

MULTNOMAH COUNTY GRAND JURY

DEATH INVESTIGATION

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

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TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled transcript of GRAND JURY proceedings was heard, commencing at the hour of 9:12 a.m. on Monday, October 29, 2018 at the Multnomah County Courthouse, Portland, Oregon.

APPEARANCES:

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

\* \* \*

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Certified Shorthand Reporter  
Portland, Oregon

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P R O C E E D I N G S

Monday, October 29, 2018

MR. JACKSON: Good morning. This is Deputy District Attorney Todd Jackson appearing before Grand Jury Number One. This is Grand Jury Case Number 79, and this is DA Case Number 2390609-1 and 2.

This is a death investigation following the use of firearms by police, which caused the death of Mr. Patrick Kimmons on September 30th, 2018 in the city of Portland.

The first witness to be called before the Grand Jury is Detective Darren Posey.

Would you please stand up and raise your right hand?

DETECTIVE DARREN POSEY

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

EXAMINATION

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BY MR. JACKSON:

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

A. Darren Posey, D-A-R-R-E-N, P-O-S-E-Y.

Q. And what is your occupation?

A. I'm a detective with the Portland Police.

Q. How long have you been a detective?

A. I've been a detective for approximately 12 years.

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

A. I've been a police officer for 21 years with the Portland Police Bureau and then an additional three years as a reserve deputy for Multnomah County.

Q. And since your time being a detective, what different details have you worked for?

A. I've worked in various different areas. I've worked in our afternoon shift detectives, which did various different cases from assault, assisting homicide, assisting in sex assault cases.

I've worked, over my 12-year period, in various different places. For about nine years, I worked in robbery detail. During that time, I worked in conjunction with the FBI Task Force and have been certified

1 to work with the FBI and take cases federally, as well as  
2 with the ATF. I worked on a gun task force for a period of  
3 time during that and preparing cases for federal  
4 prosecution.

5 Along with that, I've worked in sex assault.  
6 And then recently, in January 2018, I started working with  
7 homicide detail, focusing on homicides and suspicious  
8 deaths and officer-involved shootings.

9 Q. Okay. And have you received special training  
10 in the areas of homicide investigations and  
11 officer-involved shootings?

12 A. Yes, I have. Over the course of our training  
13 as detectives, we go to different conferences. We go to  
14 different training seminars dealing with officer-involved  
15 shootings themselves, as well as homicide investigations.

16 Q. Okay. And have you assisted in the  
17 investigation of the use of deadly force by police officers  
18 before?

19 A. Yes, I have.

20 Q. All right. Could you briefly take us through  
21 how the Portland Police Bureau investigates an  
22 officer-involved shooting or the use of deadly force by  
23 police officers?

24 A. Okay. So to kind of go with who responds to  
25 an officer-involved shooting to start off with.

1 Officer-involved shooting investigations are conducted by  
2 the homicide detail.

3 They also get additional support from the  
4 Major Crimes Unit for Multnomah County, who will provide  
5 additional investigators from other agencies within  
6 Multnomah County.

7 A -- essentially, a complete investigative  
8 team is dispatched to manage the crime scene, and that also  
9 includes the forensic evidence division, who also provides  
10 criminalists to help assist in identification of evidence  
11 and collection.

12 I'll go into patrol responsibilities. So with  
13 patrol responsibilities, the initial response to  
14 officer-involved shootings takes place with patrol response  
15 and establishing a protected crime scene.

16 So, essentially, over the course of time,  
17 we've trained officers to set up as big of a crime scene as  
18 possible, and then we have an inner and an outer perimeter  
19 that we have.

20 So involved officers are removed from that  
21 scene as soon as practical. The officers on scene will  
22 also work to identify witnesses and separate them out as  
23 well.

24 Q. Does that include both officer witnesses and  
25 nonofficer or civilian witnesses?

1           A.     Correct.  So -- so, essentially, what happens  
2     is officers who witnessed the shooting, they'll be  
3     separated as well, and then the citizen witnesses will also  
4     be separated out.

5                     With that, officers who were involved in the  
6     shooting incident will be provided an uninvolved officer so  
7     that they can, one, just monitor the officer, as well as  
8     keep them separate from other people and prevent them from  
9     talking about the incident at that point in time.

10                    With that is, the detective response takes  
11    place.  So once that's been established, there's a call-out  
12    procedure that takes place where the on-scene supervisors  
13    will take -- will make the call-out so that obviously all  
14    the resources out can come and show up for the incident in  
15    the beginning of the investigation.

16           Q.     Okay.

17           A.     So should we go to the detective  
18    responsibilities?

19           Q.     Sure.

20           A.     Okay.  So the homicide detail runs these  
21    investigations and coordinates the resources needed for the  
22    particular incident.

23                    Supervisors for the homicide detail set up  
24    officer briefings and supervisor briefings and then  
25    delineate assignments for the detectives who show up.

1           So after assignments have been completed, we  
2 also conduct further briefings in order to share that  
3 information gathered and potentially develop further  
4 evidence and witness information through those briefings  
5 together.

6           What we initially do is we'll set up a command  
7 post for a particular location, and we use that. It's our  
8 mobile command center that we use to essentially run the  
9 investigation. We have a place to be able to talk about  
10 things privately and be able to work together and share  
11 information.

12           During this investigative process, a deputy  
13 district attorney is present to provide any support and  
14 oversight.

15           Separation of witnesses, so I want to go into  
16 that just a touch at this point. As part of the  
17 investigative process, we do that for an important reason.  
18 One, we want to maintain what people have seen and their  
19 memory and keep it secure from other people's, what they've  
20 seen and what they've heard.

21           Oftentimes, in traumatic incidents, things of  
22 this nature, it's a natural reaction to talk about it with  
23 other people, but we know that that also tends to start to  
24 change other people's memory of what they saw in the  
25 situation. So what we do is we separate people in that

1 fashion.

2 That's why we also provide an uninvolved  
3 officer to be with our involved officers so that they can,  
4 you know, have somebody that they can be with, but also  
5 that person can monitor them so that they're not talking  
6 about the situation.

7 Q. Do the detectives also become involved in  
8 crime scene processing with the Forensic Evidence Division?

9 A. So part of the work that's done with a  
10 call-out from the homicide detail is we'll separate out a  
11 group of detectives who worked at the scene, as far as  
12 evidence collection, and they work with the criminalists in  
13 order to document the crime scene. And then we'll have  
14 another set of detectives that will work on conducting  
15 witness interviews.

16 So we -- we kind of separate people out to  
17 manage those things.

18 Q. In an officer-involved shooting where firearms  
19 were involved, is something called a round count also  
20 completed by detectives?

21 A. Yes.

22 Q. What is that?

23 A. So essentially what we do is the involved  
24 officers will come to us, and we will take their firearms  
25 and take their ammunition that they have, and we

1 essentially count down their ammunition that they have on  
2 their person.

3 From that, what we do is we determine what or  
4 how many rounds were fired based upon the ammunition that  
5 they were carrying on their person.

6 Q. So is it known how many bullets the officer  
7 had when they started their shift, for example?

8 A. Yes. So training dictates that the set up of  
9 our firearms is that we're -- we're provided three  
10 magazines, one for the gun or pistol, and then two extra  
11 magazines.

12 Each magazine in a Glock 17, which is our  
13 standard bureau-issued sidearm, is 17 rounds. So typically  
14 how we're trained is when you load your firearm, you'll  
15 load the firearm with the round chamber in it so that  
16 there's one in the barrel, and then that will leave 16  
17 rounds in the magazine. We then top off that magazine so  
18 that it has 17 rounds in it again, and we insert that  
19 magazine.

20 So the officer will have 18 rounds in the  
21 handgun, and then they'll have two additional magazines,  
22 typically, of 17 rounds.

23 Q. And so if you count the number of remaining  
24 rounds following an officer-involved shooting, you can  
25 determine how many rounds that officer fired in the

1 incident?

2 A. Yes.

3 Q. Okay. What is a communication restriction  
4 order?

5 A. So a communication restriction order is done  
6 by our lieutenant in the detective division. Essentially,  
7 what it is is it's an order telling the witness officers  
8 and the involved officers to not talk about the incident  
9 with anybody else.

10 Q. Okay. Otherwise, known as a gag order?

11 A. Correct.

12 Q. Okay. So moving now to this case, on  
13 September 30th of 2018, were you called out to investigate  
14 an officer-involved shooting?

15 A. Yes, I was.

16 Q. What time did you receive the call?

17 A. I'm not exactly sure what time I received the  
18 call. I -- I think I arrived on scene at about 4:50 a.m.  
19 I believe the crime scene log was established at 0324 hours  
20 that morning.

21 Q. All right. And who called you out?

22 A. I was called by Sergeant Hughes, my homicide  
23 detail sergeant.

24 Q. And in that initial call, did you learn that  
25 an officer-involved shooting had occurred at Southwest

1 Third and Harvey Milk, formerly known as Stark Street, in  
2 downtown Portland?

3 A. Yes.

4 Q. And is that where you responded?

5 A. That is where I responded. We had -- the  
6 officers had set up a -- the mobile precinct on Southwest  
7 Third between Southwest Oak and Southwest Harvey Milk  
8 Street.

9 Q. Okay. Who responded with you to the scene?

10 A. We had a full complement of detectives from  
11 the homicide detail. I'm trying to remember everybody that  
12 was there.

13 Essentially, most of the -- the homicide  
14 detail was there at that point in time. We had several  
15 detectives, including, I think, a Gresham detective as well  
16 who responded to assist with interviews and the crime  
17 scene.

18 Q. Okay. And did a member of the district  
19 attorney's office also respond to the scene?

20 A. Yes.

21 Q. And homicide sergeants and other command  
22 staff?

23 A. Correct.

24 Q. Okay. Could you kind of take us through some  
25 of the preliminary investigative steps you took in this

1 case?

2 A. So the first order of business, Sergeant  
3 Hughes and I, along with Rico Beniga, who's also a homicide  
4 detective, we conducted a briefing with Sergeant Schmautz  
5 and Sergeant Wuthrich.

6 They were the on-scene sergeants and arrived  
7 shortly after the officer-involved shooting had taken  
8 place.

9 Q. Are they members of patrol?

10 A. Yeah. They're patrol sergeants, I believe,  
11 for Central Precinct.

12 Q. Okay. And at that point, had patrol already  
13 established a crime scene?

14 A. Yes, they had.

15 Q. And when you and the other homicide detectives  
16 arrived, did you assume control of the crime scene?

17 A. Yes.

18 Q. Had patrol also identified several witnesses?

19 A. Yes, they had.

20 Q. Okay. And were those witnesses separated  
21 pursuant to the protocols you just outlined for us?

22 A. Yes, they were.

23 Q. And did those witnesses include both civilian  
24 and officer witnesses?

25 A. Yes.

1 Q. Were the involved officers also identified?

2 A. Yes, they were.

3 Q. And were they removed from the scene and  
4 separated?

5 A. Yes.

6 Q. And was a noninvolved officer posted to stand  
7 guard over them?

8 A. Yes.

9 Q. Ultimately, were communication restriction  
10 orders, similar to what you just described, given to the  
11 involved officers in this case?

12 A. Yes, they were.

13 Q. And who were the involved officers?

14 A. The involved officers were Sergeant Britt and  
15 Officer Livingston.

16 Q. What is the name of the person who was shot by  
17 police in this case?

18 A. The name of the person shot by police was  
19 Patrick Kimmons.

20 Q. How was he identified?

21 A. He was identified by Officer Asheim, and he  
22 was identified when he was being loaded into the ambulance.

23 Q. Was he also formerly identified, after the  
24 autopsy, by criminalists with the Portland Police Bureau's  
25 Forensic Evidence Division?

1 A. Yes.

2 Q. So you said you received a briefing -- a  
3 preliminary briefing about the events that had transpired  
4 that night?

5 A. (Nodding head).

6 Q. At this point, I'd like to have you take a  
7 look at the board up here.

8 A. Uh-huh.

9 Q. Do you see this aerial map of Southwest  
10 Portland?

11 A. Yes.

12 Q. Could you come up to the board and indicate  
13 for us where it was that you responded that night?

14 A. So this is the SP Plus parking lot. This  
15 is -- it says Southwest Stark, but it's also Southwest  
16 Harvey Milk Street. This is Southwest Third. This is  
17 Southwest Fourth.

18 The mobile command center was set up just back  
19 here on Southwest Third.

20 Q. And we can see along the top of the screen  
21 here, is that the Burnside Bridge?

22 A. Yeah. So the Burnside Bridge is up to the  
23 north, and Southeast Morrison Bridge is to the south.

24 Q. Okay. And can you describe what we're seeing  
25 here in terms of this map?

1           A.     So this is a closer-up view of the parking lot  
2 that's surrounded by Third, Fourth and Stark.

3                     This building here is the Church of  
4 Scientology building. This over here on this side, there's  
5 a nightclub that's called the Golden Dragon, and then over  
6 here there's also another nightclub.

7                     Our incident takes place in this parking lot.

8           Q.     Okay. And did the Church of Scientology have  
9 cameras mounted on the back side of that building?

10          A.     Yes. So I'll go into the video canvass that  
11 we do.

12                     So any time that we have a crime incident take  
13 place, part of our work is to do what's called a canvass.  
14 We look around for cameras and places that would have video  
15 systems in place for security purposes.

16                     In this particular location, there are two  
17 cameras that are located approximately here and  
18 approximately here, and there's the Church of -- they  
19 belong to the Church of Scientology. They cover all of  
20 this parking lot. They also cover outside this street as  
21 well. They have a camera on this side.

22          Q.     For the record, you're indicating along  
23 Southwest Third Avenue?

24          A.     On Southwest Third Avenue, correct.

25          Q.     Between Stark or Harvey Milk and Oak Street?

1 A. Yes.

2 Q. Okay.

3 A. On the east side of Southwest Third, there  
4 were camera -- cameras located at several businesses at  
5 this location, and then to the south on Southwest Harvey  
6 Milk, the Hi-Lo Hotel also has a camera that covers their  
7 area just in front of the building.

8 Q. Okay.

9 A. We weren't able to locate any cameras that  
10 were directly in the direction of the parking lot on the  
11 west side.

12 Q. You mean Fourth Avenue, the west side of the  
13 parking lot?

14 A. Yes, correct.

15 Q. Okay. So when you arrived on scene, was  
16 Mr. Kimmons there or had he already been transported to the  
17 hospital for treatment?

18 A. He had already been transported to the  
19 hospital for treatment.

20 Q. Okay.

21 A. And upon arrival, I had learned that he had  
22 passed away.

23 Q. In that initial briefing, did you also learn  
24 that Mr. Kimmons had shot two people in that parking lot?

25 A. Yes.

1 Q. And what did you do in response to that  
2 information?

3 A. First of all, we -- we knew that on --  
4 according to the information that we had, we had heard and  
5 found out that there was an altercation on this east side  
6 next to Southwest Third. There was a fight and a shooting  
7 that took place on this side of the street, on the west  
8 side of Southwest Third in the parking lot.

9 We extended the crime scene once that had been  
10 determined, and one of the things that we did while we were  
11 investigating is we conducted a walk-through with Officer  
12 Moore who was a witness officer, and he helped point out  
13 where some of the people were located as they -- as they  
14 had arrived and watched what unfolded.

15 And so they also indicated some of the areas  
16 of fire that they saw take place. So down at this end of  
17 the street, Patrick Kimmons was here, and essentially his  
18 direction of fire that he shot was towards the north  
19 towards the Scientology building.

20 Q. Okay. And then where did the second shooting  
21 occur, according to the information you learned, involving  
22 the police officers?

23 A. So the second shooting that takes place takes  
24 place just up from -- from this location, and it takes  
25 place approximately right here.

1           So if we split the parking lot in half, one  
2 shooting takes place here after a fight that takes place.  
3 And then the second shooting, which involves the officers,  
4 takes place just back here, probably five or six spaces  
5 back up.

6           Q.    Into the parking lot?

7           A.    In, yeah, towards the west into the parking  
8 lot.

9           Q.    Okay. And so when you learned that there are  
10 suspected people with gunshot injuries, what do you do with  
11 that information?

12          A.    So we -- first response is any time a hospital  
13 receives gunshot wound patients, they notify police. So we  
14 were informed of that information.

15                And so in addition to officer response, we  
16 also sent a group of detectives to the hospital because  
17 information -- initial information from this scene said  
18 that there was likely other people injured who had left the  
19 location and maybe gone to a hospital.

20          Q.    And so which hospital did you receive word had  
21 received people suffering from gunshot wounds?

22          A.    So Emanuel Hospital made contact with police  
23 that they had received two subjects who had -- who arrived  
24 with gunshot wounds.

25          Q.    Okay. And did you send patrol officers and

1 ultimately detectives out to investigate --

2 A. Yes.

3 Q. -- that shooting?

4 A. Yes.

5 Q. Okay. And did you ultimately learn that the  
6 two people who had arrived at Emanuel Hospital had been  
7 shot at this scene at Harvey Milk and Third by Patrick  
8 Kimmons?

9 A. Correct.

10 Q. Okay. Now, you mentioned that -- well, first,  
11 did those two individuals survive their gunshot injuries?

12 A. Yes, they did.

13 Q. You mentioned that you conducted a  
14 walk-through with witness Officer Moore?

15 A. Correct.

16 Q. And during that walk-through and any time  
17 period following, were you and other detectives able to  
18 identify items of evidence to corroborate the information  
19 you had learned in your briefing?

20 A. Yes.

21 Q. Okay. I'm going to put this board up right  
22 here. You can help me attach it on that side.

23 Okay. And so what do we see here on this  
24 board?

25 A. Okay. So what we're looking at here is a

1 basic diagram of the parking lot. Obviously, it's not to  
2 scale.

3 Here we have -- circled are the items of  
4 evidence that we collected from the scene.

5 You'll note, just as a general overview, that  
6 we have essentially two sets of -- or zones, so to speak,  
7 of evidence.

8 You'll notice that on this side of Southwest  
9 Third on that west side, partially in the parking lot and  
10 outside of the parking lot, items of evidence. And then we  
11 have a clear distinction, separation; and then we have a  
12 whole other set of items of evidence that are recovered.

13 So it clearly delineates there's two different  
14 areas of involvement going on in that parking lot.

15 Q. And does this scene, although not to scale, at  
16 least note where the vehicles in the parking lot were  
17 located shortly after the crime occurred?

18 A. Correct.

19 Q. Okay.

20 A. So each of these little boxes here, as you  
21 see, are -- are vehicles.

22 These two vehicles up here are going to be the  
23 police patrol vehicles, and these vehicles here are  
24 citizens' vehicles.

25 Q. All right. And so did the Forensic Evidence

1 Division and detectives document the crime scene  
2 photographically?

3 A. Yes.

4 Q. And have you looked at the photographs taken  
5 from -- or by the Forensic Evidence Division?

6 A. Yes, I have.

7 Q. If you look up on the board here, the TV here,  
8 what do we see?

9 A. So we're in the parking lot. We're kind of  
10 central in the parking lot, but on the east side of it.  
11 We're looking eastbound, and that's Southwest Third that  
12 we're looking at.

13 And across from -- from that patrol car that's  
14 kind of straight ahead, that one there, that's the Golden  
15 Dragon straight across.

16 Q. Right here?

17 A. Yeah.

18 Q. Okay. And so if we look at this line, we're  
19 kind of looking in this general orientation?

20 A. Correct.

21 Q. Okay. And this photograph is taken in broad  
22 daylight?

23 A. Yes.

24 Q. When you responded to the scene, do you  
25 remember -- well, you said it was about 4:00 in the

1 morning?

2 A. Yeah.

3 Q. 4:30?

4 A. Yeah.

5 Q. Was it dark out still?

6 A. Yeah. It was still dark out when I arrived.

7 Q. And what is the lighting like in this parking  
8 lot?

9 A. It's general lighting. It's streetlights.  
10 There is overhead lights that shine down on the parking  
11 lot.

12 Q. What are these little white boxes that we can  
13 see on the ground there?

14 A. So those are placard markings. They're raised  
15 up like that so that when -- when the area is scanned for  
16 measurement purposes, you can take measurements and also  
17 identify things at a distance.

18 Q. Okay. And so what are some of the items of  
19 evidence that we see marked here in this photograph?

20 A. So some of the items that we're looking at  
21 here, I'll point it out. So underneath the car, you'll  
22 notice there's a cone. That's a bullet.

23 Some of the other items, I think this  
24 particular item, is a taillight cover that was knocked out  
25 by gunfire.

1                   Down here, there's another bullet that was  
2 located at number 19, and then out here there's some other  
3 items, as well as some blood spots, that are located out  
4 here.

5           Q.     What do we see here?

6           A.     So this is number 32, and down below is a  
7 spent bullet.

8           Q.     And then on the left rear of this Audi A4,  
9 there's a sticker noting G.

10          A.     Yes.

11          Q.     And what is that?

12          A.     So this is a bullet strike. And so you'll see  
13 some other of these types of labels.

14                   Typically, we use those for an item that we're  
15 going to photograph, but can't necessarily capture except  
16 for photograph.

17                   It indicates that it's a bullet strike.

18          Q.     Okay. And the vehicle we're looking at, if  
19 you go back to this line diagram, is this one V7 here?

20          A.     Correct.

21          Q.     Okay. What are we looking at here?

22          A.     So here we're looking at this Toyota Corolla.  
23 And you'll notice down here there's a little sticker, and  
24 there's another bullet strike right there.

25          Q.     And on our line diagram, is that vehicle 6?

1 A. Correct.

2 Q. Okay.

3 A. That's a -- that's a close-up, again, a bullet  
4 strike. That's H.

5 Q. Okay.

6 A. So these are cones located here. The one that  
7 I'll point out that is important, this is a spent bullet.

8 Also to note about this particular bullet as I  
9 viewed it, as also on number 32, both of those bullets are  
10 not any ammunition that we would carry.

11 Q. "We" being?

12 A. "We" being the police.

13 They're a bullet that I know from my training  
14 and experience as something that would come out of a  
15 revolver.

16 Q. Okay.

17 A GRAND JUROR: What number is that one?

18 THE WITNESS: That's 19.

19 A GRAND JUROR: Thank you.

20

21 BY MR. JACKSON: (Continuing)

22 Q. And do the police carry revolvers?

23 A. No.

24 Q. And then we have another placard here, 20.  
25 What is that?

1 A. Placard 20 is a blood stain.

2 Q. On the street?

3 A. On the street.

4 Q. Okay. If we look back at our diagram here, 19  
5 and 20 oriented in this location here that we see.

6 A. Uh-huh.

7 Q. What is this?

8 A. So this is the spent bullet, number 19. You  
9 can see it laying there; blood.

10 We have some other items that were dropped: a  
11 person's ID, some money and a lighter, and then we also  
12 have some more blood droplets over here.

13 Q. What is this?

14 A. This is the bullet that was recovered.

15 Like I said, it's a common bullet that would  
16 be potentially used in a revolver. This could also be used  
17 in a semi-auto pistol. But typically for revolvers, they  
18 will use a -- either fully -- fully copper jacketed bullet,  
19 and it also is a -- a snub nose or sometimes referred to as  
20 a wadcutter type of style.

21 Q. Is that what you see here marked as number 19?

22 A. Yes.

23 Q. Okay.

24 A. These are blood droplets.

25 Q. And they're marked by number 20?

1 A. Number 20.

2 Q. Okay. And what is this?

3 A. This is 21, and these are on the part of the  
4 white line on the roadway. These are further blood  
5 droplets.

6 Q. Okay. Marked here on our line diagram?

7 A. Yes.

8 Q. What is this?

9 A. More blood drops.

10 Q. There's some on --

11 A. You can see some further out.

12 Q. What number is that marked?

13 A. 23.

14 Q. (Indicating)?

15 A. Yes.

16 Q. So if we look at 20, 21 and 23 in their  
17 orientation within the crime scene, does it appear that's a  
18 blood trail?

19 A. Yes, it is.

20 Q. Okay. If the person -- or shooting occurred  
21 in the parking lot, as the evidence at least at this point  
22 in your investigation indicated, that would be a blood  
23 trail leading away from the parking -- or from the scene?

24 A. Yes.

25 Q. Okay. And so that was kind of an explanation

1 of this portion of the crime scene in the northeast corner  
2 of the parking lot?

3 A. Correct.

4 MR. JACKSON: Do the grand jurors have any  
5 questions about that before we move to the second location?

6 A GRAND JUROR: Do we know whose blood the  
7 droplets belong to?

8 THE WITNESS: Yes. The -- let me explain a  
9 couple of things.

10 One of the things that we note about the blood  
11 droppings is that they stop there. Also, we know that two  
12 vehicles left this location directly after the shooting,  
13 and one of those vehicles, as we later determined, was  
14 parked right there.

15

16 BY MR. JACKSON: (Continuing)

17 Q. And where did those vehicles go?

18 A. Those vehicles went to Emanuel Hospital.

19 Q. And did the evidence indicate that they were  
20 carrying people who had been shot by gunfire?

21 A. Yes, they did.

22 Q. And were bleeding?

23 A. Yes.

24 Q. Okay. And who were the two individuals that  
25 were transported to the hospital?

1           A.     So the first person that arrived was Marcel  
2 Branch, and then the second person to arrive was Dante  
3 Hall.

4           Q.     And is Dante Hall also known as Manny Hall?

5           A.     Yes.

6           Q.     Okay.

7           A.     And a word of note with respect to that,  
8 Patrick Kimmons, who was identified here by Officer Asheim,  
9 also notes that he's familiar with Patrick Kimmons and  
10 Dante Hall. He's had personal interaction with both of  
11 those subjects, and he knows that they're friends.

12          Q.     Okay.

13                 MR. JACKSON: Any other questions about this  
14 portion of the crime scene before we move to the other?

15                 I don't see any. All right.

16

17 BY MR. JACKSON: (Continuing)

18          Q.     So, Detective, could you just give us an  
19 explanation of what this photograph is here?

20          A.     Okay. So these are the two patrol vehicles  
21 that were in the lot prior to the shooting, and that's  
22 prior to both shootings. These placards here are  
23 essentially all of the casings that we recovered from the  
24 officers' guns. And we're, again, looking eastbound  
25 towards Southwest Third from this location.

1 Q. You can see on the right side of this  
2 photograph, there's a patrol vehicle marked "Supervisor  
3 Car"?

4 A. Yes.

5 Q. And so on our line diagram, "Supervisor Unit,"  
6 is that this vehicle here?

7 A. Correct. We're at the west end of the parking  
8 lot.

9 Q. Looking east across?

10 A. Looking east across.

11 Q. On our line diagram, "Pay Booth," is that the  
12 orange building you can see on the left side of this screen  
13 here?

14 A. Yes.

15 Q. Now, what is the orientation of this  
16 photograph?

17 A. So now the camera has moved up. We're at the  
18 front of the patrol vehicles looking east. This is the  
19 casings collection zone.

20 Q. Okay. And then can you also see the placards  
21 noting the gunfire evidence and blood evidence from the  
22 initial shooting?

23 A. Yes, which is further down here at the  
24 furthest east end of the parking lot.

25 Q. So on our line diagram, this photo is taken

1 basically from the front right bumper of this patrol car  
2 looking east?

3 A. East, correct.

4 Q. What is this photograph?

5 A. So this is a nighttime shot. This is to give  
6 you perspective of what it might look like.

7 Of course, you have to understand that in this  
8 particular photograph, there's back lighting from the  
9 officer's -- from the criminalist's camera system.

10 But you'll note that there's general  
11 streetlights, as well as a streetlight towards the parking  
12 lot itself shining down in this -- in this direction.

13 So for a city area, it's appropriately lit.

14 Q. And these photographs we've been looking at,  
15 were they taken before anything had been moved within the  
16 crime scene?

17 A. Correct.

18 Q. So once patrol came on scene, set up the crime  
19 scene and froze it, in essence --

20 A. This is a picture of that.

21 Q. This is what we're seeing?

22 A. Correct.

23 Q. Okay. What's this a photo of?

24 A. So this is another perspective on the other  
25 side of those two patrol cars looking southeast. These are

1 the casings, 1 through 12, that we identified that came  
2 from police officer handguns.

3 Q. Okay.

4 A. So as you can see, there's casing 11 and 12  
5 here. You'll note on this black Acura, there's a bullet  
6 strike. There's also another bullet strike here. And then  
7 in this trunk, there's a bullet recovered.

8 Q. Okay. And on the Toyota Camry, silver, parked  
9 to the south of that Acura there, is there a bullet strike  
10 on that vehicle as well?

11 A. There's another bullet strike right here.

12 Q. Okay. What is the item marked by placard  
13 number 13 in the parking stall there?

14 A. So number 13 is a five-shot black-colored  
15 Taurus revolver.

16 Q. And that's located basically in approximately  
17 the middle of the parking stall that is empty?

18 A. Yes.

19 Q. And on our line diagram, that's marked right  
20 here?

21 A. Yes.

22 Q. Okay. What do we see here?

23 A. So here's a close-up view of 13, the revolver,  
24 and then here are some medical supplies. This is a medical  
25 kit that we carry, our police officers carry, and then here

1 in this planter, there's some eyeglasses.

2 And so there's just some medical supplies that  
3 were from when officers treated Patrick Kimmons for some of  
4 his injuries.

5 Q. So the officers, post-shooting, rendered  
6 medical aid to Mr. Kimmons?

7 A. Yes.

8 Q. What's this?

9 A. So we're looking south. This is the red truck  
10 that's in the background from the previous picture. And  
11 you'll note that there's some bullet strikes. So we have D  
12 here.

13 There's also E on top, which is a --  
14 essentially a skip across the top of the tonneau. There's  
15 a portion of a spent bullet down here on 15.

16 Q. Marked by 15?

17 A. (Nodding head).

18 Q. And if we look at our line diagram, is that  
19 red truck marked as vehicle 5 --

20 A. Yes.

21 Q. -- here parked along the north side of Harvey  
22 Milk Street or the south side of the parking lot?

23 A. Yes.

24 Q. Okay. Turning back to the item marked as  
25 number 13, the revolver, can you explain a little bit about

1 what we're seeing here?

2 A. So this is a downward view picture. It's  
3 obviously a close-up. This is a five-shot revolver. It's  
4 a .38 caliber.

5 We'll see in some further pictures that all of  
6 the cartridges that are in this gun are empty. So they had  
7 been shot.

8 So as you're looking here, you can see the  
9 hammer strikes on each of the -- of the bullet casings.  
10 Revolvers do not eliminate their casings automatically like  
11 a semi-auto handgun does.

12 Q. They don't eject?

13 A. Yeah, they're never ejected. You have to  
14 manually eject them. So they're still in the gun as they  
15 were when the gun landed in that position.

16 Q. And all five rounds were spent?

17 A. Yes.

18 Q. So before we go through round counts,  
19 Detective, could you indicate for us on the line diagram,  
20 based on your investigation, in essence, what your  
21 understanding is of what occurred?

22 A. So what happens from this information is  
23 there's an altercation that takes place at the east end of  
24 the lot. Clearly, there's a shooting that takes place at  
25 this east end of the parking lot. We had blood evidence

1 that somebody has been injured from that shooting, as well  
2 as evidence that rounds had been fired. We find bullets  
3 here.

4 We also note that the direction of fire is  
5 towards the north. So it's in this -- this direction  
6 generally.

7 In this section here, we have another  
8 encounter. We have a shooting incident. We know that  
9 based upon the casings and witness officer information, as  
10 well as position of the patrol cars, that this is an  
11 officer-involved shooting.

12 Q. Okay. And we'll view it later on in the  
13 presentation, but was video evidence obtained in this case  
14 that captured the sequence of events?

15 A. Yes.

16 Q. And have you observed that video?

17 A. Yes, I have.

18 Q. Can you explain for us on this diagram the  
19 general movements of the involved individuals?

20 A. Okay. So the video that we recovered, there  
21 are two cameras, one here and one here, so we're calling  
22 them X-1 and X-2. They're on the Scientology building, and  
23 they're at an elevated position. So they look down onto  
24 the parking lot.

25 What takes place is officers arrive here at

1 approximately 3:03 a.m., according to the CAD, which is the  
2 computer-assisted dispatch system.

3 This -- essentially, there's Sergeant Britt  
4 and Sergeant Livingston here.

5 Q. Officer Livingston?

6 A. Officer Livingston. Excuse me.

7 Down here is a group of people. What we see  
8 is we see the subject walk from here, and he walks this  
9 direction towards that group of people and engages in a  
10 fight with one of the people in that group.

11 At that point, another person -- later  
12 determined to be Patrick Kimmons -- fires upon the two  
13 subjects fighting. He then runs this direction after the  
14 shooting and starts running towards the west, along these  
15 cars.

16 So over here, Sergeant Britt and Officer  
17 Livingston, before the fight takes place, start walking the  
18 parking lot doing patrol.

19 Q. Are their lights on?

20 A. Yeah. So at 3:03, their vehicles are parked  
21 here, and one of them at least has their lights going. So  
22 there's --

23 Q. You mean headlights or the full police --

24 A. Full police lights, red and blues going.

25 Q. Okay.

1           A.     So that is at 3:03.

2                     At -- at the point they decide to walk down,  
3 as they're only a short distance down, the fight takes  
4 place.

5                     As that fight unfolds and the shooting takes  
6 place, they then engage the subject running from east to  
7 west.

8           Q.     They start running towards the shooter?

9           A.     They run towards the shooter, and the shooter  
10 runs towards them, and then they fire upon that shooter.

11          Q.     Okay. In the location marked with the casings  
12 on the ground?

13          A.     In this -- in this location.

14          Q.     Okay. And where does the shooter, who's been  
15 identified as Patrick Kimmons, ultimately come to rest?

16          A.     So Patrick Kimmons ends up resting here.

17          Q.     And for the record, you're indicating to the  
18 south of the two empty stalls near the arborvitae hedge?

19          A.     Yeah, correct.

20          Q.     Okay.

21                   MR. JACKSON: Are there any questions about  
22 that from the grand jurors?

23                   I don't see any. All right.

24

25 BY MR. JACKSON: (Continuing)

1 Q. So, Detective Posey, did you and Detective  
2 Beniga conduct round counts of Sergeant Britt and Officer  
3 Livingston in this case?

4 A. Yes, we did.

5 Q. And what do we see on the screen here?

6 A. So this is a Glock 17, Generation 4. It  
7 belonged to Officer Livingston. This is also the round  
8 that was currently chambered in the gun.

9 This is Officer Livingston's magazine from the  
10 gun. What you'll note is that it's minus several rounds.  
11 It's minus five rounds from the typical 17 rounds that are  
12 contained in that magazine.

13 Q. Okay. And so these rounds here are unfired or  
14 unspent --

15 A. Correct.

16 Q. -- bullets?

17 A. Right, and they're just in a tray to keep them  
18 in order.

19 Q. And there's 12 of them?

20 A. Yes.

21 Q. And that magazine, when fully loaded, holds 17  
22 rounds?

23 A. Yes.

24 Q. So it's missing five?

25 A. It's missing five.

1 Q. What conclusion did you come to based on that?

2 A. Based on that, Officer Livingston fired five  
3 rounds.

4 Q. Okay. Did you also check Officer Livingston's  
5 back-up magazines?

6 A. Yes.

7 Q. And was there anything of note about them?

8 A. No. He had two back-up magazines, and they  
9 were full.

10 Q. Fully loaded?

11 A. Fully loaded with 17 rounds each.

12 This is Sergeant Britt's firearm. It's also a  
13 Glock 17, Generation 3, and that bullet that you see there  
14 was in the chamber.

15 Q. Okay.

16 A. This is the magazine from that pistol. Noted  
17 is only 10 rounds in the tray. That was the 10 rounds that  
18 were in that magazine.

19 Q. Fully loaded, there would have been 17?

20 A. Correct.

21 Q. And so what conclusion did you come to based  
22 on this evidence?

23 A. Sergeant Britt fired seven rounds.

24 Q. So between the two officers, 12 total shots  
25 were fired?

1           A.     Correct, 12 total shots.

2           Q.     And how did that information correspond to the  
3 casings you located at the scene?

4           A.     We recovered 12 casings from the scene, which  
5 matched those 12 rounds that we found missing from their  
6 service pistols.

7           Q.     You already spoke about the video canvass that  
8 was conducted in this case.

9                     Did you review the video that was recovered?

10          A.     Yes.

11          Q.     And could you explain briefly for us where you  
12 saw video -- or where video was recovered from and what it  
13 showed?

14          A.     So we recovered video from Church of  
15 Scientology, so we had those camera angles. We also  
16 recovered a video image from the Hi-Lo Hotel.

17                     We attempted to recover the video imaging from  
18 the Golden Dragon. They had several cameras on that east  
19 end of Southwest Third. We were not able to get any  
20 recorded video from them.

21                     From the information we have is they have  
22 cameras, they have monitoring, but they do not record.

23          Q.     Is there a deli on the southeast corner of  
24 Third and Harvey Milk?

25          A.     Yes, which is located approximately right

1 here. It has a camera for the outside, but it's not  
2 recorded.

3 Q. And I said southeast, but I actually meant the  
4 northeast corner of the intersection.

5 A. Correct.

6 Q. Okay. So that camera did not record.

7 You recovered video from the Hi-Lo Hotel?

8 A. From the Hi-Lo Hotel.

9 Just a note about the Hi-Lo Hotel, it's what's  
10 called a bubble view. It's a very wide angle. So it  
11 covers a lot of territory, but it also is small in nature.  
12 It is directed towards the sidewalk. And though we can see  
13 the section --

14 Q. Which sidewalk?

15 A. I'm sorry. The south sidewalk of Harvey Milk  
16 Street, so down here on the diagram next to the Hi-Lo  
17 Hotel.

18 So it covers a portion of the parking lot, but  
19 it's at a great distance.

20 Q. Or appears --

21 A. Appears to be a great distance based on the  
22 view.

23 Q. And is it kind of a fisheye orientation?

24 A. Yes. That would be another type of way to  
25 describe it.

1 Q. So the image you see is actually distorted  
2 from what you would -- your eye would actually see?

3 A. Yes.

4 Q. Okay. Noted on our diagram is an arborvitae  
5 hedge that runs along the south side of the parking lot and  
6 up along the southeast side of it?

7 A. Uh-huh, yes.

8 Q. How tall is that arborvitae hedge?

9 A. I think at the most, it's three feet tall.

10 Q. So it's not like a full size, 12, 15 feet  
11 tall?

12 A. Yes. It's like waist level, approximately.

13 Q. But would it be tall enough to obscure, like,  
14 the level of a car hood?

15 A. Yes.

16 Q. Headlights, that level?

17 A. Yes.

18 Q. Okay. And so based on your review of the  
19 video evidence obtained in this case, did you come to a  
20 conclusion about which ones really captured the most  
21 information about what happened?

22 A. The best video of the parking lot was captured  
23 by the Church of Scientology cameras. They have one that's  
24 looking to the southeast, and you have one that's looking  
25 to the southwest. It covers, essentially, the entire

1 parking lot.

2 Q. Okay. Detective, I'm going to play the video  
3 now. You've observed this video?

4 A. Yes, I have.

5 Q. Do you see on the screen here the paused  
6 video?

7 A. Yes.

8 Q. Could you come up and kind of explain what  
9 we're seeing?

10 A. So --

11 Q. Before you do that, would it help to turn the  
12 lights off to be able to see it?

13 A. Yeah.

14 Q. Okay. So what are we seeing here, Detective?

15 A. So this is -- I'll just point it out here.  
16 We're looking from camera X-1 that's pointed towards --  
17 yeah, pointed towards the southeast.

18 This is the Golden Dragon. This is the  
19 grocery deli, Cameron's Books. There's a group of people  
20 here in the middle on this far east end of the parking lot.

21 Q. Do you see the date and the time stamp on the  
22 top right corner of this video?

23 A. Yes. It's 3:07:35.

24 Q. On what date?

25 A. On September 30th.

1 Q. Okay. 2018?

2 A. 2018.

3 Q. And did you determine or other detectives who  
4 retrieved this video determine whether that date and time  
5 stamp is accurate?

6 A. My understanding is that it's approximately 10  
7 minutes, five to 10 minutes off.

8 Q. Okay. In which direction?

9 A. Fast, so it's ahead.

10 Q. Okay.

11 (Video playing)

12 Q. Okay. So we've moved ahead to what is noted  
13 on the time stamp as 3:11 a.m. Could you kind of orient us  
14 to what we're seeing in this frame?

15 A. So we have a group of individuals at the  
16 furthest northeast corner of the parking lot over here.

17 You'll note that this particular car at the  
18 furthest end in the lot still, that is a black Camaro. We  
19 have a couple other individuals here. And then over here,  
20 there's the black Acura and a dark-colored Durango, and  
21 this is an open spot right here where there's some people  
22 standing.

23 Q. And so what is it that we're going to see as  
24 we play this video?

25 A. So as we play this video, we're going to see a

1 subject walk from here to this group of people who have  
2 moved over here. You're going to see Sergeant Britt and  
3 Officer Livingston walk down in the middle of the parking  
4 lot here.

5 Q. And then what are we going to see after that?

6 A. Then you'll see a fight take place here and a  
7 shooting take place here. Then you'll see the officers  
8 responding to both the fight and then the shooting, and  
9 then you'll see a subject run this direction, turn this  
10 direction as the officers are engaging that subject that  
11 just conducted the shooting.

12 Q. Okay. Do you actually see, as the shooting  
13 suspect moves away from the group, a muzzle flash in this  
14 video?

15 A. Yes, you do.

16 Q. We'll play the video now.

17 (Video playing)

18 Q. There's no audio for this video, right?

19 A. That is correct.

20 (Video playing)

21 Q. Okay. Now we're at 3:12 and 14 seconds on the  
22 time stamp.

23 Detective, has the shooting occurred at this  
24 point?

25 A. Yes.

1 Q. Both shootings?

2 A. Both shootings.

3 Q. Okay. I'm going to back this up and kind of  
4 walk through it.

5 We'll start here at 3:11:27 on the time stamp.

6 (Video playing)

7 Q. We'll pause at 3:11:49. What do we see here?

8 A. So you'll note right here, this person, who  
9 was later identified as Marcel Branch, he's walking towards  
10 this group of people here. We later determined that one of  
11 those people here is Dante Hall.

12 Also, in amongst this group is Patrick  
13 Kimmons.

14 (Video playing).

15 Q. We're at 3:11:58.

16 A. Right here, the fight begins. Marcel Branch  
17 essentially punches Dante Hall. We later determined during  
18 our investigation that there's some type of issue between  
19 the two of them.

20 Q. Okay. And is Patrick Kimmons in that group as  
21 well at this point?

22 A. Patrick Kimmons is in amongst that group.

23 Q. Okay.

24 (Video playing)

25 Q. As we click through frame by frame, can you

1 see here at 3:12:01 people starting to scatter?

2 A. There's a marked change in the group as  
3 Patrick Kimmons begins firing upon the two subjects  
4 fighting.

5 Q. What can you see in the lower right corner?

6 A. You see Sergeant Britt, and I'm not sure which  
7 one is which at this point, but Sergeant Britt and Officer  
8 Livingston are right here.

9 Q. So this is occurring literally right in front  
10 of them?

11 A. Right in front of them.

12 (Video playing)

13 Q. Okay. And now at 3:12:04.

14 A. Patrick Kimmons, the two officers, they're now  
15 engaging that person. You'll notice that everybody over  
16 here has scattered, but you'll note that Marcel Branch is  
17 making his way back to his car, which is parked right here.

18 (Video playing)

19 Q. Okay. And at this point, 3:12:08, Mr. Kimmons  
20 is down?

21 A. Yes. He's fallen down behind this Durango  
22 next to the hedge.

23 (Video playing)

24 A. And just to note, you can't see what action is  
25 taking place on this side because the Durango blocks our

1 view.

2 Q. From this camera angle, you mean?

3 A. Yes.

4 Q. Okay.

5 (Video playing)

6 Q. So from this point here, 3:12:01 where  
7 Mr. Kimmons can clearly be seen shooting, to the point that  
8 he ultimately comes to rest is a matter of seconds?

9 A. Yes.

10 Q. 3:12:01 to 3:12:08. So approximately seven  
11 seconds from when the officers would have seen Mr. Kimmons  
12 firing on this group of people to the engagement being  
13 over?

14 A. Yes.

15 (Video playing).

16 A GRAND JUROR: Can you remind me, were all  
17 five spent rounds up where the fight was?

18 THE WITNESS: Yeah -- well, we don't know how  
19 many rounds at -- given what we found here, we didn't find  
20 five rounds.

21 A GRAND JUROR: Okay.

22 THE WITNESS: We found -- I think we recovered  
23 three rounds, three or four rounds total. One was a  
24 partial. There was two -- two that were still together,  
25 and then there was one recovered from Dante Hall.

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25

BY MR. JACKSON: (Continuing)

Q. From his body?

A. From his body, yeah, his leg.

(Video playing)

Q. And as we let this play, what do you see happening right up here?

A. So this vehicle that's parked here is going to take off that direction, and then you'll note that the black Camaro that's parked here was going to drive out right behind him.

One of the things that you'll note is the person that gets in the black Camaro is limping.

(Video playing)

Q. Are those two vehicles later observed at Emanuel Hospital?

A. Yes.

Q. And did the two individuals, Marcel Branch and Dante Hall, get out of those vehicles?

A. Yes.

Q. At Emanuel Hospital?

A. At Emanuel Hospital.

A GRAND JUROR: That person that just ran across, who was that? Is that an officer?

THE WITNESS: No. The officers are still

1 here. They're dealing with some of the people that are in  
2 the vehicles here, as well as the subject that's down.

3 There were a number of people around,  
4 including in this zone here. And so what happens is some  
5 people run away because they're just trying to get away  
6 from the situation. Some of them later end up being our  
7 witnesses that we do talk to.

8

9 BY MR. JACKSON: (Continuing)

10 Q. Let's run this one more time.

11 (Video playing)

12 Q. Okay. Detective, referencing back to the  
13 crime scene photos we observed earlier, at this portion of  
14 the scene, there was evidence of a bullet strike in this  
15 vehicle here that went into the trunk?

16 A. Yes.

17 Q. A skip shot off of the rear passenger door?

18 A. Yes.

19 Q. And a round that entered the passenger  
20 compartment of this Camry, the vehicle parked to the south  
21 of the Acura?

22 A. Yes.

23 Q. Did you find any evidence in the course of  
24 your investigation to suggest the officers fired in any  
25 directions other than right at the corner of this Acura and

1 then to the south towards the red truck parked here?

2 A. No.

3 Q. So would that suggest that the officers did  
4 not start firing until Mr. Kimmons had essentially reached  
5 this back corner, rear passenger corner of the Acura?

6 A. Correct.

7 Q. Are you able to tell how far he was from the  
8 officers when he reaches that position?

9 A. So each stall on this side of the parking lot,  
10 based on measurements from our Leica scan, is approximately  
11 eight feet in width. So they're approximately eight to 10  
12 feet from Patrick Kimmons.

13 Q. At the point that the evidence shows they made  
14 the decision to begin firing?

15 A. Yes.

16 A GRAND JUROR: What is it likely that they  
17 would be saying at that point?

18 THE WITNESS: They would be saying --

19 MR. JACKSON: Well, Detective, let me caution  
20 you not to speculate.

21 THE WITNESS: That's true.

22 A GRAND JUROR: What would you expect  
23 normally?

24 THE WITNESS: Based on my training and  
25 experience, "Stop. Police. Drop the weapon," all of those

1 types of things.

2 MR. JACKSON: And later on in our  
3 presentation, we'll hear from the witness --

4 A GRAND JUROR: I didn't know if there was a  
5 protocol that --

6 MR. JACKSON: So we'll actually hear from a  
7 member of the Portland Police Bureau training division that  
8 can answer some of those questions.

9 A GRAND JUROR: Thank you.

10 MR. JACKSON: All right. Before we turn to  
11 the reverse angle or the other angle from the Church of  
12 Scientology building, does anybody have any questions about  
13 this or wish to see it again?

14 All right. I don't see anyone.

15

16 BY MR. JACKSON: (Continuing)

17 Q. Okay. Detective, what are we seeing here?

18 A. All right. So we're now looking at the other  
19 camera view. This is X-2, which is on the -- pointing  
20 towards the west and south of -- at the parking lot.

21 You'll note that down here is the furthest  
22 west end of the parking lot here, and this is the  
23 intersection for Southwest Harvey Milk and Southwest  
24 Fourth.

25 (Video playing)

1 Q. And we're now at 3:07 on the time stamp, which  
2 also states September 30th, 2018, 3:07:40?

3 A. Correct.

4 Q. What do we see pulling into the lot here?

5 A. You'll see that the police vehicle is at the  
6 east end with its overhead lights on.

7 (Video playing)

8 Q. Okay. As we move ahead now to 3:09:04, what  
9 do we see now?

10 A. We now have two vehicles, and they're  
11 positioning further into the parking lot with their  
12 overhead lights on.

13 (Video playing)

14 Q. Now we're at 3:10:43. What's occurring at  
15 this point?

16 A. The police vehicles are moving further into  
17 the -- into the parking lot.

18 Q. Repositioning next to the ticket booth or the  
19 pay booth?

20 A. Yes, yes.

21 (Video playing)

22 Q. All right. Now at 3:11:50, what do we see  
23 beginning to occur?

24 A. Sergeant Britt and Officer Livingston are  
25 beginning to walk down to the east side of the parking lot.

1 You can see them right there and there.

2 (Video playing)

3 Q. Okay. As we walk back through this, can you  
4 describe what you're seeing in terms of the officers'  
5 movements? We're starting at 3:12:00.

6 A. So there's -- there's actually two reactions  
7 that you'll notice with the officers. You'll note that  
8 they see the fight take place, and they start to engage to  
9 move towards that, but then there's a marked reaction.

10 Essentially, one of them is seeking to find  
11 cover because that's when we -- it looks like they're  
12 reacting to the shots being fired.

13 Q. Okay. That was at 3:12:02?

14 A. Right.

15 Q. Now we're at 3:12:03. What are we seeing now?

16 A. So we see that one of them has drawn their  
17 firearm. That's what it appears.

18 Something to note is that all of the casings  
19 that we recovered, there were no casings in this area.  
20 They were -- they were all over here next to these -- to  
21 these vehicles.

22 (Video playing)

23 A. We have Patrick Kimmons, who's running towards  
24 them.

25 (Video playing)

1 Q. Here at 3:12:06, you can see the officers  
2 positioned to the west side of that open parking space and  
3 Mr. Kimmons on the east side of that open parking space?

4 A. Yeah. So Patrick Kimmons, the officers.  
5 (Video playing)

6 Q. And then at 3:12:09, does he appear to be  
7 down?

8 A. Yes.

9 Q. Mr. Kimmons?

10 A. Yes.

11 Q. Okay.

12 A. So as you recall, the five-shot revolver is  
13 recovered down in between these two vehicles.

14 You can note some of his -- Patrick Kimmons'  
15 body motion. He has it in his hand at some point in there  
16 and discards it.

17 Q. Let's watch it one more time here at full  
18 speed.

19 (Video playing)

20 Q. Okay.

21 MR. JACKSON: Do you folks have any questions  
22 about that camera angle or wish to see it again?

23 A GRAND JUROR: Have you been able to  
24 determine from the video when the officers started firing,  
25 like at what frame or second?

1                   THE WITNESS: From what I can determine,  
2 there's -- every indication indicates that they started  
3 firing as he's still facing them at this corner and then --  
4 and as he's making the turn.

5                   As you'll later see, with the injuries that  
6 Patrick Kimmons ends up having, it's consistent with him  
7 making a turn away from them, but it's still as he's facing  
8 them. So it's right at this corner here because there --  
9 that's the closest apex.

10                   We didn't find any evidence of gunfire from  
11 the officers down -- you know, downrange towards this  
12 direction.

13

14 BY MR. JACKSON: (Continuing)

15                   Q. To the east?

16                   A. To the east.

17                   All of the direction of fire was southeast,  
18 basically at the back of that -- that car there, from what  
19 we can see.

20                   Q. And then also to the south with the rounds  
21 impacting the red truck?

22                   A. Correct. And there's a couple of points where  
23 you can see some smoke from the firearms, and that is  
24 consistent timing for -- at this location is where the  
25 interaction, the shooting, takes place.

1 THE WITNESS: Does that help?

2 A GRAND JUROR: Yes.

3 MR. JACKSON: Any other questions about this  
4 camera angle?

5 (No response)

6

7 BY MR. JACKSON: (Continuing)

8 Q. Detective, so you've already talked about how  
9 officers, and ultimately detectives, went out to Emanuel  
10 Hospital in response to their report that two shooting --  
11 or two people suffering from gunshot wounds had arrived?

12 A. Yes.

13 Q. And is this a photograph taken by one of the  
14 security staff at the hospital of the black car that  
15 dropped off one of the shooting victims?

16 A. Yes.

17 Q. And is that car leaving the area?

18 A. Correct.

19 Q. Okay. And is this vehicle consistent with the  
20 vehicle you see leaving the scene shortly after the  
21 shooting occurred?

22 A. Yes.

23 Q. And then what is this vehicle here?

24 A. This is a blue Chevy Cobalt. This was Marcel  
25 Branch's vehicle.

1 Q. And so back to the black Chevy, was it Dante  
2 Hall that was dropped off out of that vehicle?

3 A. Yes.

4 Q. And what do we see here on -- back to the blue  
5 Cobalt, what is this?

6 A. This is -- we're looking at the driver's side  
7 of the blue Cobalt, and you can see blood smears and then  
8 blood on the interior of the blue Chevy Cobalt.

9 Q. Is this the vehicle that Marcel Branch had  
10 driven himself to the hospital in?

11 A. Yes.

12 Q. And is this a photograph of Marcel Branch and  
13 his gunshot injuries in the hospital?

14 A. Yes.

15 Q. We see one in the abdomen and one in the upper  
16 right arm?

17 A. Correct.

18 Q. Did you subpoena medical records from Emanuel  
19 Hospital for Dante Hall and Marcel Branch?

20 A. Yes, I did.

21 Q. And upon review of those medical records,  
22 starting with Marcel Branch, did it indicate that he was,  
23 in fact, admitted for treatment of gunshot injuries on  
24 September 30th, 2018?

25 A. Yes.

1 Q. And what are the injuries noted there that  
2 were treated?

3 A. Gunshot wound to the abdomen and gunshot wound  
4 to the right arm.

5 Q. Okay. And then moving on to Dante Hall's  
6 medical records, was he also admitted for treatment of a  
7 gunshot injury on September 30th, 2018?

8 A. Yes, he was.

9 Q. To Emanuel Hospital?

10 A. Yes.

11 Q. And what was the injury documented there?

12 A. Gunshot wound to the left leg and bullet  
13 recovered from that leg.

14 Q. Okay.

15 A. And just a note, Dante Hall's injury, he had a  
16 fractured femur on his left leg.

17 And then Marcel Branch was -- both of the  
18 injuries for Marcel Branch were through and through. So  
19 two injuries on his right arm and then the injury to his  
20 abdomen went through. And I'm not exactly sure which  
21 direction it went, but there's also an injury to his back  
22 on the left side, which damaged his spleen and small  
23 intestines.

24 Q. Okay. Was security footage obtained from  
25 Emanuel Hospital?

1 A. Yes.

2 Q. Let's pause a moment while the player loads.  
3 Detective, is this the entryway into Emanuel  
4 Hospital?

5 A. Yes. It's one of them.

6 Q. And are we going to see Marcel Branch here  
7 come running in as the black Chevy pulls up into the  
8 parking lot --

9 A. Correct.

10 Q. -- entryway?

11 A. Correct.

12 (Video playing)

13 Q. Were you able to observe, as Mr. Branch was  
14 running up, that he's kind of holding his side?

15 A. Yes.

16 (Video playing)

17 Q. Is this individual being wheeled into the  
18 hospital on the gurney, is that Dante Hall?

19 A. Yes.

20 Q. Did detectives actually go out to the hospital  
21 and identify these two individuals?

22 A. Yes, they did.

23 (Video playing)

24 Q. Is this hospital security coming out of the  
25 building here?

1           A.    Yes.  He's taking a picture.

2           Q.    Okay.  All right.

3                   MR. JACKSON:  Do grand jurors have any  
4 questions of Detective Posey about the investigation or the  
5 crime scene evidence collected there from or identified  
6 within or the video evidence?

7                   A GRAND JUROR:  I'm assuming we're going to  
8 hear more about the driver of that Chevy or no?  What's  
9 their involvement?  They just kind of drove off.

10                   MR. JACKSON:  That person appears in the video  
11 to drive away from the hospital.

12                   A GRAND JUROR:  Are they a witness or what is  
13 the --

14                   THE WITNESS:  We're not sure at this point.  
15 It's -- it's possible.

16                   MR. JACKSON:  Any other questions of Detective  
17 Posey?

18                           I don't see any.

19                           Let's go off the record and take our  
20 mid-morning break.

21                           (Pause in proceedings: 10:43-10:58 a.m.)

22

23

24

25

1 MATTHEW MENA

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

5  
6 EXAMINATION

7 BY MR. JACKSON:

8 Q. Would you please state and spell your name for  
9 the Grand Jurors?

10 A. Matthew Mena, M-A-T-T-H-E-W, M-E-N-A.

11 Q. I want to take you back to September 30th of  
12 2018, in the very early morning hours.

13 Were you out that night?

14 A. Yeah.

15 Q. Do you remember what part of town you were in?

16 A. Downtown.

17 Q. And was a person named Garrett Carroll with  
18 you?

19 A. Yes.

20 Q. And who is that to you?

21 A. Friend.

22 Q. A friend of yours?

23 A. Yeah.

24 Q. Okay. At about 3:00 in the morning, were you  
25 and Mr. Carroll in front of the Golden Dragon --

1 A. Yeah.

2 Q. -- in Southwest Portland?

3 A. Yes.

4 Q. Okay. I'm just going to pull up this  
5 photograph.

6 Can you see, Mr. Mena, on the board here, is  
7 this an aerial photograph of what was formerly Stark  
8 Street, now Harvey Milk, Third and Fourth, and the Golden  
9 Dragon is in this area right here?

10 A. Yeah, yeah.

11 Q. Is that approximately where you were?

12 A. Yeah.

13 Q. Were you inside or outside of the building?

14 A. I was outside.

15 Q. Would you come up to the board here and just  
16 point to where approximately you were standing?

17 A. (Witness complying).

18 Q. Okay. Right about there?

19 A. Yeah.

20 Q. Just on the sidewalk?

21 A. Yeah.

22 Q. All right. While you were standing out there,  
23 do you recall some police patrol vehicles entering the  
24 parking lot to the west of your location?

25 A. I didn't notice them until the situation

1 happened.

2 Q. Okay.

3 A. Yeah.

4 Q. What did you notice about them, if anything,  
5 the patrol vehicles?

6 A. They were parked in that little parking area  
7 there. It seemed like their lights were on.

8 Q. When you say "their lights were on," do you  
9 mean headlights or overhead lights?

10 A. Overhead police lights.

11 Q. Do you remember how many vehicles you saw  
12 there?

13 A. Two, two SUVs.

14 Q. Two police SUVs?

15 A. Yeah.

16 Q. Okay. Could you kind of walk us through what  
17 you remember occurring?

18 A. So I heard two gunshots. I proceeded to look  
19 across the street. I saw a gentleman who was seemingly  
20 holding a gun. He ran off into the parking lot.

21 A woman who was on the sidewalk across the  
22 street from me, she hobbled over into a car. I didn't see  
23 what direction the car went off, but the car took off.

24 The gentleman ran into the parking lot. The  
25 officers pretty much ran towards him. He saw them running

1 towards him, so he made a beeline into where the parked  
2 cars are on the west side there.

3 And once he reached one of the cars, the  
4 officers came from behind him and shot him.

5 Q. Okay. When you -- when you first heard those  
6 two gunshots and looked across the street, you said you  
7 were standing here on the east side of Third Avenue?

8 A. Yeah.

9 Q. In this general area?

10 A. Yeah.

11 Q. When you looked across the street, do you  
12 remember where it was that you saw the person with the gun?

13 A. So he was -- he was right there, in the  
14 opening there.

15 Q. (Indicating).

16 A. Yeah.

17 Q. In the drive aisle on the --

18 A. Yeah. And the car was parked slightly --  
19 slightly -- go up slightly.

20 Q. (Indicating).

21 A. Yeah, to the right. It didn't look like it  
22 was in a space, like a designated space. It just looked  
23 like it was parked there, though.

24 Q. Okay. Is that the car that the person that  
25 you saw apparently shot get into?

1 A. Yeah.

2 Q. Okay.

3 A. I don't know if they were shot. They were  
4 just -- they were just, like, on one leg, so that's what I  
5 assumed, but I didn't actually see them get shot.

6 Q. But based on what you were seeing --

7 A. Yes.

8 Q. -- it seemed like that's what happened?

9 A. Yeah.

10 Q. Okay. When you first looked over, could you  
11 describe exactly what it was that you saw happening?

12 A. When I first looked over?

13 Q. Uh-huh.

14 A. So the woman was behind the vehicle. She  
15 hobbled over, got in the back seat.

16 He proceeded to -- he proceeded just to, like,  
17 look around and run up into the parking lot.

18 Q. Did you know any of these people?

19 A. No.

20 Q. Okay. And so when you say "a woman," are you  
21 saying that because you knew it was a woman or it just  
22 looked like a woman?

23 A. It looked like a woman, yeah.

24 Q. Okay.

25 A. I don't know for sure if it was a woman.

1 Q. Okay. The individual that had the gun in his  
2 hand, how was he moving, away or toward, or how was he  
3 moving with regard to the group of people?

4 A. So he was facing them when I looked over. And  
5 then he made like a -- kind of like a -- he made like a  
6 weird movement to, like, spin around and take off running  
7 afterwards.

8 Q. And did you see him running -- so if this way  
9 is north, was he running to the south or was he running a  
10 different direction?

11 A. He ran into the -- into the parking lot.

12 Q. To the west?

13 A. Yeah.

14 Q. Okay. And did you see a gun in his hand?

15 A. When I looked across the street, it seemed  
16 like there was a gun in his hand, yeah. I didn't see him  
17 drop the gun at any point, drop anything at any point.

18 Q. Okay.

19 A. So I assumed that he had a gun on him until --  
20 until he fell to the ground.

21 Q. As he was running into the parking lot, did  
22 his running motion appear consistent with holding a gun in  
23 his hand to you?

24 A. I don't know. I don't know. I don't know.  
25 If they had a gun in their hand, I think everybody would be

1 a little different. But he was making pretty intense hand  
2 motions while he was running.

3 Q. Okay.

4 A. Like pumping, just really trying to get away.

5 Q. Really running?

6 A. Yeah.

7 Q. Okay. When did you notice that the police  
8 officers were actually out of their patrol vehicles?

9 A. I think they were -- I -- I don't really  
10 remember. It's kind of fuzzy, but they might have been out  
11 the entire time, out of their vehicles.

12 Q. Okay. When do you first remember actually  
13 seeing them running up through the parking lot as you  
14 described it?

15 A. Almost immediately, almost immediately.

16 So when I looked and I saw him running, I  
17 could see the police officers already approaching him as he  
18 was running into the parking lot.

19 And I don't know if he saw them or not, but at  
20 a certain point, the officer did see him, and then he  
21 turned left into the cars --

22 Q. Okay.

23 A. -- to try to avoid them.

24 Q. That's what it appeared to you?

25 A. Yes.

1 Q. Okay. Do you remember noting anything about  
2 the sound of the gunshots that you heard from this  
3 northeast area of the parking lot?

4 A. Small caliber rounds potentially, not a -- not  
5 a big gun.

6 Q. Okay. Do you have experience with firearms to  
7 know kind of generally what gunshots sound like?

8 A. Not much, no.

9 Q. Okay. Do you remember when detectives spoke  
10 to you shortly after this incident about it?

11 A. Do I remember speaking to detectives about  
12 this situation?

13 Q. Yeah.

14 A. Yeah.

15 Q. Okay. And do you remember thinking at that  
16 point at least or indicating that it may have been a  
17 revolver type of a weapon?

18 A. That's what it looked like to me. It looked  
19 like it was all -- yeah, that's just what it appeared like.

20 Q. Okay.

21 A. I may be wrong.

22 Q. Sure. But that's -- and are you talking about  
23 when you looked over and you saw the guy with the gun --

24 A. Yeah.

25 Q. -- that's what it looked like?

1           A.    It looked like he had a small little, all  
2 silver revolver in his hand.  It could have been a pistol,  
3 but I'm pretty sure it was a revolver.

4           Q.    Okay.

5           A.    But I don't know for sure, like I said.

6           Q.    So you said when you looked over and you saw  
7 this happening, the police were already there with their  
8 lights on?

9           A.    Uh-huh, yeah.

10          Q.    What was your -- how did that strike you that  
11 this was happening with the police presence?

12          A.    I was surprised.  It seemed like -- it just  
13 seemed strange that somebody would be so bold to do this  
14 right when the police were there.

15                    I don't know.  Maybe they didn't notice the  
16 police were there.  I don't know.

17          Q.    But it surprised you that it would happen?

18          A.    Yeah, definitely a surprise.

19          Q.    As the person that you described running into  
20 the parking lot approached where the officers were running,  
21 were they kind of converging together?  Is that how you  
22 remember it?

23          A.    Yeah.  And then I assume he noticed this, and  
24 then that's when he decided to dart left.

25          Q.    When you saw him turn?

1 A. Yeah.

2 Q. When you say "left," you mean to the south?

3 A. Yeah.

4 Q. Okay. Do you remember seeing any particular  
5 movements by the individual as he was making that turn?

6 A. No. He was just running away.

7 Q. And how about as he had made the turn and was  
8 proceeding between the parked cars?

9 A. So he -- it seemed like he looked back at the  
10 officers, just to maybe see how close they were to him.  
11 And then while he was doing that, he was shot.

12 Q. Okay. And when you say "he looked back," do  
13 you mean -- could you describe what specific body movements  
14 you actually saw?

15 A. So he was running full motion, didn't stop  
16 once. He was just running.

17 And then when the officers approached him from  
18 behind and they gave him the commands, "Stop. Put down the  
19 gun," it seemed like he looked back like this, and then he  
20 was shot.

21 Q. Okay. Where was the hand that had the gun in  
22 it moving at that moment?

23 A. I want to say it was his right hand. And,  
24 like I said, he was in motion. So the gun was somewhat at  
25 his -- so he was running. The gun is somewhat like right

1 here --

2 Q. Okay.

3 A. -- at a certain point, but it --

4 Q. And just for the record, you're indicating as  
5 he looked back, he was looking over his right shoulder  
6 toward the officers?

7 A. Yes.

8 Q. And the gun in his right hand was, you've  
9 indicated, kind of near his right hip with his arm in back?

10 A. It was there -- it was there at certain  
11 points. I'm not sure if it was there at the moment he was  
12 shot, but I did notice he was running like this.

13 Q. Okay. And what, if any, commands did you hear  
14 the police officers giving to the individual?

15 A. I'm pretty sure I heard, "Stop" and "Put down  
16 the gun" or "Put it down," one of those three or all three.

17 Q. Okay. Was it a pretty chaotic scene at that  
18 point?

19 A. Oh, yeah. People were screaming all around.  
20 Yeah, it was very chaotic.

21 Q. How many people, if you had to estimate, were  
22 in this kind of general area at the time this occurred?

23 A. So actually, I haven't even mentioned, so  
24 there was another car that I'm pretty sure was involved, a  
25 black Charger or Camaro.

1 I'm not sure if he was -- the individual was  
2 with them, but they were there, too, right at the corner.

3 Q. Right here?

4 A. Downward, yeah. They were there. I don't  
5 know if they were waiting for the situation to unfold for  
6 him to get in the car. I don't know what their -- I don't  
7 know what their -- what their part in this was, but they  
8 were seemingly involved.

9 They were there. There was a bunch of people  
10 at the food carts. There was a decent amount of people at  
11 the --

12 Q. The food carts are down here to the southeast?

13 A. Yeah, on that -- on that sidewalk right there.

14 Q. Okay. (Indicating).

15 A. No, no. Yeah, all lined up there, yeah.

16 Q. Okay.

17 A. So there was a decent amount of people in  
18 front of Golden Dragon. There were people across the  
19 street, but my eyes were fixed on the gentleman and all of  
20 this.

21 Q. Uh-huh. When you first look over after  
22 hearing the gunshot, how many people were in this immediate  
23 group here?

24 A. So there was the driver, and then there was  
25 the lady. That's all I saw. There might have been more,

1 but that's all I saw.

2 Q. So were you pretty focused in on this gun that  
3 appeared in that --

4 A. On the -- like the main players, I was focused  
5 on them, like the guy and the lady who was jumping in the  
6 car.

7 I didn't really -- yeah, I was focused on them  
8 right there.

9 Q. Sure.

10 So moving back now to where the officers  
11 engaged with this individual, you described that as he came  
12 down between the cars, you heard commands being given to  
13 him.

14 Are you sure it was police giving those  
15 commands?

16 A. I'm pretty sure, yeah.

17 Q. Okay. That's kind of consistent with how  
18 police give commands to people?

19 A. Well, I was watching them, too.

20 Q. Okay.

21 A. So...

22 Q. As he turned back --

23 A. It was -- it was just his head, though, that  
24 turned back. It wasn't like an actual -- he didn't  
25 physically turn his body back.

1 Q. Okay.

2 A. It was just one of these (indicating).

3 Q. Okay. And he was still in a running motion?

4 A. Oh, yeah. He was booking away. He never  
5 stopped --

6 Q. Okay.

7 A. -- until he fell.

8 Q. And as you're watching this happen kind of  
9 realtime, did it strike you as occurring very quickly, or  
10 did it feel like you were in slow motion, or do you have a  
11 sense of that?

12 A. Happened within seconds. It was all within 10  
13 or 11 seconds.

14 Q. Okay. That was the impression you had?

15 A. Yeah.

16 Q. Okay. And based on the movements that you saw  
17 there at kind of the critical moments with police officers,  
18 did you have a fear that this individual may actually shoot  
19 at the police based on how he was moving?

20 A. Based on how he was moving, no. But based on  
21 the situation at large, I thought anything was possible.

22 Q. Okay. And as that arm was kind of coming  
23 back, as you indicated, when he looked back over his  
24 shoulder off his hip, do you remember the gun ever -- or  
25 the muzzle ever being pointed at the police --

1 A. No.

2 Q. -- that you could see?

3 A. No.

4 Q. Okay. Do you recall actually being under the  
5 impression that it may come up and actually fire at the  
6 police officers?

7 A. No. I think I -- I mean, that impression,  
8 anything could happen with a gun with just the flick of a  
9 wrist. It could have happened very quickly. It could have  
10 happened, but I did not have that impression.

11 Q. Okay. And do you remember, when you talked to  
12 the detectives in this case, saying that you at least had a  
13 thought that this individual was going to turn and start  
14 shooting at the police officers?

15 A. No, I don't remember saying that, no. If I  
16 did say that, no, I was wrong.

17 Q. Okay. So your testimony, just to be sure, to  
18 make sure we're clear, is that it didn't look like he was  
19 going to turn and shoot the police, but it takes a flick of  
20 a wrist, and anything could happen under those  
21 circumstances?

22 A. Yeah.

23 Q. Okay. After he -- after the shooting  
24 occurred, did you see what happened with the vehicles that  
25 you identified as being potentially involved in this

1 somehow?

2 A. No, no. I can't remember anything that  
3 happened after that.

4 Q. Do you remember seeing them at the scene later  
5 on as you were standing around?

6 A. No, no. I would have noticed that. No.

7 Q. Okay. So had they left, then? Is that your  
8 impression?

9 A. Yeah.

10 Q. Okay. You just didn't see which direction  
11 they went?

12 A. Yeah.

13 Q. Okay.

14 MR. JACKSON: I think those are all the  
15 questions that I have at this point for Mr. Mena.

16 Do the Grand Jurors have any questions?

17 A GRAND JUROR: I just had one question.

18 You kept referencing that the police came from  
19 behind?

20 THE WITNESS: Yep.

21 A GRAND JUROR: But weren't they running  
22 towards each other?

23 THE WITNESS: Yeah, but he had already -- so  
24 the police were in that empty -- the empty -- where the  
25 cars aren't parked, the middle ground.

1                   So they're both running there. They're going  
2 to collide.

3                   He goes this way. The police then go behind  
4 him as his back is turned.

5                   You get what I'm saying?

6                   A GRAND JUROR: Okay. Thank you.

7                   THE WITNESS: Sure.

8                   MR. JACKSON: Any other questions?

9                   I don't see any. All right. That's it.  
10 Thank you very much.

11

12

GARRETT CARROLL

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

16

17

EXAMINATION

18 BY MR. JACKSON:

19                   Q. Can you please state and spell your name?

20                   A. Garrett Carroll, G-A-R-R-E-T-T, C-A-R-R-O-L-L.

21                   Q. And how do you know Matthew Mena?

22                   A. I was actually with him on the night of the  
23 incident.

24                   Q. Okay. Is he a friend of yours?

25                   A. Yes.

1 Q. So, yeah, we'll take you back to September  
2 30th of 2018.

3 Do you see on the screen here we have an  
4 aerial shot of Third and Stark, now known as Harvey Milk?

5 A. Yes.

6 Q. And at about 3:00 in the morning, were you in  
7 this area outside of the Golden Dragon?

8 A. Yes, I was.

9 Q. Okay. And was Mr. Mena with you?

10 A. Yeah. Yes, he was.

11 Q. Could you describe for us what you remember  
12 occurring while you were standing out there?

13 A. I had just crossed the street and --

14 Q. Which direction?

15 A. Coming towards the Golden Dragon, I had just  
16 crossed the street from the Euro -- the light by -- I -- I  
17 made the transition from one side of the street to the  
18 other.

19 Q. Coming across Stark?

20 A. Yes.

21 Q. Okay.

22 A. And then Matthew was actually in front of me  
23 probably like five, six, eight feet in front of me, and I  
24 heard a shot ring out.

25 And that's when Matthew got in front of a

1 truck that was about eight feet in front of me, and I was  
2 standing up.

3 Q. Parked on the street?

4 A. Yes.

5 Q. And are we talking about on the east side of  
6 Third Avenue?

7 A. Yes.

8 Q. The sidewalk?

9 A. Yes.

10 Q. Okay.

11 A. And I was standing up, and I was watching. I  
12 couldn't see the guy who did get shot, but I could see the  
13 cops from the angle that I was at.

14 Q. And is there kind of a hedge that goes along  
15 the southeast part of the parking lot?

16 A. Yes.

17 Q. And what impact, if any, did that have on your  
18 ability to see what was happening?

19 A. I was at the angle where I could just see the  
20 hedge. I couldn't see the guy. I could see the police  
21 officers that were actually in the parking lot.

22 Q. Do you remember when you first saw the police  
23 officers there?

24 A. Yes, I do.

25 Q. When was that?

1           A.    I couldn't say the time, but I heard one shot  
2 ring out, and then two cops quickly pulled up to the scene.  
3 And then shortly after, about four more cop cars pulled up  
4 to the scene.

5           Q.    Okay. And so your impression is that they  
6 arrived around the time that you heard the gunshots?

7           A.    Yes.

8           Q.    Do I have it right that you had just crossed  
9 Stark from the south and were walking north on the east  
10 side of Third Avenue --

11          A.    Yes.

12          Q.    -- when you heard the shots?

13          A.    Yes.

14          Q.    So then how did you become aware that the  
15 police were there? Did you turn and look and see them?

16          A.    I turned and looked, and I actually saw a  
17 police SUV pull up.

18          Q.    Okay. And did it have its lights on?

19          A.    Yes, it did.

20          Q.    Could you actually see officers out of the  
21 car?

22          A.    Yes. I could see two officers.

23          Q.    Two?

24          A.    Yes.

25          Q.    And what were they doing?

1 A. They had their guns drawn.

2 Q. Okay. Were they just standing there by their  
3 cars?

4 A. Yes, they were.

5 Q. And then what happened?

6 A. I was -- it was kind of late, but I think they  
7 did say something, but I'm not sure what was said.

8 I did see the cops actually start shooting  
9 their weapons, but I couldn't necessarily see what they  
10 were shooting at, but I kind of had knowledge that they  
11 were shooting at somebody.

12 Q. Okay. And this is how soon after you heard  
13 the initial shots?

14 A. Probably about a couple minutes. It was  
15 pretty quick.

16 Q. Okay. And what was the -- were there other  
17 people around in this general area when this was happening?

18 A. Yeah. Actually, after the first shot, I saw  
19 people fleeing the parking lot and running away, and people  
20 were ducking and covering behind cars. It was a pretty  
21 hectic scene.

22 Q. Were people screaming and yelling and stuff,  
23 too?

24 A. I just -- probably a couple people were, like,  
25 Oh, shit and then probably ducking behind their cars, but I

1 didn't hear much yelling or screaming.

2 Q. Okay. Did you see which direction the people  
3 were running, or was it just kind of everywhere?

4 A. Yeah. I know one -- one woman fled the  
5 parking lot from -- kind of by the IRS Wage, but more  
6 towards the street.

7 A GRAND JUROR: Top left of the parking lot?

8 THE WITNESS: Yeah, top left. She was running  
9 down Stark.

10

11

12 BY MR. JACKSON: (Continuing)

13 Q. This way?

14 A. Yeah, but she -- she exited the parking lot  
15 coming this way and then ran down Stark.

16 Q. Okay. Did you see anybody else running  
17 straight down Third Avenue to the south?

18 A. No, I did not.

19 Q. Did anybody that you saw running appear  
20 injured to you?

21 A. I couldn't possibly say. It was a pretty  
22 hectic scene. So if somebody was running a little funny,  
23 maybe they were trying to get out of there quick. I can't  
24 possibly know.

25 Q. Did you see somebody running funny, as you put

1 it?

2 A. She looked like she was scared, but that was  
3 the girl that was running down Stark.

4 Q. Down Stark to the east?

5 A. Yes, yes.

6 Q. Okay.

7 A. Yeah.

8 Q. But nobody, like, limping or holding body  
9 parts or anything like that?

10 A. No, not to my knowledge.

11 Q. Okay. And so you're saying that you could see  
12 the police shoot, but you couldn't see what they were  
13 shooting at?

14 A. Yes, but I could see the direction that they  
15 were shooting at, and it was towards the south. It was  
16 towards the south. They had their guns drawn south, and  
17 they shot south.

18 Q. Okay. And could you not see what they were  
19 shooting at because of the hedge that was growing here?  
20 Were cars blocking you or what?

21 A. The hedge and the cars, yes, because the  
22 police were visibly in the middle of the parking lot.

23 Q. Okay. In this kind of open area?

24 A. Yes.

25 Q. Okay. Okay.

1 MR. JACKSON: Those are all the questions I  
2 have.

3 Do the Grand Jurors have any questions for  
4 Mr. Carroll?

5 I don't see any.

6 All right. That's it. Thank you very much.

7 MR. JACKSON: Why don't we go off the record  
8 while I try to set up for our next witness.

9 (Pause in proceedings: 11:25-11:27 a.m.)

10 MR. JACKSON: We're back on the record. We  
11 have our next witness.

12

13 SERGEANT JEFFREY DORN

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

17

18 EXAMINATION

19 BY MR. JACKSON:

20 Q. You can have a seat. Please state and spell  
21 your name.

22 A. Jeffrey, J-E-F-F-R-E-Y, Dorn, D-O-R-N.

23 Q. And where do you work?

24 A. I am a night shift supervisor at North  
25 Precinct for the Portland Police Bureau.

1 Q. And what does it mean to be a supervisor?

2 A. I am one of the supervisors of a shift of  
3 officers that we have. I oversee the personnel matters and  
4 the ongoings of the shift.

5 Q. Do you have a particular rank for that  
6 position?

7 A. Sergeant.

8 Q. And approximately how many sergeants are on  
9 shift during any particular shift?

10 A. Two to four. It depends upon the night.

11 Q. And what are the general responsibilities of a  
12 shift sergeant?

13 A. There's quite a few calls that end up having  
14 to have supervisor approval for a variety of reasons.

15 We have to make sure that the -- that first  
16 and foremost that the shift is staffed, so people haven't  
17 called in sick and we have enough bodies to work the street  
18 and what districts they work in.

19 Q. Okay. Were you working on September 30th of  
20 2018?

21 A. Yes, I was.

22 Q. And what were the hours of your shift that  
23 day?

24 A. I work 10:00 p.m. to 8:00 a.m.

25 Q. So did your shift actually start on the night

1 of 9/29/18 into the early morning hours of 9/30/18?

2 A. I would have -- the time is -- if I look at  
3 the time, it's 9/30. I would have started my shift on  
4 9/29, correct, at 10 p.m.

5 Q. Okay. And did you respond to Emanuel Hospital  
6 at about 3:25 in the morning on September 30th?

7 A. Yes, I did.

8 Q. And why did you do that?

9 A. There was a call that had been broadcast over  
10 the radio that there was a -- two gun -- walk-in gunshot  
11 victims that showed up at the hospital, and this is  
12 following an incident that had just happened downtown in  
13 close time frame.

14 Q. You said that you're a North Precinct patrol  
15 sergeant?

16 A. Correct.

17 Q. And in your capacity as a North Precinct  
18 patrol sergeant, would you have been aware of incidents  
19 happening in the downtown area?

20 A. Yes. That -- that incident was broadcast, the  
21 information on our net, that the North Precinct was  
22 responding to a shots fired call, and I didn't have all the  
23 information of what was happening downtown, but I was  
24 already switched over on one of my radios to listen and  
25 started monitoring the net, and I could hear a fairly

1 chaotic scene going on downtown.

2 Q. Did you get a general briefing of what had  
3 happened downtown in terms of the incident itself?

4 A. Not really, not really. It was -- it took a  
5 while from the initial broadcast, because I switched over a  
6 little late, to even piece together that it was an  
7 officer-involved shooting that I later learned, you know,  
8 or sometime in the midst there, I learned it was an  
9 officer-involved shooting in relation to another shooting  
10 that had occurred.

11 Q. Okay. So when you got the dispatch out that  
12 two people had walked into Emanuel Hospital with gunshot  
13 injuries, did you think it was related to the incident  
14 downtown?

15 A. I -- I felt there was a strong likelihood,  
16 just because of the time frame. And this is a very common  
17 scene that happens, replays itself over and over throughout  
18 the years. I've been a police officer for 22 years now and  
19 working that neighborhood for quite a few of my years.

20 So it's not unusual at all, within a short  
21 time frame after any shooting in the city, for victims to  
22 show up at area hospitals.

23 Q. With gunshot injuries?

24 A. With gunshot injuries, yes.

25 Q. So when you went out to the hospital, what did

1 you do?

2 A. I was the first one to arrive, and I pulled  
3 right into the -- the public entrance where generally most  
4 of the -- in my experience, most of the gunshot drop-off  
5 type victims are dropped off.

6 There was no vehicles in that drop-off area.  
7 I walked into the lobby and was met by security personnel  
8 and an office -- or the clerk at the front desk, who were  
9 ready to direct me back to where the gunshot victims had  
10 already been taken. So they were no longer in the lobby.  
11 They had been rushed back into the actual ER.

12 Q. Did you identify the two individuals that had  
13 been shot?

14 A. Yeah. As soon as we could, I was with -- I  
15 had a couple other officers headed to the hospital as well.  
16 And then that was first and foremost, I was trying to  
17 figure out where -- where the two individuals were and what  
18 their names were.

19 And I ended up identifying one of the  
20 individuals as Manny Hall and the other one as Marcel  
21 Branch.

22 Q. Okay. Did you learn about the nature of the  
23 injuries the two individuals had sustained?

24 A. Yeah. So the ER is set up to where there's a  
25 variety of rooms around the nurses station.

1                   And Manny Hall was in a room within the ER. I  
2 was told that the other subject, who had took a while to  
3 get his name from the nursing staff, he --

4                   Q.    Mr. Branch?

5                   A.    Yes. Mr. Branch was rushed into surgery  
6 immediately, and he was never in that -- in the vicinity of  
7 the actual ER. He got rushed back into the operating room.

8                   Q.    Okay. While you were consulting with medical  
9 staff, did you obtain a set of keys that had come from Mr.  
10 Branch?

11                  A.    Yes. A nurse came out, because when we were  
12 trying to figure out if we could figure out who Mr. Branch  
13 was, she came out and she brought a set of keys, and she  
14 handed them to Officer Holmgren, who I had there to collect  
15 any and all evidence that was going to end up transpiring.

16                  My job there was to kind of facilitate with  
17 the officers to make sure everything happened and that  
18 people weren't -- there were no visitors happening. It was  
19 locked down so that we can protect the integrity of the  
20 investigation.

21                  And so the keys were, yes, handed to Officer  
22 Holmgren.

23                  Q.    Did you know what type of car the keys  
24 belonged to?

25                  A.    Yes, and the reason is because they came -- it

1 looked like the vehicle likely was an old rental car that  
2 was purchased, and it still had like -- I don't remember if  
3 it was a Hertz rental car, but it still had the key fob tag  
4 that said "blue Chevy Cobalt," which immediately in my mind  
5 was different than the -- the original description of the  
6 car that dropped off two persons was that the -- the way  
7 that the 911 call came, I -- I transcribed it as a "Walk-in  
8 gunshot wound, two people both from the same vehicle,  
9 probably related to incident downtown. Drop-off vehicle  
10 was a black Camaro with a plate to match and that vehicle  
11 left."

12           That's the information I had going into this.  
13 So it was kind of, well, that guy has keys to a vehicle  
14 that is not this car.

15           Q.    So what did you do with that information?

16           A.    Once we had enough other officers that got to  
17 the scene to secure the rooms, myself and Officer Holmgren  
18 went to the security office, and one of the security  
19 personnel was able to pull up a video feed of the drop-off,  
20 and we were actually able to watch what -- what occurred.

21           Q.    And what did you see?

22           A.    I saw first Mr. Branch walk from what would be  
23 the north side of the parking lot, out of view, he walked  
24 into view. He walked across the big -- you know, kind of a  
25 big U-turn. He walks up to the front door, looks like he's

1 injured. And then just as he's walking into the front  
2 doors of the hospital, the black Camaro pulls up.

3 And then from the scene, that was really all I  
4 was looking for is that they arrived separately. So I  
5 didn't look at the other video footage, but Mr. Branch  
6 obviously continued into the front where I think the -- I  
7 recall the desk gal saying he made it up there and kind of  
8 collapsed at the desk, and they were tended to and brought  
9 back.

10 Q. Before surgery?

11 A. Before surgery, yeah.

12 Q. Okay.

13 A. And then we see Manny Hall was -- he was the  
14 second person who got out of there.

15 Q. Out of the black Camaro?

16 A. Out of the black Camaro. And I didn't  
17 really -- we saw the black Camaro leave, but that was --  
18 that was it. That was consistent with what I saw because  
19 it was no longer there.

20 Q. Okay. Did you locate the Cobalt in the  
21 parking lot?

22 A. Yeah. So then with that information, we saw  
23 what direction he walked from. So we went out to the  
24 parking lot and very quickly found a blue Chevy Cobalt out  
25 in the lot.

1                   I don't think I wrote the name -- or the  
2 license plate down there, but it was -- it had blood  
3 evidence, what looked like blood evidence all over the  
4 front seat and on the center console.

5                   And basically from that point, I instructed  
6 Officer Holmgren to lock down the vehicle. We're not going  
7 to touch it. Nobody comes around it.

8                   I notified the investigators downtown what we  
9 had and got the ball rolling to turn that into part of  
10 their investigation.

11                  Q.     Okay.

12                  MR. JACKSON: Are there any questions for  
13 Sergeant Dorn?

14                  I don't see any.

15                  All right. Thank you very much.

16                  THE WITNESS: Thank you.

17                  (Pause in proceedings: 11:38-1:05 p.m.)

18

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25

1 SEAN MICHAELS

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

5  
6 EXAMINATION

7 BY MR. JACKSON:

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

9 A. Sure. Sean, S-E-A-N, Michaels,  
10 M-I-C-H-A-E-L-S.

11 Q. Where do you work?

12 A. I work with the Oregon State Police Crime Lab  
13 in the DNA section.

14 Q. And could you briefly explain for us what your  
15 educational background is for that position?

16 A. Sure. I received my bachelor's of science  
17 degree from Western Illinois University in 2005.

18 Q. Okay. And what training did you receive to  
19 actually work with the Oregon State Crime Lab?

20 A. Prior to coming to the Oregon State Police  
21 Crime Lab, I worked for the Florida Department of Law  
22 Enforcement in the Tampa lab in the same capacity.

23 I received my initial DNA analyst training  
24 there, which included written and oral examinations,  
25 practice samples, working with a coach, doing literature

1 review and all of that stuff.

2           When I came to Oregon State Police, I kind of  
3 did the same thing. But because I had that experience, I  
4 kind of had an abbreviated just to apply to the -- how the  
5 Oregon State Police ran as opposed to Florida.

6           Q. And did you go directly into DNA -- the DNA  
7 unit with the Oregon State Police Crime Lab?

8           A. Yes.

9           Q. And how long have you been with the Oregon  
10 State Police Crime Lab?

11          A. I've been with them for four years.

12          Q. Okay. Doing DNA analysis the whole time?

13          A. Correct.

14          Q. Okay. Is the Oregon State Crime Lab  
15 accredited and certified to do DNA testing?

16          A. Yes, it is.

17          Q. And are the processes used by the lab accepted  
18 in the scientific community?

19          A. They are.

20          Q. Okay. Did you generate a report concerning an  
21 analysis of some swabs taken from a firearm recovered from  
22 a crime scene involving a shooting with Patrick Kimmons --

23          A. I did.

24          Q. -- in this case?

25                 And is the report you generated dated October

1 26th of 2018?

2 A. That's correct.

3 Q. Okay. Could you briefly take us through the  
4 evidence that you received from the Portland Police Bureau  
5 for analysis and how you conducted your analysis?

6 A. Sure. So I received two separate swabs from  
7 opposite sides of the gun. One was the opposite side of  
8 the serial number of the gun, and the other one was said to  
9 be collected from the serial number. I also received a  
10 blood standard from Patrick Kimmons.

11 Our process, DNA analysis process, is we  
12 pretty much take that swab, we put it into -- we add an  
13 agent, and what that does is it breaks open the DNA, it  
14 releases the DNA out of the cells. Then we quantify it to  
15 see approximately how much DNA is in that sample.

16 Once we know approximately how many DNA, then  
17 we amplify or make millions of copies of it, and then we  
18 run it on an instrument to collect the data from that  
19 sample. In turn, we used a program that will interpret  
20 that data into a DNA profile.

21 And in this case, once I ran the gun swabs, I  
22 also ran the standard separately. What I do is I compare  
23 the standard DNA profiles to those profiles of the gun  
24 swabs.

25 Q. Okay. And did you do that in this case?

1 A. I did.

2 Q. What did you find?

3 A. So when we did the comparison of the swab from  
4 the opposite serial number side of the gun, and I compared  
5 that standard to Patrick Kimmons, it was found that Patrick  
6 Kimmons cannot be excluded as the major contributor to that  
7 mixture.

8 So what that means is he was -- in comparison,  
9 he was the major profile on that gun or cannot be excluded  
10 as a major profile.

11 And what we do is it gives a stat of what's  
12 called a likelihood ratio. What it does is you have two  
13 likelihoods, you have two scenarios. Is one scenario more  
14 likely than another?

15 And in this case, it was 3.23 or 32.3  
16 septillion times more likely to observe the evidentiary  
17 mixture that the contributors are Patrick Kimmons and three  
18 unknown, unrelated individuals rather than four unknown,  
19 unrelated individuals.

20 So, again, you have the one scenario compared  
21 to the other, and it's saying that the one scenario, with  
22 him not being excluded, is 32.3 septillion times more  
23 likely than the other scenario with four unknown people.

24 So that --

25 Q. That he would be excluded from?

1           A.     Could not be excluded.    So he would be a  
2 contributor with three other people, rather than four  
3 unknown, unrelated people on the gun swab.    So that was for  
4 the first swab.

5           The second swab, which was the serial side of  
6 the gun, did that same comparison, did the standard to that  
7 mixture.

8           That mixture was assumed to be from three  
9 contributors with at least one male.    And then with that  
10 comparison, he could not be excluded as a major contributor  
11 to that mixture.

12           And then again with the statistic, it was at  
13 least 55.8 octillion times more likely to observe the  
14 mixture if the contributors are Patrick Kimmons and two  
15 unknown, unrelated individuals rather than three unknown,  
16 unrelated individuals.

17           Q.     Okay.    And what did it mean when it's  
18 identifying him as not being excluded as a major  
19 contributor?

20           A.     So in this mixture, once the -- so we have a  
21 program that deconvolutes or unravels the mixture.    So when  
22 we have a bunch of DNA from several people, we consider  
23 that a mixture, so more than one person out there.    And to  
24 unravel that mixture, it deconvolutes, and it separates it  
25 into certain people.

1           When we have a major contributor, it's over a  
2 certain percentage that that contributor is weighted, and  
3 in our case it's 70 percent.

4           So if a contributor is assumed or weighted 70  
5 percent or greater to that mixture, it can be known as a  
6 major contributor. In some instances, majors are people  
7 who leave more DNA than, say, a minor contributor.

8           Q.    Okay. And when you say "leaves more DNA,"  
9 what is it that you're talking about?

10          A.    So, again, a major would be someone who would  
11 leave more DNA than a minor contributor. Reasons can be  
12 that a person held something longer, they're sweating.

13           It's just that they're leaving more DNA, say,  
14 than the other contributors to that mixture.

15          Q.    And Mr. Kimmons was identified as a major  
16 contributor from both swabs?

17          A.    Correct. He could not be excluded as the  
18 major on both swabs.

19          Q.    Okay. When you're looking at a mixture, how  
20 are you able to identify the number of different people  
21 that may be present within that mixture?

22          A.    So we initially look at the DNA profile  
23 initially to see how many -- in your DNA, you get half your  
24 DNA from your mom, half your DNA from your dad. So you  
25 have two types: one from your mom, one from your dad.

1           So at each location, you can have one type,  
2    which is, say, for example, your mom gives you a 25 and  
3    your dad gives you a 25. You would only be a 25 because  
4    both of them gave you a 25.

5           Now, there's another one where you have two  
6    peaks where your mom gives you a 24, your dad gives you a  
7    25, so you have two different types. We look at those peaks  
8    and the number of peaks to determine how many people would  
9    be present.

10           So based on the one or two peaks, we would  
11   know that you can't have more than a certain amount of  
12   peaks to have that many contributors.

13           Q.    And from that, you can determine at least how  
14   many different individuals' DNA is present on an object --

15           A.    That's right.

16           Q.    -- or in a swab?

17           A.    Yes.

18           Q.    And so in this case, from the swab from the  
19   opposite side of the serial number side of the gun, it's  
20   assumed to be from four contributors. Is that right?

21           A.    Correct.

22           Q.    But, again, to be labeled as a major  
23   contributor, Mr. Kimmons would have to be over 70 percent  
24   there. Is that correct?

25           A.    Yeah. So when it -- when this program breaks

1 out the contributors, it gives them weight. So based on  
2 the information in that sample, it will say, based on how  
3 DNA acts, what each contributors' weight to that profile  
4 is.

5 And in this case, the major contributor was 70  
6 percent. And when I compared that standard to that, he  
7 could not be excluded as that contributor.

8 Q. Your report indicates that you received the  
9 evidence directly from the Portland Police Bureau.

10 Did they personally hand it to you, or what is  
11 the process of evidence handling within the crime lab?

12 A. So an agency will come to a lab. We have an  
13 evidence intake area, and they will log in the evidence,  
14 and it will be stored in a secure locker until I go down to  
15 the locker and take the evidence into possession through a  
16 chain of custody.

17 Q. Okay. And did you analyze the actual firearm  
18 in this case, or did you only analyze swabs taken from the  
19 firearm?

20 A. Just swabs from the firearm.

21 Q. Okay. And was it members of the Portland  
22 Police Bureau that actually collected the swabs and  
23 submitted them?

24 A. That's correct.

25 MR. JACKSON: All right. Do you folks have

1 any questions?

2 I don't see any.

3 All right. Thank you very much.

4 THE WITNESS: Thank you.

5 (Pause in proceedings: 1:21-1:24 p.m.)

6

7 CHRISTOPHER WILLIAMS

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

11

12 EXAMINATION

13 BY MR. JACKSON:

14 Q. Please state and spell your name.

15 A. Chris Williams, Christopher Williams,  
16 C-H-R-I-S-T-O-P-H-E-R.

17 Last name too?

18 Q. Yes.

19 A. W-I-L-L-I-A-M-S the second.

20 Q. Okay. I want to take you back to September  
21 30th of 2018, the early morning hours of that day.

22 A. Uh-huh.

23 Q. Were you downtown at Third and Stark, parking  
24 lot located right there?

25 A. Yes, I was.

1 Q. Okay. And if you look up on the screen here,  
2 do you see this aerial photograph of Fourth, Third, Stark,  
3 now known as Harvey Milk, and Oak?

4 A. Yes, sir.

5 Q. And is that the parking lot that you were in?

6 A. Yes, sir.

7 Q. At about -- do you remember about what time it  
8 was that you arrived?

9 A. It was -- it was early in the morning, late at  
10 night. It had to have been around, like, 2:00, 3:00, I'm  
11 assuming. It was late.

12 Q. Okay.

13 A. You want me to tell the story on what happened  
14 or --

15 Q. Well, yeah. So were you coming from somewhere  
16 else, or was that your first stop?

17 A. No. I was coming from Century, Century Bar.  
18 I was coming from Century Bar, and I went into the parking  
19 lot because I saw my cousin, one of my cousins, and I  
20 pulled into the parking lot. And, like I said, it was  
21 around 2:00 or 3:00.

22 Q. Okay. And when you got there, were there a  
23 lot of cars in the lot or was it pretty empty?

24 A. No. It was pretty -- it was pretty empty. I  
25 parked on the left side of the parking lot.

1 Q. Okay. When you say "left," you mean the  
2 south?

3 A. Yes.

4 Q. The south here where --

5 A. Yeah. My car was, like, the fourth or, like,  
6 fifth row. It was, like, on the outside. It wasn't close  
7 to the bushes. It was -- the car wasn't close to the  
8 bushes at all. It was, like, on the second row.

9 You could -- you see how there's like one and  
10 then two? You see how it's, like, row one and two? My car  
11 was on the row two side.

12 Q. The drive aisle side?

13 A. Yeah, yeah, yeah, yeah.

14 Can I show you?

15 Q. Yeah, of course.

16 A. Like, I drove in. And then my car was, like,  
17 right over here. So it was row one and row two. The  
18 bushes are right here, but my car was, like, right over  
19 there.

20 Q. What kind of car were you driving?

21 A. A 2017 Durango.

22 Q. What color was it?

23 A. Black.

24 Q. Okay. A black Durango?

25 A. Yeah.

1 Q. And you said you saw your cousin there?

2 A. Yeah. I saw one of my cousins outside of his  
3 car, and then I was -- then I pulled into the parking lot  
4 to say what's up to him.

5 Q. Okay. And do you remember who that was?

6 A. Yeah, my cousin Mike. His name is Mike. Then  
7 he introduced me to his little brother, which I didn't know  
8 that that was my little cousin. His name was Aundree.

9 Me and him started talking from my car,  
10 talking about basketball, actually, because he plays  
11 basketball.

12 Q. Okay. And do you remember what kind of car  
13 they were driving?

14 A. I don't because I -- I think he got -- he has,  
15 like, two or three cars. I'm assuming it was his car, but  
16 I just remember seeing him.

17 I was just pulling into the parking lot saying  
18 Hey, cousin, what's up? And then we all started chatting  
19 it up. I was really talking to Aundree a lot.

20 Q. About basketball?

21 A. Yeah.

22 Q. Okay.

23 A. And life, and life, too.

24 Q. And life?

25 A. Yeah.

1 Q. Okay. All right. And were you there by  
2 yourself?

3 A. Yeah.

4 Q. Okay. You just pulled in by yourself when you  
5 saw your cousin?

6 A. Yeah, yeah.

7 Q. Okay. So you're there. The cousin is parked  
8 to the -- if this is east, to the east of you or to the  
9 west of you?

10 A. To the east of me.

11 Q. To the east of you. Okay.

12 Do you remember, were you in adjoining stalls,  
13 or was there an open stall in between the two?

14 A. No, no. It was a close stall because my  
15 cousin Aundree, he was with, like, a girl and her car was  
16 right next to mine. He got -- he was getting in -- out of  
17 the passenger seat, and he was talking to her, like, as if  
18 they knew each other. Her car was literally right next to  
19 mine.

20 Q. Okay. Were you inside of your car or outside?

21 A. Outside. I was outside of it.

22 Q. And what about your cousin Michael and --

23 A. No. We was all outside of the car.

24 Q. Okay. Standing -- where were you standing in  
25 the parking lot?

1           A.    Yeah, so my car was parked.  Let's say this  
2 one was mine.  That was the girl's.

3                    So I'm outside of my driver's, and he's  
4 outside of his passenger's of the girl's car.  So we just  
5 talking, like, this literally, like, right there.

6           Q.    Okay.

7           A.    Yeah.

8           Q.    And then do you remember if there were other  
9 people kind of generally around or was it --

10          A.    It was -- it was -- I'm not going to lie to  
11 you.  I was -- I was drunk.

12          Q.    Okay.

13          A.    And it was -- it was so many, like, things  
14 happening because my whole point was really to -- I was  
15 headed to Golden Dragon, to the strip club.

16          Q.    Is the Golden Dragon located right here?

17          A.    Yeah.  So there, like, were so many people  
18 because the clubs and bars started closing, and that's the  
19 only thing open until, like, 6:00.

20                    So there was people everywhere.  I wasn't  
21 really focused on that because I was having such a deep  
22 conversation with my cousin about basketball and life and  
23 things like that.

24          Q.    Sure.  You said that you were feeling drunk,  
25 right?

1 A. Yeah.

2 Q. I mean, that could mean any number of things,  
3 right?

4 A. Yes.

5 Q. Were you, like, falling-down drunk?

6 A. No, no. It wasn't like, Oh, I'm fucked up.  
7 It wasn't like that. It was just, like, I was just buzzed,  
8 really, really buzzed.

9 That wasn't my focus, like, other people. We  
10 were just having a good -- just a good talk, and I just  
11 wasn't worried about what everybody else was doing.

12 Q. Okay. And then what do you remember  
13 happening?

14 A. So we sitting there talking. And it's funny  
15 because I was, like, yeah, like, the girls and, like, the  
16 streets and all this other stuff, it's always going to be  
17 here; like, you need to stay in Eugene and focus on sports  
18 and stuff.

19 The next thing I know, I see a dude just back  
20 up, and then I just started hearing gunfire just go off. I  
21 don't know where he went. I don't know if he got hit.

22 I'm just, like, Oh, shit, like -- I start  
23 running west towards -- well, not running, but hiding  
24 behind cars type of thing, just like, oh, like in shock,  
25 don't know really where to go.

1                   There was so many things going on, and I'm  
2 buzzed, too, and that's when I tripped, like right where  
3 the -- where you can come through on Stark, there's, like,  
4 a -- there's a middle entrance. I don't know why it's  
5 blocked off right there.

6                   You can drive -- there's like a drive-in right  
7 there, too. That's when I tripped. The next thing I know,  
8 I'm looking up, and I just saw three guns to my head,  
9 basically, and the cops was, like, Drop the weapon because  
10 I had my cell phone out in my left hand.

11                   I was, like, I don't got no -- I'm not part of  
12 this shit, whatever is going on. I was, like, You all can  
13 run my name, if you want and do all that shit. Me and my  
14 cousin we was just sitting here talking, wrong place, wrong  
15 time.

16                   So they arrested me, and I looked and then I  
17 guess I -- the kid who died or whatever, he was just, like,  
18 sitting there not too far from my car, just, like, laying  
19 there.

20                   I was, like, so buzzed, you know what I mean?  
21 It took me a long time to, like, really figure out, like,  
22 what just happened kind of.

23                   So they had me in the back of the cop car for,  
24 like, an hour or two, and then they let me go.

25                   Q.    Okay. So you're standing here in this general

1 area?

2 A. Yeah.

3 Q. Talking to your cousin?

4 A. Yeah.

5 Q. Do you remember which way you were facing?

6 A. Yeah. I'm looking towards Golden Dragon.

7 Q. To the east?

8 A. Yes, sir, and my cousin is looking at me west.

9 I'm on my driver's side outside. He's on the passenger  
10 side outside.

11 Me and him are just talking like this. Next  
12 thing you know, like three feet away, I just started  
13 hearing gunfire, and I'm, like, Oh, shit.

14 So I, like, run behind my car. I'm ducked  
15 down, and then I start heading towards Rouge, which is  
16 west.

17 Q. Okay. And is Club Rouge --

18 A. Yep.

19 Q. -- right here on Fourth and Stark or Harvey  
20 Milk?

21 A. Yes, sir.

22 Q. Okay. When you hear the gunfire, was it in  
23 your field of vision, or did you have to look in a  
24 particular direction to see what was happening?

25 A. Well, because I'm looking at him, and then,

1 like, from literally just 10 feet away, it's all like -- I  
2 was just, like, Oh, shit because I felt like I saw  
3 something. But then right when I heard it go off, I just  
4 ducked off.

5 Q. Okay.

6 A. I just started --

7 Q. What --

8 A. I tried to get out of there.

9 Q. What did you see?

10 A. A gun.

11 Q. When you looked over there?

12 A. Yeah. Well, I saw this dude just backing up.  
13 Then it's like I'm not really -- I'm still focused on what  
14 me and my cousin was talking about. The next thing you  
15 know, boom, boom, boom, boom, like, the shots and I'm,  
16 like, Oh, shit.

17 Q. And so you just -- that sound you made, was  
18 that the gunfire?

19 A. Yeah.

20 Q. And so you made more than one. Did you  
21 actually hear more than one shot?

22 A. Yeah, yeah, I did.

23 Q. Do you have a sense of how many shots you  
24 heard?

25 A. I don't. It was -- it was a couple, though.

1 And I'm not trying to say the wrong number. That's all  
2 that I'm -- you know what I'm saying? I'm not trying to  
3 overexaggerate shit.

4 Q. No, no. Whatever you remember is what we're  
5 interested in.

6 A. Yeah.

7 Q. So could you see what the person with the gun  
8 was pointing at or which direction he was facing?

9 A. No, no. He -- because we're like this. He's  
10 like this, and then he's backing up. He's backpedaling  
11 towards us.

12 Q. Okay. So if you're facing east talking --

13 A. He was headed towards my car.

14 Q. To the south?

15 A. Yeah.

16 Q. Backing away?

17 A. Yeah.

18 Q. From other people?

19 A. I'm guessing so because, like I said, there  
20 was so many people out there.

21 I'm the type of dude that when I'm, like,  
22 buzzed or drunk and stuff, I'm not worried about other  
23 people. Me and my cousin was just, like, having a good,  
24 deep talk, and I just found out that he was my cousin.

25 So I don't know. You know what I mean? We

1 was just trying to get to know each other. I'm not worried  
2 about what other people was doing, you know what I mean?

3 As soon as I heard the gunfire, then that's  
4 when I just dipped off, you know what I mean? And then I  
5 tripped, then I fell literally, like, right where the exit  
6 is at on Stark.

7 Q. Over here?

8 A. Yeah -- well, even closer, it's like -- yeah.

9 Q. Okay.

10 A. They've got cars blocking it off right there,  
11 but you can drive in that way. I don't know why it's  
12 blocked off right there.

13 Q. Okay.

14 A. It's an exit. It's, like, a side exit  
15 basically. I tripped and fell.

16 Q. Just for the record, we're looking at a  
17 Google-generated aerial map --

18 A. Yeah.

19 Q. -- as opposed to a photograph from the night.

20 A. Got it. I got you.

21 Q. Okay. Do you remember, once you heard the  
22 gunshots, which direction you ran initially, or did you  
23 just --

24 A. Yeah, yeah.

25 Q. Go ahead.

1           A.    This is what happened.  So let's just say,  
2 like, again, we're here.  The shots went off.  My car is  
3 literally, like, right there.

4           So I just started going this way, and then I  
5 tried -- I was trying to pull up my pants and run for it.  
6 Then I tripped and fell.  The cops closed in on me right  
7 there.  Let's just say right there, that's where the SUV  
8 came, and that's when they put me in cuffs.

9           And that's when I look over, and the kid -- it  
10 was weird because I guess the kid that got died or  
11 whatever, he was, like, laid up against, like, the curb.  
12 So he was, like, on the first row.

13           You get what I'm saying?

14           Q.    Uh-huh.

15           A.    And that's all I remember.

16           Q.    Kind of next to where your car was?

17           A.    Yes, sir.

18           Q.    The Durango?

19           A.    Yes, sir.

20           Q.    Okay.  Did you know who any of these people  
21 over here were?

22           A.    No, I didn't know nobody besides my cousin.  I  
23 didn't even know the kid.

24           Like I said, I was in the back of the car, and  
25 I'm trying to figure out, like, What the fuck just

1 happened, you know what I mean? To be honest, it was just,  
2 like, wrong place at the wrong time. You know what I mean?

3 I was mad at the police, too, because I felt  
4 like they thought I had something to do with it, but then  
5 they realized I didn't because it was, like, Dude, I don't  
6 got nothing to do with this shit, you know what I mean?

7 Q. Yeah. And they let you go?

8 A. Yeah, yeah, yeah, yeah.

9 Q. Okay. So do you recall, as you were kind of  
10 making your way away from the initial gunfire, hearing any  
11 other gunfire occurring?

12 A. I wasn't even worried about that. Soon as I  
13 heard them little couple shots, I'm trying to get out of  
14 there, right? All I saw was Rouge, you know what I mean?  
15 I'm trying to run towards Rouge.

16 I was so drunk, I was -- you know, I'm not  
17 trying to stand all the way up. So as soon as I stand all  
18 the way up and try to pull up my pants, I trip, fell.  
19 That's when the cops is, like, Freeze. Drop your weapon.

20 I don't have a weapon.

21 Q. Uh-huh.

22 A. I don't got nothing.

23 Q. Did you hear any police officers yelling  
24 commands at other people, not at you?

25 A. No. It was like -- it was so much going on.

1 It was, like, so much commotion going on when they was  
2 yelling at me, it's, like, I -- it was commotion behind me,  
3 too.

4 When it came -- when I saw the cops had the  
5 guns pointed at me, at that point, I'm worried about I'm  
6 not trying to be a sad case that gets shot. You know what  
7 I mean? I don't want them to think my cell phone is a gun  
8 or nothing. I'm yelling at them, I don't have no effing  
9 weapon, you know what I mean?

10 It was for sure commotion all around, you know  
11 what I mean?

12 Q. Uh-huh.

13 A. Everything just happened so quick. You know,  
14 it was just, like, boom, boom. It was like -- that's only  
15 20 feet away from my car, and cops was right there. I'm  
16 just like, What the hell. How did you all get here so  
17 quick?

18 Q. When you pulled in, did you see police in the  
19 parking lot?

20 A. Huh-uh.

21 Q. Anywhere at all --

22 A. Huh-uh.

23 Q. -- that you noticed?

24 A. It was crazy because even when they arrested  
25 me, I'm talking to the officer. I'm, like, How did you all

1 get here so damn quick, you know what I mean, because I  
2 didn't see no cops on the other side of the parking lot or  
3 nothing.

4 Q. Okay. So the first time you saw police was  
5 when you fell down basically at their feet?

6 A. Yeah, yeah, yeah.

7 Q. Okay.

8 A. And, too, I don't know. This is kind of  
9 extra, but I know that they probably got surveillance  
10 video.

11 Q. Well, so, what we're limited to here is just  
12 your perception and memory of what happened.

13 A. Got you, got you, got you.

14 A GRAND JUROR: Can I ask two quick questions?

15 MR. JACKSON: Yes, please.

16 A GRAND JUROR: How long were you there before  
17 all this happened?

18 THE WITNESS: It was crazy. It was, like, I  
19 parked, and then I'm sitting there talking to my cousin for  
20 five or 10 minutes. That's when everything just, like,  
21 happened.

22 It probably wasn't even that. It was probably  
23 five minutes, eight minutes or so. I'm just sitting there.  
24 We just talking about life and basketball, because I used  
25 to play basketball.

1                   He's playing college, and I'm proud of him.  
2 Even though it's my first time meeting him, I'm telling him  
3 late nights and girls and all that shit, that's all going  
4 to come later on, like, stay in Eugene and handle business.

5                   Fucking 30 seconds later, told you so, you  
6 know what I mean? It was kind of -- it was crazy, it was  
7 crazy.

8                   And then I was, like, freaking out because I  
9 didn't see my cousins. So I'm thinking that they got hit  
10 by a stray or, like, I don't know what's going on. But  
11 then everything ended up being okay.

12                   MR. JACKSON: They were okay?

13                   THE WITNESS: Yeah.

14                   MR. JACKSON: Okay.

15                   A GRAND JUROR: Was there a car on the other  
16 side of you?

17                   THE WITNESS: Yeah, because it was, like, my  
18 car, I'm on the outside. I'm talking to my cousin and this  
19 girl's car that he was with.

20                   A GRAND JUROR: What about the other side of  
21 you?

22                   THE WITNESS: Yeah, there was another car, but  
23 I don't know whose car that was.

24                   A GRAND JUROR: Okay. Thank you.

25                   MR. JACKSON: Okay. Are there any other

1 questions?

2 I don't see any.

3 All right. That's it. Thank you very much,  
4 sir.

5 THE WITNESS: Thank you. Yes, yes, yes. You  
6 all have a good one.

7 A GRAND JUROR: You, too.

8 (Pause in proceedings: 1:40-1:53 p.m.)

9

10 DETECTIVE DARREN POSEY

11 having been previously sworn, was re-called as a witness

12

13 EXAMINATION

14 BY MR. JACKSON:

15 Q. We're back on the record.

16 Detective Posey, thank you for coming back.

17 You're still under oath from this morning.

18 A. Yes.

19 Q. One additional question I wanted to ask you  
20 about from your investigation, what items of evidence did  
21 you submit to the crime lab for analysis and testing?

22 A. So I had both of the officers' firearms, the  
23 two Glock 17s with -- yeah, both of those to the crime lab.  
24 I also had all of the 12 casings sent to the Oregon State  
25 Crime Lab as well.

1                   Along with that, the five-shot revolver with  
2 its casings were sent to the crime lab, but also Bode swabs  
3 that were taken off of the gun were also sent to the Oregon  
4 State Crime Lab.

5                   Q.     Did you say Bode swabs?

6                   A.     Bode swabs, yes.

7                   Q.     What are those?

8                   A.     They're basically swabs that are run across  
9 the gun to collect touch DNA.

10                   Basically, your body leaves off skin cells,  
11 and the swabs pick those items up. And so those swabs were  
12 sent to the crime lab.

13                   Q.     And those swabs were taken off of the  
14 revolver?

15                   A.     Correct.

16                   Q.     Both sides?

17                   A.     Both sides.

18                   Q.     Okay. Were any of the slugs or bullets that  
19 were recovered from the scene in the northeast corner  
20 parking lot shooting recovered and also submitted to the  
21 crime lab?

22                   A.     Yes. So bullet on placard number 19 and then  
23 the bullet on placard number 32 were both sent to the  
24 Oregon State Crime Lab.

25                   So here's 32. That's the one that was sitting

1 underneath the car and then 19 that was sitting on the  
2 sidewalk.

3 MR. JACKSON: Okay. Any questions for  
4 Detective Posey about that?

5 Okay. Thank you very much.

6

7 SERGEANT STEVEN WUTHRICH

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

11

12 EXAMINATION

13 BY MR. JACKSON:

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

15 A. It's Steven Wuthrich, S-T-E-V-E-N, and  
16 Wuthrich is spelled W-U-T-H-R-I-C-H.

17 Q. And where do you work?

18 A. I'm a Portland Police sergeant.

19 Q. And you're sergeant for patrol?

20 A. Yes, sir.

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

22 A. It will be 15 years in February of next year.

23 Q. And have you worked patrol for that entire  
24 time?

25 A. Yes, sir, I have.

1 Q. And when did you become a sergeant?

2 A. May 4th of 2017.

3 Q. And what is the difference between being a  
4 patrol officer and a patrol sergeant in terms of  
5 responsibilities?

6 A. Sure. A patrol officer's responsibility  
7 primarily is to take 911 calls and actively patrol the  
8 neighborhoods and districts they work. A patrol sergeant  
9 is the first line of supervision.

10 So on a daily basis, I would respond to  
11 critical incidents in a management or leadership-type role.

12 My duties include reviewing officer reports,  
13 reviewing officers' use of force and a number of other  
14 administrative duties.

15 Q. What part of town do you generally patrol?

16 A. I work Central Precinct, which is generally  
17 the west side of the Willamette.

18 Q. All the way up north Portland down into  
19 southwest, that whole area?

20 A. Correct, and then out east to Southeast Caesar  
21 Chavez.

22 Q. All right. How many sergeants are generally  
23 on shift for a typical night?

24 A. On night shift, we generally have -- two is  
25 probably most common. Occasionally, we'll have three. If

1 we're really lucky, we have four working at nighttime.

2 Q. And so as a sergeant, are you required to  
3 respond basically all over the Central Precinct patrol  
4 location?

5 A. Yes, we are.

6 Q. Okay. Were you working on September 30th of  
7 2018?

8 A. Yes, sir, I was.

9 Q. And what shift were you working that night?

10 A. I was working night shift, which is 10 p.m. to  
11 8 a.m.

12 Q. And so did your shift start 10 p.m. September  
13 29th and go into the early morning of September 30th?

14 A. Correct, yes.

15 Q. Okay. What part of town were you focusing  
16 your attention on that night?

17 A. Being that it was a weekend night, I went down  
18 to assist with the entertainment detail, which is made up  
19 of another sergeant and generally four to six officers that  
20 focus on the bars and nightclubs downtown.

21 They block off the streets to make it safer  
22 for pedestrians. And we have hundreds, if not thousands,  
23 of people come from the Portland metro area on Friday and  
24 Saturday nights to come down and go to those clubs.

25 So we have more police staffing to support

1 more police calls for service, given the increase in the  
2 amount of people in the area.

3 Q. So there's a specific detail within the police  
4 bureau to actually deal with that part of town?

5 A. That's correct.

6 Q. And what part of town are we talking about?

7 A. Old Town. So north of Burnside and then  
8 roughly Broadway east to Naito Parkway.

9 Q. Okay. Why were you focusing your attention in  
10 that particular area?

11 A. On that particular night, we had had a large  
12 number of -- particularly large number of calls involving  
13 violence.

14 We had numerous fights break out. Callers and  
15 other witnesses in multiple of those -- multiple fights had  
16 reported that people were armed with firearms.

17 And so myself, Sergeant Schmautz, the  
18 entertainment detail sergeant.

19 Q. The what?

20 A. Entertainment detail. I apologize.

21 We were aware that there was a higher  
22 possibility of violence given the large number of fights  
23 and believing that it was more likely than not that people  
24 involved in fights had guns.

25 Q. And so when you, throughout your shift, are

1 receiving this type of information, how, as a police  
2 officer, do you respond to that?

3 A. Well, we try to respond proactively. So  
4 having worked down in Central Precinct for about a year and  
5 a half, I know areas where we're more likely to have  
6 violent events, shootings, stabbings, large fights. And so  
7 we try to proactively patrol those areas before we have to  
8 respond to an incident like that.

9 So the idea is having a police presence there  
10 will deter that kind of violence.

11 Q. As opposed to waiting for something to happen,  
12 generating a 911 call and then going?

13 A. Correct.

14 Q. Okay. And so you, in your sergeant capacity,  
15 were assisting in that proactive policing?

16 A. That and also just providing visibility in the  
17 actual enclosure itself.

18 Q. What enclosure?

19 A. So we close vehicular traffic on Friday and  
20 Saturday nights down around the bars, Davis to Burnside and  
21 Second Avenue to Fourth Avenue so that if there's a lot of  
22 pedestrians walking around, which oftentimes we'll have  
23 intoxicated pedestrians, that they can do so freely without  
24 cars trying to drive through or creating a danger  
25 situation.

1                   So oftentimes, Friday and Saturday nights,  
2 I'll go down. I'll check in with Sergeant Schmautz, see  
3 how the night's going, see what the crowd sizes are like  
4 and try to get a good idea, you know, if we need to devote  
5 more officers to that area, if we need to devote officers  
6 to places like parking lots where people sometimes  
7 congregate when the bars let out.

8                   And so, frequently, I'll go down and talk to  
9 Sergeant Schmautz, see what resources I can provide and  
10 observe and just try to be helpful because he's the only  
11 sergeant down there.

12                   There's -- if they're fully staffed, there's  
13 six people on the entertainment detail, and there's  
14 hundreds, if not a thousand people that go down there. If  
15 there's a disturbance, six police officers and a sergeant  
16 isn't a whole lot of resources.

17                   Q.    Okay. And do the police actually, once the  
18 bars are closing down, reopen the roads to vehicular  
19 traffic?

20                   A.    We do, yes.

21                   Q.    Okay. So does that also take officers to do  
22 that?

23                   A.    It does. The barricades that the officers put  
24 into place and remove at the end of the night are pretty  
25 big, and they have to be stowed on a trailer that's hooked

1 up to a police SUV.

2 Q. Is that the responsibility of the  
3 entertainment detail officers to take those down and put  
4 them away?

5 A. Yes, it is.

6 Q. Okay. What time do the bars generally close  
7 in the entertainment district?

8 A. People start letting out about 2:00, and then  
9 oftentimes people start to congregate in the enclosure  
10 between 2:00 and 3:00 a.m.

11 When people start to congregate outside and  
12 the bars have closed, security for the bars tries to  
13 encourage people to be on their way and to vacate the area  
14 so that we can eventually reopen traffic.

15 Q. Is there a set time when you guys reopen the  
16 roads, or does it happen organically?

17 A. It happens organically. It depends on the  
18 night.

19 Q. Okay. On this night, September 30th, were you  
20 aware of Sergeant Garry Britt also being on shift working?

21 A. I was. Actually, he had spent some time down  
22 in the entertainment detail with Sergeant Schmautz and I.

23 Q. That night?

24 A. Yes.

25 Q. Helping out?

1           A.    Yes.

2           Q.    Okay.  Do you recall him talking about what  
3 his kind of next steps were going to be in terms of patrol?

4           A.    I do.  The bars had closed.  Most of the  
5 people had moved out to the street and had gotten in cars  
6 or walked home or Ubered home.

7                    I was in Old Town precinct, which is a little  
8 office, little police office at Northwest Third and Couch,  
9 and I was talking to a few officers about how the night  
10 went.

11                   Sergeant Britt was in the office.  And given  
12 the -- the high number of calls involving disturbances and  
13 weapons, Sergeant Britt mentioned to me that he was going  
14 to grab a couple of officers and drive up to the parking  
15 lot at Southwest Third and Harvey Milk Street just to do  
16 some proactive patrolling because we have had a history of  
17 violent events and shootings in that particular parking  
18 lot.

19           Q.    Okay.  And was it your impression that he was  
20 intending to go there and do what you previously described  
21 in terms of just being a police presence there to deter any  
22 kind of criminal activity?

23           A.    That's what I believed his intent was, yes.

24           Q.    As opposed to responding to a call there?

25           A.    Correct.  There wasn't a -- a call that had

1 come out there. He took it upon himself to go be  
2 proactive.

3 Q. And did he talk about going alone or bringing  
4 other officers with him?

5 A. He told me he was going to grab a few  
6 officers, and he ended up -- either officers volunteered to  
7 go with him, which I think is the case, and they drove up  
8 more or less together. They left Old Town precinct at  
9 roughly the same time.

10 Q. Do you have a general sense of what time that  
11 was when this was happening?

12 A. The bars had closed and the streets had been  
13 reopened, I believe. So I would estimate roughly 2:45 to  
14 3:00 a.m.

15 Q. Okay. Did you go with Sergeant Britt to the  
16 parking lot at Third and Harvey Milk?

17 A. I did not. I remained at Old Town precinct at  
18 that point.

19 Q. Okay. Could you describe for us what you  
20 remember happening then?

21 A. Sergeant Britt had been gone for a few  
22 minutes. I was sitting in Old Town precinct talking to  
23 some officers.

24 Q. Actually, Sergeant, let me ask one other  
25 question.

1 A. Sure.

2 Q. How far is Old Town precinct from the parking  
3 lot at Third and Harvey Milk?

4 A. It is approximately six blocks.

5 Q. Okay. Is Old Town precinct on this map we  
6 have on the board here?

7 A. No. It would be just north.

8 Q. This map basically ends at Burnside on the  
9 north edge?

10 A. Right, correct.

11 Q. And so Old Town precinct is north of Burnside?

12 A. It's -- it's on Northwest Third Avenue just  
13 north of Couch.

14 Q. Okay. And the surface lot we're talking about  
15 is down here at Third and Harvey Milk?

16 A. Yes, sir.

17 Q. Okay. So by car, at this time of night,  
18 approximately how long would it take to travel there, would  
19 you say?

20 A. Just a normal driving response, you know,  
21 depending on if you get a red light on Burnside, it could  
22 be anywhere from one minute to five minutes, just a  
23 ballpark estimate.

24 Q. Okay. And is Third Avenue the road that goes  
25 southbound and Fourth Avenue goes northbound?

1 A. Yes, sir.

2 Q. And they're one-way streets?

3 A. Yes, sir.

4 Q. Okay. So traveling down from Old Town  
5 precinct to the lot, you'd have to come down Third Avenue.  
6 If you were going to enter from the west, you'd have to go  
7 basically around the block and enter off of Fourth Avenue?

8 A. Correct, yes.

9 Q. Okay. So you remained at the Old Town  
10 precinct?

11 A. I did.

12 Q. And Sergeant Britt left?

13 A. Right.

14 Q. Did you know which officers he was going with  
15 at that point?

16 A. I know Officer Harris and Officer Moore were  
17 going to go with him. I don't recall who else offered up  
18 or who else he asked to go with him.

19 Q. Is that Todd Harris and Greg Moore?

20 A. Yes, sir, it is.

21 Q. Okay. So what do you recall happening next?

22 A. Well, I was sitting in Old Town precinct. I  
23 heard an officer microphone key up on the radio, but I  
24 didn't hear anyone say anything. It was just for a second.  
25 I thought what I heard was gunshots in the

1 background. It took me -- took my brain a minute to  
2 realize what I heard or thought I heard.

3 Q. How were you hearing that?

4 A. Through my radio.

5 Q. In your ear piece?

6 A. I don't wear an ear piece.

7 Q. Okay. So it's just coming out.

8 We can see you're in uniform today. Is that  
9 the radio on your belt there?

10 A. Yes, sir.

11 Q. Okay.

12 A. This is a radio, and this is the microphone  
13 where I transmit and receive.

14 Q. Okay. And so if you held the transmission  
15 button down, it would just pick up the ambient sounds  
16 around you and transmit them?

17 A. Yep.

18 Q. Is that what you think was occurring, somebody  
19 had hit the button, but had not said anything?

20 A. That's what I believed had happened.

21 Q. Okay. Took a second for your brain to realize  
22 what you were hearing?

23 A. At that point, I was concerned that -- you  
24 know, based on my observations, I believed an officer or  
25 officers were in some kind of close proximity to gunfire.

1 Q. Could you tell whose radio that was coming  
2 from?

3 A. I could not tell, no.

4 Q. Okay. Just came out?

5 A. Just came out.

6 Q. Okay.

7 A. So I jumped up. I ran to my car, which was  
8 parked on Southwest Third Avenue.

9 As I'm getting into my patrol car, I hear  
10 Sergeant Britt get on the radio and say something to the  
11 effect of shots fired.

12 I knew roughly where he was because I knew he  
13 was going to be headed to the parking lot at Southwest  
14 Third and Harvey Milk.

15 So myself and Sergeant Schmautz and the other  
16 officers that were in Old Town precinct prior to this all  
17 started driving code 3, lights and siren, south on Third  
18 Avenue towards where we believed Sergeant Britt to be.

19 Q. Is that what code 3 means, lights and sirens?

20 A. Yes, sir.

21 Q. As fast of a response as you can do safely?

22 A. Yes.

23 Q. Okay. You're traveling southbound Third  
24 Avenue from Old Town precinct.

25 So when you got up to the lot, were you on the

1 east side of the lot?

2 A. So I actually -- I didn't know where the  
3 threat was or what was going on, and so I -- I can't  
4 remember if somebody on Fourth requested cars come in from  
5 there, but I ended up going west on Oak and south on  
6 Fourth.

7 Q. Against traffic?

8 A. Against traffic, I believe, to the best of my  
9 memory, and then trying to get eyes on where the officers  
10 were in the lot.

11 Q. Okay.

12 A. Eventually, I parked my car on Southwest Third  
13 Avenue facing the wrong way, facing northbound.

14 Q. Right at the entryway here or along the curb?

15 A. It was just south of the entryway. So more or  
16 less in the area of the entryway to the parking lot.

17 Q. So as you responded, then, you kind of circled  
18 the lot, wrong way down Fourth, down Harvey Milk and then  
19 wrong way down Third before you --

20 A. To the best of my recollection, that was my  
21 route, yeah.

22 Q. Okay. What do you remember seeing?

23 A. I could see officers, a group of officers --

24 Q. If you want to come up to the board, you can.

25 A. Sure.

1           So I parked right about here facing north and  
2 walked in this direction.

3           I could see a group of officers -- the parking  
4 lot wasn't this full. I could see a group of officers  
5 about here directing their attention towards something  
6 here.

7           Do you want me to continue?

8           Q. Well, at that point, did you have any  
9 information about what had happened, other than the shots  
10 fired broadcast from Sergeant Britt?

11          A. I knew Sergeant Britt had broadcast shots  
12 fired. At one point in a transmission, he said, I'm okay.

13           At that point, I wasn't sure if he had been  
14 involved in the shooting or if he had witnessed a shooting,  
15 but I was considering both possibilities at that point.

16          Q. Okay. So go ahead. You see this group of  
17 officers.

18           Do you remember how many there were standing  
19 there?

20          A. You know, I don't specifically. As I moved  
21 through the lot, the officers moved in towards a subject  
22 that was down on the ground, who I later learned was  
23 Mr. Kimmons.

24           They began rendering medical aid. I could see  
25 them applying tourniquets, chest seals. I saw a black

1 revolver just to the north of Mr. Kimmons and the officers  
2 rendering aid, and there was a black sedan that was  
3 occupied by two people just to the east of the revolver, to  
4 the northeast of the revolver.

5           So if officers and Mr. Kimmons are here, I saw  
6 the firearm about here and a vehicle occupied about here.

7           And so as I arrived, I saw the officers -- I  
8 saw that Mr. Kimmons was getting an abundance of emergency  
9 medical treatment. So I -- I was looking for a role at  
10 that point. That wasn't needed. That was being done.

11           Sergeant Schmautz pointed -- as he was  
12 rendering aid, he pointed back and said, There's two people  
13 in that car. We need to detain them.

14           No other officers -- all the officers were  
15 rendering aid to Mr. Kimmons at that point. I didn't know  
16 if the people in the car were involved. I didn't know if  
17 they were shooters. I didn't know what their involvement  
18 was.

19           So I went to the driver's side and had the  
20 driver, who was an African-American female, step out, and I  
21 secured her in the back -- I detained her in the back of a  
22 patrol car that was in the parking lot. And then I went to  
23 the passenger side and had an African-American male who was  
24 in the passenger seat step out and detained him in a  
25 separate patrol car that was in the parking lot. And then

1 I -- I returned to where the group of officers already were  
2 rendering aid to Mr. Kimmons.

3 There was a lot going on as I was pulling the  
4 people out of the car.

5 Q. Do you mean literally pulling them out of the  
6 car or just asking them to get out of the car?

7 A. I didn't know their involvement. I asked them  
8 to get out and escorted them, like, by the arm to a patrol  
9 car.

10 Q. Okay.

11 A. So I didn't have to physically pull them out.  
12 They both saw me. They both had their hands  
13 up. They were cooperative. They did everything I asked.

14 Q. Okay. You come walking back now and --

15 A. So I come back. And as I'm dealing with the  
16 people in the car, it's -- medical was requested probably  
17 automatically by dispatch. Medical was already staged, I  
18 believe, at that point and --

19 Q. What does that mean?

20 A. So when medical is called to an incident the  
21 police are involved in, any kind of incident where there  
22 might be some safety risks, either the fire truck or  
23 ambulance will usually park out of sight around the block  
24 or a couple blocks away until the police say it's safe for  
25 them to come in because they're obviously not equipped to

1 deal with armed people or extremely violent people.

2 Q. That's what that means to stage?

3 A. Right.

4 Q. They were staged waiting for the all clear to  
5 come in?

6 A. Right. So sometimes we'll ask, you know, Can  
7 you start medical respond and have them stage, you know,  
8 until we can make the scene safe or dispatch will say,  
9 Medical is staged. And then it's up to the officers to  
10 say, Okay. The scene is safe. We can go ahead and send  
11 medical in.

12 So I kind of -- at that -- at some point here,  
13 medical is called in. Mr. Kimmons is placed in the  
14 ambulance.

15 I don't recall when exactly it occurred in  
16 relation to my interaction with Sergeant Britt and Officer  
17 Livingston, but when I returned to the scene where the  
18 officers are, Sergeant Britt and Officer Livingston are  
19 kind of standing back from where the group of the officers  
20 applying medical aid were.

21 I asked Garry, Sergeant Britt, if he was okay.  
22 I didn't know if he had been shot at or I didn't really  
23 have a lot of pieces to the puzzle at this point.

24 He said he was okay, and he said, I'm  
25 involved.

1           And that terminology is in our policy. In  
2 regards to officer-involved shootings, involved members are  
3 members of the police bureau that used deadly force, and  
4 then there's witness members that has an additional  
5 definition.

6           So when Garry -- or Sergeant Britt told me  
7 that he was involved, it led me to believe that he was  
8 involved in an officer-involved shooting, that he had fired  
9 his weapon.

10           And Officer Livingston was standing next to  
11 Sergeant Britt. I don't recall if I asked Officer  
12 Livingston if he was also involved or if he just told me  
13 without me prompting him, but he also indicated that he was  
14 involved.

15           And just to clarify, I asked them something to  
16 the effect of, Did you both fire shots? And they both  
17 indicated yes.

18           So at that point, there was no longer a  
19 question of whether or not it was an officer-involved  
20 shooting or if they had just -- if it was just a civilian  
21 shooting. So that kind of started some protocol that I  
22 needed to do as a supervisor per our policy.

23           Q. You can take your seat again, Sergeant.

24           A. Thanks.

25           So knowing then that Sergeant Britt and

1 Officer Livingston were involved, the next arriving  
2 officers -- per policy, I had officers assigned to Sergeant  
3 Britt and Officer Livingston.

4 I don't remember who I assigned initially, but  
5 the first officer, next officer that arrived, I said, you  
6 know, something to the effect of, Can you take Garry to a  
7 patrol car and sit with him? And then I did the same for  
8 Officer Livingston to ensure that they were separated so  
9 that they wouldn't talk about the event so that eventually  
10 when investigators came and interviewed them, they would  
11 have their own individual statements and perspectives.

12 Q. Okay.

13 A. The other thing that --

14 Q. They were both monitored by non-involved  
15 officers?

16 A. That is correct, non-involved and non-witness  
17 officers.

18 Q. Okay.

19 A. The other thing is once I learned it was an  
20 officer-involved shooting, I notified dispatch. I got on  
21 the radio and said, This is, in fact, an officer-involved  
22 shooting.

23 I requested more resources from other  
24 precincts. I think I asked for at least a sergeant and  
25 four officers to help us out.

1           While this entire event was occurring, we had  
2 groups of individuals on the east side of the parking lot  
3 that were extremely angry and yelling, making threats to  
4 officers.

5           And so in addition to trying to preserve this  
6 crime scene, we had kind of an active threat of people that  
7 were not being cooperative that wouldn't get back that were  
8 yelling threats at officers, and so that was kind of a  
9 drain on resources. We could have used a lot more officers  
10 there.

11           We have 12 officers on our shift per night per  
12 minimum staffing. Those resources get drained pretty  
13 quick.

14           But once I had officers with Sergeant Britt  
15 and Officer Livingston, I coordinated with Sergeant  
16 Schmautz to make sure we divided the workload up a little  
17 bit and made sure that we knew who our witness officers  
18 were.

19           Sergeant Schmautz was able to take care of  
20 that and get them separated and get officers to accompany  
21 them.

22           I kind of transitioned into a crime scene  
23 management role and instructed officers that we needed to  
24 set up crime scene tape around the entire parking lot.

25           I ensured that an officer went in the

1 ambulance -- in the back of the ambulance with Mr. Kimmons,  
2 and that was Officer Torrey Streed, and I ensured that  
3 somebody set up a crime scene log.

4 So any time we have a crime scene, we want to  
5 document everybody who enters the crime scene.

6 Q. What did you do with regard to the gun that  
7 you'd identified laying on the ground near Mr. Kimmons'  
8 body?

9 A. So right after -- early on in my arrival here,  
10 after I removed -- asked the two individuals in the sedan  
11 to get out and placed them in patrol cars, I had already  
12 seen the black revolver on the ground. I knew it was  
13 evidence of some kind.

14 And so Officer Elena Suciu was one of the  
15 earlier arriving officers, and I ordered her to stand by  
16 the gun, make sure it wasn't disturbed, make sure no one  
17 touched it or came near it or anything to preserve that  
18 piece of evidence.

19 Q. As the scene supervisor, did you also begin  
20 notifying the variety of people that need to be notified  
21 when an officer-involved shooting occurs in the City of  
22 Portland?

23 A. I did. I called my lieutenant, acting  
24 lieutenant, Jenny Baxter. Just prior to doing that, I  
25 requested dispatch send out some pages, thinking that once

1 we received the page, it would take a minute or two before  
2 they called me so I could call my lieutenant real quick,  
3 brief her.

4 So I briefed her. I notified homicide  
5 detectives and ended up briefing Detective Michele Hughes.

6 Q. Is that the detective sergeant for the  
7 homicide detail?

8 A. Yes.

9 Q. Okay.

10 A. I briefed her by phone and then made several  
11 other notifications that I can get into or not.

12 Q. Did that also include the forensic evidence  
13 division of the Portland Police Bureau?

14 A. Yes, it did.

15 Q. And those are the criminalists?

16 A. Correct.

17 Q. Okay.

18 A. I then --

19 Q. Go ahead.

20 A. To mention one thing that I failed to mention  
21 is when I was -- when I had learned that Sergeant Britt and  
22 Officer Livingston were involved in this officer-involved  
23 shooting, I did ask them what direction they fired their  
24 weapons because I needed to know where to look for  
25 evidence.

1                   They both indicated more or less to the south.  
2   So that was something that I could later pass on to  
3   Detective Sergeant Hughes.

4           Q.    Is that known as a field of fire?

5           A.    Yes.

6           Q.    So that you would know where to be looking for  
7   strikes and a variety of other evidentiary items?

8           A.    Exactly.

9           Q.    Okay.

10          A.    And then Sergeant Britt also made a comment to  
11   me that I forgot to mention.  He said something to the  
12   effect of -- that there was probably somebody else shot in  
13   the area, and he said, "Not by us," implying not by police,  
14   but that it was likely that there would be somebody shot  
15   that left the scene that might walk into a hospital for  
16   treatment.

17                   And I think Sergeant Schmautz asked him a  
18   question about that that he can testify to also.

19          Q.    And so was that part of your briefing as well  
20   to the homicide detail in terms of what to be looking out  
21   for in the minutes and hours following the incident?

22          A.    Yes, it was.

23          Q.    Okay.  And what I mean is in terms of people  
24   walking into area hospitals with gunshot injuries?

25          A.    Sure.  And we actually received a call about

1 that a short time later.

2 Q. Were you still on scene when that came out?

3 A. I was.

4 Q. At what point did you end up relieving or  
5 being relieved from your role as the scene supervisor?

6 A. A lot of command had showed up, a lot of  
7 resource had showed up and a lot of detectives had showed  
8 up.

9 The scene became more or less static. And  
10 when it was time for me to brief homicide detectives, I  
11 relinquished command of the incident to Sergeant Mike  
12 Currier.

13 Q. Okay.

14 MR. JACKSON: Any questions?

15 I don't see any.

16 All right. Thank you very much.

17 (Pause in proceedings: 2:32-3:05 p.m.)

18

19 CLIFFORD NELSON, M.D.

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

23

24

25

## EXAMINATION

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BY MR. JACKSON:

Q. Could you please state and spell your name?

A. Clifford Nelson, N-E-L-S-O-N.

Q. Clifford standard spelling?

A. Yep.

Q. And what is your occupation?

A. I'm a deputy state medical examiner for the State of Oregon.

Q. And is that also known as a forensic pathologist?

A. Correct.

Q. And how did you become a forensic pathologist in terms of your educational background?

A. Sure. I went to college at the University of Portland, graduated with a biochemistry major. Then I went to Oregon Health Sciences University School of Medicine where I also did a pathology student fellowship, as well as my regular medical school.

I finished that in 199 -- 1989. I did my anatomic and clinical pathology residency at Oregon Health Sciences University, completed those in 1993. Then I went to Atlanta, Georgia, did my fellowship in forensic pathology. I finished that in 1994, took my boards and passed my boards for anatomic clinical and forensic

1 pathology either in '93 or '94.

2 I worked at -- I worked for six months in  
3 Atlanta on staff, then was first medical examiner for Clark  
4 County, Washington. I stayed there for 18 months. They  
5 made a new position for me in Oregon, so I came over to  
6 Oregon. That was 22 years ago.

7 Q. Okay. So for the last 22 years, you've been a  
8 forensic pathologist for the Oregon State Medical Examiners  
9 Office?

10 A. Right.

11 Q. All right. In that time, how many autopsies,  
12 roughly, have you performed?

13 A. It's like 4,600 or 4,700 right now.

14 Q. 4,700 autopsies?

15 A. Yeah, 4,700.

16 Q. Okay.

17 A. And then another 15-, 1,600 external exams.

18 Q. Okay. And what is the function of a forensic  
19 pathologist?

20 A. Basically to look at the entire death  
21 investigation, including the person's past medical history,  
22 examining the body, doing an autopsy if it's necessary,  
23 looking at ancillary labs like toxicology, looking at  
24 slides under the microscope, looking at culture results, et  
25 cetera, and coming to a conclusion as far as cause and

1 manner of death.

2 Q. Okay. And in your capacity as a forensic  
3 pathologist, have you testified in both state and federal  
4 courts all around the country as an expert?

5 A. Federal courts here in Oregon -- well, no. I  
6 guess I have in Washington, too.

7 But, yeah, as far as state circuit courts and  
8 stuff, it's all over the -- pretty much except on the --  
9 except in the Northeast.

10 Q. Okay. The rest of the country, though, you've  
11 been --

12 A. Yeah. I -- I've never been to Texas, never  
13 done it in -- never Texas, California, Mississippi,  
14 Louisiana or Alabama; Kentucky, Tennessee, I haven't been  
15 there. So over half the states, though, probably.

16 Q. Okay.

17 A. Or around half the states.

18 Q. Okay. Did you perform an autopsy on the body  
19 of Patrick Kimmons on October 1st of 2018?

20 A. I did.

21 Q. And where did you do that?

22 A. At our office out in Clackamas.

23 Q. Okay. And who was present for the autopsy?

24 A. Let's see. Paul Ware and Jamin Baker were the  
25 criminalists. Rico Beniga and -- was the detective; you

1 were there and an Officer VanBlokland, and then there was  
2 also a Detective Posey.

3 Q. Okay. And for this particular case, what was  
4 the purpose of performing an autopsy?

5 A. Basically to document the injuries. We -- we  
6 do it in any type of -- we do an autopsy pretty much for  
7 every homicide.

8 And since this is somebody's death which was  
9 caused by the actions of other people, it's a homicide by  
10 definition.

11 Q. Okay. And so it would be standard to conduct  
12 an autopsy, even in an officer-involved shooting context?

13 A. Yeah.

14 Q. Okay. Can you kind of take us through some of  
15 the preliminary steps you undertake when performing an  
16 autopsy?

17 A. Sure. One of the first things that will  
18 happen is one of our pathology assistants will take X-rays  
19 to find out if there are any bullets left in the person.  
20 And then in combination with looking where the holes are,  
21 try to figure out which one of those was -- which fits  
22 rough size or calibers of the guns being used that were  
23 involved.

24 The next thing is to basically bring them in  
25 to the autopsy suite, look them over from head to toe. If

1 they've got any clothing on, describe their clothing, how  
2 it's situated, if the holes match up with the holes on the  
3 body from the gunshot wound.

4 Then describe -- describe any other jewelry,  
5 any medical devices, any procedures they've had. Then --  
6 then describe the wounds that they've got on their body or  
7 injuries.

8 If it's not in the case of a gunshot wound,  
9 say it's a car wreck or something, we're describing their  
10 fractures, lacerations, abrasions, et cetera.

11 Q. Okay. And then --

12 A. And then when we've done that, that's when we  
13 do what most people think of as the autopsy, which is to  
14 make a Y-shaped incision.

15 In the case where we've got injuries like  
16 this, to follow the course of the injuries, see which  
17 organs were injured, get a general idea of the trajectory  
18 of the bullet, at least through the body.

19 Q. You also examined the other internal organs to  
20 determine whether or not they were properly functioning, to  
21 the extent you can?

22 A. We don't -- we'll do a gross inspection.  
23 Usually don't get microscopic slides on something like a  
24 shooting.

25 Q. Okay. So in this case, as part of your

1 examination, did you measure Mr. Kimmons' height and  
2 weight?

3 A. I did.

4 (Pause-referring). 72 inches, 217 pounds.

5 Q. Okay. You also mentioned that in the course  
6 of performing your duties, you identify a cause and manner  
7 of death.

8 Could you explain what those terms mean?

9 A. Sure. The cause of death is the one thing  
10 that kind of eventually led to the person dying. So in the  
11 case of a gunshot wound, you know, they may bleed to death.  
12 They may get an infection several days after and die from  
13 that. They may -- it may be just the trauma from the  
14 gunshot wound that causes something like spinal shock and  
15 it -- and messes up their spinal column or their brain stem  
16 and causes them to stop breathing. But whatever the cause,  
17 it's still the gunshot wound, wherever it is.

18 The manner is one of five things. It's either  
19 natural, accident, suicide, homicide or undetermined, which  
20 means just basically it doesn't fit into any of the other  
21 categories or we don't know where to put it, which category  
22 to put it in.

23 In his case, the cause of death, I presume, is  
24 listed as multiple gunshot wounds. And the manner is  
25 homicide because our definition of homicide is death at the

1 hands of another person.

2 Q. Is that a medical term as opposed to a legal  
3 term?

4 A. Correct. We don't get into murder or  
5 manslaughter or justifiable or nonjustifiable homicides or  
6 anything like that. It's just straight definition.

7 Q. Death caused by another person, it's --

8 A. Right, death caused by another person.

9 Q. Okay. In this case, after you performed the  
10 autopsy, did you reach a -- you already just actually said  
11 that.

12 Did you note, as you performed your autopsy,  
13 the injuries that Mr. Kimmons had sustained?

14 A. Yes.

15 Q. Could you take us through some of the injuries  
16 you noted?

17 A. Well, basically, Mr. Kimmons had, I believe, a  
18 total of nine -- yeah, nine different gunshot wounds, not  
19 all of which would have been rapidly fatal, but many of  
20 them would not have been rapidly fatal.

21 He had a total of nine injuries. One is of  
22 the right lower leg, one is the right buttocks. He has  
23 another one to the right lower and mid buttocks, to the  
24 left buttocks, left upper buttocks and flank. None of  
25 those would have been rapidly lethal. He has one of the

1 left thigh; again, not a rapidly lethal wound.

2 The one in the groin, because of the large  
3 vessels involved, would have been fairly rapidly lethal,  
4 but probably could have been salvaged if he was medically  
5 treated appropriately in time.

6 The gunshot wound to the upper chest is not --  
7 that's not going to be a survivable wound, and the gunshot  
8 of the right chest, definitely not a survivable wound.

9 Q. Okay. You've noted for the eighth and ninth  
10 gunshot injuries, left chest and right chest.

11 Could you explain where exactly on the body  
12 those gunshot wounds were located?

13 A. Probably be easier just to show the pictures,  
14 unless you really don't want to.

15 Q. Oh, we can show --

16 A. The external photos.

17 Q. Yeah. Do you have printed copies in there?

18 A. No. I gave them all back to you, the ones  
19 that were numbered.

20 MR. JACKSON: Let's go off and I'll pull them  
21 up.

22 (Pause in proceedings: 3:26-3:27 p.m.)

23

24 BY MR. JACKSON: (Continuing)

25 Q. Dr. Nelson, I'm showing you a photograph. Is

1 this one of the photographs taken from the autopsy you  
2 performed on Mr. Kimmons?

3 A. Yes.

4 Q. And what is it that we see here in this  
5 photograph?

6 A. This is the entrance wound with a probe in it,  
7 what's labeled in the autopsy report as number 9, "gunshot  
8 wound of the right chest."

9 He's face down at the point that the  
10 photograph is taken.

11 Q. Okay. So this gunshot injury noted in the  
12 right chest is actually on his mid-back; is that correct?

13 A. Yes.

14 A GRAND JUROR: That was the exit or  
15 entrance --

16 THE WITNESS: It's the entrance.

17 A GRAND JUROR: -- on the back?

18

19 BY MR. JACKSON: (Continuing)

20 Q. Okay. So you've noted that the gunshot wounds  
21 to the leg and buttocks that you indicated those likely  
22 would not have been rapidly fatal?

23 A. Correct.

24 Q. But the one to the groin may have been and the  
25 one to the chest?

1           A.    The one to the groin involved some major  
2    vasculatures.

3           Q.    Okay.

4           A.    And so he would have been -- bled rather  
5    rapidly from those.

6                    Now, if direct pressure is applied and then he  
7    goes someplace and those -- that is surgically repaired, he  
8    probably would live through it as long as -- as long as at  
9    least the bleeding was slowed down until they could repair  
10   it.

11          Q.    Okay.  And the left thigh gunshot wound, was  
12   that oriented on the front part of the thigh?

13          A.    I believe so, but let me check.

14                   (Pause-referring).  Yes.

15          Q.    Okay.  And the groin injury, was that oriented  
16   to the front left side of the individual as well?

17          A.    Yes.

18          Q.    Okay.  Were any actual bullets recovered from  
19   Mr. Kimmons' body?

20          A.    I believe two were.

21          Q.    In the course of -- oh, so as follow-up, then,  
22   the remaining gunshot wounds that you noted were what are  
23   referred to as through and through?

24          A.    Through and through, yeah.  They exited.

25          Q.    Okay.  In the course of conducting an autopsy,

1 is it typical for you to obtain a sample of blood or urine  
2 for toxicology analysis?

3 A. Yes.

4 Q. And was that done in this case?

5 A. Yes.

6 Q. And what were the results of the analysis?

7 A. Do you have it handy? If you don't, I can  
8 probably find it.

9 Q. (Handing).

10 A. Okay. He's got qualitative positives, which  
11 means they didn't -- they weren't able to quantitate it to  
12 tell us how much of it is in his system. But it's positive  
13 for both ketamine and trazodone.

14 Ketamine is a basically an anesthetic-type  
15 agent. It used to be exclusively for animals. I didn't  
16 realize they were actually using it in humans now.

17 Q. Is it your understanding from the medical  
18 records that the ketamine was actually administered by OHSU  
19 Hospital?

20 A. Yes, yes.

21 Q. Okay.

22 A. The -- and then the trazodone, which is a  
23 muscle relaxant/painkiller/anti-anxiety can be given for a  
24 lot of reasons.

25 And then he's got a blood alcohol of .127

1 grams per deciliter, which is a little over one and a half  
2 times the upper legal limit.

3 Q. For driving?

4 A. For driving.

5 Q. Okay. All right.

6 MR. JACKSON: Do the Grand Jurors have any  
7 questions of Dr. Nelson?

8 A GRAND JUROR: Can you tell us again, now on  
9 all of the -- you told us how a couple of the bullets, what  
10 direction they came from.

11 Can you tell us on --

12 THE WITNESS: Sure. The one on the right  
13 lower leg went from back to front, right to left and  
14 downward. The one on the right buttocks goes from right to  
15 left, back to front and downward.

16 Number three, which is the gunshot wound to  
17 the right lower mid buttocks, goes from right to left, back  
18 to front and downward.

19 The one on the left mid buttocks goes from  
20 right to left, back to front and downward. The gunshot  
21 wound to the left upper buttocks goes from back to front,  
22 right to left and upwards.

23 The gunshot wound to the left thigh goes from  
24 right to left, down -- and downward. The one to the left  
25 groin travels below to above, right to left.

1                   (Pause-referring). This doesn't make sense.  
2 I'll have to correct this. It should just be right to --  
3 right to left.

4                   I think it's --

5                   A GRAND JUROR: The groin shot?

6                   THE WITNESS: -- downward, and it does go  
7 slightly front to back.

8                   Number 8, gunshot wound to the left chest,  
9 it's predominately just downward. It's hard to tell  
10 exactly the flight of this bullet because of the way it  
11 enters the left arm. It's got a very tangential angle  
12 here, so it depends on how the person is holding his arm.

13                   But since it just kind of comes out this area  
14 after traveling through the soft tissues of the armpit,  
15 it's more likely than not it's something like this, and it  
16 just goes like that direction.

17                   The gunshot wound to the right chest goes  
18 upward, right to left and back to front.

19

20 BY MR. JACKSON: (Continuing)

21                   Q. And, Dr. Nelson, these directions that you're  
22 giving, is that according to a person oriented in a  
23 standing position?

24                   A. Yes.

25                   Q. And so if a person is actually moving around,

1 those directions could certainly change?

2 A. Yeah.

3 Q. But there's no way for you to know that?

4 A. No. It's just -- it's just with -- it just  
5 represents its path through the body with the body in  
6 anatomic position, which would be palms forward and  
7 standing --

8 A GRAND JUROR: Stationary?

9 THE WITNESS: Stationary.

10 MR. JACKSON: Okay.

11 Any other questions?

12 I don't see any.

13 All right. Thank you, Dr. Nelson.

14 THE WITNESS: Okay.

15 (Pause in proceedings: 3:37-3:42 p.m.)

16

17 TRAVIS GOVER

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

21

22

23

24

25

EXAMINATION

BY MR. JACKSON:

Q. Could you please state and spell your name?

A. My name is Travis Gover, first name T-R-A-V-I-S, last name G-O-V-E-R.

Q. Okay. Where do you work?

A. I work for the Oregon State Police Forensic Services Division here in the Portland Metro Forensic Lab.

Q. And what do you do for the Oregon State Crime Lab?

A. I'm a forensic firearm and tool mark examiner.

Q. And what training and education do you have for that position?

A. Education, I have a bachelor's degree in biology. So it's basically a science that's required by the forensic services.

The actual training for the position, I was involved in a year-long training program that was sponsored by the Bureau of Alcohol, Tobacco and Firearms. The first four months was spent doing research, writing papers, understanding the manufacture of firearms, ammunition and tools and what makes them unique.

I spent after that four months actually living back in D.C., attending classes at the Bureau of Alcohol Tobacco and Firearms National Testing Laboratory.

1                   And the last three to four months was spent  
2 back in our laboratory doing a research project, as well as  
3 assignments to finish up.

4           Q.     Okay.  And then when did you get hired by the  
5 Oregon State Crime Lab?

6           A.     I was hired in January of 1999.

7           Q.     And did you have any work experience doing  
8 this type of work prior to that?

9           A.     Prior to that, no.  This is basically the only  
10 setting in Oregon pretty much, unless you're in a private  
11 lab.

12          Q.     Okay.  And have you done firearms analysis  
13 ever since 1999?

14          A.     Yes.  I started off basically running a  
15 database called the Integrated Ballistics Identification  
16 System.  I did that for about a year and a half, and then  
17 got hired into the firearm and tool mark examiner position.

18                   Basically, since June of 2000, I've been doing  
19 that type of analysis.

20          Q.     Would you explain for us what a tool mark is?

21          A.     A tool mark is basically the -- kind of the  
22 overall aspect or discipline of what we do.

23                   By our standards, a firearm is actually a  
24 tool.  So tools will make marks on a softer object.  That's  
25 how we kind of define a tool.

1           So it could be a screwdriver to a vinyl  
2 window, somebody breaking in. It could be basically fired  
3 bullets being marked by a firearm. By our definitions,  
4 it's the same concept.

5           It's the same with cartridge cases within a  
6 firearm. It's the softer of the two metals being marked.  
7 So the firearm will actually mark the bullets and mark the  
8 cartridge case the same way a screwdriver will mark a piece  
9 of lead or like bolt cutters will actually leave marks on  
10 padlocks or chain-link fence, same with wire cutters. It's  
11 the same general concept.

12           Q. And are you able to actually compare markings  
13 you see on cartridge casings back to a particular firearm?

14           A. Yes, we are.

15           Q. Could you explain that process?

16           A. Kind of how I just described, the softer of  
17 the two materials is going to be marked by the harder of  
18 the two objects.

19           So within the manufacturing process of  
20 firearms, there's basically a lot of cutting involved.  
21 There's very sharp cutting tools that are basically cutting  
22 through different aspects of metal to make the pieces that  
23 go into a firearm.

24           So when this cutting process occurs, the sharp  
25 blade of the cutting object, tool, is being changed at a

1 microscopic level with every cut that it makes on, you  
2 know, an object that's going into the firearm.

3           So like a barrel, for instance, there's a  
4 cutter that actually passes down through the what we call  
5 bore of the barrel. So as it's moving down through that,  
6 it's actually cutting lands and grooves, which are raised  
7 lines within the barrel.

8           So when a bullet strikes, you know, the  
9 interior of the barrel, it imparts a spin, like putting a  
10 spin on a football, for stability and accuracy.

11           As that cutter passes down through the  
12 interior of the barrel, the cutter is changing at a  
13 microscopic level as it's passing and cutting. So it's  
14 actually leaving marks within the barrel that are unique to  
15 that barrel.

16           So when that cutter is actually -- you know,  
17 passes all the way through and it's moved on to the next  
18 barrel, the marks on the cutting surface or cutting edges  
19 of the tool have actually changed since it started the  
20 previous barrel.

21           So the studies that we've done to show the  
22 uniqueness of how the marks they found on a bullet passed  
23 through the interior of the barrel are different from the  
24 next firearm manufactured.

25           Same thing with what we call -- we have

1 cartridge cases. So I'm going to back up just a little bit  
2 and kind of use -- define the terminology that I'm going to  
3 use.

4 So an unfired component of ammunition is  
5 referred to as a cartridge. There's -- basically makes up  
6 a cartridge case, which is like a brass or aluminum  
7 container that holds the gunpowder, which is another one of  
8 the components. And then there's the actual bullet, which  
9 is the projectile itself.

10 Most people -- you'll hear people refer to  
11 something like a bullet, which is the unfired component.  
12 The bullet is actually a projectile by itself.

13 And the last component of the cartridge -- so  
14 basically, as you can see on the image, the piece -- the  
15 cartridge sitting down below is the unfired component, and  
16 the bullet is the actual projectile, and the cartridge case  
17 is basically the silver casing that contains the powder,  
18 and then there's a primer at the end which has an explosive  
19 compound that ignites when powder and the firing pin hits  
20 and starts the process.

21 Q. And so when a cartridge, like the one we see  
22 on the screen here, is fired, does the bullet actually  
23 separate from the cartridge casing?

24 A. Yes, it does.

25 Q. Okay. And we're talking about, in this

1 instance anyway, a semiautomatic handgun?

2 A. Yes. A semiautomatic pistol is what it's  
3 referred to as.

4 Q. And can you describe what actually happens in  
5 a firearm that causes it to shoot?

6 A. Okay. So the cartridge is loaded into what's  
7 referred to as the chamber. It's basically the holding  
8 area within the barrel, which is on, it would be the --  
9 basically the left side as you're looking at that picture.  
10 You can see it's inside the slide. The slide is the piece  
11 that sits on top that actually moves back and forth.

12 So when it's closed up, we have an area within  
13 that slide called a breach face, which would be easier if I  
14 got up there and actually -- it would be easier to point  
15 than to try to describe.

16 So the small area that you see just inside  
17 here is referred to as the breach face area. This is  
18 basically a supporting area for the cartridge when it's  
19 fired.

20 Within that breach face, there's a small hole  
21 where the firing pin comes through when it's released under  
22 spring tension. The firing pin actually makes an impact on  
23 the part of the cartridge referred to as the primer, which  
24 has an explosive compound within.

25 That minor explosion passes through a hole, a

1 small hole within the cartridge case base into the open  
2 area where the powder sits and waits, and it starts the  
3 burning of the gunpowder. That burning of the gunpowder  
4 basically generates pressure.

5 So at that point in time, this cartridge is  
6 sitting inside the chamber here, when this is all closed  
7 up. That pressure forces the bullet down the barrel, but  
8 we have what we refer to as equal and opposite pressure.  
9 That's going to push the cartridge case back.

10 So at that time, the cartridge case is pushed  
11 back into the breach face area of the firearm, which also  
12 starts the process of that slide moving to the rearward.

13 This piece right here is referred to as the  
14 extractor. It's actually hooked within this little rim on  
15 the cartridge case. So as that pressure is pushing  
16 everything backwards, that extractor is actually pulling  
17 the cartridge case to the rear of the firearm until at what  
18 point this opens up far enough, and a little pin that sits  
19 down inside referred to as the ejector hits the opposite  
20 side of the rim of the cartridge case and basically forces  
21 it to be ejected out of the firearm.

22 So but that equal and opposite direction of  
23 pressure, as it's forcing the cartridge case back into this  
24 breach face, those tool marks we referred to from the  
25 cutting process of the manufacturing, are basically being

1 impressed into the base area of the cartridge case and also  
2 onto that primer, which is a softer material.

3 Kind of the same, as the bullet is passing  
4 down a barrel, different types of barrels, the ones I  
5 described earlier, which had what we call lands and  
6 grooves, or what we refer to as conventional rifling.

7 And then firearms like these have what are  
8 referred to as polygonal rifling, which don't necessarily  
9 have those true defined what we referred to as lines or cut  
10 raised areas. They're more, if you imagine, kind of like I  
11 always tell people, if you imagine a stop sign, kind of  
12 like it's a polygon.

13 So if you imagine the interior shape of a  
14 barrel, similar to that, but then put a twist on it over  
15 length. This is what's referred to as polygonal-type  
16 rifling. They don't necessarily leave great marks, but  
17 they're more efficient in the firing process and take less  
18 energy away from the bullet, but they're not actually  
19 cutting into the bullet as it passes down.

20 So -- but in this particular case, we have a  
21 Glock firearm, which has the polygonal type rifling, but it  
22 also leaves very nice marks for the breach face area on the  
23 cartridge case.

24 Q. And then how, in a semiautomatic handgun, does  
25 the firearm reload for the next round?

1           A.    I don't see it here, but there's what we refer  
2 to as a magazine.  It's basically your ammunition-feeding  
3 device.  It's basically there as you see.

4           So this is our magazine.  It fits up into the  
5 grip of the firearm.  So the cartridges are loaded in  
6 through the top of the magazine.  The magazine is inserted  
7 up through the grip.

8           So as the fired cartridge case is extracted  
9 and ejected, the next cartridge sits just below.  And as  
10 the slide moves forward, the bottom of that breach face  
11 area catches the top of the next cartridge and pushes it  
12 forward and kind of bumps it up into the chamber so it's  
13 ready to be fired.

14          Q.    Does that process also create tool markings?

15          A.    Not as much.  There's a chance sometimes we  
16 get magazine marks, so there's metal feed lips that are at  
17 the top of the magazine that hold the cartridges basically  
18 in the magazine.

19                Sometimes we'll get marks from those that will  
20 reproduce, but a lot of times they're kind of random and  
21 don't look the same.  It's kind of a random process.

22          Q.    And so for a semiautomatic handgun such as  
23 this Glock we see on the screen labeled "Officer  
24 Livingston," what would be the difference between this and  
25 a fully automatic handgun?

1           A.    So with a full automatic, it's basically --  
2 with this particular firearm, the semiautomatic, every time  
3 the trigger is pulled, the gun is going to fire one time.

4                    So when that slide retracts and extracts and  
5 ejects that cartridge case, there's a mechanism within that  
6 that actually disconnects the trigger from the firing  
7 mechanism.

8                    So when that slide comes forward and loads the  
9 next one up, even if the trigger is still being pulled,  
10 it's been disconnected. It has to be released to reset and  
11 then pulled again in order to fire again.

12                   With an actual automatic firearm, as you're  
13 holding the trigger, you have the extraction ejection,  
14 loading. As that slide closes up to load, there's a  
15 different mechanism altogether that would cause the release  
16 of the firing pin and basically would fire with just  
17 holding the trigger one time. So it continues to fire  
18 until the trigger is released.

19           Q.    And so this gun here is semiautomatic, meaning  
20 one round per trigger pull?

21           A.    That's correct.

22           Q.    Okay. And is that true also of the firearm we  
23 see on the screen here labeled "Sergeant Britt handgun"?

24           A.    Yes.

25           Q.    Both semiautomatic?

1           A.    Both semiautomatic pistols.

2           Q.    Could you explain how that process changes  
3 when the firearm in question is a revolver?

4           A.    Okay.  So a revolver has a different feeding  
5 mechanism for the ammunition.  So as we have the magazine  
6 for the semiautomatic pistol being our source of  
7 ammunition, with a revolver there's a cylinder that holds a  
8 set amount of ammunition within the firearm.

9                    So as you see with this one, this is our  
10 cylinder right here, and you can actually see the head of  
11 the cartridge cases within the cylinder.  So as you open  
12 the cylinder up to the side, it could have five, six,  
13 seven -- in this case, five, you know, basically what we  
14 call chambers.

15                   The pistol has one chamber that's integral  
16 with the barrel.  This has five chambers that rotate each  
17 piece of ammunition into line with the barrel to be fired.

18           Q.    Does the firing process in a revolver create  
19 uniquely identifying tool marks as well?

20           A.    It does.  It has the opportunity.  It can  
21 create marks through the firing pin impression.  So as the  
22 firing pin hits that primer, which is what you see, the  
23 smaller circle within each of these cartridge cases, if  
24 there are unique marks on that firing pin, it can actually  
25 leave those marks or impress those marks into the primer

1 area of the cartridge case.

2 Sometimes, depending on the firearm, we'll  
3 actually get marks from that pressure back from the breach  
4 face area, which is up underneath where the firing pin  
5 comes out. That can happen sometimes, not as frequent as  
6 we see with semiautomatic pistols.

7 The concept with the bullet is just -- it's  
8 the same between the bullet -- or the revolver and the  
9 semiautomatic pistol. That pressure is going to force that  
10 bullet down the barrel, which would engage rifling. That's  
11 potential to be marked by the firearm.

12 Q. So in that sense, would you have an  
13 opportunity to analyze an actual fired bullet to determine  
14 whether or not it was fired by a particular gun?

15 A. Yes. If the bullet is recovered, we can look  
16 at it and determine, you know, first of all,  
17 characteristics that we refer to as class characteristics,  
18 you know, is it even possible?

19 So this firearm being a .38 Special caliber  
20 firearm is not going to obviously shoot a .45 caliber  
21 bullet. It's too big, the difference in size.

22 So the first thing we do is we look at some of  
23 those general characteristics and see is it even possible.

24 This particular revolver has conventional  
25 rifling. That's that cut rifling I described earlier;

1    whereas, the Glock and semiautomatic pistols have polygonal  
2    rifling.

3                   They show up and look different just even to  
4    the naked eye as we're looking at them under a microscope  
5    or even just under light, so we can easily say, No. This  
6    bullet could not have been fired from this gun. The  
7    characteristics are not the same from a class type level.

8                   When I say "class," it's kind of like talking  
9    about, you know, Chevrolet, Ford, you know, Tahoe models.

10                   But once you get down to, you know, dents and  
11   dings, then we're talking about individual characteristics  
12   that are unique to a particular firearm or unique to a  
13   particular vehicle as a type of identification.

14                   Q.    Okay.

15                   MR. JACKSON:  Do the Grand Jurors have any  
16   questions about that, how firearms operate, what a  
17   cartridge casing is, what a cartridge is, anything like  
18   that?

19                   Okay.  You can retake your seat.  Thank you,  
20   sir.

21

22   BY MR. JACKSON:  (Continuing)

23                   Q.    Were you asked to do a comparison of some  
24   evidence concerning the September 30th officer-involved  
25   shooting involving Patrick Kimmons?

1           A.    Yes, I was.

2           Q.    And did you document your findings in a report  
3 dated October 24th of 2018?

4           A.    That's correct.  I finished up basically end  
5 of last week.

6           Q.    Okay.  And could you first explain for us the  
7 evidence that you received for analysis?

8           A.    So what I received was two Glock semiautomatic  
9 pistols, one that belonged to each of the officers, which  
10 also we typically get their magazines, which is more than  
11 one.  It's usually whatever is within their duty belt.

12                    So I think I received three magazines from  
13 each and a various number of cartridges depending on what  
14 they had loaded into them and how many times they may have  
15 fired.

16                    I also received 12 fired cartridge cases that  
17 were of 9mm Luger caliber, two fired .38 caliber bullets.

18                    So these are -- when I refer to caliber, when  
19 I say 9mm Luger, it's a specific caliber of cartridge  
20 designed for a certain type of firearm.  A .38 caliber,  
21 when describing bullets, is kind of a general family, kind  
22 of described as the diameter.

23                    I also received five fired .38 Special caliber  
24 cartridge cases, as well as a .38 Special caliber Taurus  
25 five-shot revolver.

1 Q. Okay. And so did you first compare the two  
2 Glock handguns you received to the 9mm Luger cartridge  
3 casings recovered by the scene to determine whether or not  
4 those guns fired those bullets?

5 A. Yes, I did. So I received 12 fired 9mm Luger  
6 caliber cartridge cases. The two Glock semiautomatic  
7 pistols are also 9mm Luger caliber. They're designed to  
8 fire that caliber cartridge case or cartridge.

9 Of the 12 cartridge cases I examined, I could  
10 identify seven to one of the semiautomatic pistols and five  
11 to the other.

12 Q. And how did you do that?

13 A. So as we were just talking about earlier, the  
14 marks that are left from that manufacturing process are  
15 basically microscopic with microscopic striations or  
16 scratches, in essence, but these striations are reproduced  
17 in the same general pattern. So the spaces, the widths,  
18 the heights of these striations are generally reproducible  
19 between shots.

20 So by taking the two firearms out to our  
21 range, I test fired each one of them, collected the  
22 cartridge cases separately so I didn't have what I'd refer  
23 to as known samples with the particular case, and then I  
24 take them back in. We have a comparison microscope. It's  
25 kind of a specialized microscope for firearms analysis. So

1 it's set up with -- if you have your -- your general  
2 microscope has one stage, one set of objects.

3 My microscope has basically two stages that  
4 come up into an optical bridge and let me see both sides  
5 through one set of optics. It's like a split screen.

6 So I can look at what's on the left, on the  
7 left side of my field of view and what's on the right, on  
8 the right side with a separating line.

9 So if I change magnifications and align the  
10 cartridge cases in the same orientation and use a  
11 specialized lighting, we can enhance those microscopic  
12 marks and actually line them up and determine if a  
13 particular cartridge case was fired in a specific gun.

14 Q. And what are the different types of results  
15 you can get in that comparison process?

16 A. The first is an identification where we can  
17 say, you know, that cartridge case was identified as being  
18 fired in, you know, firearm Exhibit 1 or Exhibit 2.

19 Some of the other conclusions we can come up  
20 with are what we refer to as inconclusive. We can have  
21 agreement of those general class characteristics, like it's  
22 a 9mm Luger, but maybe there's just not any marks being  
23 produced.

24 There are incidents where the gun fires, but  
25 maybe the breach face is smooth. It doesn't have anything

1 to impress on the cartridge case. So it's not unusual. We  
2 do see it. It's not unusual to see multiple guns that can  
3 do that.

4 So in a case like that, we're not going to be  
5 able to say it's identified to that firearm. We'll say  
6 it's inconclusive based on a lack of individual detail.

7 Sometimes the bullet is too damaged. You  
8 know, we can make out some general class characteristics,  
9 but everything else has been wiped out because it skidded  
10 down the street.

11 Sometimes we may have what we refer to as some  
12 agreement of the individual, but it's not enough to  
13 basically push it over the threshold of what we know to be  
14 fired from -- you know, much detail will be produced when a  
15 bullet is produced from the same firearm.

16 So there are times when two guns, you know,  
17 could be manufactured one after the other. Some of those  
18 marks will look the same between those two guns.

19 Part of the studies that we do as a -- I'm a  
20 member of an association called Association of Firearm and  
21 Tool Mark Examiners. We do a lot of these studies with  
22 consecutively manufactured firearms. So we know what to  
23 expect and how much agreement to expect between two  
24 different firearms and we know what to expect from two  
25 bullets fired from the same firearm. So it allows us to

1 develop that threshold and determine, you know, where does  
2 an identification lie.

3           So sometimes we'll get that, you know, just  
4 that little bit of a grievance, so it will be inconclusive.  
5 It's just not enough to say yes, but we're not going to say  
6 it's not from that gun either because we just can't tell.  
7 Not enough information.

8           Then the last is basically an exclusion where  
9 either those individual marks are so grossly different and  
10 we can see, you know, the multiple shots produced one set  
11 of marks, multiple shots that we have from another scene  
12 are completely different or we have the firearm and we can  
13 see that those marks are reproduced over and over, and  
14 they're completely different and unknown.

15           We can also exclude on class, obviously, where  
16 maybe one bullet has, you know, five of those lands and  
17 grooves in the barrel with a right-handed twist, and the  
18 bullet I'm looking at from the scene has six of those lands  
19 and grooves with a left-hand twist. It's physically  
20 impossible. So we can exclude on that level.

21           MR. JACKSON: Are there any questions about  
22 that?

23           A GRAND JUROR: Are you able to determine if  
24 one came out of a fourth generation versus a third  
25 generation?

1           THE WITNESS: No, no. The rifling process for  
2 Glock's really hasn't changed from third to fourth  
3 generation. The Generation 5 supposedly has a new type of  
4 barrel, a Glock-marking barrel, a marksman barrel. I have  
5 yet to see one to see what the difference is.

6           The marks from the first generation from the  
7 '80s probably up until a year or two ago used the same  
8 general mechanism in the machining process. So we haven't  
9 really seen a lot of difference there.

10           MR. JACKSON: Any other questions about that?

11

12 BY MR. JACKSON: (Continuing)

13           Q. Okay. So when you conducted your comparison  
14 here, what were the results that you found?

15           A. So the first comparison I did was involving  
16 the two Glock semiautomatic pistols. So the cartridge  
17 cases, the 12 that I received, obviously the same caliber,  
18 I think it was seven of those cartridge cases I could  
19 identify to what I referred to as Exhibit 1, which is one  
20 of the semiautomatic pistols, which is the Glock with  
21 serial number KDD767.

22           And then five of those cartridge cases I can  
23 identify to my Exhibit 2, Glock semiautomatic pistol, which  
24 was the pistol with serial number XTA035.

25           Q. And this photograph labeled "Officer

1 Livingston," is that XTA035?

2 A. That's my Exhibit 2 for my lab, yes. I  
3 identified five cartridge cases to that firearm and seven  
4 to the other.

5 Q. And the photograph we have here labeled  
6 "Sergeant Britt handgun," that's KOD767?

7 A. I think it's KDD.

8 Q. I'm sorry. KDD767?

9 A. Yep, yep.

10 Q. And those were classified as identifications?

11 A. Yes.

12 Q. Okay. Meaning those rounds were fired by  
13 those identified --

14 A. Right. Those cartridge cases were identified  
15 as being fired in those particular firearms.

16 Glocks usually give us good markings, so that  
17 was nice.

18 Q. Okay. And what's the next thing that you did?

19 A. So the next thing, I had the two fired .38  
20 caliber bullets, and I knew these weren't fired from the  
21 Glock semiautomatic pistols based on their weight. They're  
22 right around what we refer to as 130 grains. It's a  
23 firearms-related weight.

24 Those particular weights are not loaded into  
25 9mm Luger caliber cartridges. They're typically a .38

1 Special target type loadings.

2 So I basically, you know, identified what the  
3 caliber of each of those bullets were and then had a .38  
4 Special caliber revolver, the Taurus, which I test fired in  
5 our water tank, which is what we shoot into to capture  
6 pristine specimens for comparison.

7 And with the same process I used with the  
8 cartridge cases from the nine millimeters, I looked at the  
9 fired bullets under the microscope. I could identify both  
10 of those fired bullets as being fired from the .38 Special  
11 caliber Taurus revolver.

12 Q. Again, that was an identification that that  
13 revolver fired those two bullets?

14 A. Yes, that's correct.

15 Q. Okay. I guess it's kind of inherent in what  
16 you've just testified to, but did you test the three  
17 submitted firearms for operability?

18 A. Yeah. As part of our testing, as we write up  
19 the firearm, we go through and check the safeties, see if  
20 anything is broken, checking the condition of the firearm.

21 Basically, it's mostly to make sure, one, that  
22 it's safe for us to shoot and then also to report on its  
23 operability.

24 All three of these firearms I found to be  
25 operable as designed.

1 Q. Okay.

2 MR. JACKSON: Do you folks have any questions?

3 A GRAND JUROR: I have a question.

4 In your expertise of firearms in general, what  
5 would -- so if a revolver or a pistol was being fired, the  
6 sounds of them, are those noticeably different if you --  
7 like would somebody --

8 THE WITNESS: Not really.

9 A GRAND JUROR: Okay.

10 THE WITNESS: I don't think I'd be able to  
11 differentiate if I weren't looking.

12 Some of the bigger calibers may have a lower  
13 pitch. But to differentiate between a semiautomatic pistol  
14 and a revolver, probably not.

15 A GRAND JUROR: Okay. Thank you.

16 MR. JACKSON: Any other questions?

17 I don't see any.

18 Thank you very much.

19 (Pause in proceedings: 4:12-4:53 p.m.)

20

21 AYAN ADEN

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

25

EXAMINATION

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BY MR. JACKSON:

Q. Could you please state and spell your name?

A. Ayan Aden, A-Y-A-N, last name A-D-E-N.

Q. Okay. And how old are you?

A. I'm 17 years old.

Q. Okay. I want to take you back to September 30th of 2018.

A. Okay.

Q. Were you out that night, the 29th, into the early morning hours of the 30th?

A. Yes. Yeah, I was out. My friend came from Eugene. I picked him up from North Portland, and we were going to get something to eat.

Q. Do you remember about what time it was that you picked him up?

A. 2:30.

Q. In the morning?

A. Yeah.

Q. Okay. And where did you guys go?

A. We went to the food carts on I think Third -- Third and Stark.

Q. Do you see up on the board here there's an aerial map, Third Avenue, Stark now called Harvey Milk Street?

1 A. Yes.

2 Q. Were the food carts you were going to down on  
3 this southeast corner of the intersection?

4 A. Yeah.

5 Q. Okay. And where did you park?

6 A. I parked in that parking lot right there.

7 Q. Okay. Right here?

8 A. Yeah.

9 Q. And what kind of car were you driving?

10 A. An Acura, black Acura, 1998.

11 Q. And was it just you and your boyfriend, is  
12 that --

13 A. No. He's just a friend.

14 Q. Just a friend.

15 Okay. Just you and your friend in the car?

16 A. Yeah.

17 Q. And do you remember where in the lot you  
18 parked?

19 A. It was facing Third. It was facing -- it was  
20 facing Fourth. So I was -- I was kind of by -- do you know  
21 where the Golden Dragon is?

22 Q. The Golden Dragon is right over there.

23 A. Okay. So I was facing kind of towards this  
24 street. Actually, I was facing Stark, and I was parked on  
25 the -- like closer to the -- facing Stark Street, but on

1 this side of the road.

2 Q. If you want to come up to the screen, you can  
3 point for us.

4 A. Okay. I think I was parked, like, exactly  
5 right here, somewhere around there.

6 Q. Okay. Facing south towards Stark Street?

7 A. Yeah.

8 Q. Okay. Have a seat. Thank you.

9 When you pulled in there, were there other  
10 cars in the lot?

11 A. No -- oh, well, there were other cars, but  
12 nobody was in it.

13 And then so this black car pulled up, and I  
14 don't really know -- I don't know what model it was. It  
15 was a black car with black tinted windows.

16 Somebody rolled down the window, and Aundree  
17 realized that it was his cousin. He got out of the car,  
18 and they started talking about basketball and what he was  
19 doing in Eugene and stuff like that for a while.

20 Q. I'm going to ask you to speak a little slower  
21 because we have a court reporter trying to keep up with.

22 A. Okay, okay.

23 Q. Okay. So the car pulls in. Was there more  
24 than one individual in the car?

25 A. Two.

1 Q. Two people were in the car?

2 A. Yep.

3 Q. And your friend and one of them started  
4 talking about Eugene and basketball and that kind of stuff?

5 A. Yeah, but he got out of the car.

6 Q. Okay.

7 A. Yeah.

8 Q. Okay. Did you stay in the car?

9 A. Yeah. I stayed in the car the whole time.

10 And then I actually got out to go to the food carts, and  
11 there was guys trying to talk to me. So I just went back  
12 and waited for Aundree because I didn't know what he wanted  
13 to eat anyway.

14 Q. And is Aundree the friend that you picked up?

15 A. Yeah, yeah.

16 Q. Okay. And while you were sitting in the car,  
17 can you kind of take us through what you remember  
18 occurring?

19 A. I was just kind of on my phone, and I remember  
20 just, like, after I got back in the car, I had a, like, a  
21 bad vibe off those guys that were talking.

22 I was, like, Aundree, get back in the car so  
23 we can get our food and figure out where we're going to eat  
24 and then leave.

25 Q. Were you in the driver's seat?

1           A.    Yeah.  I was driving.

2           Q.    And then what happened?

3           A.    So Aundree got back in the car, and then I  
4 think Mike was -- Mike is Aundree's older brother.  That's  
5 who we were waiting for, actually.

6                    Aundree said -- he's, like, Mike is in the  
7 area.  He's in Golden Dragon.  Let's just wait for him to  
8 come up.

9                    And so we were waiting for Mike, and Mike  
10 ended up coming out.  He was talking to us through the  
11 window.  He's like, Oh, I think -- he's, like, I'm going to  
12 throw a party or something like that.  Maybe you guys could  
13 come over.

14                   We were, like, Okay.  Let's get food, and  
15 we'll talk about that because I was pretty tired already.

16                   And that's when -- Mike was still standing  
17 there, and I remember --

18           Q.    Was he standing in the front of your car?

19           A.    Yeah.  He was standing in the front of the  
20 car, leaning on the hood of the car.

21           Q.    Was he talking to you through the driver's  
22 window or passenger window?

23           A.    Passenger window.

24           Q.    Was Aundree or Mr. Polk sitting in the  
25 passenger seat of the car?

1 A. Yeah.

2 Q. What happened then?

3 A. And then -- when Aundree was sitting in the  
4 passenger and we were about to actually get out to get  
5 food, we heard -- both of our windows were rolled down, the  
6 driver's and the passenger's. We just heard gunshots.

7 Me being scared obviously, I was, like,  
8 Aundree duck. So we just ducked. And there was, like,  
9 gunshots going on for -- I don't know. I think maybe five  
10 or six gunshots. And then we -- it was --

11 Q. Did you have a sense of where those gunshots  
12 were occurring?

13 A. I knew from the back of me because I heard it  
14 coming from the back.

15 Q. And your windows were down?

16 A. Yeah.

17 Q. Okay.

18 A. I could hear pretty clearly that it was coming  
19 from the back, and so I ducked.

20 And then I think I heard -- I don't know if it  
21 was police or not, but I heard -- I heard somebody say, "He  
22 dropped the gun by the car," but I thought they said, "He  
23 dropped his gun on your car." And that's when I freaked  
24 out. I was, like, What? Somebody put their gun on my car?

25 That's when the police realized that I was in

1 the car, you know, because it was an empty parking lot.  
2 There were no cars in the parking lot, and then they told  
3 me to put my hands up.

4 But before that, before that happened, Aundree  
5 looked up, because he's pretty tall. He looked up and  
6 he's, like, Dude, there's somebody on the floor. He got  
7 shot in the ass.

8 I was, like, Oh, my God. I looked up, and I  
9 saw the guy laying down, but I heard more bullets, like,  
10 more gunshots, and I just ducked.

11 Q. Okay. So let me just make sure that I  
12 understand what you're saying here.

13 A. Yeah.

14 Q. So you're sitting in the car. Mr. Polk is in  
15 the passenger seat. You're in the driver's seat?

16 A. Yeah.

17 Q. And Mr. Polk's older brother was leaning on  
18 the hood on the passenger side and talking through the  
19 window?

20 A. Yeah.

21 Q. And the other person that Mr. Polk had  
22 previously been talking to, is he still there in the other  
23 car?

24 A. I think he went in the car. I don't know  
25 where they went by that point. They might have walked to

1 Golden Dragon or went in the car. I'm not sure.

2 Q. Okay. And then you hear five or six gunshots?

3 A. Yeah.

4 Q. From behind?

5 A. Yeah.

6 Q. Okay. And you duck down?

7 A. Yeah.

8 Q. And did you hear a break in the gunfire?

9 A. Yeah.

10 Q. Okay. So how many rounds, if you have an  
11 idea, did you hear in the first set of gunshots?

12 A. Like five or six. I don't remember.  
13 Everything happened so quick, but I'm pretty sure five or  
14 six gunshots.

15 Q. Okay. And that's what triggered you to duck  
16 down?

17 A. Yeah. I heard them and then ducked.

18 Q. Okay. And then did you see anybody moving  
19 around the car or any --

20 A. No.

21 Q. In the parking lot at all?

22 A. No, I didn't. Just me and Aundree and his  
23 older brother, Mike. I didn't really see anybody else  
24 until Aundree pointed out that that guy was on the floor.

25 Q. Okay. And so then the second set of gunshots,

1 do you have a sense of how many shots you heard that time?

2 A. I don't really know. I think maybe another  
3 five or six. I feel like it was just as long and, like,  
4 the break kind of happened in the middle of the gunshot.

5 Q. Okay. And do you have a sense of how long  
6 that break was between the two sets of shots that you  
7 heard?

8 A. Maybe like 30 seconds, 45 seconds.

9 Q. Okay. So a break that was noticeable --

10 A. Yeah.

11 Q. -- between the --

12 A. It was noticeable.

13 Q. Okay. You said you heard what sounded like  
14 police?

15 A. Yeah.

16 Q. And what was it about these people that made  
17 you think it was the police?

18 A. It was very commanding, like, Get down on the  
19 ground, like, Stop or something. I think I heard them say,  
20 Stop running or something like that.

21 Q. You heard them giving commands?

22 A. Yeah. I heard them telling whoever they were  
23 trying to get down, like, to stop whatever they were doing.

24 Q. Okay. And then you heard this second round of  
25 five or six gunshots?

1 A. Yeah.

2 Q. Okay. When you looked up and you saw the  
3 person laying on the ground, where was he in relation to  
4 your car?

5 A. He was, like, maybe -- I don't know, probably,  
6 like, right in the corner of where this room is right  
7 there. He was on the floor.

8 Q. Okay. So if you're facing -- sitting in the  
9 driver's seat facing the south, you're kind of pointing off  
10 the front passenger side --

11 A. Yeah.

12 Q. -- of the car on the ground?

13 A. Yeah.

14 Q. Okay. Did you see that person run by your car  
15 or move around your car in any way?

16 A. No. I wasn't paying attention. I was just  
17 talking to Dre. I didn't see anybody run.

18 Q. Do you know who yelled out "There's a gun on  
19 the ground" or "He dropped the gun" or whatever it was that  
20 you --

21 A. It sounded like the police again.

22 Q. The police?

23 A. Yeah.

24 Q. Okay. And you yelled out, "What? There's a  
25 gun?"

1                   And your impression is that's what made the  
2 police realize you were in the car?

3                   A.    Yeah, I'm pretty sure.

4                   Q.    Okay.  And then what happened with that?  Did  
5 they come up and talk to you?

6                   A.    Yeah.  They told me to put my hands up, and we  
7 had our hands up for 30 seconds, 45 seconds or something  
8 like that.

9                   And Mike and Dre were yelling, "Please don't  
10 shoot, don't shoot."

11                   They kind of -- they asked us to step out of  
12 the car, me and Dre, and then they put Mike -- they were  
13 still talking to Mike.  I remember Mike was sitting on the  
14 front of the hood, and they took me and Dre and put us in  
15 separate cars.

16                   Q.    Okay.  Could you see, after the police had you  
17 get out of the car, what was going on in the scene after  
18 that?

19                   A.    I think I saw, like, paramedics helping or  
20 trying to lift somebody up maybe.  Yeah, I'm pretty sure.  
21 That -- that probably was when I was in the cop car.

22                   I don't remember.  Everything happened.  It  
23 was just kind of a blur.  Maybe somebody was standing over  
24 him.

25                   I just -- I didn't try to look back or

1 anything. I just listened to whatever, you know, the  
2 police were asking me to do, and I got put in the car.

3 Q. I'm sorry?

4 A. I got put in the car while the police detained  
5 me.

6 Q. Okay.

7 MR. JACKSON: All right. Do you folks have  
8 any questions?

9 Oh, I have one question. I'm sorry.

10

11 BY MR. JACKSON: (Continuing)

12 Q. Did you ever actually look and see a gun on  
13 the ground --

14 A. No.

15 Q. -- next to your car?

16 A. I didn't see a gun.

17 Q. Okay. So you heard somebody talk about a gun?

18 A. Yeah.

19 Q. But you never actually looked and saw one?

20 A. No.

21 Q. Okay.

22 MR. JACKSON: All right. Any other questions?

23 All right. Thank you very much.

24 THE WITNESS: Thank you.

25 MR. JACKSON: That's it for today.

1                   Thank you very much. We're five minutes past.

2 Sorry about that.

3                   (Proceedings adjourned at 5:05 p.m.)

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1 STATE OF OREGON )

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3 COUNTY OF MULTNOMAH )

4

5 I, Heather M. Ingram, Certified Shorthand Reporter for  
6 the State of Oregon, do hereby certify that I reported in  
7 stenotype the proceedings had upon the hearing of this  
8 case, previously captioned herein; that I thereafter had  
9 reduced my stenotype notes by computer-aided transcription;  
10 and that the foregoing transcript constitutes a full, true  
11 and accurate record of the proceedings had upon the hearing  
12 of said cause to the best of my knowledge and ability.

13 Witness my hand at Portland, Oregon, this 16th day of  
14 November, 2018.

15  
16 *Heather M. Ingram*



17 Heather M. Ingram

18 Oregon CSR No. 93-0279

19 Oregon Certificate expires: 9/21/2021

20 Washington CSR No. 2188

21 Washington Certificate expires: 9/25/2019

22

23

24

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A				
<b>A-D-E-N</b> 182:4	141:5	<b>ammunition</b> 9:25	<b>applied</b> 155:6	89:2
<b>A-Y-A-N</b> 182:4	<b>additional</b> 4:14 6:3	10:1,4 25:10	<b>apply</b> 95:4	<b>arrived</b> 11:18 13:6
<b>a.m</b> 1:14 11:18	6:5 10:21 119:19	160:21 164:4	<b>applying</b> 135:25	13:16 17:15 18:14
36:1 44:13 61:21	139:4	170:5,7,8,17	138:20	19:23 20:6 23:6
85:9 86:24 123:11	<b>Aden</b> 2:13 181:21	<b>ammunition-feed...</b>	<b>approached</b> 70:20	29:1 57:11 81:6
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MULTNOMAH COUNTY GRAND JURY  
DEATH INVESTIGATION

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

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled transcript of  
GRAND JURY proceedings was heard, commencing at the hour of  
9:12 a.m. on Monday, October 29, 2018 at the Multnomah  
County Courthouse, Portland, Oregon.

APPEARANCES:

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

\* \* \*

HEATHER M. INGRAM  
Certified Shorthand Reporter  
Portland, Oregon

PROCEEDINGS  
Monday, October 29, 2018

MR. JACKSON: Good morning. This is Deputy  
District Attorney Todd Jackson appearing before Grand Jury  
Number One. This is Grand Jury Case Number 79, and this is  
DA Case Number 2390609-1 and 2.

This is a death investigation following the  
use of firearms by police, which caused the death of  
Mr. Patrick Kimmons on September 30th, 2018 in the city of  
Portland.

The first witness to be called before the  
Grand Jury is Detective Darren Posey.

Would you please stand up and raise your right  
hand?

DETECTIVE DARREN POSEY

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

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EXAMINATION

BY MR. JACKSON:

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

A. Darren Posey, D-A-R-R-E-N, P-O-S-E-Y.

Q. And what is your occupation?

A. I'm a detective with the Portland Police.

Q. How long have you been a detective?

A. I've been a detective for approximately 12  
years.

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

A. I've been a police officer for 21 years with  
the Portland Police Bureau and then an additional three  
years as a reserve deputy for Multnomah County.

Q. And since your time being a detective, what  
different details have you worked for?

A. I've worked in various different areas. I've  
worked in our afternoon shift detectives, which did various  
different cases from assault, assisting homicide, assisting  
in sex assault cases.

I've worked, over my 12-year period, in  
various different places. For about nine years, I worked  
in robbery detail. During that time, I worked in  
conjunction with the FBI Task Force and have been certified

1 to work with the FBI and take cases federally, as well as  
2 with the ATF. I worked on a gun task force for a period of  
3 time during that and preparing cases for federal  
4 prosecution.

5 Along with that, I've worked in sex assault.  
6 And then recently, in January 2018, I started working with  
7 homicide detail, focusing on homicides and suspicious  
8 deaths and officer-involved shootings.

9 Q. Okay. And have you received special training  
10 in the areas of homicide investigations and  
11 officer-involved shootings?

12 A. Yes, I have. Over the course of our training  
13 as detectives, we go to different conferences. We go to  
14 different training seminars dealing with officer-involved  
15 shootings themselves, as well as homicide investigations.

16 Q. Okay. And have you assisted in the  
17 investigation of the use of deadly force by police officers  
18 before?

19 A. Yes, I have.

20 Q. All right. Could you briefly take us through  
21 how the Portland Police Bureau investigates an  
22 officer-involved shooting or the use of deadly force by  
23 police officers?

24 A. Okay. So to kind of go with who responds to  
25 an officer-involved shooting to start off with.

1 A. Correct. So -- so, essentially, what happens  
2 is officers who witnessed the shooting, they'll be  
3 separated as well, and then the citizen witnesses will also  
4 be separated out.

5 With that, officers who were involved in the  
6 shooting incident will be provided an uninvolved officer so  
7 that they can, one, just monitor the officer, as well as  
8 keep them separate from other people and prevent them from  
9 talking about the incident at that point in time.

10 With that is, the detective response takes  
11 place. So once that's been established, there's a call-out  
12 procedure that takes place where the on-scene supervisors  
13 will take -- will make the call-out so that obviously all  
14 the resources out can come and show up for the incident in  
15 the beginning of the investigation.

16 Q. Okay.

17 A. So should we go to the detective  
18 responsibilities?

19 Q. Sure.

20 A. Okay. So the homicide detail runs these  
21 investigations and coordinates the resources needed for the  
22 particular incident.

23 Supervisors for the homicide detail set up  
24 officer briefings and supervisor briefings and then  
25 delineate assignments for the detectives who show up.

1 Officer-involved shooting investigations are conducted by  
2 the homicide detail.

3 They also get additional support from the  
4 Major Crimes Unit for Multnomah County, who will provide  
5 additional investigators from other agencies within  
6 Multnomah County.

7 A -- essentially, a complete investigative  
8 team is dispatched to manage the crime scene, and that also  
9 includes the forensic evidence division, who also provides  
10 criminalists to help assist in identification of evidence  
11 and collection.

12 I'll go into patrol responsibilities. So with  
13 patrol responsibilities, the initial response to  
14 officer-involved shootings takes place with patrol response  
15 and establishing a protected crime scene.

16 So, essentially, over the course of time,  
17 we've trained officers to set up as big of a crime scene as  
18 possible, and then we have an inner and an outer perimeter  
19 that we have.

20 So involved officers are removed from that  
21 scene as soon as practical. The officers on scene will  
22 also work to identify witnesses and separate them out as  
23 well.

24 Q. Does that include both officer witnesses and  
25 nonofficer or civilian witnesses?

1 So after assignments have been completed, we  
2 also conduct further briefings in order to share that  
3 information gathered and potentially develop further  
4 evidence and witness information through those briefings  
5 together.

6 What we initially do is we'll set up a command  
7 post for a particular location, and we use that. It's our  
8 mobile command center that we use to essentially run the  
9 investigation. We have a place to be able to talk about  
10 things privately and be able to work together and share  
11 information.

12 During this investigative process, a deputy  
13 district attorney is present to provide any support and  
14 oversight.

15 Separation of witnesses, so I want to go into  
16 that just a touch at this point. As part of the  
17 investigative process, we do that for an important reason.  
18 One, we want to maintain what people have seen and their  
19 memory and keep it secure from other people's, what they've  
20 seen and what they've heard.

21 Oftentimes, in traumatic incidents, things of  
22 this nature, it's a natural reaction to talk about it with  
23 other people, but we know that that also tends to start to  
24 change other people's memory of what they saw in the  
25 situation. So what we do is we separate people in that

1 fashion.

2 That's why we also provide an uninvolved

3 officer to be with our involved officers so that they can,

4 you know, have somebody that they can be with, but also

5 that person can monitor them so that they're not talking

6 about the situation.

7 Q. Do the detectives also become involved in

8 crime scene processing with the Forensic Evidence Division?

9 A. So part of the work that's done with a

10 call-out from the homicide detail is we'll separate out a

11 group of detectives who worked at the scene, as far as

12 evidence collection, and they work with the criminalists in

13 order to document the crime scene. And then we'll have

14 another set of detectives that will work on conducting

15 witness interviews.

16 So we -- we kind of separate people out to

17 manage those things.

18 Q. In an officer-involved shooting where firearms

19 were involved, is something called a round count also

20 completed by detectives?

21 A. Yes.

22 Q. What is that?

23 A. So essentially what we do is the involved

24 officers will come to us, and we will take their firearms

25 and take their ammunition that they have, and we

1 incident?

2 A. Yes.

3 Q. Okay. What is a communication restriction

4 order?

5 A. So a communication restriction order is done

6 by our lieutenant in the detective division. Essentially,

7 what it is is it's an order telling the witness officers

8 and the involved officers to not talk about the incident

9 with anybody else.

10 Q. Okay. Otherwise, known as a gag order?

11 A. Correct.

12 Q. Okay. So moving now to this case, on

13 September 30th of 2018, were you called out to investigate

14 an officer-involved shooting?

15 A. Yes, I was.

16 Q. What time did you receive the call?

17 A. I'm not exactly sure what time I received the

18 call. I -- I think I arrived on scene at about 4:50 a.m.

19 I believe the crime scene log was established at 0324 hours

20 that morning.

21 Q. All right. And who called you out?

22 A. I was called by Sergeant Hughes, my homicide

23 detail sergeant.

24 Q. And in that initial call, did you learn that

25 an officer-involved shooting had occurred at Southwest

1 essentially count down their ammunition that they have on

2 their person.

3 From that, what we do is we determine what or

4 how many rounds were fired based upon the ammunition that

5 they were carrying on their person.

6 Q. So is it known how many bullets the officer

7 had when they started their shift, for example?

8 A. Yes. So training dictates that the set up of

9 our firearms is that we're -- we're provided three

10 magazines, one for the gun or pistol, and then two extra

11 magazines.

12 Each magazine in a Glock 17, which is our

13 standard bureau-issued sidearm, is 17 rounds. So typically

14 how we're trained is when you load your firearm, you'll

15 load the firearm with the round chamber in it so that

16 there's one in the barrel, and then that will leave 16

17 rounds in the magazine. We then top off that magazine so

18 that it has 17 rounds in it again, and we insert that

19 magazine.

20 So the officer will have 18 rounds in the

21 handgun, and then they'll have two additional magazines,

22 typically, of 17 rounds.

23 Q. And so if you count the number of remaining

24 rounds following an officer-involved shooting, you can

25 determine how many rounds that officer fired in the

1 Third and Harvey Milk, formerly known as Stark Street, in

2 downtown Portland?

3 A. Yes.

4 Q. And is that where you responded?

5 A. That is where I responded. We had -- the

6 officers had set up a -- the mobile precinct on Southwest

7 Third between Southwest Oak and Southwest Harvey Milk

8 Street.

9 Q. Okay. Who responded with you to the scene?

10 A. We had a full complement of detectives from

11 the homicide detail. I'm trying to remember everybody that

12 was there.

13 Essentially, most of the -- the homicide

14 detail was there at that point in time. We had several

15 detectives, including, I think, a Gresham detective as well

16 who responded to assist with interviews and the crime

17 scene.

18 Q. Okay. And did a member of the district

19 attorney's office also respond to the scene?

20 A. Yes.

21 Q. And homicide sergeants and other command

22 staff?

23 A. Correct.

24 Q. Okay. Could you kind of take us through some

25 of the preliminary investigative steps you took in this

1 case?  
 2 A. So the first order of business, Sergeant  
 3 Hughes and I, along with Rico Beniga, who's also a homicide  
 4 detective, we conducted a briefing with Sergeant Schmautz  
 5 and Sergeant Wuthrich.  
 6 They were the on-scene sergeants and arrived  
 7 shortly after the officer-involved shooting had taken  
 8 place.  
 9 Q. Are they members of patrol?  
 10 A. Yeah. They're patrol sergeants, I believe,  
 11 for Central Precinct.  
 12 Q. Okay. And at that point, had patrol already  
 13 established a crime scene?  
 14 A. Yes, they had.  
 15 Q. And when you and the other homicide detectives  
 16 arrived, did you assume control of the crime scene?  
 17 A. Yes.  
 18 Q. Had patrol also identified several witnesses?  
 19 A. Yes, they had.  
 20 Q. Okay. And were those witnesses separated  
 21 pursuant to the protocols you just outlined for us?  
 22 A. Yes, they were.  
 23 Q. And did those witnesses include both civilian  
 24 and officer witnesses?  
 25 A. Yes.

1 A. Yes.  
 2 Q. So you said you received a briefing -- a  
 3 preliminary briefing about the events that had transpired  
 4 that night?  
 5 A. (Nodding head).  
 6 Q. At this point, I'd like to have you take a  
 7 look at the board up here.  
 8 A. Uh-huh.  
 9 Q. Do you see this aerial map of Southwest  
 10 Portland?  
 11 A. Yes.  
 12 Q. Could you come up to the board and indicate  
 13 for us where it was that you responded that night?  
 14 A. So this is the SP Plus parking lot. This  
 15 is -- it says Southwest Stark, but it's also Southwest  
 16 Harvey Milk Street. This is Southwest Third. This is  
 17 Southwest Fourth.  
 18 The mobile command center was set up just back  
 19 here on Southwest Third.  
 20 Q. And we can see along the top of the screen  
 21 here, is that the Burnside Bridge?  
 22 A. Yeah. So the Burnside Bridge is up to the  
 23 north, and Southeast Morrison Bridge is to the south.  
 24 Q. Okay. And can you describe what we're seeing  
 25 here in terms of this map?

1 Q. Were the involved officers also identified?  
 2 A. Yes, they were.  
 3 Q. And were they removed from the scene and  
 4 separated?  
 5 A. Yes.  
 6 Q. And was a noninvolved officer posted to stand  
 7 guard over them?  
 8 A. Yes.  
 9 Q. Ultimately, were communication restriction  
 10 orders, similar to what you just described, given to the  
 11 involved officers in this case?  
 12 A. Yes, they were.  
 13 Q. And who were the involved officers?  
 14 A. The involved officers were Sergeant Britt and  
 15 Officer Livingston.  
 16 Q. What is the name of the person who was shot by  
 17 police in this case?  
 18 A. The name of the person shot by police was  
 19 Patrick Kimmons.  
 20 Q. How was he identified?  
 21 A. He was identified by Officer Asheim, and he  
 22 was identified when he was being loaded into the ambulance.  
 23 Q. Was he also formerly identified, after the  
 24 autopsy, by criminalists with the Portland Police Bureau's  
 25 Forensic Evidence Division?

1 A. So this is a closer-up view of the parking lot  
 2 that's surrounded by Third, Fourth and Stark.  
 3 This building here is the Church of  
 4 Scientology building. This over here on this side, there's  
 5 a nightclub that's called the Golden Dragon, and then over  
 6 here there's also another nightclub.  
 7 Our incident takes place in this parking lot.  
 8 Q. Okay. And did the Church of Scientology have  
 9 cameras mounted on the back side of that building?  
 10 A. Yes. So I'll go into the video canvass that  
 11 we do.  
 12 So any time that we have a crime incident take  
 13 place, part of our work is to do what's called a canvass.  
 14 We look around for cameras and places that would have video  
 15 systems in place for security purposes.  
 16 In this particular location, there are two  
 17 cameras that are located approximately here and  
 18 approximately here, and there's the Church of -- they  
 19 belong to the Church of Scientology. They cover all of  
 20 this parking lot. They also cover outside this street as  
 21 well. They have a camera on this side.  
 22 Q. For the record, you're indicating along  
 23 Southwest Third Avenue?  
 24 A. On Southwest Third Avenue, correct.  
 25 Q. Between Stark or Harvey Milk and Oak Street?

1 A. Yes.  
 2 Q. Okay.  
 3 A. On the east side of Southwest Third, there  
 4 were camera -- cameras located at several businesses at  
 5 this location, and then to the south on Southwest Harvey  
 6 Milk, the Hi-Lo Hotel also has a camera that covers their  
 7 area just in front of the building.  
 8 Q. Okay.  
 9 A. We weren't able to locate any cameras that  
 10 were directly in the direction of the parking lot on the  
 11 west side.  
 12 Q. You mean Fourth Avenue, the west side of the  
 13 parking lot?  
 14 A. Yes, correct.  
 15 Q. Okay. So when you arrived on scene, was  
 16 Mr. Kimmons there or had he already been transported to the  
 17 hospital for treatment?  
 18 A. He had already been transported to the  
 19 hospital for treatment.  
 20 Q. Okay.  
 21 A. And upon arrival, I had learned that he had  
 22 passed away.  
 23 Q. In that initial briefing, did you also learn  
 24 that Mr. Kimmons had shot two people in that parking lot?  
 25 A. Yes.

1 Q. And what did you do in response to that  
 2 information?  
 3 A. First of all, we -- we knew that on --  
 4 according to the information that we had, we had heard and  
 5 found out that there was an altercation on this east side  
 6 next to Southwest Third. There was a fight and a shooting  
 7 that took place on this side of the street, on the west  
 8 side of Southwest Third in the parking lot.  
 9 We extended the crime scene once that had been  
 10 determined, and one of the things that we did while we were  
 11 investigating is we conducted a walk-through with Officer  
 12 Moore who was a witness officer, and he helped point out  
 13 where some of the people were located as they -- as they  
 14 had arrived and watched what unfolded.  
 15 And so they also indicated some of the areas  
 16 of fire that they saw take place. So down at this end of  
 17 the street, Patrick Kimmons was here, and essentially his  
 18 direction of fire that he shot was towards the north  
 19 towards the Scientology building.  
 20 Q. Okay. And then where did the second shooting  
 21 occur, according to the information you learned, involving  
 22 the police officers?  
 23 A. So the second shooting that takes place takes  
 24 place just up from -- from this location, and it takes  
 25 place approximately right here.

1 So if we split the parking lot in half, one  
 2 shooting takes place here after a fight that takes place.  
 3 And then the second shooting, which involves the officers,  
 4 takes place just back here, probably five or six spaces  
 5 back up.  
 6 Q. Into the parking lot?  
 7 A. In, yeah, towards the west into the parking  
 8 lot.  
 9 Q. Okay. And so when you learned that there are  
 10 suspected people with gunshot injuries, what do you do with  
 11 that information?  
 12 A. So we -- first response is any time a hospital  
 13 receives gunshot wound patients, they notify police. So we  
 14 were informed of that information.  
 15 And so in addition to officer response, we  
 16 also sent a group of detectives to the hospital because  
 17 information -- initial information from this scene said  
 18 that there was likely other people injured who had left the  
 19 location and maybe gone to a hospital.  
 20 Q. And so which hospital did you receive word had  
 21 received people suffering from gunshot wounds?  
 22 A. So Emanuel Hospital made contact with police  
 23 that they had received two subjects who had -- who arrived  
 24 with gunshot wounds.  
 25 Q. Okay. And did you send patrol officers and

1 ultimately detectives out to investigate --  
 2 A. Yes.  
 3 Q. -- that shooting?  
 4 A. Yes.  
 5 Q. Okay. And did you ultimately learn that the  
 6 two people who had arrived at Emanuel Hospital had been  
 7 shot at this scene at Harvey Milk and Third by Patrick  
 8 Kimmons?  
 9 A. Correct.  
 10 Q. Okay. Now, you mentioned that -- well, first,  
 11 did those two individuals survive their gunshot injuries?  
 12 A. Yes, they did.  
 13 Q. You mentioned that you conducted a  
 14 walk-through with witness Officer Moore?  
 15 A. Correct.  
 16 Q. And during that walk-through and any time  
 17 period following, were you and other detectives able to  
 18 identify items of evidence to corroborate the information  
 19 you had learned in your briefing?  
 20 A. Yes.  
 21 Q. Okay. I'm going to put this board up right  
 22 here. You can help me attach it on that side.  
 23 Okay. And so what do we see here on this  
 24 board?  
 25 A. Okay. So what we're looking at here is a

1 basic diagram of the parking lot. Obviously, it's not to  
2 scale.

3 Here we have -- circled are the items of  
4 evidence that we collected from the scene.

5 You'll note, just as a general overview, that  
6 we have essentially two sets of -- or zones, so to speak,  
7 of evidence.

8 You'll notice that on this side of Southwest  
9 Third on that west side, partially in the parking lot and  
10 outside of the parking lot, items of evidence. And then we  
11 have a clear distinction, separation; and then we have a  
12 whole other set of items of evidence that are recovered.

13 So it clearly delineates there's two different  
14 areas of involvement going on in that parking lot.

15 Q. And does this scene, although not to scale, at  
16 least note where the vehicles in the parking lot were  
17 located shortly after the crime occurred?

18 A. Correct.

19 Q. Okay.

20 A. So each of these little boxes here, as you  
21 see, are -- are vehicles.

22 These two vehicles up here are going to be the  
23 police patrol vehicles, and these vehicles here are  
24 citizens' vehicles.

25 Q. All right. And so did the Forensic Evidence

1 morning?

2 A. Yeah.

3 Q. 4:30?

4 A. Yeah.

5 Q. Was it dark out still?

6 A. Yeah. It was still dark out when I arrived.

7 Q. And what is the lighting like in this parking  
8 lot?

9 A. It's general lighting. It's streetlights.

10 There is overhead lights that shine down on the parking  
11 lot.

12 Q. What are these little white boxes that we can  
13 see on the ground there?

14 A. So those are placard markings. They're raised  
15 up like that so that when -- when the area is scanned for  
16 measurement purposes, you can take measurements and also  
17 identify things at a distance.

18 Q. Okay. And so what are some of the items of  
19 evidence that we see marked here in this photograph?

20 A. So some of the items that we're looking at  
21 here, I'll point it out. So underneath the car, you'll  
22 notice there's a cone. That's a bullet.

23 Some of the other items, I think this  
24 particular item, is a taillight cover that was knocked out  
25 by gunfire.

1 Division and detectives document the crime scene  
2 photographically?

3 A. Yes.

4 Q. And have you looked at the photographs taken  
5 from -- or by the Forensic Evidence Division?

6 A. Yes, I have.

7 Q. If you look up on the board here, the TV here,  
8 what do we see?

9 A. So we're in the parking lot. We're kind of  
10 central in the parking lot, but on the east side of it.  
11 We're looking eastbound, and that's Southwest Third that  
12 we're looking at.

13 And across from -- from that patrol car that's  
14 kind of straight ahead, that one there, that's the Golden  
15 Dragon straight across.

16 Q. Right here?

17 A. Yeah.

18 Q. Okay. And so if we look at this line, we're  
19 kind of looking in this general orientation?

20 A. Correct.

21 Q. Okay. And this photograph is taken in broad  
22 daylight?

23 A. Yes.

24 Q. When you responded to the scene, do you  
25 remember -- well, you said it was about 4:00 in the

1 Down here, there's another bullet that was  
2 located at number 19, and then out here there's some other  
3 items, as well as some blood spots, that are located out  
4 here.

5 Q. What do we see here?

6 A. So this is number 32, and down below is a  
7 spent bullet.

8 Q. And then on the left rear of this Audi A4,  
9 there's a sticker noting G.

10 A. Yes.

11 Q. And what is that?

12 A. So this is a bullet strike. And so you'll see  
13 some other of these types of labels.

14 Typically, we use those for an item that we're  
15 going to photograph, but can't necessarily capture except  
16 for photograph.

17 It indicates that it's a bullet strike.

18 Q. Okay. And the vehicle we're looking at, if  
19 you go back to this line diagram, is this one V7 here?

20 A. Correct.

21 Q. Okay. What are we looking at here?

22 A. So here we're looking at this Toyota Corolla.  
23 And you'll notice down here there's a little sticker, and  
24 there's another bullet strike right there.

25 Q. And on our line diagram, is that vehicle 6?

1 A. Correct.  
 2 Q. Okay.  
 3 A. That's a -- that's a close-up, again, a bullet  
 4 strike. That's H.  
 5 Q. Okay.  
 6 A. So these are cones located here. The one that  
 7 I'll point out that is important, this is a spent bullet.  
 8 Also to note about this particular bullet as I  
 9 viewed it, as also on number 32, both of those bullets are  
 10 not any ammunition that we would carry.  
 11 Q. "We" being?  
 12 A. "We" being the police.  
 13 They're a bullet that I know from my training  
 14 and experience as something that would come out of a  
 15 revolver.  
 16 Q. Okay.  
 17 A GRAND JUROR: What number is that one?  
 18 THE WITNESS: That's 19.  
 19 A GRAND JUROR: Thank you.  
 20  
 21 BY MR. JACKSON: (Continuing)  
 22 Q. And do the police carry revolvers?  
 23 A. No.  
 24 Q. And then we have another placard here, 20.  
 25 What is that?

1 A. Placard 20 is a blood stain.  
 2 Q. On the street?  
 3 A. On the street.  
 4 Q. Okay. If we look back at our diagram here, 19  
 5 and 20 oriented in this location here that we see.  
 6 A. Uh-huh.  
 7 Q. What is this?  
 8 A. So this is the spent bullet, number 19. You  
 9 can see it laying there; blood.  
 10 We have some other items that were dropped: a  
 11 person's ID, some money and a lighter, and then we also  
 12 have some more blood droplets over here.  
 13 Q. What is this?  
 14 A. This is the bullet that was recovered.  
 15 Like I said, it's a common bullet that would  
 16 be potentially used in a revolver. This could also be used  
 17 in a semi-auto pistol. But typically for revolvers, they  
 18 will use a -- either fully -- fully copper jacketed bullet,  
 19 and it also is a -- a snub nose or sometimes referred to as  
 20 a wadcutter type of style.  
 21 Q. Is that what you see here marked as number 19?  
 22 A. Yes.  
 23 Q. Okay.  
 24 A. These are blood droplets.  
 25 Q. And they're marked by number 20?

1 A. Number 20.  
 2 Q. Okay. And what is this?  
 3 A. This is 21, and these are on the part of the  
 4 white line on the roadway. These are further blood  
 5 droplets.  
 6 Q. Okay. Marked here on our line diagram?  
 7 A. Yes.  
 8 Q. What is this?  
 9 A. More blood drops.  
 10 Q. There's some on --  
 11 A. You can see some further out.  
 12 Q. What number is that marked?  
 13 A. 23.  
 14 Q. (Indicating)?  
 15 A. Yes.  
 16 Q. So if we look at 20, 21 and 23 in their  
 17 orientation within the crime scene, does it appear that's a  
 18 blood trail?  
 19 A. Yes, it is.  
 20 Q. Okay. If the person -- or shooting occurred  
 21 in the parking lot, as the evidence at least at this point  
 22 in your investigation indicated, that would be a blood  
 23 trail leading away from the parking -- or from the scene?  
 24 A. Yes.  
 25 Q. Okay. And so that was kind of an explanation

1 of this portion of the crime scene in the northeast corner  
 2 of the parking lot?  
 3 A. Correct.  
 4 MR. JACKSON: Do the grand jurors have any  
 5 questions about that before we move to the second location?  
 6 A GRAND JUROR: Do we know whose blood the  
 7 droplets belong to?  
 8 THE WITNESS: Yes. The -- let me explain a  
 9 couple of things.  
 10 One of the things that we note about the blood  
 11 droppings is that they stop there. Also, we know that two  
 12 vehicles left this location directly after the shooting,  
 13 and one of those vehicles, as we later determined, was  
 14 parked right there.  
 15  
 16 BY MR. JACKSON: (Continuing)  
 17 Q. And where did those vehicles go?  
 18 A. Those vehicles went to Emanuel Hospital.  
 19 Q. And did the evidence indicate that they were  
 20 carrying people who had been shot by gunfire?  
 21 A. Yes, they did.  
 22 Q. And were bleeding?  
 23 A. Yes.  
 24 Q. Okay. And who were the two individuals that  
 25 were transported to the hospital?

1 A. So the first person that arrived was Marcel  
2 Branch, and then the second person to arrive was Dante  
3 Hall.  
4 Q. And is Dante Hall also known as Manny Hall?  
5 A. Yes.  
6 Q. Okay.  
7 A. And a word of note with respect to that,  
8 Patrick Kimmons, who was identified here by Officer Asheim,  
9 also notes that he's familiar with Patrick Kimmons and  
10 Dante Hall. He's had personal interaction with both of  
11 those subjects, and he knows that they're friends.  
12 Q. Okay.  
13 MR. JACKSON: Any other questions about this  
14 portion of the crime scene before we move to the other?  
15 I don't see any. All right.  
16  
17 BY MR. JACKSON: (Continuing)  
18 Q. So, Detective, could you just give us an  
19 explanation of what this photograph is here?  
20 A. Okay. So these are the two patrol vehicles  
21 that were in the lot prior to the shooting, and that's  
22 prior to both shootings. These placards here are  
23 essentially all of the casings that we recovered from the  
24 officers' guns. And we're, again, looking eastbound  
25 towards Southwest Third from this location.

1 Q. You can see on the right side of this  
2 photograph, there's a patrol vehicle marked "Supervisor  
3 Car"?  
4 A. Yes.  
5 Q. And so on our line diagram, "Supervisor Unit,"  
6 is that this vehicle here?  
7 A. Correct. We're at the west end of the parking  
8 lot.  
9 Q. Looking east across?  
10 A. Looking east across.  
11 Q. On our line diagram, "Pay Booth," is that the  
12 orange building you can see on the left side of this screen  
13 here?  
14 A. Yes.  
15 Q. Now, what is the orientation of this  
16 photograph?  
17 A. So now the camera has moved up. We're at the  
18 front of the patrol vehicles looking east. This is the  
19 casings collection zone.  
20 Q. Okay. And then can you also see the placards  
21 noting the gunfire evidence and blood evidence from the  
22 initial shooting?  
23 A. Yes, which is further down here at the  
24 furthest east end of the parking lot.  
25 Q. So on our line diagram, this photo is taken

1 basically from the front right bumper of this patrol car  
2 looking east?  
3 A. East, correct.  
4 Q. What is this photograph?  
5 A. So this is a nighttime shot. This is to give  
6 you perspective of what it might look like.  
7 Of course, you have to understand that in this  
8 particular photograph, there's back lighting from the  
9 officer's -- from the criminalist's camera system.  
10 But you'll note that there's general  
11 streetlights, as well as a streetlight towards the parking  
12 lot itself shining down in this -- in this direction.  
13 So for a city area, it's appropriately lit.  
14 Q. And these photographs we've been looking at,  
15 were they taken before anything had been moved within the  
16 crime scene?  
17 A. Correct.  
18 Q. So once patrol came on scene, set up the crime  
19 scene and froze it, in essence --  
20 A. This is a picture of that.  
21 Q. This is what we're seeing?  
22 A. Correct.  
23 Q. Okay. What's this a photo of?  
24 A. So this is another perspective on the other  
25 side of those two patrol cars looking southeast. These are

1 the casings, 1 through 12, that we identified that came  
2 from police officer handguns.  
3 Q. Okay.  
4 A. So as you can see, there's casing 11 and 12  
5 here. You'll note on this black Acura, there's a bullet  
6 strike. There's also another bullet strike here. And then  
7 in this trunk, there's a bullet recovered.  
8 Q. Okay. And on the Toyota Camry, silver, parked  
9 to the south of that Acura there, is there a bullet strike  
10 on that vehicle as well?  
11 A. There's another bullet strike right here.  
12 Q. Okay. What is the item marked by placard  
13 number 13 in the parking stall there?  
14 A. So number 13 is a five-shot black-colored  
15 Taurus revolver.  
16 Q. And that's located basically in approximately  
17 the middle of the parking stall that is empty?  
18 A. Yes.  
19 Q. And on our line diagram, that's marked right  
20 here?  
21 A. Yes.  
22 Q. Okay. What do we see here?  
23 A. So here's a close-up view of 13, the revolver,  
24 and then here are some medical supplies. This is a medical  
25 kit that we carry, our police officers carry, and then here

1 in this planter, there's some eyeglasses.

2 And so there's just some medical supplies that  
3 were from when officers treated Patrick Kimmons for some of  
4 his injuries.

5 Q. So the officers, post-shooting, rendered  
6 medical aid to Mr. Kimmons?

7 A. Yes.

8 Q. What's this?

9 A. So we're looking south. This is the red truck  
10 that's in the background from the previous picture. And  
11 you'll note that there's some bullet strikes. So we have D  
12 here.

13 There's also E on top, which is a --  
14 essentially a skip across the top of the tonneau. There's  
15 a portion of a spent bullet down here on 15.

16 Q. Marked by 15?

17 A. (Nodding head).

18 Q. And if we look at our line diagram, is that  
19 red truck marked as vehicle 5 --

20 A. Yes.

21 Q. -- here parked along the north side of Harvey  
22 Milk Street or the south side of the parking lot?

23 A. Yes.

24 Q. Okay. Turning back to the item marked as  
25 number 13, the revolver, can you explain a little bit about

1 that somebody has been injured from that shooting, as well  
2 as evidence that rounds had been fired. We find bullets  
3 here.

4 We also note that the direction of fire is  
5 towards the north. So it's in this -- this direction  
6 generally.

7 In this section here, we have another  
8 encounter. We have a shooting incident. We know that  
9 based upon the casings and witness officer information, as  
10 well as position of the patrol cars, that this is an  
11 officer-involved shooting.

12 Q. Okay. And we'll view it later on in the  
13 presentation, but was video evidence obtained in this case  
14 that captured the sequence of events?

15 A. Yes.

16 Q. And have you observed that video?

17 A. Yes, I have.

18 Q. Can you explain for us on this diagram the  
19 general movements of the involved individuals?

20 A. Okay. So the video that we recovered, there  
21 are two cameras, one here and one here, so we're calling  
22 them X-1 and X-2. They're on the Scientology building, and  
23 they're at an elevated position. So they look down onto  
24 the parking lot.

25 What takes place is officers arrive here at

1 what we're seeing here?

2 A. So this is a downward view picture. It's  
3 obviously a close-up. This is a five-shot revolver. It's  
4 a .38 caliber.

5 We'll see in some further pictures that all of  
6 the cartridges that are in this gun are empty. So they had  
7 been shot.

8 So as you're looking here, you can see the  
9 hammer strikes on each of the -- of the bullet casings.  
10 Revolvers do not eliminate their casings automatically like  
11 a semi-auto handgun does.

12 Q. They don't eject?

13 A. Yeah, they're never ejected. You have to  
14 manually eject them. So they're still in the gun as they  
15 were when the gun landed in that position.

16 Q. And all five rounds were spent?

17 A. Yes.

18 Q. So before we go through round counts,  
19 Detective, could you indicate for us on the line diagram,  
20 based on your investigation, in essence, what your  
21 understanding is of what occurred?

22 A. So what happens from this information is  
23 there's an altercation that takes place at the east end of  
24 the lot. Clearly, there's a shooting that takes place at  
25 this east end of the parking lot. We had blood evidence

1 approximately 3:03 a.m., according to the CAD, which is the  
2 computer-assisted dispatch system.

3 This -- essentially, there's Sergeant Britt  
4 and Sergeant Livingston here.

5 Q. Officer Livingston?

6 A. Officer Livingston. Excuse me.

7 Down here is a group of people. What we see  
8 is we see the subject walk from here, and he walks this  
9 direction towards that group of people and engages in a  
10 fight with one of the people in that group.

11 At that point, another person -- later  
12 determined to be Patrick Kimmons -- fires upon the two  
13 subjects fighting. He then runs this direction after the  
14 shooting and starts running towards the west, along these  
15 cars.

16 So over here, Sergeant Britt and Officer  
17 Livingston, before the fight takes place, start walking the  
18 parking lot doing patrol.

19 Q. Are their lights on?

20 A. Yeah. So at 3:03, their vehicles are parked  
21 here, and one of them at least has their lights going. So  
22 there's --

23 Q. You mean headlights or the full police --

24 A. Full police lights, red and blues going.

25 Q. Okay.

1 A. So that is at 3:03.  
 2 At -- at the point they decide to walk down,  
 3 as they're only a short distance down, the fight takes  
 4 place.  
 5 As that fight unfolds and the shooting takes  
 6 place, they then engage the subject running from east to  
 7 west.  
 8 Q. They start running towards the shooter?  
 9 A. They run towards the shooter, and the shooter  
 10 runs towards them, and then they fire upon that shooter.  
 11 Q. Okay. In the location marked with the casings  
 12 on the ground?  
 13 A. In this -- in this location.  
 14 Q. Okay. And where does the shooter, who's been  
 15 identified as Patrick Kimmons, ultimately come to rest?  
 16 A. So Patrick Kimmons ends up resting here.  
 17 Q. And for the record, you're indicating to the  
 18 south of the two empty stalls near the arborvitae hedge?  
 19 A. Yeah, correct.  
 20 Q. Okay.  
 21 MR. JACKSON: Are there any questions about  
 22 that from the grand jurors?  
 23 I don't see any. All right.  
 24  
 25 BY MR. JACKSON: (Continuing)

1 Q. So, Detective Posey, did you and Detective  
 2 Beniga conduct round counts of Sergeant Britt and Officer  
 3 Livingston in this case?  
 4 A. Yes, we did.  
 5 Q. And what do we see on the screen here?  
 6 A. So this is a Glock 17, Generation 4. It  
 7 belonged to Officer Livingston. This is also the round  
 8 that was currently chambered in the gun.  
 9 This is Officer Livingston's magazine from the  
 10 gun. What you'll note is that it's minus several rounds.  
 11 It's minus five rounds from the typical 17 rounds that are  
 12 contained in that magazine.  
 13 Q. Okay. And so these rounds here are unfired or  
 14 unspent --  
 15 A. Correct.  
 16 Q. -- bullets?  
 17 A. Right, and they're just in a tray to keep them  
 18 in order.  
 19 Q. And there's 12 of them?  
 20 A. Yes.  
 21 Q. And that magazine, when fully loaded, holds 17  
 22 rounds?  
 23 A. Yes.  
 24 Q. So it's missing five?  
 25 A. It's missing five.

1 Q. What conclusion did you come to based on that?  
 2 A. Based on that, Officer Livingston fired five  
 3 rounds.  
 4 Q. Okay. Did you also check Officer Livingston's  
 5 back-up magazines?  
 6 A. Yes.  
 7 Q. And was there anything of note about them?  
 8 A. No. He had two back-up magazines, and they  
 9 were full.  
 10 Q. Fully loaded?  
 11 A. Fully loaded with 17 rounds each.  
 12 This is Sergeant Britt's firearm. It's also a  
 13 Glock 17, Generation 3, and that bullet that you see there  
 14 was in the chamber.  
 15 Q. Okay.  
 16 A. This is the magazine from that pistol. Noted  
 17 is only 10 rounds in the tray. That was the 10 rounds that  
 18 were in that magazine.  
 19 Q. Fully loaded, there would have been 17?  
 20 A. Correct.  
 21 Q. And so what conclusion did you come to based  
 22 on this evidence?  
 23 A. Sergeant Britt fired seven rounds.  
 24 Q. So between the two officers, 12 total shots  
 25 were fired?

1 A. Correct, 12 total shots.  
 2 Q. And how did that information correspond to the  
 3 casings you located at the scene?  
 4 A. We recovered 12 casings from the scene, which  
 5 matched those 12 rounds that we found missing from their  
 6 service pistols.  
 7 Q. You already spoke about the video canvass that  
 8 was conducted in this case.  
 9 Did you review the video that was recovered?  
 10 A. Yes.  
 11 Q. And could you explain briefly for us where you  
 12 saw video -- or where video was recovered from and what it  
 13 showed?  
 14 A. So we recovered video from Church of  
 15 Scientology, so we had those camera angles. We also  
 16 recovered a video image from the Hi-Lo Hotel.  
 17 We attempted to recover the video imaging from  
 18 the Golden Dragon. They had several cameras on that east  
 19 end of Southwest Third. We were not able to get any  
 20 recorded video from them.  
 21 From the information we have is they have  
 22 cameras, they have monitoring, but they do not record.  
 23 Q. Is there a deli on the southeast corner of  
 24 Third and Harvey Milk?  
 25 A. Yes, which is located approximately right

1 here. It has a camera for the outside, but it's not  
 2 recorded.  
 3 Q. And I said southeast, but I actually meant the  
 4 northeast corner of the intersection.  
 5 A. Correct.  
 6 Q. Okay. So that camera did not record.  
 7 You recovered video from the Hi-Lo Hotel?  
 8 A. From the Hi-Lo Hotel.  
 9 Just a note about the Hi-Lo Hotel, it's what's  
 10 called a bubble view. It's a very wide angle. So it  
 11 covers a lot of territory, but it also is small in nature.  
 12 It is directed towards the sidewalk. And though we can see  
 13 the section --  
 14 Q. Which sidewalk?  
 15 A. I'm sorry. The south sidewalk of Harvey Milk  
 16 Street, so down here on the diagram next to the Hi-Lo  
 17 Hotel.  
 18 So it covers a portion of the parking lot, but  
 19 it's at a great distance.  
 20 Q. Or appears --  
 21 A. Appears to be a great distance based on the  
 22 view.  
 23 Q. And is it kind of a fisheye orientation?  
 24 A. Yes. That would be another type of way to  
 25 describe it.

1 Q. So the image you see is actually distorted  
 2 from what you would -- your eye would actually see?  
 3 A. Yes.  
 4 Q. Okay. Noted on our diagram is an arborvitae  
 5 hedge that runs along the south side of the parking lot and  
 6 up along the southeast side of it?  
 7 A. Uh-huh, yes.  
 8 Q. How tall is that arborvitae hedge?  
 9 A. I think at the most, it's three feet tall.  
 10 Q. So it's not like a full size, 12, 15 feet  
 11 tall?  
 12 A. Yes. It's like waist level, approximately.  
 13 Q. But would it be tall enough to obscure, like,  
 14 the level of a car hood?  
 15 A. Yes.  
 16 Q. Headlights, that level?  
 17 A. Yes.  
 18 Q. Okay. And so based on your review of the  
 19 video evidence obtained in this case, did you come to a  
 20 conclusion about which ones really captured the most  
 21 information about what happened?  
 22 A. The best video of the parking lot was captured  
 23 by the Church of Scientology cameras. They have one that's  
 24 looking to the southeast, and you have one that's looking  
 25 to the southwest. It covers, essentially, the entire

1 parking lot.  
 2 Q. Okay. Detective, I'm going to play the video  
 3 now. You've observed this video?  
 4 A. Yes, I have.  
 5 Q. Do you see on the screen here the paused  
 6 video?  
 7 A. Yes.  
 8 Q. Could you come up and kind of explain what  
 9 we're seeing?  
 10 A. So --  
 11 Q. Before you do that, would it help to turn the  
 12 lights off to be able to see it?  
 13 A. Yeah.  
 14 Q. Okay. So what are we seeing here, Detective?  
 15 A. So this is -- I'll just point it out here.  
 16 We're looking from camera X-1 that's pointed towards --  
 17 yeah, pointed towards the southeast.  
 18 This is the Golden Dragon. This is the  
 19 grocery deli, Cameron's Books. There's a group of people  
 20 here in the middle on this far east end of the parking lot.  
 21 Q. Do you see the date and the time stamp on the  
 22 top right corner of this video?  
 23 A. Yes. It's 3:07:35.  
 24 Q. On what date?  
 25 A. On September 30th.

1 Q. Okay. 2018?  
 2 A. 2018.  
 3 Q. And did you determine or other detectives who  
 4 retrieved this video determine whether that date and time  
 5 stamp is accurate?  
 6 A. My understanding is that it's approximately 10  
 7 minutes, five to 10 minutes off.  
 8 Q. Okay. In which direction?  
 9 A. Fast, so it's ahead.  
 10 Q. Okay.  
 11 (Video playing)  
 12 Q. Okay. So we've moved ahead to what is noted  
 13 on the time stamp as 3:11 a.m. Could you kind of orient us  
 14 to what we're seeing in this frame?  
 15 A. So we have a group of individuals at the  
 16 furthest northeast corner of the parking lot over here.  
 17 You'll note that this particular car at the  
 18 furthest end in the lot still, that is a black Camaro. We  
 19 have a couple other individuals here. And then over here,  
 20 there's the black Acura and a dark-colored Durango, and  
 21 this is an open spot right here where there's some people  
 22 standing.  
 23 Q. And so what is it that we're going to see as  
 24 we play this video?  
 25 A. So as we play this video, we're going to see a

1 subject walk from here to this group of people who have  
2 moved over here. You're going to see Sergeant Britt and  
3 Officer Livingston walk down in the middle of the parking  
4 lot here.

5 Q. And then what are we going to see after that?

6 A. Then you'll see a fight take place here and a  
7 shooting take place here. Then you'll see the officers  
8 responding to both the fight and then the shooting, and  
9 then you'll see a subject run this direction, turn this  
10 direction as the officers are engaging that subject that  
11 just conducted the shooting.

12 Q. Okay. Do you actually see, as the shooting  
13 suspect moves away from the group, a muzzle flash in this  
14 video?

15 A. Yes, you do.

16 Q. We'll play the video now.

17 (Video playing)

18 Q. There's no audio for this video, right?

19 A. That is correct.

20 (Video playing)

21 Q. Okay. Now we're at 3:12 and 14 seconds on the  
22 time stamp.

23 Detective, has the shooting occurred at this  
24 point?

25 A. Yes.

1 see here at 3:12:01 people starting to scatter?

2 A. There's a marked change in the group as  
3 Patrick Kimmons begins firing upon the two subjects  
4 fighting.

5 Q. What can you see in the lower right corner?

6 A. You see Sergeant Britt, and I'm not sure which  
7 one is which at this point, but Sergeant Britt and Officer  
8 Livingston are right here.

9 Q. So this is occurring literally right in front  
10 of them?

11 A. Right in front of them.

12 (Video playing)

13 Q. Okay. And now at 3:12:04.

14 A. Patrick Kimmons, the two officers, they're now  
15 engaging that person. You'll notice that everybody over  
16 here has scattered, but you'll note that Marcel Branch is  
17 making his way back to his car, which is parked right here.

18 (Video playing)

19 Q. Okay. And at this point, 3:12:08, Mr. Kimmons  
20 is down?

21 A. Yes. He's fallen down behind this Durango  
22 next to the hedge.

23 (Video playing)

24 A. And just to note, you can't see what action is  
25 taking place on this side because the Durango blocks our

1 Q. Both shootings?

2 A. Both shootings.

3 Q. Okay. I'm going to back this up and kind of  
4 walk through it.

5 We'll start here at 3:11:27 on the time stamp.

6 (Video playing)

7 Q. We'll pause at 3:11:49. What do we see here?

8 A. So you'll note right here, this person, who  
9 was later identified as Marcel Branch, he's walking towards  
10 this group of people here. We later determined that one of  
11 those people here is Dante Hall.

12 Also, in amongst this group is Patrick  
13 Kimmons.

14 (Video playing).

15 Q. We're at 3:11:58.

16 A. Right here, the fight begins. Marcel Branch  
17 essentially punches Dante Hall. We later determined during  
18 our investigation that there's some type of issue between  
19 the two of them.

20 Q. Okay. And is Patrick Kimmons in that group as  
21 well at this point?

22 A. Patrick Kimmons is in amongst that group.

23 Q. Okay.

24 (Video playing)

25 Q. As we click through frame by frame, can you

1 view.

2 Q. From this camera angle, you mean?

3 A. Yes.

4 Q. Okay.

5 (Video playing)

6 Q. So from this point here, 3:12:01 where  
7 Mr. Kimmons can clearly be seen shooting, to the point that  
8 he ultimately comes to rest is a matter of seconds?

9 A. Yes.

10 Q. 3:12:01 to 3:12:08. So approximately seven  
11 seconds from when the officers would have seen Mr. Kimmons  
12 firing on this group of people to the engagement being  
13 over?

14 A. Yes.

15 (Video playing).

16 A GRAND JUROR: Can you remind me, were all  
17 five spent rounds up where the fight was?

18 THE WITNESS: Yeah -- well, we don't know how  
19 many rounds at -- given what we found here, we didn't find  
20 five rounds.

21 A GRAND JUROR: Okay.

22 THE WITNESS: We found -- I think we recovered  
23 three rounds, three or four rounds total. One was a  
24 partial. There was two -- two that were still together,  
25 and then there was one recovered from Dante Hall.

1  
2 BY MR. JACKSON: (Continuing)  
3 Q. From his body?  
4 A. From his body, yeah, his leg.  
5 (Video playing)  
6 Q. And as we let this play, what do you see  
7 happening right up here?  
8 A. So this vehicle that's parked here is going to  
9 take off that direction, and then you'll note that the  
10 black Camaro that's parked here was going to drive out  
11 right behind him.  
12 One of the things that you'll note is the  
13 person that gets in the black Camaro is limping.  
14 (Video playing)  
15 Q. Are those two vehicles later observed at  
16 Emanuel Hospital?  
17 A. Yes.  
18 Q. And did the two individuals, Marcel Branch and  
19 Dante Hall, get out of those vehicles?  
20 A. Yes.  
21 Q. At Emanuel Hospital?  
22 A. At Emanuel Hospital.  
23 A GRAND JUROR: That person that just ran  
24 across, who was that? Is that an officer?  
25 THE WITNESS: No. The officers are still

1 here. They're dealing with some of the people that are in  
2 the vehicles here, as well as the subject that's down.  
3 There were a number of people around,  
4 including in this zone here. And so what happens is some  
5 people run away because they're just trying to get away  
6 from the situation. Some of them later end up being our  
7 witnesses that we do talk to.  
8  
9 BY MR. JACKSON: (Continuing)  
10 Q. Let's run this one more time.  
11 (Video playing)  
12 Q. Okay. Detective, referencing back to the  
13 crime scene photos we observed earlier, at this portion of  
14 the scene, there was evidence of a bullet strike in this  
15 vehicle here that went into the trunk?  
16 A. Yes.  
17 Q. A skip shot off of the rear passenger door?  
18 A. Yes.  
19 Q. And a round that entered the passenger  
20 compartment of this Camry, the vehicle parked to the south  
21 of the Acura?  
22 A. Yes.  
23 Q. Did you find any evidence in the course of  
24 your investigation to suggest the officers fired in any  
25 directions other than right at the corner of this Acura and

1 then to the south towards the red truck parked here?  
2 A. No.  
3 Q. So would that suggest that the officers did  
4 not start firing until Mr. Kimmons had essentially reached  
5 this back corner, rear passenger corner of the Acura?  
6 A. Correct.  
7 Q. Are you able to tell how far he was from the  
8 officers when he reaches that position?  
9 A. So each stall on this side of the parking lot,  
10 based on measurements from our Leica scan, is approximately  
11 eight feet in width. So they're approximately eight to 10  
12 feet from Patrick Kimmons.  
13 Q. At the point that the evidence shows they made  
14 the decision to begin firing?  
15 A. Yes.  
16 A GRAND JUROR: What is it likely that they  
17 would be saying at that point?  
18 THE WITNESS: They would be saying --  
19 MR. JACKSON: Well, Detective, let me caution  
20 you not to speculate.  
21 THE WITNESS: That's true.  
22 A GRAND JUROR: What would you expect  
23 normally?  
24 THE WITNESS: Based on my training and  
25 experience, "Stop. Police. Drop the weapon," all of those

1 types of things.  
2 MR. JACKSON: And later on in our  
3 presentation, we'll hear from the witness --  
4 A GRAND JUROR: I didn't know if there was a  
5 protocol that --  
6 MR. JACKSON: So we'll actually hear from a  
7 member of the Portland Police Bureau training division that  
8 can answer some of those questions.  
9 A GRAND JUROR: Thank you.  
10 MR. JACKSON: All right. Before we turn to  
11 the reverse angle or the other angle from the Church of  
12 Scientology building, does anybody have any questions about  
13 this or wish to see it again?  
14 All right. I don't see anyone.  
15  
16 BY MR. JACKSON: (Continuing)  
17 Q. Okay. Detective, what are we seeing here?  
18 A. All right. So we're now looking at the other  
19 camera view. This is X-2, which is on the -- pointing  
20 towards the west and south of -- at the parking lot.  
21 You'll note that down here is the furthest  
22 west end of the parking lot here, and this is the  
23 intersection for Southwest Harvey Milk and Southwest  
24 Fourth.  
25 (Video playing)

1 Q. And we're now at 3:07 on the time stamp, which  
2 also states September 30th, 2018, 3:07:40?

3 A. Correct.

4 Q. What do we see pulling into the lot here?

5 A. You'll see that the police vehicle is at the  
6 east end with its overhead lights on.

7 (Video playing)

8 Q. Okay. As we move ahead now to 3:09:04, what  
9 do we see now?

10 A. We now have two vehicles, and they're  
11 positioning further into the parking lot with their  
12 overhead lights on.

13 (Video playing)

14 Q. Now we're at 3:10:43. What's occurring at  
15 this point?

16 A. The police vehicles are moving further into  
17 the -- into the parking lot.

18 Q. Repositioning next to the ticket booth or the  
19 pay booth?

20 A. Yes, yes.

21 (Video playing)

22 Q. All right. Now at 3:11:50, what do we see  
23 beginning to occur?

24 A. Sergeant Britt and Officer Livingston are  
25 beginning to walk down to the east side of the parking lot.

1 Q. Here at 3:12:06, you can see the officers  
2 positioned to the west side of that open parking space and  
3 Mr. Kimmons on the east side of that open parking space?

4 A. Yeah. So Patrick Kimmons, the officers.

5 (Video playing)

6 Q. And then at 3:12:09, does he appear to be  
7 down?

8 A. Yes.

9 Q. Mr. Kimmons?

10 A. Yes.

11 Q. Okay.

12 A. So as you recall, the five-shot revolver is  
13 recovered down in between these two vehicles.

14 You can note some of his -- Patrick Kimmons'  
15 body motion. He has it in his hand at some point in there  
16 and discards it.

17 Q. Let's watch it one more time here at full  
18 speed.

19 (Video playing)

20 Q. Okay.

21 MR. JACKSON: Do you folks have any questions  
22 about that camera angle or wish to see it again?

23 A GRAND JUROR: Have you been able to  
24 determine from the video when the officers started firing,  
25 like at what frame or second?

1 You can see them right there and there.

2 (Video playing)

3 Q. Okay. As we walk back through this, can you  
4 describe what you're seeing in terms of the officers'  
5 movements? We're starting at 3:12:00.

6 A. So there's -- there's actually two reactions  
7 that you'll notice with the officers. You'll note that  
8 they see the fight take place, and they start to engage to  
9 move towards that, but then there's a marked reaction.

10 Essentially, one of them is seeking to find  
11 cover because that's when we -- it looks like they're  
12 reacting to the shots being fired.

13 Q. Okay. That was at 3:12:02?

14 A. Right.

15 Q. Now we're at 3:12:03. What are we seeing now?

16 A. So we see that one of them has drawn their  
17 firearm. That's what it appears.

18 Something to note is that all of the casings  
19 that we recovered, there were no casings in this area.  
20 They were -- they were all over here next to these -- to  
21 these vehicles.

22 (Video playing)

23 A. We have Patrick Kimmons, who's running towards  
24 them.

25 (Video playing)

1 THE WITNESS: From what I can determine,  
2 there's -- every indication indicates that they started  
3 firing as he's still facing them at this corner and then --  
4 and as he's making the turn.

5 As you'll later see, with the injuries that  
6 Patrick Kimmons ends up having, it's consistent with him  
7 making a turn away from them, but it's still as he's facing  
8 them. So it's right at this corner here because there --  
9 that's the closest apex.

10 We didn't find any evidence of gunfire from  
11 the officers down -- you know, downrange towards this  
12 direction.

13 BY MR. JACKSON: (Continuing)

14 Q. To the east?

15 A. To the east.

16 All of the direction of fire was southeast,  
17 basically at the back of that -- that car there, from what  
18 we can see.

19 Q. And then also to the south with the rounds  
20 impacting the red truck?

21 A. Correct. And there's a couple of points where  
22 you can see some smoke from the firearms, and that is  
23 consistent timing for -- at this location is where the  
24 interaction, the shooting, takes place.  
25

1 THE WITNESS: Does that help?  
 2 A GRAND JUROR: Yes.  
 3 MR. JACKSON: Any other questions about this  
 4 camera angle?  
 5 (No response)  
 6  
 7 BY MR. JACKSON: (Continuing)  
 8 Q. Detective, so you've already talked about how  
 9 officers, and ultimately detectives, went out to Emanuel  
 10 Hospital in response to their report that two shooting --  
 11 or two people suffering from gunshot wounds had arrived?  
 12 A. Yes.  
 13 Q. And is this a photograph taken by one of the  
 14 security staff at the hospital of the black car that  
 15 dropped off one of the shooting victims?  
 16 A. Yes.  
 17 Q. And is that car leaving the area?  
 18 A. Correct.  
 19 Q. Okay. And is this vehicle consistent with the  
 20 vehicle you see leaving the scene shortly after the  
 21 shooting occurred?  
 22 A. Yes.  
 23 Q. And then what is this vehicle here?  
 24 A. This is a blue Chevy Cobalt. This was Marcel  
 25 Branch's vehicle.

1 Q. And so back to the black Chevy, was it Dante  
 2 Hall that was dropped off out of that vehicle?  
 3 A. Yes.  
 4 Q. And what do we see here on -- back to the blue  
 5 Cobalt, what is this?  
 6 A. This is -- we're looking at the driver's side  
 7 of the blue Cobalt, and you can see blood smears and then  
 8 blood on the interior of the blue Chevy Cobalt.  
 9 Q. Is this the vehicle that Marcel Branch had  
 10 driven himself to the hospital in?  
 11 A. Yes.  
 12 Q. And is this a photograph of Marcel Branch and  
 13 his gunshot injuries in the hospital?  
 14 A. Yes.  
 15 Q. We see one in the abdomen and one in the upper  
 16 right arm?  
 17 A. Correct.  
 18 Q. Did you subpoena medical records from Emanuel  
 19 Hospital for Dante Hall and Marcel Branch?  
 20 A. Yes, I did.  
 21 Q. And upon review of those medical records,  
 22 starting with Marcel Branch, did it indicate that he was,  
 23 in fact, admitted for treatment of gunshot injuries on  
 24 September 30th, 2018?  
 25 A. Yes.

1 Q. And what are the injuries noted there that  
 2 were treated?  
 3 A. Gunshot wound to the abdomen and gunshot wound  
 4 to the right arm.  
 5 Q. Okay. And then moving on to Dante Hall's  
 6 medical records, was he also admitted for treatment of a  
 7 gunshot injury on September 30th, 2018?  
 8 A. Yes, he was.  
 9 Q. To Emanuel Hospital?  
 10 A. Yes.  
 11 Q. And what was the injury documented there?  
 12 A. Gunshot wound to the left leg and bullet  
 13 recovered from that leg.  
 14 Q. Okay.  
 15 A. And just a note, Dante Hall's injury, he had a  
 16 fractured femur on his left leg.  
 17 And then Marcel Branch was -- both of the  
 18 injuries for Marcel Branch were through and through. So  
 19 two injuries on his right arm and then the injury to his  
 20 abdomen went through. And I'm not exactly sure which  
 21 direction it went, but there's also an injury to his back  
 22 on the left side, which damaged his spleen and small  
 23 intestines.  
 24 Q. Okay. Was security footage obtained from  
 25 Emanuel Hospital?

1 A. Yes.  
 2 Q. Let's pause a moment while the player loads.  
 3 Detective, is this the entryway into Emanuel  
 4 Hospital?  
 5 A. Yes. It's one of them.  
 6 Q. And are we going to see Marcel Branch here  
 7 come running in as the black Chevy pulls up into the  
 8 parking lot --  
 9 A. Correct.  
 10 Q. -- entryway?  
 11 A. Correct.  
 12 (Video playing)  
 13 Q. Were you able to observe, as Mr. Branch was  
 14 running up, that he's kind of holding his side?  
 15 A. Yes.  
 16 (Video playing)  
 17 Q. Is this individual being wheeled into the  
 18 hospital on the gurney, is that Dante Hall?  
 19 A. Yes.  
 20 Q. Did detectives actually go out to the hospital  
 21 and identify these two individuals?  
 22 A. Yes, they did.  
 23 (Video playing)  
 24 Q. Is this hospital security coming out of the  
 25 building here?

1 A. Yes. He's taking a picture.  
 2 Q. Okay. All right.  
 3 MR. JACKSON: Do grand jurors have any  
 4 questions of Detective Posey about the investigation or the  
 5 crime scene evidence collected there from or identified  
 6 within or the video evidence?  
 7 A GRAND JUROR: I'm assuming we're going to  
 8 hear more about the driver of that Chevy or no? What's  
 9 their involvement? They just kind of drove off.  
 10 MR. JACKSON: That person appears in the video  
 11 to drive away from the hospital.  
 12 A GRAND JUROR: Are they a witness or what is  
 13 the --  
 14 THE WITNESS: We're not sure at this point.  
 15 It's -- it's possible.  
 16 MR. JACKSON: Any other questions of Detective  
 17 Posey?  
 18 I don't see any.  
 19 Let's go off the record and take our  
 20 mid-morning break.  
 21 (Pause in proceedings: 10:43-10:58 a.m.)  
 22  
 23  
 24  
 25

1 MATTHEW MENA  
 2 was thereupon called as a witness on behalf of the State  
 3 and, after having been duly sworn, was examined and  
 4 testified as follows:  
 5  
 6 EXAMINATION  
 7 BY MR. JACKSON:  
 8 Q. Would you please state and spell your name for  
 9 the Grand Jurors?  
 10 A. Matthew Mena, M-A-T-T-H-E-W, M-E-N-A.  
 11 Q. I want to take you back to September 30th of  
 12 2018, in the very early morning hours.  
 13 Were you out that night?  
 14 A. Yeah.  
 15 Q. Do you remember what part of town you were in?  
 16 A. Downtown.  
 17 Q. And was a person named Garrett Carroll with  
 18 you?  
 19 A. Yes.  
 20 Q. And who is that to you?  
 21 A. Friend.  
 22 Q. A friend of yours?  
 23 A. Yeah.  
 24 Q. Okay. At about 3:00 in the morning, were you  
 25 and Mr. Carroll in front of the Golden Dragon --

1 A. Yeah.  
 2 Q. -- in Southwest Portland?  
 3 A. Yes.  
 4 Q. Okay. I'm just going to pull up this  
 5 photograph.  
 6 Can you see, Mr. Mena, on the board here, is  
 7 this an aerial photograph of what was formerly Stark  
 8 Street, now Harvey Milk, Third and Fourth, and the Golden  
 9 Dragon is in this area right here?  
 10 A. Yeah, yeah.  
 11 Q. Is that approximately where you were?  
 12 A. Yeah.  
 13 Q. Were you inside or outside of the building?  
 14 A. I was outside.  
 15 Q. Would you come up to the board here and just  
 16 point to where approximately you were standing?  
 17 A. (Witness complying).  
 18 Q. Okay. Right about there?  
 19 A. Yeah.  
 20 Q. Just on the sidewalk?  
 21 A. Yeah.  
 22 Q. All right. While you were standing out there,  
 23 do you recall some police patrol vehicles entering the  
 24 parking lot to the west of your location?  
 25 A. I didn't notice them until the situation

1 happened.  
 2 Q. Okay.  
 3 A. Yeah.  
 4 Q. What did you notice about them, if anything,  
 5 the patrol vehicles?  
 6 A. They were parked in that little parking area  
 7 there. It seemed like their lights were on.  
 8 Q. When you say "their lights were on," do you  
 9 mean headlights or overhead lights?  
 10 A. Overhead police lights.  
 11 Q. Do you remember how many vehicles you saw  
 12 there?  
 13 A. Two, two SUVs.  
 14 Q. Two police SUVs?  
 15 A. Yeah.  
 16 Q. Okay. Could you kind of walk us through what  
 17 you remember occurring?  
 18 A. So I heard two gunshots. I proceeded to look  
 19 across the street. I saw a gentleman who was seemingly  
 20 holding a gun. He ran off into the parking lot.  
 21 A woman who was on the sidewalk across the  
 22 street from me, she hobbled over into a car. I didn't see  
 23 what direction the car went off, but the car took off.  
 24 The gentleman ran into the parking lot. The  
 25 officers pretty much ran towards him. He saw them running

1 towards him, so he made a beeline into where the parked  
2 cars are on the west side there.  
3 And once he reached one of the cars, the  
4 officers came from behind him and shot him.  
5 Q. Okay. When you -- when you first heard those  
6 two gunshots and looked across the street, you said you  
7 were standing here on the east side of Third Avenue?  
8 A. Yeah.  
9 Q. In this general area?  
10 A. Yeah.  
11 Q. When you looked across the street, do you  
12 remember where it was that you saw the person with the gun?  
13 A. So he was -- he was right there, in the  
14 opening there.  
15 Q. (Indicating).  
16 A. Yeah.  
17 Q. In the drive aisle on the --  
18 A. Yeah. And the car was parked slightly --  
19 slightly -- go up slightly.  
20 Q. (Indicating).  
21 A. Yeah, to the right. It didn't look like it  
22 was in a space, like a designated space. It just looked  
23 like it was parked there, though.  
24 Q. Okay. Is that the car that the person that  
25 you saw apparently shot get into?

1 A. Yeah.  
2 Q. Okay.  
3 A. I don't know if they were shot. They were  
4 just -- they were just, like, on one leg, so that's what I  
5 assumed, but I didn't actually see them get shot.  
6 Q. But based on what you were seeing --  
7 A. Yes.  
8 Q. -- it seemed like that's what happened?  
9 A. Yeah.  
10 Q. Okay. When you first looked over, could you  
11 describe exactly what it was that you saw happening?  
12 A. When I first looked over?  
13 Q. Uh-huh.  
14 A. So the woman was behind the vehicle. She  
15 hobbled over, got in the back seat.  
16 He proceeded to -- he proceeded just to, like,  
17 look around and run up into the parking lot.  
18 Q. Did you know any of these people?  
19 A. No.  
20 Q. Okay. And so when you say "a woman," are you  
21 saying that because you knew it was a woman or it just  
22 looked like a woman?  
23 A. It looked like a woman, yeah.  
24 Q. Okay.  
25 A. I don't know for sure if it was a woman.

1 Q. Okay. The individual that had the gun in his  
2 hand, how was he moving, away or toward, or how was he  
3 moving with regard to the group of people?  
4 A. So he was facing them when I looked over. And  
5 then he made like a -- kind of like a -- he made like a  
6 weird movement to, like, spin around and take off running  
7 afterwards.  
8 Q. And did you see him running -- so if this way  
9 is north, was he running to the south or was he running a  
10 different direction?  
11 A. He ran into the -- into the parking lot.  
12 Q. To the west?  
13 A. Yeah.  
14 Q. Okay. And did you see a gun in his hand?  
15 A. When I looked across the street, it seemed  
16 like there was a gun in his hand, yeah. I didn't see him  
17 drop the gun at any point, drop anything at any point.  
18 Q. Okay.  
19 A. So I assumed that he had a gun on him until --  
20 until he fell to the ground.  
21 Q. As he was running into the parking lot, did  
22 his running motion appear consistent with holding a gun in  
23 his hand to you?  
24 A. I don't know. I don't know. I don't know.  
25 If they had a gun in their hand, I think everybody would be

1 a little different. But he was making pretty intense hand  
2 motions while he was running.  
3 Q. Okay.  
4 A. Like pumping, just really trying to get away.  
5 Q. Really running?  
6 A. Yeah.  
7 Q. Okay. When did you notice that the police  
8 officers were actually out of their patrol vehicles?  
9 A. I think they were -- I -- I don't really  
10 remember. It's kind of fuzzy, but they might have been out  
11 the entire time, out of their vehicles.  
12 Q. Okay. When do you first remember actually  
13 seeing them running up through the parking lot as you  
14 described it?  
15 A. Almost immediately, almost immediately.  
16 So when I looked and I saw him running, I  
17 could see the police officers already approaching him as he  
18 was running into the parking lot.  
19 And I don't know if he saw them or not, but at  
20 a certain point, the officer did see him, and then he  
21 turned left into the cars --  
22 Q. Okay.  
23 A. -- to try to avoid them.  
24 Q. That's what it appeared to you?  
25 A. Yes.

1 Q. Okay. Do you remember noting anything about  
2 the sound of the gunshots that you heard from this  
3 northeast area of the parking lot?  
4 A. Small caliber rounds potentially, not a -- not  
5 a big gun.  
6 Q. Okay. Do you have experience with firearms to  
7 know kind of generally what gunshots sound like?  
8 A. Not much, no.  
9 Q. Okay. Do you remember when detectives spoke  
10 to you shortly after this incident about it?  
11 A. Do I remember speaking to detectives about  
12 this situation?  
13 Q. Yeah.  
14 A. Yeah.  
15 Q. Okay. And do you remember thinking at that  
16 point at least or indicating that it may have been a  
17 revolver type of a weapon?  
18 A. That's what it looked like to me. It looked  
19 like it was all -- yeah, that's just what it appeared like.  
20 Q. Okay.  
21 A. I may be wrong.  
22 Q. Sure. But that's -- and are you talking about  
23 when you looked over and you saw the guy with the gun --  
24 A. Yeah.  
25 Q. -- that's what it looked like?

1 A. It looked like he had a small little, all  
2 silver revolver in his hand. It could have been a pistol,  
3 but I'm pretty sure it was a revolver.  
4 Q. Okay.  
5 A. But I don't know for sure, like I said.  
6 Q. So you said when you looked over and you saw  
7 this happening, the police were already there with their  
8 lights on?  
9 A. Uh-huh, yeah.  
10 Q. What was your -- how did that strike you that  
11 this was happening with the police presence?  
12 A. I was surprised. It seemed like -- it just  
13 seemed strange that somebody would be so bold to do this  
14 right when the police were there.  
15 I don't know. Maybe they didn't notice the  
16 police were there. I don't know.  
17 Q. But it surprised you that it would happen?  
18 A. Yeah, definitely a surprise.  
19 Q. As the person that you described running into  
20 the parking lot approached where the officers were running,  
21 were they kind of converging together? Is that how you  
22 remember it?  
23 A. Yeah. And then I assume he noticed this, and  
24 then that's when he decided to dart left.  
25 Q. When you saw him turn?

1 A. Yeah.  
2 Q. When you say "left," you mean to the south?  
3 A. Yeah.  
4 Q. Okay. Do you remember seeing any particular  
5 movements by the individual as he was making that turn?  
6 A. No. He was just running away.  
7 Q. And how about as he had made the turn and was  
8 proceeding between the parked cars?  
9 A. So he -- it seemed like he looked back at the  
10 officers, just to maybe see how close they were to him.  
11 And then while he was doing that, he was shot.  
12 Q. Okay. And when you say "he looked back," do  
13 you mean -- could you describe what specific body movements  
14 you actually saw?  
15 A. So he was running full motion, didn't stop  
16 once. He was just running.  
17 And then when the officers approached him from  
18 behind and they gave him the commands, "Stop. Put down the  
19 gun," it seemed like he looked back like this, and then he  
20 was shot.  
21 Q. Okay. Where was the hand that had the gun in  
22 it moving at that moment?  
23 A. I want to say it was his right hand. And,  
24 like I said, he was in motion. So the gun was somewhat at  
25 his -- so he was running. The gun is somewhat like right

1 here --  
2 Q. Okay.  
3 A. -- at a certain point, but it --  
4 Q. And just for the record, you're indicating as  
5 he looked back, he was looking over his right shoulder  
6 toward the officers?  
7 A. Yes.  
8 Q. And the gun in his right hand was, you've  
9 indicated, kind of near his right hip with his arm in back?  
10 A. It was there -- it was there at certain  
11 points. I'm not sure if it was there at the moment he was  
12 shot, but I did notice he was running like this.  
13 Q. Okay. And what, if any, commands did you hear  
14 the police officers giving to the individual?  
15 A. I'm pretty sure I heard, "Stop" and "Put down  
16 the gun" or "Put it down," one of those three or all three.  
17 Q. Okay. Was it a pretty chaotic scene at that  
18 point?  
19 A. Oh, yeah. People were screaming all around.  
20 Yeah, it was very chaotic.  
21 Q. How many people, if you had to estimate, were  
22 in this kind of general area at the time this occurred?  
23 A. So actually, I haven't even mentioned, so  
24 there was another car that I'm pretty sure was involved, a  
25 black Charger or Camaro.

1 I'm not sure if he was -- the individual was  
 2 with them, but they were there, too, right at the corner.  
 3 Q. Right here?  
 4 A. Downward, yeah. They were there. I don't  
 5 know if they were waiting for the situation to unfold for  
 6 him to get in the car. I don't know what their -- I don't  
 7 know what their -- what their part in this was, but they  
 8 were seemingly involved.  
 9 They were there. There was a bunch of people  
 10 at the food carts. There was a decent amount of people at  
 11 the --  
 12 Q. The food carts are down here to the southeast?  
 13 A. Yeah, on that -- on that sidewalk right there.  
 14 Q. Okay. (Indicating).  
 15 A. No, no. Yeah, all lined up there, yeah.  
 16 Q. Okay.  
 17 A. So there was a decent amount of people in  
 18 front of Golden Dragon. There were people across the  
 19 street, but my eyes were fixed on the gentleman and all of  
 20 this.  
 21 Q. Uh-huh. When you first look over after  
 22 hearing the gunshot, how many people were in this immediate  
 23 group here?  
 24 A. So there was the driver, and then there was  
 25 the lady. That's all I saw. There might have been more,

1 but that's all I saw.  
 2 Q. So were you pretty focused in on this gun that  
 3 appeared in that --  
 4 A. On the -- like the main players, I was focused  
 5 on them, like the guy and the lady who was jumping in the  
 6 car.  
 7 I didn't really -- yeah, I was focused on them  
 8 right there.  
 9 Q. Sure.  
 10 So moving back now to where the officers  
 11 engaged with this individual, you described that as he came  
 12 down between the cars, you heard commands being given to  
 13 him.  
 14 Are you sure it was police giving those  
 15 commands?  
 16 A. I'm pretty sure, yeah.  
 17 Q. Okay. That's kind of consistent with how  
 18 police give commands to people?  
 19 A. Well, I was watching them, too.  
 20 Q. Okay.  
 21 A. So...  
 22 Q. As he turned back --  
 23 A. It was -- it was just his head, though, that  
 24 turned back. It wasn't like an actual -- he didn't  
 25 physically turn his body back.

1 Q. Okay.  
 2 A. It was just one of these (indicating).  
 3 Q. Okay. And he was still in a running motion?  
 4 A. Oh, yeah. He was booking away. He never  
 5 stopped --  
 6 Q. Okay.  
 7 A. -- until he fell.  
 8 Q. And as you're watching this happen kind of  
 9 realtime, did it strike you as occurring very quickly, or  
 10 did it feel like you were in slow motion, or do you have a  
 11 sense of that?  
 12 A. Happened within seconds. It was all within 10  
 13 or 11 seconds.  
 14 Q. Okay. That was the impression you had?  
 15 A. Yeah.  
 16 Q. Okay. And based on the movements that you saw  
 17 there at kind of the critical moments with police officers,  
 18 did you have a fear that this individual may actually shoot  
 19 at the police based on how he was moving?  
 20 A. Based on how he was moving, no. But based on  
 21 the situation at large, I thought anything was possible.  
 22 Q. Okay. And as that arm was kind of coming  
 23 back, as you indicated, when he looked back over his  
 24 shoulder off his hip, do you remember the gun ever -- or  
 25 the muzzle ever being pointed at the police --

1 A. No.  
 2 Q. -- that you could see?  
 3 A. No.  
 4 Q. Okay. Do you recall actually being under the  
 5 impression that it may come up and actually fire at the  
 6 police officers?  
 7 A. No. I think I -- I mean, that impression,  
 8 anything could happen with a gun with just the flick of a  
 9 wrist. It could have happened very quickly. It could have  
 10 happened, but I did not have that impression.  
 11 Q. Okay. And do you remember, when you talked to  
 12 the detectives in this case, saying that you at least had a  
 13 thought that this individual was going to turn and start  
 14 shooting at the police officers?  
 15 A. No, I don't remember saying that, no. If I  
 16 did say that, no, I was wrong.  
 17 Q. Okay. So your testimony, just to be sure, to  
 18 make sure we're clear, is that it didn't look like he was  
 19 going to turn and shoot the police, but it takes a flick of  
 20 a wrist, and anything could happen under those  
 21 circumstances?  
 22 A. Yeah.  
 23 Q. Okay. After he -- after the shooting  
 24 occurred, did you see what happened with the vehicles that  
 25 you identified as being potentially involved in this

1 somehow?  
 2 A. No, no. I can't remember anything that  
 3 happened after that.  
 4 Q. Do you remember seeing them at the scene later  
 5 on as you were standing around?  
 6 A. No, no. I would have noticed that. No.  
 7 Q. Okay. So had they left, then? Is that your  
 8 impression?  
 9 A. Yeah.  
 10 Q. Okay. You just didn't see which direction  
 11 they went?  
 12 A. Yeah.  
 13 Q. Okay.  
 14 MR. JACKSON: I think those are all the  
 15 questions that I have at this point for Mr. Mena.  
 16 Do the Grand Jurors have any questions?  
 17 A GRAND JUROR: I just had one question.  
 18 You kept referencing that the police came from  
 19 behind?  
 20 THE WITNESS: Yep.  
 21 A GRAND JUROR: But weren't they running  
 22 towards each other?  
 23 THE WITNESS: Yeah, but he had already -- so  
 24 the police were in that empty -- the empty -- where the  
 25 cars aren't parked, the middle ground.

1 So they're both running there. They're going  
 2 to collide.  
 3 He goes this way. The police then go behind  
 4 him as his back is turned.  
 5 You get what I'm saying?  
 6 A GRAND JUROR: Okay. Thank you.  
 7 THE WITNESS: Sure.  
 8 MR. JACKSON: Any other questions?  
 9 I don't see any. All right. That's it.  
 10 Thank you very much.  
 11  
 12 GARRETT CARROLL  
 13 was thereupon called as a witness on behalf of the State  
 14 and, after having been duly sworn, was examined and  
 15 testified as follows:  
 16  
 17 EXAMINATION  
 18 BY MR. JACKSON:  
 19 Q. Can you please state and spell your name?  
 20 A. Garrett Carroll, G-A-R-R-E-T-T, C-A-R-R-O-L-L.  
 21 Q. And how do you know Matthew Mena?  
 22 A. I was actually with him on the night of the  
 23 incident.  
 24 Q. Okay. Is he a friend of yours?  
 25 A. Yes.

1 Q. So, yeah, we'll take you back to September  
 2 30th of 2018.  
 3 Do you see on the screen here we have an  
 4 aerial shot of Third and Stark, now known as Harvey Milk?  
 5 A. Yes.  
 6 Q. And at about 3:00 in the morning, were you in  
 7 this area outside of the Golden Dragon?  
 8 A. Yes, I was.  
 9 Q. Okay. And was Mr. Mena with you?  
 10 A. Yeah. Yes, he was.  
 11 Q. Could you describe for us what you remember  
 12 occurring while you were standing out there?  
 13 A. I had just crossed the street and --  
 14 Q. Which direction?  
 15 A. Coming towards the Golden Dragon, I had just  
 16 crossed the street from the Euro -- the light by -- I -- I  
 17 made the transition from one side of the street to the  
 18 other.  
 19 Q. Coming across Stark?  
 20 A. Yes.  
 21 Q. Okay.  
 22 A. And then Matthew was actually in front of me  
 23 probably like five, six, eight feet in front of me, and I  
 24 heard a shot ring out.  
 25 And that's when Matthew got in front of a

1 truck that was about eight feet in front of me, and I was  
 2 standing up.  
 3 Q. Parked on the street?  
 4 A. Yes.  
 5 Q. And are we talking about on the east side of  
 6 Third Avenue?  
 7 A. Yes.  
 8 Q. The sidewalk?  
 9 A. Yes.  
 10 Q. Okay.  
 11 A. And I was standing up, and I was watching. I  
 12 couldn't see the guy who did get shot, but I could see the  
 13 cops from the angle that I was at.  
 14 Q. And is there kind of a hedge that goes along  
 15 the southeast part of the parking lot?  
 16 A. Yes.  
 17 Q. And what impact, if any, did that have on your  
 18 ability to see what was happening?  
 19 A. I was at the angle where I could just see the  
 20 hedge. I couldn't see the guy. I could see the police  
 21 officers that were actually in the parking lot.  
 22 Q. Do you remember when you first saw the police  
 23 officers there?  
 24 A. Yes, I do.  
 25 Q. When was that?

1 A. I couldn't say the time, but I heard one shot  
2 ring out, and then two cops quickly pulled up to the scene.  
3 And then shortly after, about four more cop cars pulled up  
4 to the scene.

5 Q. Okay. And so your impression is that they  
6 arrived around the time that you heard the gunshots?

7 A. Yes.

8 Q. Do I have it right that you had just crossed  
9 Stark from the south and were walking north on the east  
10 side of Third Avenue --

11 A. Yes.

12 Q. -- when you heard the shots?

13 A. Yes.

14 Q. So then how did you become aware that the  
15 police were there? Did you turn and look and see them?

16 A. I turned and looked, and I actually saw a  
17 police SUV pull up.

18 Q. Okay. And did it have its lights on?

19 A. Yes, it did.

20 Q. Could you actually see officers out of the  
21 car?

22 A. Yes. I could see two officers.

23 Q. Two?

24 A. Yes.

25 Q. And what were they doing?

1 A. They had their guns drawn.

2 Q. Okay. Were they just standing there by their  
3 cars?

4 A. Yes, they were.

5 Q. And then what happened?

6 A. I was -- it was kind of late, but I think they  
7 did say something, but I'm not sure what was said.

8 I did see the cops actually start shooting  
9 their weapons, but I couldn't necessarily see what they  
10 were shooting at, but I kind of had knowledge that they  
11 were shooting at somebody.

12 Q. Okay. And this is how soon after you heard  
13 the initial shots?

14 A. Probably about a couple minutes. It was  
15 pretty quick.

16 Q. Okay. And what was the -- were there other  
17 people around in this general area when this was happening?

18 A. Yeah. Actually, after the first shot, I saw  
19 people fleeing the parking lot and running away, and people  
20 were ducking and covering behind cars. It was a pretty  
21 hectic scene.

22 Q. Were people screaming and yelling and stuff,  
23 too?

24 A. I just -- probably a couple people were, like,  
25 Oh, shit and then probably ducking behind their cars, but I

1 didn't hear much yelling or screaming.

2 Q. Okay. Did you see which direction the people  
3 were running, or was it just kind of everywhere?

4 A. Yeah. I know one -- one woman fled the  
5 parking lot from -- kind of by the IRS Wage, but more  
6 towards the street.

7 A GRAND JUROR: Top left of the parking lot?

8 THE WITNESS: Yeah, top left. She was running  
9 down Stark.

10

11

12 BY MR. JACKSON: (Continuing)

13 Q. This way?

14 A. Yeah, but she -- she exited the parking lot  
15 coming this way and then ran down Stark.

16 Q. Okay. Did you see anybody else running  
17 straight down Third Avenue to the south?

18 A. No, I did not.

19 Q. Did anybody that you saw running appear  
20 injured to you?

21 A. I couldn't possibly say. It was a pretty  
22 hectic scene. So if somebody was running a little funny,  
23 maybe they were trying to get out of there quick. I can't  
24 possibly know.

25 Q. Did you see somebody running funny, as you put

1 it?

2 A. She looked like she was scared, but that was  
3 the girl that was running down Stark.

4 Q. Down Stark to the east?

5 A. Yes, yes.

6 Q. Okay.

7 A. Yeah.

8 Q. But nobody, like, limping or holding body  
9 parts or anything like that?

10 A. No, not to my knowledge.

11 Q. Okay. And so you're saying that you could see  
12 the police shoot, but you couldn't see what they were  
13 shooting at?

14 A. Yes, but I could see the direction that they  
15 were shooting at, and it was towards the south. It was  
16 towards the south. They had their guns drawn south, and  
17 they shot south.

18 Q. Okay. And could you not see what they were  
19 shooting at because of the hedge that was growing here?  
20 Were cars blocking you or what?

21 A. The hedge and the cars, yes, because the  
22 police were visibly in the middle of the parking lot.

23 Q. Okay. In this kind of open area?

24 A. Yes.

25 Q. Okay. Okay.

1 MR. JACKSON: Those are all the questions I  
2 have.  
3 Do the Grand Jurors have any questions for  
4 Mr. Carroll?  
5 I don't see any.  
6 All right. That's it. Thank you very much.  
7 MR. JACKSON: Why don't we go off the record  
8 while I try to set up for our next witness.  
9 (Pause in proceedings: 11:25-11:27 a.m.)  
10 MR. JACKSON: We're back on the record. We  
11 have our next witness.

12  
13 SERGEANT JEFFREY DORN

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

17  
18 EXAMINATION

19 BY MR. JACKSON:

20 Q. You can have a seat. Please state and spell  
21 your name.  
22 A. Jeffrey, J-E-F-F-R-E-Y, Dorn, D-O-R-N.  
23 Q. And where do you work?  
24 A. I am a night shift supervisor at North  
25 Precinct for the Portland Police Bureau.

1 of 9/29/18 into the early morning hours of 9/30/18?  
2 A. I would have -- the time is -- if I look at  
3 the time, it's 9/30. I would have started my shift on  
4 9/29, correct, at 10 p.m.  
5 Q. Okay. And did you respond to Emanuel Hospital  
6 at about 3:25 in the morning on September 30th?  
7 A. Yes, I did.  
8 Q. And why did you do that?  
9 A. There was a call that had been broadcast over  
10 the radio that there was a -- two gun -- walk-in gunshot  
11 victims that showed up at the hospital, and this is  
12 following an incident that had just happened downtown in  
13 close time frame.  
14 Q. You said that you're a North Precinct patrol  
15 sergeant?  
16 A. Correct.  
17 Q. And in your capacity as a North Precinct  
18 patrol sergeant, would you have been aware of incidents  
19 happening in the downtown area?  
20 A. Yes. That -- that incident was broadcast, the  
21 information on our net, that the North Precinct was  
22 responding to a shots fired call, and I didn't have all the  
23 information of what was happening downtown, but I was  
24 already switched over on one of my radios to listen and  
25 started monitoring the net, and I could hear a fairly

1 Q. And what does it mean to be a supervisor?  
2 A. I am one of the supervisors of a shift of  
3 officers that we have. I oversee the personnel matters and  
4 the ongoings of the shift.  
5 Q. Do you have a particular rank for that  
6 position?  
7 A. Sergeant.  
8 Q. And approximately how many sergeants are on  
9 shift during any particular shift?  
10 A. Two to four. It depends upon the night.  
11 Q. And what are the general responsibilities of a  
12 shift sergeant?  
13 A. There's quite a few calls that end up having  
14 to have supervisor approval for a variety of reasons.  
15 We have to make sure that the -- that first  
16 and foremost that the shift is staffed, so people haven't  
17 called in sick and we have enough bodies to work the street  
18 and what districts they work in.  
19 Q. Okay. Were you working on September 30th of  
20 2018?  
21 A. Yes, I was.  
22 Q. And what were the hours of your shift that  
23 day?  
24 A. I work 10:00 p.m. to 8:00 a.m.  
25 Q. So did your shift actually start on the night

1 chaotic scene going on downtown.  
2 Q. Did you get a general briefing of what had  
3 happened downtown in terms of the incident itself?  
4 A. Not really, not really. It was -- it took a  
5 while from the initial broadcast, because I switched over a  
6 little late, to even piece together that it was an  
7 officer-involved shooting that I later learned, you know,  
8 or sometime in the midst there, I learned it was an  
9 officer-involved shooting in relation to another shooting  
10 that had occurred.  
11 Q. Okay. So when you got the dispatch out that  
12 two people had walked into Emanuel Hospital with gunshot  
13 injuries, did you think it was related to the incident  
14 downtown?  
15 A. I -- I felt there was a strong likelihood,  
16 just because of the time frame. And this is a very common  
17 scene that happens, replays itself over and over throughout  
18 the years. I've been a police officer for 22 years now and  
19 working that neighborhood for quite a few of my years.  
20 So it's not unusual at all, within a short  
21 time frame after any shooting in the city, for victims to  
22 show up at area hospitals.  
23 Q. With gunshot injuries?  
24 A. With gunshot injuries, yes.  
25 Q. So when you went out to the hospital, what did

1 you do?

2 A. I was the first one to arrive, and I pulled  
3 right into the -- the public entrance where generally most  
4 of the -- in my experience, most of the gunshot drop-off  
5 type victims are dropped off.

6 There was no vehicles in that drop-off area.  
7 I walked into the lobby and was met by security personnel  
8 and an office -- or the clerk at the front desk, who were  
9 ready to direct me back to where the gunshot victims had  
10 already been taken. So they were no longer in the lobby.  
11 They had been rushed back into the actual ER.

12 Q. Did you identify the two individuals that had  
13 been shot?

14 A. Yeah. As soon as we could, I was with -- I  
15 had a couple other officers headed to the hospital as well.  
16 And then that was first and foremost, I was trying to  
17 figure out where -- where the two individuals were and what  
18 their names were.

19 And I ended up identifying one of the  
20 individuals as Manny Hall and the other one as Marcel  
21 Branch.

22 Q. Okay. Did you learn about the nature of the  
23 injuries the two individuals had sustained?

24 A. Yeah. So the ER is set up to where there's a  
25 variety of rooms around the nurses station.

1 looked like the vehicle likely was an old rental car that  
2 was purchased, and it still had like -- I don't remember if  
3 it was a Hertz rental car, but it still had the key fob tag  
4 that said "blue Chevy Cobalt," which immediately in my mind  
5 was different than the -- the original description of the  
6 car that dropped off two persons was that the -- the way  
7 that the 911 call came, I -- I transcribed it as a "Walk-in  
8 gunshot wound, two people both from the same vehicle,  
9 probably related to incident downtown. Drop-off vehicle  
10 was a black Camaro with a plate to match and that vehicle  
11 left."

12 That's the information I had going into this.  
13 So it was kind of, well, that guy has keys to a vehicle  
14 that is not this car.

15 Q. So what did you do with that information?

16 A. Once we had enough other officers that got to  
17 the scene to secure the rooms, myself and Officer Holmgren  
18 went to the security office, and one of the security  
19 personnel was able to pull up a video feed of the drop-off,  
20 and we were actually able to watch what -- what occurred.

21 Q. And what did you see?

22 A. I saw first Mr. Branch walk from what would be  
23 the north side of the parking lot, out of view, he walked  
24 into view. He walked across the big -- you know, kind of a  
25 big U-turn. He walks up to the front door, looks like he's

1 And Manny Hall was in a room within the ER. I  
2 was told that the other subject, who had took a while to  
3 get his name from the nursing staff, he --

4 Q. Mr. Branch?

5 A. Yes. Mr. Branch was rushed into surgery  
6 immediately, and he was never in that -- in the vicinity of  
7 the actual ER. He got rushed back into the operating room.

8 Q. Okay. While you were consulting with medical  
9 staff, did you obtain a set of keys that had come from Mr.  
10 Branch?

11 A. Yes. A nurse came out, because when we were  
12 trying to figure out if we could figure out who Mr. Branch  
13 was, she came out and she brought a set of keys, and she  
14 handed them to Officer Holmgren, who I had there to collect  
15 any and all evidence that was going to end up transpiring.

16 My job there was to kind of facilitate with  
17 the officers to make sure everything happened and that  
18 people weren't -- there were no visitors happening. It was  
19 locked down so that we can protect the integrity of the  
20 investigation.

21 And so the keys were, yes, handed to Officer  
22 Holmgren.

23 Q. Did you know what type of car the keys  
24 belonged to?

25 A. Yes, and the reason is because they came -- it

1 injured. And then just as he's walking into the front  
2 doors of the hospital, the black Camaro pulls up.

3 And then from the scene, that was really all I  
4 was looking for is that they arrived separately. So I  
5 didn't look at the other video footage, but Mr. Branch  
6 obviously continued into the front where I think the -- I  
7 recall the desk gal saying he made it up there and kind of  
8 collapsed at the desk, and they were tended to and brought  
9 back.

10 Q. Before surgery?

11 A. Before surgery, yeah.

12 Q. Okay.

13 A. And then we see Manny Hall was -- he was the  
14 second person who got out of there.

15 Q. Out of the black Camaro?

16 A. Out of the black Camaro. And I didn't  
17 really -- we saw the black Camaro leave, but that was --  
18 that was it. That was consistent with what I saw because  
19 it was no longer there.

20 Q. Okay. Did you locate the Cobalt in the  
21 parking lot?

22 A. Yeah. So then with that information, we saw  
23 what direction he walked from. So we went out to the  
24 parking lot and very quickly found a blue Chevy Cobalt out  
25 in the lot.

1 I don't think I wrote the name -- or the  
2 license plate down there, but it was -- it had blood  
3 evidence, what looked like blood evidence all over the  
4 front seat and on the center console.

5 And basically from that point, I instructed  
6 Officer Holmgren to lock down the vehicle. We're not going  
7 to touch it. Nobody comes around it.

8 I notified the investigators downtown what we  
9 had and got the ball rolling to turn that into part of  
10 their investigation.

11 Q. Okay.

12 MR. JACKSON: Are there any questions for  
13 Sergeant Dorn?

14 I don't see any.

15 All right. Thank you very much.

16 THE WITNESS: Thank you.

17 (Pause in proceedings: 11:38-1:05 p.m.)  
18  
19  
20  
21  
22  
23  
24  
25

1 review and all of that stuff.

2 When I came to Oregon State Police, I kind of  
3 did the same thing. But because I had that experience, I  
4 kind of had an abbreviated just to apply to the -- how the  
5 Oregon State Police ran as opposed to Florida.

6 Q. And did you go directly into DNA -- the DNA  
7 unit with the Oregon State Police Crime Lab?

8 A. Yes.

9 Q. And how long have you been with the Oregon  
10 State Police Crime Lab?

11 A. I've been with them for four years.

12 Q. Okay. Doing DNA analysis the whole time?

13 A. Correct.

14 Q. Okay. Is the Oregon State Crime Lab  
15 accredited and certified to do DNA testing?

16 A. Yes, it is.

17 Q. And are the processes used by the lab accepted  
18 in the scientific community?

19 A. They are.

20 Q. Okay. Did you generate a report concerning an  
21 analysis of some swabs taken from a firearm recovered from  
22 a crime scene involving a shooting with Patrick Kimmons --

23 A. I did.

24 Q. -- in this case?

25 And is the report you generated dated October

1 SEAN MICHAELS

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

6 EXAMINATION

7 BY MR. JACKSON:

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

9 A. Sure. Sean, S-E-A-N, Michaels,  
10 M-I-C-H-A-E-L-S.

11 Q. Where do you work?

12 A. I work with the Oregon State Police Crime Lab  
13 in the DNA section.

14 Q. And could you briefly explain for us what your  
15 educational background is for that position?

16 A. Sure. I received my bachelor's of science  
17 degree from Western Illinois University in 2005.

18 Q. Okay. And what training did you receive to  
19 actually work with the Oregon State Crime Lab?

20 A. Prior to coming to the Oregon State Police  
21 Crime Lab, I worked for the Florida Department of Law  
22 Enforcement in the Tampa lab in the same capacity.

23 I received my initial DNA analyst training  
24 there, which included written and oral examinations,  
25 practice samples, working with a coach, doing literature

1 26th of 2018?

2 A. That's correct.

3 Q. Okay. Could you briefly take us through the  
4 evidence that you received from the Portland Police Bureau  
5 for analysis and how you conducted your analysis?

6 A. Sure. So I received two separate swabs from  
7 opposite sides of the gun. One was the opposite side of  
8 the serial number of the gun, and the other one was said to  
9 be collected from the serial number. I also received a  
10 blood standard from Patrick Kimmons.

11 Our process, DNA analysis process, is we  
12 pretty much take that swab, we put it into -- we add an  
13 agent, and what that does is it breaks open the DNA, it  
14 releases the DNA out of the cells. Then we quantify it to  
15 see approximately how much DNA is in that sample.

16 Once we know approximately how many DNA, then  
17 we amplify or make millions of copies of it, and then we  
18 run it on an instrument to collect the data from that  
19 sample. In turn, we used a program that will interpret  
20 that data into a DNA profile.

21 And in this case, once I ran the gun swabs, I  
22 also ran the standard separately. What I do is I compare  
23 the standard DNA profiles to those profiles of the gun  
24 swabs.

25 Q. Okay. And did you do that in this case?

1 A. I did.  
 2 Q. What did you find?  
 3 A. So when we did the comparison of the swab from  
 4 the opposite serial number side of the gun, and I compared  
 5 that standard to Patrick Kimmons, it was found that Patrick  
 6 Kimmons cannot be excluded as the major contributor to that  
 7 mixture.  
 8 So what that means is he was -- in comparison,  
 9 he was the major profile on that gun or cannot be excluded  
 10 as a major profile.  
 11 And what we do is it gives a stat of what's  
 12 called a likelihood ratio. What it does is you have two  
 13 likelihoods, you have two scenarios. Is one scenario more  
 14 likely than another?  
 15 And in this case, it was 3.23 or 32.3  
 16 septillion times more likely to observe the evidentiary  
 17 mixture that the contributors are Patrick Kimmons and three  
 18 unknown, unrelated individuals rather than four unknown,  
 19 unrelated individuals.  
 20 So, again, you have the one scenario compared  
 21 to the other, and it's saying that the one scenario, with  
 22 him not being excluded, is 32.3 septillion times more  
 23 likely than the other scenario with four unknown people.  
 24 So that --  
 25 Q. That he would be excluded from?

1 When we have a major contributor, it's over a  
 2 certain percentage that that contributor is weighted, and  
 3 in our case it's 70 percent.  
 4 So if a contributor is assumed or weighted 70  
 5 percent or greater to that mixture, it can be known as a  
 6 major contributor. In some instances, majors are people  
 7 who leave more DNA than, say, a minor contributor.  
 8 Q. Okay. And when you say "leaves more DNA,"  
 9 what is it that you're talking about?  
 10 A. So, again, a major would be someone who would  
 11 leave more DNA than a minor contributor. Reasons can be  
 12 that a person held something longer, they're sweating.  
 13 It's just that they're leaving more DNA, say,  
 14 than the other contributors to that mixture.  
 15 Q. And Mr. Kimmons was identified as a major  
 16 contributor from both swabs?  
 17 A. Correct. He could not be excluded as the  
 18 major on both swabs.  
 19 Q. Okay. When you're looking at a mixture, how  
 20 are you able to identify the number of different people  
 21 that may be present within that mixture?  
 22 A. So we initially look at the DNA profile  
 23 initially to see how many -- in your DNA, you get half your  
 24 DNA from your mom, half your DNA from your dad. So you  
 25 have two types: one from your mom, one from your dad.

1 A. Could not be excluded. So he would be a  
 2 contributor with three other people, rather than four  
 3 unknown, unrelated people on the gun swab. So that was for  
 4 the first swab.  
 5 The second swab, which was the serial side of  
 6 the gun, did that same comparison, did the standard to that  
 7 mixture.  
 8 That mixture was assumed to be from three  
 9 contributors with at least one male. And then with that  
 10 comparison, he could not be excluded as a major contributor  
 11 to that mixture.  
 12 And then again with the statistic, it was at  
 13 least 55.8 octillion times more likely to observe the  
 14 mixture if the contributors are Patrick Kimmons and two  
 15 unknown, unrelated individuals rather than three unknown,  
 16 unrelated individuals.  
 17 Q. Okay. And what did it mean when it's  
 18 identifying him as not being excluded as a major  
 19 contributor?  
 20 A. So in this mixture, once the -- so we have a  
 21 program that deconvolutes or unravels the mixture. So when  
 22 we have a bunch of DNA from several people, we consider  
 23 that a mixture, so more than one person out there. And to  
 24 unravel that mixture, it deconvolutes, and it separates it  
 25 into certain people.

1 So at each location, you can have one type,  
 2 which is, say, for example, your mom gives you a 25 and  
 3 your dad gives you a 25. You would only be a 25 because  
 4 both of them gave you a 25.  
 5 Now, there's another one where you have two  
 6 peaks where your mom gives you a 24, your dad gives you a  
 7 25, so you have two different types. We look at those peaks  
 8 and the number of peaks to determine how many people would  
 9 be present.  
 10 So based on the one or two peaks, we would  
 11 know that you can't have more than a certain amount of  
 12 peaks to have that many contributors.  
 13 Q. And from that, you can determine at least how  
 14 many different individuals' DNA is present on an object --  
 15 A. That's right.  
 16 Q. -- or in a swab?  
 17 A. Yes.  
 18 Q. And so in this case, from the swab from the  
 19 opposite side of the serial number side of the gun, it's  
 20 assumed to be from four contributors. Is that right?  
 21 A. Correct.  
 22 Q. But, again, to be labeled as a major  
 23 contributor, Mr. Kimmons would have to be over 70 percent  
 24 there. Is that correct?  
 25 A. Yeah. So when it -- when this program breaks

1 out the contributors, it gives them weight. So based on  
2 the information in that sample, it will say, based on how  
3 DNA acts, what each contributors' weight to that profile  
4 is.

5 And in this case, the major contributor was 70  
6 percent. And when I compared that standard to that, he  
7 could not be excluded as that contributor.

8 Q. Your report indicates that you received the  
9 evidence directly from the Portland Police Bureau.

10 Did they personally hand it to you, or what is  
11 the process of evidence handling within the crime lab?

12 A. So an agency will come to a lab. We have an  
13 evidence intake area, and they will log in the evidence,  
14 and it will be stored in a secure locker until I go down to  
15 the locker and take the evidence into possession through a  
16 chain of custody.

17 Q. Okay. And did you analyze the actual firearm  
18 in this case, or did you only analyze swabs taken from the  
19 firearm?

20 A. Just swabs from the firearm.

21 Q. Okay. And was it members of the Portland  
22 Police Bureau that actually collected the swabs and  
23 submitted them?

24 A. That's correct.

25 MR. JACKSON: All right. Do you folks have

1 Q. Okay. And if you look up on the screen here,  
2 do you see this aerial photograph of Fourth, Third, Stark,  
3 now known as Harvey Milk, and Oak?

4 A. Yes, sir.

5 Q. And is that the parking lot that you were in?

6 A. Yes, sir.

7 Q. At about -- do you remember about what time it  
8 was that you arrived?

9 A. It was -- it was early in the morning, late at  
10 night. It had to have been around, like, 2:00, 3:00, I'm  
11 assuming. It was late.

12 Q. Okay.

13 A. You want me to tell the story on what happened  
14 or --

15 Q. Well, yeah. So were you coming from somewhere  
16 else, or was that your first stop?

17 A. No. I was coming from Century, Century Bar.  
18 I was coming from Century Bar, and I went into the parking  
19 lot because I saw my cousin, one of my cousins, and I  
20 pulled into the parking lot. And, like I said, it was  
21 around 2:00 or 3:00.

22 Q. Okay. And when you got there, were there a  
23 lot of cars in the lot or was it pretty empty?

24 A. No. It was pretty -- it was pretty empty. I  
25 parked on the left side of the parking lot.

1 any questions?

2 I don't see any.

3 All right. Thank you very much.

4 THE WITNESS: Thank you.

5 (Pause in proceedings: 1:21-1:24 p.m.)  
6

7 CHRISTOPHER WILLIAMS

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

11 EXAMINATION

12 BY MR. JACKSON:

13 Q. Please state and spell your name.

14 A. Chris Williams, Christopher Williams,  
15 C-H-R-I-S-T-O-P-H-E-R.

16 Last name too?

17 Q. Yes.

18 A. W-I-L-L-I-A-M-S the second.

19 Q. Okay. I want to take you back to September  
20 30th of 2018, the early morning hours of that day.

21 A. Uh-huh.

22 Q. Were you downtown at Third and Stark, parking  
23 lot located right there?

24 A. Yes, I was.  
25

1 Q. Okay. When you say "left," you mean the  
2 south?

3 A. Yes.

4 Q. The south here where --

5 A. Yeah. My car was, like, the fourth or, like,  
6 fifth row. It was, like, on the outside. It wasn't close  
7 to the bushes. It was -- the car wasn't close to the  
8 bushes at all. It was, like, on the second row.

9 You could -- you see how there's like one and  
10 then two? You see how it's, like, row one and two? My car  
11 was on the row two side.

12 Q. The drive aisle side?

13 A. Yeah, yeah, yeah, yeah.

14 Can I show you?

15 Q. Yeah, of course.

16 A. Like, I drove in. And then my car was, like,  
17 right over here. So it was row one and row two. The  
18 bushes are right here, but my car was, like, right over  
19 there.

20 Q. What kind of car were you driving?

21 A. A 2017 Durango.

22 Q. What color was it?

23 A. Black.

24 Q. Okay. A black Durango?

25 A. Yeah.

1 Q. And you said you saw your cousin there?  
 2 A. Yeah. I saw one of my cousins outside of his  
 3 car, and then I was -- then I pulled into the parking lot  
 4 to say what's up to him.  
 5 Q. Okay. And do you remember who that was?  
 6 A. Yeah, my cousin Mike. His name is Mike. Then  
 7 he introduced me to his little brother, which I didn't know  
 8 that that was my little cousin. His name was Aundree.  
 9 Me and him started talking from my car,  
 10 talking about basketball, actually, because he plays  
 11 basketball.  
 12 Q. Okay. And do you remember what kind of car  
 13 they were driving?  
 14 A. I don't because I -- I think he got -- he has,  
 15 like, two or three cars. I'm assuming it was his car, but  
 16 I just remember seeing him.  
 17 I was just pulling into the parking lot saying  
 18 Hey, cousin, what's up? And then we all started chatting  
 19 it up. I was really talking to Aundree a lot.  
 20 Q. About basketball?  
 21 A. Yeah.  
 22 Q. Okay.  
 23 A. And life, and life, too.  
 24 Q. And life?  
 25 A. Yeah.

1 Q. Okay. All right. And were you there by  
 2 yourself?  
 3 A. Yeah.  
 4 Q. Okay. You just pulled in by yourself when you  
 5 saw your cousin?  
 6 A. Yeah, yeah.  
 7 Q. Okay. So you're there. The cousin is parked  
 8 to the -- if this is east, to the east of you or to the  
 9 west of you?  
 10 A. To the east of me.  
 11 Q. To the east of you. Okay.  
 12 Do you remember, were you in adjoining stalls,  
 13 or was there an open stall in between the two?  
 14 A. No, no. It was a close stall because my  
 15 cousin Aundree, he was with, like, a girl and her car was  
 16 right next to mine. He got -- he was getting in -- out of  
 17 the passenger seat, and he was talking to her, like, as if  
 18 they knew each other. Her car was literally right next to  
 19 mine.  
 20 Q. Okay. Were you inside of your car or outside?  
 21 A. Outside. I was outside of it.  
 22 Q. And what about your cousin Michael and --  
 23 A. No. We was all outside of the car.  
 24 Q. Okay. Standing -- where were you standing in  
 25 the parking lot?

1 A. Yeah, so my car was parked. Let's say this  
 2 one was mine. That was the girl's.  
 3 So I'm outside of my driver's, and he's  
 4 outside of his passenger's of the girl's car. So we just  
 5 talking, like, this literally, like, right there.  
 6 Q. Okay.  
 7 A. Yeah.  
 8 Q. And then do you remember if there were other  
 9 people kind of generally around or was it --  
 10 A. It was -- it was -- I'm not going to lie to  
 11 you. I was -- I was drunk.  
 12 Q. Okay.  
 13 A. And it was -- it was so many, like, things  
 14 happening because my whole point was really to -- I was  
 15 headed to Golden Dragon, to the strip club.  
 16 Q. Is the Golden Dragon located right here?  
 17 A. Yeah. So there, like, were so many people  
 18 because the clubs and bars started closing, and that's the  
 19 only thing open until, like, 6:00.  
 20 So there was people everywhere. I wasn't  
 21 really focused on that because I was having such a deep  
 22 conversation with my cousin about basketball and life and  
 23 things like that.  
 24 Q. Sure. You said that you were feeling drunk,  
 25 right?

1 A. Yeah.  
 2 Q. I mean, that could mean any number of things,  
 3 right?  
 4 A. Yes.  
 5 Q. Were you, like, falling-down drunk?  
 6 A. No, no. It wasn't like, Oh, I'm fucked up.  
 7 It wasn't like that. It was just, like, I was just buzzed,  
 8 really, really buzzed.  
 9 That wasn't my focus, like, other people. We  
 10 were just having a good -- just a good talk, and I just  
 11 wasn't worried about what everybody else was doing.  
 12 Q. Okay. And then what do you remember  
 13 happening?  
 14 A. So we sitting there talking. And it's funny  
 15 because I was, like, yeah, like, the girls and, like, the  
 16 streets and all this other stuff, it's always going to be  
 17 here; like, you need to stay in Eugene and focus on sports  
 18 and stuff.  
 19 The next thing I know, I see a dude just back  
 20 up, and then I just started hearing gunfire just go off. I  
 21 don't know where he went. I don't know if he got hit.  
 22 I'm just, like, Oh, shit, like -- I start  
 23 running west towards -- well, not running, but hiding  
 24 behind cars type of thing, just like, oh, like in shock,  
 25 don't know really where to go.

1 There was so many things going on, and I'm  
 2 buzzed, too, and that's when I tripped, like right where  
 3 the -- where you can come through on Stark, there's, like,  
 4 a -- there's a middle entrance. I don't know why it's  
 5 blocked off right there.  
 6 You can drive -- there's like a drive-in right  
 7 there, too. That's when I tripped. The next thing I know,  
 8 I'm looking up, and I just saw three guns to my head,  
 9 basically, and the cops was, like, Drop the weapon because  
 10 I had my cell phone out in my left hand.  
 11 I was, like, I don't got no -- I'm not part of  
 12 this shit, whatever is going on. I was, like, You all can  
 13 run my name, if you want and do all that shit. Me and my  
 14 cousin we was just sitting here talking, wrong place, wrong  
 15 time.  
 16 So they arrested me, and I looked and then I  
 17 guess I -- the kid who died or whatever, he was just, like,  
 18 sitting there not too far from my car, just, like, laying  
 19 there.  
 20 I was, like, so buzzed, you know what I mean?  
 21 It took me a long time to, like, really figure out, like,  
 22 what just happened kind of.  
 23 So they had me in the back of the cop car for,  
 24 like, an hour or two, and then they let me go.  
 25 Q. Okay. So you're standing here in this general

1 like, from literally just 10 feet away, it's all like -- I  
 2 was just, like, Oh, shit because I felt like I saw  
 3 something. But then right when I heard it go off, I just  
 4 ducked off.  
 5 Q. Okay.  
 6 A. I just started --  
 7 Q. What --  
 8 A. I tried to get out of there.  
 9 Q. What did you see?  
 10 A. A gun.  
 11 Q. When you looked over there?  
 12 A. Yeah. Well, I saw this dude just backing up.  
 13 Then it's like I'm not really -- I'm still focused on what  
 14 me and my cousin was talking about. The next thing you  
 15 know, boom, boom, boom, boom, like, the shots and I'm,  
 16 like, Oh, shit.  
 17 Q. And so you just -- that sound you made, was  
 18 that the gunfire?  
 19 A. Yeah.  
 20 Q. And so you made more than one. Did you  
 21 actually hear more than one shot?  
 22 A. Yeah, yeah, I did.  
 23 Q. Do you have a sense of how many shots you  
 24 heard?  
 25 A. I don't. It was -- it was a couple, though.

1 area?  
 2 A. Yeah.  
 3 Q. Talking to your cousin?  
 4 A. Yeah.  
 5 Q. Do you remember which way you were facing?  
 6 A. Yeah. I'm looking towards Golden Dragon.  
 7 Q. To the east?  
 8 A. Yes, sir, and my cousin is looking at me west.  
 9 I'm on my driver's side outside. He's on the passenger  
 10 side outside.  
 11 Me and him are just talking like this. Next  
 12 thing you know, like three feet away, I just started  
 13 hearing gunfire, and I'm, like, Oh, shit.  
 14 So I, like, run behind my car. I'm ducked  
 15 down, and then I start heading towards Rouge, which is  
 16 west.  
 17 Q. Okay. And is Club Rouge --  
 18 A. Yep.  
 19 Q. -- right here on Fourth and Stark or Harvey  
 20 Milk?  
 21 A. Yes, sir.  
 22 Q. Okay. When you hear the gunfire, was it in  
 23 your field of vision, or did you have to look in a  
 24 particular direction to see what was happening?  
 25 A. Well, because I'm looking at him, and then,

1 And I'm not trying to say the wrong number. That's all  
 2 that I'm -- you know what I'm saying? I'm not trying to  
 3 overexaggerate shit.  
 4 Q. No, no. Whatever you remember is what we're  
 5 interested in.  
 6 A. Yeah.  
 7 Q. So could you see what the person with the gun  
 8 was pointing at or which direction he was facing?  
 9 A. No, no. He -- because we're like this. He's  
 10 like this, and then he's backing up. He's backpedaling  
 11 towards us.  
 12 Q. Okay. So if you're facing east talking --  
 13 A. He was headed towards my car.  
 14 Q. To the south?  
 15 A. Yeah.  
 16 Q. Backing away?  
 17 A. Yeah.  
 18 Q. From other people?  
 19 A. I'm guessing so because, like I said, there  
 20 was so many people out there.  
 21 I'm the type of dude that when I'm, like,  
 22 buzzed or drunk and stuff, I'm not worried about other  
 23 people. Me and my cousin was just, like, having a good,  
 24 deep talk, and I just found out that he was my cousin.  
 25 So I don't know. You know what I mean? We

1 was just trying to get to know each other. I'm not worried  
 2 about what other people was doing, you know what I mean?  
 3 As soon as I heard the gunfire, then that's  
 4 when I just dipped off, you know what I mean? And then I  
 5 tripped, then I fell literally, like, right where the exit  
 6 is at on Stark.  
 7 Q. Over here?  
 8 A. Yeah -- well, even closer, it's like -- yeah.  
 9 Q. Okay.  
 10 A. They've got cars blocking it off right there,  
 11 but you can drive in that way. I don't know why it's  
 12 blocked off right there.  
 13 Q. Okay.  
 14 A. It's an exit. It's, like, a side exit  
 15 basically. I tripped and fell.  
 16 Q. Just for the record, we're looking at a  
 17 Google-generated aerial map --  
 18 A. Yeah.  
 19 Q. -- as opposed to a photograph from the night.  
 20 A. Got it. I got you.  
 21 Q. Okay. Do you remember, once you heard the  
 22 gunshots, which direction you ran initially, or did you  
 23 just --  
 24 A. Yeah, yeah.  
 25 Q. Go ahead.

1 happened, you know what I mean? To be honest, it was just,  
 2 like, wrong place at the wrong time. You know what I mean?  
 3 I was mad at the police, too, because I felt  
 4 like they thought I had something to do with it, but then  
 5 they realized I didn't because it was, like, Dude, I don't  
 6 got nothing to do with this shit, you know what I mean?  
 7 Q. Yeah. And they let you go?  
 8 A. Yeah, yeah, yeah, yeah.  
 9 Q. Okay. So do you recall, as you were kind of  
 10 making your way away from the initial gunfire, hearing any  
 11 other gunfire occurring?  
 12 A. I wasn't even worried about that. Soon as I  
 13 heard them little couple shots, I'm trying to get out of  
 14 there, right? All I saw was Rouge, you know what I mean?  
 15 I'm trying to run towards Rouge.  
 16 I was so drunk, I was -- you know, I'm not  
 17 trying to stand all the way up. So as soon as I stand all  
 18 the way up and try to pull up my pants, I trip, fell.  
 19 That's when the cops is, like, Freeze. Drop your weapon.  
 20 I don't have a weapon.  
 21 Q. Uh-huh.  
 22 A. I don't got nothing.  
 23 Q. Did you hear any police officers yelling  
 24 commands at other people, not at you?  
 25 A. No. It was like -- it was so much going on.

1 A. This is what happened. So let's just say,  
 2 like, again, we're here. The shots went off. My car is  
 3 literally, like, right there.  
 4 So I just started going this way, and then I  
 5 tried -- I was trying to pull up my pants and run for it.  
 6 Then I tripped and fell. The cops closed in on me right  
 7 there. Let's just say right there, that's where the SUV  
 8 came, and that's when they put me in cuffs.  
 9 And that's when I look over, and the kid -- it  
 10 was weird because I guess the kid that got died or  
 11 whatever, he was, like, laid up against, like, the curb.  
 12 So he was, like, on the first row.  
 13 You get what I'm saying?  
 14 Q. Uh-huh.  
 15 A. And that's all I remember.  
 16 Q. Kind of next to where your car was?  
 17 A. Yes, sir.  
 18 Q. The Durango?  
 19 A. Yes, sir.  
 20 Q. Okay. Did you know who any of these people  
 21 over here were?  
 22 A. No, I didn't know nobody besides my cousin. I  
 23 didn't even know the kid.  
 24 Like I said, I was in the back of the car, and  
 25 I'm trying to figure out, like, What the fuck just

1 It was, like, so much commotion going on when they was  
 2 yelling at me, it's, like, I -- it was commotion behind me,  
 3 too.  
 4 When it came -- when I saw the cops had the  
 5 guns pointed at me, at that point, I'm worried about I'm  
 6 not trying to be a sad case that gets shot. You know what  
 7 I mean? I don't want them to think my cell phone is a gun  
 8 or nothing. I'm yelling at them, I don't have no effing  
 9 weapon, you know what I mean?  
 10 It was for sure commotion all around, you know  
 11 what I mean?  
 12 Q. Uh-huh.  
 13 A. Everything just happened so quick. You know,  
 14 it was just, like, boom, boom. It was like -- that's only  
 15 20 feet away from my car, and cops was right there. I'm  
 16 just like, What the hell. How did you all get here so  
 17 quick?  
 18 Q. When you pulled in, did you see police in the  
 19 parking lot?  
 20 A. Huh-uh.  
 21 Q. Anywhere at all --  
 22 A. Huh-uh.  
 23 Q. -- that you noticed?  
 24 A. It was crazy because even when they arrested  
 25 me, I'm talking to the officer. I'm, like, How did you all

1 get here so damn quick, you know what I mean, because I  
2 didn't see no cops on the other side of the parking lot or  
3 nothing.

4 Q. Okay. So the first time you saw police was  
5 when you fell down basically at their feet?

6 A. Yeah, yeah, yeah.

7 Q. Okay.

8 A. And, too, I don't know. This is kind of  
9 extra, but I know that they probably got surveillance  
10 video.

11 Q. Well, so, what we're limited to here is just  
12 your perception and memory of what happened.

13 A. Got you, got you, got you.

14 A GRAND JUROR: Can I ask two quick questions?

15 MR. JACKSON: Yes, please.

16 A GRAND JUROR: How long were you there before  
17 all this happened?

18 THE WITNESS: It was crazy. It was, like, I  
19 parked, and then I'm sitting there talking to my cousin for  
20 five or 10 minutes. That's when everything just, like,  
21 happened.

22 It probably wasn't even that. It was probably  
23 five minutes, eight minutes or so. I'm just sitting there.  
24 We just talking about life and basketball, because I used  
25 to play basketball.

1 questions?

2 I don't see any.

3 All right. That's it. Thank you very much,  
4 sir.

5 THE WITNESS: Thank you. Yes, yes, yes. You  
6 all have a good one.

7 A GRAND JUROR: You, too.

8 (Pause in proceedings: 1:40-1:53 p.m.)  
9

10 DETECTIVE DARREN POSEY  
11 having been previously sworn, was re-called as a witness  
12

13 EXAMINATION

14 BY MR. JACKSON:

15 Q. We're back on the record.

16 Detective Posey, thank you for coming back.  
17 You're still under oath from this morning.

18 A. Yes.

19 Q. One additional question I wanted to ask you  
20 about from your investigation, what items of evidence did  
21 you submit to the crime lab for analysis and testing?

22 A. So I had both of the officers' firearms, the  
23 two Glock 17s with -- yeah, both of those to the crime lab.  
24 I also had all of the 12 casings sent to the Oregon State  
25 Crime Lab as well.

1 He's playing college, and I'm proud of him.  
2 Even though it's my first time meeting him, I'm telling him  
3 late nights and girls and all that shit, that's all going  
4 to come later on, like, stay in Eugene and handle business.

5 Fucking 30 seconds later, told you so, you  
6 know what I mean? It was kind of -- it was crazy, it was  
7 crazy.

8 And then I was, like, freaking out because I  
9 didn't see my cousins. So I'm thinking that they got hit  
10 by a stray or, like, I don't know what's going on. But  
11 then everything ended up being okay.

12 MR. JACKSON: They were okay?

13 THE WITNESS: Yeah.

14 MR. JACKSON: Okay.

15 A GRAND JUROR: Was there a car on the other  
16 side of you?

17 THE WITNESS: Yeah, because it was, like, my  
18 car, I'm on the outside. I'm talking to my cousin and this  
19 girl's car that he was with.

20 A GRAND JUROR: What about the other side of  
21 you?

22 THE WITNESS: Yeah, there was another car, but  
23 I don't know whose car that was.

24 A GRAND JUROR: Okay. Thank you.

25 MR. JACKSON: Okay. Are there any other

1 Along with that, the five-shot revolver with  
2 its casings were sent to the crime lab, but also Bode swabs  
3 that were taken off of the gun were also sent to the Oregon  
4 State Crime Lab.

5 Q. Did you say Bode swabs?

6 A. Bode swabs, yes.

7 Q. What are those?

8 A. They're basically swabs that are run across  
9 the gun to collect touch DNA.

10 Basically, your body leaves off skin cells,  
11 and the swabs pick those items up. And so those swabs were  
12 sent to the crime lab.

13 Q. And those swabs were taken off of the  
14 revolver?

15 A. Correct.

16 Q. Both sides?

17 A. Both sides.

18 Q. Okay. Were any of the slugs or bullets that  
19 were recovered from the scene in the northeast corner  
20 parking lot shooting recovered and also submitted to the  
21 crime lab?

22 A. Yes. So bullet on placard number 19 and then  
23 the bullet on placard number 32 were both sent to the  
24 Oregon State Crime Lab.

25 So here's 32. That's the one that was sitting

1 underneath the car and then 19 that was sitting on the  
2 sidewalk.

3 MR. JACKSON: Okay. Any questions for  
4 Detective Posey about that?

5 Okay. Thank you very much.

6  
7 SERGEANT STEVEN WUTHRICH  
8 was thereupon called as a witness on behalf of the State  
9 and, after having been duly sworn, was examined and  
10 testified as follows:

11 EXAMINATION

12 BY MR. JACKSON:

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

14 A. It's Steven Wuthrich, S-T-E-V-E-N, and  
15 Wuthrich is spelled W-U-T-H-R-I-C-H.

16 Q. And where do you work?

17 A. I'm a Portland Police sergeant.

18 Q. And you're sergeant for patrol?

19 A. Yes, sir.

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

21 A. It will be 15 years in February of next year.

22 Q. And have you worked patrol for that entire  
23 time?

24 A. Yes, sir, I have.  
25

1 we're really lucky, we have four working at nighttime.

2 Q. And so as a sergeant, are you required to  
3 respond basically all over the Central Precinct patrol  
4 location?

5 A. Yes, we are.

6 Q. Okay. Were you working on September 30th of  
7 2018?

8 A. Yes, sir, I was.

9 Q. And what shift were you working that night?

10 A. I was working night shift, which is 10 p.m. to  
11 8 a.m.

12 Q. And so did your shift start 10 p.m. September  
13 29th and go into the early morning of September 30th?

14 A. Correct, yes.

15 Q. Okay. What part of town were you focusing  
16 your attention on that night?

17 A. Being that it was a weekend night, I went down  
18 to assist with the entertainment detail, which is made up  
19 of another sergeant and generally four to six officers that  
20 focus on the bars and nightclubs downtown.

21 They block off the streets to make it safer  
22 for pedestrians. And we have hundreds, if not thousands,  
23 of people come from the Portland metro area on Friday and  
24 Saturday nights to come down and go to those clubs.

25 So we have more police staffing to support

1 Q. And when did you become a sergeant?

2 A. May 4th of 2017.

3 Q. And what is the difference between being a  
4 patrol officer and a patrol sergeant in terms of  
5 responsibilities?

6 A. Sure. A patrol officer's responsibility  
7 primarily is to take 911 calls and actively patrol the  
8 neighborhoods and districts they work. A patrol sergeant  
9 is the first line of supervision.

10 So on a daily basis, I would respond to  
11 critical incidents in a management or leadership-type role.

12 My duties include reviewing officer reports,  
13 reviewing officers' use of force and a number of other  
14 administrative duties.

15 Q. What part of town do you generally patrol?

16 A. I work Central Precinct, which is generally  
17 the west side of the Willamette.

18 Q. All the way up north Portland down into  
19 southwest, that whole area?

20 A. Correct, and then out east to Southeast Caesar  
21 Chavez.

22 Q. All right. How many sergeants are generally  
23 on shift for a typical night?

24 A. On night shift, we generally have -- two is  
25 probably most common. Occasionally, we'll have three. If

1 more police calls for service, given the increase in the  
2 amount of people in the area.

3 Q. So there's a specific detail within the police  
4 bureau to actually deal with that part of town?

5 A. That's correct.

6 Q. And what part of town are we talking about?

7 A. Old Town. So north of Burnside and then  
8 roughly Broadway east to Naito Parkway.

9 Q. Okay. Why were you focusing your attention in  
10 that particular area?

11 A. On that particular night, we had had a large  
12 number of -- particularly large number of calls involving  
13 violence.

14 We had numerous fights break out. Callers and  
15 other witnesses in multiple of those -- multiple fights had  
16 reported that people were armed with firearms.

17 And so myself, Sergeant Schmutz, the  
18 entertainment detail sergeant.

19 Q. The what?

20 A. Entertainment detail. I apologize.

21 We were aware that there was a higher  
22 possibility of violence given the large number of fights  
23 and believing that it was more likely than not that people  
24 involved in fights had guns.

25 Q. And so when you, throughout your shift, are

1 receiving this type of information, how, as a police  
 2 officer, do you respond to that?  
 3 A. Well, we try to respond proactively. So  
 4 having worked down in Central Precinct for about a year and  
 5 a half, I know areas where we're more likely to have  
 6 violent events, shootings, stabbings, large fights. And so  
 7 we try to proactively patrol those areas before we have to  
 8 respond to an incident like that.  
 9 So the idea is having a police presence there  
 10 will deter that kind of violence.  
 11 Q. As opposed to waiting for something to happen,  
 12 generating a 911 call and then going?  
 13 A. Correct.  
 14 Q. Okay. And so you, in your sergeant capacity,  
 15 were assisting in that proactive policing?  
 16 A. That and also just providing visibility in the  
 17 actual enclosure itself.  
 18 Q. What enclosure?  
 19 A. So we close vehicular traffic on Friday and  
 20 Saturday nights down around the bars, Davis to Burnside and  
 21 Second Avenue to Fourth Avenue so that if there's a lot of  
 22 pedestrians walking around, which oftentimes we'll have  
 23 intoxicated pedestrians, that they can do so freely without  
 24 cars trying to drive through or creating a danger  
 25 situation.

1 up to a police SUV.  
 2 Q. Is that the responsibility of the  
 3 entertainment detail officers to take those down and put  
 4 them away?  
 5 A. Yes, it is.  
 6 Q. Okay. What time do the bars generally close  
 7 in the entertainment district?  
 8 A. People start letting out about 2:00, and then  
 9 oftentimes people start to congregate in the enclosure  
 10 between 2:00 and 3:00 a.m.  
 11 When people start to congregate outside and  
 12 the bars have closed, security for the bars tries to  
 13 encourage people to be on their way and to vacate the area  
 14 so that we can eventually reopen traffic.  
 15 Q. Is there a set time when you guys reopen the  
 16 roads, or does it happen organically?  
 17 A. It happens organically. It depends on the  
 18 night.  
 19 Q. Okay. On this night, September 30th, were you  
 20 aware of Sergeant Garry Britt also being on shift working?  
 21 A. I was. Actually, he had spent some time down  
 22 in the entertainment detail with Sergeant Schmutz and I.  
 23 Q. That night?  
 24 A. Yes.  
 25 Q. Helping out?

1 So oftentimes, Friday and Saturday nights,  
 2 I'll go down. I'll check in with Sergeant Schmutz, see  
 3 how the night's going, see what the crowd sizes are like  
 4 and try to get a good idea, you know, if we need to devote  
 5 more officers to that area, if we need to devote officers  
 6 to places like parking lots where people sometimes  
 7 congregate when the bars let out.  
 8 And so, frequently, I'll go down and talk to  
 9 Sergeant Schmutz, see what resources I can provide and  
 10 observe and just try to be helpful because he's the only  
 11 sergeant down there.  
 12 There's -- if they're fully staffed, there's  
 13 six people on the entertainment detail, and there's  
 14 hundreds, if not a thousand people that go down there. If  
 15 there's a disturbance, six police officers and a sergeant  
 16 isn't a whole lot of resources.  
 17 Q. Okay. And do the police actually, once the  
 18 bars are closing down, reopen the roads to vehicular  
 19 traffic?  
 20 A. We do, yes.  
 21 Q. Okay. So does that also take officers to do  
 22 that?  
 23 A. It does. The barricades that the officers put  
 24 into place and remove at the end of the night are pretty  
 25 big, and they have to be stowed on a trailer that's hooked

1 A. Yes.  
 2 Q. Okay. Do you recall him talking about what  
 3 his kind of next steps were going to be in terms of patrol?  
 4 A. I do. The bars had closed. Most of the  
 5 people had moved out to the street and had gotten in cars  
 6 or walked home or Ubered home.  
 7 I was in Old Town precinct, which is a little  
 8 office, little police office at Northwest Third and Couch,  
 9 and I was talking to a few officers about how the night  
 10 went.  
 11 Sergeant Britt was in the office. And given  
 12 the -- the high number of calls involving disturbances and  
 13 weapons, Sergeant Britt mentioned to me that he was going  
 14 to grab a couple of officers and drive up to the parking  
 15 lot at Southwest Third and Harvey Milk Street just to do  
 16 some proactive patrolling because we have had a history of  
 17 violent events and shootings in that particular parking  
 18 lot.  
 19 Q. Okay. And was it your impression that he was  
 20 intending to go there and do what you previously described  
 21 in terms of just being a police presence there to deter any  
 22 kind of criminal activity?  
 23 A. That's what I believed his intent was, yes.  
 24 Q. As opposed to responding to a call there?  
 25 A. Correct. There wasn't a -- a call that had

1 come out there. He took it upon himself to go be  
 2 proactive.  
 3 Q. And did he talk about going alone or bringing  
 4 other officers with him?  
 5 A. He told me he was going to grab a few  
 6 officers, and he ended up -- either officers volunteered to  
 7 go with him, which I think is the case, and they drove up  
 8 more or less together. They left Old Town precinct at  
 9 roughly the same time.  
 10 Q. Do you have a general sense of what time that  
 11 was when this was happening?  
 12 A. The bars had closed and the streets had been  
 13 reopened, I believe. So I would estimate roughly 2:45 to  
 14 3:00 a.m.  
 15 Q. Okay. Did you go with Sergeant Britt to the  
 16 parking lot at Third and Harvey Milk?  
 17 A. I did not. I remained at Old Town precinct at  
 18 that point.  
 19 Q. Okay. Could you describe for us what you  
 20 remember happening then?  
 21 A. Sergeant Britt had been gone for a few  
 22 minutes. I was sitting in Old Town precinct talking to  
 23 some officers.  
 24 Q. Actually, Sergeant, let me ask one other  
 25 question.

1 A. Yes, sir.  
 2 Q. And they're one-way streets?  
 3 A. Yes, sir.  
 4 Q. Okay. So traveling down from Old Town  
 5 precinct to the lot, you'd have to come down Third Avenue.  
 6 If you were going to enter from the west, you'd have to go  
 7 basically around the block and enter off of Fourth Avenue?  
 8 A. Correct, yes.  
 9 Q. Okay. So you remained at the Old Town  
 10 precinct?  
 11 A. I did.  
 12 Q. And Sergeant Britt left?  
 13 A. Right.  
 14 Q. Did you know which officers he was going with  
 15 at that point?  
 16 A. I know Officer Harris and Officer Moore were  
 17 going to go with him. I don't recall who else offered up  
 18 or who else he asked to go with him.  
 19 Q. Is that Todd Harris and Greg Moore?  
 20 A. Yes, sir, it is.  
 21 Q. Okay. So what do you recall happening next?  
 22 A. Well, I was sitting in Old Town precinct. I  
 23 heard an officer microphone key up on the radio, but I  
 24 didn't hear anyone say anything. It was just for a second.  
 25 I thought what I heard was gunshots in the

1 A. Sure.  
 2 Q. How far is Old Town precinct from the parking  
 3 lot at Third and Harvey Milk?  
 4 A. It is approximately six blocks.  
 5 Q. Okay. Is Old Town precinct on this map we  
 6 have on the board here?  
 7 A. No. It would be just north.  
 8 Q. This map basically ends at Burnside on the  
 9 north edge?  
 10 A. Right, correct.  
 11 Q. And so Old Town precinct is north of Burnside?  
 12 A. It's -- it's on Northwest Third Avenue just  
 13 north of Couch.  
 14 Q. Okay. And the surface lot we're talking about  
 15 is down here at Third and Harvey Milk?  
 16 A. Yes, sir.  
 17 Q. Okay. So by car, at this time of night,  
 18 approximately how long would it take to travel there, would  
 19 you say?  
 20 A. Just a normal driving response, you know,  
 21 depending on if you get a red light on Burnside, it could  
 22 be anywhere from one minute to five minutes, just a  
 23 ballpark estimate.  
 24 Q. Okay. And is Third Avenue the road that goes  
 25 southbound and Fourth Avenue goes northbound?

1 background. It took me -- took my brain a minute to  
 2 realize what I heard or thought I heard.  
 3 Q. How were you hearing that?  
 4 A. Through my radio.  
 5 Q. In your ear piece?  
 6 A. I don't wear an ear piece.  
 7 Q. Okay. So it's just coming out.  
 8 We can see you're in uniform today. Is that  
 9 the radio on your belt there?  
 10 A. Yes, sir.  
 11 Q. Okay.  
 12 A. This is a radio, and this is the microphone  
 13 where I transmit and receive.  
 14 Q. Okay. And so if you held the transmission  
 15 button down, it would just pick up the ambient sounds  
 16 around you and transmit them?  
 17 A. Yep.  
 18 Q. Is that what you think was occurring, somebody  
 19 had hit the button, but had not said anything?  
 20 A. That's what I believed had happened.  
 21 Q. Okay. Took a second for your brain to realize  
 22 what you were hearing?  
 23 A. At that point, I was concerned that -- you  
 24 know, based on my observations, I believed an officer or  
 25 officers were in some kind of close proximity to gunfire.

1 Q. Could you tell whose radio that was coming  
 2 from?  
 3 A. I could not tell, no.  
 4 Q. Okay. Just came out?  
 5 A. Just came out.  
 6 Q. Okay.  
 7 A. So I jumped up. I ran to my car, which was  
 8 parked on Southwest Third Avenue.  
 9 As I'm getting into my patrol car, I hear  
 10 Sergeant Britt get on the radio and say something to the  
 11 effect of shots fired.  
 12 I knew roughly where he was because I knew he  
 13 was going to be headed to the parking lot at Southwest  
 14 Third and Harvey Milk.  
 15 So myself and Sergeant Schmautz and the other  
 16 officers that were in Old Town precinct prior to this all  
 17 started driving code 3, lights and siren, south on Third  
 18 Avenue towards where we believed Sergeant Britt to be.  
 19 Q. Is that what code 3 means, lights and sirens?  
 20 A. Yes, sir.  
 21 Q. As fast of a response as you can do safely?  
 22 A. Yes.  
 23 Q. Okay. You're traveling southbound Third  
 24 Avenue from Old Town precinct.  
 25 So when you got up to the lot, were you on the

1 So I parked right about here facing north and  
 2 walked in this direction.  
 3 I could see a group of officers -- the parking  
 4 lot wasn't this full. I could see a group of officers  
 5 about here directing their attention towards something  
 6 here.  
 7 Do you want me to continue?  
 8 Q. Well, at that point, did you have any  
 9 information about what had happened, other than the shots  
 10 fired broadcast from Sergeant Britt?  
 11 A. I knew Sergeant Britt had broadcast shots  
 12 fired. At one point in a transmission, he said, I'm okay.  
 13 At that point, I wasn't sure if he had been  
 14 involved in the shooting or if he had witnessed a shooting,  
 15 but I was considering both possibilities at that point.  
 16 Q. Okay. So go ahead. You see this group of  
 17 officers.  
 18 Do you remember how many there were standing  
 19 there?  
 20 A. You know, I don't specifically. As I moved  
 21 through the lot, the officers moved in towards a subject  
 22 that was down on the ground, who I later learned was  
 23 Mr. Kimmons.  
 24 They began rendering medical aid. I could see  
 25 them applying tourniquets, chest seals. I saw a black

1 east side of the lot?  
 2 A. So I actually -- I didn't know where the  
 3 threat was or what was going on, and so I -- I can't  
 4 remember if somebody on Fourth requested cars come in from  
 5 there, but I ended up going west on Oak and south on  
 6 Fourth.  
 7 Q. Against traffic?  
 8 A. Against traffic, I believe, to the best of my  
 9 memory, and then trying to get eyes on where the officers  
 10 were in the lot.  
 11 Q. Okay.  
 12 A. Eventually, I parked my car on Southwest Third  
 13 Avenue facing the wrong way, facing northbound.  
 14 Q. Right at the entryway here or along the curb?  
 15 A. It was just south of the entryway. So more or  
 16 less in the area of the entryway to the parking lot.  
 17 Q. So as you responded, then, you kind of circled  
 18 the lot, wrong way down Fourth, down Harvey Milk and then  
 19 wrong way down Third before you --  
 20 A. To the best of my recollection, that was my  
 21 route, yeah.  
 22 Q. Okay. What do you remember seeing?  
 23 A. I could see officers, a group of officers --  
 24 Q. If you want to come up to the board, you can.  
 25 A. Sure.

1 revolver just to the north of Mr. Kimmons and the officers  
 2 rendering aid, and there was a black sedan that was  
 3 occupied by two people just to the east of the revolver, to  
 4 the northeast of the revolver.  
 5 So if officers and Mr. Kimmons are here, I saw  
 6 the firearm about here and a vehicle occupied about here.  
 7 And so as I arrived, I saw the officers -- I  
 8 saw that Mr. Kimmons was getting an abundance of emergency  
 9 medical treatment. So I -- I was looking for a role at  
 10 that point. That wasn't needed. That was being done.  
 11 Sergeant Schmautz pointed -- as he was  
 12 rendering aid, he pointed back and said, There's two people  
 13 in that car. We need to detain them.  
 14 No other officers -- all the officers were  
 15 rendering aid to Mr. Kimmons at that point. I didn't know  
 16 if the people in the car were involved. I didn't know if  
 17 they were shooters. I didn't know what their involvement  
 18 was.  
 19 So I went to the driver's side and had the  
 20 driver, who was an African-American female, step out, and I  
 21 secured her in the back -- I detained her in the back of a  
 22 patrol car that was in the parking lot. And then I went to  
 23 the passenger side and had an African-American male who was  
 24 in the passenger seat step out and detained him in a  
 25 separate patrol car that was in the parking lot. And then

1 I -- I returned to where the group of officers already were  
2 rendering aid to Mr. Kimmons.

3 There was a lot going on as I was pulling the  
4 people out of the car.

5 Q. Do you mean literally pulling them out of the  
6 car or just asking them to get out of the car?

7 A. I didn't know their involvement. I asked them  
8 to get out and escorted them, like, by the arm to a patrol  
9 car.

10 Q. Okay.

11 A. So I didn't have to physically pull them out.

12 They both saw me. They both had their hands  
13 up. They were cooperative. They did everything I asked.

14 Q. Okay. You come walking back now and --

15 A. So I come back. And as I'm dealing with the  
16 people in the car, it's -- medical was requested probably  
17 automatically by dispatch. Medical was already staged, I  
18 believe, at that point and --

19 Q. What does that mean?

20 A. So when medical is called to an incident the  
21 police are involved in, any kind of incident where there  
22 might be some safety risks, either the fire truck or  
23 ambulance will usually park out of sight around the block  
24 or a couple blocks away until the police say it's safe for  
25 them to come in because they're obviously not equipped to

1 And that terminology is in our policy. In  
2 regards to officer-involved shootings, involved members are  
3 members of the police bureau that used deadly force, and  
4 then there's witness members that has an additional  
5 definition.

6 So when Garry -- or Sergeant Britt told me  
7 that he was involved, it led me to believe that he was  
8 involved in an officer-involved shooting, that he had fired  
9 his weapon.

10 And Officer Livingston was standing next to  
11 Sergeant Britt. I don't recall if I asked Officer  
12 Livingston if he was also involved or if he just told me  
13 without me prompting him, but he also indicated that he was  
14 involved.

15 And just to clarify, I asked them something to  
16 the effect of, Did you both fire shots? And they both  
17 indicated yes.

18 So at that point, there was no longer a  
19 question of whether or not it was an officer-involved  
20 shooting or if they had just -- if it was just a civilian  
21 shooting. So that kind of started some protocol that I  
22 needed to do as a supervisor per our policy.

23 Q. You can take your seat again, Sergeant.

24 A. Thanks.

25 So knowing then that Sergeant Britt and

1 deal with armed people or extremely violent people.

2 Q. That's what that means to stage?

3 A. Right.

4 Q. They were staged waiting for the all clear to  
5 come in?

6 A. Right. So sometimes we'll ask, you know, Can  
7 you start medical respond and have them stage, you know,  
8 until we can make the scene safe or dispatch will say,  
9 Medical is staged. And then it's up to the officers to  
10 say, Okay. The scene is safe. We can go ahead and send  
11 medical in.

12 So I kind of -- at that -- at some point here,  
13 medical is called in. Mr. Kimmons is placed in the  
14 ambulance.

15 I don't recall when exactly it occurred in  
16 relation to my interaction with Sergeant Britt and Officer  
17 Livingston, but when I returned to the scene where the  
18 officers are, Sergeant Britt and Officer Livingston are  
19 kind of standing back from where the group of the officers  
20 applying medical aid were.

21 I asked Garry, Sergeant Britt, if he was okay.  
22 I didn't know if he had been shot at or I didn't really  
23 have a lot of pieces to the puzzle at this point.

24 He said he was okay, and he said, I'm  
25 involved.

1 Officer Livingston were involved, the next arriving  
2 officers -- per policy, I had officers assigned to Sergeant  
3 Britt and Officer Livingston.

4 I don't remember who I assigned initially, but  
5 the first officer, next officer that arrived, I said, you  
6 know, something to the effect of, Can you take Garry to a  
7 patrol car and sit with him? And then I did the same for  
8 Officer Livingston to ensure that they were separated so  
9 that they wouldn't talk about the event so that eventually  
10 when investigators came and interviewed them, they would  
11 have their own individual statements and perspectives.

12 Q. Okay.

13 A. The other thing that --

14 Q. They were both monitored by non-involved  
15 officers?

16 A. That is correct, non-involved and non-witness  
17 officers.

18 Q. Okay.

19 A. The other thing is once I learned it was an  
20 officer-involved shooting, I notified dispatch. I got on  
21 the radio and said, This is, in fact, an officer-involved  
22 shooting.

23 I requested more resources from other  
24 precincts. I think I asked for at least a sergeant and  
25 four officers to help us out.

1 While this entire event was occurring, we had  
 2 groups of individuals on the east side of the parking lot  
 3 that were extremely angry and yelling, making threats to  
 4 officers.  
 5 And so in addition to trying to preserve this  
 6 crime scene, we had kind of an active threat of people that  
 7 were not being cooperative that wouldn't get back that were  
 8 yelling threats at officers, and so that was kind of a  
 9 drain on resources. We could have used a lot more officers  
 10 there.  
 11 We have 12 officers on our shift per night per  
 12 minimum staffing. Those resources get drained pretty  
 13 quick.  
 14 But once I had officers with Sergeant Britt  
 15 and Officer Livingston, I coordinated with Sergeant  
 16 Schmautz to make sure we divided the workload up a little  
 17 bit and made sure that we knew who our witness officers  
 18 were.  
 19 Sergeant Schmautz was able to take care of  
 20 that and get them separated and get officers to accompany  
 21 them.  
 22 I kind of transitioned into a crime scene  
 23 management role and instructed officers that we needed to  
 24 set up crime scene tape around the entire parking lot.  
 25 I ensured that an officer went in the

1 we received the page, it would take a minute or two before  
 2 they called me so I could call my lieutenant real quick,  
 3 brief her.  
 4 So I briefed her. I notified homicide  
 5 detectives and ended up briefing Detective Michele Hughes.  
 6 Q. Is that the detective sergeant for the  
 7 homicide detail?  
 8 A. Yes.  
 9 Q. Okay.  
 10 A. I briefed her by phone and then made several  
 11 other notifications that I can get into or not.  
 12 Q. Did that also include the forensic evidence  
 13 division of the Portland Police Bureau?  
 14 A. Yes, it did.  
 15 Q. And those are the criminalists?  
 16 A. Correct.  
 17 Q. Okay.  
 18 A. I then --  
 19 Q. Go ahead.  
 20 A. To mention one thing that I failed to mention  
 21 is when I was -- when I had learned that Sergeant Britt and  
 22 Officer Livingston were involved in this officer-involved  
 23 shooting, I did ask them what direction they fired their  
 24 weapons because I needed to know where to look for  
 25 evidence.

1 ambulance -- in the back of the ambulance with Mr. Kimmons,  
 2 and that was Officer Torrey Streed, and I ensured that  
 3 somebody set up a crime scene log.  
 4 So any time we have a crime scene, we want to  
 5 document everybody who enters the crime scene.  
 6 Q. What did you do with regard to the gun that  
 7 you'd identified laying on the ground near Mr. Kimmons'  
 8 body?  
 9 A. So right after -- early on in my arrival here,  
 10 after I removed -- asked the two individuals in the sedan  
 11 to get out and placed them in patrol cars, I had already  
 12 seen the black revolver on the ground. I knew it was  
 13 evidence of some kind.  
 14 And so Officer Elena Suciú was one of the  
 15 earlier arriving officers, and I ordered her to stand by  
 16 the gun, make sure it wasn't disturbed, make sure no one  
 17 touched it or came near it or anything to preserve that  
 18 piece of evidence.  
 19 Q. As the scene supervisor, did you also begin  
 20 notifying the variety of people that need to be notified  
 21 when an officer-involved shooting occurs in the City of  
 22 Portland?  
 23 A. I did. I called my lieutenant, acting  
 24 lieutenant, Jenny Baxter. Just prior to doing that, I  
 25 requested dispatch send out some pages, thinking that once

1 They both indicated more or less to the south.  
 2 So that was something that I could later pass on to  
 3 Detective Sergeant Hughes.  
 4 Q. Is that known as a field of fire?  
 5 A. Yes.  
 6 Q. So that you would know where to be looking for  
 7 strikes and a variety of other evidentiary items?  
 8 A. Exactly.  
 9 Q. Okay.  
 10 A. And then Sergeant Britt also made a comment to  
 11 me that I forgot to mention. He said something to the  
 12 effect of -- that there was probably somebody else shot in  
 13 the area, and he said, "Not by us," implying not by police,  
 14 but that it was likely that there would be somebody shot  
 15 that left the scene that might walk into a hospital for  
 16 treatment.  
 17 And I think Sergeant Schmautz asked him a  
 18 question about that that he can testify to also.  
 19 Q. And so was that part of your briefing as well  
 20 to the homicide detail in terms of what to be looking out  
 21 for in the minutes and hours following the incident?  
 22 A. Yes, it was.  
 23 Q. Okay. And what I mean is in terms of people  
 24 walking into area hospitals with gunshot injuries?  
 25 A. Sure. And we actually received a call about

1 that a short time later.  
 2 Q. Were you still on scene when that came out?  
 3 A. I was.  
 4 Q. At what point did you end up relieving or  
 5 being relieved from your role as the scene supervisor?  
 6 A. A lot of command had showed up, a lot of  
 7 resource had showed up and a lot of detectives had showed  
 8 up.  
 9 The scene became more or less static. And  
 10 when it was time for me to brief homicide detectives, I  
 11 relinquished command of the incident to Sergeant Mike  
 12 Currier.  
 13 Q. Okay.  
 14 MR. JACKSON: Any questions?  
 15 I don't see any.  
 16 All right. Thank you very much.  
 17 (Pause in proceedings: 2:32-3:05 p.m.)  
 18  
 19 CLIFFORD NELSON, M.D.  
 20 was thereupon called as a witness on behalf of the State  
 21 and, after having been duly sworn, was examined and  
 22 testified as follows:  
 23  
 24  
 25

1 pathology either in '93 or '94.  
 2 I worked at -- I worked for six months in  
 3 Atlanta on staff, then was first medical examiner for Clark  
 4 County, Washington. I stayed there for 18 months. They  
 5 made a new position for me in Oregon, so I came over to  
 6 Oregon. That was 22 years ago.  
 7 Q. Okay. So for the last 22 years, you've been a  
 8 forensic pathologist for the Oregon State Medical Examiners  
 9 Office?  
 10 A. Right.  
 11 Q. All right. In that time, how many autopsies,  
 12 roughly, have you performed?  
 13 A. It's like 4,600 or 4,700 right now.  
 14 Q. 4,700 autopsies?  
 15 A. Yeah, 4,700.  
 16 Q. Okay.  
 17 A. And then another 15-, 1,600 external exams.  
 18 Q. Okay. And what is the function of a forensic  
 19 pathologist?  
 20 A. Basically to look at the entire death  
 21 investigation, including the person's past medical history,  
 22 examining the body, doing an autopsy if it's necessary,  
 23 looking at ancillary labs like toxicology, looking at  
 24 slides under the microscope, looking at culture results, et  
 25 cetera, and coming to a conclusion as far as cause and

1 EXAMINATION  
 2 BY MR. JACKSON:  
 3 Q. Could you please state and spell your name?  
 4 A. Clifford Nelson, N-E-L-S-O-N.  
 5 Q. Clifford standard spelling?  
 6 A. Yep.  
 7 Q. And what is your occupation?  
 8 A. I'm a deputy state medical examiner for the  
 9 State of Oregon.  
 10 Q. And is that also known as a forensic  
 11 pathologist?  
 12 A. Correct.  
 13 Q. And how did you become a forensic pathologist  
 14 in terms of your educational background?  
 15 A. Sure. I went to college at the University of  
 16 Portland, graduated with a biochemistry major. Then I went  
 17 to Oregon Health Sciences University School of Medicine  
 18 where I also did a pathology student fellowship, as well as  
 19 my regular medical school.  
 20 I finished that in 199 -- 1989. I did my  
 21 anatomic and clinical pathology residency at Oregon Health  
 22 Sciences University, completed those in 1993. Then I went  
 23 to Atlanta, Georgia, did my fellowship in forensic  
 24 pathology. I finished that in 1994, took my boards and  
 25 passed my boards for anatomic clinical and forensic

1 manner of death.  
 2 Q. Okay. And in your capacity as a forensic  
 3 pathologist, have you testified in both state and federal  
 4 courts all around the country as an expert?  
 5 A. Federal courts here in Oregon -- well, no. I  
 6 guess I have in Washington, too.  
 7 But, yeah, as far as state circuit courts and  
 8 stuff, it's all over the -- pretty much except on the --  
 9 except in the Northeast.  
 10 Q. Okay. The rest of the country, though, you've  
 11 been --  
 12 A. Yeah. I -- I've never been to Texas, never  
 13 done it in -- never Texas, California, Mississippi,  
 14 Louisiana or Alabama; Kentucky, Tennessee, I haven't been  
 15 there. So over half the states, though, probably.  
 16 Q. Okay.  
 17 A. Or around half the states.  
 18 Q. Okay. Did you perform an autopsy on the body  
 19 of Patrick Kimmons on October 1st of 2018?  
 20 A. I did.  
 21 Q. And where did you do that?  
 22 A. At our office out in Clackamas.  
 23 Q. Okay. And who was present for the autopsy?  
 24 A. Let's see. Paul Ware and Jamin Baker were the  
 25 criminalists. Rico Beniga and -- was the detective; you

1 were there and an Officer VanBlokland, and then there was  
2 also a Detective Posey.

3 Q. Okay. And for this particular case, what was  
4 the purpose of performing an autopsy?

5 A. Basically to document the injuries. We -- we  
6 do it in any type of -- we do an autopsy pretty much for  
7 every homicide.

8 And since this is somebody's death which was  
9 caused by the actions of other people, it's a homicide by  
10 definition.

11 Q. Okay. And so it would be standard to conduct  
12 an autopsy, even in an officer-involved shooting context?

13 A. Yeah.

14 Q. Okay. Can you kind of take us through some of  
15 the preliminary steps you undertake when performing an  
16 autopsy?

17 A. Sure. One of the first things that will  
18 happen is one of our pathology assistants will take X-rays  
19 to find out if there are any bullets left in the person.  
20 And then in combination with looking where the holes are,  
21 try to figure out which one of those was -- which fits  
22 rough size or calibers of the guns being used that were  
23 involved.

24 The next thing is to basically bring them in  
25 to the autopsy suite, look them over from head to toe. If

1 examination, did you measure Mr. Kimmons' height and  
2 weight?

3 A. I did.

4 (Pause-referring). 72 inches, 217 pounds.

5 Q. Okay. You also mentioned that in the course  
6 of performing your duties, you identify a cause and manner  
7 of death.

8 Could you explain what those terms mean?

9 A. Sure. The cause of death is the one thing  
10 that kind of eventually led to the person dying. So in the  
11 case of a gunshot wound, you know, they may bleed to death.  
12 They may get an infection several days after and die from  
13 that. They may -- it may be just the trauma from the  
14 gunshot wound that causes something like spinal shock and  
15 it -- and messes up their spinal column or their brain stem  
16 and causes them to stop breathing. But whatever the cause,  
17 it's still the gunshot wound, wherever it is.

18 The manner is one of five things. It's either  
19 natural, accident, suicide, homicide or undetermined, which  
20 means just basically it doesn't fit into any of the other  
21 categories or we don't know where to put it, which category  
22 to put it in.

23 In his case, the cause of death, I presume, is  
24 listed as multiple gunshot wounds. And the manner is  
25 homicide because our definition of homicide is death at the

1 they've got any clothing on, describe their clothing, how  
2 it's situated, if the holes match up with the holes on the  
3 body from the gunshot wound.

4 Then describe -- describe any other jewelry,  
5 any medical devices, any procedures they've had. Then --  
6 then describe the wounds that they've got on their body or  
7 injuries.

8 If it's not in the case of a gunshot wound,  
9 say it's a car wreck or something, we're describing their  
10 fractures, lacerations, abrasions, et cetera.

11 Q. Okay. And then --

12 A. And then when we've done that, that's when we  
13 do what most people think of as the autopsy, which is to  
14 make a Y-shaped incision.

15 In the case where we've got injuries like  
16 this, to follow the course of the injuries, see which  
17 organs were injured, get a general idea of the trajectory  
18 of the bullet, at least through the body.

19 Q. You also examined the other internal organs to  
20 determine whether or not they were properly functioning, to  
21 the extent you can?

22 A. We don't -- we'll do a gross inspection.  
23 Usually don't get microscopic slides on something like a  
24 shooting.

25 Q. Okay. So in this case, as part of your

1 hands of another person.

2 Q. Is that a medical term as opposed to a legal  
3 term?

4 A. Correct. We don't get into murder or  
5 manslaughter or justifiable or nonjustifiable homicides or  
6 anything like that. It's just straight definition.

7 Q. Death caused by another person, it's --

8 A. Right, death caused by another person.

9 Q. Okay. In this case, after you performed the  
10 autopsy, did you reach a -- you already just actually said  
11 that.

12 Did you note, as you performed your autopsy,  
13 the injuries that Mr. Kimmons had sustained?

14 A. Yes.

15 Q. Could you take us through some of the injuries  
16 you noted?

17 A. Well, basically, Mr. Kimmons had, I believe, a  
18 total of nine -- yeah, nine different gunshot wounds, not  
19 all of which would have been rapidly fatal, but many of  
20 them would not have been rapidly fatal.

21 He had a total of nine injuries. One is of  
22 the right lower leg, one is the right buttocks. He has  
23 another one to the right lower and mid buttocks, to the  
24 left buttocks, left upper buttocks and flank. None of  
25 those would have been rapidly lethal. He has one of the

1 left thigh; again, not a rapidly lethal wound.  
 2 The one in the groin, because of the large  
 3 vessels involved, would have been fairly rapidly lethal,  
 4 but probably could have been salvaged if he was medically  
 5 treated appropriately in time.  
 6 The gunshot wound to the upper chest is not --  
 7 that's not going to be a survivable wound, and the gunshot  
 8 of the right chest, definitely not a survivable wound.  
 9 Q. Okay. You've noted for the eighth and ninth  
 10 gunshot injuries, left chest and right chest.  
 11 Could you explain where exactly on the body  
 12 those gunshot wounds were located?  
 13 A. Probably be easier just to show the pictures,  
 14 unless you really don't want to.  
 15 Q. Oh, we can show --  
 16 A. The external photos.  
 17 Q. Yeah. Do you have printed copies in there?  
 18 A. No. I gave them all back to you, the ones  
 19 that were numbered.  
 20 MR. JACKSON: Let's go off and I'll pull them  
 21 up.  
 22 (Pause in proceedings: 3:26-3:27 p.m.)  
 23  
 24 BY MR. JACKSON: (Continuing)  
 25 Q. Dr. Nelson, I'm showing you a photograph. Is

1 A. The one to the groin involved some major  
 2 vasculatures.  
 3 Q. Okay.  
 4 A. And so he would have been -- bled rather  
 5 rapidly from those.  
 6 Now, if direct pressure is applied and then he  
 7 goes someplace and those -- that is surgically repaired, he  
 8 probably would live through it as long as -- as long as at  
 9 least the bleeding was slowed down until they could repair  
 10 it.  
 11 Q. Okay. And the left thigh gunshot wound, was  
 12 that oriented on the front part of the thigh?  
 13 A. I believe so, but let me check.  
 14 (Pause-referring). Yes.  
 15 Q. Okay. And the groin injury, was that oriented  
 16 to the front left side of the individual as well?  
 17 A. Yes.  
 18 Q. Okay. Were any actual bullets recovered from  
 19 Mr. Kimmons' body?  
 20 A. I believe two were.  
 21 Q. In the course of -- oh, so as follow-up, then,  
 22 the remaining gunshot wounds that you noted were what are  
 23 referred to as through and through?  
 24 A. Through and through, yeah. They exited.  
 25 Q. Okay. In the course of conducting an autopsy,

1 this one of the photographs taken from the autopsy you  
 2 performed on Mr. Kimmons?  
 3 A. Yes.  
 4 Q. And what is it that we see here in this  
 5 photograph?  
 6 A. This is the entrance wound with a probe in it,  
 7 what's labeled in the autopsy report as number 9, "gunshot  
 8 wound of the right chest."  
 9 He's face down at the point that the  
 10 photograph is taken.  
 11 Q. Okay. So this gunshot injury noted in the  
 12 right chest is actually on his mid-back; is that correct?  
 13 A. Yes.  
 14 A GRAND JUROR: That was the exit or  
 15 entrance --  
 16 THE WITNESS: It's the entrance.  
 17 A GRAND JUROR: -- on the back?  
 18  
 19 BY MR. JACKSON: (Continuing)  
 20 Q. Okay. So you've noted that the gunshot wounds  
 21 to the leg and buttocks that you indicated those likely  
 22 would not have been rapidly fatal?  
 23 A. Correct.  
 24 Q. But the one to the groin may have been and the  
 25 one to the chest?

1 is it typical for you to obtain a sample of blood or urine  
 2 for toxicology analysis?  
 3 A. Yes.  
 4 Q. And was that done in this case?  
 5 A. Yes.  
 6 Q. And what were the results of the analysis?  
 7 A. Do you have it handy? If you don't, I can  
 8 probably find it.  
 9 Q. (Handing).  
 10 A. Okay. He's got qualitative positives, which  
 11 means they didn't -- they weren't able to quantitate it to  
 12 tell us how much of it is in his system. But it's positive  
 13 for both ketamine and trazodone.  
 14 Ketamine is a basically an anesthetic-type  
 15 agent. It used to be exclusively for animals. I didn't  
 16 realize they were actually using it in humans now.  
 17 Q. Is it your understanding from the medical  
 18 records that the ketamine was actually administered by OHSU  
 19 Hospital?  
 20 A. Yes, yes.  
 21 Q. Okay.  
 22 A. The -- and then the trazodone, which is a  
 23 muscle relaxant/painkiller/anti-anxiety can be given for a  
 24 lot of reasons.  
 25 And then he's got a blood alcohol of .127

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1 grams per deciliter, which is a little over one and a half  
2 times the upper legal limit.  
3 Q. For driving?  
4 A. For driving.  
5 Q. Okay. All right.  
6 MR. JACKSON: Do the Grand Jurors have any  
7 questions of Dr. Nelson?  
8 A GRAND JUROR: Can you tell us again, now on  
9 all of the -- you told us how a couple of the bullets, what  
10 direction they came from.  
11 Can you tell us on --  
12 THE WITNESS: Sure. The one on the right  
13 lower leg went from back to front, right to left and  
14 downward. The one on the right buttocks goes from right to  
15 left, back to front and downward.  
16 Number three, which is the gunshot wound to  
17 the right lower mid buttocks, goes from right to left, back  
18 to front and downward.  
19 The one on the left mid buttocks goes from  
20 right to left, back to front and downward. The gunshot  
21 wound to the left upper buttocks goes from back to front,  
22 right to left and upwards.  
23 The gunshot wound to the left thigh goes from  
24 right to left, down -- and downward. The one to the left  
25 groin travels below to above, right to left.

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1 (Pause-referring). This doesn't make sense.  
2 I'll have to correct this. It should just be right to --  
3 right to left.  
4 I think it's --  
5 A GRAND JUROR: The groin shot?  
6 THE WITNESS: -- downward, and it does go  
7 slightly front to back.  
8 Number 8, gunshot wound to the left chest,  
9 it's predominately just downward. It's hard to tell  
10 exactly the flight of this bullet because of the way it  
11 enters the left arm. It's got a very tangential angle  
12 here, so it depends on how the person is holding his arm.  
13 But since it just kind of comes out this area  
14 after traveling through the soft tissues of the armpit,  
15 it's more likely than not it's something like this, and it  
16 just goes like that direction.  
17 The gunshot wound to the right chest goes  
18 upward, right to left and back to front.  
19  
20 BY MR. JACKSON: (Continuing)  
21 Q. And, Dr. Nelson, these directions that you're  
22 giving, is that according to a person oriented in a  
23 standing position?  
24 A. Yes.  
25 Q. And so if a person is actually moving around,

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1 those directions could certainly change?  
2 A. Yeah.  
3 Q. But there's no way for you to know that?  
4 A. No. It's just -- it's just with -- it just  
5 represents its path through the body with the body in  
6 anatomic position, which would be palms forward and  
7 standing --  
8 A GRAND JUROR: Stationary?  
9 THE WITNESS: Stationary.  
10 MR. JACKSON: Okay.  
11 Any other questions?  
12 I don't see any.  
13 All right. Thank you, Dr. Nelson.  
14 THE WITNESS: Okay.  
15 (Pause in proceedings: 3:37-3:42 p.m.)  
16  
17 TRAVIS GOVER  
18 was thereupon called as a witness on behalf of the State  
19 and, after having been duly sworn, was examined and  
20 testified as follows:  
21  
22  
23  
24  
25

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1 EXAMINATION  
2 BY MR. JACKSON:  
3 Q. Could you please state and spell your name?  
4 A. My name is Travis Gover, first name  
5 T-R-A-V-I-S, last name G-O-V-E-R.  
6 Q. Okay. Where do you work?  
7 A. I work for the Oregon State Police Forensic  
8 Services Division here in the Portland Metro Forensic Lab.  
9 Q. And what do you do for the Oregon State Crime  
10 Lab?  
11 A. I'm a forensic firearm and tool mark examiner.  
12 Q. And what training and education do you have  
13 for that position?  
14 A. Education, I have a bachelor's degree in  
15 biology. So it's basically a science that's required by  
16 the forensic services.  
17 The actual training for the position, I was  
18 involved in a year-long training program that was sponsored  
19 by the Bureau of Alcohol, Tobacco and Firearms. The first  
20 four months was spent doing research, writing papers,  
21 understanding the manufacture of firearms, ammunition and  
22 tools and what makes them unique.  
23 I spent after that four months actually living  
24 back in D.C., attending classes at the Bureau of Alcohol  
25 Tobacco and Firearms National Testing Laboratory.

1 And the last three to four months was spent  
2 back in our laboratory doing a research project, as well as  
3 assignments to finish up.

4 Q. Okay. And then when did you get hired by the  
5 Oregon State Crime Lab?

6 A. I was hired in January of 1999.

7 Q. And did you have any work experience doing  
8 this type of work prior to that?

9 A. Prior to that, no. This is basically the only  
10 setting in Oregon pretty much, unless you're in a private  
11 lab.

12 Q. Okay. And have you done firearms analysis  
13 ever since 1999?

14 A. Yes. I started off basically running a  
15 database called the Integrated Ballistics Identification  
16 System. I did that for about a year and a half, and then  
17 got hired into the firearm and tool mark examiner position.

18 Basically, since June of 2000, I've been doing  
19 that type of analysis.

20 Q. Would you explain for us what a tool mark is?

21 A. A tool mark is basically the -- kind of the  
22 overall aspect or discipline of what we do.

23 By our standards, a firearm is actually a  
24 tool. So tools will make marks on a softer object. That's  
25 how we kind of define a tool.

1 microscopic level with every cut that it makes on, you  
2 know, an object that's going into the firearm.

3 So like a barrel, for instance, there's a  
4 cutter that actually passes down through the what we call  
5 bore of the barrel. So as it's moving down through that,  
6 it's actually cutting lands and grooves, which are raised  
7 lines within the barrel.

8 So when a bullet strikes, you know, the  
9 interior of the barrel, it imparts a spin, like putting a  
10 spin on a football, for stability and accuracy.

11 As that cutter passes down through the  
12 interior of the barrel, the cutter is changing at a  
13 microscopic level as it's passing and cutting. So it's  
14 actually leaving marks within the barrel that are unique to  
15 that barrel.

16 So when that cutter is actually -- you know,  
17 passes all the way through and it's moved on to the next  
18 barrel, the marks on the cutting surface or cutting edges  
19 of the tool have actually changed since it started the  
20 previous barrel.

21 So the studies that we've done to show the  
22 uniqueness of how the marks they found on a bullet passed  
23 through the interior of the barrel are different from the  
24 next firearm manufactured.

25 Same thing with what we call -- we have

1 So it could be a screwdriver to a vinyl  
2 window, somebody breaking in. It could be basically fired  
3 bullets being marked by a firearm. By our definitions,  
4 it's the same concept.

5 It's the same with cartridge cases within a  
6 firearm. It's the softer of the two metals being marked.  
7 So the firearm will actually mark the bullets and mark the  
8 cartridge case the same way a screwdriver will mark a piece  
9 of lead or like bolt cutters will actually leave marks on  
10 padlocks or chain-link fence, same with wire cutters. It's  
11 the same general concept.

12 Q. And are you able to actually compare markings  
13 you see on cartridge casings back to a particular firearm?

14 A. Yes, we are.

15 Q. Could you explain that process?

16 A. Kind of how I just described, the softer of  
17 the two materials is going to be marked by the harder of  
18 the two objects.

19 So within the manufacturing process of  
20 firearms, there's basically a lot of cutting involved.  
21 There's very sharp cutting tools that are basically cutting  
22 through different aspects of metal to make the pieces that  
23 go into a firearm.

24 So when this cutting process occurs, the sharp  
25 blade of the cutting object, tool, is being changed at a

1 cartridge cases. So I'm going to back up just a little bit  
2 and kind of use -- define the terminology that I'm going to  
3 use.

4 So an unfired component of ammunition is  
5 referred to as a cartridge. There's -- basically makes up  
6 a cartridge case, which is like a brass or aluminum  
7 container that holds the gunpowder, which is another one of  
8 the components. And then there's the actual bullet, which  
9 is the projectile itself.

10 Most people -- you'll hear people refer to  
11 something like a bullet, which is the unfired component.  
12 The bullet is actually a projectile by itself.

13 And the last component of the cartridge -- so  
14 basically, as you can see on the image, the piece -- the  
15 cartridge sitting down below is the unfired component, and  
16 the bullet is the actual projectile, and the cartridge case  
17 is basically the silver casing that contains the powder,  
18 and then there's a primer at the end which has an explosive  
19 compound that ignites when powder and the firing pin hits  
20 and starts the process.

21 Q. And so when a cartridge, like the one we see  
22 on the screen here, is fired, does the bullet actually  
23 separate from the cartridge casing?

24 A. Yes, it does.

25 Q. Okay. And we're talking about, in this

1 instance anyway, a semiautomatic handgun?  
 2 A. Yes. A semiautomatic pistol is what it's  
 3 referred to as.  
 4 Q. And can you describe what actually happens in  
 5 a firearm that causes it to shoot?  
 6 A. Okay. So the cartridge is loaded into what's  
 7 referred to as the chamber. It's basically the holding  
 8 area within the barrel, which is on, it would be the --  
 9 basically the left side as you're looking at that picture.  
 10 You can see it's inside the slide. The slide is the piece  
 11 that sits on top that actually moves back and forth.  
 12 So when it's closed up, we have an area within  
 13 that slide called a breach face, which would be easier if I  
 14 got up there and actually -- it would be easier to point  
 15 than to try to describe.  
 16 So the small area that you see just inside  
 17 here is referred to as the breach face area. This is  
 18 basically a supporting area for the cartridge when it's  
 19 fired.  
 20 Within that breach face, there's a small hole  
 21 where the firing pin comes through when it's released under  
 22 spring tension. The firing pin actually makes an impact on  
 23 the part of the cartridge referred to as the primer, which  
 24 has an explosive compound within.  
 25 That minor explosion passes through a hole, a

1 impressed into the base area of the cartridge case and also  
 2 onto that primer, which is a softer material.  
 3 Kind of the same, as the bullet is passing  
 4 down a barrel, different types of barrels, the ones I  
 5 described earlier, which had what we call lands and  
 6 grooves, or what we refer to as conventional rifling.  
 7 And then firearms like these have what are  
 8 referred to as polygonal rifling, which don't necessarily  
 9 have those true defined what we referred to as lines or cut  
 10 raised areas. They're more, if you imagine, kind of like I  
 11 always tell people, if you imagine a stop sign, kind of  
 12 like it's a polygon.  
 13 So if you imagine the interior shape of a  
 14 barrel, similar to that, but then put a twist on it over  
 15 length. This is what's referred to as polygonal-type  
 16 rifling. They don't necessarily leave great marks, but  
 17 they're more efficient in the firing process and take less  
 18 energy away from the bullet, but they're not actually  
 19 cutting into the bullet as it passes down.  
 20 So -- but in this particular case, we have a  
 21 Glock firearm, which has the polygonal type rifling, but it  
 22 also leaves very nice marks for the breach face area on the  
 23 cartridge case.  
 24 Q. And then how, in a semiautomatic handgun, does  
 25 the firearm reload for the next round?

1 small hole within the cartridge case base into the open  
 2 area where the powder sits and waits, and it starts the  
 3 burning of the gunpowder. That burning of the gunpowder  
 4 basically generates pressure.  
 5 So at that point in time, this cartridge is  
 6 sitting inside the chamber here, when this is all closed  
 7 up. That pressure forces the bullet down the barrel, but  
 8 we have what we refer to as equal and opposite pressure.  
 9 That's going to push the cartridge case back.  
 10 So at that time, the cartridge case is pushed  
 11 back into the breach face area of the firearm, which also  
 12 starts the process of that slide moving to the rearward.  
 13 This piece right here is referred to as the  
 14 extractor. It's actually hooked within this little rim on  
 15 the cartridge case. So as that pressure is pushing  
 16 everything backwards, that extractor is actually pulling  
 17 the cartridge case to the rear of the firearm until at what  
 18 point this opens up far enough, and a little pin that sits  
 19 down inside referred to as the ejector hits the opposite  
 20 side of the rim of the cartridge case and basically forces  
 21 it to be ejected out of the firearm.  
 22 So but that equal and opposite direction of  
 23 pressure, as it's forcing the cartridge case back into this  
 24 breach face, those tool marks we referred to from the  
 25 cutting process of the manufacturing, are basically being

1 A. I don't see it here, but there's what we refer  
 2 to as a magazine. It's basically your ammunition-feeding  
 3 device. It's basically there as you see.  
 4 So this is our magazine. It fits up into the  
 5 grip of the firearm. So the cartridges are loaded in  
 6 through the top of the magazine. The magazine is inserted  
 7 up through the grip.  
 8 So as the fired cartridge case is extracted  
 9 and ejected, the next cartridge sits just below. And as  
 10 the slide moves forward, the bottom of that breach face  
 11 area catches the top of the next cartridge and pushes it  
 12 forward and kind of bumps it up into the chamber so it's  
 13 ready to be fired.  
 14 Q. Does that process also create tool markings?  
 15 A. Not as much. There's a chance sometimes we  
 16 get magazine marks, so there's metal feed lips that are at  
 17 the top of the magazine that hold the cartridges basically  
 18 in the magazine.  
 19 Sometimes we'll get marks from those that will  
 20 reproduce, but a lot of times they're kind of random and  
 21 don't look the same. It's kind of a random process.  
 22 Q. And so for a semiautomatic handgun such as  
 23 this Glock we see on the screen labeled "Officer  
 24 Livingston," what would be the difference between this and  
 25 a fully automatic handgun?

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1 A. So with a full automatic, it's basically --  
2 with this particular firearm, the semiautomatic, every time  
3 the trigger is pulled, the gun is going to fire one time.  
4 So when that slide retracts and extracts and  
5 ejects that cartridge case, there's a mechanism within that  
6 that actually disconnects the trigger from the firing  
7 mechanism.  
8 So when that slide comes forward and loads the  
9 next one up, even if the trigger is still being pulled,  
10 it's been disconnected. It has to be released to reset and  
11 then pulled again in order to fire again.  
12 With an actual automatic firearm, as you're  
13 holding the trigger, you have the extraction ejection,  
14 loading. As that slide closes up to load, there's a  
15 different mechanism altogether that would cause the release  
16 of the firing pin and basically would fire with just  
17 holding the trigger one time. So it continues to fire  
18 until the trigger is released.  
19 Q. And so this gun here is semiautomatic, meaning  
20 one round per trigger pull?  
21 A. That's correct.  
22 Q. Okay. And is that true also of the firearm we  
23 see on the screen here labeled "Sergeant Britt handgun"?  
24 A. Yes.  
25 Q. Both semiautomatic?

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1 A. Both semiautomatic pistols.  
2 Q. Could you explain how that process changes  
3 when the firearm in question is a revolver?  
4 A. Okay. So a revolver has a different feeding  
5 mechanism for the ammunition. So as we have the magazine  
6 for the semiautomatic pistol being our source of  
7 ammunition, with a revolver there's a cylinder that holds a  
8 set amount of ammunition within the firearm.  
9 So as you see with this one, this is our  
10 cylinder right here, and you can actually see the head of  
11 the cartridge cases within the cylinder. So as you open  
12 the cylinder up to the side, it could have five, six,  
13 seven -- in this case, five, you know, basically what we  
14 call chambers.  
15 The pistol has one chamber that's integral  
16 with the barrel. This has five chambers that rotate each  
17 piece of ammunition into line with the barrel to be fired.  
18 Q. Does the firing process in a revolver create  
19 uniquely identifying tool marks as well?  
20 A. It does. It has the opportunity. It can  
21 create marks through the firing pin impression. So as the  
22 firing pin hits that primer, which is what you see, the  
23 smaller circle within each of these cartridge cases, if  
24 there are unique marks on that firing pin, it can actually  
25 leave those marks or impress those marks into the primer

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1 area of the cartridge case.  
2 Sometimes, depending on the firearm, we'll  
3 actually get marks from that pressure back from the breach  
4 face area, which is up underneath where the firing pin  
5 comes out. That can happen sometimes, not as frequent as  
6 we see with semiautomatic pistols.  
7 The concept with the bullet is just -- it's  
8 the same between the bullet -- or the revolver and the  
9 semiautomatic pistol. That pressure is going to force that  
10 bullet down the barrel, which would engage rifling. That's  
11 potential to be marked by the firearm.  
12 Q. So in that sense, would you have an  
13 opportunity to analyze an actual fired bullet to determine  
14 whether or not it was fired by a particular gun?  
15 A. Yes. If the bullet is recovered, we can look  
16 at it and determine, you know, first of all,  
17 characteristics that we refer to as class characteristics,  
18 you know, is it even possible?  
19 So this firearm being a .38 Special caliber  
20 firearm is not going to obviously shoot a .45 caliber  
21 bullet. It's too big, the difference in size.  
22 So the first thing we do is we look at some of  
23 those general characteristics and see is it even possible.  
24 This particular revolver has conventional  
25 rifling. That's that cut rifling I described earlier;

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1 whereas, the Glock and semiautomatic pistols have polygonal  
2 rifling.  
3 They show up and look different just even to  
4 the naked eye as we're looking at them under a microscope  
5 or even just under light, so we can easily say, No. This  
6 bullet could not have been fired from this gun. The  
7 characteristics are not the same from a class type level.  
8 When I say "class," it's kind of like talking  
9 about, you know, Chevrolet, Ford, you know, Tahoe models.  
10 But once you get down to, you know, dents and  
11 dings, then we're talking about individual characteristics  
12 that are unique to a particular firearm or unique to a  
13 particular vehicle as a type of identification.  
14 Q. Okay.  
15 MR. JACKSON: Do the Grand Jurors have any  
16 questions about that, how firearms operate, what a  
17 cartridge casing is, what a cartridge is, anything like  
18 that?  
19 Okay. You can retake your seat. Thank you,  
20 sir.  
21 BY MR. JACKSON: (Continuing)  
22 Q. Were you asked to do a comparison of some  
23 evidence concerning the September 30th officer-involved  
24 shooting involving Patrick Kimmons?  
25

1 A. Yes, I was.  
 2 Q. And did you document your findings in a report  
 3 dated October 24th of 2018?  
 4 A. That's correct. I finished up basically end  
 5 of last week.  
 6 Q. Okay. And could you first explain for us the  
 7 evidence that you received for analysis?  
 8 A. So what I received was two Glock semiautomatic  
 9 pistols, one that belonged to each of the officers, which  
 10 also we typically get their magazines, which is more than  
 11 one. It's usually whatever is within their duty belt.  
 12 So I think I received three magazines from  
 13 each and a various number of cartridges depending on what  
 14 they had loaded into them and how many times they may have  
 15 fired.  
 16 I also received 12 fired cartridge cases that  
 17 were of 9mm Luger caliber, two fired .38 caliber bullets.  
 18 So these are -- when I refer to caliber, when  
 19 I say 9mm Luger, it's a specific caliber of cartridge  
 20 designed for a certain type of firearm. A .38 caliber,  
 21 when describing bullets, is kind of a general family, kind  
 22 of described as the diameter.  
 23 I also received five fired .38 Special caliber  
 24 cartridge cases, as well as a .38 Special caliber Taurus  
 25 five-shot revolver.

1 Q. Okay. And so did you first compare the two  
 2 Glock handguns you received to the 9mm Luger cartridge  
 3 casings recovered by the scene to determine whether or not  
 4 those guns fired those bullets?  
 5 A. Yes, I did. So I received 12 fired 9mm Luger  
 6 caliber cartridge cases. The two Glock semiautomatic  
 7 pistols are also 9mm Luger caliber. They're designed to  
 8 fire that caliber cartridge case or cartridge.  
 9 Of the 12 cartridge cases I examined, I could  
 10 identify seven to one of the semiautomatic pistols and five  
 11 to the other.  
 12 Q. And how did you do that?  
 13 A. So as we were just talking about earlier, the  
 14 marks that are left from that manufacturing process are  
 15 basically microscopic with microscopic striations or  
 16 scratches, in essence, but these striations are reproduced  
 17 in the same general pattern. So the spaces, the widths,  
 18 the heights of these striations are generally reproducible  
 19 between shots.  
 20 So by taking the two firearms out to our  
 21 range, I test fired each one of them, collected the  
 22 cartridge cases separately so I didn't have what I'd refer  
 23 to as known samples with the particular case, and then I  
 24 take them back in. We have a comparison microscope. It's  
 25 kind of a specialized microscope for firearms analysis. So

1 it's set up with -- if you have your -- your general  
 2 microscope has one stage, one set of objects.  
 3 My microscope has basically two stages that  
 4 come up into an optical bridge and let me see both sides  
 5 through one set of optics. It's like a split screen.  
 6 So I can look at what's on the left, on the  
 7 left side of my field of view and what's on the right, on  
 8 the right side with a separating line.  
 9 So if I change magnifications and align the  
 10 cartridge cases in the same orientation and use a  
 11 specialized lighting, we can enhance those microscopic  
 12 marks and actually line them up and determine if a  
 13 particular cartridge case was fired in a specific gun.  
 14 Q. And what are the different types of results  
 15 you can get in that comparison process?  
 16 A. The first is an identification where we can  
 17 say, you know, that cartridge case was identified as being  
 18 fired in, you know, firearm Exhibit 1 or Exhibit 2.  
 19 Some of the other conclusions we can come up  
 20 with are what we refer to as inconclusive. We can have  
 21 agreement of those general class characteristics, like it's  
 22 a 9mm Luger, but maybe there's just not any marks being  
 23 produced.  
 24 There are incidents where the gun fires, but  
 25 maybe the breach face is smooth. It doesn't have anything

1 to impress on the cartridge case. So it's not unusual. We  
 2 do see it. It's not unusual to see multiple guns that can  
 3 do that.  
 4 So in a case like that, we're not going to be  
 5 able to say it's identified to that firearm. We'll say  
 6 it's inconclusive based on a lack of individual detail.  
 7 Sometimes the bullet is too damaged. You  
 8 know, we can make out some general class characteristics,  
 9 but everything else has been wiped out because it skidded  
 10 down the street.  
 11 Sometimes we may have what we refer to as some  
 12 agreement of the individual, but it's not enough to  
 13 basically push it over the threshold of what we know to be  
 14 fired from -- you know, much detail will be produced when a  
 15 bullet is produced from the same firearm.  
 16 So there are times when two guns, you know,  
 17 could be manufactured one after the other. Some of those  
 18 marks will look the same between those two guns.  
 19 Part of the studies that we do as a -- I'm a  
 20 member of an association called Association of Firearm and  
 21 Tool Mark Examiners. We do a lot of these studies with  
 22 consecutively manufactured firearms. So we know what to  
 23 expect and how much agreement to expect between two  
 24 different firearms and we know what to expect from two  
 25 bullets fired from the same firearm. So it allows us to

1 develop that threshold and determine, you know, where does  
2 an identification lie.

3 So sometimes we'll get that, you know, just  
4 that little bit of a grievance, so it will be inconclusive.  
5 It's just not enough to say yes, but we're not going to say  
6 it's not from that gun either because we just can't tell.  
7 Not enough information.

8 Then the last is basically an exclusion where  
9 either those individual marks are so grossly different and  
10 we can see, you know, the multiple shots produced one set  
11 of marks, multiple shots that we have from another scene  
12 are completely different or we have the firearm and we can  
13 see that those marks are reproduced over and over, and  
14 they're completely different and unknown.

15 We can also exclude on class, obviously, where  
16 maybe one bullet has, you know, five of those lands and  
17 grooves in the barrel with a right-handed twist, and the  
18 bullet I'm looking at from the scene has six of those lands  
19 and grooves with a left-hand twist. It's physically  
20 impossible. So we can exclude on that level.

21 MR. JACKSON: Are there any questions about  
22 that?

23 A GRAND JUROR: Are you able to determine if  
24 one came out of a fourth generation versus a third  
25 generation?

1 Livingston," is that XTA035?

2 A. That's my Exhibit 2 for my lab, yes. I  
3 identified five cartridge cases to that firearm and seven  
4 to the other.

5 Q. And the photograph we have here labeled  
6 "Sergeant Britt handgun," that's KOD767?

7 A. I think it's KDD.

8 Q. I'm sorry. KDD767?

9 A. Yep, yep.

10 Q. And those were classified as identifications?

11 A. Yes.

12 Q. Okay. Meaning those rounds were fired by  
13 those identified --

14 A. Right. Those cartridge cases were identified  
15 as being fired in those particular firearms.

16 Glock usually give us good markings, so that  
17 was nice.

18 Q. Okay. And what's the next thing that you did?

19 A. So the next thing, I had the two fired .38  
20 caliber bullets, and I knew these weren't fired from the  
21 Glock semiautomatic pistols based on their weight. They're  
22 right around what we refer to as 130 grains. It's a  
23 firearms-related weight.

24 Those particular weights are not loaded into  
25 9mm Luger caliber cartridges. They're typically a .38

1 THE WITNESS: No, no. The rifling process for  
2 Glock really hasn't changed from third to fourth  
3 generation. The Generation 5 supposedly has a new type of  
4 barrel, a Glock-marking barrel, a marksman barrel. I have  
5 yet to see one to see what the difference is.

6 The marks from the first generation from the  
7 '80s probably up until a year or two ago used the same  
8 general mechanism in the machining process. So we haven't  
9 really seen a lot of difference there.

10 MR. JACKSON: Any other questions about that?

11 BY MR. JACKSON: (Continuing)

12 Q. Okay. So when you conducted your comparison  
13 here, what were the results that you found?

14 A. So the first comparison I did was involving  
15 the two Glock semiautomatic pistols. So the cartridge  
16 cases, the 12 that I received, obviously the same caliber,  
17 I think it was seven of those cartridge cases I could  
18 identify to what I referred to as Exhibit 1, which is one  
19 of the semiautomatic pistols, which is the Glock with  
20 serial number KDD767.

21 And then five of those cartridge cases I can  
22 identify to my Exhibit 2, Glock semiautomatic pistol, which  
23 was the pistol with serial number XTA035.

24 Q. And this photograph labeled "Officer  
25

1 Special target type loadings.

2 So I basically, you know, identified what the  
3 caliber of each of those bullets were and then had a .38  
4 Special caliber revolver, the Taurus, which I test fired in  
5 our water tank, which is what we shoot into to capture  
6 pristine specimens for comparison.

7 And with the same process I used with the  
8 cartridge cases from the nine millimeters, I looked at the  
9 fired bullets under the microscope. I could identify both  
10 of those fired bullets as being fired from the .38 Special  
11 caliber Taurus revolver.

12 Q. Again, that was an identification that that  
13 revolver fired those two bullets?

14 A. Yes, that's correct.

15 Q. Okay. I guess it's kind of inherent in what  
16 you've just testified to, but did you test the three  
17 submitted firearms for operability?

18 A. Yeah. As part of our testing, as we write up  
19 the firearm, we go through and check the safeties, see if  
20 anything is broken, checking the condition of the firearm.

21 Basically, it's mostly to make sure, one, that  
22 it's safe for us to shoot and then also to report on its  
23 operability.

24 All three of these firearms I found to be  
25 operable as designed.

1 Q. Okay.  
 2 MR. JACKSON: Do you folks have any questions?  
 3 A GRAND JUROR: I have a question.  
 4 In your expertise of firearms in general, what  
 5 would -- so if a revolver or a pistol was being fired, the  
 6 sounds of them, are those noticeably different if you --  
 7 like would somebody --  
 8 THE WITNESS: Not really.  
 9 A GRAND JUROR: Okay.  
 10 THE WITNESS: I don't think I'd be able to  
 11 differentiate if I weren't looking.  
 12 Some of the bigger calibers may have a lower  
 13 pitch. But to differentiate between a semiautomatic pistol  
 14 and a revolver, probably not.  
 15 A GRAND JUROR: Okay. Thank you.  
 16 MR. JACKSON: Any other questions?  
 17 I don't see any.  
 18 Thank you very much.  
 19 (Pause in proceedings: 4:12-4:53 p.m.)  
 20  
 21 AYAN ADEN  
 22 was thereupon called as a witness on behalf of the State  
 23 and, after having been duly sworn, was examined and  
 24 testified as follows:  
 25

1 A. Yes.  
 2 Q. Were the food carts you were going to down on  
 3 this southeast corner of the intersection?  
 4 A. Yeah.  
 5 Q. Okay. And where did you park?  
 6 A. I parked in that parking lot right there.  
 7 Q. Okay. Right here?  
 8 A. Yeah.  
 9 Q. And what kind of car were you driving?  
 10 A. An Acura, black Acura, 1998.  
 11 Q. And was it just you and your boyfriend, is  
 12 that --  
 13 A. No. He's just a friend.  
 14 Q. Just a friend.  
 15 Okay. Just you and your friend in the car?  
 16 A. Yeah.  
 17 Q. And do you remember where in the lot you  
 18 parked?  
 19 A. It was facing Third. It was facing -- it was  
 20 facing Fourth. So I was -- I was kind of by -- do you know  
 21 where the Golden Dragon is?  
 22 Q. The Golden Dragon is right over there.  
 23 A. Okay. So I was facing kind of towards this  
 24 street. Actually, I was facing Stark, and I was parked on  
 25 the -- like closer to the -- facing Stark Street, but on

1 EXAMINATION  
 2 BY MR. JACKSON:  
 3 Q. Could you please state and spell your name?  
 4 A. Ayan Aden, A-Y-A-N, last name A-D-E-N.  
 5 Q. Okay. And how old are you?  
 6 A. I'm 17 years old.  
 7 Q. Okay. I want to take you back to September  
 8 30th of 2018.  
 9 A. Okay.  
 10 Q. Were you out that night, the 29th, into the  
 11 early morning hours of the 30th?  
 12 A. Yes. Yeah, I was out. My friend came from  
 13 Eugene. I picked him up from North Portland, and we were  
 14 going to get something to eat.  
 15 Q. Do you remember about what time it was that  
 16 you picked him up?  
 17 A. 2:30.  
 18 Q. In the morning?  
 19 A. Yeah.  
 20 Q. Okay. And where did you guys go?  
 21 A. We went to the food carts on I think Third --  
 22 Third and Stark.  
 23 Q. Do you see up on the board here there's an  
 24 aerial map, Third Avenue, Stark now called Harvey Milk  
 25 Street?

1 this side of the road.  
 2 Q. If you want to come up to the screen, you can  
 3 point for us.  
 4 A. Okay. I think I was parked, like, exactly  
 5 right here, somewhere around there.  
 6 Q. Okay. Facing south towards Stark Street?  
 7 A. Yeah.  
 8 Q. Okay. Have a seat. Thank you.  
 9 When you pulled in there, were there other  
 10 cars in the lot?  
 11 A. No -- oh, well, there were other cars, but  
 12 nobody was in it.  
 13 And then so this black car pulled up, and I  
 14 don't really know -- I don't know what model it was. It  
 15 was a black car with black tinted windows.  
 16 Somebody rolled down the window, and Aundree  
 17 realized that it was his cousin. He got out of the car,  
 18 and they started talking about basketball and what he was  
 19 doing in Eugene and stuff like that for a while.  
 20 Q. I'm going to ask you to speak a little slower  
 21 because we have a court reporter trying to keep up with.  
 22 A. Okay, okay.  
 23 Q. Okay. So the car pulls in. Was there more  
 24 than one individual in the car?  
 25 A. Two.

1 Q. Two people were in the car?  
 2 A. Yep.  
 3 Q. And your friend and one of them started  
 4 talking about Eugene and basketball and that kind of stuff?  
 5 A. Yeah, but he got out of the car.  
 6 Q. Okay.  
 7 A. Yeah.  
 8 Q. Okay. Did you stay in the car?  
 9 A. Yeah. I stayed in the car the whole time.  
 10 And then I actually got out to go to the food carts, and  
 11 there was guys trying to talk to me. So I just went back  
 12 and waited for Aundree because I didn't know what he wanted  
 13 to eat anyway.  
 14 Q. And is Aundree the friend that you picked up?  
 15 A. Yeah, yeah.  
 16 Q. Okay. And while you were sitting in the car,  
 17 can you kind of take us through what you remember  
 18 occurring?  
 19 A. I was just kind of on my phone, and I remember  
 20 just, like, after I got back in the car, I had a, like, a  
 21 bad vibe off those guys that were talking.  
 22 I was, like, Aundree, get back in the car so  
 23 we can get our food and figure out where we're going to eat  
 24 and then leave.  
 25 Q. Were you in the driver's seat?

1 A. Yeah.  
 2 Q. What happened then?  
 3 A. And then -- when Aundree was sitting in the  
 4 passenger and we were about to actually get out to get  
 5 food, we heard -- both of our windows were rolled down, the  
 6 driver's and the passenger's. We just heard gunshots.  
 7 Me being scared obviously, I was, like,  
 8 Aundree duck. So we just ducked. And there was, like,  
 9 gunshots going on for -- I don't know. I think maybe five  
 10 or six gunshots. And then we -- it was --  
 11 Q. Did you have a sense of where those gunshots  
 12 were occurring?  
 13 A. I knew from the back of me because I heard it  
 14 coming from the back.  
 15 Q. And your windows were down?  
 16 A. Yeah.  
 17 Q. Okay.  
 18 A. I could hear pretty clearly that it was coming  
 19 from the back, and so I ducked.  
 20 And then I think I heard -- I don't know if it  
 21 was police or not, but I heard -- I heard somebody say, "He  
 22 dropped the gun by the car," but I thought they said, "He  
 23 dropped his gun on your car." And that's when I freaked  
 24 out. I was, like, What? Somebody put their gun on my car?  
 25 That's when the police realized that I was in

1 A. Yeah. I was driving.  
 2 Q. And then what happened?  
 3 A. So Aundree got back in the car, and then I  
 4 think Mike was -- Mike is Aundree's older brother. That's  
 5 who we were waiting for, actually.  
 6 Aundree said -- he's, like, Mike is in the  
 7 area. He's in Golden Dragon. Let's just wait for him to  
 8 come up.  
 9 And so we were waiting for Mike, and Mike  
 10 ended up coming out. He was talking to us through the  
 11 window. He's like, Oh, I think -- he's, like, I'm going to  
 12 throw a party or something like that. Maybe you guys could  
 13 come over.  
 14 We were, like, Okay. Let's get food, and  
 15 we'll talk about that because I was pretty tired already.  
 16 And that's when -- Mike was still standing  
 17 there, and I remember --  
 18 Q. Was he standing in the front of your car?  
 19 A. Yeah. He was standing in the front of the  
 20 car, leaning on the hood of the car.  
 21 Q. Was he talking to you through the driver's  
 22 window or passenger window?  
 23 A. Passenger window.  
 24 Q. Was Aundree or Mr. Polk sitting in the  
 25 passenger seat of the car?

1 the car, you know, because it was an empty parking lot.  
 2 There were no cars in the parking lot, and then they told  
 3 me to put my hands up.  
 4 But before that, before that happened, Aundree  
 5 looked up, because he's pretty tall. He looked up and  
 6 he's, like, Dude, there's somebody on the floor. He got  
 7 shot in the ass.  
 8 I was, like, Oh, my God. I looked up, and I  
 9 saw the guy laying down, but I heard more bullets, like,  
 10 more gunshots, and I just ducked.  
 11 Q. Okay. So let me just make sure that I  
 12 understand what you're saying here.  
 13 A. Yeah.  
 14 Q. So you're sitting in the car. Mr. Polk is in  
 15 the passenger seat. You're in the driver's seat?  
 16 A. Yeah.  
 17 Q. And Mr. Polk's older brother was leaning on  
 18 the hood on the passenger side and talking through the  
 19 window?  
 20 A. Yeah.  
 21 Q. And the other person that Mr. Polk had  
 22 previously been talking to, is he still there in the other  
 23 car?  
 24 A. I think he went in the car. I don't know  
 25 where they went by that point. They might have walked to

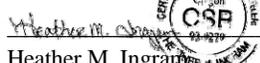
1 Golden Dragon or went in the car. I'm not sure.  
 2 Q. Okay. And then you hear five or six gunshots?  
 3 A. Yeah.  
 4 Q. From behind?  
 5 A. Yeah.  
 6 Q. Okay. And you duck down?  
 7 A. Yeah.  
 8 Q. And did you hear a break in the gunfire?  
 9 A. Yeah.  
 10 Q. Okay. So how many rounds, if you have an  
 11 idea, did you hear in the first set of gunshots?  
 12 A. Like five or six. I don't remember.  
 13 Everything happened so quick, but I'm pretty sure five or  
 14 six gunshots.  
 15 Q. Okay. And that's what triggered you to duck  
 16 down?  
 17 A. Yeah. I heard them and then ducked.  
 18 Q. Okay. And then did you see anybody moving  
 19 around the car or any --  
 20 A. No.  
 21 Q. In the parking lot at all?  
 22 A. No, I didn't. Just me and Aundree and his  
 23 older brother, Mike. I didn't really see anybody else  
 24 until Aundree pointed out that that guy was on the floor.  
 25 Q. Okay. And so then the second set of gunshots,

1 A. Yeah.  
 2 Q. Okay. When you looked up and you saw the  
 3 person laying on the ground, where was he in relation to  
 4 your car?  
 5 A. He was, like, maybe -- I don't know, probably,  
 6 like, right in the corner of where this room is right  
 7 there. He was on the floor.  
 8 Q. Okay. So if you're facing -- sitting in the  
 9 driver's seat facing the south, you're kind of pointing off  
 10 the front passenger side --  
 11 A. Yeah.  
 12 Q. -- of the car on the ground?  
 13 A. Yeah.  
 14 Q. Okay. Did you see that person run by your car  
 15 or move around your car in any way?  
 16 A. No. I wasn't paying attention. I was just  
 17 talking to Dre. I didn't see anybody run.  
 18 Q. Do you know who yelled out "There's a gun on  
 19 the ground" or "He dropped the gun" or whatever it was that  
 20 you --  
 21 A. It sounded like the police again.  
 22 Q. The police?  
 23 A. Yeah.  
 24 Q. Okay. And you yelled out, "What? There's a  
 25 gun?"

1 do you have a sense of how many shots you heard that time?  
 2 A. I don't really know. I think maybe another  
 3 five or six. I feel like it was just as long and, like,  
 4 the break kind of happened in the middle of the gunshot.  
 5 Q. Okay. And do you have a sense of how long  
 6 that break was between the two sets of shots that you  
 7 heard?  
 8 A. Maybe like 30 seconds, 45 seconds.  
 9 Q. Okay. So a break that was noticeable --  
 10 A. Yeah.  
 11 Q. -- between the --  
 12 A. It was noticeable.  
 13 Q. Okay. You said you heard what sounded like  
 14 police?  
 15 A. Yeah.  
 16 Q. And what was it about these people that made  
 17 you think it was the police?  
 18 A. It was very commanding, like, Get down on the  
 19 ground, like, Stop or something. I think I heard them say,  
 20 Stop running or something like that.  
 21 Q. You heard them giving commands?  
 22 A. Yeah. I heard them telling whoever they were  
 23 trying to get down, like, to stop whatever they were doing.  
 24 Q. Okay. And then you heard this second round of  
 25 five or six gunshots?

1 And your impression is that's what made the  
 2 police realize you were in the car?  
 3 A. Yeah, I'm pretty sure.  
 4 Q. Okay. And then what happened with that? Did  
 5 they come up and talk to you?  
 6 A. Yeah. They told me to put my hands up, and we  
 7 had our hands up for 30 seconds, 45 seconds or something  
 8 like that.  
 9 And Mike and Dre were yelling, "Please don't  
 10 shoot, don't shoot."  
 11 They kind of -- they asked us to step out of  
 12 the car, me and Dre, and then they put Mike -- they were  
 13 still talking to Mike. I remember Mike was sitting on the  
 14 front of the hood, and they took me and Dre and put us in  
 15 separate cars.  
 16 Q. Okay. Could you see, after the police had you  
 17 get out of the car, what was going on in the scene after  
 18 that?  
 19 A. I think I saw, like, paramedics helping or  
 20 trying to lift somebody up maybe. Yeah, I'm pretty sure.  
 21 That -- that probably was when I was in the cop car.  
 22 I don't remember. Everything happened. It  
 23 was just kind of a blur. Maybe somebody was standing over  
 24 him.  
 25 I just -- I didn't try to look back or

1 anything. I just listened to whatever, you know, the  
 2 police were asking me to do, and I got put in the car.  
 3 Q. I'm sorry?  
 4 A. I got put in the car while the police detained  
 5 me.  
 6 Q. Okay.  
 7 MR. JACKSON: All right. Do you folks have  
 8 any questions?  
 9 Oh, I have one question. I'm sorry.  
 10  
 11 BY MR. JACKSON: (Continuing)  
 12 Q. Did you ever actually look and see a gun on  
 13 the ground --  
 14 A. No.  
 15 Q. -- next to your car?  
 16 A. I didn't see a gun.  
 17 Q. Okay. So you heard somebody talk about a gun?  
 18 A. Yeah.  
 19 Q. But you never actually looked and saw one?  
 20 A. No.  
 21 Q. Okay.  
 22 MR. JACKSON: All right. Any other questions?  
 23 All right. Thank you very much.  
 24 THE WITNESS: Thank you.  
 25 MR. JACKSON: That's it for today.

1 STATE OF OREGON )  
 2 )  
 3 COUNTY OF MULTNOMAH )  
 4  
 5 I, Heather M. Ingram, Certified Shorthand Reporter for  
 6 the State of Oregon, do hereby certify that I reported in  
 7 stenotype the proceedings had upon the hearing of this  
 8 case, previously captioned herein; that I thereafter had  
 9 reduced my stenotype notes by computer-aided transcription;  
 10 and that the foregoing transcript constitutes a full, true  
 11 and accurate record of the proceedings had upon the hearing  
 12 of said cause to the best of my knowledge and ability.  
 13 Witness my hand at Portland, Oregon, this 16th day of  
 14 November, 2018.  
 15  
 16   
 17 Heather M. Ingram  
 18 Oregon CSR No. 93-0279  
 19 Oregon Certificate expires: 9/21/2021  
 20 Washington CSR No. 2188  
 21 Washington Certificate expires: 9/25/2019  
 22  
 23  
 24  
 25

1 Thank you very much. We're five minutes past.  
 2 Sorry about that.  
 3 (Proceedings adjourned at 5:05 p.m.)  
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