

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

3
4
5
6 **GRAND JURY No. 1 PROCEEDINGS**

7 **Case No. 28**

8 Conducted by:

9 Don Rees, Chief Deputy District Attorney

10 Todd Jackson, Deputy District Attorney

11
12 - - -

13 May 7, 2018

14 - - -

15 DA Case No. 2380019

16 Re: PPB Case No. 18-114856

17
18
19
20
21 Katie Bradford, CSR 90-0148
22 Court Reporter
23 Portland, Oregon
24 (503) 267-5112

25 Proceedings recorded on wma audio recording;
 transcript provided by Certified Shorthand Reporter.

GENERAL INDEXVOLUME 2Page No.

1		
2		
3		
4	May 7, 2018 Proceedings	161
5	Case Called	161
6	Examination of Roger Axthelm	161
7	Examination of Kenneth Fox	192
8	Examination of Grover Robinson, Jr.	219
9	AFTERNOON SESSION	241
10	Examination of Troy Grundmeyer	241
11	Examination of Jeff Livingston	254
12	Examination of Timothy Ferguson	272
13	Examination of Dennis Wilcox	296
14	Examination of Tyler Simpkins	309
15	Examination of Clifford Nelson	325
16	Examination of Chad Phifer	340
17	Examination of Brad Nutting	366
18	Reporter's Certificate	393

* * *

19

20

21

22

23

24

25

1 Death Investigation

2 PPB Case No. 18-114856

3 Deceased: John Andrew Elifritz

4 Incident Date: April 7, 2018

5 Location: 526 SE Grand Avenue, Portland, Oregon

6 * * *

7 (Volume 2, Monday, May 7, 2018, 8:43 a.m.)

8 **P R O C E E D I N G S**

9 (Whereupon, the following proceedings were
10 held before Grand Jury No. 1:)

11 MR. REES: All right. We're on the record.

12 And we're continuing on Monday morning with

13 DA Case 238001 and Grand Jury No. 1, Case No. 28.

14 And our next witness is Sergeant Roger Axthelm.

15 Sergeant. Sergeant, if you could remain

16 standing and please raise your right hand.

17 **ROGER AXTHELM**

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

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

20 **EXAMINATION**

21 BY MR. REES:

22 Q For the record, sir, if you could please
23 state and spell your name.

24 A Yeah. Roger, last name's Axthelm. It's

25 A-x-t-h-e-l-m, as in Mary.

1 Q And what's your occupation?

2 A Sergeant with the Portland Police Bureau.

3 Q How long have you been in the Police Bureau?

4 A Since 1994, so 23-plus years.

5 Q And how long have you been a sergeant?

6 A 12-plus years as a sergeant.

7 Q All right. And what precinct are you
8 currently assigned to?

9 A Central Precinct, afternoon relief. We call
10 it C relief.

11 Q And so what -- what are the hours of that
12 shift?

13 A 4:00 p.m. 'til 2:00 -- 'til 2:00 a.m.

14 Q All right. And is this correct that,
15 currently, Central Precinct extends west to the
16 Washington County border and then east across the
17 Willamette River to -- I'm not sure how many blocks?

18 A Yeah. Our line for Central is basically
19 Southeast 39th west over in the Forest Heights, I-84,
20 south down to Milwaukie, Lake Oswego. And then almost
21 to the Saint Johns Bridge and then further west over
22 to Beaverton.

23 Q So, geographically, it's a -- it's a -- it's
24 a big piece of territory?

25 A Yeah. Yeah, it's a -- it's a big area. I

1 think East Precinct is bigger, but when you look at
2 response to calls, the Southwest Hills can kind of jam
3 up that flow a little bit with how you can get through
4 the hills.

5 Q And, generally, what are your duties during
6 a shift as the patrol sergeant? Are you responding to
7 9-1-1 calls one after another or are you supervising
8 the people who are doing the (indiscernible)?

9 A Our minimums are three sergeants on at a --
10 on nights. And on a Friday, Saturday night, we have
11 20 officers, is our minimum. And during the week, is
12 18 officers and 3 sergeants, are the minimums.

13 And street sergeants are responsible for
14 going to calls, covering calls from a supervisory
15 point of view. But we also do respond as back-up
16 officers quite frequently to calls, too, just because
17 of the numbers that we have in the Bureau right now.
18 They'll send us dispatches.

19 Q Was Saturday, April 7th, 2008 -- I'm sorry,
20 2018 -- a -- a regular shift for you?

21 A Right. That's --

22 Q Okay.

23 A -- my last shift of the week.

24 Q All right. And prior to this call that
25 we're talking about --

1 A Mm-hmm.

2 Q -- this morning involving a shooting at
3 Cityteam Ministries, was there anything unusual going
4 on during the shift?

5 A No, not that I remember. I mean, it was --
6 if I remember right, it was fairly steady. The
7 weather was bad. The rain had started to come in, I
8 think, earlier.

9 Q Okay. When did you first learn about some
10 incident involving John Elifritz?

11 A I was in the office right over here at
12 Central Precinct doing some paperwork in the office.
13 I had my pack set on.

14 We also have a stationary radio in -- in the
15 sergeant's office there when I heard the call come out
16 of a car that was basically determined that it was
17 dumped and somebody ran from it on Martin Luther King
18 Boulevard --

19 Q Okay.

20 A -- at about Stark. And the car came back --
21 the license plate that was on it came back as stolen.
22 And the person was seen running, what we had heard
23 initially, eastbound from that location, a gentleman
24 not wearing a shirt.

25 And I heard that initially, officers were

1 going to it and I stayed in the office at that point
2 and kind of finished up some paperwork I was
3 (indiscernible).

4 Q And you're hearing about all of this over
5 the radio --

6 A Right.

7 Q -- is that right?

8 A Yeah.

9 Q The police radio?

10 A Yeah. It -- it came out as a priority call
11 initially. The way they dispatch, a -- a certain
12 level of them are called ones and twos, basically,
13 sometimes a three. The dispatchers will let people
14 know over their radio.

15 And then other calls hold on our computers,
16 which we call our MDCs. And the officers can pick
17 those calls as they have time available. But this
18 information came over the radio.

19 Q All right. And then did you receive further
20 information about that situation at some point?

21 A Yeah. There was -- officers, you know, were
22 getting over on the call and then there was somebody
23 -- came over on the radio. I believe it was an
24 officer from East came over on the radio and said,
25 "Hey, that car was involved in a kidnapping earlier

1 today. I believe the subject displayed a gun," or
2 something like that. And that was -- it came over the
3 air, too, from another officer.

4 And for clarity, what dispatchers will do,
5 if there's a major event going on in -- in one of our
6 frequencies -- we have three frequencies that work
7 within Portland and that's being the Central Precinct,
8 North precinct and East Precinct.

9 So if East has something going that's fairly
10 hot, they'll usually let us know, "Hey, East is behind
11 the stolen car," or, "East is going to a burglary call
12 at such and such address."

13 So officers in Central know what's going on
14 -- a little bit about what's going on, but just in
15 case they might be over in East Precinct, too, so they
16 don't run right over the top of something like that,
17 too.

18 So some information had transpired somewhere
19 and an East officer came up -- I believe it was
20 East -- came up on our frequency and said, "Hey, that
21 car was involved in a -- a kidnapping, possibly with a
22 gun."

23 Q Okay. At what point did you leave your
24 office at Central Precinct to go out on the road?

25 A I think shortly after I heard that, I got in

1 my car and left. And -- and, at that time, it -- it
2 was still -- canine was coming. We had a canine
3 officer coming from out in East Precinct. His
4 statement was basically -- 'cause we'll set up and do
5 dog tracks and stuff.

6 And that area over in Grand is kind of a
7 busy area for -- for foot traffic, so doing a dog
8 track can be sometimes difficult. And it was, like,
9 you know, how far are we behind it and stuff like that
10 since the guy ran and then also there was rain
11 starting to come down.

12 So it was basically decided by him and the
13 officer started doing more of a grid search, so the
14 last we heard, he was to the east. So cars started
15 driving in neighborhoods and -- and doing that stuff.
16 So I -- I went east.

17 Q So, meaning -- meaning looking for the --
18 the suspect?

19 A Looking for the subject, yeah. Which --

20 Q Okay.

21 A -- at that point, we figured should've stuck
22 out a little bit because he left without a shirt on on
23 a fairly chilly, rainy night.

24 Q And so then what are you doing? What are
25 you -- at this point, what's your role?

1 A Well, I'm listening to the radio, but I was
2 actually over in the area just kind of driving through
3 the area and grid searching because there wasn't a,
4 quote, unquote, "formal" search going on. We just
5 kind of swarmed the area at that point.

6 Q And so based upon what you had heard on the
7 police radio, what, in your mind -- what, in your
8 mind, is happening? What are you -- what are you
9 looking for? What's -- what's -- do you have probable
10 cause? What would the probable cause be for making an
11 arrest?

12 A Well, we -- we have a guy that is in a
13 stolen car to begin with. We have a guy that's
14 possibly involved in a kidnap and possibly an armed --
15 armed kidnapping at that point.

16 It did come out a little bit later -- an
17 officer came out while we were still looking through
18 the blocks that, hey, he had looked at some video or
19 something and he couldn't clearly see a handgun, but
20 just where his hand position was.

21 So it -- it kind of stepped down a little
22 bit as far as the handgun was concerned. And then a
23 North officer came on the air, too, I believe, and
24 said, "Hey, this car was involved in something else
25 with us not too long ago up in North, too."

1 So then that compounded. Now, I've got this
2 car is involved in something that happened out in
3 East; something that happened out in North; and, now,
4 all of a sudden, I've got this stolen car that's all
5 of a sudden dumped with a guy running from it right
6 down here in our precinct.

7 Q Okay. So what -- then what happened?

8 A We continued searching and somebody got on
9 the air and said, "Hey, I just talked to the -- the
10 clerk." And I don't know if they face to face talked
11 to the clerk or if they called Jacksons, which is the
12 Shell mart right over at about Washington and --
13 between MLK and Grand, and said, "Hey, this gentleman
14 just came in and he was wearing, like, a raincoat on,"
15 which they had had some problems, you know, with and
16 it matched the description of the guy.

17 And then he'd left to the west, they
18 thought. And so I was east, so I started vectoring
19 back to the west to go down into the lower-southeast
20 side when I heard on the radio an officer say, "Hey,
21 somebody -- you know, he just ran into the homeless
22 shelter and he's threatening people in there."

23 Q All right. Were you familiar with that
24 particular location, Cityteam Ministries?

25 A Yeah. I've -- I've been there once, maybe

1 twice, not through the door we were going through, but
2 there's a side door that goes up a staircase. But
3 I've, you know, peeked into that -- that area. But
4 the call I had been on previously was basically more
5 up the stairs to their housing, which is above.

6 Q Okay. So when you hear that the suspect is
7 now in that shelter, were you still in your
8 patrol car?

9 A Mm-hmm.

10 Q And where -- where did you go?

11 A I was south and to the west of Jacksons at
12 that point and police cars were starting to vector in,
13 closing in. And I just basically turned a U ball in
14 the parking lot there and a couple cars slid in up on
15 Washington prior to me (indiscernible) then I came in
16 after them and parked.

17 I grabbed, I think, my raincoat and put it
18 on in the car, but I had also gotten on the radio and
19 said -- my call sign is 3810 -- said, "3810, I'm
20 arriving." And I don't believe I'd put myself on the
21 call prior to that.

22 I, as a sergeant, a lot of times, you'll get
23 on the air and say where I'm at, you know, if I'm
24 going to get on the call or something like that. And
25 that does a couple of things. One is it lets officers

1 know there's a supervisor there.

2 But, secondly, it lets my other two
3 supervisors know -- the other two supervisors know
4 that, "Hey, I -- I've got this call. You've got this
5 one over here." So it keeps, you know, a sergeant
6 from way out in Southwest Portland saying, "Hey, I got
7 to run into downtown quick."

8 So it kind of keeps us, you know,
9 juxtaposed, okay? You know, Sergeant Dunbar has this
10 and, you know, so we don't all three converge on
11 something really quick.

12 Q All right. And where -- where do you go
13 once you park?

14 A I parked -- the officers -- the other ones
15 were running to the -- the door of the shelter. I
16 followed them to the door.

17 Q All right. And so what -- if you could,
18 just give us kind of a word picture of what's --
19 what's happening there on the sidewalk outside of
20 Cityteam Ministries.

21 A Yeah. The building is multi-story and the
22 entrance to it is kind of the old-style facade where
23 it kind of angles into the doorway. So there's kind
24 of a awning dry spot. When I got there, there was a
25 number of officers in the doorway.

1 I could tell that they were giving commands
2 to him. I could hear him, you know, yelling, but it
3 was fairly chaotic. I was behind our canine officer,
4 who had his canine dog and it was barking, so I
5 couldn't hear a lot.

6 I also could peek to my left and see I --
7 there was a number of people to my left down into that
8 room. And the attention of the officers was to the
9 left -- I mean, to their right, so over this
10 direction.

11 And I had people over on this side that were
12 just standing or -- or way back in a -- in a -- kind
13 of a doorway area that I could see that there was just
14 people there.

15 Q All right. And what -- what were you
16 thinking at that point as far as this situation,
17 what's going on and what -- what action should be
18 taken?

19 A Yeah. Well, my -- my concern was I had
20 heard that he was threatening people with a knife. you
21 know, I had -- everything that had built up to this
22 point. And my concern was for the people who were in
23 there, that we needed to move into that location to
24 challenge the suspect, but also to gain his attention
25 over to us and not those people.

1 I was concerned that, you know, he could
2 willfully do what he wanted to with those people at
3 that point, so I wanted to make sure that we could get
4 in. We had numerical superiority. We had less
5 lethal. They had cover with them, so he would
6 hopefully look toward us and we could get those people
7 out safely and that would give us time to deal
8 with him.

9 Q Did you think that there was a -- a -- an
10 immediate threat to the people who were inside the
11 shelter or not?

12 A Yeah. He -- he had free reign inside that
13 room to go wherever, basically, he wanted to go.
14 And -- and he was kind of darting.

15 Q So --

16 A (Indiscernible).

17 Q Okay. So what did you do?

18 A I basically said something to the effect of,
19 "Step in," or, "Move in." And we just all -- we --
20 the doorway opened up and the officers came in and --
21 and formed into the room.

22 Q And -- and so why did you think that that
23 was the better plan as opposed to all the police
24 staying out on the sidewalk?

25 A Again, it -- it shows numerical superiority.

1 We had a better advantage, tactical advantage to
2 address him, but also for protection of those people,
3 too. And what I want to do is get him into a room or
4 get him out. There was a door where they were all
5 kind of pushing out of this backroom.

6 You know, get in that room, if we could get
7 them in the room and we had more time, we could deal
8 with the -- with the subject when I knew that they
9 could be safe behind the door at that point.

10 Q All right. And so what -- what happened
11 following all of that?

12 A Officers pushed in. They continued to give
13 commands to them. I started, you know, yelling at the
14 people, "Get in the room. Get in the room." There
15 was people who were right behind us, you know, trying
16 to get them to get out from right behind us and get
17 the other people in the room so we could contain him
18 where he was.

19 He was on the south wall. There was a -- an
20 alcove area, I'll call it, right there where he was
21 kind of darting in and out of. That was a concern to
22 me, too, 'cause I wasn't sure what was in that alcove,
23 whether there was a staircase, whether there was a
24 door to go upstairs.

25 But he didn't seem to be trying doors. He

1 would dart out, come back, dart out, come back. The
2 officers were deploying less lethal at him. Our less
3 lethal had just changed -- the program had just
4 changed from -- what we used to use was a beanbag
5 round, came out at -- like, a -- a sock, almost, that
6 had lead shot in it.

7 And what -- the new system we're using is a
8 40 millimeter. It's a bigger round, more impact, but
9 it's single shot also, so the less-lethal guys have
10 to -- if they fire one round, they have to break it,
11 throw that cartridge out, put a new one in, lock it
12 back up and reacquire their target again.

13 The -- the target system is -- is much
14 better on it. It's got a -- a scope sight on it with
15 a red dot, so it's much more accurate, too.

16 Q So that's the foam --

17 A That -- that's the foam --

18 Q -- projectiles?

19 A -- less lethal. It's called a 40
20 millimeter.

21 Q And -- and -- and we've heard and you just
22 testified that the Portland Police Bureau has just
23 recently started --

24 A Mm-hmm.

25 Q -- using that. Had you seen it used --

1 A I had not.

2 Q -- in the field?

3 A Had not. Had not even heard it go off,
4 really, before, myself. But it's a -- it's a -- more
5 of a, (descriptive noise), sound 'cause it -- as it
6 goes down the -- the barrel.

7 Q And so you saw officers using that out on --

8 A Yeah, I --

9 Q -- on the sidewalk?

10 A I heard --

11 Q Or inside?

12 A I'm -- I'm pretty sure I heard it when we
13 were at the doorway, one or two rounds that might have
14 been launched while we were -- while they were in the
15 doorway. And then when we pushed in, I contend I
16 heard it a number of other times that they were using
17 less lethal as he darted more toward the north.

18 Q Were you able to see the suspect at
19 that time?

20 A I would see him darting. My -- I -- I
21 wasn't addressing looking at him most of the time
22 'cause my concern was more -- at that point, I knew my
23 officers were back over here to my right, were
24 addressing him.

25 My more concern was let's get these people

1 to get in so we can get them safely secured or get
2 them out, so we had more time to deal with him at that
3 point, we had containment, we had him isolated at that
4 point and we didn't have innocent people in there.

5 Q And so did you have your gun out?

6 A I did not.

7 Q And there were a number of people inside of
8 the shelter, a number of civilians, homeless people,
9 right?

10 A Yeah.

11 Q What -- what -- what did you see them doing?

12 A Well, like I said, they were basically
13 overflowing that doorway, which was on the northeast
14 corner, just basically spilling out from that room
15 whether it was totally full or whether they just
16 wanted to see what was going on.

17 You know, they weren't moving. They were
18 wide eyed and -- and just kind of -- you know, we
19 were saying, "Get in. Get in," and nobody was moving.
20 And, you know, "Come this way," nobody was moving at
21 that point.

22 Q And so what did you then see or -- or
23 hear happening?

24 A Again, he had made, you know, some motions,
25 kind of darting. The -- the distance he had from

1 where the alcove was to the officers was also kind
2 of -- he had free reign on that, too. There were some
3 chairs thrown around; but, I mean, he could run
4 straight down at the officers and stuff like that.

5 And as I'm yelling at the people, I saw out
6 of the corner of my eye him kind of darting this way.
7 He was wearing a blue jacket with maroon on top. He
8 kind of darted this way. And then, all of a sudden, I
9 heard a -- kind of a simultaneous just, boom, and that
10 was gunfire.

11 I looked and looked at the officers. I saw
12 him down, the suspect down. I went over to one of the
13 officers that works with me, Officer Nutting. He had
14 an AR-15. I put my hand on his shoulder, I think, and
15 I looked at him and I said, "Okay. We're going to
16 form a custody team."

17 He looked at me and kind of said, "I -- I
18 don't know if we need to." And I could see blood
19 right about the person, but my view was different from
20 where Officer Nutting was 'cause there was a chair or
21 something obstructing my view. And so I looked over a
22 little bit and I just told him, I said, "Okay. Stay
23 here. You guys stay here."

24 Q Okay. And --

25 A GRAND JUROR: Can I ask a question?

1 MR. REES: (Indiscernible).

2 A GRAND JUROR: I'm sorry.

3 THE WITNESS: Yeah.

4 A GRAND JUROR: Could you go back -- you --
5 you asked him to do what kind of team or what kind
6 of --

7 THE WITNESS: A -- a custody team.

8 Basically, we're trained post-shooting, we make sure
9 it's safe. We move up with a custody team and we'll
10 begin a -- or handcuff the person. That's just the
11 way we're trained. So muscle memory kind of kicks in.

12 And that's where I told him. I said, "Hey,
13 we're going to form a custody team and move up," and
14 that's when he gave me that -- his assessment.

15 A GRAND JUROR: Okay.

16 BY MR. REES:

17 Q And then per the Bureau training policy, did
18 you take steps to render medical assistance?

19 A Right. What I did was I walked from him to
20 the west. There was less -- less-lethal officers
21 there. He was still laying on the ground and I
22 told -- I put my hand, I think, again, on one of the
23 less-lethal officers and I said, "I want you to fire
24 one round" -- I' already gloved up.

25 Right after the shooting happened, I -- I

1 gloved up. And I -- I said, "I want you to fire one
2 less lethal at him." And my plan was that -- was I
3 wanted to see if there was any movement.

4 'Cause my plan at this point was I was
5 planning to move up on my own, which, tactically, we
6 normally move up with three people in a custody team.
7 But seeing what I was seeing, I was going to address
8 that on my own.

9 And one of the reasons was there was a bunch
10 of -- at -- at that point, I could observe a bunch of
11 blood splatter and everything all over the place,
12 almost all the way back to where my less lethals were.

13 So I was thinking also contamination area,
14 too, so I could go up on him by myself. So I had that
15 officer fire one round. I saw no motion from the
16 subject and I walked up to the subject myself.

17 Q All right. Again, what did you do regarding
18 getting medical assistance?

19 A Yeah, medical had been called. I -- he was
20 laying face down. When I got closer, there was a
21 serious amount of blood there. I picked him on his
22 right side, grabbed the right side of his body, rolled
23 him up onto his left side to observe. And as I did
24 that, his hand kind of fell free and a knife kind of
25 flipped out from him.

1 A GRAND JUROR: How big was that blade? No
2 one has told us yet. Was it a two inch?

3 THE WITNESS: I'm -- I'm guessing it was --

4 A GRAND JUROR: (Indiscernible) blade?

5 THE WITNESS: -- this big. I mean --

6 A GRAND JUROR: That's -- that's big. I'm
7 sure someone (indiscernible).

8 THE WITNESS: I'm -- I'm sure --

9 MR. REES: You -- (indiscernible) --

10 THE WITNESS: And it was a fold-out -- it
11 was a fold-out blade. It had a thumb throw on it,
12 which, if you're familiar with how those blades are,
13 you know, you kind of put your finger in the hole and
14 it can flip out. And it was probably about a
15 60-degree angle when it -- when it pulled through on
16 him and was sitting there opened. I couldn't tell if
17 it had a -- go ahead.

18 A GRAND JUROR: Were -- were the officers --
19 at this time, by the time they all were at Cityteam,
20 weren't they aware that he had been stabbing himself
21 in the neck --

22 THE WITNESS: I -- I hadn't heard --

23 A GRAND JUROR: -- and -- and had suicidal
24 actions that day?

25 THE WITNESS: I hadn't heard anything about,

1 you know, that -- that came to me --

2 A GRAND JUROR: And the gun? There was
3 no gun?

4 THE WITNESS: -- that was clearly -- that
5 there -- that there was a -- a suicidal thing like
6 that or -- or a -- a cutting thing like that. And,
7 you know, we -- we kind of ruled the gun out on the
8 air.

9 But, I mean, I -- I -- I guess I can -- I
10 can say that I've got a carjacking in one place with
11 possibly a gun and possibly not and I've got something
12 else in North Portland that he was involved and then I
13 got something down here that keeps --

14 A GRAND JUROR: I just assumed that's why
15 they knew every -- all the police that were there at
16 the end, where they were, "Oh, he had done this in the
17 day. He had done that, this, this" --

18 THE WITNESS: No. I mean, the -- the
19 information that I base -- that I remember is
20 basically -- was what I mentioned, the -- an East
21 car saying, "Hey, that car was involved in a" --

22 A GRAND JUROR: Mm-hmm.

23 THE WITNESS: -- "in this and -- and this
24 guy possibly was with them."

25 A GRAND JUROR: Mm-hmm.

1 THE WITNESS: "He was with the one that did
2 it." And then when it came out that he was -- had his
3 shirt off, I remember somebody saying that, "That's
4 how that -- you know, he doesn't wear a shirt very
5 often."

6 A GRAND JUROR: Mm-hmm.

7 THE WITNESS: But as far as, you know,
8 him cutting or something like that, I don't remember
9 anything like that.

10 I mean, the last thing that -- you know,
11 which got us all to that homeless shelter was a
12 transmission of, "Hey, he's in the homeless shelter
13 and he's threatening people with a knife." And
14 that's -- that's what got -- brought us --

15 A GRAND JUROR: Was there blood on his neck
16 when you actually put -- put your eyes on him at the
17 shelter?

18 THE WITNESS: I -- I didn't --

19 A GRAND JUROR: Was he doing that then?

20 THE WITNESS: -- I didn't see any; but, to
21 be honest with you, I didn't really pay a lot of
22 attention to him because I had officers who were
23 addressing him and my concern was for these people
24 over here 'cause the sooner I could get them
25 contained, the sooner I could get them to someplace

1 safe, the sooner I had that isolated so we could
2 address him and we had a little bit more time.

3 My -- my major concern was I was going to
4 have a -- a TriMet incident here with a guy who's in
5 a -- had free reign, if we couldn't stop him, to run
6 over and grab somebody, and then I had a
7 hostage/cutting situation.

8 That -- that was really my concern because
9 it was going to have to be a split-second decision
10 made by officers if he ran that direction at that
11 point --

12 A GRAND JUROR: Mm-hmm.

13 THE WITNESS: -- or else we were going to
14 have a much different situation.

15 BY MR. REES:

16 Q What -- what do you mean by, "A TriMet
17 situation"?

18 A TriMet, at 42nd, we had a gentleman that
19 slit the throats of -- that he was in a fight with
20 two people with a knife, killed both of them. And,
21 obviously, I think there was a couple more people
22 hurt.

23 But, I mean, this situation, when I got
24 there, I was like, well, I got a guy with a knife and
25 a guy who's obviously, you know, not doing --

1 complying with things and has been doing a number of
2 things around town. Now, all of a sudden, I've got
3 him in a closed setting with people in there. And
4 that was my concern.

5 MR. REES: Okay. Do you have any questions?

6 MR. JACKSON: No.

7 MR. REES: Are there any other questions
8 from the grand jury?

9 A GRAND JUROR: I've got -- I've got a
10 couple questions.

11 MR. REES: Sure.

12 A GRAND JUROR: You know, from the video, it
13 was loud.

14 THE WITNESS: Mm.

15 A GRAND JUROR: Pandemonium going on. The
16 dog -- dog was barking like crazy.

17 THE WITNESS: Mm-hmm.

18 A GRAND JUROR: You know, it was pretty
19 clear to me that the -- the folks in the homeless
20 shelter weren't responding to any, you know, requests
21 by you to get out or get safe.

22 So that -- I -- I'm not sure that, you know,
23 the situation as it was with all that noise, that
24 those folks maybe didn't even hear you or -- or
25 comprehend what you were trying to portray to them.

1 That's kind of one observation, I guess --

2 THE WITNESS: Mm-hmm.

3 A GRAND JUROR: -- not a question. But when
4 -- and -- and the non-lethals had -- from the video,
5 seemed to have absolutely no effect and it looked like
6 he was struck in the leg a couple times and --

7 THE WITNESS: Mm-hmm.

8 A GRAND JUROR: -- it didn't faze him. And
9 I appreciate the fact that maybe this is a new thing
10 that you're trying. Did they -- with -- with the
11 accuracy of these foam bullets, could they have done a
12 head shot on him and --

13 THE WITNESS: That -- that's considered
14 deadly force with -- with these rounds. Also with
15 our -- the beanbag rounds, too, a head shot is -- is a
16 lethal -- considered deadly force.

17 A GRAND JUROR: Okay. So, basically, they
18 were going for the skin because he had a jacket on --

19 THE WITNESS: They -- they have a --

20 A GRAND JUROR: -- so they were going for
21 the leg?

22 THE WITNESS: Well, they -- they have a
23 targeted area that they look at. And I'm not trained
24 in the less lethal, but their targeted area is
25 basically here down, is their targeted area that they

1 go --

2 A GRAND JUROR: Well, I mean, from your
3 observation and -- and experience, why wouldn't those
4 have had any effect whatsoever on this guy other than
5 the fact maybe he was drugged up and -- it seemed like
6 they would've had a little more effect.

7 THE WITNESS: That would be my
8 interpretation, is somebody who's -- who's very high
9 on -- on drugs can fight through that stuff. They can
10 fight through the Taser. It doesn't have any effect.

11 And the impact weapon, too, they can --
12 they can fight through, too, based on where it is just
13 because, you know, they -- they're in more of a -- you
14 know, an amped-up state on where it's at.

15 And -- and you're more educated on what
16 happened out there from seeing the videos and stuff
17 because the only video I've seen was the one that came
18 on the news, I think, the first night that came out
19 (indiscernible). And I turned the volume down on it
20 and turned it off. And I haven't seen anything since
21 then or discussed it, so --

22 A GRAND JUROR: Since, you know, you were
23 the ranking officer and -- and your focus was mainly
24 on, you know, safety of people in the room, so policy
25 that seven individuals basically armed and ready --

1 THE WITNESS: Mm-hmm.

2 A GRAND JUROR: -- the -- are there any
3 typical discussions before a situation, if you're in
4 a situation like that, where, "Okay. This is what
5 we're going to do if this guy comes at us. Maybe
6 one guy shoots"?

7 I mean, it was basically -- are there any
8 discussions prior to a situation like that? Are
9 the officers trained to -- if -- if -- if there's a
10 threatening move by this individual, everybody go?

11 THE WITNESS: Well, officers have to
12 evaluate in their own mind, you know, what -- where is
13 the threshold for me to shoot based on policy, based
14 on my comfort zone, based on my training? So they
15 have to make that determination.

16 In longer, protracted type of instances,
17 then that's when we'd scale our forces if we're going
18 somewhere. This one was more, I got there. I was
19 more wanting rapid entry to step into that void so he
20 is more, I guess, targeted at us and deflected toward
21 us and not to these innocent people over here 'cause
22 my number-one goal is the safety of civilians.

23 And I was comfortable -- when I saw how they
24 staged up in there, I was comfortable with how they
25 were set in that. And, like -- again, I kept kind of

1 looking over occasionally.

2 I was yelling at them. And then, all of
3 sudden, when I saw him darting down and I heard, boom,
4 then I knew -- you know, I saw him down, then,
5 obviously, we have a shooting.

6 You know, his reign to come down to those
7 officers -- when you kind of look at it from your
8 video and from what I remember, his reign to come down
9 to the officers is fairly quick and fairly fast. I
10 don't know what the footage was to go down there, but
11 it's fairly fast.

12 And if you -- the officers on this side, for
13 them to have a shot, to program, yeah, he's a threat
14 to me, he's a threat to other officers, he's a threat
15 to civilians, it closes pretty quick before they get
16 into what we call a crossfire where shooting at
17 somebody could -- could accidentally hurt somebody
18 else in that process, kind of.

19 What -- what I remember was just a loud,
20 boom. It wasn't a -- you know, one round, another
21 round and another round. It was almost like a
22 simultaneous --

23 A GRAND JUROR: It was --

24 THE WITNESS: -- boom. So every officer,
25 basically, that threat was there. It was present.

1 They processed that in their brain. It had to go from
2 here down, down to a trigger finger and -- and fire it
3 and it was all made simultaneously.

4 A GRAND JUROR: Is -- is there ever a plan
5 for -- I mean, it seems like this happened so fast,
6 but --

7 THE WITNESS: This moved very fast, yes.

8 A GRAND JUROR: -- you know, is there ever a
9 protocol for deescalation? Like, what other tools are
10 there, what other options besides deadly force?

11 THE WITNESS: Well, the problem is, I mean,
12 deescalation is a -- is a great term and that's what
13 we all use and kind of a buzzword. But we can't
14 really work at, quote, unquote, "deescalation," until
15 I can make sure I have containment and isolation on
16 this person and it's safe for the people -- for the
17 other people who were in there. That's what we
18 were --

19 A GRAND JUROR: It probably made it
20 harder --

21 THE WITNESS: -- initially doing.

22 A GRAND JUROR: -- too, with -- with so
23 many civilians --

24 THE WITNESS: Yeah.

25 A GRAND JUROR: -- in the room.

1 THE WITNESS: That's -- and that was my
2 plan. Once we got them secured somewhere or once we
3 got them out of there, I had time on my side because
4 then I had -- the only threat I had, basically, was
5 this door behind here, which I didn't know where it
6 went to. And I could scale that.

7 His movement going here, threatening to
8 these people, and defracking [sic] this way and then
9 his charge toward the officers made that decision and
10 that's why it happened quickly.

11 Our plan was to get people out and my plan
12 was to get the people out, get him contained, then we
13 could work at other -- you know, then we can start
14 slowing things down a little bit, but we can't
15 deescalate, in the term, until we really have a scene
16 that's safe for us and the containment issue.

17 And that -- and we didn't get to that point.
18 That -- that wasn't allowed -- you know, that wasn't
19 allowed to happen. And then we would have all the
20 time, you know, that we could work with him, we could,
21 you know, bring in, you know, some extra assets if we
22 need to talk to him.

23 We could make sure we had the -- the -- if
24 there's a back stairway, that that's all contained.
25 But that -- that decision was taken out of our hand

1 on that.

2 MR. REES: Any other -- any other questions
3 from the grand jury?

4 All right. Okay. All right. I'm not
5 seeing any other questions, so we'll excuse
6 this witness.

7 Sergeant, thank you for coming in.

8 THE WITNESS: Okay. Thank you.

9 MR. REES: Thank you for your time.

10 THE WITNESS: Thank you.

11 A GRAND JUROR: Thank you.

12 (Recess taken, 9:21 a.m. - 9:34 a.m.)

13 MR. JACKSON: Okay. We're back on the
14 record. The next witness is Kenneth Fox.

15 Come on in, sir.

16 Please stand right here and raise your right
17 hand.

18 **KENNETH FOX**

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

21 **EXAMINATION**

22 BY MR. JACKSON:

23 Q Okay. You can have a seat.

24 Could you please state and spell your name?

25 A Kenneth Fox, K-e-n-n-e-t-h, F-o-x.

1 Q All right. And where are you employed?

2 A The Portland Police Bureau.

3 Q And what do you do for the Police Bureau?

4 A I'm a police officer.

5 Q How long have you been a police officer?

6 A Eleven years.

7 Q And what have been your assignments over
8 those eleven years?

9 A I've been assigned to patrol the entire
10 time.

11 Q Patrol the entire time?

12 A Correct.

13 Q Okay. And what are your general
14 responsibilities as a patrol officer?

15 A I take 9-1-1 calls and non-emergency calls.

16 Q Okay. Respond, deal with calls and then
17 move to the next one?

18 A Correct.

19 Q Okay. Were you working on April 7th of
20 2018?

21 A Yes, I was.

22 Q And what shift were you working that day?

23 A I was working afternoon shift.

24 Q What are the hours of afternoon shift?

25 A It's 4:00 p.m. to 2:00 a.m.

1 Q And did you have any special equipment with
2 you while you were on your patrol shift that day?

3 A I had the MAV audio recorder.

4 Q Okay. And what is that?

5 A It's an audio and video recorder. It's an
6 in-car camera system. The camera is in the car and
7 then there's an audio mic, which I wear on my person.

8 Q Okay. And so how is the MAV system
9 initiated?

10 A It's initiated a variety of different ways,
11 one which is turning on the overhead lights. There's
12 a button on the actual mic that I wear on the chest.
13 You can turn it on. And there's a record button on a
14 display screen within the car if you go over a certain
15 mile per hour or if you crash.

16 Q Okay. Any -- any one of those would
17 activate the system?

18 A Correct.

19 Q Okay. And how many cameras are in the car?

20 A There's one facing forward, one that faces
21 left and right, one that faces rear and one in the --
22 the backseat, so five.

23 Q Okay. And if you get out of the car, you
24 said the audio is actually on your uniform?

25 A Correct.

1 Q Okay. And so do you know how far you can
2 get away from a car that the audio will still transmit
3 or --

4 A It depends on the surroundings. Sometimes
5 it's farther than others. If you're inside a
6 building, sometimes it doesn't work; other times, it
7 does. So it's -- it's very dependent upon the area
8 that you're actually in.

9 Q Okay. Were you working that shift in
10 uniform in a marked patrol car?

11 A Yes, I was.

12 Q All right. And what was the area of your
13 shift?

14 A Inner Southeast Portland.

15 Q Inner Southeast Portland. And Stark and
16 MLK, is that included in your patrol area?

17 A Yes, it is.

18 Q Okay. And did you become aware of a call
19 of an abandoned vehicle in the middle of Stark
20 and MLK?

21 A Yes, I did.

22 Q How did you become aware of that call?

23 A I was dispatched as a cover unit to that --
24 to that call.

25 Q Okay. And what does that mean?

1 A I was -- I responded as a cover car for the
2 primary officer to assist him with whatever --
3 whatever come -- came up.

4 Q Okay. What information did you have about
5 the call when you responded?

6 A Initially, when the call came out, it was
7 just an abandoned vehicle. It was at the -- at the
8 intersection where a subject had walked off. But then
9 an update came out that it was a -- actually a stolen
10 vehicle that had been left behind. And it was -- that
11 vehicle was associated to two previous calls earlier
12 in the day.

13 Q Okay. Do you recall what the nature of
14 those previous calls were?

15 A I -- I do. So the initial call, the only
16 information I have about the call was a -- a computer
17 message sent out by an East officer stating the
18 vehicle was taken by force. It didn't specify the
19 exact force, but it gave a description of the vehicle
20 with the license plate.

21 And then shortly before the call that I was
22 dispatched to, North net responded to a call of a
23 threat with a -- possible threat with a gun related to
24 the same -- same call that the North officer had sent
25 the message out on -- out about. And then the updates

1 came that they were one and the same car.

2 Q Okay. All three of those incidents
3 were all --

4 A Correct.

5 Q -- the same. Okay.

6 A Same vehicle.

7 Q And so when you were dispatched out to the
8 abandoned vehicle call, where were you coming from?

9 A I was coming from South -- Southeast 3rd and
10 Southeast Stevens.

11 Q Okay. So about how long does it take to
12 drive to the scene?

13 A A couple minutes. Not -- not very long. I
14 mean, like, probably like ten blocks, give or -- give
15 or take.

16 Q Okay. And did you have a partner with you
17 or were you by yourself?

18 A I was by myself.

19 Q What did you see when you first arrived at
20 the location?

21 A I saw a vehicle parked on MLK facing
22 southbound and there was a -- there was a group of
23 citizens standing just west of the vehicle in a
24 parking lot/sidewalk area.

25 Q Okay. What did you observe about the

1 vehicle?

2 A I know there's -- there was some damage to
3 the vehicle. I believe it was to the front driver's
4 side, but it was just sitting there stationary, nobody
5 inside.

6 Q Okay. Did you talk to any of the people
7 that had gathered around the vehicle?

8 A I did. I asked if anybody had seen the
9 person who was -- had driven, walking off. A
10 gentleman said he had. I got a description from that
11 -- that subject and broadcast the information.

12 Q Okay. Over your police radio?

13 A Correct.

14 Q And when you say, "broadcast" out, I mean,
15 who would that be broadcasting to?

16 A It would be broadcast to any -- any officers
17 monitoring Central net.

18 Q Okay. And is that limited only to Portland
19 police officers or does that include other agencies
20 as well?

21 A It includes other agencies as well.

22 Q Okay. So anybody who was listening to the
23 Central Precinct net would have heard that broadcast?

24 A Correct.

25 Q Or could have heard that broadcast?

1 A Could have heard the broadcast, correct.

2 Q Okay. What did you do next?

3 A I asked -- asked Officer Nell if he wanted
4 me to hang out and help with interviews there or to go
5 area check for the subject. Officer Nell requested
6 that I go help with the area check.

7 Q Okay. And what is an area check?

8 A Drive around the area looking for somebody
9 who matches the description of the person who was in
10 the vehicle.

11 Q How did you begin your area check?

12 A I went and started looking around at camps,
13 area transient camps where people often go and hang
14 out at where somebody might blend in at and just drive
15 around the general area 'cause there are a variety of
16 camps in the area.

17 Q Okay. And how long have you patrolled that
18 particular part of town?

19 A Since 2008, in general. I mean, not
20 specifically that area, but the greater inner
21 southeast area.

22 Q Okay. So ten years?

23 A About, yeah.

24 Q Safe to say you're pretty familiar with the
25 area, the folks, the businesses?

1 A I feel pretty familiar, yeah.

2 Q Yeah. Okay. So as you were conducting your
3 area check, what happened?

4 A There was a call broadcast at the Jacksons
5 gas station at 621 Southeast Grand about a subject
6 standing in the doorway holding a knife.

7 Q Okay. What did you do with that
8 information?

9 A Well, myself and a bunch of other officers
10 started driving that -- that direction towards the
11 Jacksons gas station.

12 Q Okay. Did you have information at that
13 point that it was the same person?

14 A At that point, I don't -- we didn't know if
15 it was -- if the person from the vehicle was one and
16 the same or not.

17 Q And how far is the Jacksons from the
18 location where the vehicle was abandoned?

19 A Just a couple blocks.

20 Q Okay. Pretty close?

21 A It's pretty close.

22 Q All right. So you said you were responding
23 to the Jacksons as a result of that call.

24 A Correct.

25 Q What happened then?

1 A There was an update that the subject who had
2 been standing in the door with a knife had left. I
3 believe he left southbound on Grand Avenue.

4 Q Okay. That was the information you
5 received?

6 A That was information via the radio.

7 Q Had you arrived at the Jacksons when
8 you got --

9 A I had --

10 Q -- that information?

11 A -- not arrived.

12 Q Okay. So when that update came out, what
13 did you do?

14 A I continued to area check looking for that
15 subject who walked southbound, so I went beyond --
16 southbound beyond the Jacksons and was coming back up
17 and around.

18 Q Okay. At some point, did you learn that the
19 suspect from the Jacksons was one and the same with
20 your abandoned vehicle call?

21 A An officer -- and I'm no sure who -- went to
22 the actual Jacksons and contacted them. Then they
23 broadcast that they believed it was the same --
24 same person.

25 Q Okay. And did you receive that information

1 over the radio?

2 A Via the radio.

3 Q Okay. And were you conducting your area
4 check while you were getting that update?

5 A Correct.

6 Q Okay. What happened then?

7 A Then it came out AMR had seen a person
8 holding a knife directly in front of the Columbia
9 Shelter at 509 Southeast Grand.

10 Q Okay. And where is that in relation to the
11 Jacksons?

12 A It's one block north.

13 Q Okay. And --

14 A It's basically at the corner of Grand
15 and Stark.

16 Q Okay. And the vehicle was abandoned at MLK
17 and Stark?

18 A Correct.

19 Q Okay. So what did you do in response to
20 that information?

21 A Well, I began responding to that area from a
22 couple blocks away.

23 Q Okay. And what happened when you got there?

24 A Other officers arrived there prior to me and
25 then it was broadcast that the subject was no longer

1 there.

2 Q No longer --

3 A No longer standing in front of the
4 Columbia Shelter.

5 Q In front of the Columbia Shelter.

6 Okay. And while you're conducting your area
7 check or responding to these various locations, did
8 you have your lights, sirens activated?

9 A Not at that point.

10 Q Okay. Was your MAV recording system
11 otherwise activated by you or some other means?

12 A I had not activated it yet. I activated it
13 upon arriving to walk up to the Columbia Shelter.

14 Q Okay. So you parked your car?

15 A Parked my car. I turned my lights on to --
16 to activate the MAV and parked my car.

17 Q Okay. And then what did you do?

18 A Got out. It was broadcast that he was gone
19 and I began walking back to my police car. And I was
20 flagged down by somebody from Cityteam Ministries.

21 Q Okay. And where is Cityteam Ministries in
22 relation to the Columbia Shelter?

23 A It's basically directly across the street to
24 the east. It's at 526 Southeast Grand Avenue.

25 Q Okay. What information did you receive from

1 this person that was flagging you down?

2 A I seen there was a subject inside of
3 Cityteam holding a knife to his throat.

4 Q Okay. Did you look -- or could you see into
5 Cityteam from where you were?

6 A You can see -- you can see in there, but I
7 couldn't see anybody do that typically.

8 Q Okay. So what did you do?

9 A I attempted to get on the radio to broadcast
10 that information, made multiple attempts to and my
11 radio just made a squelching noise, so --

12 Q I'm sorry?

13 A It made a squelching noise and I couldn't
14 broadcast due to other radio traffic, I'm presuming,
15 but I'm not entirely sure why.

16 Q Okay. So then what did you do?

17 A I guess the other officers must have heard
18 the -- heard the information via that guy talking or
19 it was being broadcast on the radio. I'm not
20 100-percent sure. And they became -- they started
21 going over towards Cityteam as well.

22 Q And so did you move in that direction?

23 A Correct.

24 Q What did you see when you got up there?

25 A We got up to the door and opened the door.

1 And I could see in the southeasterly corner of
2 Cityteam a -- a male holding a knife.

3 Q Okay. What else did you see in there?

4 A I saw a bunch of people who were also at
5 Cityteam there quickly moving/running away from
6 the subject.

7 Q Did you have a sense of how many people were
8 in there?

9 A I would guess about 40.

10 Q Okay. So a fair amount of people?

11 A Quite a few, yeah.

12 Q All right. And where were they in relation
13 to where this subject was with the knife?

14 A They were all over the place. I mean, they
15 were trying -- so the subject with -- with the knife
16 was in the southeast corner and they were trying to
17 move to the north side of the building away from him.

18 Q And were -- were they all kind of piling up
19 over there --

20 A They were --

21 Q -- staying away?

22 A They were moving that direction. I mean,
23 some of them rather slowly, but some of them pretty
24 quickly.

25 Q So what were some of the concerns you had at

1 that point?

2 A The subject could -- could grab one of the
3 people who was also in there, potentially hold them
4 hostage. He could hurt, stab somebody. He could
5 hurt himself.

6 Q Were the people close enough to him for him
7 to do that?

8 A Yeah. There was people moving around in
9 his vicinity.

10 Q Okay. So what did you do then?

11 A We -- we were right at the door, so we were
12 in -- actually in the physical doorway. And there was
13 me and a couple of officers there and other officers
14 were walking up. And Officer Damerville deployed a --
15 the less-lethal 40 millimeter at the subject.

16 Q Okay. Did you give the subject any
17 commands?

18 A I didn't personally give the subject any
19 commands.

20 Q What about other officers?

21 A I believe they were, but I don't recall what
22 they were.

23 Q Okay. You do recall, though,
24 Officer Damerville deploying a 40-millimeter round?

25 A Correct.

1 Q Okay. And do you know where he was when he
2 did that?

3 A He was in the doorway.

4 Q Okay. And where were you?

5 A I was in the doorway. So he -- so it's a
6 double door with, like, a bar in the center. He was
7 to my left, I think, one or -- one or two officers to
8 the left and I was at the very far right side of the
9 doorway initially.

10 And then I adjusted to hold the door open to
11 pry more room for the less lethal. And there was an
12 AR there, an officer with an AR as well.

13 Q AR operator came in?

14 A Yes.

15 Q Okay.

16 A I believe it was Officer Nutting. I believe
17 he came up with us initially.

18 Q Okay. Could you see whether the less-lethal
19 rounds were actually hitting the subject?

20 A Yes. I observed, I think, one or two
21 less-lethal rounds actually hit the subject.

22 Q What reaction, if any, did he have to it?

23 A Little to none. He continued holding a
24 knife and -- and pacing in the -- in that general
25 vicinity.

1 Q Okay. Were the people still near him?

2 A There were still -- there were still people
3 in the -- the greater area. I don't remember if there
4 was anybody, like, right next to him at that point or
5 not, though.

6 Q All right. Could you see whether or not
7 the -- the subject was injured in any way from where
8 you were?

9 A At that point, I don't -- I don't recall if
10 he was injured at all at that -- at that moment.

11 Q Okay. So what happened then?

12 A I remember hearing another officer either
13 say or broadcast over the radio -- I'm not entirely
14 sure which -- that the potential for a hostage
15 situation and then shortly thereafter is when we -- we
16 went into Cityteam.

17 Q Okay. What happened once you got inside?

18 A We tried to get as many people that were
19 inside out of harm's way. There was doors on the
20 north side of the building. We were trying to get
21 everybody to go in -- in those doors out -- to the
22 outside of this main room.

23 Q Okay. Did they seem to be complying with
24 those commands?

25 A Yeah. Everybody that was in there was, as

1 quickly as possible, trying to get through those
2 doors.

3 Q And was it your sense that they were able to
4 actually exit through those doors, exit the building?

5 A I -- I don't believe they were able to exit
6 the building through those doors, but I'm not entirely
7 sure, as I have not been in those doors before.

8 Q Okay.

9 A I think it might just give access to
10 different areas of the building.

11 A GRAND JUROR: Can you, like, point on the
12 chart behind you what doors you're talking about?

13 Like, at the bottom is Grand Ave there.

14 THE WITNESS: So that's Grand. So
15 there's -- I believe these -- these doors over here.
16 And I don't -- I don't remember which doors exactly
17 they went into, but I think it was these two, were the
18 primary doors.

19 BY MR. JACKSON:

20 Q Okay. And where were you positioned once
21 you came in?

22 A Would've been this general vicinity --

23 Q Okay.

24 A -- I believe.

25 Q You're pointing more kind of toward

1 the north --

2 A Yeah.

3 Q -- side.

4 A North side --

5 Q Okay.

6 A -- kind of in -- kind of in line -- I
7 believe it was kind of in line with the stair --
8 staircase, but a little farther down.

9 Q Okay. And is that staircase enclosed with
10 a -- a kind of waist-high railing?

11 A Yes.

12 Q Okay. Do you -- do you remember being
13 actually behind the railing or --

14 A I -- I don't remember exactly --

15 Q -- down by --

16 A -- the position -- the position, but I
17 was -- I guess I was a little bit west of it. I don't
18 remember how -- how far west, though.

19 Q And where was your attention focused during
20 that time?

21 A It was in the -- on the subject in the back
22 of the room with the knife.

23 Q Okay. And what was he doing?

24 A I think he was kind of pacing around and
25 then at one point, when the knife was in his hand, he

1 started, like, motioning towards his neck like he was
2 stabbing himself in the neck. And I don't know
3 whether he was or not, but it appeared like he was.

4 And then after that, I didn't necessarily
5 see any new blood, but I remember seeing blood on his
6 face and around his face.

7 Q Okay. What happened then?

8 A I'm not sure if this was before or after,
9 but there was a gentleman who would've been kind of --
10 there was, like, a little alcove. He would have been
11 here. He kind of popped out and was coming down
12 this -- this wall. I -- I moved and was trying to get
13 him to come behind the desk and he kind of crouched
14 down -- down underneath the -- the desk right there.

15 Q Okay. What happened next?

16 A So I -- I went back to the approximate area
17 where he was at. And shortly thereafter, the subject
18 began walking towards officers with -- with the knife
19 in his hand.

20 Q Okay. What do you remember happening next?

21 A As he walked -- was walking towards us, I
22 heard a burst of gunfire and then he went down to the
23 ground.

24 Q Do you have a sense of how far away he was
25 from the officers?

1 A When he went down to the ground or at which
2 point?

3 Q When he started moving in their direction.

4 A I -- I don't recall exactly where he was at
5 when he started moving towards us.

6 Q Okay. What about once he was down on the
7 ground?

8 A I would guess -- guess about seven feet
9 away.

10 Q Seven feet away? Okay. Did you have your
11 handgun or any kind of weapon drawn?

12 A I did. I had my handgun out.

13 Q And when did you pull that out?

14 A I believe when I would've turned back --
15 back to the general area he was at after trying to get
16 the guy to go behind the desk.

17 Q Okay. And so just so we're clear, you --
18 you came down by the desk to try to get that guy out
19 of the way?

20 A Out of the way, out of harm's way. I wanted
21 him to back there, but he stopped and kind of hunkered
22 down right there.

23 Q And then where did you move back to?

24 A Same -- same general area, kind of in this
25 general vicinity.

1 Q Okay. And you said at that point you drew
2 your handgun?

3 A I had my handgun drawn, yes.

4 Q You had your handgun drawn.

5 A I -- I believe I drew it -- drew it when I
6 got back to -- and I don't remember exactly when --
7 the exact point when I did draw it.

8 Q Okay. And did you fire?

9 A I did not.

10 Q Why not?

11 A Due to my position, I -- I was slightly
12 behind the line. And I -- at the point when I was
13 about to fire, I recognized that -- I -- I could see,
14 like, the back shoulders of two officers and I didn't
15 feel it was safe to fire between two officers from
16 behind their position, presenting -- that presented a
17 pretty serious risk to them as well.

18 Q And you -- you actually had officers in your
19 line of fire?

20 A Not -- they were not directly in front of
21 me. I had a clear line in front of me, but this
22 gentleman's moving towards us and I didn't -- I can't
23 predict what somebody else might do. And I didn't
24 want to fire from slightly -- slightly behind, between
25 two officers.

1 Q Okay. But you did have your handgun out?

2 A I did, yes.

3 Q And then were you aware that other officers
4 had fired?

5 A Yes, I was.

6 Q And what happened then?

7 A The subject went down to the ground, landing
8 on his stomach with his head facing north.

9 Q Okay. What did you do next?

10 A We couldn't -- we couldn't see both his
11 hands and we couldn't see where the knife was at. And
12 we were trying to figure out a way so we could go
13 render -- render aid to him.

14 Me and another officer moved up around to
15 the -- the east side of that staircase so we could
16 see, get eyes on the subject and see if we could see
17 where the knife and where his right hand was. His
18 right hand was underneath his body and we could not
19 see the knife.

20 Q Okay. And did you relay that information to
21 other officers?

22 A I did.

23 Q Okay. What happened then?

24 A I move back and then a couple officers
25 approached. And they rolled him up on his side and so

1 they say that they can see the knife and not to
2 move it.

3 Q Okay. Did you actually ever see the knife
4 out when it was on the ground?

5 A I did.

6 Q Okay. When did you see it?

7 A When they -- when they rolled him up onto
8 his side.

9 Q Okay. You could see it right there?

10 A I could see it on the ground to his -- on
11 his right side.

12 Q What happened then?

13 A Medical is requested to come.

14 Q Okay. And was your -- to the extent you
15 knew, your MAV recording, operating throughout that
16 encounter?

17 A As far as I know, yes.

18 Q Okay. You never shut it off or anything?

19 A Not -- not during that point, no.

20 Q Okay. When did you turn it off?

21 A After -- after all that had occurred. After
22 medical had been requested in, I asked
23 Sergeant Axthelm if I could go and turn off my MAV
24 recorder.

25 Q Okay. And -- and was that after the medics

1 had come in and all of that?

2 A Correct.

3 Q Okay. When the subject began moving toward
4 the officers, could you actually see the knife in his
5 hand?

6 A Yeah, it was in his right hand.

7 Q Okay. And how did he have it positioned?

8 A I guess he was holding his hand like this
9 with the blade protruding out the top of his hand,
10 pointing towards officers.

11 Q Okay. And that's how it was when he was
12 moving towards the officers?

13 A Correct.

14 MR. JACKSON: Okay. Any questions?

15 BY MR. REES:

16 Q I do. And I -- I'm sorry if you already
17 said this, but MAV, is -- is that an acronym? M-A-V?

18 A Mobile audio video.

19 Q Mobile audio video.

20 A Yeah.

21 Q Okay. And so you were wearing a wireless
22 microphone --

23 A Correct.

24 Q -- essentially.

25 A Yeah.

1 Q It's projecting sound back to your car for
2 the recording?

3 A Correct.

4 Q Okay. In terms of a threat assessment, why
5 did you pull your -- your gun out?

6 A Felt like he posed an immediate threat to
7 myself and other officers.

8 Q And you -- you told Mr. Jackson you didn't
9 fire because you thought that possibly other officers
10 were -- would be in danger if you would have fired
11 your weapon?

12 A Correct.

13 Q If -- if you had had a shot that you felt
14 was clear, would you have fired your weapon?

15 A Absolutely.

16 Q Absolutely. And can you explain why you say
17 that?

18 A He's -- the subject's moving towards us,
19 holding a knife. You know, and fearing for myself and
20 for other officers' safety that they may be
21 significantly injured or killed.

22 Q And so did you -- at the time did you think
23 that in your mind, like, I'm -- maybe I'm going to
24 shoot?

25 A Yes.

1 Q Several officers -- six, actually. Six
2 officers did use deadly force in this incident. Were
3 -- was that part of your calculation? Did you know
4 that -- that others were going to fire or not fire?

5 A I -- I had no idea who had fired at that
6 point.

7 MR. REES: All right. Thank you.

8 MR. JACKSON: Are there any other questions?

9 A GRAND JUROR: What -- what actions --
10 besides the actions that you just explained, what --
11 what kinds of orders or what was being said by both
12 the sergeant and -- or what did you hear from anybody
13 involved there?

14 THE WITNESS: So I don't really remember
15 hearing much during the time inside during this
16 incident. The only sounds that I remember hearing was
17 the gunfire.

18 A GRAND JUROR: So you didn't remember
19 hearing orders like, "Go here, do this, do that"?

20 THE WITNESS: I don't remember hearing that,
21 no.

22 A GRAND JUROR: And nothing from
23 John Eldridge?

24 THE WITNESS: No, ma'am.

25 MR. JACKSON: Okay. Any other questions? I

1 don't see any.

2 All right. Thank you very much, Officer.

3 THE WITNESS: Thank you.

4 MR. REES: Come on up.

5 THE WITNESS: Good morning.

6 MR. REES: Good morning, Officer.

7 This is our next witness. And if you'd
8 please raise your right hand.

9 GROVER ROBINSON

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

12 MR. REES: And, sir, if you would, for the
13 record, state and spell your name.

14 THE WITNESS: It's Grover Robinson, Jr.,
15 G-r-o-v-e-r. Last name is R-o-b-i-n-s-o-n.

16 EXAMINATION

17 BY MR. JACKSON:

18 Q And, sir, what -- what's your occupation?

19 A I'm a community police officer with the
20 Portland Police Bureau. Have been for four -- over
21 four years now.

22 Q All right. And is -- when you say
23 "community police officer," is that the same thing as
24 a --

25 A Patrol officer.

1 Q -- patrol officer?

2 A That's correct.

3 Q Okay. And you're here today in front of the
4 grand jury in your police uniform.

5 A Right.

6 Q On the night of this incident that the grand
7 jury is examining on April the 7th, I believe you were
8 wearing plain clothes; is that right?

9 A That is correct.

10 Q And so -- and -- and on the video that we've
11 seen, we see an individual close in with the police,
12 but wearing just casual clothes. And that -- that
13 would be you then?

14 A That would be correct.

15 Q Yeah. And so can you explain what were you
16 doing that night? Why are you wearing plain clothes?

17 A So in addition to my duties as a patrol
18 officer, I'm also a field training officer. That
19 night I was assigned with my trainee, who is on his
20 last day of Phase 4. There are several phases within
21 the training program.

22 And Phase 4, the last two weeks of that
23 phase, I'm in plain clothes in an observation mode.
24 So my job is to just stand back and observe. And I'm
25 not only in plain clothes so that people don't come to

1 me and refer to me, so he can work independent and I
2 can just observe if possible.

3 Q Okay. And so when you're doing that, is --
4 is the purpose that members of the public don't really
5 know that you're a police officer and then you can
6 observe your -- your trainee?

7 A That's correct.

8 Q And do you ever get involved?

9 A In rare occasions. I am still armed. I
10 still have my badge in case I need to identify myself
11 as a police officer. I still have a bulletproof vest.
12 But, primarily, I refrain from taking direct action on
13 anything unless something dire comes up.

14 Q Okay. And where was your -- your -- is
15 it -- is it probably called your -- your trainee or --

16 A Recruit.

17 Q -- recruit. Who -- who was your recruit
18 that night?

19 A Officer Jeffrey Livingston.

20 Q Jeffrey Livingston. Okay. And so do you go
21 with him from the time of the start of the shift, roll
22 call, and then out on -- on patrol and stay with him
23 for the entire shift?

24 A I do.

25 Q Okay. We're -- we're just going to take

1 a -- a minute and just go to the surveillance video so
2 we can see Officer Robinson just for reference in the
3 -- in the video. Do you see yourself in the picture?

4 A I do. I'm wearing the black jacket with the
5 red stripes on the sleeve.

6 Q So that's you --

7 A Yes.

8 Q -- here, right?

9 A Uh-huh.

10 Q Okay. So that was just for -- for
11 reference. We looked at the video again. That's
12 Officer Robinson, but here in plain clothes you just
13 look like some guy standing around, big guy.

14 So what -- what was your -- what was your
15 status regarding responding to this location? What
16 was the first information that you -- you had
17 regarding the situation?

18 A So prior to arriving here --

19 Q Yeah.

20 A -- this would have been probably the fourth
21 call we received in relation to the same subject. My
22 partner -- I refer to him as partner even though he's
23 my recruit because being in Phase 4 and working
24 independent, I want him to be able to be thinking
25 independently as a partner and not a trainee, so I'll

1 refer to him as partner.

2 We were initially on another call unrelated
3 to this when the call came out that there was a
4 crashed vehicle. The subject was seen running from it
5 and shortly thereafter, this -- this particular
6 vehicle had been listed as stolen and taken, I
7 believe, earlier in that day from either North or East
8 Precinct.

9 It's where the original report was taken.
10 It was taken by force. And shortly after that, I
11 believe somebody had said that it was either taken by
12 force with the use of a gun or a weapon of some kind,
13 but it was some uncertainty as to whether or not there
14 was a weapon involved.

15 The subject left in an unknown direction,
16 but because of the severity of the call and, you know,
17 the severity of the crime, the call we were on, I'm
18 just telling him there probably wasn't much we could
19 do at that, so I suggested to my partner, "Hey, we
20 should probably cut loose from here."

21 Had to help out on the area check. We did
22 that, got to the area. Didn't see anybody matching
23 that description. They had left in an unknown
24 direction. The description that we had was, I
25 believe, possibly a white male, no shirt, blue jeans

1 or some blue pants, something like that, and had taken
2 off in an unknown direction.

3 Several officers were already looking one
4 way and we decided, "Hey, let's head up" -- I believe
5 we were heading down Stark, eastbound on Stark and
6 circle around to see if we can find him.

7 Shortly thereafter, another call came out
8 and said that the subject -- a subject was standing at
9 the doorway of the Jacksons, which is located, I
10 believe, south of Stark; but between Grant and MLK.
11 The subject was standing in a doorway armed with a
12 knife, possibly on drugs.

13 And shortly thereafter an update said that
14 they were sure that this was the same person we were
15 looking for, except the new updates showed that he was
16 wearing some kind of a jacket.

17 Q So -- I'm sorry to interrupt. But -- so
18 meaning this is the same person involved in the prior
19 carjacking?

20 A That's correct.

21 Q Okay. And -- and do you -- do you remember
22 anything at all about a call out of North, about a --
23 a situation with the same stolen vehicle at all or --

24 A No. Just --

25 Q No?

1 A Just the update that somebody believed that
2 this report was taken either North or East. There was
3 some kind of video associated with it, but it was
4 unclear in the video whether or not a weapon was
5 involved. I don't recall most of the details on that.
6 You know, at that time the focus was on locating this
7 person.

8 Q So you're getting bits and pieces of
9 information over time?

10 A Mm-hmm.

11 Q It is a -- it's an evolving situation,
12 obviously.

13 A That's correct.

14 Q And -- and maybe you said it, but at some
15 point did you say to your recruit/partner, "Let --
16 let's head in that direction"?

17 A I did.

18 Q And when -- when -- and I interrupted you,
19 but when was that in the sequence that you decided to
20 head in that direction?

21 A That was at the initial call with the crash
22 vehicle and subject that had taken off in an unknown
23 direction.

24 Q Okay.

25 A Once it was determined or broadcast that it

1 was taken by force, just knowing that chances are, if
2 this guy had already taken a vehicle by force and --
3 and crashed that vehicle, he's probably, you know, a
4 high likelihood that he's looking for another vehicle
5 and possibly do the same thing. So the risk to the
6 public was -- was very high, so --

7 Q So are you actively looking for the suspect
8 then?

9 A Yes. We began an area check and started
10 assisting, flooding the area with a bunch of patrol
11 cars just trying to look for him. Now, we were pretty
12 confident we'd be able to spot this guy. He was
13 running around with no shirt. Not too many people
14 running around with no shirt, so --

15 Q Okay. And this is fairly early in the
16 evening. So were there -- were there lots of cars on
17 the road and people out and about --

18 A No.

19 Q -- do you recall?

20 A No.

21 Q All right. Any sign of the suspect?

22 A We didn't locate the suspect during the area
23 check. Having not located anybody, once that second
24 call came out at the Jacksons with the guy standing in
25 the door with a knife, possibly on drugs, at that time

1 we didn't know it was the same person, but everybody
2 was dealing with the initial call working on the area
3 check.

4 I believe somebody had asked -- or somebody
5 had volunteered to go, but they were looking for
6 somebody equipped with a less lethal -- you know, a
7 40-millimeter less lethal. It's pretty standard when
8 you have a subject that's armed with a knife that you
9 have somebody with a less lethal go as a secondary
10 option to confront that.

11 When somebody offered up with that, I
12 recognized, hey, this is probably something we want
13 another officer. We had a primary officer that was
14 going to head for that. A less-lethal officer should
15 be a second officer to go with him so that the less
16 lethal can just focus on being less lethal.

17 So I suggested we head there and do that.
18 Staging location was devised. We met there -- or we
19 waited there at the -- at that location, the staging
20 location, which was over Stark and Grand, or Stark
21 and MLK.

22 The crash vehicle was about a block north of
23 us. I saw that while we were sitting at the staging
24 location. We were there waiting when the other
25 officers were en route to come meet up and rendezvous.

1 I guess another officer had headed to
2 Jacksons to get eyes on. Saw that the guy wasn't
3 there anymore; went in and made contact with the
4 employees, and I was updated that this was probably
5 the same person based on the description, behavior,
6 weapon, et cetera, et cetera.

7 New update, as I said earlier, was that this
8 guy was now wearing a jacket or a rain parka or
9 something like that and had left. But I don't believe
10 there was a -- a direction of travel. He just said he
11 was no longer there.

12 So we never made it to the Jacksons because
13 as we were leaving, heading southbound, another call
14 came out and said that there was a subject armed -- I
15 believe it was subject armed with a knife at the
16 shelter on the west side of MLK -- Grand -- the west
17 side of Grand. And the subject -- and was probably
18 the same guy. So we just headed there.

19 Q And that would be the -- that's the east
20 side of Grand, I think, isn't it?

21 A No, it's the west side. The first -- the --
22 the third call --

23 Q Oh, I'm sorry.

24 A -- was on the west side.

25 Q Which is -- okay. Oh, right.

1 A Yeah.

2 Q The Columbia Shelter, which used to be by
3 Shleifer Furniture.

4 A Yeah. 509.

5 Q Got it.

6 A Right.

7 Q Yeah. Okay.

8 A But --

9 Q Sorry.

10 A Yeah, so he came out there. There was a
11 subject there, I believe, that was also armed with a
12 knife, so we made our way there pretty quickly.

13 Q That's the same side of the street as
14 Jacksons. It's -- but it's north of Jacksons?

15 A That's correct.

16 Q Yeah, I've got it. I'm sorry. Okay.

17 A Yeah. A couple blocks -- a couple blocks
18 north?

19 Q Yeah. Right. Okay.

20 A So we made our way there. As we got there,
21 there were several officers already there and we found
22 out while we were sitting there waiting for
23 information, that the subject was no longer there. He
24 was moving around.

25 But as we were sitting there and I was

1 listening, waiting for updates on the direction of
2 travel, I looked over and there was an older white
3 male, gray hair, coming out of the shelter on the east
4 side of the street.

5 He was indicating, "Hey, somebody's inside,"
6 or pointing inside. So it was quickly after that -- I
7 didn't even get a chance to broadcast, you know,
8 getting flagged down at, you know, the shelter on the
9 east side.

10 And somebody else had updated that, "Hey,
11 the subject was last seen heading across the street."
12 So we made our way over there. I told my partner, I
13 went, "Hey, turn the car, just block traffic south of
14 that location and let's make our way in, figure out
15 what's going on."

16 And I'm not sure if that was at the
17 beginning of -- as we were entering the location, that
18 video, but I approached the window, saw the subject
19 inside had a knife up to his neck.

20 And it was at that point that I recognized
21 it's probably one of those deals where, even in plain
22 clothes, there was probably going to be some role I
23 was going to have to take in -- in this since, you
24 know, this shelter was full of people, rough guess,
25 you know, 40-, 50-some-odd people in there.

1 It's a homeless shelter that has a regular
2 line outside of it. And at some point they let people
3 in. Once they reach capacity --

4 Q And you're --

5 A -- they close the doors.

6 Q I'm sorry. You're talking there from past
7 experience --

8 A Past experience.

9 Q -- you know that, so you're familiar with
10 that homeless shelter?

11 A I am.

12 Q Okay. And so did you -- based on your past
13 observations and I guess also looking through the
14 window, did -- did you have an impression that there
15 were a lot of people inside the shelter?

16 A I did.

17 Q How many? Could you see inside how many
18 people there were or --

19 A Yeah. Rough guess, I mean, without
20 obviously counting, I mean, I would say, you know, 40,
21 50. But could have been more than that.

22 Q Okay. But in the past, you've seen people
23 on the sidewalk lined up to go inside?

24 A Yeah. And it's not uncommon for people to
25 get turned away, just from them reaching their

1 capacity, so --

2 Q So do you --

3 A -- several times during the middle of the
4 night, you know, I can go by and there's people camped
5 out on the sidewalk that couldn't make it in.

6 Q All right. So based on your training and
7 experience as a community police officer, when you see
8 this person inside the shelter with the knife and you
9 know about these other calls and the carjacking call,
10 you can see a weapon's involved, what are you -- what
11 are you thinking?

12 A The danger to the community is probably the
13 most important thing I'm thinking at this time. I
14 mean, this guy is obviously at a -- at this point,
15 threatened himself, threatening self-harm with a
16 deadly weapon.

17 But I know, based on his proximity to, you
18 know, the citizens inside, there's a high likelihood
19 that this could turn into something as severe as a
20 hostage situation. You know, he's in close enough
21 proximity.

22 And based on the fact that we already had
23 prior reports of this subject being possibly under the
24 influence of drugs, he's already, you know, likely
25 carjacked a vehicle, and so he's already demonstrated

1 his ability to place others in harm, so that was
2 pretty -- pretty intense.

3 Q So what do you do in a situation like that?
4 You've got a -- a lot of cops on the sidewalks. You
5 see it. It looks like there's police everywhere.

6 A Mm-hmm.

7 Q And then everybody else is on the inside.
8 What -- what -- what happens?

9 A Well, like I said, I mean, I'm -- if I was
10 dressed the way I was, if I was equipped the way I was
11 I would have obviously been one of the first ones to
12 run in and address the situation myself.

13 But in the role I was in it was important
14 for everybody else who was armed with, you know, less
15 lethal, who's armed with, you know, firearm, shotgun,
16 whatever the case is, to address this threat.

17 You know, I let them filter in first and do
18 that. At one point I recognized there's a ton of
19 people inside. My trainee is inside. He's fulfilling
20 a role, too, and addressed a number of folks that are
21 inside trying to get them away from the subject and
22 hopefully out.

23 I recognized at one point that there's other
24 people inside. There's two employees that are sitting
25 in the southwest corner of the -- the room. They're

1 both employees behind a desk, but they're just sitting
2 there.

3 So I go in. I want to address them to
4 possibly get out. And there's several other people.
5 I know as I came in, I saw that there was somebody
6 behind the subject. The subject was on the south side
7 of the room, but he was pacing back and forth, still
8 holding the knife up to his neck.

9 But behind him there were several people,
10 occupants of the shelter that were still trapped in
11 that kind of corner behind -- the dangerous part about
12 that is they're in a -- what we call our backdrop. So
13 should the point come where deadly force has to be
14 used, there's a potential for them to be in the
15 backdrop, you know, and in the line of fire.

16 So -- and one of the guys -- I mean, at --
17 people were pretty quick to address them, "Hey, move
18 around. Get out of the way." But there was one guy
19 in particular who panicked, I'm assuming, at the table
20 that was there and tried to turn it onto its side and
21 hide behind the table.

22 The table was obviously insufficient cover
23 for, you know, fire coming through. So somebody had
24 figured that out and addressed him and got him moved
25 away. But at this time I'm still trying to tell these

1 guys to -- "Hey, you guys should leave and get out to
2 safety," and whatnot.

3 And starting to focus on my trainee, who's
4 trying to get people funneled out along the north side
5 of the wall out the door. I mean, it's kind of
6 important, too, that there are people that can witness
7 what's going on.

8 But -- and not just police officers. I, as
9 a police officer, when I'm doing an investigation
10 would like to be able to have witnesses that can
11 account for things and not just my own account.

12 But at the same time, you know, with the
13 situation being what it is, I much prefer everybody be
14 out to safety. And not even knowing that there's
15 cameras inside, just getting them out.

16 So my attention was focused on getting
17 people out. Meanwhile, I'm watching what this guy's
18 doing. He's pacing back and forth. At one point he
19 kind of backs towards where people are being funneled.

20 There's this huge kind of obstacle in the
21 middle of the floor. It's a staircase leading down to
22 a lower level. He kind of flies around the side of it
23 towards where people are being funneled away, but
24 somehow makes his way back around.

25 He's pacing back and forth still. Still

1 with a knife to his neck. I never seen him drop it or
2 menace anyone with it, but he's still --

3 A GRAND JUROR: Was he --

4 THE WITNESS: -- with people inside.

5 A GRAND JUROR: -- yelling anything at that
6 time?

7 THE WITNESS: You know, honestly, I don't
8 recall him even saying anything. I know several
9 officers were, you know, asking him to drop the knife.
10 And, you know, he was being warned that force would be
11 used. I did hear some less-lethal rounds going off.
12 Those are the 40 millimeter (indiscernible) rounds.

13 I saw him get hit a few times in the lower
14 waist or below the waist. But I do recall he had --
15 they didn't have any effect on him. You know, I
16 didn't see, you know, anybody who, like -- typically,
17 you would see somebody kind of buckle over or -- just
18 from the impact of, you know, the initial round.

19 But I didn't see any break in demeanor or
20 anything like that. I don't recall him saying
21 anything, but he never -- he never reacted to it. So
22 he kept pacing back and forth. I think I looked at
23 one point to the two who were still sitting there.

24 I told them one more time to get out. They
25 got up and got behind me and headed out the door. And

1 as they were doing that, I heard rounds being fired,
2 lethal rounds being fired from several -- several
3 weapons. I looked up and the guy was -- the subject
4 was in the process of being shot. And he was buckling
5 over, ended up falling forward.

6 And I immediately recognized that he must
7 have moved closer toward this while I was looking
8 away. The last time I saw him, he was further back in
9 the room. When he was getting hit, he was noticeably
10 closer.

11 So, I mean, I automatically knew, you know,
12 he had -- he must have advanced on them causing them
13 to have to fire. I -- I probably would have done the
14 same thing had I been in that position.

15 BY MR. REES:

16 Q You -- you had said that you -- you viewed
17 this is a very dangerous situation.

18 A Mm-hmm.

19 Q People inside, he's got the knife. But
20 he's -- he's holding the knife up to his own neck when
21 you see him.

22 A Mm-hmm.

23 Q So how -- how is that dangerous to the other
24 people in the room?

25 A Well, anybody armed with a knife can --

1 right now, he's -- at that particular time, he's got a
2 knife to his neck. That's nothing to say that while
3 he's closing the distance on officers, he takes the
4 knife and turns it towards an officer. You know, it's
5 a deadly, dangerous weapon.

6 Q Well, what about earlier -- earlier in the
7 situation? I mean, were you surprised that the other
8 officers were using the less-lethal foam rounds
9 against him given the situation?

10 A No. No.

11 Q No?

12 A No. The less-lethal rounds are a great
13 option because, obviously, being less lethal, it gives
14 us a level of force with the hopes of averting to a
15 higher level of force, you know.

16 For most people, you know, depending on --
17 without other factors, you know, drugs, state of mind,
18 will to fight, whatnot, a less-lethal round is usually
19 -- can -- not usually, you never know.

20 But would be a viable option to try to see
21 if you can get some kind of pain compliance before
22 having to use force. The average person would
23 probably react accordingly, drop the knife, not want
24 to get shot with a less-lethal round more than once.

25 Aside from the fact, I just recently went

1 through the training and got certified as a
2 less-lethal operator, so I have first-hand knowledge
3 of seeing what -- that they can do, how fast it -- it
4 travels and its impact on the target and whatnot.

5 But with him not having any reaction to it,
6 it kind of testifies in and of itself to his will to
7 fight or his state of mind or possible drug --
8 drug-affected behaviors.

9 Q Did you see him have any response at all to
10 either officers yelling at this guy, "Drop the knife,"
11 or being hit with the less lethal rounds?

12 A No.

13 MR. REES: Okay. Are there any questions
14 from the grand jury?

15 A GRAND JUROR: Were -- were there any
16 Tasers on any of the officers involved or why weren't
17 they in the picture?

18 THE WITNESS: I don't recall. I don't know
19 myself, if I would have opted for a Taser at that
20 point. With so many officers nearby, there's always
21 the danger of you can point a Taser -- the way Tasers
22 work, if you don't know -- at least our Tasers, the
23 X26 -- has two probes.

24 Those probes, when fired, you know, you're
25 aiming lower body and you're hoping for a spread.

1 One -- one probe usually comes straight out towards
2 where you're aiming and the second one kind of is
3 angled downwards.

4 With officers moving around, the subject
5 moving around, there's always the danger of that
6 point, that close proximity, by firing the Taser,
7 probe could strike one of the other officers, possibly
8 incapacitate them momentarily. Or based on this guy's
9 movement, you know, I don't know if a Taser would have
10 been applicable at that point.

11 MR. REES: Any other questions? All right.
12 Seeing no further questions, we'll excuse this
13 officer.

14 Thank you very much for coming in.

15 THE WITNESS: Thank you.

16 A GRAND JUROR: Thank you.

17 THE WITNESS: Have a good one.

18 MR. JACKSON: All right. And we're going to
19 go off the record for another case. And then we'll
20 resume this afternoon.

21 * * *

22 (Noon Recess taken at 10:26 a.m.)

23

24

25

AFTERNOON SESSION

(Grand Jury No. 1, 1:21 p.m.):

MR. REES: All right. We're back on the record on Grand Jury No. 1, Case 28. And the next witness is Sergeant Grundmeyer.

TROY GRUNDMEYER

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

EXAMINATION

BY MR. REES:

Q Sir, when you're ready, if you would, please, for the record, state your first and last name.

A Yeah. My first name is Troy, T-r-o-y. And my last name is Grundmeyer, G-r-u-n-d-m-e-y-e-r.

Q And what's your position with the Portland Police Bureau?

A I'm a sergeant in the K9 unit, and so we have a unit of ten -- or ten patrol dogs and two sergeants, eight officers. I'm one of the sergeants.

Q All right. And how long have you been in that position?

A I've been a sergeant in the unit for four years. Prior to that, I was a handler in the unit for

1 ten years.

2 Q All right. And just for the record, as I
3 understand it, there was a K9 officer and his handler
4 on scene in the shooting April 7th, and that was
5 Officer Gore. He's not available, so we've called you
6 for some background information on the capabilities
7 and limitations of the -- the K9 officers.

8 A Yeah. Correct. Officer Shawn Gore is on
9 vacation now out of state.

10 Q Okay. And so, first, briefly, what's the
11 training involved for the officer and -- and the
12 canines?

13 A So each -- each dog, before they're
14 certified as a patrol dog in the state of Oregon, they
15 go through a 400-hour, ten-week training course with
16 the -- the individual officer that's going to handle
17 that dog with the dog. After that's completed, they
18 pass a test.

19 So they're -- all the patrol dogs in the
20 state of Oregon kind of fall under the umbrella of the
21 Oregon Police Canine Association. Once they complete
22 their 400 hours of training and they pass a test --
23 that is an Oregon Police Canine Association test -- if
24 they pass that test, they can then be a certified
25 patrol dog.

1 Once that's completed, though, the training
2 doesn't stop. We train weekly, daily. Every
3 Wednesday night, the -- our entire unit, that's our
4 training day, so we train together every Wednesday,
5 but then we also train every night.

6 We train in tracking, building searches,
7 control work, which would be the biting and the
8 call-offs and that kind of thing.

9 And then on top of that, we attend -- twice
10 a year, we attend an Oregon Police Canine Association
11 seminar, where it's training and doing all the stuff
12 that we do all year long, we do that as a big -- big
13 group. So it's -- it's hundreds to thousands of hours
14 of training, between the handlers and the dogs at any
15 given time.

16 Q What's the -- the primary purpose, the
17 number one purpose of using one of these canines?

18 A Well, the number one thing that we use them
19 for is as a locating tool. So the dog's nose is
20 roughly -- depending on what you read -- a hundred to
21 a thousand times more powerful than a human's nose.
22 We use the dog to -- to search and find people,
23 sources of human scent. That's our number one
24 priority.

25 Q All right. And what's -- what's the number

1 two or secondary purpose?

2 A The secondary would be a means of
3 less-lethal force, so you're probably familiar with a
4 taser is a less lethal mean than guns, batons. The
5 dog can also be used to scent -- to be sent on a bite
6 to apprehend a fleeing person or to try to subdue a
7 person.

8 That's -- that's -- we probably train more
9 in that because there's -- it's kind of more -- more
10 involved with that, but that's the secondary function
11 of the dog.

12 Q And do you have an understanding that in
13 this case, Officer Gore handling his canine was
14 involved in tracking the suspect of the -- the
15 carjacking?

16 A Yeah. I'm not a 100-percent familiar with
17 exactly what happened on this, but my understanding
18 was that he was responding to the scene because they
19 had a carjacking and a car in the middle of the street
20 and the suspect had -- had run off somewhere. So I --
21 my understanding is his initial response would be to
22 search for that person, go find him.

23 Q And then we've seen, as part of our grand
24 jury investigation, video that shows the officer with
25 his German Shepherd canine partner coming into this

1 homeless shelter. I think one -- one question is why
2 wouldn't the dog be just released to grab someone who
3 has a knife or -- or would they be?

4 A Well, we -- generally not. We don't send
5 the dogs on somebody that's armed with a knife or
6 armed with a gun. And the reason being is the dogs
7 are trained to -- when they are sent to bite, to bite
8 the first available piece of the person, whether it be
9 the leg, the arm, to try and control that person.

10 The idea would be you'd send the dog, the
11 custody team would have a plan at that point once the
12 person is dealing with the dog to move up and try and
13 take control. The dog's not kind of a magic thing
14 that's going to go and, if you think about it, grab
15 the person and bring them back to you to control the
16 person.

17 The dog's going to be sent on the bite and
18 then you'd have to have a plan to move forward and
19 then control that person. If you sent the dog against
20 somebody with a knife, you know, the -- I'm not
21 familiar with any training where a dog could disarm a
22 person with a knife.

23 So if you sent the dog against somebody with
24 a knife, the person's still going to have the knife
25 and it could -- could obviously create kind of more

1 problems than what it's going to solve.

2 Q How -- how might the dog be used in a
3 scenario where the police are confronting someone with
4 a knife and are trying to get the person to drop the
5 knife? At some point, would the dog potentially come
6 into play?

7 A Yeah. That's why you would have -- have the
8 dog there as one of your less-lethal options. If the
9 person dropped the knife, you'd have to be ready to
10 immediately send the dog. The -- the other side of
11 that coin is the dog has to know what their target is.
12 The dog has to have target lock.

13 You'd have to have the dog in a position
14 where they could see which -- I mean, they're dogs. I
15 can't say, "Go bite the person in the black shirt."
16 They have to know what they're looking at. But so you
17 would have the dog there.

18 If the dog -- if the knife was dropped,
19 you'd immediately turn and send the dog up and then
20 move on up and control that person before they could
21 have access to the knife again.

22 Q Okay. So at some point, if a subject had --
23 had dropped the weapon and the dog was clear on -- on
24 who the suspect was, then you might release the dog
25 to -- to hold onto the person so they could be

1 arrested?

2 A Yeah. Yes, you would. Again, I don't -- I
3 haven't seen everything regarding this case. I -- I
4 did see the news video and the first thing that was on
5 the news that struck me was the dogs. They're dogs.
6 They see movement.

7 So you have to have them at -- to looking in
8 the right direction, have them target lock -- for lack
9 of a better word -- on what their target is. And the
10 dogs are attracted to the movement.

11 So what I saw on that video -- and I just
12 saw that brief clip -- was people moving in the
13 background and that's what the dog's going to see. So
14 you -- just to say that if the person dropped the
15 knife, you would send the dog, that may not be the
16 case.

17 If there's things going in the background
18 and people moving, you would have to really have that
19 person isolated so where the dog realized, like, yes,
20 that -- that is my target. I get where -- where I'm
21 supposed to be focused. I didn't see it in that
22 video. And there's a lot -- there's a lot happening,
23 from what I could see.

24 MR. REES: Okay. And any -- any questions
25 from the grand jury about the dog you saw on the video

1 or any follow-up questions?

2 A GRAND JUROR: I -- I think more than a
3 question is an observation that in that -- in the
4 video that we've seen, the -- the scene is very
5 chaotic --

6 THE WITNESS: Mm-hmm.

7 A GRAND JUROR: And there are people moving
8 everywhere. And the dog present seemed to add to the
9 general pandemonium in the room, just because, you
10 know, officers are -- are barking orders and there are
11 people in the background. But the dog's barking --

12 THE WITNESS: Mm-hmm.

13 A GRAND JUROR: -- was just, like -- seemed
14 to me it was just adding more chaos to the -- to the
15 scene.

16 THE WITNESS: Yeah. And all of our dogs are
17 different. Some -- my dog is very quiet. Other dogs
18 bark a lot. Sometimes the -- sometimes -- a lot of
19 times, actually, the barking can actually convince
20 somebody to give up.

21 A GRAND JUROR: Yeah.

22 THE WITNESS: You know, people will see the
23 dog, hear the barking, hear our warnings and they'll
24 choose to -- to give up. That happens quite a bit.
25 Again, in -- in that video clip I saw -- I haven't

1 seen the extended version. I only saw what was on the
2 news, but it was very chaotic. I mean, without the
3 dog involved --

4 A GRAND JUROR: Right.

5 THE WITNESS: -- it looked like a very
6 chaotic scene.

7 A GRAND JUROR: Do you know if the dog had
8 been brought to the car, the Honda --

9 THE WITNESS: I -- I don't, no.

10 A GRAND JUROR: -- that had crashed?

11 THE WITNESS: I did read before I came in
12 here, officer --

13 A GRAND JUROR: I just wondered if you had
14 just any chance to get the scent of this man.

15 THE WITNESS: It's not -- from what I --
16 like I said, before I got here, I read Officer Gore's
17 statement and it sounds like he was on his way to the
18 car --

19 A GRAND JUROR: Mm-hmm.

20 THE WITNESS: -- and realized that it had
21 been 15 minutes. And it was a heavily -- heavily
22 populated area. So to track the person, you would
23 have to -- the way that we work the dogs, if somebody
24 runs from a car, primarily, we'll set a perimeter.

25 So we'll have officers on the corners and

1 then we'll pick up the person's scent and track that
2 person. It sounds like from where this occurred, that
3 would be really hard 'cause of the conditions, the
4 people everywhere. To try to pick up the correct
5 scent --

6 A GRAND JUROR: In the rain.

7 THE WITNESS: -- from the car in the rain
8 would be really hard. And you're always kind of
9 racing against the clock. So on this one, after 15
10 minutes -- that's kind of an extended amount of
11 time -- it would be difficult.

12 So it sounds like Officer Gore was probably
13 going to this call with the intention of searching.
14 But then realizing the environment and -- and all the
15 other things going on with that. And then it sounds
16 like before he even actually got there to deploy his
17 dog, they started to get information that this person
18 was nearby.

19 And so he -- that would be normal where he
20 would respond to where he could -- and if you think
21 about the dogs in this -- in this -- he's initially
22 responding to use the dog as a locating tool to find
23 this person.

24 He's listening to the call. And he
25 transitions, at some point, for the dog to be another

1 less-lethal tool. So it's, like -- we always talk
2 about it being a toolbox. We have all these things on
3 our belt.

4 The dog is just another thing to add to that
5 toolbox, but it also -- every single one of them comes
6 with limitations. And the dogs -- the dogs are
7 awesome. They're very well trained. You can't train
8 the dog out of a dog, though. And they're very well
9 trained and they also come with limitations.

10 A GRAND JUROR: So, basically, they're like
11 another officer. They're not put in harm's way if you
12 don't have to?

13 THE WITNESS: I can't hear you. I'm sorry.

14 A GRAND JUROR: So they're like another
15 officer that you're not going to put in harm's way?

16 THE WITNESS: Well, not necessarily. You
17 know, the way that we look at it is the dogs -- we
18 obviously don't want to send the dogs on what we would
19 call a suicide mission if we know the dog -- we're
20 going to send the dog after somebody that's armed.

21 But if we -- if we can protect lives, we --
22 we will do that and we know that. But we're not going
23 to be reckless about it and -- and send out -- we
24 never want to send the dog into a situation where it's
25 going to make -- no matter how chaotic it is, we don't

1 want to make it worse.

2 Like, if we can send the dog -- if we send
3 the dog into a crowded room of people and, you know,
4 you can think of all the different things that could
5 happen. They could bite the wrong person.

6 A GRAND JUROR: Mm-hmm.

7 THE WITNESS: They could bite the person
8 with the weapon and then the person could use the
9 weapon against the dog, which could create a bunch of
10 other confusion.

11 So we're -- we're constantly training to --
12 to be aware of that line and to use our dogs correctly
13 and use our dogs appropriately. And not just, you
14 know, send the dog out when it wouldn't be a situation
15 that -- that would be applicable, if that makes sense.

16 A GRAND JUROR: What would be the reason for
17 the dog actually going into the -- into that room,
18 because -- because there was, like, 40 or 50 people --

19 THE WITNESS: Yeah.

20 A GRAND JUROR: -- running in all different
21 directions --

22 THE WITNESS: Well --

23 A GRAND JUROR: -- and chaos.

24 THE WITNESS: -- from what it sounds to me
25 like they didn't really know what they had at that

1 moment. And, again, if they got into that room,
2 there's people everywhere, if they could get everybody
3 out, get that person isolated, then at some point they
4 would have had time to come up with a plan.

5 I imagine the plan would have been, Officer
6 Gore, if he'd have dropped the knife, send the dog as
7 the dog was on a bite, so the suspect's dealing with
8 the dog, then they would move up and try and control
9 him at that point.

10 A GRAND JUROR: Mm-hmm.

11 THE WITNESS: That would be -- that would be
12 normal. That would be reasonable.

13 MR. REES: Okay. If there's no further
14 questions, we'll excuse Sergeant Grundmeyer. Thank
15 you for coming in.

16 MR. JACKSON: Would you raise your right
17 hand?

18 Swear him.

19 **JEFF LIVINGSTON**

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

22 MR. JACKSON: Have a seat.

23 Please state and spell your name.

24 THE WITNESS: It's Jeff Livingston.

25 J-e-f-f, L-i-v-i-n-g-s-t-o-n.

1 EXAMINATION

2 BY MR. JACKSON:

3 Q All right. How are you employed, sir?

4 A As a police officer with the Portland Police
5 Bureau.

6 Q How long have you been a police officer?

7 A 13 months.

8 Q Okay. And in what phase of your training
9 are you in right now?

10 A I'm in Phase 5 right now.

11 Q What does that mean?

12 A So right now, I'm still an eligible recruit
13 in training, but I'm not independently on my own,
14 operating as a independent officer on daily calls.15 Q Okay. And were you working on April 7th of
16 2018?

17 A I was.

18 Q And did you have a field training officer
19 with you?

20 A I was. Officer Grover Robinson.

21 Q Okay. Officer Grover Robertson -- or
22 Robinson. And was he in uniform?

23 A He was not. He was in plain clothes.

24 Q And what about you?

25 A So I was in my uniform driving a marked

1 patrol car, operating as a independent officer.

2 Q Okay. What was your shift that day?

3 A So my shift was set up -- I was working the
4 744 district. Started at 1600 and ended at 2:00 a.m.
5 At least that's what it was scheduled. That district
6 consists of Southeast Powell down to Southeast Steel
7 over to Caesar Chavez and basically to the water.
8 That day I had basically been patrolling that area.

9 Nothing -- nothing out of the norm, nothing
10 different. I remember it being pretty rainy and it
11 kind of caused me to be a little bit slower than
12 normal. Yeah.

13 Q Okay. And so throughout the shift, were you
14 just responding to calls for service?

15 A I was. I -- there's a couple -- if I
16 remember right, a couple unwanted calls at the time
17 that this call came out. I was just finishing up
18 covering one of my district officers for -- it was a
19 disturbance and we had figured that out. We worked
20 with the complainants and we were just basically
21 finalizing that call.

22 Q Okay. And so what information did you
23 receive related to the call at Stark and MLK?

24 A So as we were finishing up, I heard over the
25 radio a unit say that he just came across what he

1 called a dumped stolen -- an abandoned stolen sitting
2 at the intersection of MLK and Stark.

3 The unit basically said that the suspect --
4 information he had is that the suspect had left
5 minutes before, heading eastbound on Stark. So I
6 initially cleared my call that I was on and started
7 driving northbound on 12th Avenue to make my way up
8 there.

9 As I was driving, that particular unit was
10 trying to give updates about where the subject had
11 gone and any updates of where he'd be. And someone
12 asked over the radio, "Do we want to set up a
13 perimeter?"

14 The Unit 714 said, "No. I think because of
15 the timing, let's just do an area check." So I
16 immediately, thinking that I was already at 12th, 12
17 blocks over from where they were at, I would stay in
18 that perimeter. Once I got to Stark, I would just
19 stay in that area, trying to look for the subject.

20 Q Okay. And in terms of an area check, does
21 that just mean you drove around, seeing if you found a
22 guy that matched the description?

23 A It does. It does. It's just -- it's just
24 obviously trying to be vigilant, trying to look for
25 anybody that matches the descriptions that are coming

1 over the dispatch, just trying to basically patrol
2 that area to see if you see him walking or running
3 away, anything like that.

4 Q What other information about this individual
5 did you learn while you were performing your area
6 check?

7 A So once I got into the area of 12th and
8 Stark and I actually was doing the area check, the
9 first update that I remember coming through was there
10 were reports that that abandoned stolen was tied to
11 what they called the carjacking over in East Precinct.
12 They said that somebody had a knife and had carjacked
13 someone and had been driving this particular vehicle.

14 As we were driving around, the first initial
15 update we had was a white male with his shirt off,
16 approximately six feet tall. And then as I continued
17 to patrol, another update came out saying that the
18 gentleman was six feet tall, had a red and blue
19 jacket, and had a knife.

20 So I continued my patrol, obviously using
21 that information, kind of keeping my eyes out. And
22 then at one point, there was another update saying
23 that the last known information was he was on Grand
24 heading south -- south.

25 As I turned back and started making my way,

1 Unit 714 said that he had spoken to the local gas
2 station, which was right across the street from where
3 the abandoned vehicle was located, and talked to the
4 clerk there and showed them a picture of somebody that
5 they believed to be involved.

6 And the clerk had confirmed that it was that
7 individual. 714 put out a name. I ended up hearing
8 Andrew Elifritz. Later, I found out his full name was
9 Jonathan Andrew Elifritz, who then an east car had
10 communicated over dispatch, "Yes, that's the same
11 individual that we had dealt with earlier with the
12 carjacking out of the East Precinct."

13 So at that point, now, we at least have an
14 idea of who it is, a pretty good description, six feet
15 tall, white male wearing a red and blue jacket with a
16 knife, heading southbound. So now my attention was --
17 I was heading south on MLK trying to divert myself
18 back up, heading north on Grand, to see if I could
19 cross paths with this individual.

20 And, at that point, I received an updated
21 communication that they thought he was at My Father's
22 Place bar, which is Washington and Kent.

23 Q Okay. Pretty near that area?

24 A In that area.

25 Q Yeah. And where was that in relation to

1 where you were?

2 A I was roughly five or six blocks south of
3 that location.

4 Q Okay.

5 A So --

6 Q So did you come up north?

7 A I did. Headed northbound. I ended up
8 pulling up -- when -- as I was driving, you could see
9 that there were multiple units doing area checks,
10 multiple units converged on My Father's Place when
11 that update came out.

12 So as I pulled up, I could see, I don't
13 know, between five and six officers just pulling up to
14 that location. As I was getting out of the vehicle,
15 someone already dispatched out -- no, the person at --
16 the bartender or somebody at My Father's Place said,
17 "He's not here. He already left."

18 I specifically asked over the radio, "Was
19 there any last known direction of travel?" They said
20 no, so everybody started to kind of get back into
21 their vehicle and continue doing their area check.

22 Q Then what happened?

23 A As I was getting back into my car, I look
24 over to my right and I see a citizen just waving us
25 over. He was almost to the point where he was in the

1 street, just waving. So I was basically on the
2 left-hand side of Grand and I just positioned my car,
3 drove over to the right-hand side, to the right lane,
4 blocked that lane and got out and ran over to where
5 the citizen was -- was waving us over to.

6 Q Okay. What did you see? Well, did you hear
7 the citizen actually say anything about what was
8 going on?

9 A I didn't. It was quite loud I believe.
10 And, like I said, approximately 7:30 at night, there
11 was quite a bit of traffic on Grand, plus the officers
12 that were all coming over, either running over or
13 drove over to the other side of the street.

14 It was -- it was quite loud right there. I
15 didn't hear what he said. He was just pointing inside
16 to a building.

17 Q Okay. Did you look in the building?

18 A I did. As I got out of my vehicle, I ran
19 over to the area that he was pointing. As I walked
20 over -- as I ran over to it, you could see inside
21 this -- it appeared to be a shelter.

22 The windows are quite large and it didn't
23 appear to have any blinds or at least they weren't
24 drawn, so you could see through the windows pretty --
25 pretty easily.

1 As I approached, I could see a man standing
2 in the middle of the room matching our description. A
3 red and blue jacket, white male, pretty big guy
4 holding a knife and yelling back towards the doorway
5 at us. At that point, it looked like we had multiple
6 officers in the doorway.

7 There were multiple officers in front of me
8 giving commands to this individual. I happened to be
9 behind them 'cause I got there a couple of seconds
10 late. At that point, I could visibly see and hear
11 them giving him commands to, "Drop the knife, drop the
12 knife," and he was not responding.

13 I saw the individual holding the knife about
14 waist high and then he was -- he was moving it around
15 and yelling back to the officers in the doorway, but I
16 couldn't hear what he was saying because I also
17 noticed that there were several -- I -- I think I
18 estimated 50 or so citizens that were inside this
19 shelter, running kind of erratically around.

20 Some were getting up against the north wall.
21 Some were just standing there. Some were trying to
22 get out the door as we were standing there. And so --

23 Q Okay. How far, if you have to estimate, was
24 this individual from the door where you and other
25 officers were standing?

1 A When we were at the doorway and where he was
2 positioned, it was about 30 feet inside the
3 building --

4 Q Okay.

5 A -- away from us.

6 Q All right. But you guys were at the door.
7 Well, let me ask this question: As you're seeing this
8 scene that you've just described, what kind of
9 concerns are you having or are occurring to you?

10 A Immediate concerns are the citizens that are
11 in place that are exposed to this individual with the
12 knife. So being that we're at the doorway, he's
13 30 feet in and there's about 50 people lining the
14 walls and behind him.

15 That, combined with what we've already
16 known, that he's allegedly carjacked somebody with a
17 knife and he's been -- been, you know, yelling,
18 screaming, not listening to any of our commands.

19 Trying to make sure that those people are
20 safe and for us to try to get in there and to at
21 least, you know, get them out as quickly as possible
22 or shield them from any potential threat that could
23 happen moving forward.

24 Q Okay. So what did you guys do to deal with
25 those concerns?

1 A So, initially, the -- the officers up front
2 kept giving verbal commands trying to get him to drop
3 the knife. He wouldn't comply.

4 I heard one of the officers standing in
5 front of me ask for a less lethal, which is, like, a
6 40-millimeter rubber bullet I guess designed to have,
7 like, an impact so that it'll hurt, but obviously it's
8 not a lethal option.

9 We -- he asked for someone to step up to
10 where they were at, so someone stepped up into a
11 forward position. They fired off a round. They hit
12 him about mid torso. I could see that. Didn't have
13 an effect on the individual. He continued to stand,
14 yelling, holding the knife, just continuously moving
15 around throughout the room.

16 I heard another officer say, "Let me get
17 another less lethal," because they're individually
18 loaded. So as soon as you fire, you have to take some
19 time to reload. So we had another person standing
20 behind, ready to go. They fired their second shot.

21 I couldn't see from where I was at, 'cause
22 the people in front, if it hit the individual or not,
23 the subject. But again, he continued to stand,
24 continued to yell, continued to hold the knife.

25 So, at that point, we were ready to move in

1 and at least advance inside so that we could cover the
2 individuals that were in there. He ended up moving
3 back on his own before we entered, back another about
4 ten feet and positioned himself almost towards the
5 back of the wall. So that gave us the ability to move
6 in that ten feet.

7 And officers that were behind that front
8 line were able to funnel in and start basically
9 creating a wall between us and the citizens and that
10 were on that north wall. So myself, Officer Ferguson
11 and a couple other officers -- I don't remember who
12 they were.

13 We went down the -- the north side of the
14 wall, so now we were angled almost at a 90-degree,
15 facing the individual over in the corner as he
16 continued to yell back at us.

17 Q Okay. And was your focus primarily on the
18 individual with the knife or on the citizens you've
19 described that were in that back corner and along the
20 wall?

21 A Initially, when we're entering I'm trying to
22 keep my eyes on the subject because I don't know what
23 he's going to do with the knife. I don't know his
24 intentions. So as we flanked around, getting in
25 position between us -- between the threat and the

1 citizens, I was concerned for -- for -- for our safety
2 and what he was going to do.

3 As soon as I realized the position I was in
4 and that I had the individuals behind me, I also
5 quickly noted that there was a -- on the section from
6 us, there was about a three-foot barrier of cabinets
7 or something that was there that give us a little bit
8 more time, a little bit more reaction time in case
9 something happened.

10 I was then starting to pay attention to who
11 was behind me. The individuals and citizens over here
12 were running. They were screaming. Some were
13 standing there wanting to watch.

14 Some were trying to tuck back into these
15 closet doors. Some were just hanging out. So we were
16 trying to control that situation as we were also
17 trying to stay focused on this individual.

18 And at that point, I started directing
19 people back into the bathrooms, back into closets and
20 to get back as quickly as possible.

21 Q Okay. Then what happened?

22 A As I was diverting my attention trying to
23 figure out who was still running behind me and who was
24 moving, giving commands to some of the citizens to
25 either get back or get back inside, I looked -- I

1 looked back, I don't know, approximately five seconds.

2 And as I looked back towards the subject, I
3 saw the subject move rapidly towards the officers that
4 were initially giving him the verbal commands and that
5 were actually visibly pointed at him. It -- it
6 appeared that he started running in a rapid, like
7 quick pace.

8 I wouldn't say sprint, but in a quick pace,
9 closing ground on him -- on them pretty fast. And I
10 heard the gunshots go off.

11 Q Okay. Did you have your gun drawn at any
12 point in this encounter?

13 A I did when we had first initially entered.
14 Tactically, we went in, and like I said, we funneled
15 to the -- to the left to create that wall.

16 And when I realized that there was a little
17 bit of a barrier and a little bit of time, I ended up
18 holstering my weapon for safety reasons because of all
19 the people that were running behind me and everything
20 that was behind.

21 I holstered by weapon and was basically
22 telling everybody, you know, where to go. And then
23 when the shots went off and he went down, I quickly
24 drew my weapon and positioned myself a little bit
25 better away from whatever that barrier was so I could

1 see, 'cause I saw that he went -- he fell and went
2 down, so I positioned myself a little bit better so I
3 could see where he was at.

4 Q Okay. And what he was doing?

5 A And what he was doing.

6 Q Okay.

7 A Yeah.

8 Q What did you see?

9 A It appeared that he was down. I could see
10 blood. The -- the -- one of the initial officers, I
11 think it was Officer Nutting, was yelling, you know,
12 "Put your guns down, put your guns down. We need to
13 fire another less-lethal round. We don't know his
14 condition yet." So -- and we couldn't see where the
15 knife was.

16 We couldn't see where the weapon was, so we
17 didn't want to obviously advance on him until -- 'til
18 further notice. So when everyone put their -- you
19 know, put their guns down at low ready and one of the
20 individuals that operates the less lethal, they shot
21 it. It hit him, I believe, like, upper torso, upper
22 back.

23 There was no movement. The sergeant,
24 Sergeant Axthelm, said, "Okay, now we need to try to
25 provide medical. We need to approach the individual."

1 So everyone continued to have their guns at a low
2 ready. The sergeant and another officer made --
3 advanced toward the individual.

4 They rolled him over to see if there was any
5 response. As they rolled over, I could see the knife
6 was not under him, but close enough in proximity where
7 he was able to grab it. It was next to the -- next to
8 his body. At that point, I couldn't hear what they
9 said.

10 They just ended up rolling him back over.
11 And then at that point, everyone said, "Okay. Let's
12 holster up. Let's holster up." And -- and then we
13 started debriefing what was -- what just happened.

14 Q Okay. And did that involve getting the
15 remaining citizens evacuated out of the building?

16 A It did. At that point, once some of the
17 shooters -- the individuals that fired their weapons,
18 they were debriefing for a moment.

19 Myself, Officer Ferguson and another officer
20 that were on that north wall immediately started from
21 the northeast corner, which was the bathroom, and
22 started clearing those rooms and getting everybody out
23 of there as quickly as possible.

24 And if remember correctly, there was four
25 rooms all the way down and we just made our way

1 strategically through each one to make sure we didn't
2 miss anyone, got them out and had them stage out front
3 around the corner.

4 Q Okay. You said that you looked back and you
5 saw the individual kind of rapidly moving in almost a
6 run, closing distance, you said, toward the officers.
7 Do you have a sense of how far he was from the
8 officers when you heard the gunshots?

9 A I would estimate that when we moved in to
10 his new position, we were back to about 20 feet
11 between those officers and him. And when he closed
12 that gap, I would say it's -- it was about ten feet,
13 roughly.

14 MR. JACKSON: Okay. Do you folks have any
15 questions?

16 A GRAND JUROR: Ten feet -- so about how far
17 away was he when the non-lethal, the first -- the
18 non-lethal, they were the first shots fired?

19 THE WITNESS: Correct. When we were in the
20 doorway?

21 A GRAND JUROR: Yeah.

22 THE WITNESS: Correct.

23 A GRAND JUROR: And he was how far?

24 THE WITNESS: About 30 feet.

25 A GRAND JUROR: 30 feet?

1 THE WITNESS: Yeah.

2 A GRAND JUROR: And so did -- did the lethal
3 rounds -- when -- I know there were several guns and
4 several different people with the guns, but the first
5 lethal shots, how -- how -- how much time was it,
6 seconds, minutes, between the non-lethal and then the
7 lethal shots being fired? Or was it simultaneous
8 or --

9 THE WITNESS: No, it wasn't simultaneous
10 because we had to have that time to move in --

11 A GRAND JUROR: Mm-hmm.

12 THE WITNESS: And officers were getting
13 around to the other side. So from the first
14 less-lethal shot -- or I guess I should say from the
15 last less-lethal shot to when he advanced towards
16 those officers, I would say it was approximately four
17 minutes, three to four minutes.

18 A GRAND JUROR: From the first non-lethal to
19 the --

20 THE WITNESS: From the last non-lethal
21 'cause there was two shots that I heard at the
22 doorway.

23 A GRAND JUROR: Mm-hmm.

24 THE WITNESS: And then when we saw no
25 reaction and nothing happen --

1 A GRAND JUROR: Mm-hmm.

2 THE WITNESS: -- and he moved himself back
3 into the room, the first layer of officers moved in
4 and then the second layer funneled around and created
5 that wall.

6 A GRAND JUROR: Right.

7 THE WITNESS: And, at that point, the
8 officers that had initial eye contact and was verbally
9 giving commands continued to say, "Drop the knife,
10 drop the knife."

11 He continued to yell and continued to have
12 the knife in his hand. And then in that time frame is
13 when he decided to advance towards those officers.
14 And during that advance is when the less -- is when
15 the lethal options --

16 A GRAND JUROR: Mm-hmm.

17 THE WITNESS: -- occurred. Does that answer
18 your question?

19 A GRAND JUROR: Yeah. Four minutes.

20 MR. JACKSON: Okay. Any other questions?

21 All right. Seeing none.

22 Thank you very much.

23 THE WITNESS: Thank you guys.

24 A GRAND JUROR: Thank you.

25 MR. JACKSON: Come on in, sir.

1 If you could stand right here and raise your
2 right hand.

3 **TIMOTHY FERGUSON**

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

6 MR. JACKSON: Okay. You can have a seat.

7 Could you please state and spell your name.

8 THE WITNESS: It's Timothy Ferguson,
9 F-e-r-g-u-s-o-n.

10 EXAMINATION

11 BY MR. JACKSON:

12 Q All right. How are you employed?

13 A City of Portland as a Portland Police
14 officer.

15 Q How long you been a police officer?

16 A Six years.

17 Q And what have been your assignments or
18 duties during that time?

19 A During that time, I am a patrol officer. I
20 am also a detached enhanced crisis intervention
21 trained officer and a FTO, which is a field training
22 officer, so acting as a coach at the time.

23 Q Okay. Did you have a trainee with you?

24 A I did.

25 Q Okay. How long had you been with the

1 trainee?

2 A For that particular day or --

3 Q Overall. Is there --

4 A Overall?

5 Q -- just one field training officer --

6 A Right. So --

7 Q -- assigned to a trainee?

8 A I think up until that point, it had been
9 maybe four weeks. Three or four weeks with that
10 trainee.

11 Q Okay. And were you in uniform, a marked
12 patrol car?

13 A Yes. I was dressed as I am now, uniformed,
14 displaying a badge in a marked patrol car.

15 Q I guess I should back up. But we're talking
16 about April 7th of 2018. Were you working that day?

17 A I was.

18 Q Okay. And you were in uniform in a marked
19 patrol car?

20 A I was.

21 Q Okay. Could you describe for us what your
22 shift was.

23 A As I work the afternoon shift, so we work
24 from -- trying to translate from military time, so
25 from 4:00 p.m. to 2:00 a.m. in the morning. I

1 primarily work downtown on the west side of the river.
2 That's my district, so that's my area of operation.

3 Q Okay. On April 7th of 2018, did you end up
4 responding to a call on the east side of the river
5 near MLK and Stark?

6 A I did.

7 Q And why did you go across the river to
8 that call?

9 A So we heard a call come out of a crash of a
10 stolen vehicle where the suspect was walking away
11 eastbound and so I directed my trainee to drive onto
12 the east side of the river so we could help with the
13 area check --

14 Q Okay.

15 A -- for the suspect.

16 Q Was it your understanding that an area check
17 was going to be necessary?

18 A Yes. Because the updates that continued to
19 come was that the suspect and the vehicle were
20 involved in east precinct in a carjacking earlier in
21 the day. And so -- and there were subsequent --
22 subsequently more updates.

23 Q Okay.

24 A So that was the primary reason we started
25 heading across the river.

1 Q What were the updates -- the further updates
2 you received?

3 A The further updates, so as we got to the
4 east side where -- the area we were checking, there
5 was an update that the suspect in the vehicle were
6 also involved in a -- a road rage incident in north
7 precinct where a gun was possibly seen on video.

8 There was another update that the video
9 actually didn't show a gun, but maybe purported to
10 have a gun. There was -- I think the other updates
11 were -- so at this point, we're still area checking.

12 Q Where were you performing your area check?

13 A So the initial direction was that the
14 suspect had headed east from MLK and Stark. And so I
15 decided that we would go long. And so we went about
16 six blocks east of that location and then started area
17 checking coming back.

18 And so, hopefully, the person hadn't gotten
19 far enough away that we could catch them as they were,
20 you know, further away at that time, just given the
21 time frame.

22 Q Okay. Did you have a description of the
23 person you were looking for?

24 A So the description for that initially was a
25 white male about six foot, wearing blue jeans, no

1 shirt, heavily tattooed and about the 280-pound range
2 or something along those lines.

3 Q So that's what you were looking for?

4 A That's what we were looking for, yeah.

5 Q Okay. What happened while you were doing
6 the area check?

7 A So while we were doing the area check,
8 another call came out at the Jacksons, which is a
9 little bit south of MLK and Stark.

10 And that was a suspect who was wearing,
11 like, a blue and red jacket and armed with a knife,
12 possibly, high, who was threatening or scaring
13 customers or employees around the Jacksons, which is,
14 like, a convenience store, gas station-type place.

15 Q Okay. And is that located close proximity
16 to where the abandoned vehicle was?

17 A Yes, a little bit south. I didn't put it
18 together at the time. I don't work on the east side,
19 so I didn't realize how close that actually was, so --

20 Q Do you know now?

21 A I do now -- I do know now, yeah.

22 Q Okay. How close is it?

23 A It's within a few blocks.

24 Q Okay.

25 A It's very close.

1 Q So what did you do when you heard that call
2 from the Jacksons come out?

3 A So some officers were diverted to that call.
4 Like I said, I didn't initially put anything together
5 that maybe it was just an unrelated call.

6 And then a update came out that -- I think
7 an officer had responded and confirmed that the
8 suspect at that Jacksons call was the same suspect for
9 the call that we were on. So I directed my trainee,
10 Officer Livingston, to head towards the Jacksons and I
11 helped guide her in that direction.

12 Q Okay. And just for clarity, since we've
13 heard from a couple of Officer Livingstons --

14 A Yes.

15 Q -- was it Jeff Livingston?

16 A No.

17 Q Okay.

18 A Mine is -- mine was Ariel Livingston.

19 Q Okay. And is Jeff Livingston also a
20 trainee?

21 A He is also a trainee, yes.

22 Q Okay.

23 A At the same time.

24 Q Okay. But you were not with Officer
25 Jeff Livingston?

1 A I was with -- no.

2 Q Okay. All right.

3 A Yeah, I could be (indiscernible).

4 Q Okay. So you guys come into the area and
5 then what happened?

6 A So we got to the area about the Jacksons.
7 Actually, before we got to the Jacksons, there was an
8 update from one of the -- I believe an AMR unit that
9 said they had seen somebody with a knife up to their
10 throat.

11 So as we got to the Jacksons, there was
12 subsequent updates that came out relatively in quick
13 succession that people were out with the suspect up
14 the street. I could see the lights north on Southeast
15 Grand.

16 And then there was an update that there was
17 possibly a knife to somebody else's throat, to
18 someone's throat. That was not from the medics. That
19 was from an officer directly. So I directed
20 Officer Livingston to drive north up Southeast Grand
21 in a rapid -- rapidly --

22 Q Mm-hmm.

23 A -- towards where the lights were at. And so
24 we headed to that location.

25 Q Okay. Then what happened?

1 A So while we're driving, that's when the
2 updates are coming out that they're out with the
3 suspect; that there's -- possibly he's holding a knife
4 a someone's throat. The vehicle -- so we came to a
5 stop just a little bit short of the location in front
6 of a bar called -- I believe it's called My Father's
7 Place.

8 Attempted to exit the vehicle, but the
9 vehicle wasn't to a complete stop yet, so the door
10 kind of came back and bit me as I was trying to get
11 out of the vehicle. But once I picked up the things I
12 had dropped, I went to the door of the -- I believe
13 it's the Cityteam Ministries. And I don't have the
14 address for that (indiscernible).

15 Q Mm-hmm.

16 A Then that was the location.

17 Q Why was -- why did you go to the Cityteam
18 Ministries?

19 A So the update is that that's where -- the
20 area where the -- the suspect was currently located.
21 And when I got out of the vehicle, there was a few
22 officers in the doorway of the Cityteam Ministries.

23 Q Okay. They were already -- there were other
24 officers already there?

25 A Right. They're, like, side to side in a --

1 in the doorway.

2 Q Okay. Did you go up and look into the
3 building?

4 A I did. So I was the second row behind the
5 row of officers who was in the -- in the forefront of
6 the doorway.

7 Q Okay. What did you see in there?

8 A So looking in, I had never been inside
9 Cityteam Ministries before, so the room is -- it's a
10 fairly small room. It's in the shape of, like, a
11 rectangle. In the center of the room, there's --
12 there's, like, a low wall, probably about three to
13 four foot high in the shape of a square.

14 And I understand that to be -- I saw that to
15 be, like, a staircase that goes down. There were some
16 doorways in the back. There's some pillars in there.
17 There was a bunch of chairs that were turned over.

18 In the first third of the room, I would say,
19 which would be towards the west, was a male suspect
20 who matched the description of both calls, actually.
21 So it was a white male about six foot tall, looked to
22 be in the upper 200 pounds.

23 But he also had, like, a jacket on that was
24 kind of blue and red, which matched the description of
25 what had come out on the Jacksons call, which was --

1 turns out to be related. So he's in the upper
2 one-third of the room.

3 And then there -- there's easily 20- to
4 30-plus people, citizens in the room as well. And
5 they're all kind of herded into the -- what would be
6 the northeast corner. So as I'm looking at the room,
7 there's citizens kind of crowding into the corner.

8 The best way to describe that, what the
9 citizens did, just kind of looked like when people
10 cram into an elevator, when you've got a bunch of
11 bodies just crammed together. The citizens were
12 just -- they just appeared to be all crammed, just as
13 close as they could get into the corner.

14 There was chairs turned over. And people --
15 some people were attempting to come down what would be
16 the -- this wall, so the north wall of the room, like,
17 in our direction.

18 So the -- the suspect is in the front of the
19 room. He's got the blue-and-red jacket on. He's
20 bleeding about the neck. He has a knife in his --
21 what I believe to be his right hand. And he's holding
22 it at about this chest height right here, so lower
23 than his neck, like, in the upper chest area.

24 Officers are giving him direction to drop
25 the knife. He's yelling something back, but I can't

1 understand what he's -- what he's saying. Couldn't
2 understand what he's saying.

3 Q Mm-hmm.

4 A Yeah, he looked -- he's in a very agitated
5 state. His fists were clenched. The knife -- the
6 hand that was holding the knife was clenched. His jaw
7 was clenched. He looks very agitated, very angry,
8 just very aggressive stance.

9 Q Okay. What happened then?

10 A So officers are giving him commands.
11 Somebody yelled, "Beanbag, beanbag," or "Bag him." So
12 we used to have a less lethal -- it was a less-lethal
13 shotgun that shot a beanbag. And we had just gotten
14 rid of those about two to three weeks prior and gone
15 to a 40-millimeter less-lethal system.

16 So when somebody says, "Bag him, bag him,"
17 or "Beanbag," they're referring to the less-lethal
18 system. So it's just something in our vernacular that
19 we say that would now apply towards the 40 millimeter
20 less-lethal operating system.

21 So somebody was directing the less-lethal
22 operator at that time -- there was just one -- to --
23 to use his less-lethal device. That was deployed.
24 With the previous shotguns, less-lethal shotguns, you
25 could fire multiple rounds in succession.

1 With the new one, it's a breach-operated
2 weapon system, so you actually have to break it open
3 in half like a -- like one of the old-time shotguns,
4 you know. Remove the spent round and load the new
5 round in, so there's some -- some downtime on there.
6 So that operator was trying to load a new one in. The
7 first round wasn't effective.

8 Q Did you see whether it hit?

9 A I didn't see whether the round hit or not.
10 My understanding was that it did, but I didn't
11 physically see it.

12 Q Okay. But you know that it was deployed?

13 A It was deployed, yeah.

14 Q And is that from the door or were they
15 inside the door or back?

16 A They're -- they're still in the door at this
17 point.

18 Q Okay.

19 A He's still in the first, I'd say, like,
20 one-third of the room. It's tough to gauge distance.
21 It's not a very big room. He was, I believe, forward
22 of the -- the box-like structure, the square
23 structure.

24 There was calls for another less-lethal
25 operator. We ideally like to have, with the new

1 system, you know, more than one, so that during that
2 downtime, that other less-lethal operator can deploy
3 if need be.

4 So a second less-lethal operator got there,
5 kind of moved over and told people to kind of make way
6 so that he could get into position so that he could
7 use the less lethal -- his less-lethal 40 millimeter.

8 Q Did you hear additional shots going off?

9 A I did hear additional 40-millimeter rounds,
10 yes.

11 Q Okay.

12 A It's a very distinctive sound. Doesn't
13 sound like a -- a normal firearm.

14 Q Okay. And did you see whether any of those
15 projectiles hit the subject?

16 A I didn't physically see 'cause I had moved
17 out of the way, so that he could get up there. But
18 when I got back up to a position where I could see
19 back in, it looked like the subject had moved from the
20 first third of the room, like, back.

21 And so if this is the north wall as I'm
22 facing, he kind of went, like, towards the southeast,
23 so he's, like, southeast of the -- the square-like
24 structure in the room.

25 Q Okay.

1 A Towards the back. But he's pacing, so he's
2 not standing still.

3 Q Did you, at any point, see him moving in the
4 direction of all those citizens you described kind of
5 packed into that --

6 A So he was --

7 Q -- that northeast corner?

8 A He looked to be, like, moving just
9 erratically in the back section. Those citizens were
10 -- the ones that weren't trying to get down the wall
11 on this side were -- were really packing into the
12 corner.

13 There was doors back there. And not being
14 familiar with it, I was wondering why -- why they
15 weren't just going out the doors. And I subsequently
16 learned that they're not methods of egress; that
17 they're just restrooms and stuff.

18 So they looked to be in distress. They were
19 just kind of packing themselves in. It looked at at
20 one point, somebody had thrown a chair or were pushing
21 chairs as if to -- to put, like, a barrier between
22 themselves and the subject.

23 Q What kind of concerns were going through
24 your mind as you're watching this unfolding in this
25 room?

1 A So my primary concerns are for the people
2 who are in the corner, the citizens who are in the
3 room. So it's not a very big room. I'm very familiar
4 working downtown with stab wounds and I've been on
5 numerous calls of stabbings, fatal, nonfatal, and I'm
6 very aware of the damage that a knife can cause.

7 And so within a few quick steps -- I mean,
8 we're talking about one to two seconds -- he could
9 have been in the area where the -- where the other
10 citizens are, the ones that are trying to get away.
11 And then once he is in that area, our -- our options
12 are greatly reduced now.

13 Q What do you mean by that?

14 A So I guess the best way to describe this as,
15 we -- we don't have any tools that would be a viable
16 option anymore.

17 So if you have a suspect who's -- who's in
18 front of numerous citizens or has taken a citizen and
19 grabbed him for a hostage or something like that, we
20 no longer have the -- the means to use any of our
21 less-lethal tools or lethal tools.

22 Q You're not going to shoot --

23 A We're not going to fire into -- right.
24 If -- if he was to put a knife or he was to start
25 actively using a knife on a citizen, for us to -- to

1 engage him with -- with a firearm would be very, very
2 difficult, I'd say. Not difficult, but just something
3 that we probably are -- are not going to do.

4 Q Okay.

5 A Just 'cause he's a moving target, he's
6 got -- he's got citizens all around him. If a round
7 was to -- to miss and strike a citizen, then -- so my
8 primary concern is if he gets anywhere near them, then
9 we're -- we're really in a bad spot.

10 Q Okay. At some point, did you move into
11 the room?

12 A At some point, the first row of officers
13 moved into the room 'cause he had gone towards the
14 back of the room. And then I came in to the room
15 as well.

16 Q And given -- well, did you -- you said that
17 you saw the knife in his hand.

18 A Right.

19 Q Do you remember what it looked like?

20 A I couldn't see the -- handle of the knife.
21 It's -- it was in his hand. The knife looked to be,
22 what I'd say to be, like, between three to four inches
23 long. It's difficult to see when it's moving around,
24 but -- but, I mean, from the distance I saw, I would
25 calculate this to be about three to four inches.

1 A GRAND JUROR: You mean the blade or just
2 the --

3 THE WITNESS: The -- the blade.

4 A GRAND JUROR: -- handle and the blade?

5 THE WITNESS: The blade, yeah. So the --

6 A GRAND JUROR: Hmm.

7 THE WITNESS: -- the part that's protruding
8 from the -- from the palm.

9 A GRAND JUROR: Mm-hmm.

10 THE WITNESS: Yeah.

11 BY MR. JACKSON:

12 Q Look -- looked to you to be about three to
13 four inches?

14 A Three -- somewhere between three to
15 four inches.

16 Q Okay. And how, if at all, did size of the
17 blade play into your calculation of the risk that this
18 person posed to those citizens you just described?

19 A Ah, so for me, the -- the size of the blade
20 poses the same risk as if it's a larger blade, if it's
21 a five- or six-inch blade. I mean, the -- the
22 difference is -- is negligible. It's not any less
23 lethal or dangerous.

24 For example, I don't carry a backup weapon,
25 so if I'm ever in a struggle for my primary duty

1 weapon, which is on my hip, I carry a blade mid-center
2 to my body which has a two-inch blade.

3 And I'm basically confident and banking my
4 life that -- that this two-inch blade would be enough
5 to -- to save my life if need be if I was in a
6 struggle to keep my gun from going into someone else's
7 hands. So knowing that I am, essentially, banking my
8 life on a two-inch blade, I'm not going to discount a
9 three- to four-inch blade.

10 And, again, having worked downtown and
11 seeing what box cutters can do and pieces of glass and
12 similarly small to medium-size blades, the mortality
13 is still exactly the same.

14 Q Okay.

15 A Yeah.

16 Q So when you moved in, you said that you kind
17 of fanned around to the northern part of the room?

18 A Yeah. So we moved in and it was kind of
19 like a half-moon formation that we kind of just
20 organically took. And I think the idea is -- at least
21 in my head, is that we have officers who are directly
22 in front of the suspect.

23 And the other officers were kind of going in
24 this direction so that we could put ourselves in a
25 position between the -- the citizens who were in the

1 back of the room and the suspect in case he tries to
2 go this way, at least we'll have a better way to
3 intervene.

4 Q To prevent the scenario you just described?

5 A To -- right. To prevent him from going from
6 this part of the room to where everybody is.

7 Q Okay.

8 A So we kind of formed, like, a half moon.
9 That's the best way to describe it. I don't know what
10 shape that would be.

11 Q What happened next?

12 A So, initially, when I came into the room, I
13 had my duty weapon out and I determined that we had
14 enough resources on scene. There was -- there was
15 long guns, there was less-lethal 40 millimeters, so my
16 primary focus shifted to how I can effectively get the
17 people, the citizens out of the room.

18 And so there was a handful of officers who
19 were focused on the citizens and we were just trying
20 to direct them to stay away and get in the corner.
21 They were yelling back at us that, "There's nowhere to
22 go, there's nowhere to go."

23 There was people, like, cramming into the
24 restrooms. They had a man and a woman's -- a male and
25 a female restroom in the back corner. So I was trying

1 to figure out how to get them down the wall and out to
2 safety without getting in the way of us and there
3 really wasn't a whole lot of space. So that's kind of
4 what my focus was --

5 Q Okay.

6 A -- at that point.

7 Q And where was the suspect with the knife?

8 A The suspect with the knife was still -- so
9 if this is the square in the center, he's still in
10 this portion of the room and he's -- he's kind of
11 going back and forth around. He's moving.

12 So he's still being directed to drop the
13 knife. He's -- he's yelling things in return. And
14 there was just a lot of -- a lot of noise in there, so
15 I wasn't able to understand what he was saying.

16 At this point, the canine was there. The
17 citizens were all yelling things, like, "Where do we
18 go? How do" -- you know, so I wasn't able to hear
19 what he was saying.

20 Q At some point, did you see him move in the
21 direction of the officers?

22 A Yeah. So I was kind of -- I was watching
23 him and then I was watching the citizens and just kind
24 of keeping an eye on both things. There was just a
25 real fast, sudden movement from him coming from

1 basically this corner towards the west side where the
2 officers were (indiscernible).

3 Q Did you turn and look at what was happening?

4 A I did, but at the point where this -- there
5 was pillars and there was things in the way. He had
6 already gotten past the point where I could really see
7 what and where he was, so I'd lost visual sight
8 of him.

9 Q Okay.

10 A And there -- and I was behind the first row
11 of officers. I was behind officers, so I didn't have
12 a clear line of vision to see him anymore.

13 Q Okay. Did you hear gunshots?

14 A I did.

15 Q Do you have any sense of what types of
16 weapons you heard or how many times or anything like
17 that?

18 A It just sounded like -- it sounded like
19 multiple weapons all firing simultaneously. It was
20 just a quick burst and that was it. There wasn't a --
21 a protracted firing. It was just -- sounded like
22 simultaneous bursts going off, yeah, simultaneously,
23 would be the word.

24 Q Okay. And then what did you do after the
25 gunshots ended?

1 A So the gunshots ended. We were waiting to
2 get the word that we can move forward because we can't
3 see. Due to the square little wall and the -- the
4 pillars, we can no longer see the suspect.

5 So we were given the okay. Someone said
6 that we were okay to move forward. So, at that point,
7 I moved forward with several other officers and I was
8 just telling people to, "Get out, get out, get out."

9 There was, like, another low wall directly
10 centered in the back of the room, like, a really low
11 wall. And there was a gentleman who I don't know at
12 what point he got there, but he was on the other side
13 of the wall.

14 So I was directing him to come over the
15 wall. At first, he didn't, so then I was concerned
16 that maybe he was in a wheelchair or he wasn't
17 physically capable of coming over the wall, so I was
18 trying to figure out how I can get to him without
19 placing myself in a situation where firearms are
20 pointed at me.

21 He was able to get over the wall. Then
22 another officer and I started getting citizens out of
23 the restrooms, out of the little rooms in the back and
24 just directing them to -- to leave, to get out as fast
25 that they could, which they did. So we were able to

1 clear the rooms in the back, get all the citizens down
2 the wall and then out the door.

3 MR. JACKSON: Okay. Do you folks have any
4 questions?

5 A GRAND JUROR: Yeah. Did you ever see him
6 harm himself, John Elifritz? Did he --

7 THE WITNESS: Harm himself?

8 A GRAND JUROR: Did he stab himself in the
9 neck or --

10 THE WITNESS: He was -- he was making
11 motions when we first got there. He was -- he had the
12 knife here. There was blood about his neck, but I
13 couldn't tell if he was actually stabbing himself
14 or --

15 A GRAND JUROR: Yeah.

16 THE WITNESS: Or what he was doing, so --

17 A GRAND JUROR: Well, when he had -- you
18 said before he had the knife up here.

19 THE WITNESS: The knife up here, yeah.

20 A GRAND JUROR: Was the blade towards him
21 or out?

22 THE WITNESS: It was -- well, it was -- it
23 was alternating, so at one point, it was, like,
24 towards himself. At other points, it was down here.

25 A GRAND JUROR: Yeah.

1 THE WITNESS: It was just -- it was
2 constantly just kind of moving around between being in
3 front of him.

4 A GRAND JUROR: Hmm.

5 THE WITNESS: Yeah, so --

6 MR. JACKSON: Any other questions?

7 A GRAND JUROR: Oh, I have one more.

8 MR. JACKSON: Sure. Go ahead.

9 A GRAND JUROR: I just want to -- so when
10 you talked about the -- the non-lethal, the two --

11 THE WITNESS: Mm-hmm.

12 A GRAND JUROR: -- non-lethal officers, are
13 they the ones with the red -- they have a red --
14 something red on their uniform to --

15 THE WITNESS: It -- it's like --

16 A GRAND JUROR: -- distinguish them?

17 THE WITNESS: -- a white orange -- orange --
18 the --

19 A GRAND JUROR: So you can tell who they are
20 by that? Is that --

21 THE WITNESS: Yes.

22 A GRAND JUROR: That was my question.

23 THE WITNESS: Yeah. So it's a strap that
24 holds the -- the less lethal on you.

25 A GRAND JUROR: Okay.

1 THE WITNESS: And it's just, like, a really,
2 really intense neon orange color.

3 A GRAND JUROR: Okay.

4 THE WITNESS: It's very visible. Yeah.

5 MR. JACKSON: All right. Any other
6 questions? Okay. That's it.

7 Thank you, Officer.

8 A GRAND JUROR: Thank you.

9 MR. REES: Officer, can you please raise
10 your right hand?

11 THE WITNESS: Yes.

12 DENNIS WILCOX

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

15 MR. REES: When you're ready, would you
16 please state your first and last name and spell it?

17 THE WITNESS: Dennis Wilcox, D-e-n-n-i-s,
18 W-i-l-c-o-x.

19 EXAMINATION

20 BY MR. REES:

21 Q And, sir, if you'd please state your
22 occupation.

23 A Portland Police officer.

24 Q How long you been a police officer?

25 A 27 years.

1 Q And were you on scene on April 7th during
2 the -- the shooting that occurred at Cityteam
3 Ministries?

4 A Yes, I was inside the room.

5 Q All right. And prior to going inside that
6 location during your shift, did you have information
7 about the suspect at that location?

8 A Yes.

9 Q What -- can you tell the grand jury
10 generally what you understood?

11 A Not too long -- my shift starts at 4:00 in
12 the afternoon. Not too long after shift had started,
13 got information from east precinct about a carjacking
14 that occurred there of a silver SUV. They sent over
15 the MPCs, our mobile computers in our cars.

16 They put out -- information out and then
17 later in the evening, that SUV crashed about MLK and
18 Stark and the suspect ran on foot. And more
19 information was given at that time. They got --
20 first, it was a hit and run.

21 Then we saw and got the plate. They matched
22 the description of the carjacking car, so that
23 information came out. And also there's another
24 incident in north precinct involving the same suspect,
25 same vehicle that initially said that they had video

1 of him, like, there was a road rage incident or
2 something, had video of him pointing a gun at
3 somebody.

4 And then it got revised to maybe just
5 reaching for something, but there was video of him
6 doing something at north precinct, also in the same
7 vehicle.

8 Q Okay. And as the day progressed, did you
9 receive further information, do you recall?

10 A You mean after the crash?

11 Q Yeah. So, I mean, you --

12 A Okay.

13 Q -- you heard about the crash, I assume, and
14 then --

15 A Yeah.

16 Q -- you heard about some other situations --

17 A Yeah.

18 Q -- in the vicinity?

19 A Right. I -- I tell dispatch on call. I was
20 working down in southeast. Sellwood area is my
21 district, you know, several miles away. But
22 self-dispatched to go to it as more information came
23 out and what was involved, that he'd taken off
24 on foot.

25 I knew a canine was on the way, so I -- I

1 went north to assist with the perimeter and the -- the
2 area check for the suspect ran from the stolen car.
3 Description was male, white, anywhere from 20 to 40,
4 at the time with no shirt on, had tattoos. And he ran
5 eastbound from MLK and Stark area.

6 So I started doing area checks once I got up
7 there -- it was quite a ways away -- to the east along
8 Seventh Avenue. You know, a canine would just have us
9 do an area check while everybody's looking for him.

10 Information came out while we were doing
11 area check the Jacksons Shell station, located at MLK
12 and Washington or so, got called about a suspect or a
13 subject standing in their doorway holding a knife to
14 his throat. And so we kind of started doing --
15 converging into that area for an area check.

16 He'd left. Information came out after that
17 from -- I think AMR called in and said they were
18 flagged down and told that there was a subject holding
19 a knife to the throat of another person at a shelter
20 around MLK and Stark area, Grand and Stark area. And
21 so officers went there.

22 We were still continuing to do an area
23 check. It was broadcast that he had already left the
24 shelter and so -- and last seen southbound, so we went
25 kind of south again looking around Jacksons, not as

1 down south as Jacksons, doing area check. Then it was
2 broadcast that he was at the shelter, I think 526
3 Southeast Grand. And officers converged there.

4 I got there. There was already several
5 officers up at the entrance to the door. I parked a
6 block and a half or so away.

7 And as I was approaching the door and
8 en route, there was broadcast there was -- there was
9 hostages, possible hostage situation. Dispatcher had
10 to clarify that and just basically said, "Hold there.
11 It's an urgent situation."

12 So by the time I was approaching the door on
13 foot -- I had to walk quite a ways or run quite a
14 ways -- there was officers at the entryway outside of
15 the -- the room. Less lethal was being deployed.
16 Commands were being given. Warnings were being given.

17 I got to the -- to the doorway behind the
18 officers and shortly after that, the decision made to
19 go inside. I could see, looking through, that there
20 were several citizens inside, like, 20 to 30 citizens
21 inside the big room. I could see the suspect, at
22 times holding the knife to his throat.

23 It looked like he'd already cut his throat
24 and then dropped the knife down. There were citizens
25 behind him running around. And he kept -- the room,

1 the center of the room, there's a stairway that goes
2 to the basement with a -- like, a three-foot
3 (indiscernible) desk. About this size railing that
4 goes around the stairway. And then there's pillars,
5 support pillars in the center of the room.

6 And he was kind of ducking behind the
7 support pillars. The majority of the people were on
8 the left side of the room. He was kind of ducking
9 back out of sight, probably to avoid the less-lethal
10 strikes. And then coming back, kind of peeking around
11 and stuff.

12 So the people who were inside the room were
13 in a very hazardous situation. He'd already
14 demonstrated from information we had that he might
15 have been holding a knife to another person's throat
16 and holding a knife to his own throat. I could still
17 see the knife in his hand while he was doing this.

18 Q And so if I could interrupt.

19 A Yes.

20 Q You were familiar with the legal term
21 "totality of the circumstances," right?

22 A Yes.

23 Q And you've been a police officer for a fair
24 amount of time. Can you -- can you give us some
25 insight into your police officer's mind, having heard

1 all these things over the radio about this situation
2 and then combining that with your training and
3 experience, which is the totality of the
4 circumstances, everything that you know and you've
5 trained.

6 What was your -- what's your assessment of
7 the situation at this point? What are you really
8 thinking when you go into Cityteam Ministries?

9 A It was a very fluid, rapidly evolving
10 situation. My opinion was people inside were in
11 danger of being harmed, either lethally or
12 non-lethally.

13 And the subject with the knife was acting
14 very erratically, wasn't following commands, wasn't
15 dropping the knife, was given the opportunity to drop
16 the knife. Less lethal had been deployed on him.

17 He was refusing to do that. And I felt that
18 we needed -- definitely needed to protect the lives of
19 the people that were inside the room at that time. I
20 was on the -- our SWAT Team, SERT team for over
21 20 years; been involved in a lot of different
22 situations.

23 And based on what I could see -- and I got
24 there a little behind the curve. I think they were
25 developing a plan at the doorway, but I -- I wasn't a

1 part of that 'cause it took me a while to get up
2 there.

3 Made entry shortly after I got there. But
4 it was a situation where something had to be done to
5 separate him from the people inside to save their
6 lives.

7 Q And do I understand correctly that -- that
8 your primary focus when you went inside was on keeping
9 the citizens in that room away from him rather than
10 focusing on -- on him?

11 A Well, it's a combination of the two. I
12 mean, obviously, we want to -- we want to assist him
13 or help him. I've been involved in a lot of suicidal
14 situations. I was the ECIT officer for many years.
15 And so it's combination of, yes, we want to get in
16 there, we want to -- number one is protect the lives
17 of the citizens.

18 But, also, we want to try to save him from
19 himself also. He'd already cut his throat. He was
20 acting very erratically. He wasn't following commands
21 or warnings. So it's a combination of the two, but
22 primarily, yeah, we want to make sure he's not going
23 to hurt these other people also, so --

24 Q Okay. So I -- I sort of interrupted you.
25 What -- what happened then from that point? You were

1 at where you made those observations you just
2 described.

3 A Entry was made. The -- I came in kind of
4 behind the officers. Officer Gore was there with his
5 canine. He was controlling his canine as we made --
6 went through the doorway.

7 I kind of went to the center and to the left
8 of the room a little bit. I was trying to -- other
9 officers and we were trying to convey to the people
10 that were in there to get to the left of the room and
11 to get out the door.

12 It was very -- or chaotic. It was extremely
13 loud. But Officer Gore's canine was barking
14 continuously. Citizens were yelling. Officers were
15 giving commands and warnings.

16 So it was very chaotic and very noisy in
17 there. So I kind of went to the left, kind of with --
18 along with Sean and (indiscernible) those people and
19 trying to get them away from the subject.

20 One of the officers, Officer Nutting, kind
21 of went that way, too. And they created a bit of an
22 L, it's called, where you try to create an L on -- on
23 a thread, so that if there is any kind of discharged
24 firearms, there's no crossfire. And also, the
25 backdrop's real important.

1 And, initially, there were people running
2 around behind him, but by the time we got in there and
3 got most people to the left, they had a clear field of
4 fire as far as the backdrop was concerned.

5 So I created an L. I was kind of dividing
6 my attention between the citizens and kind of keeping
7 an eye on the suspect. I want to stay hands free in
8 case necessary to do whatever I needed to do. I never
9 drew my weapon.

10 There was ample amount of officers dealing
11 with the threat. And there's less lethal also dealing
12 with the threat. So I was kind of divided between the
13 citizens and kind of keeping an eye on what he was
14 doing.

15 Shortly after entry, he -- and he was -- the
16 suspect was kind of yelling something at times, but I
17 couldn't really tell what he was saying. Again, it
18 was very loud and chaotic.

19 The dog was just continuously barking. I
20 realized Sean -- Officer Gore probably wasn't going to
21 release his dog with an armed suspect at that time
22 because of the danger to the dog.

23 And Officer Gore was a SERT -- a SERT
24 operator also on our -- on our SWAT team. So shortly
25 after that, I saw that he started aggressing towards

1 the officers and shot were fired.

2 He initially took a couple steps, continued
3 to as more shots -- shots continued to be fired and
4 then he went down. At that time, we tried to get most
5 everybody else, all the citizens out and then
6 developed a plan to go render aid.

7 Now, less lethal was deployed on his legs to
8 see if there was any reaction out of him, because the
9 -- the knife -- he still had the knife in his hand
10 when he aggressed on the officers, had the knife in
11 his hand when he went down.

12 And he was laying kind of on his stomach and
13 you couldn't where the knife was. So less lethal was
14 just deployed to his leg, just to see if there was
15 reaction. And then we moved forward and kind of
16 rolled him up to check for him, and the knife was
17 directly underneath him.

18 It was obvious that he was deceased. We had
19 medical come in and confirm that. And from there, you
20 know, post-shooting, pretty much just kind of
21 separated the people and shooters.

22 And I ended up clearing the rest of the
23 facility with Officer Gore to make sure there weren't
24 any other victims or citizens that had been injured or
25 were hiding somewhere. So we're cleared the rest of

1 the facility.

2 MR. REES: Okay. Any questions from the
3 grand jury?

4 A GRAND JUROR: Do the police have any other
5 tools that they could use in a crisis? I know it's --
6 I know it's -- you know --

7 THE WITNESS: Like, it was very rapidly
8 evolving.

9 A GRAND JUROR: I just -- yeah.

10 THE WITNESS: It's hard to -- it's hard to
11 really realize, you know, how fast things are
12 happening, but -- if you're not there. But it was
13 rapidly evolving.

14 Steps were being taken to -- to get the
15 citizens away from him. But it only takes a split
16 second for somebody with a knife to cover quite a
17 distance and severely injure somebody or kill
18 somebody.

19 An example would be the -- the TriMet
20 incident, you know, a year or so ago, you know, where
21 two people were fatally stabbed.

22 A GRAND JUROR: Mm-hmm.

23 THE WITNESS: Another was seriously wounded.
24 It can happen very, very quickly with an edged weapon.
25 And it was rapidly evolving. Like I said, less lethal

1 was being deployed. It just -- he kind of made that
2 decision at the time to aggress toward the officers
3 and less -- or lethal force was used.

4 BY MR. REES:

5 Q And I -- I think you mentioned that you
6 are -- is this right, ECIT?

7 A I was.

8 Q Right.

9 A I -- yeah, I was ECIT for -- initially, the
10 first few years.

11 Q And that acronym stands for --

12 A It's Enhanced Critical Incident Team. We're
13 all CIT critical incident team as far as any with
14 mental health crisis and people -- or people in
15 crisis.

16 But then the ECIT officers get an
17 additional -- initially, 40 hours of training, then
18 in-service every year. So you get quite a bit more
19 training on dealing with mentally -- people in crisis.

20 MR. REES: So do you have a follow-up
21 question on that or --

22 A GRAND JUROR: No. I know it's not a
23 perfect world. You can't -- can't get every -- you
24 know, it happens pretty fast.

25 MR. REES: Any -- any other questions? If

1 not, we'll release Officer Wilcox.

2 Thank you for coming in. Appreciate it.

3 MR. JACKSON: Okay. Remain standing. Raise
4 your right hand.

5 **TYLER SIMPKINS**

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

8 MR. JACKSON: Please have a seat.

9 And please state and spell your name.

10 THE WITNESS: My name's Tyler Simpkins.
11 Last name is spelled S-i-m-p-k-i-n-s.

12 **EXAMINATION**

13 BY MR. JACKSON:

14 Q All right. And where are you employed?

15 A I work for Clackamas County Sheriff's Office
16 as a deputy on patrol.

17 Q How long you been a deputy for Clackamas
18 County?

19 A About four-and-a-half years.

20 Q Okay. What's your current assignment?

21 A I'm currently assigned to the transit police
22 division, so I currently work out of Gresham Police
23 Department patrolling basically from I205 east.

24 Q Could you explain a little bit for us how
25 the transit division is set up and that you're a

1 Clackamas County sheriff's deputy working out of
2 Gresham?

3 A So the Transit Police Division is basically
4 an interagency team comprised of several different
5 agencies. Portland contributes, Clackamas County,
6 Gresham, Multnomah County. Basically every -- every
7 agency that has TriMet run through their area.

8 Q Washington County --

9 A Washington County as well.

10 Q -- Beaverton?

11 A Beaverton.

12 Q Okay.

13 A Hillsboro. There's probably a couple other
14 agencies that I haven't listed off, but -- and then --
15 so we're usually riding around in -- in two-person
16 cars. And who we're partnered with, it's not unusual
17 for us to be partnered with someone from a different
18 agency.

19 Q Okay. And so were you working on April 7th
20 of 2018?

21 A Yes, I was.

22 Q Pause for just a moment.

23 All right. And who were you partnered with
24 that day?

25 A I was partnered with Deputy Sieczkowski,

1 who's a Multnomah County deputy.

2 Q And had you been partnered with him before?

3 A Yeah. I've been working with him off and on
4 for the past several months.

5 Q And were the two of you in uniform, badge
6 displayed?

7 A Yes.

8 Q And were you driving a Clackamas County car
9 or --

10 A No. We were driving a car marked Transit
11 Police.

12 Q Okay. And so does the transit division have
13 their own cars that aren't tied to a specific agency?

14 A I believe Portland supplies the vehicles,
15 but they're marked "Transit Police."

16 Q Okay.

17 A They're the Ford Explorers, like most
18 Portland vehicles.

19 Q Okay. What were -- what were the hours of
20 your shift on April 7th?

21 A It was 2:00 -- 2:00 p.m. to midnight.

22 Q 2:00 p.m. to midnight?

23 A Yeah.

24 Q And you said, "Gresham," but did you have a
25 particular boundary that you were operating within?

1 A Ah, so we -- we can respond to any transit
2 calls. But, in general, we -- we patrol from I205
3 east, which is, basically, like, 82nd, 100, 102nd
4 area, somewhere around there, east.

5 We happened to be west of that on April 7th
6 when -- 'cause we -- we were having lunch at -- around
7 this area, 68th and Sandy when -- when the call came
8 out that we responded to.

9 Q Okay. And what was your understanding of
10 the call that you responded to?

11 A So we heard the call come out. It was a
12 call regarding a vehicle that had crashed somewhere
13 near the area of Grand and Stark. And it was reported
14 the vehicle was earlier involved in a carjacking.

15 So we -- and the -- the suspect was
16 reportedly out on foot somewhere in the area, so we
17 responded to help look for the suspect.

18 Q As a transit division deputy, is it normal
19 for you to respond to what seems to be a
20 non-transit-related call to help with an area check?

21 A Yes. A lot of times, we'll -- you know,
22 we're still law enforcement officers and we have
23 police authority throughout the whole state.

24 So if we're in the area of a -- a priority
25 call, we'll oftentimes go by and help out with looking

1 for a suspect or contacting witnesses or however we
2 can help out.

3 Q Okay. And so for that particular call, you
4 and Deputy Sieczkowski decided to respond?

5 A That's correct.

6 Q And so what did you guys do?

7 A So we arrived in the area and we -- we were
8 driving around conducting an area check for the
9 suspect. He was -- I don't remember the exact billed
10 description, but he was described as a white male with
11 no shirt and I think it was blue pants.

12 So we were -- we were driving around the
13 blocks looking for someone matching that description
14 when we were flagged down by someone, an employee of
15 Jacksons convenience store, which I think is just
16 south of the -- the homeless shelter.

17 And he gave us an updated description. I
18 can't remember the exact coloring, but he said he was
19 wearing a jacket now and pointed up somewhere toward
20 Grand as where he went.

21 So we went and continued looking. And I
22 think the -- I can't remember the exact route we took,
23 but we drove around a couple of the blocks in the area
24 looking for him.

25 Q Did you have information at that point that

1 he was armed with any kind of weapon?

2 A There was -- I remember there were some
3 reports from, I believe it was a north officer
4 somewhere that he may be -- may be armed with a
5 firearm, but I don't recall anything other than that.

6 Q Okay. And so you guys, when -- you actually
7 spoke with the clerk at the Jacksons?

8 A Correct.

9 Q And then moved on to start -- continue
10 searching the blocks?

11 A Yes. That's correct.

12 Q And then what happened after that?

13 A So while we were doing that, I looked up
14 the -- the person that officers believed that the
15 suspect was. And I recognized the name from the call
16 earlier in the day that east precinct dealt with.

17 I never responded to that, but I remember
18 hearing it over the radio. In that instance, he was
19 reported armed with a knife and he was claiming that
20 his wife and daughter were murdered. But they -- it
21 was my understanding Portland couldn't find any sort
22 of scene, so they disengaged from there.

23 And after looking up his photo while we were
24 doing an area check, somehow, I don't remember whether
25 it was over the radio or whether someone told us in --

1 whether someone told us in person, we got information
2 that AMR personnel might be -- might have seen the
3 suspect or been with him or something along those
4 lines.

5 So we went and contacted an AMR unit that
6 was right around the area of Grand and Stark.
7 Actually, a couple Portland officers contacted him.
8 As we were walking up, the Portland officers were
9 walking away saying that he was wasn't here anymore.

10 And as we were walking back to our vehicle,
11 we had parked directly across from the -- the homeless
12 shelter. And we were walking back to our vehicle.
13 Several people -- I heard several people shouting,
14 "He's over here, he's over here." And it sounded like
15 it was coming from the direction of the homeless
16 shelter.

17 Q So at that point, you knew that this suspect
18 had been involved in that earlier call where the
19 police had disengaged where he'd reported his wife and
20 daughter murdered, that he was involved in a
21 carjacking and that he was also involved in some
22 incident in North Portland, a road rage incident in
23 North Portland?

24 A Yes. I don't -- I don't recall exactly what
25 that incident was, but, yeah, some incident in North

1 Portland, possibly involving a firearm.

2 Q Okay. And you said you were aware that that
3 first call had a knife involved in it?

4 A Yes, that's correct.

5 Q Okay. So when you went over -- where was
6 Deputy Sieczkowski while you were kind of learning all
7 of this information?

8 A So he was standing next to me, next -- right
9 next to our vehicle. Are you -- sorry, are you
10 talking about learning about the prior --

11 Q Yeah.

12 A -- call? So we were partnered all day long
13 and he was there. He was listening at the radio with
14 me when he -- when we -- and we were both listening to
15 the east call involving the -- the suspect earlier in
16 the day. And he heard all the updates over the radio
17 as far as the -- the suspect also being involved in a
18 call at north with a firearm involved.

19 Q Okay.

20 A And being a carjacking suspect as well.

21 Q And then he was with you when you guys
22 responded to the Jacksons and then to this AMR report?

23 A Yes. That's correct.

24 Q So when you saw these folks at the shelter
25 kind of waving you in or flagging you down, what did

1 you do then?

2 A So at that point, Deputy Sieczkowski and
3 myself, along with a couple other Portland officers --
4 I don't know who they were -- went over towards the
5 entrance of the homeless shelter. And at that point,
6 there were several people coming out of the entrance.
7 I don't --

8 Q Do you recall what they were saying to you
9 guys as they were coming out?

10 A Yeah. So I don't know how many people the
11 statements came from, but I recall someone saying,
12 "He's inside. He's got a knife and he's trying to
13 stab people." So at that point, believing that he was
14 our suspect inside, I drew my handgun and started
15 approaching the door.

16 Q I'm sorry. Could you say that again?

17 A I drew my handgun and started approaching
18 the -- the front entrance along with Deputy -- Deputy
19 Sieczkowski and a couple other Portland officers.

20 Q Why did you make the decision to draw your
21 handgun at that point?

22 A Because of the -- the -- I -- I heard
23 someone say that he was trying to stab people inside
24 and he was armed with a knife, so I believed that
25 there -- there may have been an active fight in

1 progress and someone's life may have been in danger.

2 Q Okay. What happened then?

3 A So we approached the front door. Deputy
4 Sieczkowski and I kind of approached the -- I think it
5 was a set of double doors, if I remember correctly.
6 We were kind of on the left side and then a couple of
7 Portland officers were on the right side of the doors.

8 And I could see just inside the -- the room.
9 It was basically one big room. Just inside to the
10 right, there was, like, a little desk or office space
11 area. Right in the center of the room, there was a --
12 like, a little three-foot wall surrounding what I
13 assumed was a staircase.

14 I didn't actually see a staircase, but it
15 had, like, a -- a door on the front of it. And there
16 were several chairs spread throughout the --
17 throughout the room. And I saw the suspect who we'd
18 just looked up the photo of a few minutes ago,
19 Mr. Elifritz.

20 He was on the -- if you're looking at --
21 in -- in through the front door, he was on the right
22 side of the room, kind of diagonally, halfway between
23 that -- the three-foot, walled-off section and the --
24 the desk area.

25 And he had a knife in his right hand,

1 holding it up to the right side of his throat. And on
2 the left side of his neck, I saw there was a big gash
3 that appeared to be flooding blood. And there was
4 definitely -- there was quite a bit of blood on the
5 floor as well. He seemed very agitated.

6 And I don't know who -- who exactly it was,
7 but one or two of the Portland officers started giving
8 him commands. I remember -- I remember him saying
9 something along the line, like, "Drop the knife. Give
10 us" -- something along -- "Let's talk for a little
11 bit," or something like that.

12 Q Did he respond to --

13 A He --

14 Q -- those commands?

15 A He was -- I remember him shouting something,
16 but I don't remember exactly what he was shouting.
17 And, at that point, a couple more Portland officers
18 that had rifles showed up.

19 So they moved to the front and I kind of
20 moved back behind them, so I couldn't really see what
21 happened for the next -- next little bit. I know a
22 couple of less-lethal rounds were fired at him. I
23 don't know if they hit him, but he -- and don't know
24 if he reacted to them at all.

25 Q At some point, did you and the other

1 officers move into the room?

2 A Yes. So, at this point, there were still a
3 bunch of civilians that were still inside the --
4 inside the room with the suspect. So we started to
5 move in and try and get them and get them out of
6 the room.

7 As we started moving into the room, I went
8 to the left a little bit with Deputy Sieczkowski and
9 started moving down along the wall. On the left wall,
10 there's, like, a -- a door in the front left corner
11 and there's a couple of doors, like, in the middle of
12 the wall. I think one of them went to a closet. I
13 don't know where the other one went.

14 And we started moving down along -- along
15 that wall while Mr. Elifritz was on the -- the other
16 side of that three-foot, walled-off section. And, at
17 that point, there were several more officers showing
18 up, more by the second. So I was trying -- I was
19 focused on the -- the civilians over there.

20 There was a group of civilians huddled in
21 the back left corner. I was trying to get their
22 attention to come down along the wall and out the door
23 so we could get -- get everybody out of there that
24 might have been in danger.

25 And I don't recall exactly what drew my

1 attention back towards Mr. Elifritz, but something
2 drew my attention back towards him. And as I looked
3 over, I saw him walking towards officers. There were
4 still a bunch of officers up at the front of the room
5 by the -- the desk or the office area, along with some
6 more that were with Deputy Sieczkowski and I along the
7 left wall. So I saw him advancing on them and I
8 turned and --

9 Q What did you think he was doing?

10 A So, at this point, I thought he was going to
11 advance on officers and try and attack -- attack them.
12 So I turned towards him and I was getting ready to
13 shoot him when several shots went off within a couple
14 of seconds. And he fell down behind that little
15 three-foot, walled-off section and I -- I didn't see
16 him anymore until we moved around to the side of it.

17 Q Did you have your handgun drawn?

18 A Yes. My handgun was still out at that
19 point.

20 Q Do you recall at point you -- well, I guess
21 I'll ask you this: So you testified when you first
22 walked up to the door, you drew your handgun. Did you
23 ever re-holster it?

24 A No.

25 Q You had it out the whole time?

1 A Yeah, I had it out the whole time.

2 Q Okay. And you said when you -- your
3 attention was directed back to Mr. Elifritz and he was
4 moving toward the officers, you thought he was going
5 to attack them. And what was it about his demeanor
6 and mannerisms to make you think that?

7 A I saw his arms had kind of flared out a
8 little bit and he was walking, advancing on the
9 officers. He was walking towards them. And he was
10 still very agitated at that point. I could see he was
11 tensing his muscles and it looked like he was going to
12 get -- trying to get close enough to -- to stab one of
13 the officers.

14 Q Did he still have the knife in his hand?

15 A Yes.

16 Q And was it pointed at his neck during that
17 period or in a different direction?

18 A I don't recall which direction it was
19 pointed. I remember his arm was kind of coming out
20 away from his body, but I don't recall exactly where
21 the knife was pointed.

22 Q Okay. And you were preparing to shoot?

23 A Yes, that's correct.

24 BY MR. REES:

25 Q Okay. Deputy, if -- if you had shot, do you

1 believe you would have been within the policy of the
2 Clackamas County Sheriff's Office and the -- the law
3 of the State of Oregon?

4 A Yes, I do.

5 Q And why is that?

6 A Because I believed he was an imminent --
7 imminent threat to the officers that were up front. I
8 believed he was going to try and stab them, which, in
9 my opinion, is going to cause either serious physical
10 injury or death.

11 MR. REES: Do you folks have any questions?

12 A GRAND JUROR: How much blood was on his
13 neck? I'm wondering.

14 THE WITNESS: I don't recall. I -- I
15 remember there was -- I could see -- I only saw it
16 for, like, a split second; but I remember it was on
17 the left side of his neck. It looked like, I don't
18 know, maybe a gash about like that -- that long.

19 A GRAND JUROR: Mm-hmm.

20 THE WITNESS: It appeared to be --

21 A GRAND JUROR: He was going like this,
22 probably about to pass out.

23 THE WITNESS: Potentially. But I don't
24 know, I mean, he was still extremely agitated at that
25 point. When he started advancing on officers, it

1 looked like he was going to try and stab them, so --

2 BY MR. JACKSON:

3 Q But did -- did he appear like he was on the
4 verge of -- of passing out or collapsing to the
5 ground?

6 A He was still up moving around. He -- I -- I
7 didn't -- it didn't look like he was getting ready
8 to -- to pass out at all. He was still up, actively
9 moving around and he -- I didn't see his facial
10 expression at all, but he wasn't acting like he was
11 about to pass out.

12 A GRAND JUROR: No -- no officers could
13 understand anything he was -- that -- that he was
14 saying?

15 THE WITNESS: I -- I can't speak for other
16 officers, but I -- my attention was kind of focused on
17 the civilians in the corner, so -- and there was a lot
18 of civilians shouting as well, so I don't know exactly
19 what he was saying.

20 MR. JACKSON: Any other questions? Okay.

21 Thank you, Deputy.

22 (Recess taken, 2:55 p.m. - 2:59 p.m.)

23 MR. REES: All right. We're back on
24 the record.

25 ////

1 **CLIFFORD NELSON**

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

4 **EXAMINATION**

5 BY MR. REES:

6 Q Doctor, if you would, please, state and
7 spell your name.

8 A Clifford Nelson, C-l-i-f-f-o-r-d,
9 N-e-l-s-o-n.

10 Q Okay. What's your occupation?

11 A Deputy State Medical Examiner for the State
12 of Oregon.

13 Q And how do you -- how do you qualify for
14 that position?

15 A I'm a forensic pathologist, which means I've
16 gone through four years of college, four years of
17 medical school, five years of pathology residency and
18 combined anatomic and clinical pathology, and then
19 another year of a fellowship in forensic pathology.

20 Q And where did you go to college and
21 medical school?

22 A University of Portland and then medical
23 school and residency were both at OHSU.

24 Q And how many years have you been
25 practicing medicine?

1 A Well, officially, you get your medical --
2 medical license as -- when you graduate, so 1989. I
3 was board certified in forensic pathology in 1994.

4 Q And since that time, do you know
5 approximately how many autopsies you've performed?

6 A I think a little over 5,000.

7 Q And you've testified in state and federal
8 court and -- and I guess all over the United States;
9 is that correct?

10 A Correct.

11 Q As an expert witness. Did you perform the
12 autopsy on the body of John Andrew Elifritz on Monday,
13 April 9th, 2018?

14 A Yes.

15 Q Where did you perform that?

16 A At our office in Clackamas, Oregon.

17 Q And who was present at the time of
18 the autopsy?

19 A Criminalists Nebling and Ware, Detectives
20 Kammerer and Slater, Todd Jackson -- Deputy District
21 Attorney Todd Jackson and Officer Gabe Hertzler.

22 Q Okay. And what was the purpose of
23 performing an autopsy in this case?

24 A In this case, where the cause of death is
25 pretty obvious, it's predominantly for documentation

1 and collection of evidence.

2 Q And would the -- it be standard, following
3 an officer-involved shooting, that an autopsy --

4 A Correct.

5 Q -- would be conducted?

6 And you've conducted similar autopsies in
7 the past; is that correct?

8 A Yes.

9 Q In terms of the general appearance of the
10 body of Mr. Elifritz, did you measure his height --

11 A Yes.

12 Q -- and weight?

13 A 74 inches and 266 -- or 262 pounds.

14 Q And can you explain to the grand jury the --
15 the difference between the terms "cause of death" and
16 "manner of death"?

17 A Sure. Cause of death is the primary thing
18 that causes somebody to die. So say somebody gets
19 shot in the chest and it hits a large vessel and they
20 pour two liters of blood into their left chest cavity.
21 Cause of death is a gunshot wound of the chest.
22 Manner of death -- or mechanism of death is
23 exsanguination or bleeding internally.

24 Another person gets shot in the chest, they
25 don't have a lot of bleeding, so it misses any major

1 vessels. But it hits their back, they become
2 paralyzed. They get a bedsore five years later from
3 inability to move and they get an infection; and then,
4 ultimately, they die.

5 Cause of death is still a gunshot wound to
6 the chest even though it may be several years
7 afterwards. But the manner of death -- or excuse me,
8 the mechanism of death is an infection.

9 Manner of death is one of five things. It's
10 either natural, accident, suicide, homicide or
11 undetermined. And undetermined, we use in cases where
12 it doesn't really fit into the other categories.

13 Q And can -- can you briefly explain the
14 differences between those five different categories
15 under the heading of manner of death? I mean, natural
16 death, I assume, is some natural disease process
17 or aging --

18 A Correct.

19 Q -- is that right?

20 A Correct. Natural death would be coronary
21 artery disease, so somebody dies from heart -- has a
22 dysrhythmia due to blockage of blood flow through one
23 of their coronary arteries due to atherosclerotic
24 coronary artery disease. That's an example of a
25 natural death.

1 An accidental death would be an unintended
2 -- unintended traumatic event. Somebody is walking
3 along a -- an embankment or a -- a raised walkway by a
4 river and they slip and they fall off into the river
5 and they drown. And so they're drowning.

6 They're -- they could either have blunt
7 force injuries from the fall or they could drown.
8 Either one of -- one of them is not an intended
9 consequence of their action. Most drug deaths are
10 accidental. They're -- the person using the drugs
11 are intending to get high. They're not intending to
12 kill themselves.

13 Suicide, we use a very strict definition.
14 It's death at one's own hand. No, you know, "What if
15 they change their mind at the last minute?" things.
16 Just -- we just use the idea that, you know, they took
17 an action which any reasonable person would realize
18 would have -- would or could have fatal consequences.
19 They did it themselves; and, now, they're dead.

20 Homicide, death at the hands of another.

21 And then undetermined when it doesn't fit
22 into one of those categories.

23 Q So in this case, after your autopsy, did you
24 reach an opinion or a conclusion about the cause and
25 manner of death?

1 A Yes. Listed the cause of death as gunshot
2 and shotgun wounds and the manner of death as
3 homicide.

4 Q And your finding of homicide in this case is
5 a medical conclusion rather than a legal conclusion?

6 A It's a medical definition.

7 Q Are you familiar with the phenomenon of
8 suicide by the police?

9 A Yes.

10 Q And what is that?

11 A It's a term that Dr. Joe Davis actually
12 coined out of Miami. And it was when somebody used
13 the police, except -- as their mechanism by which to
14 end their own life, intentionally end their own life.

15 We are pretty strict about when we use that
16 term. For us, it requires that somebody clearly
17 showed intent; that they have some type of past mental
18 or medical history that indicates that they are
19 suicidal; and that they have, in the form of the
20 written letter, a tape-recorded message or
21 specifically said to reliable witnesses, "I am going
22 to get the police to kill me," and it has to be that
23 clear.

24 Q Did you consider such a finding in
25 this case?

1 A Yes.

2 Q And did you know that some of the features
3 that you described were present in this case?

4 A Yes.

5 Q What -- what feature was lacking to prevent
6 a finding of suicide by police?

7 A As far as I know, there is not a written
8 note, a recorded message or a specific statement that
9 says, "I am going to get the police to kill me."

10 Q Is that -- is that the only feature that is
11 absent to prevent you from making that finding?

12 A Yes.

13 Q Going back to the autopsy, itself, that you
14 conducted, can you summarize for the grand jury what
15 you noted in terms of the wounds to the body?

16 A The --

17 Q I'm sorry.

18 A Yeah, I -- I --

19 Q Yeah.

20 A Another thing that happened, I lost hearing
21 in this ear about three weeks ago.

22 Q Right, on the side facing me. I was asking
23 if you could summarize for the grand jury your
24 findings at the autopsy regarding the wounds to
25 the body.

1 A Sure. He had six -- I termed them
2 less-lethal -- shotgun-round impacts. Used to term
3 these as beanbag rounds, but my understanding is they
4 don't use beanbags anymore because they had a tendency
5 to tear apart, especially if they had hit an
6 intermediate target before and then you would get
7 penetrating wounds instead of just an impact.

8 Six gunshot wounds, so with -- shot with
9 bullets as opposed to shotgun rounds, which he also
10 had three of.

11 Q So six less-lethal round impacts, six
12 gunshot wounds and three shotgun wounds --

13 A Right.

14 Q -- is that correct?

15 On the less-lethal round impacts, visually,
16 what -- what -- what did that look like and where were
17 they on his body?

18 A They look, actually, just like the old
19 beanbag rounds look -- look like. They're -- they
20 tend to be about an inch in diameter, sometimes a
21 little more depending on the angle which they hit.
22 And they hit with enough force so that they leave this
23 abraided bruise.

24 And it basically emulsifies or turns to
25 liquid the underlying fat. They're meant to be

1 painful and they're meant to hopefully stop a person
2 without having to cause their death, you know, use
3 a -- a weapon to cause their death.

4 Q And I'm guessing you don't see people in
5 your line of work who've been hit by a -- a line-drive
6 baseball, probably, but you see other types of
7 traumatic bruising from blunt force trauma.
8 Is this -- is this the equivalent of -- of some
9 kind of --

10 A I -- the --

11 Q -- traumatic event like that?

12 A These are -- these are very localized and
13 very hard. And what they do -- because of the amount
14 of force which they strike and dissipate that energy
15 quickly to the underlying fat. It just literally
16 turns it to liquid.

17 Q Mm-hmm. Of the six gunshot wounds and three
18 shotgun wounds, were you able to distinguish amongst
19 them as -- as far as whether they would be lethal
20 or nonlethal?

21 A Some of them were. Some of them weren't.
22 Let's see.

23 (Pause in proceedings, 3:13 p.m. -
24 3:14 p.m.)

25 THE WITNESS: The one that's strike him --

1 struck him in the area of the pant legs that broke his
2 keys up on the left side was probably not going to be
3 lethal -- would probably not have been lethal. A
4 gunshot of the -- wound to the left finger, again,
5 probably wouldn't be lethal.

6 You know, all of these potentially could be
7 if they were left untreated, they bled enough or they
8 got infected. But -- but I wouldn't think of that as
9 a lethal wound. A gunshot wound to his right hand,
10 same thing. I wouldn't think of that as necessarily a
11 lethal wound.

12 Let's see here. A gun -- gunshot wound to
13 the abdomen, because it just basically went through
14 the underlying fat and superficial muscle, again,
15 probably, you know, with -- with minor medical
16 treatment, wouldn't have been a lethal wound.

17 Right-upper abdomen, that one potentially
18 could be 'cause when -- when it fractured the -- the
19 right costal margin, it injured the underlying lung.
20 A gunshot wound to the right chest and arm, that
21 one could easily have been lethal -- lethal in and
22 of itself.

23 As far as the shotgun wounds, the one in the
24 right chest is predominantly -- ends in -- ends in the
25 pectoralis muscle, which is the -- the muscle of the

1 breast and probably wouldn't have, in and of itself,
2 been fatal.

3 Shotgun wound to the right shoulder and
4 axilla, that one easily could have been fatal because
5 of the amount of vascular damage. And shotgun wound
6 to the crevicular region on the left, which would be
7 up in this area, again, because of the vascular
8 damage, could very easily have been fatal.

9 Q Okay. So if I could just double check, of
10 the six gunshot wounds, your testimony is four not
11 immediately fatal, one possibly fatal and one --

12 A Easily --

13 Q -- strong --

14 A Yeah.

15 Q -- easily fatal. Of the three gunshot
16 wounds, one not immediately fatal and then two pretty
17 strongly yes, fatal?

18 A Yeah.

19 Q Okay. So three -- three of the nine
20 firearms or gunshot -- combined shotgun and gunshot,
21 three of the nine --

22 A Likely were rapidly fatal.

23 Q Likely rapidly fatal. Okay. During the
24 autopsy, is it standard practice to take a sample of
25 some bodily fluid for testing for drugs or alcohol

1 through toxicology?

2 A Yes.

3 Q And was that done in this case?

4 A Yes.

5 Q And what was tested: Was it blood or urine?

6 A Blood.

7 Q All right. And do you have the results of
8 that testing?

9 A The methamphetamine was 0.33 milligrams per
10 liter and I don't know if the amphetamine was 0.063 or
11 0.63.

12 Q Is that -- is that clinical (indiscernible)?

13 A Yeah. I just wrote down notes that were
14 left on my voicemail from --

15 Q Okay.

16 A -- the tox, but -- so I don't -- I -- I just
17 didn't write it down clear enough that I can make
18 it out.

19 Q But the number that, clinically, you're
20 really interested in is the --

21 A Is the methamphetamine.

22 Q -- 0.33 milligrams per liter. So what does
23 that translate to in terms of, if you're able to tell
24 us, level of intoxication?

25 A I can't just look at a number and say, "This

1 person would be this intoxicated with this number,"
2 because I don't know when they took it or how much
3 they took or what their highest level was.

4 If he is going up or if he's stable, that's
5 an intoxicating level of methamphetamine. If he's
6 crashing or going down, they're not going to probably
7 act as intoxicated as I would -- somebody in a -- with
8 a rising level of methamphetamine.

9 Q Okay. You viewed the video of the shooting
10 with myself and Detective Sergeant Ken Whattam
11 following the autopsy. Based on your observations in
12 the -- the video, did -- did it appear that this
13 person was, you know, crashing from the effects of
14 methamphetamine?

15 A No, he -- he does not appear to be crashing.
16 He's common -- commonly referred to as tweaking.

17 Q And what is -- so what is that?

18 A Actively showing agitation, typical of
19 somebody on methamphetamine.

20 Q In the behaviors described prior to the
21 shooting, were -- were those, you know, consistent
22 generally with someone under the influence of
23 methamphetamine?

24 A Yes.

25 Q And does the intoxicating effect of

1 methamphetamine mask pain? Because in this case --
2 and, of course, you saw that the six less-lethal round
3 impacts on the body -- and you said it would be very
4 painful. I believe you saw in the video no -- no
5 reaction. Does -- does the --

6 A I --

7 Q -- methamphetamine act as a -- as a mask or
8 could there be some other reason to not feel the pain
9 or not react to the pain?

10 A I -- I'm not an addictionologist. I
11 don't know.

12 Q Okay. Let me ask you finally about your
13 external examination. Did -- did you observe any
14 injury to the neck of John Elifritz at the time of
15 the autopsy?

16 A Yes. I believe it's on both sides, but I'm
17 checking. Yeah. He's got incised wounds of both
18 sides of his neck or cuts.

19 Q And how is --

20 A Cutting wounds on both sides of his neck.

21 Q Cutting wounds. How -- how deep and -- and
22 how significant were those?

23 A Oh, they're not very deep and they're not
24 very significant.

25 Q In terms of them impacting him, his -- his

1 ability to act, any impact at all? Any -- any, you
2 know, veins or arteries cut --

3 A Well, and I don't --

4 Q -- or anything like that?

5 A In somebody normally who had that, it would
6 be painful. But they're not losing a lot of blood
7 from those. They're not hitting any major vascular
8 structures, haven't got into an airway. So it's --
9 it's really not affecting him as far as his cause or
10 manner of death.

11 MR. REES: Okay. Any -- any questions for
12 Dr. Nelson from the grand jury?

13 A GRAND JUROR: I'd like to know what --
14 the -- the six nonlethal wounds, which part of his
15 body were they on?

16 THE WITNESS: If I remember, it was
17 primarily leg -- legs and abdomen, but let me check.
18 Medial right thigh, anterior left thigh, posterior
19 right medial thigh, lateral lower left popliteal, so
20 that's near the -- behind the knee.

21 Left thigh again. I guess none of them got
22 his abdomen. Hip. And the last one is anterior right
23 thigh, so pretty much all thigh, one side or the
24 other.

25 MR. REES: Any other questions, folks? No?

1 All right. Thanks very much, Dr. Nelson.

2 We'll excuse this witness. And shall we
3 take our ten-minute -- sort of just our
4 mid-to-late-afternoon break? Okay.

5 (Recess taken, 3:26 p.m. - 3:43 p.m.)

6 MR. REES: All right. We're back on the
7 record. We're resuming from our midafternoon break.
8 And our next witness is ready to be sworn in.

9 **CHAD PHIFER**

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

12 **EXAMINATION**

13 BY MR. REES:

14 Q When you're ready, if you'll please state
15 your first and last name and spell it.

16 A My name is Chad Phifer, C-h-a-d; last name
17 Phifer, P-h-i-f-e-r. I'm an officer with the Portland
18 Police Bureau.

19 Q All right. How long have you been a
20 police officer?

21 A I've been a police officer for 18-and-a-half
22 years, eight of which was with Multnomah County and
23 ten and a half with Portland Police Bureau.

24 Q All right. And when this incident occurred
25 on April 7th, 2018, was that a regular working day for

1 you?

2 A It was, yes.

3 Q And prior to coming on your shift, which I
4 believe starts at 4:00 in the afternoon and goes --

5 A Correct.

6 Q -- to 2:00 in the morning?

7 A Yes.

8 Q Prior to that, was there anything unusual
9 happening in your -- your life? Any emotional things
10 happening or --

11 A No. No, not that I recall.

12 Q Had -- had you consumed any drugs or alcohol
13 prior to your shift?

14 A No.

15 Q In your work in downtown Portland, do you
16 frequently encounter homeless people on the street?

17 A Yeah. That's very common in the downtown
18 core area especially and the inner southeast side.
19 There are -- I can probably safely say there isn't a
20 night that goes by that I don't deal with a mentally
21 ill person, usually multiple times a night, often
22 in crisis.

23 There are a lot of mentally ill people on
24 the streets downtown here and we get a lot of calls
25 about them.

1 Q And have you had weapons-types encounters
2 with homeless people or other people on the street
3 where you've had to deal with that and you've had to,
4 you know, deescalate the -- the situation?

5 A Yes.

6 Q And have you done so successfully?

7 A Yes.

8 Q What would you say the -- the -- kind of
9 the -- the hallmark of that type of situation is where
10 you've been able to successfully been able to talk to
11 and deescalate a -- a situation with a potentially
12 dangerous person?

13 A I mean, like, an example --

14 Q If there is one.

15 A -- or something?

16 Q Well, no. Maybe there isn't a hallmark.
17 But I'm thinking, is there anything about those types
18 of encounters that -- that is sort of a -- a primary
19 feature that exists when -- when you're able to
20 do that?

21 A When you -- when you can do that, there's
22 definitely generally a dialogue that you -- you
23 can talk. If you can talk to the person can often
24 deescalate if they're able to communicate with you.

25 So, I mean, in -- in generally talking to

1 somebody like that, if they have mental health issues,
2 you can generally tell if they have mental health
3 issues when they start talking to you 'cause they say
4 some pretty interesting things. But you really kind
5 of have to have a dialogue with them to deescalate a
6 situation like that, but it definitely is possible.

7 Q On April 7th, 2018, can you just briefly
8 summarize for us briefly what you had heard over
9 your police radio regarding the events that led up,
10 ultimately, to a confrontation at the
11 Cityteam Ministries?

12 A Yes. Initially, we'd gotten a call --
13 actually, it wasn't a call. It was a CAD message,
14 which is our computer terminal. It's kind of like a
15 text message.

16 And it was from an East officer that said
17 that a silver Honda CRV with Zebra, Roger, Queen 832
18 had been taken by force by a possible suspect that was
19 John Elifritz. And there was PC for probable cause;
20 in other words, for UUMV and I believe Rob III and
21 that the call had also indicated that he had
22 threatened to kill people.

23 So I read the CAD message. I was aware of
24 that CAD message. I kept it in my head, you know, in
25 case I run into that vehicle and see it. Later that

1 evening, another call came out from North and we're
2 on a different dispatch net than the North is, so I
3 switched over.

4 Basically, there was a call regarding a
5 subject that had threatened somebody with a gun or
6 reportedly threatened somebody with a gun and it was
7 on cell phone video. I just switched over to that net
8 just to see what the call was about.

9 Just as often in -- in situations like that,
10 we'll -- we'll want to know tactically, how are they
11 going to handle it? What's the sergeant going to do?
12 What are the officers going to do? And it's good to
13 know what's going on in the city in case it runs into
14 another precinct, which this one did.

15 So I switched over. I hear that a subject
16 had reportedly pointed a firearm at somebody. They
17 were driving a -- a Honda CRV. And then I hear a
18 North officer come on and ask, "Is that the same CRV
19 that was reportedly taken by force?"

20 Dispatch comes on and confirms that it is
21 and it -- it is coming back as a stolen vehicle. So,
22 now, I know that that vehicle has been involved in two
23 incidents and the suspect is possibly John Elifritz.

24 Q And did you -- did you hear also on the
25 radio at some point that -- that a weapon was not

1 involved in the road rage incident?

2 A I did. I did hear that later on. And I
3 can -- it -- it's a little bit further on in my -- my
4 timeline of events.

5 Q Okay.

6 A And I'll -- I'll -- I can touch on that
7 when I --

8 Q Okay. All right. Okay.

9 A Okay. If you want me to keep going?

10 Q Yeah. Yeah, sure. I --

11 A Okay.

12 Q Yeah.

13 A So I -- I hear that -- so I -- so I -- I
14 know that that's -- that's -- there's two incidents
15 involved. And so then I'm -- I get dispatched to a
16 call, so I'm going to a call.

17 I hear another call come out over Central
18 dispatch, which is my net, that says that a silver CRV
19 has crashed and a subject -- shirtless subject with
20 tattoos is running from the car. That immediately
21 sparks my interest because it's a silver CRV.

22 I know of two other calls. I ask on the
23 air, "Is that the same vehicle that's associated with
24 the call that was taken -- the car that was taken by
25 force?" And dispatch comes on and says, "It does

1 appear that that's the same vehicle." So now I'm
2 knowing of three incidents involving this vehicle.

3 I dispatch -- I broadcast over the air
4 that -- 'cause somebody asked, was the subject armed?
5 And I got on and broadcast that the subject was
6 reportedly armed with a firearm in that incident.

7 Later on -- well, I -- I get cleared for my
8 call. I go across the river to assist with this call.
9 I'm driving an unmarked patrol car. They're looking
10 for a suspect. They're often better to find suspects
11 if you're driving in an unmarked patrol car because
12 they -- they don't see you 'cause you're not as
13 obvious.

14 So I go across the river and -- and also
15 knowing that I have -- I am a rifle operator, which we
16 oftentimes don't have any rifle operators on shift. I
17 go across the river. And then when we -- when I get
18 over on the other side of the river and we're looking
19 for the suspect, a North officer gets on and says
20 they've reviewed the video and they did not -- they
21 did -- no -- no gun was seen.

22 So, now, it's -- it's possible that he was
23 not armed with a gun, that he threatened that he had a
24 gun or that there was some sort of discrepancy in --
25 in whether there was actually a firearm involved in

1 that. But the vehicle was taken by force still.

2 So as I'm in that area, a call comes out
3 regarding a -- a subject with a knife. The call said
4 he appears to be high opiates. He has a -- I think it
5 was a three- or four-inch blade -- bladed knife. He's
6 standing in front of the Jacksons.

7 I'm looking at the Jacksons, essentially,
8 when that call comes out, so I could see the Jacksons.
9 So I say, "Well, I can go." We have a lot of officers
10 in there at the time, but they're probably doing
11 other things.

12 I say, "I can go to that call," and I say,
13 "I'll wait for a less-lethal operator," because,
14 generally, on a -- a knife call or some sort of weapon
15 call, we'll have a less lethal go with us in case that
16 is -- you know, in case we need one.

17 So I'm waiting for a less-lethal operator to
18 come to my location, which, at that time, was MLK and
19 Stark, Martin Luther King and Stark. And then the --
20 the -- we get another call from whoever called that in
21 at the Jacksons saying the subject left. So they left
22 southbound on Grand, so I -- now, we're doing an area
23 check. We're kind of just looking for the subject to
24 see if we can find him again.

25 As I'm looking for that subject, somebody

1 gets on and says, "We're" -- I'm not thinking and I
2 don't think anybody else was thinking, because there
3 was only two of us going to this call at Jacksons,
4 that this is the same subject that is in -- that has
5 crashed the car that's the suspect in the other things
6 because it's literally within sight of the crashed
7 car.

8 And, normally, people that run from cars,
9 you know, they're hiding. They're not close by.
10 They're trying to get out of the area, so I'm not
11 thinking it's the same subject, you know.

12 And the description is different. This one
13 is the subject is wearing a blue-and-red rain jacket
14 and the call that the subject ran from the car was
15 wearing no shirt and had tattoos and was bald. So as
16 I'm looking for -- you want me to just keep -- keep
17 going? I'm almost done with my timeline of --

18 Q Okay.

19 A So as I'm looking for that subject, someone
20 comes on and says that the subject that we are looking
21 for actually is the same suspect that ran from the
22 vehicle. And they confirmed that it was -- was John
23 Elifritz. I pulled up a picture of John Elifritz on
24 my computer just to see who I was looking for.

25 As I'm driving through the area, I'm driving

1 westbound on Washington, I hear another call come out
2 of a subject from the location of 509 Southeast Grand
3 that there's a subject in front of the location that's
4 holding a knife to his throat. And so, now, I'm
5 believing that that is also the same subject that we
6 were looking for Mr. Elifritz.

7 I pull up in front of Cityteam Ministries,
8 which is 526 Southeast Grand. I can see the other
9 officer's being contacted at 509. And I hear them --
10 shortly after making contact, they -- I'm about ready
11 to get out of my patrol car, the -- there -- the
12 subject has left.

13 So I -- I'm in my patrol car and I look
14 over. I'm in the middle lane of Grand. I look over
15 and I can see the Cityteam Ministry doors open. And I
16 can see people shuffling back and forth inside and it
17 looks like there's some sort of commotion inside.

18 And I see, like, the bottom of a chair come
19 up, like somebody's lifting up a chair, like, to
20 defend themselves. And I'm thinking, are they moving
21 the chair or are they defending themselves? What's
22 going on in there?

23 And I'm starting to realize there's
24 something going on there. And as I'm doing that,
25 somebody comes out and he's got his hands to his mouth

1 and he's yelling like he's trying to flag down the
2 officers that are kind of over in front of my patrol
3 car at that point. And then I broadcast information
4 that I believe the -- the subject was in the Cityteam
5 Ministries.

6 Q So did you head to that location, to
7 Cityteam Ministries?

8 A Yeah. I'm literally looking at the front
9 door of Cityteam Ministries at that point. My car is
10 sitting here. If I look out the passenger-side
11 window, I'm looking inside Cityteam Ministries.

12 Q And what did you take with you?

13 A I took my AR, which is my rifle.

14 Q So -- and -- and have you had special
15 training to carry that particular weapon?

16 A I have, yes.

17 Q And why -- why did you -- why did you take
18 it with you? Why did you think that'd be important to
19 have as you left your car?

20 A As I mentioned earlier, there are not many
21 of us on shift that have that particular tool just
22 because it's a -- it's a week-long training and
23 getting people through it and keeping them certified
24 and things, so -- so there might be times when I'm the
25 only afternoon officer on shift that has one.

1 There might be two, there might be three and
2 then when night shift comes out, there might be a few
3 more. But it's not common to have a lot of rifles on
4 shift. It's a tool that I -- I would bring to the
5 table because I -- because I have that.

6 It's -- it's a tool and we use it for
7 situations where you -- you can address somebody from
8 a longer distance with a rifle than you can with a
9 handgun. You can -- you can keep back further from
10 the incident. You don't have to be as close. It's --
11 it's more accurate at a longer distance as well.

12 So, you know, I -- I thought we might need
13 it in this situation just for our defense or just to
14 have another -- all the tools that we need when
15 addressing the subject.

16 Q All right. And so where -- where -- where
17 did you go to?

18 A I went to -- I got out and I went to the
19 front of Cityteam Ministries. There was officers
20 standing on both sides of the door. And the door is
21 kind of -- there's nobody really in the door. They're
22 kind of -- looked like they were kind of peeking
23 around the door frame.

24 And I come up and I say, "I have a -- a long
25 gun," which is a rifle. And then I was motioning to

1 come up to the front, so I -- it didn't appear that we
2 had a rifle there already. So I come up to the front.
3 Again, this is a good tool to have from a distance
4 when addressing somebody.

5 And I see the subject standing inside the
6 location and I can see that he's got a knife to the
7 side of his neck and he's holding it kind of in an
8 upright position and I can see blood on his neck.

9 Q All right. And when you see that and --
10 along with everything else that you've heard so far on
11 the radio, what are -- what are you thinking is
12 happening and what do you think the best solution to
13 this crisis would be?

14 A Well, the best solution would be for him to
15 drop the knife, which is the order that I gave him.
16 I -- I addressed him and I said, "Drop the knife." It
17 didn't appear that he -- I didn't get anything back
18 from him to indicate that he was speaking directly to
19 me and he didn't drop the knife.

20 I'm standing basically inside the door --
21 well, at the door, the entryway to the door. And
22 Officer Damerville was standing right next to me, I
23 believe, to the left of me. And we're -- we're --
24 we're trying to get him to drop the knife.

25 Q All right. And -- and how -- how did you

1 give that command?

2 A It's a -- it's a firm, "Drop the knife,"
3 command.

4 Q In a loud voice?

5 A Loud voice, you know, commanding type call
6 in an effort to, you know, get him to drop the knife.

7 Q And in other situations, you've used your
8 command voice, you've given firm commands as a police
9 officer, I assume?

10 A Correct.

11 Q And do people respond to that?

12 A They have, yeah. I mean, it -- generally --
13 and sometimes it doesn't even have to be the initial
14 command. Sometimes police show up and somebody just
15 complies immediately upon us showing up.

16 You know, I've had times where I pull up to
17 a subject that's armed and they -- they -- you know,
18 they get rid of the weapon and they put their hands up
19 or they do something like that.

20 Q Mm-hmm.

21 A You know, as a police presence, which is
22 kind of our -- our first -- that's the first thing
23 that, you know, we're assessing, is -- is when we show
24 up, we're providing a police presence and then we --
25 we -- we're giving orders, both of those things are

1 trying to resolve the situation peacefully.

2 Q But, in this case, you said, "Drop the
3 knife," and you said you couldn't tell whether he --

4 A I didn't get -- I didn't -- he looked angry.
5 I saw his teeth. I didn't hear what he said if he
6 said anything back to me. It didn't appear that we
7 were going to have any sort of dialogue as far as him
8 contacting or, you know, speaking with me. He -- so,
9 yeah. Yeah, it --

10 Q All right.

11 A -- he didn't comply.

12 Q And you said you were standing next to
13 Officer Damerville.

14 A I believe it was Damerville, yes.

15 Q He's got the 40-millimeter less lethal?

16 A He has the less lethal --

17 Q Right.

18 A -- yes.

19 Q Did you -- did you see or hear him use that?

20 A He hadn't used it initially that -- 'cause
21 the subject turned and started walking further into --
22 into the shelter. And he -- at that point, he -- he
23 was shooting. He did shoot, that I know of, at least
24 a couple of rounds of less lethal at the subject and I
25 saw them hit him.

1 Q Could -- could you see whether there was any
2 reaction to that?

3 A I saw him turn once, like maybe one might
4 have hit him, like, in kind of the upper back -- not
5 the upper back, but kind of the hip area. But it
6 wasn't -- it wasn't anything that was making him
7 comply with any of the things that we were trying to
8 get him to do.

9 Q Right. At some point, you and the other
10 officers moved inside of the building or the room?

11 A Yes.

12 Q And why'd you go inside?

13 A Somebody had urged us behind us to go
14 inside, which was -- was good because we needed to get
15 inside because in seeing him walking around inside, I
16 mean, he has -- he has a knife.

17 I'm very concerned for the people that are
18 inside 'cause there's people -- at one point, at the
19 door, I'm like, "Can you" -- I said some sort of order
20 like, "Get out from behind him," or something like
21 that or, "Get them away from him."

22 And a lot of it was to my fellow officers,
23 like, because there's people running around behind him
24 and I'm very concerned that I may have to use force to
25 prevent him from stabbing or hurting somebody in this

1 room that are running all around behind him and trying
2 to find places to hide.

3 There was a guy that was trying to find a
4 place to hide behind -- not behind him, but, you know,
5 the location it's, like, some sort of desk or
6 something behind him. And I'm concerned about those
7 people. And I'm concerned that I -- I can't stop him
8 at that point because there are people in the room.

9 And I can't -- I can't use force in that
10 type of situation because I'm risking their -- their
11 welfare. But, fortunately, he had not gone directly
12 at any of those people in the room.

13 They -- they were able to kind of filter out
14 and go in a north doorway out of the room. So,
15 generally, it was almost just him that we had at that
16 point when we kind of came in. Most of the people
17 were out at that time, I believe.

18 Q What happens once you're -- you're inside?
19 Where -- where do you -- where do you go and -- and
20 why do you choose to stand in that particular
21 location?

22 A Well, we -- we went in and we kind of
23 created kind of an L pattern. I know Officer Nutting
24 went to the left. And I'm -- I kind of just went
25 straight in. I was kind of -- I didn't vary much from

1 where I was at before.

2 I kind of went straight in and had officers
3 on my -- on my right, had officers on my left in a
4 kind of L shaped around this barricade that's in a
5 (indiscernible). It's -- it's a stairway that goes
6 down to another level underneath the desk.

7 Q All right. And do you hear other officers
8 make verbal commands or do you make additional verbal
9 commands to the suspect?

10 A Beyond my initial commands to drop the
11 knife, I -- I don't recall making many other commands
12 because there were other officers that were -- were
13 giving verbal commands. In a situation like that, you
14 can't -- no -- not everybody can give verbal commands
15 or it's just overwhelming.

16 They're talking over each other. People
17 can't understand what they're supposed to do. You
18 might be giving conflicting commands, so I wasn't
19 giving commands at that point, but I could hear
20 commands being given.

21 Q Do you -- do you remember specifically what
22 was said?

23 A I don't remember specifically what they
24 were, no.

25 Q Did you hear or see additional less-lethal

1 rounds fired?

2 A I did. I believe there were less-lethal
3 rounds fired while we were inside. I can't tell you
4 how many, but I believe that there were less-lethal
5 rounds fired inside as well.

6 Q And what did you perceive the suspect was --
7 was doing or -- or having some kind of response to
8 that or -- or no response?

9 A I wasn't seeing anything that obviously was
10 indicating that it was effective with him. He wasn't
11 dropping the knife. He wasn't complying. He wasn't
12 listening to anything that was being said. It didn't
13 appear that he had any intention of cooperating or
14 having a dialogue with us.

15 You know, as I said before, if you can have
16 a dialogue with somebody or communicate with them,
17 then you can -- you can possibly get them -- convince
18 them of something.

19 Q Have you been in situations previously where
20 someone's been hit with a beanbag and who has
21 complied, has dropped the knife?

22 A I have, actually. And this incident is very
23 similar, almost exactly the same, as an incident I had
24 in August of last year. A subject with a knife to his
25 neck was walking around in traffic and he was slicing

1 his neck. It was over on the southeast side,
2 Milwaukie and Powell.

3 And in that incident, we were trying to
4 contain him because he's walking around through
5 traffic and we're staggering with our patrol cars to
6 try and get him contained so that he doesn't have
7 access to any of the public 'cause he's walking around
8 in traffic.

9 And we were able to kind of contain him. He
10 sat down against a wall. He still held the knife.
11 And in that situation, we, at the time, were using
12 beanbag shotgun rounds, which are -- they're --
13 they're smaller. They're not -- they don't hurt
14 as much.

15 That's kind of why we -- we -- we switched
16 to the 40-millimeter round because it's a bigger round
17 and the beanbag shotgun rounds, a lot of people would
18 just kind of ignore them. This guy didn't, though.
19 He got hit by a round that he -- affected him and he
20 ended up dropping the knife and -- and we took him
21 into custody.

22 Q So on April 7th, 2018, in the incident we're
23 talking about here, you're seeing this person hit
24 multiple times with the new 40-millimeter less lethal,
25 no reaction. I mean, what do you -- what do you

1 think -- what do -- what do you think is going
2 to happen?

3 A Well, I -- I think that we -- we've taken
4 that tool out of the picture of being effective.
5 That -- that tool is not working, obviously. He's --
6 he's not complying. It also leads me to believe --
7 you know, further lead me to believe that he's on some
8 sort of intoxicant or alcohol or something that is
9 affecting his pain tolerance.

10 And, I mean, 'cause if you're dealing with,
11 you know, mentally ill people or something like that,
12 I mean, they're still feeling pain. And those --
13 those 40-millimeter rounds have to hurt. And so in
14 this situation, they're -- they're not working.

15 Q Did you think that a Taser would be an
16 option in this situation?

17 A He was too far away for the Taser. Our
18 Taser cartridges, I believe, are 25 yards -- or, no,
19 25 feet.

20 Q 25 feet.

21 A Yeah. Sorry. And he was -- he was deeper
22 in the room than that Taser cartridge -- when we were
23 L'd out in our pattern, he was deeper in the room than
24 a Taser cartridge would be effective at. And he was
25 also wearing, like, a -- a rain jacket, which clothing

1 restricts those. Those are barbed Taser cartridges.

2 They -- they have to penetrate the skin.

3 And so if you have thick jackets on or clothing like
4 that, oftentimes the barbs will get stuck in that and
5 they won't necessarily penetrate the skin. There are
6 oftentimes where the -- the Tasers are not effective.

7 Q Okay. So what -- what -- what happens then
8 at the end of this encounter?

9 A The subject was kind of behind -- kind of
10 behind a little wall. He went around this -- this
11 wall, and I'm thinking, is there a door on that side?
12 'Cause I'm really concerned about keeping him
13 contained 'cause the -- the -- the -- the wall on this
14 side has this open door where I know at least
15 15 people have probably gone in at this point.

16 So I'm worried that when he goes behind the
17 wall, that he's going to exit out of another door.
18 But he doesn't, apparently. I can't see that, but
19 there was no door behind that, kind of goes behind
20 that and then he comes out and starts coming at us, my
21 direction and probably more so to the -- the officers
22 that are standing right next to me, but is
23 deliberately coming towards us.

24 And, at that point, I -- I raised my rifle
25 and I fired two rounds.

1 Q And why did you make the decision to -- to
2 raise your rifle and fire two rounds at that time?

3 A Well, I -- I felt like my safety as well
4 as the people standing next to me, our safety is in
5 jeopardy. You know, I -- I felt -- you know, this
6 subject has made homicidal threats to kill people.

7 He's threatened somebody involved in this
8 situation. He's armed. I believe he's high on drugs
9 and I felt my danger as well as the -- the danger of
10 the officers standing next to me, he's coming at us
11 with a knife.

12 Q And did you believe that your use of deadly
13 force at that time was within Bureau policy or not?

14 A I do, yes. I was defending myself and I was
15 defending the other officers.

16 Q Why did you stop shooting?

17 A I -- I fired two rounds and the subject fell
18 after my two rounds. So, at that point, he's no
19 longer coming at us anymore, so the situation has --
20 it's more contained now and he's not a threat to us at
21 that point.

22 Q Is that -- is that pursuant to your training
23 to stop shooting when the threat is ended?

24 A Correct. I mean, the -- the only reason we
25 are shooting is to stop the threat. And -- and that's

1 why we -- we don't fire or use tools after the threat
2 has been stopped. And so that's -- yeah, that's true.
3 The threat had -- had stopped at that point.

4 Q When you fired, were you aware that other
5 officers were firing or -- or not?

6 A I -- when I fired, no. I -- I wasn't aware
7 that anybody else was -- was going to fire. I knew
8 that I was going to fire and it was -- it was very
9 quick, like, all of a sudden, you know, he comes out
10 and he's coming at us.

11 And I raised up and I fired two rounds. And
12 I felt like everybody around me fired at exactly the
13 same time. It felt like -- it -- it was just -- it --
14 it might have been another rifle, AR or something,
15 that was next to me. It felt like it was pretty much
16 exactly the same.

17 Q Were -- were you surprised when he suddenly
18 came towards the police?

19 A Well, yes. I -- I mean, I was hoping that
20 we were going to be able to resolve the situation
21 with -- with -- without using any -- any more levels
22 of force, that we were going to be able to -- to -- to
23 do that.

24 But, yes, it was surprising. Like, we are
25 covering him and trying to get him to comply and then,

1 all of a sudden he's coming at you. And so, yes, I
2 mean, I was surprised. Like, now, there's really
3 only -- my only option is to -- to fire at him.

4 A Taser, if you were even to use a Taser at
5 that point, if it were even effective, he would pretty
6 much -- you know, he would be on top of you for the --
7 the Taser to be effective because of the distance that
8 the Taser travels. So, yes, I mean, I'm -- it was
9 what we had to do to prevent him coming at us.

10 MR. REES: Do you have any questions?

11 MR. JACKSON: No.

12 MR. REES: Questions from the grand jurors.

13 A GRAND JUROR: With all the commotion in
14 the room, you -- you said you didn't really hear
15 anything he was saying.

16 THE WITNESS: Mm-hmm.

17 A GRAND JUROR: And he was kind of ranting?

18 THE WITNESS: Yes.

19 A GRAND JUROR: Do you -- do you think that
20 maybe he -- do -- do you know if he heard what -- your
21 commands for him to drop his weapon? Do you know if
22 he heard you?

23 THE WITNESS: You know, I don't --

24 A GRAND JUROR: I mean --

25 THE WITNESS: -- I -- I'm sure he did 'cause

1 there were lots of commands that were given. You
2 know, he -- when -- when -- the initial command, when
3 I was the initial person talking to him, I was
4 probably one of the only ones that was giving him a
5 command --

6 A GRAND JUROR: Mm-hmm.

7 THE WITNESS: -- to drop the knife 'cause I
8 had visual contact with him first and I said, "Drop
9 the knife." And --

10 A GRAND JUROR: But people were running
11 around in chaos --

12 THE WITNESS: Mm-hmm.

13 A GRAND JUROR: -- weren't they, at that
14 time?

15 THE WITNESS: They were running around
16 inside, but he's --

17 A GRAND JUROR: Trying to get away?

18 THE WITNESS: -- I'm looking at him.

19 A GRAND JUROR: Yeah.

20 THE WITNESS: And I'm saying, "Drop the
21 knife." And I -- I can guarantee you he heard that.
22 And then when we're inside the room, I don't know what
23 he could hear. But as I mentioned earlier, there's --
24 our presence alone is a visual command as well.
25 I mean --

1 A GRAND JUROR: Mm-hmm.

2 THE WITNESS: -- when you have a line of
3 officers and we're firing less-lethal rounds --

4 A GRAND JUROR: Mm-hmm.

5 THE WITNESS: -- at you and you can see us
6 and we're yelling at you, that alone is something that
7 I think everybody in this room would understand, that
8 I need to comply with.

9 MR. REES: Anything else? Okay. If there's
10 no further questions, we'll excuse this officer.

11 Thank you for coming in.

12 MR. JACKSON: Stand right here and raise
13 your right hand.

14 **BRAD NUTTING**

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

17 **EXAMINATION**

18 BY MR. JACKSON:

19 Q You can have a seat.

20 Would you please state and spell your name.

21 A Brad Nutting, B-r-a-d. Last name is

22 N-u-t-t-i-n-g.

23 Q All right. And how old are you?

24 A Sorry. I'm 32, almost 33.

25 Q 32. And where are you employed?

1 A City of Portland as a police officer.

2 Q Okay. How long have you been a
3 police officer?

4 A Since January 25th of 2007, so a little over
5 11 years.

6 Q Okay. What have been your primary
7 assignments during that time?

8 A I've been a patrol officer during that time
9 for the most part.

10 Q The entire period?

11 A Yeah. There was a couple months where I
12 worked with our Central Precinct Street Crimes Unit,
13 which is an undercover position, as an opportunity to
14 learn some more things.

15 Q Okay. And aside from your normal training,
16 do you have any other specialized training or
17 certifications?

18 A I do. I am an AR-15 operator, a less-lethal
19 operator, a firearms instructor, a Taser instructor,
20 an AR-15 instructor. I was on our Special Emergency
21 Reaction Team, it's called SWAT, for about
22 two-and-a-half years, extensive training with that.
23 And I'm also enhanced crisis intervention trained
24 since approximately 2013.

25 Q Okay. And what is that last one that you

1 mentioned there?

2 A The last one is -- so we have -- everybody
3 in the Portland Police Bureau is trained in crisis
4 intervention training, which is called ECIT. It's a
5 40-hour program. I received it when I was first hired
6 along with everybody else in our advanced academy.

7 The enhanced crisis intervention training
8 is another additional 40 hours of training focusing
9 on dealing with people in crisis and helping resolve
10 those calls. And then every year we have ECIT
11 in-service, is what it's called, which is a ten-hour
12 in-service, updates, and we also do scenario-based
13 training on that as well at times.

14 Q So if police officers or patrol officers
15 have an encounter with somebody in a mental health
16 crisis, will a ECIT officer be brought in to kind of
17 assist or help handle the situation?

18 A So depending on the call and how it comes in
19 it's received by the Bureau of Emergency
20 Communications, which is 9-1-1, oftentimes, ECIT
21 officers are automatically dispatched, depending on
22 the call, or an officer can request an ECIT officer to
23 come and assist them. So I found myself on those two
24 different scenarios.

25 Q Okay. And in your capacity as a police

1 officer, ECIT-trained police officer, have you dealt
2 with people in mental health crisis?

3 A Yes. So my primary patrol area is downtown
4 in the PSU area. And we have a lot of -- not in the
5 PSU area, but a little bit north of there, a lot of
6 housing units.

7 And so I take a lot of calls in these places
8 that there's oftentimes multiple calls per night of
9 people in crisis or experiencing some sort of mental
10 health influence. And when I go to talk to them, it
11 kind of has that mental health aspect to it.

12 Q Okay. And have you relied on that --
13 that training to successfully talk to folks and
14 deescalate situations?

15 A Absolutely.

16 Q How often would you say you use that
17 training in your interactions as a police officer?

18 A I think I've utilized as training as kind of
19 an overall guise for how I operate as a police
20 officer. You know, it comes down to how you talk to
21 people, the demeanor, your body posture and also
22 assessing people and where they're at at that moment
23 and understanding what it is that, you know, is
24 affecting how their behavior or their responses are.

25 Q Does part of that training include

1 deescalation techniques?

2 A Yes.

3 Q Okay. And have you utilized those
4 successfully in your career?

5 A Yes.

6 Q All right. Is your appearance before this
7 grand jury voluntary?

8 A Yes.

9 Q And you're not under subpoena or otherwise
10 compelled to be here and present your testimony?

11 A Correct.

12 Q All right. So I want to take you now to
13 April 7th of 2018. Were you scheduled to work
14 that day?

15 A No, I came in on an overtime shift.

16 Q Okay. And so how did that occur?

17 A So I had been asked if I could work an
18 overtime shift previous -- prior to that day. And so
19 I came in at my normal time and my normal shift hours.
20 I normally work afternoons, which is 4:00 p.m. to
21 2:00 a.m. And so I came in for 4:00 p.m. start time
22 and I started.

23 Q Okay. And during that day, anything unusual
24 happen?

25 A No. The only thing that stands out is I

1 remember we had a high-wind advisory that day, just
2 bad, nasty weather.

3 Q Okay.

4 A Nothing abnormal other than that.

5 Q Okay. Nothing going on in your
6 personal life --

7 A No.

8 Q -- leading up to this?

9 Okay. Did you consume any drugs or alcohol
10 prior to starting your shift?

11 A No.

12 Q Or at any time during your shift?

13 A No.

14 Q Okay. Did the shift begin kind of as
15 normal, as usual?

16 A It did, yeah.

17 Q All right. At some point, did you become
18 aware of an incident down at MLK and Stark, a car
19 being abandoned in the street?

20 A It did.

21 Q Okay. What did you do -- or how did you
22 come across that information?

23 A So, initially, there was a call that was
24 broadcast on Central Precinct's radio net. So each
25 area geographically in the City has different radio

1 nets. And so we listened to Central where I work.
2 And it had been a rebroadcast of a stolen vehicle
3 involved in a -- what sounded like a road rage with a
4 gun involved.

5 So I was listening to that net and then the
6 same vehicle was broadcast in a wreck at Southeast MLK
7 and Stark. And so I immediately attached myself to
8 that call because geographically, where I'm located
9 at -- in my work area, I can get across the Hawthorne
10 Bridge and go help out with that call.

11 Q And so were you patrolling the PSU area
12 prior to going over?

13 A Yes.

14 Q Okay.

15 A So I was on Southwest 4th Avenue. I can't
16 give you an exact location. I just recall passing
17 through Southwest Market, which is a couple blocks
18 that way.

19 Q Okay. All right. So you already mentioned
20 there was a rebroadcast of a carjacking that this
21 vehicle was associated with?

22 A So I later learned that this vehicle was --
23 and it was the vehicle that was stolen by force out
24 in East Precinct. The broadcast I spoke to earlier
25 was a North Precinct call -- I don't remember the

1 exact location -- where a person had called into 9-1-1
2 and was reporting that they had been menaced and the
3 guy possibly had a gun and they had it on video.

4 And North Precinct officers were responding
5 to that location to investigate it. But they had
6 given out the same plate as -- as this MLK and Stark
7 wreck, which when I run the plate, it comes back to
8 the East Precinct incident and that information comes
9 in also.

10 Q Okay. So as you were coming into the area,
11 you were aware of both of those prior calls?

12 A I don't know at which point I -- I don't
13 remember at what point the East Precinct information,
14 I was made aware of. I knew about the North one for
15 sure 'cause I'd been listening to that and then
16 flipped back to Central and I attached to this call
17 after hearing that he had left on foot from the crash
18 scene where the vehicle ended up at MLK and Stark.

19 Q Mm-hmm.

20 A And my initial thought was, okay, we've got
21 a potential suspect running in the blocks who might be
22 armed with a pistol or a handgun, whatever was
23 reported.

24 Q Okay. So when you came into the area, what
25 -- what did you do?

1 know who I can look for now instead of a general
2 description of a white male with no shirt who had
3 their pants on with lots of tattoos. And I'm
4 continuing my area check.

5 There's a call that comes in at Jacksons
6 Food Mart, which is -- I work the west side of the
7 river, so I apologize. It's, like, a block and a half
8 south of Southeast Stark on Grand Avenue on the west
9 side of Grand Avenue. (Indiscernible) an exact
10 address, sorry.

11 But a call comes in there, so I'm continuing
12 my area check. At that point, I'm pretty far south.
13 I'm on, like, Grand Avenue and Taylor area. So I'm
14 coming back northbound on Grand. Out -- it comes out
15 that that guy had left, but it sounded potentially
16 like the same description as Mr. Elifritz.

17 But there was an added piece to it that he
18 now had a blue-and-red jacket on -- or, I'm sorry, a
19 blue-and-red jacket, not two jackets.

20 Q Mm-hmm.

21 A And so I just continue my area check, 'cause
22 there's, like, no other direction at that point.

23 Q And then at -- at -- at that point, had you
24 received information that this person was armed with a
25 knife or some other kind of weapon.

1 A Yes, sorry. I omitted that. There -- yeah.
2 So the original call at the Jacksons was that there
3 had been a male standing outside -- I think I recall
4 the time frame being, like, ten minutes -- holding a
5 knife and appeared to be under the influence of
6 opiates, heroin. I can't remember exactly which one
7 it was. That's what I can recall.

8 Q Okay.

9 A And then --

10 Q Go ahead.

11 A Sorry, go ahead.

12 Q No, go -- go ahead.

13 A And then there's -- so a block and a half
14 north of that location, an AMR, American Medical
15 Response, which is an ambulance, unit was at Southeast
16 Stark -- or, no. It was on Southeast Grand at
17 Southeast Stark. I believe they were at 509 Southeast
18 Grand Avenue on a call.

19 And they report this same described
20 suspect -- or subject with this red-and-blue jacket,
21 holding a knife and over at the doors to the shelter,
22 which is at 526 Southeast Grand Avenue.

23 And so I'm still northbound on Grand Avenue
24 and I go directly to them to talk to them and figure
25 out what information they have.

1 Q Mm-hmm. Did you do that?

2 A I did.

3 Q What information did you learn?

4 A So I went to contact them. They had a
5 patient which was totally unrelated to any of our
6 stuff that was going on. And so the medic in the back
7 directed me to the driver.

8 And he told me that, essentially, what he
9 saw was there was a guy standing outside holding a
10 knife and that they had locked him out of the shelter
11 and that he had left the location, but he didn't know
12 which direction he had went.

13 So I broadcast that on the radio to
14 everybody else there. At that time, we had multiple
15 cars on Grand Avenue; and, you know, between Stark and
16 a block and a half south of that for the Jacksons.

17 And I'm getting back in my car and getting
18 ready to continue the area check. At this point, I've
19 surmised that I don't know where he went to, so I
20 continue driving around to try and locate him.

21 Q Okay. And then what happened?

22 A So as I'm starting to drive away, another
23 officer gets on the radio -- and I don't know who it
24 was -- and says, "I'm out with a guy in front of the
25 shelter." And he's -- I think he said, "Start to go

1 through medical. He just cut his neck." And so --

2 Q Is this the information you heard over
3 the radio?

4 A This is information that's coming through on
5 the radio from another officer that's -- I'm assuming,
6 was behind me 'cause that's where the shelter ended up
7 being, is -- so I'm closer to Stark -- Southeast Stark
8 and the shelter is to my southeast at that point.

9 Q Mm-hmm.

10 A And so I stop my car and I get out. And
11 when I was speaking with the medic from AMR, Officer
12 Damerville was with me 'cause he had arrived at that
13 location as well.

14 And I remember he had his less-lethal
15 40-millimeter launcher with him. So I grabbed my AR
16 'cause I'm not -- I was never clear of how many people
17 were with us at that point. And so I grabbed my AR to
18 go provide him with lethal cover.

19 Q And why did you choose to bring the AR with
20 you as opposed to just relying on your handgun?

21 A Because of its accuracy --

22 Q Mm-hmm.

23 A -- the capabilities that it has to be more
24 accurate than a handgun.

25 Q Okay. So you decided to bring the AR,

1 Officer Damerville has the less-lethal launcher. Did
2 you have a less-lethal launcher with you?

3 A I did.

4 Q Okay. And why did you choose not to
5 bring that?

6 A Like I said, I didn't know exactly how many
7 people were with us and how many people -- 'cause I
8 had started to drive and had already driven away.
9 And my thought process was, okay. We've got a less
10 lethal initially.

11 I'll go provide him with lethal cover and
12 I'll, you know, choose this -- this system that's more
13 accurate to provide that for him, as he's going to be
14 the less-lethal operator initially.

15 And then, I mean, there was other officers
16 working that were in that area doing an area check
17 that had less lethal because, during the Jacksons
18 call, an officer had -- I'm sorry, had been dispatched
19 or self-dispatched to that call that was also less
20 lethal. And so I knew they were still in the area.

21 Q Okay. So you went over to the Cityteam
22 Ministries shelter door --

23 A Correct.

24 Q -- with Officer Damerville. What did you
25 see there?

1 A So Officer Damerville is standing in the
2 front door. It's -- I don't remember. I feel like
3 they -- I remember them opening outward, but it's got
4 a center post in the middle and he's standing on the
5 right side of the door.

6 There's people lined up on the outside of
7 the shelter as I'm coming up from the north, walking
8 south towards the shelter's entrance. And so we're
9 asking people, me included, like, "Hey, can you guys
10 move down the block? No standing in front of the
11 windows."

12 And I'm hearing them start to address --
13 there's other officers there -- start to address
14 Mr. Elifritz at this time inside. So I come up to the
15 door and Deputy Sieczkowski, who works on TriMet, but
16 is employed by Multnomah County Sheriff's Office, was
17 standing in the door with his pistol out.

18 And I let him know, "Hey, I'm here with a
19 rifle," just to, like, let him know that, "I'm right
20 here behind you." And so he ends up -- we make a
21 decision that we'll switch out.

22 So he steps back and I step forward, so I'm
23 right next to Officer Damerville and I'm in the
24 left -- the left door of the double doors.

25 Q And what did you see happening inside

1 the room?

2 A So, at that point, there's a lot of people
3 inside and they're all starting to gravitate towards
4 the north wall away from Mr. Elifritz, who was
5 standing there in -- in the middle of the room. And
6 there's a center-fed, like, downward staircase.

7 And he's standing closer towards us than
8 where that's at, but he's got the knife up and it's in
9 his right hand. And he's just intently staring and --
10 super-intense stare at the officers in the doorway.

11 And what I remember about him was there's --
12 what I believed was a cut that ran from the bottom of
13 his jaw on the right side to, like, his collarbone
14 area and the blood was running down onto the front of
15 a zipped-up jacket.

16 And he's still got the knife in his hand.
17 He's clenching it really hard. And then there's
18 commands being given and warnings being given by the
19 other officers on scene about, you know, dropping
20 the knife.

21 Q Did you give any commands?

22 A I didn't, the reason being is part of our
23 training is -- is when there's multiple people giving
24 commands and multiple people talking all at once, it
25 gets very confusing.

1 And it can oftentimes create confusion for
2 officers, for people involved, suspects, citizens.
3 And so I chose not to at that point because somebody
4 else was clearly articulating what needed -- you know,
5 what -- what the commands were and all that stuff.

6 Q Do you recall what commands were being
7 given?

8 A I remember, "Drop the knife. Drop the
9 knife. You're going to get shot with less lethal."
10 And it was either "less lethal" or "40 millimeter."

11 I can't remember what the exact verbiage
12 was, but there was a command to drop the knife and
13 then a warning of, "If you don't drop the knife,
14 you'll be shot with less lethal."

15 Q How did he respond to those commands?

16 A I don't recall him ever responding to them.
17 He just continued to look at us intently. His
18 shoulders were rolled up. He was posturing as if he
19 was, like, ready for a fight.

20 And, yeah, it -- I don't ever recall him
21 having any response to any sort of verbal contact
22 other than just continuing what he was doing and
23 failing to comply.

24 Q Okay. What happened then?

25 A Officer Damerville fires one 40-millimeter

1 less-lethal round and I remember watching it. And
2 from what I recall, it struck him right about where
3 your belt buckle would sit, which is where we're
4 trained to aim for, the belt line.

5 He was about -- I'm trying to think now --
6 seven to ten yards away from us inside the building at
7 this point, from what I recall. We're still standing
8 in the doorway kind of side by side. And there's a
9 guy sitting right in front of me.

10 I think there was a (indiscernible) right in
11 front of me. He's a little bit off to my left; but,
12 like, a couple yards in front of me and he's just,
13 like, frozen in fear. That's what I recall seeing on
14 his face.

15 And I'm watching the responses we're getting
16 from Mr. Elifritz and I -- I'm watching a round impact
17 and I see a quick grimace of, like, kind of a
18 tightening of the abdominal muscles, is what I would
19 kind of articulate what happened, but his behavior
20 doesn't change.

21 And then he starts to walk, kind of back
22 pedal, keeping us kind of in sight with the knife in
23 his hand. He's still not dropping the knife. And so,
24 now, I'm getting even more concerned about everybody
25 that's inside.

1 And I didn't know what he was going to do
2 and my biggest fear was he's going to go back towards
3 these other folks that have kind of tried to push
4 themselves away from the incident and go kill them
5 with his knife.

6 And I'm thinking at this time, like, I -- I
7 can't respond appropriately because there's people
8 behind him and I have to worry about that as far as
9 being lethal cover or being in that position to have
10 to take that shot. And so we're working on getting
11 the guy out in front of me as that's all happening.

12 Q Okay.

13 A And other people are trying to find a
14 way out.

15 Q And so you said that you're trained on the
16 less-lethal launchers as well, right?

17 A Correct.

18 Q And so when you saw that reaction or lack of
19 reaction from him being struck by one of those, what
20 -- what started going through your mind about other
21 options available to you to deal with the situation?

22 A At that point, when I saw his reaction, I --
23 my initial reaction back to his reaction was I told
24 Officer Damerville, "Hit him again," meaning, like,
25 send another round. We need to, like, keep trying

1 this because right now we don't have -- based on our
2 distance, his movement, we don't have something else
3 we can use right now to stop him from doing what he's
4 doing, other than, you know, getting up to lethal
5 force.

6 It's like the 40 millimeter provides us a
7 standoff distance. He's out of range of the Taser and
8 he's just -- so that -- that was my initial response
9 to that.

10 Q Okay. So there weren't -- it sounds like
11 there weren't any other options available to you at
12 that point to deal with the situation other than try
13 to hit him again with the less-lethal launcher?

14 A Correct.

15 Q Okay. So what happened then?

16 A So -- and I don't remember the exact
17 chronological order, but it's happening kind of
18 simultaneously. He started to move farther away
19 from us back towards the group of folks that is in
20 the northeast corner. And he comes around this half
21 wall on the other side away from us.

22 And there's a guy sitting there in a chair
23 and I remember him walking towards him. And that's
24 where I kind of left off earlier. Like, there were so
25 many people around him, I can't appropriately address

1 him if he starts trying to kill somebody with his
2 knife. And --

3 Q Do you mean you couldn't use deadly force?

4 A Correct.

5 Q And why is that?

6 A Because of what was behind him. There was
7 people behind him and I'm thinking as I'm essentially
8 coming up, looking for, like, what is my backstop, I'm
9 looking around. And I'm seeing people inside the
10 shelter just kind of stuck, trying to figure a
11 way out.

12 And I'm seeing a door, but I don't know
13 where it leads to in the back, in the northeast
14 corner. And then there's a stairwell door, but it
15 looks like it just leads upstairs off to the northwest
16 corner and then an entry door.

17 And so, like I said, simultaneously, this is
18 kind of all happening. And somebody -- there was
19 another officer behind me or maybe off to my right
20 that says, "Hey, we need to, like -- we need to find a
21 way where we need to move in."

22 I'm like, "Yeah, that makes sense. We need
23 to, like, get down this wall and protect these people
24 'cause he's moving towards them." And I think at that
25 point, Rich Bailey had shown up. He was another

1 less-lethal operator.

2 That's kind of the chronological part where
3 -- he might have been there before that, but after
4 that, I don't know exactly when he got the call. And
5 so as the person on the left side of the door, knowing
6 that I have other officers behind me, I say, "Okay.
7 Let's -- let's move towards the left."

8 And I don't know how articulate it, but
9 there was a plan made and then we moved to the left.
10 And I, basically, placed myself and the other officers
11 in between the people that are in side, kind of panic
12 stricken and frozen and they're up against that
13 north wall.

14 I placed ourselves in between them and
15 where -- where Mr. Elifritz is at, you know, in an
16 attempt to essentially provide them with a barrier of
17 us. And he responds by backing away from us towards
18 the southeast corner of the building -- or the room.

19 Q And is it your recollection that commands
20 are continually being given to him throughout that
21 time period or has that kind of fallen off?

22 A No. Commands were -- so I'm taking minutes
23 upon minutes to explain this. This happened very
24 quickly. Commands are continuing throughout this.
25 Warnings are still being given. I'm hearing them

1 from across the room.

2 I'm hearing, out of my right -- the right
3 ear, commands from -- so it basically created an L in
4 the room. There's officers on the west wall, which
5 was where the entry door was. And then I'm over on
6 the north wall towards the northeast corner. So I'm
7 hearing clearly commands from them.

8 I've got people behind me moving as far as,
9 like, citizens trying to move and find a way out. And
10 I'm hearing the commands throughout the
11 whole incident.

12 Q Okay. What happened next?

13 A So, at the point that he kind of backs away
14 from us, I mean, I don't know exactly where and
15 exactly when, but other less-lethal rounds are being
16 fired at him along with the commands and warnings.

17 He's continuing to hold this knife. And I'm
18 sorry, earlier, I kind of glossed over a point and
19 didn't articulate it. So when he had stepped behind
20 the half wall as we're moving in towards the north
21 wall, he's stabbing himself in the -- what I believed
22 was him stabbing himself.

23 I'm watching him take his right hand, which
24 he's been holding the knife the whole time and quickly
25 going towards the left side of his neck. And I'm

1 seeing little red marks that appeared to be consistent
2 with stab wounds, from what I've seen doing my job on,
3 you know, patrol. So I'm watching him stab himself as
4 we're moving in, just trying to create this barrier,
5 so --

6 Q Okay.

7 A -- jump back a little bit.

8 Q That's okay. So you've now seen him
9 actually stabbing himself and you're aware of his
10 conduct leading up to this encounter and throughout
11 the day. And so you said you're in the L, he kind of
12 moves back to the southeast corner, and then what
13 happened?

14 A And so, at this point, I'm really, really
15 worried about everybody else around here. Like, he's
16 -- he's willing to stab himself in the neck. He's not
17 following commands from officers. He's not being
18 affected by this 40-millimeter launcher after
19 multiple rounds.

20 And he's back in the southeast corner. And
21 he pauses for a moment and he's still holding the
22 knife in his right hand and his shoulders are rolled
23 forward, like I said earlier, just kind of in this
24 fighting stance like he's ready to get in a fight.

25 And then, all of a sudden, he starts moving

1 towards the officers that are on the west. So -- so
2 he starts moving really intently, very fast. It
3 wasn't a stroll. And he's holding the knife and he's
4 moving towards the officers along the west wall.

5 And as I'm -- I'm on target and I'm getting
6 ready to take a shot. As I'm getting ready to take
7 that shot and I've taken my shot, I'm hearing other
8 rounds go off as well. I'm thinking I'm hearing
9 40 millimeter as well as other lethal rounds going
10 off.

11 And I fire once at the point that he's still
12 advancing towards them 'cause the whole time that he
13 started moving towards them in the manner he's moving,
14 I'm thinking, he's going to go kill one of these guys.

15 Q That's what you thought would happen if you
16 didn't take action?

17 A Yeah.

18 Q Okay.

19 A 'Cause I'm hearing the rounds go off and I'm
20 not seeing any response from him at all. Like, he is
21 continuing to walk forward. And so, like I said, I --
22 I used lethal force to try and stop him from being a
23 threat towards those officers.

24 Q Did you feel like you acted consistent with
25 your training and Police Bureau policy on the use of

1 deadly force?

2 A Yes.

3 Q Okay. After you fired your one shot, what
4 happened then?

5 A So after I fired the shot, I'm still
6 assessing his behavior and the change. He had stopped
7 moving forward, which is why I only fired one round
8 during the incident. And, basically, he falls to the
9 ground at that point.

10 And then I'm still holding lethal cover
11 'cause that was my primary role on this call, but also
12 trying to work through with everybody else that's
13 there on, okay. Like, how do we render aid to this
14 guy? How do we safely approach him? Where's the
15 knife at? Going through the post-shooting stuff that
16 we train to do.

17 Q Mm-hmm. At any point, did you consider
18 using a different tool at your disposal besides
19 the AR?

20 A No.

21 Q Why not?

22 A There was nothing -- as I spoke to earlier,
23 there was nothing that I had with me that was going
24 to be, A, capable of being deployed on him; i.e., the
25 Taser. And, I mean, I would have to put away my

1 lethal cover tool, which was my rifle, to go to
2 another less-lethal tool.

3 Therefore, I'm pulling myself out of the
4 role that Officer Damerville and I had already
5 established. And it's -- it's a partnership. He
6 knows that his job is to be less lethal. My job is to
7 be the lethal cover for him and to protect him. And,
8 like I said, I -- there was just nothing else there
9 that I could have used.

10 Q Was there even time to have made that type
11 of a transition from when you perceived him moving
12 toward the officers with the knife?

13 A No.

14 MR. JACKSON: Okay. Do you folks have any
15 questions?

16 Okay. Thank you very much.

17 MR. REES: That's it for today.

18 MR. JACKSON: So that concludes our
19 testimony for today. We want to go off.

20 * * *

21 (Grand Jury No. 1 adjourned,
22 Volume 2, 5-7-18 at 4:50 p.m.)

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

--oOo--

REPORTER'S CERTIFICATE

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

Katie Bradford, CSR 90-0148
Court Reporter
(503) 267-5112