
21 in a deadly force encounter or someone is shot by another
22 person or there's traffic crashes, the expectation from our
23 training is that we'll use it as quickly as possible and as
24 safe and render aid.

25 Q. Just by virtue of how responses occur to

1 the car. We're going to deal with the gun and the person.

2 I was not -- like everyone in the car was --

3 like the words they were saying, they were saying, We
4 didn't do anything. We just want to get out of here.

5 There was nothing that really raised my concern to them.

6 Both of them, like, had their hands on the
7 dashboard. They were entirely compliant. So I just didn't
8 feel concerned at all about them.

9 So officers began having them come out the
10 driver's side. And I assigned an officer, Hey, we're going
11 to move up. When we move past the gun, that's yours. You
12 just stop. Do not move from that gun because I didn't want
13 someone to grab it or have it, you know, be used in any
14 way. I just wanted it to be completely controlled.

15 So an officer stayed with the gun. And myself
16 and a group of officers ran up to the subject. I didn't
17 have any concern about his -- it was -- it was very obvious
18 that he was very impaired. I mean, he was -- not drunk,
19 but impaired like his body movements, the way he was
20 handling himself, it was clear that he was critically
21 injured and not really physically able to do anything that
22 would be concerning to us.

23 I could see both of his hands, because they
24 were on the ground. So we ran up, and I --

25 Q. Sergeant Schmutz, let me just ask a

1 incidents, are the police generally the first ones on scene
2 in a position to render aid to an individual?

3 A. Yeah. So medical will not come in until it's
4 safe.

5 And the biggest thing is, again, with the
6 tourniquets and other things that we'll be able to stop
7 bleeding. It's very, very critical to do it as quickly as
8 possible. Arterial injuries can bleed out quickly. So the
9 expectation is we'll get there, then have medical come in.

10 But you can imagine, it can take minutes
11 before they can come in, and that can be the difference
12 between living and dying.

13 Q. So how did you react to the situation you were
14 presented with on September 30th?

15 A. So I -- my biggest concern with the people in
16 the car was them going the opposite direction of the gun,
17 obviously, and also have the gun kind of accounted for.

18 So I kind of hastily instructed officers to
19 have the subject outside of the car, just come over to
20 them. Some officers controlled him.

21 And then I instructed a group of officers,
22 Hey, everyone in this car, they're going to need to come
23 out. They're going to need to come to you. It's just --
24 it's yours.

25 We have a different group on the other side of

1 clarifying question here.

2 So when you're faced with a situation,
3 somebody, as you've identified, was clearly shot, can that
4 person still in that condition present a threat to police
5 officers --

6 A. Yes.

7 Q. -- who may becoming up to render aid to that
8 individual?

9 A. Yeah, definitely could. And, again, the
10 challenge with these situations is you're always kind of
11 looking at the probabilities and possibilities and what is
12 this person capable of because certainly the last thing I
13 want to do is have my officers go rush up and have him
14 access another weapon and have us get into a close-range
15 shooting or an officer hurt or something else happen.

16 I was very confident, based on his positioning
17 and kind of based on the amount of people we had and kind
18 of the way we were able to move up, we moved up from his
19 feet, I was -- I was very, very confident that he was more
20 in need of medical care than he was a threat at that point.

21 I was told that the gun that was -- as we're
22 moving up that the gun was the gun that he had had.

23 Q. Do you remember who told you that?

24 A. I just remember hearing it. I just remember
25 someone saying, The gun was his or, That's his gun or

1 something like that.
 2 But, again, his hands were -- both of his
 3 hands were out on the ground in front of him. He was kind
 4 of crawling. I just -- I had no concerns about moving up
 5 at that point.
 6 I felt like if we were going to be able to
 7 save him, we needed to get to him immediately.
 8 Q. Do you recall how many officers came with you
 9 to assist?
 10 A. I -- four -- three of my guys were with me, so
 11 I remember them specifically: Officer Mark Duarte, Joe
 12 Bernard and Tim Paolini. They were working with me. I
 13 work with them every day. So I remember them coming up.
 14 There were, I'm sure, others, but those are my
 15 guys. So I know them.
 16 Q. And did you and the other officers render aid
 17 to Mr. Kimmons until the paramedics were able to come in
 18 and take over?
 19 A. Yeah. So when we got to him, again, it was
 20 not entirely clear where he was bleeding from.
 21 So I -- I could see that he had some bullet
 22 wounds to his legs. It looked to me like one -- one on the
 23 right side, two on his left leg, kind of up high. I don't
 24 know exactly how many he had in each leg, but that's what I
 25 recall seeing.

1 So I asked officers to put tourniquets on both
 2 of his legs. We did two on the left leg because it seemed
 3 to be bleeding more. With leg injuries, your legs are big,
 4 so you have to -- two is better than one basically.
 5 I used my seat belt cutter and cut off his
 6 shirt. It was kind of bloody, so it wasn't -- you couldn't
 7 take it off, so I cut it off.
 8 I could see that he had one bullet wound to
 9 his upper back. I'd say it was on the upper left side,
 10 kind of about lung height, kind of mid-back, and so I
 11 applied a chest seal to that.
 12 We rolled him over, and I could see he had --
 13 I'm sorry. It was -- yeah, left side. Sorry.
 14 And then he had another bullet wound kind of
 15 lower kind of hip side area on the right side. That was --
 16 those were the only injuries that I saw.
 17 We looked at his chest. I didn't see any on
 18 his chest. Those were the two -- only two injuries that I
 19 saw on his back.
 20 Q. When paramedics ultimately came in, did you
 21 continue to assist and render aid or did the paramedics
 22 pretty much take over at that time?
 23 A. Yeah. I mean, in those situations, the
 24 paramedics want to get them out and to the hospital as soon
 25 as possible.

1 They came over. We told them what we had
 2 done. We always mark tourniquet times, so we told them
 3 that. We helped lift him onto the gurney, and he was taken
 4 away.
 5 Q. Okay. What did you do then?
 6 A. So I walked over with -- so Sergeant Wuthrich
 7 had arrived.
 8 I walked over and asked him to confirm that
 9 this was an officer-involved shooting, I guess, something
 10 to the effect of, We did this? And he said yes. And that
 11 kind of launches a large myriad of investigative
 12 responsibilities.
 13 Obviously, the two situations, if a civilian
 14 shoots a gun versus if a police officer shoots a gun,
 15 there's different things that need to be done.
 16 So I assisted him in kind of coordinating
 17 where everyone would go. Our -- we're required to
 18 sequester any involved or witness officers, so they can't
 19 talk to each other. I assisted him in doing that, making
 20 sure they were all separate.
 21 Q. And was it your understanding that in terms of
 22 involved officers, there were two, Sergeant Britt and
 23 Officer Livingston?
 24 A. That's correct.
 25 Q. And was it also your understanding that there

1 were two identified witness officers, Greg Moore and Todd
 2 Harris?
 3 A. That's correct.
 4 Q. So those individuals were sequestered, as you
 5 put it?
 6 A. Yes.
 7 Q. Were there also civilian or nonofficer
 8 witnesses identified?
 9 A. Yeah. So, I mean, the people who I mentioned
 10 in the car, the female on the driver's side, I believe her
 11 name was Ayan Aden, and I -- I have in my report that
 12 Aundree Polk was in the passenger seat. Then Michael
 13 Willis was the person who was standing in front of the car.
 14 My understanding is there were some other
 15 witnesses identified that I didn't talk to or know about,
 16 but I feel like someone said something about a white SUV
 17 that had a person in it.
 18 Q. Okay. And it was your understanding that the
 19 witnesses were also separated?
 20 A. Yeah.
 21 Q. To preserve their recollections of what
 22 happened?
 23 A. Yeah. And, like, the people in the car, it
 24 was unclear what their involvement was, if they were
 25 involved with the subject, if they had just randomly been

1 in the lot. But they were in close enough proximity that I
 2 was, like, Hey, we need to figure out what they saw or if
 3 they were involved. We really didn't know at this point.
 4 So we stayed with them until detectives
 5 determined what their involvement was.
 6 Q. Okay. What about establishing a crime scene?
 7 A. So initially, we set up our crime scene just
 8 in that lot. And then just kind of through the process, we
 9 learned that there had been a secondary -- well, a primary
 10 shooting that led to the secondary shooting because we had
 11 heard, like, right after this happened that some gunshot
 12 victims had showed up at Emanuel Hospital.
 13 And just given the amount of time that the --
 14 the drive time was exactly what it would be to drive from
 15 where we were to the hospital and some other reports of
 16 gunfire, we started looking around and saw some blood in
 17 between the cars in the bike lane on Third.
 18 Q. As we look back at our line diagram, kind of
 19 this general area?
 20 A. 21, 22, 23 and 24. My car was probably
 21 towards, like, 19-ish or so.
 22 So -- but there was a car parked right around
 23 21 and another car parked around 23, and one of my officers
 24 came up and said, Hey, there's some --
 25 Q. Do you mean patrol cars --

1 OFFICER TODD HARRIS
 2 was thereupon called as a witness on behalf of the State
 3 and, after having been duly sworn, was examined and
 4 testified as follows:
 5
 6 EXAMINATION
 7 BY MR. JACKSON:
 8 Q. Could you please state and spell your name?
 9 A. Todd Harris, T-O-D-D, H-A-R-R-I-S.
 10 Q. We have a fan going in here, and so if you
 11 could keep your voice up and also speak slowly for our
 12 court reporter.
 13 A. Okay.
 14 Q. Thanks.
 15 Where are you -- what's your current
 16 employment?
 17 A. With the Portland Police Bureau.
 18 Q. And how long have you been with the Portland
 19 Police Bureau?
 20 A. For 10 years.
 21 Q. What do you do for the Portland Police Bureau?
 22 A. I'm a patrol officer at Central Precinct in
 23 the downtown area.
 24 Q. How long have you been assigned to that area?
 25 A. The majority of that time on different

1 A. Yes.
 2 Q. -- or just regular cars?
 3 A. Patrol cars.
 4 One of my officers came up and said, Hey,
 5 there's some ID and blood in the street over here outside
 6 of our crime scene, so we made it bigger --
 7 Q. To --
 8 A. -- to encompass that area. We just had not
 9 seen it up until that point.
 10 Q. Okay. Did you stay on scene until homicide
 11 detail detectives arrived and kind of took over the
 12 investigation?
 13 A. Yeah. So the homicide detectives arrived. We
 14 give them -- the sergeants give a briefing on, This is what
 15 we know at this point, and then they take over.
 16 Q. Okay. Did you participate in that briefing?
 17 A. I did.
 18 MR. JACKSON: Do you folks have any questions
 19 for Sergeant Schmautz?
 20 I don't see any.
 21 All right. Thank you very much.
 22
 23
 24
 25

1 occasions.
 2 Q. The majority of the 10 years?
 3 A. Yes.
 4 Q. And what's your current specific assignment?
 5 Just general patrol for that area?
 6 A. General patrol. Every night when I come to
 7 work, I typically work in the downtown area, but the
 8 district I work may be different depending on which night.
 9 Q. And how are -- just briefly if you can
 10 explain, how are the districts actually set up for Central
 11 Precinct patrol?
 12 A. Well, in the downtown core area, there are
 13 five districts, and they typically have one -- at least one
 14 officer assigned to work at a district. And sometimes if
 15 we have enough officers, we may have two partner up
 16 together.
 17 Q. Were you working on September 30th, which was
 18 September 29th, into the early morning hours of September
 19 30th?
 20 A. Yes.
 21 Q. And were you working by yourself or with a
 22 partner that night?
 23 A. I was working with a partner, Officer Greg
 24 Moore.
 25 Q. And which district were you assigned to patrol

1 that night?
 2 A. The 837 district.
 3 Q. What is that?
 4 A. That encompasses from Waterfront/Naito over to
 5 Southwest Sixth Avenue and then Burnside south almost to
 6 about where the precinct is to around Main or Madison.
 7 Q. And so that would be just to the south of the
 8 Old Town area or the entertainment area?
 9 A. Yes.
 10 Q. When you're patrolling that district, will you
 11 sometimes respond to calls outside of that district?
 12 A. Yes.
 13 Q. Fairly regularly?
 14 A. Fairly regularly.
 15 Q. Okay.
 16 A. The downtown area is -- the districts are
 17 close enough to where you may be called upon to go to a
 18 neighboring one.
 19 Q. And so on the 30th, could you kind of explain
 20 what your primary actions were while you were patrolling?
 21 A. Sure. It was a weekend night. Those are
 22 typically the busiest, especially from about midnight until
 23 the bar closing time and sometimes after that. It's the
 24 largest, I would say, congregation, amount of people in the
 25 downtown area. Most are going to nightclubs. A lot of

1 A. It's a Ford Explorer Interceptor-type patrol
 2 vehicle that says "Portland Police" on the side. It had
 3 red, white and blue lights. It's a marked patrol vehicle.
 4 Q. So it's an SUV, not your traditional Crown
 5 Victoria?
 6 A. Correct, correct.
 7 Q. So as the bars begin to close down between
 8 1:30 and 2:30 in the morning, is there a marked increase in
 9 activity in the Old Town entertainment area?
 10 A. Yes, because the hours before, the majority of
 11 people are inside the nightclubs. And then when they
 12 close, there are hundreds of people that are making their
 13 way to drive home, to take an Uber home, to continue to
 14 congregate or to go somewhere else.
 15 Q. And is there a surface parking lot located at
 16 Southwest Harvey Milk between Third and Fourth Avenue
 17 that's actually within your patrol district?
 18 A. Yes.
 19 Q. And is that a location that warrants
 20 additional attention by you and other patrolling officers?
 21 A. Yes.
 22 Q. And why is that?
 23 A. It's significant because of the Golden Dragon
 24 nightclub strip club, which is located on Southwest Third
 25 Avenue. It does not serve alcohol, which allows it to stay

1 them are consuming alcohol, and it's important to have a
 2 good presence at that time of night to keep the public
 3 safe.
 4 Q. And is there an actual detail of police
 5 officers assigned to that specific area, especially on
 6 weekends?
 7 A. Yes. There is an entertainment detail.
 8 Q. And you're not part of that?
 9 A. No. I -- I have been before, but not
 10 currently.
 11 Q. Do you often, based on your assigned patrol
 12 area, assist the entertainment detail in responding to
 13 calls and dealing with situations?
 14 A. Yes.
 15 Q. When you work with a partner car, one of you
 16 is driving and one is a passenger?
 17 A. Yes.
 18 Q. Were you driving that night or was Officer
 19 Moore?
 20 A. Officer Moore was driving.
 21 Q. And were you in full uniform in a marked
 22 patrol car?
 23 A. Yes, just like I am right now.
 24 Q. And could you describe what type of a patrol
 25 car you were operating?

1 open, sometimes as late at 5:00 or 6:00 in the morning.
 2 So people that have been in clubs drinking and
 3 partying can then -- that's a place where it's typical for
 4 them to congregate to afterwards.
 5 Q. Throughout your shift on the 29th into the
 6 morning on the 30th, had you received information that
 7 there had been a number of reports of fights and other
 8 violence going on in both your patrol district and the
 9 entertainment detail district?
 10 A. Yes.
 11 Q. What did you do in response to that
 12 information?
 13 A. If it's something I'm responding to, I go
 14 there and try to investigate, figure out if there's a
 15 fight, if there's incident of violence.
 16 I keep in the back of my mind that there's
 17 always the thought that something can continue to happen as
 18 the night goes on longer until people have gone home, and
 19 then you kind of feel safer at that point.
 20 Q. At some point as you approached that 2:30 to
 21 3:00 in the morning period of time, did you hear from
 22 Sergeant Gary Britt a request for officers to accompany him
 23 to that lot at Harvey Milk between Third and Fourth Avenue?
 24 A. Yes.
 25 Q. And what did you do in response to that

1 request?
 2 A. Officer Moore and I, because it's our patrol
 3 district, started to head that way. I believe we were
 4 handling a call over on the Southeast side at around 35th
 5 and Hawthorne.
 6 There was a drunk gentleman there who
 7 basically they asked for a welfare check on him, and we
 8 ended up driving him home. He lived nearby.
 9 So that's about the time that that request
 10 came out. So because it wasn't our patrol district, we
 11 started to drive back towards the downtown area.
 12 Q. Do you remember approximately how far out in
 13 Southeast you guys were?
 14 A. Around 35th and Hawthorne was about where we
 15 dropped him off. That's where he lived.
 16 Q. Okay. So you guys are responding back to
 17 downtown from out in Southeast?
 18 A. Yes.
 19 Q. Do you recall if the request from Sergeant
 20 Britt was specifically to you or just kind of a general,
 21 Hey, if somebody is out there, come with me?
 22 A. A general request.
 23 Q. Did you indicate that you and Officer Moore
 24 would assist him?
 25 A. Yes, one of us did.

1 A. So coming back from the Southeast side, we
 2 came north on Southwest Fourth Avenue. And as we turned
 3 into the lot right here, just as -- I felt like just as we
 4 had turned in the lot and were pulling forward, I noticed
 5 that there were two patrol vehicles both with their lights
 6 on at that time.
 7 I remember reading "supervisor" on the side of
 8 the unit that was closest to Southwest Fourth Avenue.
 9 Q. Did they have their lights on?
 10 A. Yes.
 11 Q. And when I say "lights" -- or when you say
 12 "lights," do you mean headlights or overhead lights?
 13 A. Overhead lights, so red, white and blue
 14 lights.
 15 Q. Okay.
 16 A. So as Officer Moore and I turned east into the
 17 lot right here, that's when my attention was drawn to
 18 muzzle fire, gunfire, which I took to be in this area
 19 closer to the sidewalk over here.
 20 Q. Did you know at that point which officers were
 21 already on scene in the parking lot?
 22 A. Just Sergeant Britt because he made that
 23 request, but I didn't know if there were any others that
 24 were -- well, I should say there was another car there, so
 25 I knew that at least one other officer was there, but I

1 Q. And what was your understanding of what you
 2 guys were going to do?
 3 A. As it was about 2:30, 3:00, that's the time
 4 where there's a lot of people congregated specifically on
 5 Southwest Third Avenue on the east side of the street, and
 6 there are several clubs that are right there.
 7 And so the parking lot, people that come to
 8 that area are going to park there. So it's important for
 9 us to be there with our lights and sirens on to try to use
 10 our presence to deter, you know, any kind of assault that
 11 could happen, prevent people from committing a crime.
 12 Q. You said you sit there with your lights and
 13 sirens on.
 14 Do you actually have the sirens going?
 15 A. Not necessarily, usually just the lights. But
 16 sometimes sirens are helpful to disburse crowds or groups
 17 that are starting to gather together that may look like
 18 they're going to start fighting.
 19 Q. Okay. Is it pretty routine for you guys to
 20 basically post out in that fashion, lights on, just kind of
 21 announcing police presence?
 22 A. Yes.
 23 Q. When you arrived at the lot, could you take us
 24 through -- there's a map behind you here -- what your
 25 approach route was and what you saw upon arrival.

1 didn't know who.
 2 Q. If you look over here on the screen, could you
 3 kind of explain what you just kind of went through, but in
 4 terms of this actual photograph?
 5 A. Okay. So coming -- it's the opposite of that.
 6 Coming north on Fourth Avenue and turning into the lot
 7 right here, I saw muzzle flash, gunfire, in this
 8 approximate area right here.
 9 I didn't know who fired or which direction it
 10 was coming from. It all happened kind of quickly, but my
 11 belief was that there were officers, and I could also see
 12 down this direction and groups that were here, but I -- I
 13 just couldn't tell who they were.
 14 After the gunfire occurred, these groups --
 15 Q. So if we switch to this photograph here, which
 16 is a still frame looking eastbound across the parking lot,
 17 would this kind of generally have been -- actually, let me
 18 pull up a different photograph.
 19 Would this photograph have generally been your
 20 view as you were pulling into the lot with Officer Moore?
 21 A. Yes.
 22 Q. Okay. And so could you point out kind of
 23 where you were perceiving things occurring?
 24 A. So muzzle fire at this location right here,
 25 along with there were groups of people, several. And once

1 I saw and heard the muzzle fire, the groups then went south
2 kind of behind the vehicles and out of my view.

3 Q. Did you have a sense of how many people you
4 were seeing congregated down there at the east end of the
5 parking lot?

6 A. Eight to 10.

7 Q. Eight to 10 people?

8 A. Total, yeah.

9 Q. You had mentioned that you had at least some
10 awareness that there were police officers there.

11 Could you actually see them out of their
12 patrol cars or not?

13 A. I -- I -- I just believe that they were part
14 of that group that was down there. I had seen their cars.
15 I hadn't seen them in their cars.

16 Turned, faced this direction and then saw
17 muzzle fire. It wasn't lit up quite this well lit. It was
18 much darker, and the red, blues and whites were all going,
19 so it was kind of like shadows to some degree.

20 A GRAND JUROR: May I ask, so how long from
21 you pulling into the entrance until you saw the muzzle
22 flash?

23 THE WITNESS: Almost instantly.

24 A GRAND JUROR: Just like right -- okay.

25 THE WITNESS: It was, like, as we had made the

1 Q. And Officer Moore was driving?

2 A. Yes.

3 Q. So what did you do once you saw that happen?

4 A. So once the muzzle fire occurred, I believe we
5 drove forward just a few more feet, and then I got out of
6 the passenger side.

7 Q. Now we're looking back at the west-facing
8 still frame of the lot.

9 A. So our patrol vehicle is about right -- I'm
10 about right here.

11 So just as I'm getting out of the passenger
12 door, a subject came running out of this -- along this
13 hedge line right here, a taller African-American male with
14 like a green shirt.

15 I gave him commands to go down. He went down
16 very quickly. He was compliant, went onto his stomach.

17 That's kind of where my focus was. I didn't
18 know what his role was or wasn't. Officer Moore and I
19 approached him and placed him in handcuffs and stood him
20 up, and then Officer Moore walked him back to our patrol
21 vehicle.

22 Q. Okay. And what did you do then?

23 A. So as we were taking this person -- this first
24 subject into custody right here, I saw another male come
25 through the -- well, I shouldn't say. I didn't see him

1 turn to go into the lot and then just the car had come
2 straight. And being the passenger, my eyes were most
3 likely looking between parked cars to look for that --
4 anything that could have been going on there, not directly
5 ahead, but then saw the orange muzzle fire.

6 A GRAND JUROR: Uh-huh.

8 BY MR. JACKSON: (Continuing)

9 Q. Did you actually hear gunshots as well?

10 A. Yes.

11 Q. How many, if you remember, did you hear?

12 A. I'd say like six to eight.

13 Q. Okay. That's what you perceived?

14 A. Yes.

15 Q. You said there were eight to 10 people down at
16 that east end of the lot.

17 Once that muzzle flash occurred, did they kind
18 of scatter, or did they all move in one direction? How did
19 they move as you saw it?

20 A. I noticed most of them dispersing. What
21 caught my eye was people dispersing south through these
22 vehicles, in between the vehicles.

23 Q. Okay. Now, you were still in your patrol car?
24 You had just arrived?

25 A. Yes.

1 until he came south towards this hedge line.

2 As I'm looking -- as I'm about up to the
3 sidewalk at this point where we had handcuffed this
4 individual and as I'm looking east along this hedge line,
5 another subject came into view and I don't want to say ran
6 for it, but just moved toward the hedge and then went down
7 onto his stomach and kind of actually got up to his hands
8 and knees.

9 I saw that he was bleeding from his left
10 thigh, and I gave some updates on the radio of what I was
11 observing, that he was moving on his hands and knees.

12 Q. Did you hear a second set of gunfire after
13 that first muzzle flashing and sounds of gunfire that you
14 heard when you were still in the patrol car?

15 A. I didn't.

16 Q. Okay. You jump out of the car, and you're
17 focused on this person that is now laying in front of you?

18 A. Running towards us. We have to address that.
19 Yes, we get him handcuffed, stand him up.

20 And as we're dealing with that, that's when I
21 saw the second subject come forward and then eventually go
22 to the ground.

23 Q. Okay. What did you do then?

24 A. So I recognized that after this person had
25 gone to the ground, after this -- I had taken the first

1 person, stood him up and walked him away, it was then I
2 noticed that Sergeant Britt was in my peripheral view to my
3 left.

4 I could see that the second subject was -- I
5 believe he was shot by the way he was laying on the ground.

6 I walked up to Sergeant Britt, asked him if he
7 was okay. He said he was, and we had a conversation about,
8 like, if he was involved, and he said yes.

9 I asked him if I could take his place, and he
10 said yeah. So I switched out with him.

11 Q. Did he have his gun drawn --

12 A. Yes.

13 Q. -- when you saw him?

14 Did you also have your gun drawn?

15 A. I did.

16 Q. Why did you have your gun drawn?

17 A. I didn't know -- this person had been shot. I
18 didn't know what his role was.

19 I also recognized that Officer Britt had his
20 gun drawn on the subject, so it would make sense for me to
21 also do that, especially if I'm going to walk up and take
22 his place.

23 Q. Take Sergeant Britt's place?

24 A. Yes.

25 Q. Had you not drawn your gun when you first

1 second individual between the cars moving toward the hedge?

2 A. Yes.

3 Q. And then go down?

4 A. Yes.

5 Q. Did you redraw at that point?

6 A. Yes.

7 Q. Your gun?

8 A. Yes.

9 Q. Okay. And why did you do that?

10 A. It's an unknown threat. He's involved in
11 some -- in some degree.

12 It was almost like the first person --
13 although he wasn't running out at me, he was directly in
14 the direction of the -- the muzzle fire happened, the
15 groups that I saw went south towards that hedge.

16 Usually, if you're a suspect, you're trying to
17 run away from what happened, not just stand there. This
18 person was also moving away from where I was and where
19 other officers were.

20 Q. Once you saw Sergeant Britt and he had told
21 you that he was involved, what did that mean to you?

22 A. It meant to me that he was involved as a
23 shooter. He didn't say he was a witness to what happened,
24 but he had fired his duty weapon.

25 Q. He didn't say those words?

1 jumped out of the patrol car and encountered the other
2 individual?

3 A. I did also then. I had my gun drawn to -- as
4 we walked up and approached him, and then we -- we
5 handcuffed him, yeah.

6 Q. And so you put the gun away at that point?

7 A. Yes.

8 Q. Why did you decide at that time, when you get
9 out of the patrol car shortly after seeing the muzzle flash
10 just down the parking lot, to actually draw your firearm?

11 A. It's a very active situation. You don't know
12 if more shots are going to be fired, if suspects are going
13 to be running towards you. You know that somebody has fired
14 a gun.

15 That's the best defense that I have to protect
16 myself and any others there. It's my job to protect them.

17 Q. Okay. So you address the individual who went
18 down in front of you actually with your gun drawn?

19 A. Yes.

20 Q. Once he's dealt with, you reholstered?

21 A. I don't remember, but I know I helped
22 handcuffing him, so I wouldn't handcuff somebody with my
23 gun drawn. I would have holstered, handcuffed and then
24 drawn my gun.

25 Q. And it was at that point you recall seeing the

1 A. No.

2 Q. But that's what you understood "I was
3 involved" to mean?

4 A. Correct.

5 Q. Why did you then make the decision to replace
6 him in that position of cover over the individual?

7 A. When you fire your duty weapon, it's a -- it
8 can be a very high energy, traumatic thing.

9 It was important for me, having not been in
10 that situation, to take his place so he could think clearly
11 and also just to make sure that he was okay.

12 Q. Okay. Did you have a sense of where he went
13 after you replaced him?

14 A. No, because my focus was still on the second
15 subject who was down on the ground.

16 Q. Once you did replace him, you said your gun
17 was still out on the individual?

18 A. Yes.

19 Q. What did you do then?

20 A. I gave updates on the radio about the
21 movements of the subject, that he was up on his hands and
22 knees, the location of where the blood was coming from on
23 his leg.

24 At one point, I yelled -- I just yelled if
25 other officers were okay, and I broadcast on the radio that

1 myself and Officer Moore were okay because I'd only seen
2 gunfire down here, and I didn't know if just this person
3 was shot or if others had been -- if any officers had been
4 shot.

5 Q. Any other officers or any other people?

6 A. Or any other people, yes.

7 Q. Okay. If you could point out for us on this
8 photograph, where were you standing when you replaced
9 Sergeant Britt?

10 A. (Pause-referring).

11 Q. If it would help to use this diagram instead,
12 you can do that.

13 A. Thank you.

14 I remember the opening in this hedge right
15 here, and I would say it was about this --

16 Q. This here is the curb-cut entry?

17 A. Yeah.

18 Q. Okay. And then the lot would extend --
19 obviously, this diagram is not to scale.

20 This gap here, you can see this gap right
21 here.

22 A. It seemed like he was behind a darker --
23 alongside a darker-colored vehicle that was positioned a
24 few spots back, so he was near.

25 So I would say about in this area right here.

1 medical aid to that individual?

2 A. Yes. Another officer had brought a red IFAK
3 kit, which had medical supplies in it.

4 His shirt was taken off. I used my light to
5 illuminate the area on his back where I could -- a chest
6 seal was placed over the bullet hole there.

7 I also saw that there were two -- I saw two
8 bullet hole strikes on his left quad. And someone else had
9 already put a tourniquet on as others were rendering aid.
10 And Sergeant Schmautz yelled for, "I need tourniquets, I
11 need tourniquets."

12 I had one on me. I took it out, and I only
13 saw the two bullet strikes on his left quad, so I put a
14 second tourniquet on. I couldn't get it higher than the
15 first one because the first one was already as high as it
16 could go, so I just tied it down as best as I could.

17 Q. Below the first one?

18 A. Below the first one on the same leg.

19 Q. Okay. Did AMR or paramedics ultimately come
20 in and take over the aid?

21 A. Yes. I asked for them to come in initially on
22 Harvey Milk, as this was already kind of taped down with
23 several officers at this point.

24 They ended up coming in the same way we did in
25 the parking lot, and I helped lift him up onto the -- they

1 Q. Okay. Behind what's marked on this diagram as
2 V-2?

3 A. Yes.

4 Q. Okay. At some point from your position of
5 cover over the individual, did you notice a firearm on the
6 ground?

7 A. Not from that position. It wasn't until -- I
8 saw Sergeant Schmautz out of my -- to my left, my
9 peripheral, that he had moved forward a little bit. And
10 this is after I'd given him some updates about what the
11 second subject was doing.

12 Up to that point, I had not seen a gun on him.
13 He was still just kind of on his hands and knees moving
14 slowly.

15 And so when Sergeant Schmautz was to my
16 peripheral and was starting to move forward, I walked up
17 with him in kind of a triangle towards his downed subject.

18 Either right after we got up to him or as we
19 were walking up, I remember looking from my left shoulder
20 and seeing something like shiny and silver on the pavement
21 in between the cars, which I thought was a handgun. I
22 never walked up to it to look directly over it, but that's
23 what I thought was a handgun.

24 Q. And when you walked up to the person that was
25 down on the ground, did you and other officers render

1 put, like, a tarp underneath where they could roll him over
2 and lift him up on the gurney.

3 Q. Okay. And he was taken away to the hospital?

4 A. Yes.

5 Q. While you were still on scene, do you recall
6 receiving an update that a gunshot victim had shown up at
7 Legacy Emanuel Hospital?

8 A. Yes. I didn't know which hospital it was,
9 just that there was a gunshot. I didn't catch the name of
10 the hospital, but at a hospital.

11 That was after this event had occurred, and I
12 was waiting in a patrol car over here with another officer.
13 Then I heard that update.

14 Q. So were you actually shortly after -- well,
15 let me ask a different question.

16 At what point were you identified as a witness
17 officer and sequestered from the scene?

18 A. Once the subject had been taken by ambulance,
19 I had a conversation with Sergeant Schmautz just to let him
20 know that I was a witness officer.

21 Q. At that point, were you removed and placed in
22 a patrol car?

23 A. Yes.

24 Q. So it was while you were sitting in the patrol
25 car that you got the update over the radio that a person

1 suffering from a gunshot injury had arrived at an area
 2 hospital?
 3 A. Yes, from a vehicle that I recognized.
 4 Earlier that night when Officer Moore and I
 5 were -- had come down Southwest Third Avenue and gone west
 6 through the lot, I noticed a black Camaro, shiny newer
 7 Camaro.
 8 There were a couple individuals standing by
 9 the car, not doing anything, but it just caught my eye as
 10 they were in this lot.
 11 I did a query on the plate. I remember it
 12 started with a 9 and the letter T. As it was broadcast
 13 later, I recalled that it was the same.
 14 So this update about somebody had dropped an
 15 individual off at the hospital and gave that license plate,
 16 I recalled that it was the same plate that I ran earlier,
 17 the same vehicle that I had seen parked about this location
 18 right here.
 19 Q. In the northeast corner of the lot?
 20 A. Yes.
 21 Q. Okay.
 22 MR. JACKSON: Are there any questions for
 23 Officer Harris?
 24 I don't see any.
 25 All right. Thank you very much.

1 Q. What were they?
 2 A. I have been the district officer for the 830
 3 district, as well as foot patrol for two summers.
 4 Q. What is the 830 district?
 5 A. It's the area from -- it's south of Burnside
 6 down to Main, from 6th Avenue to the river on the west
 7 side.
 8 Q. Okay. Were you also assigned to the
 9 entertainment detail for a period of time?
 10 A. I -- at that time I was assigned, yes.
 11 Q. In your patrol duty in the 830, as you put it,
 12 which is the district immediately to the south of the Old
 13 Town entertainment area --
 14 A. Yes.
 15 Q. -- do you often get called upon to respond to
 16 calls within the entertainment area?
 17 A. Yes.
 18 Q. Were you working on September 29th, into the
 19 early morning hours of September 30th?
 20 A. Yes.
 21 Q. And who were you working with that night?
 22 A. I was working with Officer Todd Harris.
 23 Q. And is Officer Harris somebody that you
 24 partner with every shift?
 25 A. No. Occasionally.

1 THE WITNESS: Thank you.
 2 (Pause in proceedings: 10:05-10:17 a.m.)
 3
 4 OFFICER GREGORY MOORE
 5 was thereupon called as a witness on behalf of the State
 6 and, after having been duly sworn, was examined and
 7 testified as follows:
 8
 9 EXAMINATION
 10 BY MR. JACKSON:
 11 Q. Could you please state and spell your name?
 12 A. Gregory Moore, G-R-E-G-O-R-Y, M-O-O-R-E.
 13 Q. Where are you employed?
 14 A. Portland Police Bureau.
 15 Q. What do you do for the Portland Police Bureau?
 16 A. I'm an officer.
 17 Q. How long have you been a police officer?
 18 A. Just over seven and a half years.
 19 Q. And what have been your assignments over that
 20 seven and a half year period?
 21 A. I've been assigned to Central Precinct for
 22 almost that entire time.
 23 Q. Within Central Precinct, have you had any
 24 specific duty assignments?
 25 A. Yes.

1 Q. Do you usually work with a partner?
 2 A. More often than not, probably no.
 3 Q. You work by yourself?
 4 A. By myself most of the time, yeah.
 5 Q. Was there anything specific or unique about
 6 this night that you would have been working with a partner?
 7 A. No, no.
 8 Q. Just staffing worked out that way?
 9 A. Staffing worked out that way.
 10 Q. And what district were you assigned to that
 11 night?
 12 A. 837.
 13 Q. What is that?
 14 A. It's the night officer for the 830 district.
 15 Q. That district immediately to the south of Old
 16 Town?
 17 A. Yes.
 18 Q. And is the surface parking lot on Southwest
 19 Harvey Milk between Third and Fourth Avenue within that
 20 patrol district?
 21 A. Yes.
 22 Q. As bars are closing down at around 1:30 to
 23 2:30 in the morning, is there a marked increase in activity
 24 in both your patrol district and the one immediately to
 25 your north?

1 A. Yes.
 2 Q. How do you coordinate a response to that
 3 increased activity with other officers?
 4 A. Typically, officers, including myself, go to
 5 those areas and just do increased patrol, address issues
 6 that are going on, there's kind of just a lot of us in that
 7 area where those people are congregated.
 8 Q. And during this shift, were you aware of
 9 reports of several fights and other violent acts occurring
 10 in both your patrol area and the entertainment area?
 11 A. Yes.
 12 Q. And were you also aware of reports of people
 13 armed with weapons, including firearms?
 14 A. Yes.
 15 Q. What did you do, if anything, in response to
 16 that information?
 17 A. We had -- I know I responded to Ankeny Alley,
 18 which is part of Ankeny between Second and Third, on
 19 several fights and we'd kind of done extra patrols in that
 20 area, as well as the lot at Harvey Milk, Third and Fourth,
 21 that flat lot.
 22 Q. At some point between that 2:30 to 3:00
 23 a.m. period of time, do you recall Sergeant Britt
 24 requesting additional officers to accompany him to that lot
 25 on Harvey Milk between Third and Fourth Avenue?

1 This area, with that parking lot there,
 2 there's several bars, including Silverado, Golden Dragon,
 3 Club Rouge, food carts, a couple other bars and then a
 4 hotel. People tend to congregate there.
 5 My understanding is we were going to go there
 6 to essentially try and reduce crime. And if people were
 7 going to commit acts of, you know, violence or crime, we'd
 8 hopefully deter it by our presence.
 9 Q. Okay. And how is it that you guys announce
 10 your presence when you're going to do that kind of
 11 proactive patrolling?
 12 A. Typically, we'll do -- we'll park our car --
 13 specifically in this lot, we'll park our patrol car in the
 14 lot with the lights on. It's a signal that we're there so
 15 everyone knows that we're there.
 16 Q. When you and Officer Harris responded, were
 17 you driving?
 18 A. I was driving.
 19 Q. If you look at the map behind you, can you
 20 indicate for us how you approached the lot and ultimately
 21 entered it?
 22 A. Can I stand and show?
 23 Q. Yes, please.
 24 A. So Officer Harris and I were driving north on
 25 Fourth, and we came in the lot from the west side going

1 A. Yes.
 2 Q. And was that request a general request out, or
 3 was it directed specifically to you and Officer Harris?
 4 A. It was just a general request, if I remember.
 5 Q. How did you respond to that request?
 6 A. We responded to the area.
 7 Q. Where were you responding from?
 8 A. We -- Officer Harris and I had taken a call
 9 about a drunk individual on the east side of the river at
 10 like 35th and Hawthorne or 25th and Hawthorne, somewhere
 11 out of our district. We'd given a drunk gentleman a ride
 12 home because he was having trouble figuring things out.
 13 We had just given him a ride home, so we were
 14 responding from the east side of the river.
 15 Q. Okay. And was it your understanding that
 16 other officers were also going to be going to the lot with
 17 Sergeant Britt?
 18 A. Yes.
 19 Q. Did you know who those officers were?
 20 A. No, I did not.
 21 Q. What was your understanding of what you were
 22 going to do when you got to the lot?
 23 A. My understanding is we were going to do
 24 high-visibility patrol, address issues, whether it be
 25 fights or violence or other drunk issues.

1 east.
 2 Q. And if you look up on the screen here, this
 3 still frame, could you indicate here how you guys came in?
 4 A. Yeah. So from the right side of the screen,
 5 kind of right top side, yeah, right in there, and then we
 6 came this way.
 7 Q. Okay. And do you recall whether there were
 8 other patrol cars already there when you guys pulled in?
 9 A. Yes. There was a supervisor car parked there,
 10 as well as another patrol car.
 11 Q. And did they have their lights on?
 12 A. I believe so.
 13 Q. When you pulled in, did you immediately just
 14 drive through the lot or what -- can you describe what you
 15 remember happening?
 16 A. Yeah. So we pulled in pretty slowly, the idea
 17 being we were going to just kind of creep into the lot and
 18 eventually get out and walk around. So we weren't driving
 19 very quickly or anything.
 20 As we entered the lot at the far east end of
 21 the lot towards Third, I saw a black male wearing a dark
 22 jacket raise his hand kind of pointing north as in a
 23 shooting fashion, shooting stance with his hand kind of out
 24 away from his body, and then heard and saw flashes, which
 25 to me were gunfire.

1 Q. Did you have an awareness of where -- well,
 2 first, whether other officers were already on scene and, if
 3 so, where they were?
 4 A. Yes. So Sergeant Britt and Officer Livingston
 5 were already on scene. And when I first pulled in the lot,
 6 I saw them, and they were probably -- they were east of me
 7 midway through the parking lot probably.
 8 Q. Okay. Out of their cars?
 9 A. Out of their cars, yes.
 10 Q. This individual that you saw raise his arm in
 11 a shooting fashion, could you actually see a gun in his
 12 hand?
 13 A. I couldn't tell what was in his hand, no.
 14 Q. Could you see what he was pointing at?
 15 A. I -- I don't recall what he was pointing at.
 16 I know it was pointing north, but I don't remember if he
 17 was pointing it at someone or if I even saw what that was.
 18 Q. Okay. Did you have any awareness of other
 19 people in the lot when you pulled in and saw this
 20 happening?
 21 A. I know there's typically a large group of
 22 people both outside of the Golden Dragon and in that lot.
 23 I don't specifically recall where people were
 24 or how many there were.
 25 Q. Okay. Was your attention pretty focused in on

1 Livingston, I don't know which one was where, but they were
 2 kind of in this area probably, kind of walking that way.
 3 And then the shooting suspect was probably
 4 around in here when I saw that.
 5 Q. Okay. And if you could remain here and just
 6 kind of point out what you saw happening then.
 7 A. So as this subject shot, he then ran this way.
 8 Q. And "this way" is to the south?
 9 A. Yes, towards the south, like towards Harvey
 10 Milk. And Livingston and Britt moved with their guns drawn
 11 to address him.
 12 There's -- I'm not sure where the cutout is,
 13 but it's maybe right here. There's a little driveway.
 14 Q. Is there kind of a cutout entryway right here
 15 at the end of this hedgerow?
 16 A. Yes.
 17 Q. After this white truck, kind of between these
 18 cars here?
 19 A. Yes.
 20 Q. Okay. And so what did you do when you saw the
 21 individual moving to the south?
 22 A. So I turned the car to the south to that
 23 little cutout, towards that cutout, thinking that I was
 24 going to move to containment to be able to address the
 25 subject who just shot somebody or shot at somebody.

1 this person you saw --
 2 A. Yes.
 3 Q. -- firing the gun?
 4 A. Yeah. Once the gun went off, that was my
 5 primary focus.
 6 Q. And so was your patrol car still oriented
 7 basically straight east at that point?
 8 A. Yes.
 9 Q. So as you're sitting in the driver's seat,
 10 you're looking straight out your windshield seeing this
 11 happen?
 12 A. Yes.
 13 Q. Was the lighting in the lot such that you felt
 14 like you were able to actually see accurately what was
 15 happening?
 16 A. Yes, I could see it, yes.
 17 Q. What happened -- before I ask you, as we look
 18 up on the screen here, this photograph, is this roughly
 19 what your perspective would have been as you were looking
 20 out your windshield?
 21 A. Yes, roughly.
 22 Q. Okay. Could you indicate here where you saw
 23 the -- Sergeant Britt, Officer Livingston and also the
 24 person with the gun shooting?
 25 A. Yeah. So Sergeant Britt and Officer

1 This is a matter of, I don't know how much
 2 time, seconds probably. It was really rapid.
 3 We -- as I turned the car that way, I see a
 4 subject. I couldn't tell you where in this line, but he
 5 goes -- he starts going between two vehicles.
 6 And as he goes back, I'm kind of losing sight
 7 of his torso. I can still see his head for part of this as
 8 we're turning and he's running.
 9 And I see him turn back, like, his head turn
 10 back towards where Livingston and Britt are, and that's
 11 when I heard the -- heard and saw the flash of Livingston
 12 and Britt's shooting.
 13 Q. Okay. And when he looked back, could you see
 14 where his hands were or any other parts of his body?
 15 A. No. At that point, I could not because he was
 16 going in between the cars.
 17 Q. So if we go back to this photograph here,
 18 looking straight east through the parking lot, as you're
 19 turning --
 20 A. So as I'm turning here, I can see him going --
 21 again, I don't know which car he ran between. I could see
 22 him go, and then I could see his head turn back as he's
 23 going between.
 24 Q. Okay. And did it turn back, like, kind of
 25 partially as if he's looking back, or did it turn all the

1 way around and look at --
 2 A. To me, it looked like he was all the way
 3 around looking at the officers.
 4 Q. Could you see where the officers were in
 5 relation to him?
 6 A. Again, I can't tell you depthwise, like, how
 7 many cars back they were because it was just so dynamic.
 8 But they were -- like I said, they were moving
 9 towards the back of these cars to address him.
 10 Q. Is this individual you saw doing that the same
 11 one that you had just seen firing the gun?
 12 A. Yes.
 13 Q. Okay. Were there other people kind of running
 14 around the area, or were you able to see just that one guy
 15 who was shooting?
 16 A. I was -- I was focused on him and then Britt
 17 and Livingston. I mean, I was aware there were other
 18 people there, but specifically I couldn't tell you what
 19 they were doing.
 20 Q. Okay. As you turned in this direction here in
 21 the driver's seat, you would have been on the side of the
 22 car closest to what was happening?
 23 A. Yes.
 24 Q. So were you looking straight out your door
 25 window to see this?

1 A. He was to my right. As we exited the vehicle,
 2 he stayed to my right, and we moved up.
 3 Q. When you say "moved up," which direction did
 4 you move?
 5 A. So we moved south towards Harvey Milk.
 6 There's the Harvey Milk sidewalk and then the hedge line.
 7 We moved up toward that cutout towards that
 8 area, towards Harvey Milk.
 9 Q. If you look up on the board here, if this is
 10 the kind of cutout entryway at the end of this arborvitae
 11 hedge, were you actually standing on the sidewalk on the
 12 south side of the lot or were you still in the lot?
 13 A. We were still in the lot because I could see
 14 down the hedge line.
 15 Q. What do you remember seeing?
 16 A. Well, as we -- as Officer Harris and I moved
 17 up, moved south towards Harvey Milk, a subject came running
 18 and actually fell right in front of us. So we began giving
 19 him commands. We didn't know how he was involved, if he
 20 was involved, what was going on.
 21 We gave him commands. He was compliant. I
 22 placed him in handcuffs. And as I was picking him up, I
 23 looked left, which would be east down the hedge line, so
 24 inside the hedge line, still in the lot, and I could see
 25 the torso of the subject -- I had seen the suspect from the

1 A. Yes. I would have probably looked out the
 2 door window.
 3 Q. Okay. And Officer Harris, in the passenger
 4 seat, would have been on the other side?
 5 A. Yes.
 6 Q. So if he were looking, he would have been
 7 looking across you and out your window?
 8 A. Yes.
 9 Q. Okay. Did you get out of the car?
 10 A. Yes.
 11 Q. You can have a seat again. Thank you.
 12 When you got out of the car, did you draw your
 13 firearm?
 14 A. Yes.
 15 Q. Why did you do that?
 16 A. Well, I just witnessed a shooting, a subject
 17 is attempting to use deadly force, and I was afraid I was
 18 going to have to confront him, and it would be the threat
 19 of deadly force against me being used.
 20 And so I had my gun out in case I had to use
 21 deadly force to stop him.
 22 Q. Okay. Were you aware of where Officer Harris
 23 was?
 24 A. Yes.
 25 Q. Where was he?

1 shooting, I had seen the same guy.
 2 He was kind of on his hands and knees on the
 3 ground.
 4 Q. Okay. Near the hedgerow?
 5 A. Yes.
 6 Q. Okay. So you were looking down kind of the
 7 nose hoods of the parked cars to see that?
 8 A. Yes.
 9 Q. Okay. And did you identify the individual
 10 that fell down at your feet?
 11 A. Yes.
 12 Q. Who was it?
 13 A. I believe it was Chris Williams.
 14 Q. Okay. What did you do with Mr. Williams?
 15 A. So I picked him up and immediately took him
 16 back to my patrol car. I searched him real quick and
 17 placed him inside my patrol car.
 18 Q. Did you stay with him until other officers
 19 came to relieve you?
 20 A. Yes.
 21 Q. At what point were you identified as a witness
 22 officer?
 23 A. I think it was immediately after -- after
 24 that, once -- I believe it was Officer Robert came and
 25 stayed with Chris Williams.

1 That's when I was immediately -- almost
 2 immediately after that.
 3 Q. And were you then sequestered --
 4 A. Yes.
 5 Q. -- from any further involvement?
 6 A. Yes.
 7 Q. Okay. Did you at any point come up into this
 8 area to assist in rendering aid or any other actions with
 9 respect to the other person you had seen shooting earlier?
 10 A. No. I had no involvement in that, no.
 11 Q. Okay.
 12 MR. JACKSON: Do you folks have any questions
 13 for Officer Moore?
 14 A GRAND JUROR: So you pull in, see the flash.
 15 When the man came around the corner, you said
 16 he turned, you could see him, like, turn back.
 17 Is that when the officers were firing, or did
 18 he -- did they fire and then he turned?
 19 THE WITNESS: He turned back, and it was
 20 immediately after that that they fired.
 21 A GRAND JUROR: Oh, okay.
 22 A GRAND JUROR: So he did a stop and turn to
 23 confront the officers?
 24 THE WITNESS: He was still moving. Like I
 25 said, I couldn't see most of his torso because he was going

1 Q. Okay.
 2 A GRAND JUROR: Could you hear Officers Britt
 3 and Livingston saying anything?
 4 THE WITNESS: When he ran between the cars?
 5 A GRAND JUROR: Uh-huh.
 6 THE WITNESS: No. So I was still in my
 7 vehicle, and we're turning at that point.
 8 It's -- I mean, we're at the back end of this
 9 white car. They're down there. It's quite a distance.
 10 I don't recall hearing anything.
 11 A GRAND JUROR: Right. And it's chaotic?
 12 THE WITNESS: Yeah, it was so fast.
 13
 14 BY MR. JACKSON: (Continuing)
 15 Q. Were your windows up?
 16 A. You know, I don't remember. Typically, I have
 17 them down, but I couldn't tell you for sure.
 18 Q. Okay.
 19 MR. JACKSON: Any other questions?
 20 I don't see any.
 21 Thank you very much.
 22 THE WITNESS: Thank you.
 23
 24
 25

1 between cars at that point. I could see his head turn
 2 back. I couldn't tell you what he was doing with his
 3 hands.
 4 A GRAND JUROR: So his head, not fully
 5 presenting himself.
 6 THE WITNESS: I could only see his head. Like
 7 I said, I don't know what his torso was doing. I could see
 8 his head turned back towards Livingston and Britt.
 9
 10 BY MR. JACKSON: (Continuing)
 11 Q. Prior to that, had he been moving, as you
 12 perceived it, in a -- still in a southerly direction or in
 13 a westerly direction through the parking lot?
 14 A. At that point, he was still south.
 15 Q. Okay. Moving between cars?
 16 A. Yes.
 17 Q. Did you, from your perspective, at any point
 18 see him turn and run to the west toward where you were?
 19 A. No, no. I didn't see him run to the west, no.
 20 Q. Okay. So as far as you were seeing, he fired
 21 the gun and was running to the south?
 22 A. Yes.
 23 Q. And then as he's disappearing between parked
 24 cars, you saw his head turn back?
 25 A. Yes.

1 OFFICER JOSH HOWERY
 2 was thereupon called as a witness on behalf of the State
 3 and, after having been duly sworn, was examined and
 4 testified as follows:
 5
 6 EXAMINATION
 7 BY MR. JACKSON:
 8 Q. Could you please state and spell your name?
 9 A. My name is Josh Howery, H-O-W-E-R-Y.
 10 Q. And what's your occupation?
 11 A. I'm a police officer with the Portland Police
 12 Bureau.
 13 Q. How long have you been a police officer?
 14 A. Almost 18 years.
 15 Q. Could you go through your educational
 16 background?
 17 A. Yes. I have a bachelor's degree from George
 18 Fox University. That's about where the formal education
 19 ended right there.
 20 Q. Okay. And did you become a police officer
 21 shortly after graduating?
 22 A. About three years afterwards.
 23 Q. And what have been your assignments over your
 24 career with the Portland Police Bureau?
 25 A. I worked patrol for about six years, and then

1 I moved to a specialty unit for a prostitution coordination
2 team on 82nd Avenue.

3 From there, I actually moved to the detective
4 division for a short time, investigating human trafficking
5 investigations.

6 I moved back to the street for a couple of
7 years. And then in 2012, I went to the training division
8 full time as a lead instructor for control tactics.

9 Q. Okay. And how long were you with the training
10 division?

11 A. I was at the training division for six years.
12 And then this year, I was -- I recently, about three weeks
13 ago, was transferred from the training division to the
14 full-time Special Emergency Reaction Team.

15 Q. And what is the Special Emergency Reaction
16 Team?

17 A. That's our SWAT team here in Portland.

18 Q. Okay. And so you're full-time assigned to
19 that detail?

20 A. Yes, that's correct.

21 Q. While you were working in the training
22 division, could you describe what your responsibilities
23 were?

24 A. Yes. So I was initially hired there to teach
25 our defensive tactics and control tactics program. So that

1 through certain videos to help them in their
2 decision-making process. We would watch videos of other
3 incidents around the country, that sort of thing, that had
4 been captured, you know, some good outcomes, some bad
5 outcomes.

6 And then we'd talk through those and say, What
7 went good? What went bad? What kind of tactics could have
8 been used to make this a better outcome or, in some cases,
9 could anything have been done to make that -- in some
10 cases, that was not possible, and we'd discuss that.

11 From there, we'd go into the mat room, and
12 we'd learn techniques, concepts, principles, and we'd
13 practice those things, right?

14 Part of what we were doing was actual physical
15 skills that a new person just needs repetition at. And so
16 they would learn how to arrest somebody, how to position
17 themselves to create a safer environment for themselves,
18 how to put handcuffs on somebody, for instance, and the
19 combatives, how to take somebody down, how to defend
20 yourself, how to defend somebody else, that sort of thing.

21 Q. And does that program and training also
22 include learning how to utilize tools and how to determine
23 which tools are appropriate for which types of
24 circumstances?

25 A. Yes. A lot of our instruction there in the

1 would be teaching our in-service, that would be all of the
2 members of the bureau, a yearly refresher for our arrest
3 techniques, our searching techniques, that sort of thing,
4 our hand-to-hand combatives that were included in that as
5 well.

6 I was also required to teach the advanced
7 academy. So all of our new recruits would go to the basic
8 academy in Salem. They would come back here to Portland,
9 go out on the street for a few months and then come back to
10 an advanced academy. We'd put them through another 10 to
11 14 weeks of additional training. They would get between 50
12 and 120 hours extra of control tactics and defensive
13 tactics.

14 Q. And you were the primary instructor for that
15 program?

16 A. That's correct.

17 In addition to that, for the advanced academy,
18 I also would teach a use of force decision-making class.

19 Q. Okay. In terms of the actual training that
20 officers receive, how is the information given to them?
21 How are they evaluated and ultimately allowed to go out on
22 to the street as fully sworn police officers?

23 A. As far as the control tactics and the
24 use-of-force training, we'd start in the classroom and give
25 them basic classroom information. And then we would go

1 mat room would focus on how can you use these tools on your
2 belt and are they a viable option at that time?

3 You know, officers carry a wide variety of
4 less lethal tools and lethal tools on their belt. Based on
5 distance and time and circumstance, some may be
6 appropriate, some may not be appropriate based on that
7 circumstance.

8 And so we would -- we would train them
9 initially just to be able to even use those tools, can they
10 even get it out of the pouch, right, but then also work
11 toward more complicated scenarios where they had to decide,
12 what is the appropriate tool to resolve a confrontation?

13 Q. And so do you actually engage in
14 scenario-based training as part of the program?

15 A. Yes. The advanced academy is broken into
16 specific disciplines; however, all those disciplines
17 eventually come together and -- because police work is a
18 combination of all of those disciplines.

19 They have time on the range where they shoot
20 with firearms instructors, sometimes satellite firearms
21 instructors. They have time in the mat room where they
22 practice the hand-to-hand stuff and the arrest techniques.

23 And then they have time in our scenario
24 village, if you will. We have a mock street, a couple of
25 streets with houses and apartments and things, and they can

1 go in there. And the patrol procedure is discipline, and
 2 they can put those things together.
 3 So they go and do a scenario, and they don't
 4 know what the scenario is initially, but it could be -- it
 5 could range from they do a normal traffic stop and nothing
 6 happens up to a deadly force incident where they may have
 7 to use deadly force, and they will have to put all the
 8 skills they've learned in the other disciplines together
 9 and successfully solve this scenario, if you will.
 10 Q. So as an instructor, how are officers
 11 evaluated as they go through that process?
 12 A. There are written tests. So the officers have
 13 to actually learn certain academic information and be able
 14 to recite that back.
 15 They are evaluated on their individual skill.
 16 Are they able to use certain techniques to control a
 17 person?
 18 And then overall in those scenarios, we're
 19 watching -- you know, each scenario has a learning
 20 objective, and the officers are going into that objective,
 21 and they're -- they're rated, basically, how they do
 22 compared to what we'd consider a normal officer, an average
 23 officer, to be able to perform, how that person would solve
 24 the scenario, not that everybody would solve the scenario
 25 exactly the same, but that it's reasonable.

1 you think now, after everything is done and the stress
 2 level has come down, that you thought you could have done
 3 better or you would do differently?
 4 And then, you know, we have a lot of
 5 instructors usually around those. We will also, as
 6 instructors, give input, Hey, you know, we've been around
 7 for a little while. We've seen other people do this, and
 8 offer suggestions. Maybe X, Y, Z would have worked in this
 9 situation well. Maybe this skill that you learned
 10 yesterday in control tactics would have applied in this
 11 scenario today and just try to guide them through different
 12 options.
 13 Q. So as part of the training, are officers also
 14 taught what the actual Portland Police Bureau's specific
 15 policies are with regard to how to conduct themselves,
 16 certainly in terms of use-of-force decision making?
 17 A. Yes.
 18 Q. And how is that taught to them?
 19 A. Those are taught through a series of different
 20 classes.
 21 Right from the very beginning, I know that the
 22 FTEP instructors also --
 23 Q. What is FTEP?
 24 A. I'm sorry. Our field training evaluation
 25 program.

1 And so we look for that, hey, did the officer
 2 come into the scenario, did they resolve that
 3 confrontation, and was it with what they did, whether it
 4 was a force situation, whether it was a deescalation-type
 5 event or whatever it was, were they able to do it
 6 reasonably?
 7 Q. Is an officer's specific decision making part
 8 of that evaluative process?
 9 A. Yes.
 10 Q. In terms of as they're encountering a
 11 situation and making decisions on what to do, how to
 12 position themselves, how to interact with the person or
 13 threat or whatever is presented, is that being evaluated as
 14 well?
 15 A. Yes.
 16 Q. And then how are officers critiqued?
 17 A. At the end of every scenario, at the end of
 18 every iteration, if you will, we gather the officers back,
 19 and we debrief the situation. We say, Hey, what
 20 information did you have going into this? What were you
 21 able to process in the amount of time that you had to
 22 process that?
 23 And then ask them, What decisions were you
 24 making? What did you do?
 25 And then we ask them, Is there anything else

1 When an officer is first hired, even before
 2 they go to the basic academy, they get a series of classes,
 3 several weeks of training.
 4 One of those is through the field training
 5 evaluation program on policy stuff. They give them the
 6 policy, and they read the policy to them. They start to
 7 explain that to them to set a base of understanding.
 8 So the officers are required to read all of
 9 those policies. They go to the basic academy, they get
 10 their initial training through the State, and then they
 11 come back to the advanced academy.
 12 We focus mostly on the force directive, 1010,
 13 when they come back to control tactics because much of what
 14 we do in control tactics has to do with applying force.
 15 We also talk about satisfactory performance,
 16 and then there's other classes in different disciplines,
 17 and they all try to blend together to make sure that the
 18 officers, as they come out, have a comprehensive
 19 understanding of what the policy is requiring of them.
 20 Q. Okay. Is there a concept within the police
 21 bureau's training program concerning deescalation?
 22 A. Yes.
 23 Q. What is that and how is it incorporated into
 24 officer training?
 25 A. The expectation through the policy is that

1 whenever possible, an officer should try to deescalate a
2 situation when they have the time to do that.

3 Now, when we talk about deescalation, we're
4 talking about an attempt to solve a confrontation using
5 less force or without force.

6 But, again, that happens when we can, right?
7 Not every situation is it possible to solve the situation
8 without force.

9 We tell officers, Look, if you have more time
10 and you have more resources available to you, it probably
11 is more likely that you can use some other type of tactic
12 to try to avoid using force or using less force.

13 As that time shrinks down and the threat level
14 becomes higher, that goes away, and officers are going to
15 be required to act, to intervene in a potentially very
16 violent, very dangerous situation.

17 In that case, there's just not the time to do
18 so.

19 Q. When you say "to do so," do you mean to
20 utilize some of these deescalation tactics or techniques?

21 A. That's correct.

22 Q. And kind of along those same lines, is there
23 also a concept within the police bureau's training and
24 policies establishing a duty to act?

25 A. Yes. Part of that satisfactory performance

1 effectively do so.

2 Say, for instance, they were up against a
3 situation that just was not winnable, we would -- we would
4 probably steer them toward a direction of getting
5 additional resources there so they could intervene
6 successfully.

7 But if you were there and this is happening
8 and we have the ability to successfully intervene in a
9 dangerous situation, we should do that.

10 Q. Okay. And the training would actually inform
11 officers to do that?

12 A. Yes.

13 Q. To act and to intervene?

14 A. Yes.

15 Q. I'd like to move now to the use of deadly
16 force policy for the police bureau.

17 What is the -- what is deadly force?

18 A. Deadly force is any force that is likely to
19 cause serious physical injury or death.

20 Q. So deadly force could encompass a use of force
21 that does not cause death?

22 A. Yes.

23 Q. What are officers trained with regard to the
24 use of deadly force?

25 A. It starts from the policy. It says an officer

1 talks about officers being required to intervene when the
2 police are called. They're required to respond to the
3 call. They're required to help other people when on duty.

4 Q. Is there a policy about the sanctity of life
5 and protection of people?

6 A. Yes. That becomes -- that starts off the
7 entire use-of-force directive. And so it talks about that
8 all life is valuable and that we're -- you know, part of
9 what we're there to do is to protect life.

10 Q. Okay. And so you talked about the duty to act
11 arising in circumstances where the police are called?

12 A. Yes.

13 Q. 911, police are expected and have a duty to
14 respond to that call and render service?

15 A. Correct.

16 Q. How does the duty to act apply in a situation
17 where the police are not necessarily called to respond, but
18 are actually observing an event unfolding in front of them?

19 A. The expectation would be that the -- if they
20 can, they should intervene to stop whatever bad event is
21 happening.

22 So if people are being hurt and they have the
23 ability to intervene and stop people from being hurt or
24 keep other people from being hurt, that would be the
25 expectation. Now, if they can do so, if they can

1 may be -- may use deadly force when they reasonably believe
2 a person poses an immediate threat of death or serious
3 physical injury to the officer or others.

4 Q. You say "poses an immediate threat"?

5 A. Yes.

6 Q. So do the officers have to actually be
7 experiencing deadly force before they're authorized under
8 the policy to respond with deadly force?

9 A. No. That would be an immediate action, right?
10 That would mean the bad thing is already happening to them,
11 and they're responding. They're reacting to that.

12 The policy requires that they have to
13 reasonably believe that the person is an immediate threat
14 of that, that the next thing that is happening is the bad
15 thing, but not that the bad thing is actually happening to
16 them at that point.

17 Q. And does that include threats to themselves
18 and other people?

19 A. Yes.

20 Q. Is that standard you articulated in policy
21 actually more restrictive than the criminal law has
22 recognized as justified use of deadly force?

23 A. Yes, it is.

24 Q. And why does the bureau set a standard that is
25 actually more restrictive in terms of the justifiable or

1 allowable permissible use of deadly force than the law
 2 allows?
 3 A. The bureau has actually tried to, one -- I
 4 think there's a couple different reasons, but, one, they
 5 create a buffer zone. If they require our officers to use
 6 a higher standard in using deadly force, then when they
 7 follow that policy and they still get into the situation
 8 where they use deadly force, legally, there's a buffer
 9 zone. They're not on the line of being whether it's legal
 10 for them to shoot a person or not or use deadly force
 11 against a person or not.
 12 But their standard is so much higher that
 13 we're not even close to that line of, Well, we don't know
 14 if it's legal or not. We know that it's legal.
 15 And then we get to say, Was it within policy
 16 or not? Because our policy is already a higher standard.
 17 Q. So is it, therefore, conceivable a person
 18 could be using deadly force outside of the bureau's policy,
 19 but still be justified under the criminal law?
 20 A. Yes, absolutely.
 21 Q. Okay. I'd like to now ask you about general
 22 threat assessment in terms of firearms.
 23 A. Okay.
 24 Q. And the threat that a person armed with a gun
 25 presents to an officer in terms of what they would be

1 A. No. The officer still has to make an
 2 individual assessment, and they have to articulate why they
 3 believed that person was an immediate threat of death or
 4 serious physical injury to them or somebody else.
 5 Q. How, if at all, does the training, in terms of
 6 response, change if the subject with the firearm is
 7 observed using it against other people?
 8 A. That would get into the mind-set of an officer
 9 and increase the threat level. It also increases the
 10 urgency of that event.
 11 If somebody is actively using a firearm
 12 against somebody, the officers have this -- the urgency to
 13 go and intervene goes way up because without intervention
 14 there, people continue to get hurt, and people will -- you
 15 know, they -- they could die. They could be seriously
 16 injured.
 17 Officers are going to be trained that in that
 18 situation, if somebody is actively using deadly force
 19 against other people and can continue to do that, that they
 20 need to stop that threat.
 21 Running away would not be a good option for
 22 that.
 23 Q. You mean the police running away?
 24 A. Yes. The police running away would not be a
 25 good option.

1 trained to be identifying.
 2 A. Okay.
 3 Q. So how are police officers trained to deal
 4 with a situation involving a subject that is armed with a
 5 gun?
 6 A. A lot of different ways is the general answer,
 7 and the reason why is because just because a person has a
 8 gun, they -- they may pose a different level of threat
 9 based on what type of gun they have, what they're doing
 10 with that gun, what is the distance from that person? How
 11 is that person moving or not moving?
 12 Does that make sense to everybody? You know,
 13 every situation is a little bit different. So what we try
 14 to do is teach officers concepts and principles, this is
 15 what guns can do. This is what -- this is generally how we
 16 should try to avoid being shot or getting other people shot
 17 or that sort of thing, and these are general ideas of how
 18 we can stop somebody who does have a gun and may be using
 19 deadly force.
 20 Q. Okay. And so given what you've just
 21 described, is there some kind of blanket policy that any
 22 time an officer is confronted or presented with an armed
 23 individual, they are authorized to use deadly force against
 24 that person to just shoot them regardless of what that
 25 person is doing?

1 Merely hiding and waiting until everybody is
 2 done shooting would not be a good option.
 3 The idea is we're trying to preserve life.
 4 Closing that distance and actually neutralizing that threat
 5 or keeping that threat away from other people would be what
 6 we would train folks to try to do in that situation.
 7 Q. How does the threat presented by a firearm
 8 differ from threats presented by other types of weapons?
 9 A. Firearms are typically unique because of the
 10 range involved. If, say, a person has a knife or a stick,
 11 they can only hurt other people if they're within arm's
 12 reach of other people, including officers, too.
 13 With firearms, if you take a typical handgun
 14 round, accurately, people can fire those maybe up to 50
 15 yards. And so they view that as an accurate deadly threat
 16 up to 50 yards.
 17 If they just start shooting, and bullets start
 18 flying up in the air and they come down, you know,
 19 somewhere else, that could be up to half a mile or more
 20 where those bullets could represent a deadly threat.
 21 But, again, the range increases so much
 22 substantially just because of the firearm itself.
 23 A knife, again, could be a deadly threat
 24 typically, has to be within arm's reach.
 25 A firearm could be across the street. It

1 could be across the parking lot. It could be -- it can be
2 used in so many other types of ways and still be a deadly
3 threat.

4 Q. If an officer is presented with a situation
5 where they're actually seeing an individual armed with a
6 firearm shooting or firing a firearm either at them or at
7 other people, what tools would they be trained to utilize,
8 or at least prepare to utilize, to respond to that type of
9 a condition?

10 A. We would typically train an officer to respond
11 to deadly force with -- or a deadly threat like that with
12 deadly force of their own.

13 In some cases, we would suggest officers find
14 some -- some type of cover to stand behind to perhaps stop
15 bullets if fire is directed at them.

16 In the case of fire being directed toward
17 somebody else, hiding behind a brick wall will not help the
18 officers very much stop that threat. But actually using
19 deadly force against that threat to stop them would be the
20 recommended way to do that.

21 And the reason why, again, is it gives the
22 officers some amount of distance so they don't have to
23 completely or just totally run up to somebody and try to
24 disarm the person or use a less lethal type method, which
25 may not work.

1 Q. Okay. But they're not penetrating; in other
2 words, those rounds would not be expected to cause serious
3 physical injury or death in the manner they're trained to
4 be used?

5 A. That's correct. In fact, they typically don't
6 break bones or anything like that. They hit, and they
7 bounce off.

8 Q. So if you had a situation where a person is
9 armed with a gun and firing it at other people, would it be
10 appropriate or consistent with training for the officer to
11 try to engage that threat using the Taser or the 40
12 millimeter launcher or pepper spray or baton or any of
13 those other tools that you described?

14 A. No. And part of the reason is -- well,
15 there's multiple reasons why we would not use some of those
16 tools to try to stop a deadly force threat as in this case.

17 Most of those weapons are not designed to
18 completely incapacitate a person. They're not going to
19 stop a person who is highly motivated.

20 We have seen multiple times on the street
21 where a highly motivated individual has been hit correctly
22 through our training with the 40 millimeter sponge round,
23 and it had no effect. The person kept walking right
24 through that. They kept running through that. It hit
25 their legs and bounced off, and they didn't react to it.

1 This person is using deadly force against
2 other people. It is the most effective and safest way for
3 officers to actually use deadly force from a distance to
4 actually stop that threat.

5 Q. When you talk about less lethal options as
6 opposed to lethal options, what are you talking about?

7 A. There's -- you know, the officers carry
8 several different types of systems on their belts, and in
9 their cars in some cases, to try to take people into
10 custody using not lethal force. Those can include pepper
11 spray, hand-held baton, the Taser or I guess it's the
12 conducted electrical weapon is what it's supposed to be
13 called, and then the --

14 Q. Commonly referred to as the Taser?

15 A. Also known as the Taser.

16 Q. Okay.

17 A. And then the 40 millimeter projectile that we
18 carry.

19 Q. And are those sponge rounds or what used to be
20 called beanbag rounds?

21 A. Yes, that's correct. It shoots a round a lot
22 slower than a bullet. They're typically much larger. They
23 have some amount of mass, but they're typically soft.

24 And so they're designed to impact a person and
25 cause some amount of pain and have them -- make them stop.

1 Tasers have a high failure rate.

2 Q. How does a Taser operate, if you could explain
3 that?

4 A. Sure. A Taser has a -- it looks like a big
5 yellow firearm, if you will. It has cartridges on the
6 front, two of them.

7 As the Taser is deployed, two probes out of
8 each cartridge, so each cartridge at a time. So if you
9 deploy a Taser, two probes come out of the cartridge. One
10 goes directly at the line of sight or the aim point of the
11 Taser. The other one comes down at about eight degrees.

12 And then there are -- they have sharp ends.
13 So they -- what they do is penetrate into a person's skin,
14 and they hit -- they fire electrical pulses via wire that
15 are attached to those probes.

16 So when the probe goes in and they both hit,
17 they both connect, what happens is it creates a circuit
18 through the body. So everything between those probes
19 becomes affected by that electrical current.

20 Well, the electrical current is such that it
21 is designed to make the external muscles of a person
22 contract involuntarily.

23 Now, if we are too close with a Taser, those
24 probes get really close together, it doesn't affect very
25 many muscles. And so causing those muscles to

1 involuntarily contract, it may hurt, but it won't actually
 2 physically stop a person.
 3 If we get too far away, we run out of wire.
 4 And so our -- our typical Taser cartridges have a range of
 5 25 feet. So anything outside of 25 feet, the Taser is not
 6 going to work. Anything too close, up to about seven to 10
 7 feet, the Taser is going to be minimally effective.
 8 And then we run into other problems, like in
 9 Portland when it gets cold and that sort of thing, clothing
 10 tends to stop the probes from actually penetrating into the
 11 skin.
 12 Many times, because you're trying to fire two
 13 probes that are going off at an angle, you'll miss with one
 14 probe. One probe is not enough to have any effect on a
 15 person at all.
 16 And so the idea of using this in a highly
 17 dynamic situation against a deadly force threat, right,
 18 where the person could inflict serious physical injury or
 19 death to you or somebody else is not an appropriate tool.
 20 Q. When firing the Taser, is it a single shot and
 21 then you have to change the cartridge or can you deploy
 22 multiple probes? So let's say you shoot, you miss a probe
 23 or the probes don't connect, can you just fire again?
 24 A. You can fire again with our particular Taser.
 25 Each Taser carries two cartridges; however, to do that, you

1 it be ineffective and then deciding to switch over to the
 2 handgun?
 3 A. In that case, we would -- the training would
 4 be to just drop the Taser and transition to the handgun.
 5 It would take -- it takes about one and a half
 6 to two seconds to draw a handgun. Under stress, things
 7 tend to take a little bit longer. And that's not including
 8 the time it takes to actually realize what's happening,
 9 make the conscious effort to let go of your Taser and then
 10 go to a different weapon system.
 11 Q. You're talking about a series of seconds of
 12 time lost in that decision-making process to transition
 13 between tools?
 14 A. Yes.
 15 Q. Okay. And how does that play into the
 16 training and decision making of which tool to draw as an
 17 initial matter when engaging a threat?
 18 A. We try to be proportional when we decide
 19 which -- what level of force we use, and we also look at
 20 what -- what is reasonable as far as how do we solve this
 21 situation? How do we resolve this confrontation
 22 effectively?
 23 And if it takes too much time or we have the
 24 chance of now we all get hurt or killed because we chose
 25 the wrong thing, then that's not the appropriate tool.

1 have to turn the Taser off and turn it back on or you have
 2 to press a button on the side to make it manually switch to
 3 the next Taser cartridge.
 4 And so everything comes at a cost of time if
 5 you're using a tool like that. So, for instance, if you
 6 deploy a Taser, it takes some time. Then you have to
 7 realize that the Taser was either effective or not
 8 effective. And then under stress, you may need to be
 9 turning the Taser off and turning it back on or hitting a
 10 button on the side, which is a -- which is a fine motor
 11 skill, which may be difficult in a time of stress, to
 12 switch to the next cartridge and then deploy it again. All
 13 of those things take time.
 14 And, again, when we're talking about a deadly
 15 force threat, right, a person firing a handgun could
 16 continue to fire a handgun at a rate of about one shot
 17 per -- I'm sorry, about five shots per second.
 18 Q. If the second shot or deployment of the Taser
 19 is ineffective, how would an officer go about reloading it?
 20 A. At that point, they would have to turn the
 21 Taser off. They would have to press a button on the front
 22 of the Taser, remove each cartridge, find their pouch of
 23 Taser cartridges, if they carry extras, and then reload it.
 24 It would take several seconds.
 25 Q. What about trying to deploy the Taser, having

1 Q. Okay. I now want to ask you about the
 2 training concerning commands --
 3 A. Okay.
 4 Q. -- that officers would be expected to provide
 5 and the circumstances in which they would be expected to
 6 provide them.
 7 A. Okay.
 8 Q. What is the training concerning commands?
 9 A. The training, again, with commands and
 10 warnings would be that you're required to give a warning if
 11 it is -- if it is safe to do so.
 12 At the point it becomes not safe to do so,
 13 because usually we don't have the time -- because time,
 14 circumstances and safety allow we should give a warning.
 15 Again, time compression is a real thing in
 16 police work, especially when somebody is already shooting
 17 other people, right?
 18 At that point, do we want to give commands to
 19 make that person stop and wait for the seconds it takes for
 20 that person to hear those commands, make the decision
 21 whether they follow the commands and then maybe do those
 22 commands, or do we want to intervene and actually stop them
 23 from using deadly force against other people?
 24 Again, safety, if somebody is running at you
 25 with a gun, right, giving a command may come out as part of

1 habit. But waiting for that person to actually do that, as
2 they're getting about seven yards closer to you every
3 second at full speed already, now --

4 Q. Is that a kind of average speed?

5 A. That would be about average.

6 Q. Okay.

7 A. At full speed it takes, you know -- a person
8 can cover, say, seven yards at full speed already at a dead
9 run. That person is getting quite a bit closer to you
10 every second.

11 Again, giving a command out, one, they may not
12 hear it; two, the closer they get with a gun, the more
13 likely it is they're going to be able to hit you, right?
14 Accuracy goes way up the closer the distance.

15 And then, again, time is -- time is our enemy
16 at that point. We don't have the time to wait for all
17 these things to happen because the bad things are happening
18 to us at that point.

19 Q. And so given what you've just explained, would
20 there be circumstances where an officer would be within
21 policy to use deadly force without having provided any
22 commands or warnings at all?

23 A. Yes.

24 Q. You said that sometimes commands or warnings
25 will be given as a matter of habit?

1 conditioned themselves through all the other calls they've
2 gone into, through all the other training they've gone to,
3 to blurt out that command.

4 So it may still come out, but, again, they're
5 still moving through the threat assessment, and they're
6 thinking, Wait. This is a real threat, and I need to
7 respond now.

8 Q. Are you familiar with the concept of action
9 reaction?

10 A. Yes.

11 Q. How does that concept -- well, first, could
12 you explain what that is?

13 A. Yes. Action reaction is a principle which we
14 teach in control tactics. We actually teach in the
15 advanced academy through several disciplines.

16 It boils down to, in a contest of time, the
17 initiator of an action will have an advantage over somebody
18 reacting to that.

19 It comes down to physiology, right, science.
20 If somebody does something, and the other person is waiting
21 for them to do that, there is -- there's some time there
22 that passes before that person is actually able to, in
23 their mind, observe that action and make the decision to
24 react to it and then actually do something about it,
25 physically make a move, if you will.

1 A. Yes.

2 Q. Could you explain what you mean by that?

3 A. In some of the trainings, in some situations,
4 an officer may have the time or they may be behind a piece
5 of cover where a -- like in a scenario or a real-life
6 situation, they encounter a person who's armed, right, and
7 they have more distance. They have -- the situation may be
8 static. The person may be standing there.

9 In that case, officers are starting to -- they
10 would give commands. They would give warnings even, right,
11 because they have a lot more resources at their disposal.

12 Because we run a lot of scenarios and a lot of
13 training, we do a lot of different calls that are
14 dangerous. There are dangerous circumstances; however,
15 they don't turn into shootings, most of them, right? Over
16 300,000 calls for service in a year, and we typically get
17 into maybe four or five shootings in a year. So the
18 percentage is really, really low.

19 But all those other cases, they were able to
20 give a command. They were able to give a warning, and that
21 situation didn't turn into that because it was static.
22 They did have time.

23 Now, in the cases that all of a sudden it
24 turns and they don't have the time, and this is no longer a
25 static environment, but a very dynamic one, they've also

1 Q. Okay. And so is it important for officers to
2 understand some of the physical and physiological
3 limitations of the human body as they're out encountering
4 situations and engaging threats?

5 A. Yes, absolutely. We don't use action reaction
6 as a justification for using deadly force, but what we want
7 to teach officers is that it exists.

8 And because there is that disadvantage of a
9 subject you're dealing with, that they decide to make a
10 move and you react to it, you will be at that disadvantage.
11 We want them -- our training focuses on, Okay. Knowing
12 that, what can you do to set yourself in a better position
13 to maybe mitigate that disadvantage, right?

14 Is that getting more distance in some cases?
15 In some cases, it could be. Is it getting behind cover?
16 Could that help? Could it be distracting the person so
17 that when they decide to do something, their attention is
18 divided.

19 But, again, it's not just a blanket, This is
20 why you do things, but it is also a -- it's an idea of,
21 Hey, this exists. Make sure that when you have the time
22 to, start thinking about how do we get some of that
23 advantage back.

24 Q. Are there actual exercises or demonstrations
25 you use in the training to illustrate this principle for

1 officers?
 2 A. Yes.
 3 Q. What are those?
 4 A. The most basic one that we use for action
 5 reaction is I'll have one of my students come up in the
 6 class. We have training guns. They are Glocks. They are
 7 just like our real Glocks; however, they only fire blanks
 8 and sim rounds, which is a plastic paintball round, if you
 9 will. So they're designed to only do that.
 10 The gun itself is exactly like what we carry
 11 on the street, so it's a good training tool for the
 12 officers. Everything is -- the trigger is exactly the
 13 same, so they're -- they're familiar with it.
 14 And I'll have the student step up in front of
 15 me. It's close, maybe three to five yards away, so they
 16 can -- we'll have a conversation. And they have a gun, and
 17 I have a gun, and it's loaded with blanks.
 18 What we do is we have -- I will have them --
 19 I'll tell them, Here's the game. Here's the demonstration,
 20 if you will. Here are the rules. You may point the gun at
 21 me with your finger on the trigger, and I will have my gun
 22 down by my side with my finger off the trigger. When I
 23 move to point the gun and shoot at you, you may fire.
 24 It would seem they have the advantage.
 25 They're already on target. Their finger is on the trigger.

1 moving, make a decision to react to it and then actually
 2 act, it can be over a second of time?
 3 A. Definitely. And, again, in a second of time,
 4 five to six shots could have come up toward you as the
 5 officer.
 6 So very rarely are we in a situation where we
 7 are pointing a gun at somebody with a finger on the trigger
 8 and as soon as they move, we've already decided we're going
 9 to shoot as soon as that person moves. That situation
 10 almost never happens.
 11 What's more likely is that something happens.
 12 That person already makes the first move, and they decide
 13 to employ deadly force.
 14 The officer has to do several steps. In many
 15 cases, they still need to draw their gun, right? And that
 16 could take up to two seconds, including the reaction time.
 17 And what we find is that even when we are on
 18 the range and we have done demonstrations or we've done
 19 practice where the officer knows that a beep is going to
 20 come, and as soon as that beep goes, they can draw and fire
 21 one round on the target, very often it takes one and a
 22 quarter to one and a half seconds for that officer to get
 23 one round on the paper. The only stimulus they have,
 24 they're waiting for, is that beep, right?
 25 Now you put somebody on the street, and now

1 All they have to do is move it about a tenth of an inch to
 2 the rear.
 3 And what happens is when I decide to move,
 4 they don't know when I'm going to do it. I bring that gun
 5 up and I can get one, sometimes two shots off, before
 6 they're able to process that in their minds and just pull
 7 the trigger.
 8 It takes them -- if everything is going
 9 perfectly for them, on average, it will take them a quarter
 10 of a second just to realize I've started to move. And then
 11 it will take them another .06 to .1 seconds to actually
 12 pull that trigger.
 13 For me, when I decide to move, there's no
 14 reaction time. I just start to move, and I decide to pull
 15 the trigger, and it will take me less than a quarter of a
 16 second to get that shot off.
 17 That would be the first illustration that we
 18 do.
 19 Q. When a person has made the decision to fire,
 20 on average, do you know how fast a person can fire a
 21 semiautomatic handgun or revolver?
 22 A. It's typically between five and six shots per
 23 second. So every .2, .25 shots per second.
 24 Q. And so in some of the time that you have just
 25 described it takes just to perceive a person is actually

1 the stimulus is much greater. We're taking in a ton of
 2 information through our eyes and our ears, and we're trying
 3 to make a decision whether we need to use deadly force.
 4 All of that slows down the response. This is
 5 not just a simple reaction drill. It is a take in
 6 information, process it, make the right decision, decide
 7 what you're going to do and then execute it.
 8 Q. So how are officers trained to deal with some
 9 of those issues you've just identified?
 10 A. Part of it is, you know, training. They're
 11 trained on physical skills, how to draw faster, how to hit
 12 targets, how to do that sort of thing.
 13 Part of it they're going to have to visualize
 14 what they would do in certain situations. You cannot put
 15 every officer in a situation that's actually real and have
 16 them do that over and over again to where they get good at
 17 it.
 18 They're going to have to actually do some
 19 training in scenarios where they may get better at reacting
 20 to certain situations, but then they're going to have to
 21 visualize on their own, how would I react in this
 22 situation? How will I -- what type of decisions will I
 23 make?
 24 Q. So separate and apart from actually using
 25 deadly force, in terms of firing their gun, what is the

1 training in terms of when officers should be drawing their
2 guns and how would they be expected to be pointing the guns
3 or utilizing the guns when engaging in a situation like
4 this?

5 A. That also depends on what the officer is
6 perceiving as a threat.

7 If the officer is perceiving somebody as a
8 threat and they are a deadly force threat, we would
9 recommend that you cover them with a firearm.

10 Again, if you --

11 Q. What does that mean you cover them?

12 A. We may point the gun at them. We may have the
13 gun just slightly low so we can actually still see what's
14 going on.

15 What we find a lot of times is if officers
16 have a gun up in front of their face looking down sights,
17 it takes a lot of their vision away. They're not able to
18 see what they need to see as far as threat evaluation.

19 But having that gun lowered just slightly
20 where they're still partially on target and they can very
21 quickly come back up to target, that slows -- that takes
22 away some of their time lag. But, again, that's that
23 officer's decision.

24 And, again, if you have the time to cover
25 somebody, to point that gun in their direction and assess,

1 process and decision to stop using that level of force?

2 A. Again, everything takes time. Officers are
3 taught that if they are using deadly force, they should be
4 continually evaluating whether their use of deadly force or
5 use of any force is effective.

6 And as it becomes apparent that it's
7 effective, officers will probably decide to start to dial
8 down their use of force.

9 Now, again, it's --

10 Q. When you say "effective," do you mean
11 neutralizing the threat or the threat has abated?

12 A. Yes. We're stopping that threat from
13 continuing to be a threat.

14 So as that person becomes not a threat
15 anymore, the officers should recognize that and then stop
16 using deadly force. That all takes time as well.

17 If an officer has decided to use deadly force,
18 and they're continuing to use deadly force because they are
19 watching, they are evaluating the threat and it remains and
20 it remains, and now it's going down and now it becomes --
21 now it is not a threat in their mind.

22 Because of the rapidness of how they may be
23 using deadly force, their mind may take -- may have made
24 that decision. It will take another half second to
25 actually stop. And that's just the way that the body works

1 then maybe we can give commands. Maybe we can see what's
2 going to happen, what that person is going to do.

3 At the point that that person is actively
4 doing something, they may not have the time to do that
5 even.

6 But, again, having that gun out before they
7 make that decision to shoot may actually shrink that time
8 lag down before they make that decision.

9 Q. And so if an officer is faced with an armed
10 subject actually firing a gun at other people, would you
11 expect that officer or officers responding to that threat
12 to actually have their guns out --

13 A. Yes.

14 Q. -- as they're approaching?

15 A. Yes. What I would think an officer would try
16 to do would be they would be trying to get in a position to
17 where they could intervene in that situation.

18 If that decision to intervene includes using
19 deadly force, having your gun in your hand would be an
20 important part of that.

21 Q. I want to go back to something you had
22 mentioned previously about some of the time it takes to
23 perceive threats, make a decision about what to do and then
24 actually do it in response to it, to a threat.

25 How does that also impact the evaluation

1 and the way that the -- the amount of time that it takes
2 that command from the brain to get down to the finger and
3 actually stop doing what it's doing.

4 You know, that includes momentum of the finger
5 and everything else; actually stopping something once it's
6 started, it takes some time.

7 Q. In that half second, based on some of the
8 timelines you've previously indicated, multiple rounds
9 could even be fired after the brain has made a decision to
10 stop firing before the finger actually stops pulling the
11 trigger?

12 A. Yes. And, you know, part of that is just the
13 observation. I see this. I make the decision to stop and
14 then stop the finger from firing. It could be two to three
15 rounds extra.

16 Q. In a dynamic situation that you have been
17 describing and some of the timelines it takes for a person
18 to perceive a threat and react to it, can the body actually
19 move substantially in the time it takes to perceive a
20 threat and act on it?

21 A. Yes.

22 Q. So how can that actually impact, for example,
23 location of injuries or rounds or gunshot wounds on a
24 subject's body?

25 A. If there's -- somebody is moving at a high

1 rate of speed, you know, near the limits of their
2 ability -- again, you know, I would guess that they could
3 run seven to eight yards per second.

4 If it takes half a second to three-quarters of
5 a second to a second to see a threat, realize it's a
6 threat, decide to use deadly force against that threat and
7 then actually start to employ that deadly force, if that
8 takes a half second to a second, we could be talking from
9 three, four yards to eight or nine yards in that case.
10 That's a long ways, right? We're talking about 10 feet to
11 20 feet to more than that, 25 feet.

12 So, again, even though the decision has been
13 made, the threat's been -- the threat is there, it still
14 takes time for the body to actually accomplish the goal,
15 which is to use deadly force to stop that threat.

16 Q. And in that time, could a person, for example,
17 change direction, jump, duck, move, turn around completely?

18 A. Yes. They can do all of those things. In a
19 half second to a second, the body could be several feet
20 away in a completely different position.

21 Q. Okay. Have you actually seen in your
22 training, in your capacity as an instructor for the police
23 bureau, situations where a person is presented with a
24 threat, front facing?

25 A. Uh-huh.

1 of just the reaction. And, again, they have one stimulus
2 that they are looking for, which is me moving.

3 And, again, it is -- the body, it just takes
4 the mind and the body that amount of time that I can
5 actually turn around, get that shot off and turn back
6 around, and I will get hit in the back every time.

7 Q. How does stress impact both the training and
8 some of the timelines that you've articulated?

9 A. Stress just makes everything take longer. You
10 know, in most cases, it -- what it -- what it really slows
11 down is the decision-making process.

12 You know, the officers have to be very, very
13 good at prioritizing what they need to be doing. And if
14 something gets -- when stress comes up, those priorities
15 are not as clear-cut for that officer anymore. And so they
16 may be worried about talking on the radio instead of
17 dealing with the threat that's right in front of them and
18 actually happening to them.

19 And so in some cases, we have to try to teach
20 them through training, Hey, be disciplined in the order
21 that you do stuff. Find out what is the biggest priority,
22 what is the greatest threat and deal with that.

23 Because, again, when that stress rises, those
24 priorities tend to get out of whack, and then everything
25 starts to slow down.

1 Q. And by the time they perceive, decide to act
2 and act, the person has turned around and is actually shot
3 in the back?

4 A. Yes. In fact, one of the demonstrations I do
5 with our academy students and in some cases, the community
6 academy where we run an academy for community members,
7 we'll set it up just like I did before with the person
8 pointing a blank firing gun at me, and I'll have my gun
9 down by my side, but be facing completely away from them.

10 Then the --

11 Q. So you're both facing the same direction?

12 A. We're both facing the same direction, right.
13 They're looking at my back.

14 And the -- the demonstration is the same.
15 When I come up and present the gun to point it at them,
16 they can shoot. And, again, their finger is on the
17 trigger.

18 What mostly happens, probably 99 percent of
19 the time, I can take that gun, turn around, fire a shot
20 back at them. And by the time they actually shoot, my shot
21 is off, and I'm already back facing the other way, the shot
22 being completely in the back.

23 It happens that fast because, again, when I
24 make that first decision to move, I start at zero. They're
25 already starting at least a quarter second behind because

1 Q. And how does stress impact some of an
2 officer's ability to even perform tasks, aside from
3 decision making?

4 A. Very often, an officer's fine motor skills
5 will start to degrade under stress.

6 Under high stress, when an officer may be in
7 fear for their life, in fear for other people's lives,
8 bullets are flying, those fine motor skills may be
9 seriously degraded.

10 And then we look at what are the skills
11 involved that the officers are trying to do? Running
12 towards the threat might be a gross motor skill. Firing
13 the -- firing a handgun involving using one finger and
14 trying to pull the trigger in a nice -- or press the
15 trigger in a nice smooth way might not be something that's
16 as easy to do now.

17 And so one of the first things that happens is
18 accuracy for firearms starts to seriously degrade.

19 Q. Are there actual statistics demonstrating the
20 impact of stress on firearms accuracy?

21 A. Across the country, if you look at larger
22 departments that have done some of the studies on their
23 accuracy, their hit rate during a gunfight where officers
24 were involved with -- involved in deadly force incidents
25 where bullets are -- bullets are coming at them and they're

1 firing back, the numbers that we come up with are somewhere
 2 between 18 and 30 percent accuracy rate. So about --
 3 Q. Meaning best case scenario, they're missing 70
 4 percent of the time?
 5 A. Average, they're missing about 70 percent of
 6 the time.
 7 Q. Okay. And did range play into that analysis?
 8 A. Range does play into that. Typically, the
 9 closer the encounter, the higher the hit rate is.
 10 But in some cases, because of the closeness of
 11 that encounter, the stress in some cases goes way higher,
 12 and sometimes the accuracy actually gets worse because of
 13 that -- just that proximity and then movement and
 14 everything else like that.
 15 MR. JACKSON: Do the grand jurors have any
 16 questions about any of the topics we've discussed so far?
 17 A GRAND JUROR: I have a question.
 18 Is there any part of the training that brings
 19 into -- or maybe discusses an aspect of other people in the
 20 surrounding area when the use of deadly force is decided?
 21 THE WITNESS: Yes. Part of that is in the
 22 policy. It says that an officer's negligent or reckless
 23 use of deadly force would not be covered by the policy.
 24 We talk about, Hey, Officers, when you decide
 25 to use deadly force, they're still accountable for every

1 people. Well, they're straight behind my suspect. Perhaps
 2 if I take a step to the side, I take that away.
 3 So officers are good at doing that because we
 4 started to get in -- in our training, start to make them
 5 think about those things. What else is behind?
 6 In some cases, they are doing it split second;
 7 in other cases, they've already seen some of this
 8 information, and though they may not have consciously
 9 thought about it at the time while they're approaching, it
 10 started to make sense as the situation unfolded.
 11 A GRAND JUROR: Okay.
 12 A GRAND JUROR: Is there any specific guidance
 13 in the training on how to treat fleeing subjects with
 14 regards to deadly force?
 15 THE WITNESS: When we talked about use of
 16 deadly force, it stays with is the person an immediate
 17 threat of death or serious physical injury?
 18 There's a second part of the deadly force
 19 policy that says that an officer, to effect an arrest or
 20 prevent an escape, an officer can use deadly force against
 21 a person if they have probable cause to believe that the
 22 person has committed a felony involving the infliction or
 23 threatened infliction of serious physical harm to somebody,
 24 to another person and the person poses an immediate threat
 25 of death or serious physical injury to the officer or other

1 round that they fire.
 2 And so even all the way back to their very
 3 first firearm session, what they talk about is safety rules
 4 with firearms. And it's not just for the range, but it is
 5 for how you handle firearms.
 6 Police officers, when they're on duty, all
 7 have a firearm. And so we talk about that we treat all
 8 guns as if they're loaded. We talk about never point your
 9 muzzle at anything you don't intend to destroy, including
 10 yourself. We talk about keeping your finger off the
 11 trigger and have trigger guard.
 12 The last one is know what your target is, know
 13 what the backstop is, what would catch the bullet behind,
 14 and then know what's beyond that.
 15 Now, we can't always, in the moment of stress,
 16 all of a sudden start to start thinking, rounds are coming
 17 at me. I need to fire back to actually stop this deadly
 18 force. What's my target? What's my backstop? What's
 19 beyond?
 20 We start thinking about that on the front end.
 21 If we are approaching and we have the time, that's a good
 22 time to start thinking about those things. There's a
 23 building over there with a brick wall. Maybe I need to
 24 angle myself differently.
 25 As I'm approaching, I notice a group of

1 people.
 2 A person running away, again, with a firearm
 3 can be just as deadly as the person running towards you
 4 because, again, it takes no time for them to turn around,
 5 and they're able to use deadly force because of the tool
 6 that they've decided to employ because they can turn around
 7 and fire bullets back at you as fast as they come out if
 8 they're running towards you. A person running away with a
 9 knife might be a different story.
 10 And then the officers are also instructed to
 11 consider the totality of the circumstances. If a person
 12 has just shot into a group of people and they're running
 13 away, is it because they are done or is it because they're
 14 finding -- and the officers won't ever know this, but is it
 15 because they're going to find another group of people to
 16 shoot?
 17 We have to start thinking about this person is
 18 a major threat. They're still running with their gun. We
 19 may have to -- we may have to treat them like they're going
 20 to go use deadly force against somebody else, and we're
 21 trying to prevent that.
 22 A GRAND JUROR: Are officers required to go
 23 through any sort of bias training in their just overall
 24 education?
 25 THE WITNESS: Yes. Implicit bias training has

1 come through the bureau in the last several years through
2 every in-service and the advanced academy.

3 A GRAND JUROR: This is probably -- it's maybe
4 not fitting here 100 percent, but are officers trained as
5 to how -- where to aim if they're encountering a suspect
6 like this? Are they -- is deadly force intent to kill or
7 is it just trying to take away the power?

8 THE WITNESS: I'm glad you asked that.

9 When we use deadly force to stop a threat, the
10 intent is to stop the threat.

11 The way we teach as far as aiming points is we
12 aim for the center of available mass. So what that means
13 is -- because, again, I talk about the effects of stress,
14 and accuracy starts to degrade. It becomes harder to hit
15 what you're aiming at.

16 So we try to find the biggest part of the
17 target and aim for the center of that so that that -- the
18 officer has the highest chance of hitting. If they're
19 using deadly force to stop a threat, they can't stop that
20 threat if they don't hit them.

21 So it really boils down to accuracy. What is
22 the most likely way that we can get an effective hit on a
23 person? It has nothing to do with killing a person or
24 wounding a person or maiming a person or anything like
25 that.

1 First of all, is that realistic; and, second
2 of all, is that consistent with the bureau's training
3 policies?

4 A. No. Smaller targets are harder to hit.
5 Moving targets are much harder to hit. And so if you think
6 about a small moving target, it becomes very, very
7 difficult to hit those things.

8 And, again, so we say, Hey, we want -- if our
9 officers have to use deadly force, we have to give them the
10 best chance of making a hit. So that's to find the biggest
11 part of the target and shoot for the center of that.

12 That way, if they miss by just a little bit,
13 they're still likely to get a hit and maybe actually end
14 that threat.

15 Yeah, again, shooting guns out of hands,
16 shooting, you know, arms, legs, things that are moving
17 increases the chances of a miss.

18 Well, every time we miss, there's a bullet
19 going downrange somewhere, but we don't know necessarily
20 where it might end up, and we would like to minimize that
21 as well.

22 Q. Okay. And I guess also along those same
23 lines, I'll ask a follow-up question about how bullets
24 actually impact the body to stop -- effectively stop a
25 threat.

1 But, again, in a time of stress, what's the
2 biggest chance that we can hit -- make a hit to use deadly
3 force to actually stop that threat?

4 If a person was hiding behind a brick wall and
5 only half of them was exposed, the recommendation would be
6 to aim in between the brick wall and the outside of that
7 person and aim for the center of what you have as the
8 target to use for deadly force.

9 If it is merely a hand coming out from behind
10 a doorway firing a gun at you, we would say what is your
11 target? Well, you only have this much of a target. We
12 want the aim center of the available mass, the center of
13 that particular target.

14 So, again, it's not a shoot to kill, shoot to
15 wound or anything. It really comes down to how can we best
16 get a hit so we can effectively use this to stop the
17 threat?

18
19 BY MR. JACKSON: (Continuing)

20 Q. And so kind of to follow up on that, I'm sure
21 we've all seen, in television and movies, people shooting
22 guns out of a person's hand, shooting them in the foot or
23 the leg to kind of stop them from running, shooting tires
24 out of cars as they're driving down the freeway and things
25 like that.

1 A. Okay.

2 Q. So you described it's ineffective if you are
3 not hitting the target?

4 A. Right.

5 Q. But even if you are hitting the target, how
6 does that actually operate to stop a threat?

7 A. The first way that it stops a threat is
8 psychologically. It penetrates into the body and causes
9 pain, and the person decides to stop doing what they were
10 doing.

11 Now, the energy imparted by the bullet flying
12 through the air and into the human body is not like you see
13 on TV. It will not blow a person six feet back and knock
14 them on their back. If that was the case, if it had that
15 much energy going into the person, the person firing the
16 gun would also be receiving that same amount of energy as
17 far as physics works.

18 And so that's just not the case. There's a
19 little bit of a recoil on the user end. And then on the
20 receiving end, it would be about that same amount of energy
21 transfer.

22 The second way that bullets would stop a
23 person would be hydraulically. We create enough blood loss
24 that the body is not able to function anymore, and then
25 that person stops.

1 We've seen that in several shootings across
2 the nation. There was one in the Gorge not too long ago, a
3 couple years ago now, where a trooper got in a shooting.
4 That guy got shot through the heart, and he was able to
5 reload his gun, get back to his car, get in his car and
6 drive a mile down the road.

7 Q. After being shot through the heart?
8 A. After being shot through the heart, yes.
9 That guy eventually did die. But, again, just
10 because you have a -- what would be a fatal shot through
11 the heart -- that's where all the blood flows through -- it
12 still takes some amount of time for that to actually take
13 effect.

14 On a highly motivated individual, that person
15 can still do a lot of damage. That's happened nationwide
16 several times.

17 Mechanically, if a bullet is able to hit
18 certain bones, it may break bone structure to where certain
19 limbs may not work as well, and that would be a
20 consideration, right? That would stop a person a lot
21 quicker if they're not able to use certain parts of their
22 body.

23 Again, a lot of those areas would be a very,
24 very precise shot and not always feasible by an officer in
25 the situation they're in.

1 incident itself?
2 A. Yes, that is correct.

3 Q. Do you have an understanding of what happened
4 in this case in terms of the officers' actions and
5 behaviors and what actually occurred?

6 A. Yes, I do.
7 Q. Have you also observed surveillance video that
8 captured the sequence of events as they occurred on that
9 night?

10 A. Yes, I have.
11 Q. So based on your understanding of what
12 happened, from a training perspective, how would officers
13 be trained to deal with a situation such as Sergeant Britt
14 and Officer Livingston were presented with on September
15 30th?

16 A. I believe they would have been trained to
17 observe what they observed and go to intervene in that use
18 of deadly force by Patrick Kimmons. They -- they would be
19 trained to go intervene in that and, if necessary, use
20 deadly force themselves to prevent those people, themselves
21 and other people from potentially being subject to a lethal
22 threat.

23 Q. From a training perspective, would it have
24 been consistent with training principles for the officers
25 to have tried to utilize deescalation techniques or other

1 And then the last would be an electrical-type
2 stoppage where the brain stem or the spinal cord up high
3 would be severed. And in that case, that would make the
4 body stop instantaneously.

5 Again, very small targets, somewhat protected.
6 The chance of getting a shot like that reliably with a
7 handgun are low.

8 Q. Okay.
9 MR. JACKSON: Are there any follow-up
10 questions on that from the grand jurors?

11 BY MR. JACKSON: (Continuing)

12 Q. So now, Officer Howery, we can move to the
13 actual incident that occurred on September 30th, 2018 --

14 A. Okay.

15 Q. -- where police officers used deadly force
16 that resulted in the death of Patrick Kimmons.

17 A. Yes.

18 Q. Were you part of the response to that
19 incident?

20 A. No, I was not.

21 Q. Are you, therefore, testifying here as an
22 expert witness in police training and tactics?

23 A. Yes.

24 Q. As opposed to an actual witness to the
25

1 less lethal tools given the scenario you observed?

2 A. I believe once the situation kicked off and it
3 was rapidly evolving, I believe that it would not have been
4 feasible for them to use deescalation techniques.

5 Now, can I talk real quick about stuff that
6 happened just prior to that?

7 Q. Sure.

8 A. I believe that they were trying to avoid any
9 type of shooting occurring by being in the area, by turning
10 on their overhead lights and being in plain view and then
11 walking down the middle of the parking lot toward the group
12 of people initially just to show presence, just so nobody
13 would come out and shoot up the crowd, shoot a group of
14 people, so fights wouldn't break out. They were trying to
15 do that at the beginning.

16 Now, they had no idea that the shooting was
17 about to occur. But that's what their whole purpose was
18 there for was to try to avoid something like this happening
19 and try to be as noticeable as possible.

20 And at that point, all of their -- you know,
21 all of their efforts still didn't have an effect on the
22 suspect in this case.

23 Q. Okay. As you observed the video, you see
24 Mr. Kimmons running towards the officers, and the officers
25 are running towards Mr. Kimmons?

1 A. Yes.
 2 Q. Obviously, Mr. Kimmons has just fired his gun
 3 at a group of people?
 4 A. Right.
 5 Q. Would it be consistent with the training for
 6 the officers to actually run toward that person as he's
 7 running toward them as opposed to trying to seek cover or
 8 take some other type of action?
 9 A. I believe that they started to run toward him
 10 as he started to run toward them. They may have actually
 11 not realized how much of a threat that he still posed.
 12 They may not have initially seen the gun. I don't know
 13 that for sure.
 14 But you can see them initially start to move
 15 to cover and then decide, Wait, no. We need to go stop
 16 this guy. He still poses a threat to people. If he gets
 17 away from us, who knows where he's going to go? He just
 18 shot into one crowd of people with the police standing
 19 there with the lights on, right?
 20 That's a pretty bold move. Does he -- is he
 21 willing to go out and shoot other people? They need --
 22 they're coming in, I think, to stop him from doing that.
 23 They realize that he still poses a deadly threat.
 24 You see them again almost start to jump for
 25 cover for a second and then they decide, No. We need to

1 closer in some cases.
 2 Q. When you have a situation where two officers
 3 are engaging a threat, like in this case, is there a
 4 requirement that they coordinate somehow their behavior in
 5 engaging that threat?
 6 Specifically, I'm asking about one officer
 7 firing versus the other officer firing versus both firing.
 8 Is there a requirement or training in how to deal with that
 9 type of a situation?
 10 A. No. When the officers are there, if they --
 11 if they are perceiving a deadly force threat against
 12 themselves, they're authorized to use deadly force to
 13 counter that, again, if it's safe to do so and, you know,
 14 their backstop is clear and that sort of thing.
 15 But the officers are not required to say,
 16 Well, it's his turn or it's my turn or anything like that.
 17 The way that they each perceive the threat authorizes them
 18 to use deadly force themselves.
 19 On the flip side of that, they're required to
 20 articulate why they felt the person was a threat, why they
 21 reasonably believed the person was a threat. It can't be
 22 just, Well, he did, so I did. They each individually have
 23 to have that belief.
 24 But, again, it doesn't require that they both
 25 do because of standing even two to three feet apart, angles

1 stop this threat right now.
 2 When you see in the small movements, it
 3 doesn't take much time, but they're there. You know,
 4 they're running. They pause for a second. They're
 5 jumping, and then they say, No. We actually need to end
 6 this threat right here.
 7 Q. And kind of along those same lines, would the
 8 training require them to wait for a person like Mr. Kimmons
 9 to get within a certain distance from them before they
 10 would be authorized under the Portland Police Bureau's
 11 policy to use deadly force?
 12 A. No. Once they realize that he poses an
 13 immediate threat of death or serious physical injury, they
 14 can make that decision, if they decided to, at any time.
 15 They may have felt there was an advantage of
 16 letting him get closer or getting closer because, again, we
 17 all know that the closer you are if you're going to use
 18 deadly force, your accuracy goes up.
 19 They may also have been thinking there's a lot
 20 of people around. And so higher accuracy hits that we make
 21 are going to be less dangerous for bystanders, that sort of
 22 thing.
 23 And then, again, getting different angles so
 24 that they can get clear shots, those are all factors of why
 25 an officer might move to a different position or even

1 are different. Sometimes a person is turned just so that
 2 one person may perceive a threat and the other person may
 3 not until some other type of movement happens.
 4 And so that's typically why officers don't
 5 fire all at the same time with the exact same number of
 6 rounds and then they all stop at exactly the same time.
 7 It's because different angles and different perceptions and
 8 then sometimes just ability based on those positions. They
 9 each happen individually.
 10 Q. Okay. And so the decision to use deadly force
 11 is personal to the officer?
 12 A. Yes, that's correct.
 13 Q. In the video of the incident, you can see
 14 Mr. Kimmons running towards the officers. And then as they
 15 reach kind of the closest they get to each other,
 16 Mr. Kimmons turns to the south and begins running down
 17 between two parked cars?
 18 A. Uh-huh.
 19 Q. Is that your understanding?
 20 A. Yes.
 21 Q. Okay. From a training perspective, how would
 22 the threats change, if at all, based on the change in
 23 Mr. Kimmons' direction of travel and positioning as it
 24 relates to the officers?
 25 A. I look at that and I say, I think that it can

1 still be a -- an immediate threat, a very high threat.
 2 Now this person is running. In just a few
 3 feet, he's going to have maybe cover if he gets to the
 4 front of a car to turn and fire, you know, engage in a
 5 shoot-out with the officers.
 6 The other part is now he's starting to get
 7 away to where he could go in it and find other victims to
 8 shoot at. He has just shot indiscriminately at a group of
 9 people. There's nothing to say that he's not going to
 10 continue to do so. So if he gets away, there's still --
 11 the threat is still there.
 12 As far as the threat to the officers, he's
 13 able to, again, based on just time and the tool that he has
 14 available, turn around and fire shots at them just as fast
 15 as he -- as if he was standing in front of them.
 16 Q. Have there actually been shooting incidents
 17 where people have been hit by rounds and actually gone to
 18 the ground and as officers are approaching that person,
 19 they've begun firing again at the officers?
 20 A. Yes. In fact, we've had that happen here in
 21 the city of Portland where a -- we actually even Tasered a
 22 person. They went down to the ground and rolled over and
 23 then produced a gun and shot multiple officers.
 24 So, yeah, just because a person goes to the
 25 ground doesn't mean that that threat is necessarily over.

1 EXAMINATION
 2 BY MR. JACKSON:
 3 Q. Could you please state and spell your name?
 4 A. Yep. It's Garry Britt, G-A-R-R-Y, B-R-I-T-T.
 5 Q. How old are you, sir?
 6 A. I am 32 years old.
 7 Q. And what is your educational background?
 8 A. Well, I grew up in Portland. I was born and
 9 raised here. I attended Franklin High School, and I
 10 graduated in 2004.
 11 After graduating from Franklin, I went and put
 12 myself through the two-year transfer degree program at
 13 Multnomah Community College for business.
 14 Then after that, I transferred to Western
 15 Oregon University and graduated from there in December of
 16 20 -- 2007.
 17 Q. And what was your major?
 18 A. It was business management.
 19 Q. Okay. And when did you decide to become a
 20 police officer?
 21 A. It started when I was in high school, middle
 22 school.
 23 So when I was in high school, I learned about
 24 the Portland Police Cadet program, which is a volunteer
 25 program for high school kids to get experience, and so I

1 It just -- it takes nothing to roll over and produce that
 2 gun.
 3 Again, you know, they have to pull the trigger
 4 less than half an inch to make it fire again.
 5 Q. And so based on your review of the
 6 circumstances that are captured in this video, did you see
 7 anything jump out at you in terms of the officers' behavior
 8 that was -- or struck you as being outside of the Portland
 9 Police Bureau's policy and training?
 10 A. No, nothing at all.
 11 MR. JACKSON: Do the grand jurors have any
 12 questions for Officer Howery about anything we've
 13 discussed?
 14 I don't see any.
 15 Thank you very much, Officer Howery.
 16 (Pause in proceedings: 12:01-1:10 p.m.)
 17
 18 SERGEANT GARRY BRITT
 19 was thereupon called as a witness on behalf of the State
 20 and, after having been duly sworn, was examined and
 21 testified as follows:
 22
 23
 24
 25

1 did that from about 2003 to 2007.
 2 Q. Okay. And did you ultimately apply to become
 3 a police officer with the Portland Police Bureau?
 4 A. I did. And in June of 2008, I was sworn in as
 5 a police officer.
 6 Q. And did you go through the standard DPSST
 7 academy for new officers?
 8 A. I did. I went to the basic academy, and I
 9 graduated in 2009. And then shortly after that, I went to
 10 the advanced academy for Portland.
 11 Q. Did you successfully complete the advanced
 12 academy through the Portland Police Bureau?
 13 A. I did.
 14 Q. And can you briefly take us through what some
 15 of the areas of training you received, in both the basic
 16 and advanced academy, were?
 17 A. Sure. We received defensive tactics training,
 18 driving training. We went also through crisis intervention
 19 training.
 20 Q. What is that?
 21 A. It's -- crisis intervention training is to
 22 help you teach to some -- or talk to somebody who is in
 23 crisis. So it's something that every sworn police officer
 24 in Portland goes through.
 25 Q. Did you also go through the firearms program?

1 A. I did. I also went through some active
 2 shooter training as well.
 3 Q. Did that training involve both classroom
 4 classes, hands-on training, and also scenario-based
 5 training?
 6 A. Yes, it did.
 7 Q. Did you graduate, in essence, or successfully
 8 complete all of that to become an active, sworn member of
 9 the Portland Police Bureau?
 10 A. Yes, I did. And I went through my
 11 probationary period and passed through that as well.
 12 Q. What is that?
 13 A. It's a period of time after you go through the
 14 academy where you are placed with a coach, and they do
 15 evaluations on you to see how your progress is going.
 16 You have to do some studying and whatnot
 17 because there's a booklet you have to go through as well.
 18 Q. Okay. And how long is that period of
 19 probationary status?
 20 A. I want to say about six months to a year, but
 21 I'm not exactly sure.
 22 Q. You successfully completed that?
 23 A. I did.
 24 Q. And at that point, were you basically out just
 25 doing the job?

1 September 30th of 2018, were you placed under a
 2 communications restriction order?
 3 A. I was.
 4 Q. And is that still in effect?
 5 A. Yes.
 6 Q. Okay. Moving now to the day of September
 7 29th, 2018, into the early morning hours of September 30th,
 8 2018, were you working that day?
 9 A. I was.
 10 Q. Okay. And what was your job that day to
 11 perform?
 12 A. I'm a patrol supervisor for Central Precinct.
 13 So that pretty much means that me and -- or myself and
 14 either two to four other sergeants oversee the officers
 15 that work for Central Precinct on the night shift.
 16 And so we do various things from do the
 17 scheduling to do the roll call, which is our briefing.
 18 I'll also take after-action reports for force events.
 19 It's kind of that management portion of the
 20 precinct.
 21 Q. Okay. And during your actual shift, what are
 22 your responsibilities?
 23 A. During my shift, it's to oversee the officers.
 24 So if like a tactical call comes out or a, you know, unique
 25 call that's not, you know, a general everyday call, I will

1 A. Yes. I was assigned to East Precinct, where I
 2 did most of my career up until May of 2018 when I got
 3 promoted to sergeant.
 4 Q. Okay. So how many years have you been a
 5 police officer?
 6 A. 10 years.
 7 Q. Over the course of that 10-year period, are
 8 you required to go through periodic training sessions to
 9 make sure you're staying up to date on everything?
 10 A. Yes. We do annual in-service training.
 11 Typically, it goes between two-days to three-day periods
 12 where we'll do various trainings from firearms to law
 13 updates to CPR, first aid training, scenario training as
 14 well.
 15 Q. Okay. Is your appearance here before the
 16 grand jury today compelled in any way by the district
 17 attorney's office or any other agency?
 18 A. No.
 19 Q. Are you under subpoena today to testify before
 20 this body?
 21 A. No.
 22 Q. Are you appearing voluntarily because you
 23 would like to come and speak to the grand jury?
 24 A. Yes, I would.
 25 Q. Okay. Following the incident that occurred on

1 go to it.
 2 And if it turns into where I need to be an
 3 incident commander for it, I will until somebody else
 4 relieves me; and, also, just checking in on my officers
 5 while they're out doing their job, just to see how they're
 6 doing and what's been going on in the shift.
 7 Q. Okay. Did your day on -- well, what shift
 8 were you working on September 29th, into September 30th?
 9 A. The night shift. So it's 10 p.m. to 8 a.m.
 10 Q. Did anything out of the ordinary or unusual
 11 happen during the day leading up to your shift?
 12 A. Before my shift, no.
 13 Q. And what time does your shift start?
 14 A. It starts at 10 p.m.
 15 Q. Okay. And so when do you typically sleep?
 16 A. During the day.
 17 Q. What time do you usually wake up?
 18 A. Give or take, I'll try and get to bed by,
 19 like, 9 a.m. and wake up by at least 3 p.m.
 20 Q. You have about six or so hours prior to
 21 starting your shift?
 22 A. Yes.
 23 Q. And then you work through the night. And what
 24 time do you usually get off?
 25 A. I get off at 8 a.m. and drive straight home

1 and try and get some sleep.
 2 Q. Okay. So nothing out of the ordinary going on
 3 that day in your personal life?
 4 A. No.
 5 Q. Once you came on shift, were you at any point
 6 under the influence of any substances that would materially
 7 affect your job functions or decision making?
 8 A. No.
 9 Q. In terms of the shift itself, did anything out
 10 of the ordinary occur as it began?
 11 A. Not as it began. But when the night started
 12 evolving, some incidents started occurring.
 13 Would you like me to get into that?
 14 Q. Well, before that, could you kind of take us
 15 through how your shift starts --
 16 A. Okay.
 17 Q. -- on a typical day and as it did on this day?
 18 A. Yes. So it typically starts, I'll go in about
 19 an hour or two early, work out. I'll go into the
 20 sergeant's office. I'll meet with the other sergeants from
 21 the other shifts to kind of get an idea of what has been
 22 going on that night.
 23 If I'm the scheduling sergeant for that night,
 24 I'll make sure the roster is all set, if we need to hire
 25 people on overtime to meet minimums, and I do roll call as

1 out, and we've had shootings occur, just because everybody
 2 is coming out of the bars and everything at the same time.
 3 Q. Okay. And are there particular areas or parts
 4 of the town that you'd be focusing on?
 5 A. Yes. There's certain parking lots that we've
 6 had higher incidents occurring in.
 7 And on this night in particular, we had two
 8 fight calls that occurred between Southwest Second and
 9 Southwest Third and Ankeny, and one of those fights -- one
 10 of the callers said that they heard somebody say they had a
 11 gun.
 12 Shortly after that, there was another fight
 13 that broke out at Northwest Fourth and Couch, which there's
 14 another parking lot there that we've had issues with in the
 15 past. That fight broke up relatively quickly.
 16 So, you know, in the history of the area,
 17 there's another lot that we've had issues with at Southwest
 18 Third and Harvey Milk Street. And so I decided to drive by
 19 to see how the parking lot was, if there were individuals
 20 in the lot or if the lot was clearing out.
 21 Q. Was that in response to a call at the lot, or
 22 were you just kind of driving through to monitor and see
 23 what was going on?
 24 A. I was just driving through because in the
 25 past, we've had issues with violent assaults and shootings

1 well, which is what I did that night.
 2 Q. Okay. And what does that mean to do roll
 3 call?
 4 A. It means at 10 p.m., we all meet in a -- like
 5 a meeting room, and I will go over flyers that have been
 6 given to us by detectives or just information of what has
 7 occurred on the shift before.
 8 I always -- I also give the district
 9 assignments.
 10 Q. To the patrol officers?
 11 A. Yes.
 12 Q. So is that kind of a way of having all of the
 13 officers that are going to be on duty for that shift on the
 14 same page as they go out into the city?
 15 A. Yes, it is.
 16 Q. Okay. So you were about to start explaining
 17 some of the things that you became aware of as your shift
 18 progressed.
 19 What were those things?
 20 A. So Friday and Saturday nights, typically
 21 between midnight and 3 a.m., I like to be out patrolling,
 22 kind of getting an idea of how the night has been.
 23 Working Central, we have a lot of clubs, a lot
 24 of bars. We have the entertainment district. And so
 25 typically by those hours, we'll end up seeing fights break

1 in that lot as well.
 2 Q. Okay. As you went by, do you remember
 3 approximately what time that was?
 4 A. I believe it was approximately 3:08.
 5 Q. Okay. In the morning?
 6 A. Yes.
 7 Q. Okay. And were you driving down Fourth
 8 Avenue? Third Avenue? Oak? Harvey Milk? Which road were
 9 you driving down to kind of survey?
 10 A. So I was driving from Southwest Third or --
 11 yeah. I was driving on Southwest Third southbound, and I
 12 approached Harvey Milk Street.
 13 As I approached, I could tell the lot was
 14 fairly full. There were individuals just kind of loitering
 15 about in the lot, and there was a group of about four to
 16 six individuals that were kind of congregated in the
 17 driveway on the Southwest Third side.
 18 And as I drove by, I had my windows down, and
 19 I could hear either loud talking or yelling. I can't
 20 recall which it was. But when I looked over, it didn't
 21 seem like the group was in a disturbance at that time.
 22 Q. But based on the noise, it drew your
 23 attention? You actually looked over at them?
 24 A. It did.
 25 Q. Okay. What did you do in response to that?

1 A. So in response to that, I got on the radio,
2 and I asked for two marked patrol units to respond to the
3 parking lot.

4 And everybody who has worked on the shift
5 understands there's this kind of a -- a concept we'll use
6 where we will take marked patrol vehicles with their
7 emergency lights on and park them throughout these parking
8 lots just as a visual indicator that the police are there
9 and to kind of deter any of the fights or the violent
10 activities to, you know, occur and to kind of encourage
11 people to kind of, you know, leave the parking lot.

12 Q. And were you operating a marked patrol car at
13 the time?

14 A. I was.

15 Q. Can you describe it?

16 A. Yeah. It's a marked Ford Explorer with the
17 emergency light bar on top and emergency lights, you know,
18 on the grille and on the back and everything.

19 Q. Did it have any specific markings denoting it
20 as a sergeant's car or a supervisor car?

21 A. Yes. On the -- on both front doors, there's a
22 little logo that says "supervisor" on it.

23 Q. Okay. And would that indicate to other patrol
24 officers that a supervisor is on scene if that car is
25 there?

1 the area, come respond with me?

2 A. It was a general request, but two -- two
3 manned marked units answered up, and they -- these officers
4 are fairly experienced with working down in this inner core
5 downtown area, and so they were en route to assist me with
6 it.

7 Q. Okay. And so you knew that they were coming?

8 A. Yes.

9 Q. Was one of those units Officer Livingston?

10 A. It was not. Officer Livingston was just
11 driving by and decided to pull into the parking lot to
12 assist me. He called it out that he was out with me over
13 the radio.

14 Q. Okay. Do you recall who the officers were
15 that had indicated they were going to respond to the scene
16 with you?

17 A. Yes. It was Officer Flores, Officer McDonald,
18 Officer Harris and Officer Moore.

19 Q. Okay. And did you have a sense of where those
20 officers were in terms of calculating how long it would
21 take them to actually arrive?

22 A. Yes, because prior to this, I knew they were
23 kind of down in the Fourth and -- Northwest Fourth and
24 Couch area because we have -- between Second and Fourth and
25 Burnside and just north of Couch, we have an enclosure that

1 A. Yes.

2 Q. Okay. So what did you do then?

3 A. So after I called it out on the radio, I
4 continued southbound and went around the block to Southwest
5 Fourth and drove northbound and pulled my marked patrol
6 vehicle into the driveway.

7 Q. So if you look at the screen up here, is this
8 an image of the parking lot between Third and Fourth Avenue
9 off Harvey Milk?

10 A. Yes, it is.

11 Q. And could you point up here on the board where
12 you came into the lot?

13 A. So I drove in from up here on Southwest
14 Fourth. And you can see kind of in the distance -- it's
15 kind of hard to see on this screen -- that there's some red
16 lights.

17 That's kind of where my car was parked. So
18 it's just barely into the driveway.

19 Q. Okay. Sergeant, are you talking about this
20 right here?

21 A. Yes, yes.

22 Q. Okay. You can have a seat there.

23 When you radioed out for additional cars or
24 units, did you have specific officers that you made the
25 request to, or was it kind of a general, Hey, whoever is in

1 goes up for Friday and Saturday nights for individuals who
2 are going from the clubs. They can walk freely throughout
3 the street.

4 And so -- and it also helps kind of not have
5 everybody cluttered on the sidewalks, you know, and cause
6 fights.

7 So I knew they were coming from that general
8 area.

9 Q. Okay. But they weren't actually with you when
10 you arrived?

11 A. No.

12 Q. Or were they?

13 A. No, they were not.

14 Q. Okay. Were you the first one to arrive at the
15 parking lot, as far as you knew, from the police bureau?

16 A. I was, as far as I knew.

17 Q. Who was next to arrive?

18 A. It was Officer Livingston.

19 Q. Do you recall, was he in a partner car or by
20 himself?

21 A. He was by himself.

22 Q. And where did he -- was he operating a marked
23 patrol car?

24 A. Yes, he was.

25 Q. And where did he go?

1 A. He pulled his patrol vehicle into the parking
 2 lot, and there's a pay booth for the parking attendant.
 3 He parked his patrol vehicle next to that pay
 4 booth coming in from the Fourth side driveway.
 5 Q. When you put out a call for additional units
 6 to come for the purpose you were going to the lot for,
 7 would you expect those units to be coming in lights and
 8 sirens, going through red lights and stuff like that to get
 9 to the scene, or would they be coming in a more calm and
 10 casual manner?
 11 A. More calm and casual because the way I
 12 broadcast it over the air, I just asked for two cars to
 13 come to the parking lot.
 14 And the purpose, you know, we don't -- unless
 15 something is actively occurring, we don't want to just come
 16 in lights and sirens. We just like to come in, set up our
 17 cars and be a visible presence.
 18 Q. Okay. Did you turn your overhead lights on
 19 for your patrol vehicle?
 20 A. I did.
 21 Q. And what about Officer Livingston?
 22 A. He did as well.
 23 Q. Once you were both there, what do you remember
 24 seeing going on?
 25 A. So just to back up, before Officer Livingston

1 A. Yes.
 2 Q. And what was kind of the plan at that point?
 3 You can retake your seat, sir.
 4 A. We were -- we were just assessing the
 5 situation. It seemed like as soon as I pulled in, a lot of
 6 people started kind of leaving the lot.
 7 This group stayed that I initially saw, and
 8 they began to move over to the -- the northwest corner of
 9 the lot where this -- the black vehicle is in the corner of
 10 this picture, but, like, in the driveway.
 11 Q. So if we look at this image here, we're now
 12 looking east across the parking lot --
 13 A. Yeah.
 14 Q. -- toward Southwest Third. You can see the
 15 Golden Dragon here.
 16 Is this kind of the direction that you and
 17 presumably Officer Livingston were looking as you were
 18 making your assessment?
 19 A. Yes, it was.
 20 Q. Okay. And so what did you actually see in
 21 terms of the movements of the people?
 22 A. It seemed like everybody else in the parking
 23 lot had kind of moved towards the cars, and I didn't see
 24 really anybody else at this time, but I did see that group
 25 still.

1 arrived, I observed a parking attendant that was in the
 2 parking lot. He was walking around.
 3 And so I went up to him and just asked him how
 4 the parking lot has been that night, and he said --
 5 Q. In or out of your car?
 6 A. I was out of my car at this time.
 7 Q. Okay.
 8 A. And, you know, he said there hadn't been any
 9 problems.
 10 And so I asked him about the group that I saw
 11 and asked if he -- if they were arguing, and he said no.
 12 They were just talking loudly.
 13 And so shortly after that, Officer Livingston
 14 arrived, positioned his vehicle as I described, and I
 15 walked over to his position.
 16 I don't know if there's a better picture.
 17 Q. Okay. And so this is the pay booth here?
 18 A. Yeah.
 19 Q. Is this Officer Livingston's vehicle parked
 20 next to it?
 21 A. Yes.
 22 And so you can kind of see a shadow of an
 23 individual on this -- on the picture. That's where we
 24 ended up standing.
 25 Q. Okay. Next to the patrol car?

1 It seemed -- it seemed like they were just
 2 talking at first. It didn't seem like there was really an
 3 issue.
 4 So at that time, we were just -- I was just
 5 going to wait for at least one or, you know, maybe both of
 6 the other cars to show up to kind of make another
 7 assessment if we needed to stick around in the lot or not.
 8 Q. Okay. When did that change?
 9 A. It changed shortly after Officer Livingston
 10 arrived.
 11 And so this picture, it actually does a good
 12 job of how the lot was lit. So this corner is fairly dark,
 13 and these bright lights off of the strip club were kind
 14 of -- they were backlighting the group.
 15 Q. And for the record, you're indicating the
 16 northeast corner of the parking lot?
 17 A. Yes.
 18 Q. Okay.
 19 A. And so when it was getting backlit, I could
 20 just see kind of the silhouette, the shadows from the
 21 group.
 22 And shortly after Officer Livingston arrived,
 23 two of the individuals in the group started fighting. I
 24 could tell they were fighting because I could see punches
 25 being thrown, people, you know, trying to grab at each

1 other.
 2 And so our initial thought was, Okay. It's
 3 just a fight, so we started walking over.
 4 And at this point, things started happening
 5 within seconds very rapidly. I got -- I tried to grab my
 6 radio just to key up after I saw the fight start.
 7 Q. What does that mean "to key up"?
 8 A. To actually broadcast over the radio that
 9 there was a fight occurring in the lot.
 10 Q. Did you actually depress the transmission
 11 button as you recall?
 12 A. I don't recall if I was even able to. I know
 13 I didn't say anything because as soon as I did that, I
 14 could tell the group were men, just by their physical
 15 structure.
 16 One of the males, he broke away from the
 17 fight. And at this point, I could see his shoulders and
 18 his arms and his legs, and I could see him raise his right
 19 hand, chest level with the individual he was just fighting
 20 with, and he was within -- he -- it seemed like he was
 21 almost touching him, almost like he was pointing at him.
 22 Q. Like point blank?
 23 A. Yes.
 24 Q. Okay.
 25 A. And I immediately saw four little flashes of

1 kind of a -- in the north, northern direction. From the
 2 way his body was, it seemed like it was maybe north,
 3 northwest, but just that general area towards the church.
 4 Q. Okay. Could you see whether or not his
 5 gunfire had hit anybody at that point?
 6 A. Not at that point.
 7 Q. Based on your perception of where people were
 8 standing and the proximity of him with his arm up pointing
 9 what you described as chest height, did you expect that
 10 somebody had been hit or could have been fatally injured?
 11 A. Yes, just the distance of where he was
 12 pointing the firearm at the individual, like you said,
 13 we'll use the term point blank. That is like you're
 14 touching somebody and firing at them.
 15 That's what it looked like to me.
 16 Q. Okay. And so as you're seeing this happen,
 17 what's going through your mind?
 18 A. That I need to parallel him and keep my eyes
 19 on him and start broadcasting out, you know, over the air
 20 that, you know, a shooting just occurred.
 21 But once he started running, I didn't -- it
 22 happened within such a short -- like seconds, I started
 23 paralleling him.
 24 If I can get up, I can show you the direction
 25 of travel.

1 light coming from the tip and simultaneously heard four
 2 gunshots.
 3 I'm experienced with firearms. I know that
 4 these were gunshots.
 5 Q. What did you see the other people in that
 6 group you described doing in response to the gunfire you
 7 were witnessing?
 8 A. From what I recall, I just recall seeing him
 9 shooting the one individual in what looked like the chest
 10 area. I mean, they were rapid, four shots. And then he
 11 immediately started running southbound on the sidewalk.
 12 And so I started tracking, watching him
 13 because at this point, my training just started kicking in,
 14 like, this individual just shot somebody, you know, I need
 15 to parallel him.
 16 Q. Let me ask you another question.
 17 A. Yeah.
 18 Q. So you saw him shoot the person.
 19 Were the other people in that group -- I think
 20 you originally described as four to six individuals --
 21 still kind of in the general area?
 22 A. I don't recall at that point.
 23 Q. Okay. Do you have a sense of which direction
 24 he was firing?
 25 A. Yes. The way his arm was raised, it was in

1 Q. Yeah. And while you're doing that, can you
 2 explain what it means to parallel somebody?
 3 A. Yeah. So I just -- I wanted to keep eyes on
 4 him from a safe distance at that point until I had more
 5 resources there because, I mean, I know he's armed with a
 6 firearm, and he just shot at somebody. So I want to at
 7 least have enough officers with me to approach him to take
 8 him safely into custody.
 9 So he started running on the sidewalk area,
 10 and I started paralleling this way towards -- there's a
 11 black SUV right here, kind of where the individual is
 12 standing on the south side of the lot.
 13 And immediately there's a -- there's a
 14 hedgerow right up here. As I got to the back of this SUV,
 15 he took a quick right turn into the lot.
 16 Q. To the west?
 17 A. To the west.
 18 And so the lighting changed over there. It
 19 was a lot more bright. And at this point, I could see the
 20 individual, the male with his left hand lifting his shirt
 21 up, and with his right hand, he's putting the revolver in
 22 the front of his waistband.
 23 Q. You just called it a revolver?
 24 A. Yes.
 25 Q. Could you actually see what type of gun it was

1 at that point?
 2 A. Yes. It was a metal-colored revolver, and it
 3 was kind of like -- it wasn't a long Western style. It was
 4 a smaller one.
 5 Q. Okay. In his right hand?
 6 A. Yes.
 7 Q. Okay. And is that the same hand that you
 8 perceived him using to fire just moments before?
 9 A. Yes, yes.
 10 Q. Okay.
 11 A. And so at this point, he's coming -- I -- like
 12 I said, I made it to the back of this SUV, and he turns
 13 right, west into the lot, and he's coming at a fast pace
 14 towards me. I can't remember if he was, like, fast walking
 15 or jogging as he's putting the gun in his front waistband.
 16 So immediately, I start drawing my firearm to
 17 challenge him.
 18 Q. Why did you decide to do that?
 19 A. Because I watched him as he -- he put the
 20 firearm in his front waistband and he redressed his shirt.
 21 I could see that there was nothing in his hands.
 22 At this point, he's coming towards me at a
 23 fast pace, and so there wasn't really any -- I didn't have
 24 any cover at that point to get behind.
 25 Q. I mean, why did you decide at that point to

1 So as he passes under this kind of spotlight
 2 that we see in this image here, that's where you saw him
 3 kind of putting the firearm into his pants?
 4 A. Yes, his front waistband area, yeah.
 5 Q. Okay. And so at the point when you saw him
 6 pulling the gun back out, did you have a sense of how close
 7 he was to you and how quickly he was moving towards you?
 8 A. Yes. He was at the back -- the back end of
 9 that vehicle with the tail lights on. So I -- you know,
 10 I'd gauge anywhere approximately between five to 10 feet
 11 with him advancing while pulling the firearm out towards
 12 me.
 13 Q. Okay. And you said that you remember issuing
 14 a command to put his hands up?
 15 A. Yes.
 16 Q. Did it appear that he was complying with that
 17 command?
 18 A. No.
 19 Q. When the gun came out, was it pointed at you?
 20 A. I just recall it coming out and seeing the
 21 barrel coming up out of his waistband. So like if you --
 22 you bring your arm or elbow -- you know, make an L shape,
 23 it was coming out to there when I started firing.
 24 Q. Okay. And you said that you believed that you
 25 were going to get shot?

1 draw your firearm?
 2 A. Because he's coming -- he's now coming towards
 3 me, and I know he's armed with a firearm. So I was going
 4 to start giving him commands to put his hands up.
 5 Q. Okay.
 6 A. So immediately, as soon as I see him dress his
 7 shirt, I yell at him to get his hands up, and he's still
 8 coming towards me at a fast pace. We make eye contact.
 9 I look back down, and he's made it to
 10 approximately like where the tail lights of this car is,
 11 and so I'm at the back end of this SUV.
 12 I look back down. And with his right hand, he
 13 was taking the revolver back out from his waistband. And I
 14 could see the barrel coming out, and it got to about belly
 15 button out of his waistband, so I could see the whole
 16 firearm.
 17 And so at that point, I thought I was going to
 18 get shot, too, and so I began to fire my firearm while kind
 19 of twisting my body away from him to the right. It was
 20 just instinct because I was preparing myself to get shot.
 21 I started moving to the left to get, you know,
 22 off center with him. I fired until I could tell my rounds
 23 were having an effect on him. I could see him kind of
 24 stumble and go to the ground.
 25 Q. Okay. Have a seat.

1 A. Yes.
 2 Q. In fact, you were preparing yourself to be
 3 shot?
 4 A. Yes.
 5 Q. Okay. Do you have protective gear on in the
 6 event that you were to be shot or shot at?
 7 A. Yes.
 8 Q. What is that gear?
 9 A. It's a ballistics vest, and that usually helps
 10 protect you from having, you know, handgun rounds penetrate
 11 through the vest and into your body.
 12 Q. Okay. Does that cover your hips and legs?
 13 A. It does not.
 14 Q. Does it cover your shoulders and arms?
 15 A. No, it does not.
 16 Q. Or your upper chest, neck or head?
 17 A. No.
 18 Q. What about under your arms on the sides, does
 19 it cover that portion?
 20 A. No, it does not.
 21 Q. Okay. So you described kind of turning almost
 22 away from the individual who is drawing the gun.
 23 Did you have any kind of thought about where
 24 your protective vest was covering as opposed to not
 25 covering?

1 A. Not at that time. The way I think about it, I
 2 think my body was just trying to protect itself because it
 3 was happening so fast that it just -- you know, I wanted to
 4 make myself smaller, you know, be less of a target.
 5 And since this happened so quickly, I don't --
 6 I wasn't thinking of, you know, where I'd want to get shot
 7 in the vest. Frankly, I didn't want to get shot.
 8 Q. Do you remember where your fire was aimed at?
 9 A. I don't recall for sure. I know it was at him
 10 and fixated kind of on the firearm because that was the
 11 thing that was going to hurt me. So that's what I --
 12 Q. That's what you were looking at?
 13 A. Yeah.
 14 Q. Okay. As this was going, did you have a sense
 15 of firing more than one time?
 16 A. Yes.
 17 Q. Do you know how many times you fired?
 18 A. I fired six times.
 19 Q. That's what you recall?
 20 A. Yes.
 21 Q. Okay. As you were firing, did you see him
 22 moving at all?
 23 A. From what I recall, I was twisting and moving
 24 to the left to get off center with him. I just remember
 25 firing while doing that and then him going down into the

1 not be a stationary target type of thing, especially if
 2 somebody is going to try and shoot you.
 3 So I think it was a little bit of both.
 4 Q. You've described this event as happening very
 5 quickly.
 6 Do you have any kind of sense of what kind of
 7 time frame this all occurred within?
 8 A. Within seconds. I don't know how many
 9 seconds. But it was so fast that, I mean, I couldn't even
 10 get on the radio to broadcast the fight because then he
 11 started shooting.
 12 And then when I was paralleling, the thought
 13 went through my mind that I needed to start broadcasting
 14 this, and he turns into the lot. At that point, we're face
 15 to face with each other. So it was really quick.
 16 Q. Okay. Did you know at the point that you're
 17 face to face, as he's pulling the gun out on you, whether
 18 he had shots to fire, whether the gun still had bullets
 19 left in it?
 20 A. Not at that time, but I know typically
 21 revolvers are six rounds. So in my mind, there's still
 22 rounds in the gun.
 23 Q. Okay. You didn't have a sense, then, of
 24 whether or not that gun was operable and still had bullets.
 25 Is that fair?

1 parking lot or the -- the stall.
 2 Q. The parking stall?
 3 A. Yeah.
 4 Q. And why did you decide to stop shooting?
 5 A. Because I could tell from his body demeanor
 6 that -- I mean, he was starting to run away from me and
 7 kind of go to the ground at the same time. So...
 8 Q. Did you see whether or not he still had the
 9 gun in his hand?
 10 A. I did not.
 11 Q. So when was the last time you remember
 12 actually seeing him with a gun in his hand?
 13 A. So I remember -- the last time I remember
 14 seeing him with the gun in his hand was when it was coming
 15 up, like, out of his waistband as he's coming towards me.
 16 Q. Okay. As this is kind of unfolding, did you
 17 have any conscious thought about your training or were you
 18 acting more kind of instinctually within your training to
 19 deal with this situation?
 20 A. As the shooting was happening or post?
 21 Q. As the shooting was happening.
 22 A. I think it was both. I think me turning away
 23 from him was my body trying to just protect itself.
 24 I think me moving to the left to get off
 25 center with him, it's a tactic to, you know, kind of move,

1 A. I know it was at least operable because I saw
 2 that he fired it.
 3 Q. Okay.
 4 A. But for me to make, you know, that
 5 split-second decision to question if the gun is still
 6 loaded or not as it's coming out towards me, I don't know
 7 if -- you know, if I'd be sitting here to talk to you. It
 8 just happened so quickly.
 9 Q. And are you trained to assume that all
 10 firearms are loaded?
 11 A. Yes.
 12 Q. For your own personal safety?
 13 A. Yes.
 14 Q. At what point in this, if at all, did you
 15 become aware that there were other people around in the
 16 area?
 17 A. It wasn't until later because after I saw him
 18 go to the ground, I went from the back end of the black SUV
 19 to the passenger side and went to the front hood area of
 20 that vehicle to get eyes on the male because at this point,
 21 I didn't know if he still had the firearm or what his
 22 intent was. So I wanted to use that engine block as hard
 23 cover to get eyes on him.
 24 Q. Were you afraid that he was still in a
 25 position to fire on you?

1 A. Yes, or that he still had the firearm still on
 2 him.
 3 Q. Okay. And so what happened then?
 4 A. I started giving him commands to get his hands
 5 out where I could see him. I got on the radio and notified
 6 dispatch that, you know, shots were fired. I recall
 7 hearing somebody get on the air as well saying that they
 8 need medical staged. So at this point, my mind was going
 9 from the shooting to rendering aid to him.
 10 And shortly after I started giving him
 11 commands to get his hands out where we could see him, an
 12 officer relieved me, and other officers showed up and
 13 started giving him medical treatment.
 14 Q. Okay. Did you inform some of the other
 15 officers that arrived on scene that you were an involved
 16 officer in this incident?
 17 A. Yes, I did.
 18 Q. And were you then sequestered away from the
 19 scene?
 20 A. I was. But prior to that, I met with another
 21 sergeant, Sergeant Wuthrich. That was who I advised that I
 22 was an involved member, and we were back between the
 23 vehicle with its tail lights on and the Durango, or the
 24 black SUV, and I could see his firearm that he had in the
 25 parking stall.

1 was, I mean, no reason to.
 2 Q. Okay. Fair to say he didn't present a threat
 3 to you at that point?
 4 A. I mean, he was still -- he was a threat, but
 5 he wasn't a threat of imminent death or serious physical
 6 injury at that point.
 7 I mean, we didn't know where the gun was, if
 8 it was still on him. So, I mean, we're going to approach
 9 in a safe manner to get up to him, you know, but he wasn't
 10 at that level.
 11 Q. And so how is that different from what you
 12 were presented with when you decided to actually fire?
 13 A. At that point, he was pulling a firearm out at
 14 me after I told him to get his hands up, after I saw him
 15 shot at -- shoot two individuals.
 16 Q. Okay.
 17 A. Sorry. Shoot at an individual.
 18 Q. Okay. Did you later learn that two
 19 individuals had been hit?
 20 A. I did.
 21 Q. Okay. Did you have other force options
 22 available to you at the moment that you decided to fire?
 23 A. I had other force options, but they wouldn't
 24 have been appropriate or effective at the time, especially
 25 with me with my firearm out already.

1 Q. On the ground?
 2 A. Yes.
 3 Q. And is that the first time that you saw the
 4 firearm again?
 5 A. Yes.
 6 Q. Was it the same one that you had previously
 7 scene in the possession of the individual?
 8 A. Yes.
 9 Q. Okay. So when did you become aware of other
 10 people in the area?
 11 A. It was about at that time. You know, I
 12 started hearing people yell, you know, and I saw officers
 13 interviewing people, and then I was pulled away.
 14 Q. When you moved around the SUV, as you put it,
 15 to put eyes on the individual with the engine block cover,
 16 you said you didn't know where the gun was at that point?
 17 A. No, I did not.
 18 Q. Why did you decide not to continue firing at
 19 that point?
 20 A. Because he was being -- he was starting to
 21 become compliant at this point. He was laying on the
 22 ground, and I could tell he was hit.
 23 And so, like, just by training, I told him to
 24 put his arms out, and he started, you know, bringing his
 25 hands where I could see them on the ground. And so there

1 Q. And what did you think would happen if you
 2 didn't shoot at that moment?
 3 A. That I was going to get shot.
 4 MR. JACKSON: Are there any questions from the
 5 grand jurors?
 6 I don't see any.
 7 All right. Thank you very much.
 8 THE WITNESS: Thank you.
 9 (Pause in proceedings: 1:54-1:55 p.m.)
 10
 11 DETECTIVE DARREN POSEY
 12 having been previously sworn, was re-called as a witness
 13
 14 EXAMINATION
 15 BY MR. JACKSON:
 16 Q. Detective Posey, take a seat here. You're
 17 still under oath from yesterday when you testified before
 18 this grand jury.
 19 I wanted to ask you a couple of questions.
 20 First, as you previously testified, you reviewed the
 21 medical records from Legacy Emanuel Hospital for Marcel
 22 Branch and Dante Emanuel Hall. Is that right?
 23 A. Yes, yes.
 24 Q. And within the medical records for Marcel
 25 Branch, was there a statement within them concerning what

1 had happened to him that brought him to the hospital?
 2 A. Yes.
 3 Q. And what was that statement?
 4 A. So under the medical records, one of the --
 5 one of the staff asked -- talked to Marcel Branch.
 6 And while he was being admitted for evaluation
 7 of his injuries, he stated to that staff member he was
 8 sucker punched by an individual that he did not know. The
 9 individual then pulled a gun and started shooting.
 10 The patient felt pain in his abdomen, and then
 11 he was able to drive himself to Legacy Emanuel Hospital and
 12 walked into the ER department.
 13 Q. Okay. In the course of your investigation
 14 into this incident, were Dante Emanuel Hall and Marcel
 15 Branch contacted?
 16 A. Yes, they were.
 17 Q. And was Dante Emanuel Hall cooperative with
 18 the investigative efforts of the law enforcement?
 19 A. Dante Hall was uncooperative with the
 20 investigation effort and through channels has indicated he
 21 will not cooperate with this investigation.
 22 Q. What about Marcel Branch, was he contacted as
 23 it relates to this investigation?
 24 A. Yes. Marcel Branch was contacted. He was
 25 initially cooperative with the investigation and talked to

1 OFFICER JEFF LIVINGSTON
 2 was thereupon called as a witness on behalf of the State
 3 and, after having been duly sworn, was examined and
 4 testified as follows:
 5
 6 EXAMINATION
 7 BY MR. JACKSON:
 8 Q. All right. Can you please state and spell
 9 your name?
 10 A. Yeah. It's Jeff Livingston, J-E-F-F,
 11 L-I-V-I-N-G-S-T-O-N.
 12 Q. How old are you?
 13 A. 39.
 14 Q. What's your educational background?
 15 A. I've got a little bit of college, went to
 16 Spokane Falls Community College for a year and then went
 17 into the military. I was in the Coast Guard for two years
 18 active and six years reserve.
 19 Q. Did you grow up in the Spokane area?
 20 A. I did.
 21 Q. When did you come to Portland?
 22 A. My wife and I moved here about three years ago
 23 or -- excuse me, four years ago.
 24 My wife works for Macy's, and she got a
 25 promotion. So we ended up at that point moving us from

1 investigators, and he continued to be cooperative until
 2 this week. But as of this week, he has not responded to
 3 calls or texts.
 4 Q. Or any other efforts of law enforcement to
 5 contact or communicate with him?
 6 A. Correct.
 7 Q. Okay.
 8 MR. JACKSON: Are there any questions of
 9 Detective Posey?
 10 A GRAND JUROR: Can you give me that quote
 11 again that Mr. Branch said to the staff member?
 12 THE WITNESS: Yeah. "He states he was sucker
 13 punched by an individual that he did not know. The
 14 individual then pulled a gun and started shooting. The
 15 patient felt pain to his abdomen, and he was able to drive
 16 himself to Legacy Emanuel Hospital and walked into the ER
 17 department."
 18 MR. JACKSON: Any other questions?
 19 I don't see any.
 20 All right. Thank you.
 21 (Pause in proceedings: 1:58-2:00 p.m.)
 22
 23
 24
 25

1 Spokane to here.
 2 At the time, I was working for health care --
 3 I was an administrator for a health-care company. So I
 4 just transferred from that company here to Portland and
 5 picked up and moved.
 6 Q. Okay. And when did you decide to become a
 7 police officer?
 8 A. I was actually at a career fair October of
 9 2015, and I was there recruiting kids from the college. I
 10 happened to have Portland Police and Washington State
 11 Patrol. They were all near us, and they happened to be
 12 talking to me.
 13 It's been my lifelong dream to be a police
 14 officer. So at that point, I think it was October of '15,
 15 when I decided to make that career change and really give
 16 everything I could to become a police officer.
 17 Q. All right. So did you go through the
 18 application process?
 19 A. Application process. I believe application
 20 process and testing started January of '16. I received a
 21 call for my background to be picked up and started
 22 September of 2016.
 23 It was January of 2017 when I got the call to
 24 state that I had a letter of offer as long as I passed the
 25 psychological and the medical testing, which I did, and

1 then ended up going to the academy March of 2017.
 2 Q. Okay. And did you successfully complete the
 3 basic academy?
 4 A. I did, 16 weeks.
 5 Q. And then did you come to Portland Police
 6 Bureau's advanced academy?
 7 A. I did, September of 2017 through November of
 8 2017. It was a 10-week course.
 9 Q. Okay. Could you briefly explain for us some
 10 of the training you received in the academy?
 11 A. Absolutely. So the training that you get is a
 12 vast array. It's a little bit of law -- actually, quite a
 13 bit of law. There's a lot of, like, defensive tactics, if
 14 you've got to go hands-on with individuals. We spent a lot
 15 of time in there.
 16 We spent, at the academy down in Salem, about
 17 a week's worth, so it would have been 40 hours of training,
 18 just in the firing range. And then they've got their own
 19 little scenario village where you spend an enormous amount
 20 of time with your classmates going through dozens and
 21 dozens of scenarios.
 22 There's medical training, there's report
 23 writing training. It's a vast array. They throw a lot in
 24 16 weeks. They could probably extend it a little bit more,
 25 but there's a lot of information, a lot of training coming

1 that you come through, until you're essentially on your
 2 own.
 3 So at that time, when I went on the street for
 4 the four weeks, I was in entry phase. And then when you go
 5 back, you just do all scenarios, everything for four weeks
 6 straight. It's all scenarios, things that make you process
 7 what's going on.
 8 From what I've been told, a lot of the
 9 scenarios are everything that's maybe happened on the
 10 street before to other officers, and they want to bring
 11 that into training as much as possible.
 12 Q. Okay. Did you successfully complete all of
 13 that training?
 14 A. I did.
 15 Q. Did you then go on to a probationary period
 16 following the completion of your training?
 17 A. I did. So the probationary period is 18
 18 months. And, again, you're going through that entire FTEP
 19 program, phase 0 through phase 5, during that 18-month
 20 program.
 21 I ended up fulfilling that successfully as of
 22 September 2nd, 2018.
 23 Q. Okay. And at that point, you were just out as
 24 a police officer doing the job?
 25 A. Correct.

1 through that; as well as in the advanced academy, the way
 2 they set it up with Portland is it's a 10-week block. The
 3 first six weeks is all law. So you do a lot of your law
 4 classes at night.
 5 During the day, you split it up between four
 6 hours of the range time and four hours of defensive
 7 tactics. So we get a lot of that training hands-on for the
 8 first six weeks.
 9 We come back, which is nice. We get to go to
 10 the street, kind of implement what we've learned a little
 11 bit for four weeks and --
 12 Q. Let me ask you a question.
 13 Do you have a coach with you or, like, an
 14 officer that has been through this program to kind of
 15 supervise you as you go through that?
 16 A. We did. As soon as they put you on the
 17 street, you start the FTEP, field training program, where
 18 you start with a coach.
 19 When you first come out of the academy and you
 20 go to the street like they sent us, for that brief amount
 21 of time you go in phases, phase 1, phase 2.
 22 The goal is as you go through those phases,
 23 you can slowly have the coach pull themselves back from
 24 working on the day-to-day observations and allow you to
 25 start working on some of these calls, some of the things

1 Q. Okay. Is your appearance before this grand
 2 jury today a result of any kind of compulsion or subpoena
 3 process or anything like that from the district attorney's
 4 officers or other law enforcement?
 5 A. I guess I don't understand the question.
 6 Q. Okay. In other words, are you here
 7 voluntarily, or are you being compelled to testify before
 8 this grand jury?
 9 A. Voluntarily.
 10 Q. Okay. You're not under subpoena?
 11 A. No.
 12 Q. Okay. Following the incident that occurred on
 13 September 30th, 2018, were you placed under a
 14 communications restriction order?
 15 A. I was. After the incident I was, correct.
 16 Q. And is that order still in place?
 17 A. It is, correct.
 18 Q. So now moving to the September 29th, into the
 19 morning, early morning hours of September 30th, were you
 20 working?
 21 A. I was, correct.
 22 Q. And what shift were you working?
 23 A. I was working C shift, which is our 1600.
 24 It's 4 p.m. to 2 a.m.
 25 On that particular night, I ended up offering

1 to stay late to help out with the entertainment district
2 for overtime, so I ended up staying past 2:00.

3 Q. Okay. You start work at 4:00. What is your
4 kind of sleep schedule?

5 A. So on an average day, when I get off of work
6 at -- we get off at 1:30, so we can get in and change and
7 so forth. I'll usually leave the precinct at about 2:15 on
8 an average day in the morning.

9 I get home. I have a couple dogs. So usually
10 when I'm coming home, my wife is sleeping. My dogs are
11 restless. I'm taking care of them, letting them out,
12 giving them treats.

13 I usually try to make myself a meal, and I'm
14 usually -- it's hard to wind down at that point, so I
15 usually watch TV for maybe an hour, and then usually I'm
16 starting to get a little tired. So it's usually closer to
17 3:30, 4:00, I'll go upstairs and go to bed.

18 On average, I typically get about six to seven
19 hours. I know that morning, because the night before
20 was -- was not very strenuous. They had me working in the
21 Southwest Hills, which is -- it equates to -- working
22 downtown, there's a lot of call volume. In the Southwest
23 Hills, there is not. I ended up working Southwest Hills.
24 There wasn't a lot going on, so I wasn't overly strained.

25 I remember sleeping pretty well, getting up

1 protocol as far as going through -- we have flyers, any
2 wanted flyers or anything like that.

3 And then when it was done, that particular
4 shift, one of the sergeants -- we tend to do some
5 debriefing. We try to go through some training and really
6 get our mindset right before we hit the street.

7 I believe that particular roll call, we had a
8 couple videos shown to us as far as a couple of police
9 shootings that had happened across the country.

10 They show that to us, then they replay it,
11 then they stop. We ask any questions that we have, and
12 then we work through it as a group and say what would we do
13 different, what did we like about that officer's tactics
14 and so forth?

15 Like I said, I believe that night, we went
16 over both videos, which took maybe approximately 10 or 15
17 minutes. Once we were done with that, they released us.

18 Q. Okay. When you say "released," you mean?

19 A. Out to the streets.

20 Q. Okay. At any point during your shift, were
21 you under the influence of any substances that would
22 materially affect your job function or decision making?

23 A. I was not.

24 Q. And do you recall what patrol area you were
25 assigned to that night?

1 around 11:00. Then I like to get into the office pretty
2 early. We have to get cars down at the garage. We have to
3 get all of our information, get our gear.

4 So I usually take a quick shower, get another
5 meal, get my dogs situated, and I'm usually leaving by
6 about 12:30 or 1:00 so that I can get down by 2:00.

7 Once I'm down there, I've got my car, I've got
8 my e-mails sent, I've gotten dressed and basically just
9 waiting for roll call, and that's how it went on that
10 particular evening.

11 Q. Anything unusual about that process or going
12 on in your personal life or anything like that?

13 A. Nothing, no.

14 Q. As the shift began, it starts with roll call?

15 A. Correct.

16 Q. Okay. What was the roll call process for that
17 particular shift?

18 A. For that particular shift, I believe, if I
19 remember correctly, we had quite a few folks in there. I
20 say "folks" meaning we had, I believe our new captain. We
21 just got a new captain. He was in there. We had several
22 sergeants in there just to give some updates of what was
23 going on from day shift to the afternoon shift.

24 We had a full roster of individuals on shift
25 that night. I believe they went through their normal

1 A. I was. My district was 844. They assign us
2 by district numbers.

3 844 is essentially downtown, and it's from
4 I-405 as your eastern boundary to Southwest Vista as your
5 western boundary; north Burnside as your northern boundary
6 all the way to Jefferson.

7 And on that particular night, I have a partner
8 that usually works with me, a partnering district car that
9 takes 845, and that would have been just east of the
10 freeway.

11 He ended up working a mission that night, so I
12 ended up actually working both districts, which is not
13 uncommon and not typically difficult. It's just a matter
14 of, you know, additional calls throughout the night and so
15 forth.

16 Q. Okay. Do you work with a partner or by
17 yourself?

18 A. By myself.

19 Q. In a marked patrol car?

20 A. Marked patrol car, correct.

21 Q. And are you in full uniform, badge displayed
22 while operating as a patrol officer?

23 A. That is correct.

24 Q. Okay. Do you recall any unusual calls that
25 you responded to during your shift up to the time when the

1 incident occurred?
 2 A. Nothing unusual, pretty basic, couple theft
 3 calls. We get a lot of unwanted calls from folks in front
 4 of businesses and so forth.
 5 I think I had a domestic dispute towards the
 6 end of the night, nothing out of the norm that we typically
 7 get through the downtown calls.
 8 Q. Okay. And what time is your shift supposed to
 9 end? 2:00 in the morning?
 10 A. 2:00 in the morning, correct.
 11 Q. You had volunteered, you previously stated, to
 12 stay late and assist with the entertainment detail?
 13 A. Correct.
 14 Q. When was that arranged? As the shift was
 15 ending or prior?
 16 A. Actually prior. Essentially, with the
 17 entertainment district, it's down there on Third and Couch,
 18 and it -- on Thursday, Friday, Saturday nights, it's quite
 19 busy, especially at about midnight until the time the bars
 20 close. It's gets extremely busy.
 21 Once the bars closed, people start leaving the
 22 area. It floods the street, which is why Portland Police
 23 puts up barricades from Second over to Fourth and then from
 24 to Davis over on Burnside just so pedestrian don't get hit,
 25 so folks don't get hit.

1 And we're talking about 1:00 in the morning
 2 now on September 30th?
 3 A. Correct.
 4 Q. Okay. Did you ultimately end up assisting the
 5 entertainment detail?
 6 A. I did.
 7 Q. So what did you do?
 8 A. So what typically happens in that situation is
 9 the majority of why we're there is our presence. It's --
 10 it's so that we can basically keep the peace. Just having
 11 our presence there alone tends to stop any type of
 12 fighting, any type of bickering, anybody who is trying to
 13 drive home drunk. They walk out of a nightclub and they
 14 walk directly across the street to go get in their car,
 15 they tend to see us. So they're more opt to grab a taxi or
 16 Uber, grab their friends and walk the other way, although
 17 there is sometimes fighting that happens.
 18 When we're there, we're basically trying to
 19 make sure that we keep the peace. If there is a fight that
 20 breaks out, we try to break it up. If there's no injuries,
 21 nobody wants to press charges, everybody goes on their own
 22 way. You basically try to keep it to a minimum at best
 23 from anything happening.
 24 That night, there were some scuffles. There
 25 were, you know, some typical stuff from night goers, but

1 When you're driving down there as an officer,
 2 it's evident how busy it is, and it tends to -- I can
 3 clearly see when certain nights are pretty busy and when
 4 other nights are not.
 5 That night appeared to be pretty busy. I
 6 volunteered several times before to work overtime, so I
 7 know the officers quite well that work the entertainment
 8 district.
 9 I took it upon myself to drive down there and
 10 reach out to the sergeant who was working and just ask,
 11 Hey, do you need anybody else tonight to stay after my
 12 shift is over? And he said, Absolutely, that would be
 13 great. It is pretty busy. Just start coming back down
 14 here at about 1:00.
 15 So I left that area, went back on to patrol
 16 most of the downtown area. And when it was 1:00, I just
 17 drifted my way over.
 18 I put myself on a specific call for Third and
 19 Couch, which everybody from the Portland Police side
 20 understands in our computer system, that means you're going
 21 to be on a specific detail down in the entertainment
 22 district versus being available for dispatch to send you
 23 everywhere else.
 24 Q. Okay. So you did that, started making your
 25 way over.

1 nothing out of the ordinary that -- that I haven't seen
 2 specifically down on Fourth and Couch, Third and Couch.
 3 Q. Okay. So were you just kind of driving around
 4 with your lights on or how did you actually do that or
 5 perform that function?
 6 A. Great question.
 7 No. In this situation, we are actually on
 8 foot. What we'll do is we have those barricades, like I
 9 mentioned. Several officers, usually you try to work in
 10 groups of two or three, are on foot walking through the
 11 entertainment district.
 12 You're essentially either standing in the
 13 street just observing as people are coming out. A lot of
 14 the patrons and the people going to these night clubs will
 15 stand out and talk for a good hour, hanging out, whatever,
 16 grabbing food.
 17 You're just essentially, again, keeping your
 18 presence on foot. We do have some officers we'll ask to go
 19 park their vehicles in one of the neighboring parking lots
 20 because as people are going to the parking lots, that's
 21 where issues have arose.
 22 They see us standing there, so they start
 23 going over there to fight or do whatever they are going to
 24 do.
 25 That particular night, I was on foot, and I

1 stayed in the area of the nightclubs.
 2 Q. Okay. Anything out of the ordinary occur
 3 while you were kind of walking around patrolling?
 4 A. No. Like I said, there were a few scuffles.
 5 Again, pretty similar to what we see on a Friday or
 6 Saturday night, folks coming out. They may have already
 7 had words in a bar. They get in a fight with each other.
 8 We break it up, send people home.
 9 On that particular night, I believe the crowd
 10 from that area had started to leave, and we had it pretty
 11 cleared out just before 3:00.
 12 Q. And so what did you do then?
 13 A. At that point, our sergeant said, I think
 14 everyone has gone home for the night, at least the majority
 15 of them, so let's go ahead and start picking up barricades.
 16 So essentially, we have a truck with a trailer
 17 that we drive around and pick up the barricades. It takes
 18 us about 10 minutes.
 19 Once we got those picked up, I was -- I just
 20 know that there's really nothing else for me to do. They
 21 ended up going back in. We have our substation there on
 22 Third and Couch.
 23 Most of the officers walk back to do paperwork
 24 or any other follow-up that they have.
 25 Q. Is the Old Town Precinct?

1 Third and Stark.
 2 As I was driving southbound on Third, I was
 3 just crossing essentially where that parking lot was when I
 4 heard the radio transmission. I had looked over, seen a
 5 police car in the -- in the lot with its lights on. I
 6 didn't see anybody. I did see a group of people.
 7 Q. You did see or didn't see?
 8 A. I did see a group of people. I didn't see the
 9 officer. I just saw his car.
 10 So I know by him asking for some additional
 11 units, nobody else has responded yet. So I took it upon
 12 myself to drive down to the next street, which is a one-way
 13 on Washington. I took a right, and then went up to Fourth,
 14 took a right and circled back. I pulled into the parking
 15 lot to assist. I pulled into the west entrance of that
 16 parking lot.
 17 At that point, I pulled in pretty quickly
 18 because I wasn't quite sure why he called or what he
 19 radioed for.
 20 So as I pulled in, I did see a group of
 21 people, approximately seven or eight people, that were in
 22 the middle of the parking lot just walking eastbound away
 23 from where we were.
 24 As I pulled in, I just got out of my car
 25 pretty quickly, and I just asked Sergeant Britt, Hey,

1 A. OTP is what we call it.
 2 After the barricades were picked up, most of
 3 the officers and sergeant had walked over to OTP, and I
 4 just know that that's my time to go. There's nothing else
 5 they need from me.
 6 I think I waved to the sergeant and said, Hey,
 7 I'll see you later. Let me know if you need anything else.
 8 I was getting into my vehicle knowing that my hour of
 9 overtime is over, and it's time for me to go home.
 10 At that point, I was starting to get into my
 11 vehicle and head south on Third Avenue, just heading back
 12 towards the precinct.
 13 Q. And where is Central Precinct located?
 14 A. The address is 1111 Southwest Second Avenue.
 15 Q. And from the courthouse, is it basically just
 16 across the park?
 17 A. Correct, kitty-corner from where we're at if
 18 we come out the main doors of the courthouse.
 19 Q. You were going south down Third Avenue toward
 20 Central Precinct?
 21 A. Yes.
 22 Q. What happened then?
 23 A. As I was leaving, I get a dispatch call that
 24 you hear over the radio. Sergeant Britt had asked for some
 25 additional cars to come to the parking lot at Southwest

1 what's going on?
 2 And he's, like, No, nothing. There just was a
 3 group of people that were arguing. It looked like maybe
 4 something was going to get out of hand. I just wanted to
 5 get some more officers here.
 6 Q. Do you remember where you parked?
 7 A. I do. So his car appeared to me to be pretty
 8 close to when you pull into the driveway. He basically
 9 looked like he just kind of stopped as he pulled into the
 10 driveway.
 11 And then I pulled in essentially on the side
 12 of him and almost at an angle so I could quickly get in and
 13 then just hop out and see what was going on. So I was
 14 parked at this kind of odd angle in front of this police
 15 cruiser.
 16 Q. Did you later reposition your car?
 17 A. I did. We had -- we did -- we had two females
 18 walk up to their vehicle. It looked like they had some
 19 bags. They said they were trying to move their car, and if
 20 we could move out of the way so they could back up.
 21 I was the one that was kind of primarily
 22 blocking them, so I backed up and repositioned. I pulled
 23 forward eastbound, and I remember seeing a little kiosk
 24 where I knew that if I could pull up right and do it just
 25 the right way, I wouldn't block any of the cars, hopefully,

1 so if anybody else comes back, I'm not constantly
 2 repositioning.
 3 I parked there, and then I specifically --
 4 because on Third and Couch in some of those parking lots
 5 where we ask people to park, we specifically have our
 6 strobes on. We specifically have our lights going so we
 7 have that presence.
 8 I made sure my lights were on, everything was
 9 set up. I left my headlights on because we were faced to
 10 Southwest Third, and right there is a nightclub called the
 11 Golden Dragon, and there's another nightclub called -- I
 12 apologize. I don't remember which one it is, but that's
 13 next to it.
 14 That's a lot of times where folks will come
 15 from as far as leaving the club to go to their car. So I
 16 wanted to light that area up as much as I could.
 17 Q. Okay. So you got out of your patrol car?
 18 A. I did.
 19 Q. And could you describe what the patrol car
 20 looks like?
 21 A. A basic police vehicle. It's blue and white.
 22 It says "Portland Police" on the side. It's got lights and
 23 sirens. It's not like an unmarked car of any kind. It's
 24 got a bumper grille on the back.
 25 Q. Is it an SUV or a Crown Victoria?

1 to get to know him a little bit when we were looking
 2 eastbound and --
 3 Q. You guys are still standing next to your
 4 patrol car?
 5 A. Yes. I believe he's standing to the right of
 6 me. I'm to the left. We're faced east. And in the
 7 parking lot, there's two rows of cars. I would say
 8 approximately the gap of the parking lot is maybe 20 feet
 9 as far as, like, the actual gap of where we're standing.
 10 Q. Do you mean like the drive aisle?
 11 A. The drive aisle, yes. And each of the cars
 12 that are in, I would say, the north row that are parked and
 13 then there's cars that are parked in the south row, I see a
 14 group of approximately five to six individuals walk over
 15 into the parking lot, and they're standing at the back of
 16 the last vehicle, what appeared to be in the north row.
 17 At that point, I see a physical altercation
 18 start to happen. You can see fists flying. The group is
 19 kind of in a big scrum.
 20 I instantly go on to my radio and say, 844, we
 21 have a fight at Third and Couch -- or excuse me, Third and
 22 Stark.
 23 As that fight is happening, I see a black male
 24 large in stature step back away from the group and pull out
 25 what appeared to be a dark-looking handgun in his right

1 A. SUV, yeah, Ford Explorer SUV.
 2 Q. Okay. So you parked there. You get out of
 3 the car. And then what happened?
 4 A. So at that point, I believe I walked around my
 5 car. I don't remember if it was to the front or to the
 6 back.
 7 And being that Sergeant Britt's car was behind
 8 me, and he was back there essentially waiting for me to
 9 move my car, he walked up to where I was. I ended up
 10 walking around.
 11 At some point about where my car was, we were
 12 standing together just making small chitchat. That was the
 13 first time I'd met Sergeant Britt. I actually met him for
 14 the first time down at Third and Couch when he was down
 15 there observing the area.
 16 Q. That night?
 17 A. That night.
 18 It sounded like that night he was just trying
 19 to get a feel for Third and Couch and what the
 20 entertainment district entailed because he might be filling
 21 in for the other sergeant in the future.
 22 So I had just met him briefly at Third and
 23 Couch when I ended up trying to assist him over at this
 24 parking lot at where Third and Stark was.
 25 We were having small chitchat. I was trying

1 hand. He's approximately three feet from the group, and
 2 he's also facing north looking at the group.
 3 He opens fire at point blank range of the --
 4 of the individuals in that group. And the reason I
 5 remember that so well is, one, it was loud; and, two, he
 6 was holding it quite high, shoulder height and maybe even
 7 higher, as he was firing the gun at the group.
 8 At that point, we're -- we're still positioned
 9 in the center of the parking lot. I see the subject. I
 10 see the gun drop down, and it disappears out of my sight
 11 for several moments.
 12 He takes some back steps as if he's going to
 13 try to take off south, but then he abruptly changes and
 14 starts heading westbound in our direction. He starts
 15 advancing towards us.
 16 Q. Let me ask you another question here.
 17 So when you saw this person raise his hand and
 18 shoot, you said it was loud?
 19 A. Uh-huh.
 20 Q. So you heard it?
 21 A. Correct.
 22 Q. Could you hear whether it was one shot or more
 23 than one shot?
 24 A. No. It was multiple. I would say
 25 approximately four to five shots.

1 Q. Okay. Could you actually see the shooting
 2 occurring as well, or were you just hearing it?
 3 A. No. I could see it. Like I said, it's
 4 probably -- from where we were to where they were, I would
 5 estimate it's approximately 60 to 70 feet.
 6 So from we were at, it was evident that the
 7 group that was fighting, him stepping back, him actually
 8 firing, I could see all of that.
 9 Q. Okay. Did you actually see, like, muzzle
 10 flashes, or was there some other indication that the gun
 11 was actually firing?
 12 A. I don't recall. With -- with everything going
 13 on and the adrenalin instantly hitting, I don't remember
 14 any of the muzzle flash.
 15 Q. Okay. You said there was a group of, I think
 16 you said, five to six individuals?
 17 A. I believe that's about how many I thought I
 18 saw.
 19 Q. Did you see them reacting to the gunfire that
 20 you were witnessing?
 21 A. Well, they were essentially behind that last
 22 car, and so I don't -- I don't remember, you know, where
 23 they went or what happened. I know that they were up
 24 against the car essentially or near the car.
 25 And, again, my sole focus, I just -- you're on

1 I started to put out on the radio, "844, we have a fight,"
 2 we're starting to just gravitate towards that, you know,
 3 take a couple of steps.
 4 This situation was so dynamic and happened so
 5 fast that we were only able to get a couple steps in before
 6 now we're reacting to the individual itself, and so --
 7 Q. The shooting?
 8 A. After the shooting, after the subject had
 9 fired upon the group.
 10 I'm so hyper-focused on him now that I see him
 11 go to -- like I said, what appeared to take off southbound
 12 and then abruptly stop and then change his direction and
 13 start heading west directly towards us.
 14 At that point, he's advancing quickly. I see
 15 the gun come back out, and it's now pointed in our
 16 direction.
 17 My gun is out, and I'm giving verbal commands,
 18 "Drop the gun, drop the gun." The subject doesn't drop the
 19 gun, and he's still advancing towards us.
 20 I fire multiple rounds simultaneously with
 21 Sergeant Britt. Approximately three to four shots were
 22 fired from -- from me.
 23 As I'm firing those multiple shots, the
 24 subject's direction changes and now puts him south in an
 25 open parking spot between a sedan and an SUV.

1 a tunnel vision. When something like that is happening,
 2 you're on tunnel vision instantly to him, and I'm trying to
 3 track him to see if he's going to run or what he's going to
 4 do.
 5 I don't recall what happened with the other
 6 individuals.
 7 Q. Okay. Did you see anybody that appeared to
 8 have been injured by the gunfire?
 9 A. I couldn't tell, other than the fact that he's
 10 standing three feet from them at point blank range with a
 11 handgun. I couldn't tell if there were any injuries at
 12 that point.
 13 Q. Did you suspect that somebody had been shot or
 14 possibly even killed?
 15 A. I did suspect that, absolutely, yes.
 16 Q. What did you do then? You said you had tunnel
 17 vision on him?
 18 A. Correct.
 19 Q. What is it that you did?
 20 A. So at that point, we're still near our
 21 vehicle. As we saw the fight, we were starting to walk up
 22 towards it.
 23 And, again, this --
 24 Q. This is before the shooting?
 25 A. Well, yes. So -- so as the fight came out and

1 I can see that the subject is taking fire and
 2 has been struck by gunfire and is falling down to the
 3 ground.
 4 I decide to stop shooting. I see that he's on
 5 the ground, and the gun that was in his hand, his right
 6 hand, is now on the ground between me and him. It's just
 7 north of him by about two feet.
 8 I remember he was still moving around, and I
 9 couldn't see his hands. So at that point, he's still a
 10 threat to me because he has access to that gun.
 11 I start immediately giving him verbal
 12 commands, "Show me your hands, show me your hands."
 13 He was on his left side, and I couldn't see
 14 his left hand. So I said, "Show me your left hand." At
 15 this point, he's being compliant. He rolls over and shows
 16 me both of his hands.
 17 I say to him, I give him a warning, "Don't
 18 move for that gun or you'll be shot again."
 19 I hear Sergeant Britt -- in this situation,
 20 Sergeant Britt was to my right. At some point, and I don't
 21 recall when, he had repositioned himself over to the front
 22 of the SUV. I could hear his voice. I could hear him also
 23 giving some type of verbal commands. I heard him come
 24 across the radio and just say, "Shots fired."
 25 With me standing there, I knew that that

1 wasn't enough information we needed to put across the air,
2 especially since we needed additional officers on scene.

3 So I got on the radio and I said, "844, shots
4 fired. One suspect down. Our guns are facing south."

5 The reason we do that is it's critical to get
6 that information out so that other officers that are
7 responding don't come into an area where there's maybe a
8 potential cross-fire. I also did that because we wanted to
9 get additional officers on scene as quickly as we could.

10 While I'm putting that out and still, you
11 know, keeping my eyes and having my gun pointed at the
12 subject, I hear some commotion and yelling and so forth to
13 my left. I quickly observe that there's two subjects in
14 the sedan next to the open parking space. There's a female
15 in the driver's seat and a male in the passenger seat, and
16 there's a male standing in front of the vehicle, which he
17 had a dark item in his hand, which caught my eye quickly.

18 So I went gunpoint to those three and
19 immediately gave verbal commands, "Show me your hands.
20 Keep your hands up."

21 I was quickly able to identify that the
22 subject standing in front of the car had a cell phone in
23 his hand, which is why no additional -- why I did not shoot
24 or any other advancements made on my part.

25 He was moving around a lot. And being that I

1 heard him yell for someone to grab that.

2 And then within moments, I see a group -- I
3 hear a group run behind me and I see a group come back
4 around the SUV and start rendering aid. They go hands on
5 with the subject.

6 At that point, I'm now focused solely on these
7 three because I know that they have hands on, and they have
8 him potentially secured, and they were helping him.

9 Sergeant Wuthrich comes up and taps me on the
10 shoulder and tells me to walk forward, keep my eyes on the
11 subject while they pull the individuals out of the vehicle
12 and get them into custody.

13 And then I saw a couple officers come around
14 front, place the subject that was standing in front of the
15 vehicle into custody, which at that point, I looked back
16 over to make sure this was still secure, and it was.

17 At that point, I felt it was safe enough for
18 me to holster my weapon. And then I took a step back, took
19 a deep breath. And the next thing I remember doing is
20 turning around and looking back to where the subjects were
21 behind the car, and I think it was Sergeant --

22 Q. Which car?

23 A. Sorry. The one with the group that had been
24 open fired on.

25 Q. The initial shooting?

1 had an unsecured gun and a subject that I'm also still
2 trying to keep an eye on, I told him, "Don't you move
3 towards that gun. Stay back. Keep your hands up where I
4 can see them."

5 I told the individuals in the car to keep
6 their hands on the dashboard. They were compliant. They
7 were obviously yelling, "Don't shoot, don't shoot. I don't
8 have anything."

9 At that point, I remember seeing out of the
10 peripheral of my left side officers were running up, coming
11 in from the east driveway, officers coming up from that
12 standpoint.

13 I remember Sergeant Schmautz came and tapped
14 me on my shoulder and asked me, "What threats do we have
15 right now? What do we need to address?"

16 I explained to him that we had the subject
17 down near the gun, and we have these three individuals that
18 I don't know if they're affiliated. I don't know what the
19 situation is. We just need to get them into custody before
20 we figure out what's going on next.

21 At that point, I heard Sergeant Schmautz say
22 that he's trying to put a team together so that they can
23 render aid to the suspect -- the subject.

24 I hear him ask for an IFAK kit, which is an
25 advanced first aid kit that we all keep in our cars. I

1 A. The initial shooting.

2 I had said to Sergeant Wuthrich, "I think we
3 need to go over there and see if there are any victims.
4 That's where the original shooting happened."

5 At that point, he assured me that they were
6 going to check everything. They just wanted me to take a
7 step back.

8 He asked if I was involved. I said I was. He
9 asked me to go sit in the vehicle, and he assigned me with
10 a member as a partner to just make sure everything was okay
11 and for me to go sit by my car, which I did.

12 And then a few moments later, Sergeant
13 Schmautz came back walking over to me. After they rendered
14 aid to the subject, he walked back over with another
15 officer, Officer Heppner, who he said he was going to
16 switch out with Officer Whitmore as being my member to sit
17 with. He advised me to sit in the vehicle and just wait
18 for further instructions, which I did.

19 At that point, I sat in the vehicle until --
20 until they got me out of the area and finished processing
21 me.

22 Q. Okay. So you and Sergeant Britt are out of
23 your vehicles. You see this fight occurring, and you start
24 moving toward it.

25 You described seeing the shooting occur?

1 A. Uh-huh.
 2 Q. Did you then begin moving toward the shooter
 3 or looking for cover or retreating or what movements did
 4 you actually do?
 5 A. We're in the middle of, like I had said, the
 6 driveway of the parking lot, the thruway.
 7 At the time, there's really -- because, again,
 8 it happened so fast and so dynamic, there wasn't a thought
 9 of getting cover. It's a matter of just now your adrenalin
 10 is rushing, you have tunnel vision on the subject. We know
 11 he has a gun.
 12 We had started to walk forward in the middle
 13 of that parking lot, at least I did, taking a few steps to
 14 address the fight when that had started.
 15 At that point, I didn't have any time to
 16 react. What I remember thinking was, I think this guy is
 17 going to take off, and I was trying to prepare myself to
 18 get in a foot pursuit potentially before he just turned and
 19 started coming back westbound at us.
 20 So at that point, if I remember correctly, I
 21 didn't take but a couple of steps and then have my ability
 22 to just be in the parking lot to address, you know, him
 23 coming at us and what was going to happen next.
 24 Q. So is it your memory that you actually stayed
 25 somewhat close to the patrol car?

1 Q. Where were you positioned as it relates to him
 2 when you next saw the gun?
 3 A. So the next time I saw it, I was -- I was
 4 facing east. He was advancing west, and I would say we
 5 were almost -- almost in a direct line. If not, he might
 6 have been slightly to my right based on his positioning of
 7 the -- like I said, I think he was trying to head and then
 8 for some reason, he just turned on us.
 9 So I might have had a couple steps to his
 10 right, my left, but it was almost a head-on type of a
 11 direction.
 12 Q. Was he running down the back of the parked
 13 cars in a westerly direction towards you, then?
 14 A. Correct. So, again, I had said that there's
 15 the north end cars, south end cars.
 16 He would have made it close to somewhere to
 17 the -- to the back side of the south end of the vehicles.
 18 And as he turned, he's essentially running parallel with
 19 the back of the vehicles directly at us.
 20 Q. All right. So did you move, then, down more
 21 toward that line of vehicles in the southern part of the
 22 parking lot?
 23 A. I don't recall moving that much. I -- I feel
 24 like when we got out of our car, we were already, like I
 25 said, in the center of the -- center of the parking lot.

1 A. Relative, within a few feet. We might have
 2 been over to the right a little bit. Just based on our
 3 position, when I got out and was talking to Sergeant Britt,
 4 we might have been to the right of the vehicle and, like I
 5 said, then advanced. But I think we'd be relative within
 6 five feet, 10 feet of the car from what I remember.
 7 Q. You said that when the shooting occurred, you
 8 first saw the person moving to the south and then lost
 9 sight of the gun?
 10 A. Correct.
 11 Q. Is that right?
 12 A. Correct.
 13 Q. Do you remember where he was when you lost
 14 sight of the gun?
 15 A. He was relatively close to the group,
 16 somewhere in there, because the gun came back down.
 17 And then as he was back pedaling, trying to
 18 leave southbound, I couldn't see where it was. So it was
 19 sometime where he was standing next to the group and trying
 20 to potentially take off in that short distance, whatever
 21 that distance was.
 22 Q. Okay. Do you remember actually seeing his
 23 hands empty, or did you just not see his hands at all?
 24 A. I just couldn't see at that point, and I don't
 25 recall that part of it.

1 We may have moved slightly. As his direction
 2 is moving, we may have moved thinking that we -- well, me
 3 thinking that there was going to be a foot pursuit, and so
 4 that my have repositioned me slightly into the parking lot,
 5 but I don't remember moving considerably over because I
 6 knew at that point I was still pretty vulnerable with no
 7 cover, no -- no cars to quickly dip down in and so forth.
 8 Q. Okay. When you next saw the gun, do you
 9 remember where it was?
 10 A. It was -- it was coming out, and I -- I
 11 couldn't see if it was coming out of a pocket, if it was
 12 out of a waistband, but it came out of somewhere as he was
 13 advancing.
 14 I'm just hyper-focused, trying to look at him,
 15 trying to -- they teach us to watch the hands. You know,
 16 hands are such a -- such a crucial part. So I'm trying to
 17 look for his hands. I don't recall, again, with the
 18 adrenalin and the tunnel vision, exactly where it came out
 19 of. I just know that it came out of somewhere, waist,
 20 pocket, something with his right hand.
 21 A GRAND JUROR: And where was he standing when
 22 you noticed that come out again?
 23 THE WITNESS: So he's advancing towards us.
 24 So he's turning from his south position, and he's coming
 25 westbound.

1 At some point as he's coming westbound is when
 2 he's bringing it back up, correct.
 3
 4 BY MR. JACKSON: (Continuing)
 5 Q. In his right hand?
 6 A. Right hand.
 7 Q. Is that the same hand you'd seen him
 8 previously using to fire the gun?
 9 A. Yes, correct. That's what it appeared from my
 10 distance.
 11 Q. You saw it come out. He's running?
 12 A. Correct.
 13 Q. Were his arms swinging in kind of a running
 14 motion or something different?
 15 A. I think they were because he was advancing on
 16 us pretty quickly, but I remember the gun being pointed at
 17 us. I remember the gun being specifically pointed in our
 18 direction, which is why I was yelling, "Drop the gun, drop
 19 the gun."
 20 At that point is when I was fearful we were
 21 going to start taking rounds.
 22 Q. So did you actually think that if you didn't
 23 shoot, you were going to be shot?
 24 A. Absolutely. And I think when you take the
 25 situation that we had of the individual now advancing on us

1 with a gun out and it's pointed at us, he poses the intent,
 2 means and opportunity, which is what they train us on.
 3 And the fact that he just shot that -- into
 4 that group at point blank range and for whatever reason,
 5 turns and starts advancing towards us and doesn't listen to
 6 our commands, at that point, I absolutely think that it was
 7 reasonable for me to shoot because of that.
 8 Q. Were you in fear for your life at that point?
 9 A. I was. I absolutely was.
 10 Q. When you say the gun was pointed at you, do
 11 you remember -- how do you know that or what did you see
 12 that made you conclude that?
 13 A. Well, again, I could -- I could see that
 14 during the initial shooting, that it was a dark-colored
 15 handgun. It was something of dark color. He was holding
 16 it quite high.
 17 When the gun came back out, again, that's what
 18 I'm looking for is I'm always trained to look for the hand.
 19 That's what's -- that's what's going to hurt you the most.
 20 So when I saw the gun come back out, I
 21 recognized the black gun; similar to the situation of when
 22 the individuals that were at that car sparked my attention,
 23 I quickly looked for his hands, and I saw that he had a
 24 cell phone in his hand and obviously made the decision not
 25 to shoot.

1 It was the same aspect. I'm looking to see if
 2 he has it, to see where it's at and if it's a threat to me,
 3 an immediate threat to me, which at that point, I felt that
 4 it was being that it was pointed at us.
 5 Q. Okay. When you made the decision to shoot
 6 then, was he still advancing towards you?
 7 A. He was.
 8 Q. You previously testified that in the course of
 9 you shooting, you perceived that he changed direction?
 10 A. Correct.
 11 Q. Why did you continue shooting at that point?
 12 A. Because at that point, he was still an
 13 immediate threat. He still had that gun in his right hand.
 14 And the other thing that we discuss a lot in
 15 this -- in training is action versus reaction and the
 16 ability to reassess once you've identified that threat.
 17 So once I've started firing those multiple
 18 rounds, in that matter of a second or two, whatever that
 19 timing may be, I don't know, he's changing a direction on
 20 us. I'm reassessing to see does he still have that. I'm
 21 trained to essentially address and neutralize that threat.
 22 When I saw him start to go to the ground and I
 23 saw the gun drop, at that point, my reassessment says,
 24 Okay. We now have addressed that. Reassess, see what's
 25 going to happen next. If he's -- if he listens to my

1 commands, we can move forward with that.
 2 Essentially, just the threat itself just
 3 needed to be addressed.
 4 Q. Okay. And so it wasn't until the point that
 5 you saw the gun drop and him start to go to the ground that
 6 you felt comfortable ceasing your firing?
 7 A. Correct. And, again, it -- I don't know the
 8 timing of -- the amount of moments, the amount of seconds
 9 that it happened, but it was very quick. It was very
 10 dynamic.
 11 I remember that we were on the move a little
 12 bit. I remember that I couldn't get behind a vehicle at
 13 that point because I also had Sergeant Britt to my right.
 14 So as he's -- as we're firing, I can't just
 15 dip down to get cover because now I'm flagging him. So now
 16 I'm essentially changing.
 17 It was very fast, very dynamic, and we just
 18 had to do what we needed to do to address that threat at
 19 the time.
 20 Q. Okay.
 21 MR. JACKSON: Do the grand jurors have any
 22 questions?
 23 I don't see any.
 24 All right. Thank you.
 25 THE WITNESS: Can I just say one more thing?

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1 MR. JACKSON: Sure.

2 THE WITNESS: I was just going to say that

3 Portland puts us through an enormous amount of training.

4 They spend a lot of time, a lot of resources, which I

5 absolutely feel was invaluable in this situation.

6 They -- they put us through a lot of

7 scenarios, a lot of training. A lot of times it's in a

8 static and very sterile environment, so they try to do

9 their best to try to recreate that stress in that

10 high-level situation.

11 What I can tell you, and being brand new to

12 this situation, is that the level of fear and the level of

13 adrenalin that I felt that day I had never felt before, nor

14 do I want to.

15 I just hope that in this situation, I'll never

16 have to do that again in my 23 years left on my career,

17 that I'll never have to do that again.

18 I just wanted to make sure that I got that

19 said because it's important for me.

20

21 BY MR. JACKSON: (Continuing)

22 Q. Yeah. And I'm sure over the last series of

23 weeks, you've kind of replayed this through your mind.

24 As you reflect back on it now, do you feel you

25 had another option in terms of your decision making and

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1 what you ended up doing?

2 A. I don't. And I -- I objectively think that

3 that -- what had happened -- again, with the situation of

4 us being there to begin with, to keep peace, we're in plain

5 clothes uniform. We're standing in the middle of a parking

6 lot with both our cars on with the lights.

7 For this situation over here with the original

8 shooting happening, we have an assault at best, maybe a

9 potential homicide, a homicide that just happened in front

10 of us.

11 And I think the shock and awe factor as you're

12 standing there as a police officer of what just happened

13 and then now us having the duty to act on that and doing

14 what we can to eliminate that threat, but then for him to

15 advance on us and now we're dealt with, you know, an

16 additional circumstance and us having to deal with that

17 immediate threat, no, I don't -- I don't think there is any

18 other outcome that could have come out of this,

19 unfortunately.

20 Q. Okay. You just said you were in plain

21 clothes.

22 A. I'm sorry. Uniform with a badge displaying.

23 A GRAND JUROR: Thank you.

24 MR. JACKSON: Okay. Are there any other

25 questions?

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1 A GRAND JUROR: No.

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

3 (Proceedings adjourned at 2:48 p.m.)

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Page 403

1 STATE OF OREGON)

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3 COUNTY OF MULTNOMAH)

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5 I, Heather M. Ingram, Certified Shorthand Reporter for

6 the State of Oregon, do hereby certify that I reported in

7 stenotype the proceedings had upon the hearing of this

8 case, previously captioned herein; that I thereafter had

9 reduced my stenotype notes by computer-aided transcription;

10 and that the foregoing transcript constitutes a full, true

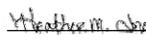
11 and accurate record of the proceedings had upon the hearing

12 of said cause to the best of my knowledge and ability.

13 Witness my hand at Portland, Oregon, this 16th day of

14 November, 2018.

15

16   

17 Heather M. Ingram

18 Oregon CSR No. 93-0279

19 Oregon Certificate expires: 9/21/2021

20 Washington CSR No. 2188

21 Washington Certificate expires: 9/25/2019

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23

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25