

1 MULTNOMAH COUNTY GRAND JURY

2 DEATH INVESTIGATION

3 Deceased: BRAD L. MORGAN)
4) DA Case No. 2236553-1
5 Date of Incident: January 25, 2012) PPB Case No.12-7018
6 Location: 318 SW Morrison,)
Portland, Oregon)

7
8 VOLUME 1

9 TRANSCRIPT OF PROCEEDINGS

10 BE IT REMEMBERED that the above-entitled
11 transcript of Grand Jury proceedings was heard, commencing
12 at the hour of 8:30 a.m. on Monday, February 13, 2012 at the
13 Multnomah County Courthouse, Portland, Oregon.

14
15 APPEARANCES

16 Mr. Donald Rees, Deputy District Attorney,
17 Appearing on behalf of the State;

18
19 JULIE L. BOURGEOIS
20 Court Reporter
21 Multnomah County Courthouse
1021 SW 4th Avenue Rm. 311
Portland, Oregon 97204
22
23
24
25

1	INDEX OF WITNESSES	PAGE
2		
3	MARK SLATER	2
4	LARRY LEWMAN	25
	MICHAEL SMITH	33
5	CHRISTINA SWARTWOUT	40
	WHITNEY SMITH	47
6	KORENA BARTLEY	52
7		
8		
9		
10		
11		
12		
13		
14		
15		
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17		
18		
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1 TRANSCRIPT OF PROCEEDINGS 2/13/12 8:30

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MARK SLATER,

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called as a witness in behalf of the

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State, being first

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duly sworn, was examined and testified as follows:

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EXAMINATION

8

BY MR. REES:

9

Q Can you please state your name and slowly spell

10

your name.

11

A It's Mark Slater, and Mark is with a K, Slater,

12

S-L-A-T-E-R.

13

Q What's your occupation?

14

A I'm detective with the Portland Police Bureau in

15

the homicide division.

16

Q How long have you been a detective?

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A I have been a detective for about eight years, and

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been in homicide for almost six of those years.

19

Q How long have you been a police officer?

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A I was hired in 1993 with the police bureau.

21

Q Since you have been a detective, how many homicide

22

cases have you worked on, either as the lead detective or as

23

one of the detectives assisting the leads?

24

A Well over 100.

25

Q On January 25th, 2012, were you called to respond

1 to the scene of an officer involved shooting?

2 A Yes.

3 Q What time did you receive that call?

4 A I received a page from my sergeant, I was at home,
5 it was about 4:30 in the morning, just a page that said
6 there was an officer involved shooting downtown. And it
7 told me to respond to 318 SW Morrison. And at that point, I
8 get ready and head downtown. And I spoke with my supervisor
9 on the way downtown to learn some minor details of what we
10 were investigating.

11 Q The location, 318 SW Morrison Street, is here in
12 downtown Portland, Multnomah County?

13 A Yes.

14 Q Ultimately, who else in addition to yourself was
15 involved in the investigation?

16 A There were probably fifteen to twenty different
17 detectives involved with it. We had -- that was just
18 Portland detectives. We had three detectives from the East
19 County Major Crimes Team that came and assisted us as well,
20 numerous sergeants within the detective division,
21 lieutenants and command staff, going up from there.

22 Q You mentioned the East County Major Crimes Team.
23 What outside agencies were involved?

24 A Multnomah County Sheriff's Office and Gresham
25 Police Department.

1 Q All right. And can you give the grand jury just a
2 brief overview of what the general protocol is in terms of
3 conducting this type of investigation?

4 A Sure. It's very similar to work in any other, you
5 know, whether it's a homicide or a basic crime scene
6 investigation. The scene is all secure -- by the time I
7 arrive and all of the investigative team arrived, the whole
8 scene was secured with crime scene tape. We meet with
9 someone at that point who would give us a briefing of what
10 has occurred up to that point. Anyone who was directly
11 involved with the investigation, whether they were an
12 involved member who actually used lethal force, or anyone
13 who witnessed it, they are immediately separated from each
14 other as soon as it's tactically safe to do that from the
15 scene.

16 And so it's the same investigation when we have
17 witnesses and we have involved parties. So everyone is
18 separated, all witnesses are interviewed, recorded
19 interviews, and all the interviews are transcribed. We have
20 all of -- any officer who did anything at a scene like this,
21 whether it's blocking traffic or running an errand, everyone
22 documents it in a special report.

23 Q Certain officers are subject to a gag order;
24 correct?

25 A Yes. Any officer who witnessed the event or was

1 involved with it, gets issued a -- it's called a CRO, it's a
2 communication restriction order, which prevents them from
3 talking about the case with anyone except for their attorney
4 or the investigators or spouses.

5 Q And how long is that in place?

6 A That's in place usually until after the grand jury
7 makes a decision, makes a vote, at that point then we will
8 issue a rescindment for those restriction orders.

9 Q During this investigation, on January 25th, 2012,
10 can you tell us the name of the person that was shot by the
11 police?

12 A Yes, it's Brad Morgan.

13 Q How old was he?

14 A He just turned 21 years old.

15 Q Were you able to determine through the course of
16 this investigation, how many officers were involved in using
17 deadly force?

18 A Yes, two.

19 Q And who were they?

20 A It was Sergeant John Holbrook, and Officer David
21 Scott.

22 Q Did you determine how many other officers were
23 present and are eye witnesses to the shooting?

24 A Four.

25 Q Do you have their names?

1 A Yes. It was Officer Jim Richardson, Officer John
2 Myers, Officer Tim Hoerauf, H-O-E-R-A-U-F, Officer James
3 Nett, N-E-T-T.

4 Q Are those all Portland police officers?

5 A They are. And Officer Nett works out of north
6 precinct, and the other three are all central officers.

7 Q Were any other witnesses to the shooting
8 identified during the investigation, whether they be law
9 enforcement or civilian witnesses?

10 A No. I mean, actual seeing what happened, no. A
11 couple people who were downstairs or down on the street
12 heard the gun shots, so that's a hear-sound witness.
13 Otherwise, the witnesses we spoke to were family and friends
14 of Mr. Morgan

15 Q All right. What was the call that brought the
16 officers that you just mentioned to that location of 318 SW
17 Morrison?

18 A It was a 911 call that came in at 3:18 in the
19 morning from Brad Morgan using his cell phone. And it was a
20 call where he said that he had committed a robbery downtown
21 using a knife, and he was currently on top of a building in
22 downtown Portland.

23 Q And what is the length of that call?

24 A I think it's about 23 or 24 minutes long.

25 Q All right. Ladies and gentlemen, I'm going to

1 pass around a transcript of the 911 call, and then I'll play
2 it at the same time in just a moment, and follow along.

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(The 911 call was played for the Grand

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Jurors, and will be inserted at this point

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in the transcript.)

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Dispatch: 9-1-1.

Morgan: How's it going? Um, I uh, robbed somebody Downtown Portland at knifepoint and I'd just like to let you guys know that I did that and um, I'm about to commit suicide and I'm standing on a 10-story high building.

Dispatch: Okay, where at?

Morgan: Um, I don't want to release that information. I just would like to let you guys know that you're gonna get....

Dispatch: ...Okay if you're not gonna tell me where you are why are you calling me?

Morgan: Um, because I'd like to let you guys know that um, I committed a robbery and I would uh, you guys need to clean my body up here soon.

Dispatch: Okay, what's your name?

Morgan: Uh, BRAD MORGAN.

Dispatch: Is there anybody we should call to let them know?

Morgan: Um, I'd like you to contact KORENA BARTLEY, but you know - it, it's up to you guys.

Disptach: Okay, do you have a phone number for this person?

Morgan: Um, she ain't gonna answer the phone, I've been trying to contact her.

Dispatch: Okay, whose this person to you?

Morgan: Um, she's my ex-girlfriend.

Dispatch: Okay, how long ago did she become your ex-girlfriend?

Morgan: Um, about three weeks ago.

Dispatch: Okay, and you're going to jump off a building because of that or because of some other reason?

Morgan: Um, I've gotten myself into a lot of trouble lately and uh, my girlfriend took my son from me and denies my visiting time. I've tried going to the courts and working things out. Um, my life is just shitty anyways so I feel that I, I no longer need to live.

Dispatch: Okay. And that's your final decision there's no way I can talk you outta that?

Morgan: No, I just would like to let you guys know that uh, you know, just for a heads up what's going on.

Dispatch: Okay, tell me her name again, I didn't write it down quickly enough.

Morgan: KORENA BARTLEY.

Dispatch: What is her phone number?

Morgan: Um, hold on one second. It's 503-839-um, 936 – no wait, 839-3689.

Dispatch: 839-3689?

Morgan: Correct.

Dispatch: This is the ex-girlfriend whose the mother of your child?

Morgan: Yeah.

Dispatch: How old's the child?

Morgan: Um, he's eight months old.

Dispatch: Okay, it seems um, it's too bad that you're not gonna get to see him and talk to him when he's older, don't you think?

Morgan: Um, I'd probably be in jail if, if I were to live past today anyways so –

Dispatch: Don't you think he'd still prefer you were alive? So he has a dad?

Morgan: Um, he probably would, but – you know I, I'm thinking past that right now. I just, you know –

Dispatch: Okay, how'd you get up to the building there did you walk or did you drive?

Morgan: Um, I don't have a vehicle so I walked.

Dispatch: Okay. And you're just on top of like a – somebody's business or a parking structure or what?

Morgan: Um, I'm top of a 10-story building.

Dispatch: Okay, right – like a parking structure or like somebody's business or, or what kind of building are we talking about?

Morgan: Um, it's a parking structure and I've got a visual view of uh, Pioneer Square.

Dispatch: Why don't you talk to me just a little bit longer before you do anything you can't take back.

Morgan: I know I can't take it back once I do it and – you know I really, I really am debating on doing it or not, but I, I've – my criminal background nobody believes my side of the story. Um, I –

Dispatch: Alright, well you know what I'm gonna give you a really great deal, are you ready for this?

Morgan: What?

Dispatch: This is a one-time only deal and only from me. I will believe everything you tell me on this phone call, everything. You have my word.

Morgan: Well –

Dispatch: Okay, so talk to somebody who is prepared to believe you. Tell me your side.

Morgan: Um, alright first off um, the reason why my girlfriend broke up with me is 'cause we got into a little argument. Um, she told the police officer that I um, hung up the phone while she was trying to make a police report and that's why I got arrested. Um – I sat in jail for four days and um, got a restraining order served while I was in there.

Dispatch: When was that? Was that a long time ago or?

Morgan: No, just recently.

Dispatch: Okay.

Morgan: And the cop wouldn't believe me 'cause of my record.

Dispatch: Okay so why....

Morgan: ...And that, that's why I ~~went~~ to jail...

Dispatch: ...If that's, well if that's what she said you tell me what really happened, tell me your side.

Morgan: Um, I was trying to leave with my son, um, she took my son from me so I took him back and pushed her away from the door because she was trying to hold me in our apartment, not, not like shoved her, but like put my hand on the doorknob and I elbowed her away a little bit. And then I started proceeding down to the Max to get on the Max to go see my parents and uh, she flagged down a Sheriff that was driving by, just so happens, and she gave him her side of the story and I gave him mine. And the only reason he arrested me is because I, I hung up the phone on the police call. I understand that was a bad thing at the time, but it got me arrested and it made so I couldn't see my son even longer then, then I, I was supposed to, you know? And I –

Dispatch: Yeah.

Morgan: And then um, after that my girlfriend says you can call and talk to your son and then when I call to talk to my son she calls the police and says I'm contacting her and now they want to arrest me for that.

Dispatch: Okay was there like a no-contact order or something or?

Morgan: Yes.

Dispatch: Okay.

Morgan: And on top of that...

Dispatch: ...So she...

Morgan: ...I was supposed to get...

Dispatch: ...She said you could and then she called the police when you did, yeah?

Morgan: Yes.

Dispatch: Okay.

Morgan: And then um – basically I, I, I don't know I just – I feel that I no longer need to live that she, she's putting me down every which way she can.

Dispatch: Okay well...

Morgan: ...N- not, I have, I have nobody besides her.

Dispatch: Well hang on just a second. So the initial gone to no-contact order, did that come from the judge after this hang-up the phone incident?

Morgan: It came from the judge um – yes.

Dispatch: Because...

Morgan: ...After the, yeah after...

Dispatch: ...Because that's a temporary thing for now. I mean that's not an irrevocable you're never gonna see your son again thing. You just have to work through the system and ride it out for a little while.

Morgan: That's the problem...

Dispatch: ...And not _____

Morgan: ...I've been going through the system my whole life and I'm, and I'm tired of it. And most of the time it wasn't even my fault and - I, I've, I've just done some bad things in my life and I, and I feel that this is the consequence for it.

Dispatch: Well, doing bad things, I mean everybody does bad things, but what you need to do is grow, become better because of it. Not just end your life. That's kind of cheating don't you think? I mean you have to, you, you get to suffer the consequences of what you did, I mean you know that. You're telling me that yourself, but, but then you learn and you become a better man for it.

Morgan: You know I appreciate the sweet talk, I, I really do, you know and it feels good to actually be able to talk to somebody finally.

Dispatch: Yeah? Well I'm, I'm not blowing smoke. I really believe that, really. Everybody gets to suffer the consequences of what they do, but you get to be better. You get to chose to be better and do better.

Morgan: That's the problem, when I try to chose to be better and do better it just crashes back down on me.

Dispatch: Well have you, you said you don't have anybody but her, have you tried to get help? I mean I assume there's some other thing, you said you've been working with the system for a long time so I'm guessing you have some...

Morgan: ...Well like I said I've, I've had a criminal background I -

Dispatch: Right.

Morgan: Hung out with the wrong crowd and did the wrong things that I shouldn't have done.

Dispatch: Okay well you admit that you took responsibility for making bad choices, excellent. But you don't have to stay there forever, you're not stuck there forever. You get to chose to be different.

Morgan: And that's what I'm doing right now, I'm choosing to...

Dispatch: ...No...

Morgan: ...To finish it. I, I...

Dispatch: No, everybody dies, that doesn't make you different. You want to be a better man, not a dead man. Your son needs you to be a better man.

Morgan: Well the fact, the, the reason why I'm really mad is, is she's posting on Facebook and making it visible for me to see that she's basically with another guy. I feel the whole reason that she even did this whole ordeal was to get the domestic violence grant and now on top of that I took care of my son the whole first eight months, last year, and uh - and she's claiming him on the taxes so I don't, you know, I don't need any - she's gonna move into her own place and fuckin'...

Dispatch: ... Yeah it sounds like you're not exactly gettin' the fair deal there, I would agree. But - um, just removing yourself from the equation that doesn't hurt her. You know? You, I mean I'm not recommending you stay alive so you can make her pay, that's not what I mean at all. I mean is your punishing yourself for crap she's doing, don't do that.

Morgan: It's not - well I feel that I was part of it. I'm not, didn't, I'm not blaming it all on her.

Dispatch: Well of course you have done your share, everybody, everybody agrees it sounds like you've done your share, but, but you don't, you don't have to stay there, you don't have to keep making choices that put you in that same situation.

Morgan: Yeah but uh, or even on top like there's the little things that I've done, she even got my cousin against me. Um, she has the cops, you know, on her side and no matter what the fuck I do or say, you know, and - I've been fighting the courts and the police my whole life and I'm tired of it. Like honestly I feel like shooting one of 'em right now.

Dispatch: Okay well don't do that. Um, first of all BRAD the police are in the area lookin' for you 'cause they want to talk to you too. They don't want you to be dead on the pavement.

Morgan: This is the second time I've, I've in um, attempted to commit suicide and honestly I think this is gonna be the final time.

Dispatch: Okay well please, please don't. The police are asking if you'll tell me what you're wearing so they can find you and help you. Will you tell me that?

Morgan: I'm wearing a red backpack and a hoodie and -

Dispatch: What color hoodie?

Morgan: Black with red on the front.

Dispatch: Do you have any guns on you since you mentioned shooting, uh, shooting?

Morgan: Possibly.

Dispatch: I'm just telling 'em what you said.

Morgan: I'd actually prefer for a police officer to shoot me at this point. I, I'm not looking forward to this jump.

Dispatch: I, I get that, but how, how do you think that'll make the cop feel?

Morgan: I hope pretty good because that's what they do for a living you know?

Dispatch: No, no it isn't what they do. Most of them never even fire their gun...

Morgan: ...Ha- have you ever watched, have you ever watched COPS and seen what they do?

Dispatch: Yes I have.

Morgan: Have you ever been in the, in the, in my feet steps where you're being beat by a nightstick and maced and thrown in the back of their car?

Dispatch: I have not been on that side, no.

Morgan: They, they're, they're brute...

Dispatch: The police do not want to shoot you. They don't want to kill you, they don't want to ^{take} your life.

Morgan: I want to take one of their lives.

Dispatch: Well please...

Morgan: ...I honestly do. And, and I, I - you know - the same cop's been circling around this building like he doesn't know what, how to get in or something.

Dispatch: How did you get in?

Morgan: Um, I walked up the stairs.

Dispatch: On what side?

Morgan: On the Max side. The side with the Max.

Dispatch: Alright.

Morgan: There's a street sweeper, at least it'll be easy clean-up.

Dispatch: That would be a bad outcome BRAD. That would make me sad.

Morgan: It'd make you sad? (chuckle)

Dispatch: Yeah, it would make me very, very sad.

Morgan: You're fun-...

Dispatch: ... 'Cause I've been talkin' to ya, you know? You've never met me, I've never met you, but – we've talked and you've told me some personal stuff and even a little bit I feel like I know you just a little bit and it would make me sad if you died tonight.

Morgan: You know I, I'm a good person, you know I can try to be a, a – and I try to be, but no matter which way I put – I, I just want my girlfriend and she, she pushing me away. She's telling me how happy she is with her other guy or whatever. And it's not, it doesn't feel good.

Dispatch: So you said that she's posting on Facebook, but she's blocked you, how do, how did you know about the Facebook thing if she blocked you?

Morgan: 'Cause I have friends that have her as a friend and I'm on their Facebook.

Dispatch: Okay so I actually, I confess, I don't know how Facebook works, does that mean you can see...

Morgan: ...I can, I can see her posts through another person.

Dispatch: Oh I gotcha, okay.

Morgan: Um, and on top of that she deleted me and then wrote on there I'm, I'm done with you, leave me alone. It's like what do you mean your done with me, you got the kid and you're not gonna, you know, talk to me anymore? We were perfectly fine

until she had the kid and, you know, it was a planned pregnancy and everything.
And now –

Dispatch: How long were you guys together?

Morgan: Like two and half years, maybe three years.

Dispatch: And so, let's see, so like a year in you guys decided to have a baby?

Morgan: My kid's only eight months old.

Dispatch: How old are you?

Morgan: I'm 21.

Dispatch: Well I suppose I'd sound like your mom if I said that's awfully young to have a kid huh?

Morgan: Um, my mom actually wanted me to have a kid because she has heart problems and she wanted to be around for it. And she's putting my mom through not being able to see him either. (sniffing) And it makes me feel like shit because then I feel like it's my fault. And at the same time I have the feeling that she was dating somebody behind my back and then obviously wanted to be with them or something. She wrote on Facebook, you know, thank for the great night and then the next post was I wants my pants back. It's like dude come on, you fuckin' ho. You have a kid and all you want is sex now from other people, it's not fuckin' right at all. And I can't stand the fact that there's gonna be another person as my son's father figure.

Dispatch: Hm – where does she live now? Does she live close to where you are? I mean if we needed to could we, could we have her come down?

Morgan: No. She lives in Gresham, I was just on their roof spying on 'em. Well I was trying to see my son, but the dog kept barking so I had to leave.

Dispatch: Ah.

Morgan: All I wanted to do was get a visual of my son.

Dispatch: Yeah.

Morgan: 'Cause uh, she's playing with me and it's not right at all.

Dispatch: Well what I wondered was...

Morgan: ... You know on top of that it's like, and you even go down to the courthouse and you get a restraining order on somebody and now you can't contact them? Its like - come on.

Dispatch: Did you actually get served, did you actually get served with a restraining order?

Morgan: Yes, this is my second time. The first time she, she was fine, she was happy with me and she says oh, see you later and next thing I know there's a sheriff at my door serving me with the restraining order. I find out that she gets \$1,200 bucks. And then on top of that like I'm trying to make up with her 'cause I love her and I just want to be with her and be a family and then she comes back with me and uh, I had an apartment with my roommates and, and uh, I was basically kicked outta there and, and she stayed there for maybe another week and then moved out. Left my, my roommates high and dry. And then I worked things out with her and, and I was trying to make it back right with my roommates and, and go back over there and next thing I know she's pulling it all over again. And I honestly don't feel that, that uh, that it's right at all.

Dispatch: Is she older then you?

Morgan: No, she's younger.

Dispatch: Well I do think she's kind of jerking you around, but then you already know that.

Morgan: She, she's playing with me and she's having fun and I, and I'm not gonna let her do it anymore.

Dispatch: Well I would say this is not the way to make it stop.

Morgan: Alright your police officers found me finally.

Dispatch: Okay, would you do me a big huge favor please, please, please don't do anything rash, don't make 'em hurt you. Just put your hands up and go talk to them and let them help you. Let them get you to a counselor or whatever.

Morgan: Alright, I'm cool with that.

Dispatch: Okay. Please.

Morgan: No, I'm not leaving with these officers. I'm, I'm definitely not gonna leave with these officers. I'm done going to that jailhouse, I'm done being treated like a ragdoll...

Dispatch: ... Well okay, tonight, tonight this is, what you've done with me is not a crime.

Morgan: Um, th- th- these cops are not gonna be able to reach me 'cause I was like a monkey and got to where I'm at and uh - they're, they're, yeah, not gonna get to me.

Dispatch: Okay, well really in this instance they want the same thing for you I want. They want, they want to get you some counseling...

Morgan: ...They want to see me jump. They'd get a kick out of it honestly...

Dispatch: ...No they wouldn't. Nobody wants to see you jump, have you ever seen a jumper? I have, it's horrid, it's awful, ugly.

Morgan: I've never, I've never seen one, but I, I imagine it's gonna be a quick painful death.

Dispatch: Okay.

Morgan: You know an, and this is how bad of a person I am. I seen a guy come off of an ATM and I walked up to him with my knife and said give me the money and he handed it to me and uh, a police officer drove past like two seconds afterward, he could've stopped it, but he, he didn't notice. And the guy didn't shout out for help, luckily. And the first homeless person I seen I gave all the money to.

Dispatch: So you didn't even keep the money?

Morgan: No, I gave it away.

Dispatch: Can I ask why you took the money if you weren't gonna keep it?

Morgan: Um, I was walking to them up to the top of this building and seen a homeless guy sit- laying there on the road and I, I kinda felt for him, you know, his girlfriend probably kicked him out.

Dispatch: Okay. And so then when you saw the opportunity you took the money and went back to him?

Morgan: Yeah.

Dispatch: Alright.

Morgan: I feel sorry for it, but - you know, I, I don't know what overcame me, but I felt that it was right. And that's the problem with me I feel things are right and I do it and I, and most of the time they're mistakes.

Dispatch: Well it sounds to me like you need to talk to a counselor to help you sort out good choices from bad perhaps. You know?

Morgan: I, I've tried talking to people, I've tried getting help. I wanted KORENA to go with me and sit down with a mediator or whatever and try to make things work, you know? I was gonna sign-up for anger management classes, whatever it took.

Dispatch: Yeah.

Morgan: But when she found out that I was trying to make an effort she just made it more of an effort to keep my son from me. And to stay farther away.

Dispatch: Well here's something else for you to consider. If you go ahead and do the things like go to anger management with or without her and you can show a judge that you are making these efforts because you want to be the father of the, of the boy, then to....

Morgan: ...I, I already know that I've already done fucked up just by coming up here and calling you. I'm not gonna be able to see my son after this.

Dispatch: BRAD...

Morgan: ...Do you really think they're gonna let somebody so mentally unstable see their son after something like this?

Dispatch: Maybe not right this minute, no. But what I'm sayin' is you can still get help and straighten yourself out and then it'll be obvious from the things that you've done, to a judge whose gonna make the decision, that you're making an effort to straighten yourself out.

Morgan: I've already tried that. I've already tried that, they don't believe me. They don't believe me with my record I'm telling you.

Dispatch: Well that's the...

Morgan: ...It's KORENA's word over mine no matter what.

Dispatch: That's probably part of it, but what I'm saying is you've gotta, you've gotta make an effort over time and watch, you know, so up to now you've made bad choices and that's what they're looking at. From now forward you make good choices so they can look at that.

Morgan: You know honestly I really do appreciate your, your, your high talking is, it's kinda making me feel better, but honestly I, I've already fucked up by coming up here and doing what I've done. I've already fucked up.

Dispatch: Okay, don't make it worse by hurting yourself.

Morgan: I'm not gonna hurt myself, I'm gonna provoke the police to do it or I'm gonna jump off after that doesn't work.

Dispatch: Where is the knife you used earlier?

Morgan: In my pocket.

Dispatch: Ah, alright.

Morgan: If they shoot me I'm not, I'm qu- I'm far enough from the edge to fall.

Dispatch: I'd appreciate if you'd just go give up to the police.

Morgan: I know you would and I would almost appreciate it to, but the thing is is I know where they're gonna take me, I know what they're gonna do to me. And it's not gonna make my girlfriend love me its...

Dispatch: Well it sounds to me if she's this busy messin' with you that maybe she's not very nice and you're better off without her, but you know, that's not my decision, that's your decision. But I don't want you to be...

Morgan: ...I, I probably am better off without her and that's what my dad says...

Dispatch: ... Well I don't think ...

Morgan: ...The thing is I, I love her...

Dispatch: ...She really treats you very well. Yeah and I know how you feel is how you feel there's nothing you can do about that, I get that. I do. And you're kind of tied to her for life anyway because she is the mother of your child.

Morgan: Yeah. And, and she doesn't realize that, you know? We...

Dispatch: ... Well she...

Morgan: ... We wanted to be a family, we, we agreed to each other that we were gonna, no matter what, stick together. And, you know, one little fuckin' argument, she just bails out. And then already with somebody else, like come on dude.

Dispatch: Well...

Morgan: ...The fact of me knowing that my girlfriend's sleeping with somebody else just makes me want to kill the other person...

Dispatch: ... Yeah, I get that...

Morgan: And it'll harm her, but I feel that I'm just gonna kill myself and not, then I don't have to deal with it no more.

Dispatch: Well, but those aren't your only options. You're talking like that's your only option that somebody has to die.

Morgan: And the police are trying to talk to me and I'll let you go.

Dispatch: Okay.

1 BY MR. REES:

2 Q After that 911 call was received, when did the
3 police first arrive at the downtown parking structure?

4 A The original call came in right around 3:18, and
5 it took a couple of minutes before the first car was
6 dispatched to the call, and that was Officer Scott was the
7 first one dispatched. And they didn't know exactly where
8 Mr. Morgan was, so the cars were kind of in the area trying
9 to figure out which one of these buildings in the area he
10 was truly on top of.

11 Q I assume they used GPS or some other means for the
12 general location?

13 A They did. The phone he was using in the corner of
14 the parking structure where he was shot, it's actually
15 sitting right on top of cellular antennas. So when they
16 pinged his phone, they came up with that location, 318 SW
17 Morrison.

18 So, the officers get into the area starting right
19 around 3:22 a.m., and it's a nine -- it's a ten-story
20 structure. The officers are circling around the building.
21 He even says in the 911 call, you can see the officers down
22 below driving around. By the time the first officer
23 actually spots him up on top of the structure, it's 3:35 in
24 the morning at that point. And that's about the time as you
25 look at diagram behind me, the police cars are as they were

1 the morning of this incident. So they finally locate Mr.
2 Morgan and they go up to start making contact with him.

3 Q Just to move ahead with the time line, before we
4 talk about the scene itself, what time, then, are the shots
5 fired?

6 A Shots are fired at 4:01 a.m.

7 Q Feel free if you want to stand up by the photo,
8 but if you would, why don't you give us an overview of what
9 we're seeing in that photograph, and tell us what it shows.

10 A Ten-story parking structure. These are the MAX
11 tracks you heard mentioned in the 911 call. 3rd Avenue over
12 here, 4th Avenue down here (indicating). It's hard to tell,
13 this corner here in the southwest corner of the parking
14 structure on top, is where Mr. Morgan is. There's two
15 entrances to this parking structure, one off 3rd, and one
16 off 4th.

17 This loops around and comes up to the top right
18 here, and then it drops down, because that's where you drive
19 to get to this spot (indicating). If you go in on 3rd or
20 4th Avenue, it depends on which level of the parking garage
21 you end up on. So that's actually like a ten-foot gap in
22 there for driving underneath to leave the structure.

23 And then this corner is another, I think, it was
24 like 19 feet taller than top level of the 10th story. It's
25 where the elevator is housed in, and there's like an air

1 conditioning unit on top of this corner. And it's all --
2 there's no way to get up there unless you scale along the
3 cement ledge on the west side of this structure.

4 This will -- you want me to go over which car is
5 whose?

6 Q Yes.

7 A The car directly to the east here is Sergeant
8 Holbrook's car. The next one back was Officer Richardson
9 and Hoerauf, they are a partner car. Officer Myers is over
10 here, Officer Nett is behind him, and this is Officer
11 Scott's car.

12 Q Do you want to go ahead and tell us what the
13 numbers are?

14 A I don't know if you can guys can see all of the
15 yellow dots. I can bring it in closer.

16 Q Or you can move up, whatever works.

17 A Well, the yellow dots are items of evidence.

18 Okay. I'll go through the list. Placard No. 1 is the knife
19 that he mentioned, it's sitting -- actually it was on top of
20 this air-conditioning unit in the corner. No. 2 was a pack
21 of Camel cigarettes, lying basically on the ground on the
22 roof right next to where the knife was. No. 3 was a can of
23 Monster Energy Drink. And No. 4 is a black colored plastic
24 toy gun. Nos. 5, 6, 7, 8 and 9 are all shell casings. You
25 don't see No. 5 on this diagram because it's actually down

1 on 4th Avenue. When the weapon fired, it must have went
2 over the edge down onto 4th Avenue, it was found down there.

3 Q So there were a total of 5?

4 A Total of five rounds fired that we knew about at
5 that point, yes. So these are all shell casings 6, 7, 8, 9
6 in the corner here, and then 10, 11, 12, 13 and 14, all
7 these ones out here. They are all bullet fragments, just
8 some super small, some a little more substantial pieces of
9 the fired bullets. And then Placard 15, 16 and 17 are all
10 just some cigarette butts we found sitting by the cement
11 wall, kind of here where the shell casings were located.

12 Q Before we go to the next photograph, are there any
13 questions on this?

14 GRAND JUROR: Where he was standing up was --

15 THE WITNESS: Mr. Morgan?

16 GRAND JUROR: Yeah.

17 THE WITNESS: On top of this unit. If you
18 look by Placard yellow dot No. 4 was the black plastic
19 gun, and it's actually located in his hand when they
20 approach him. And there's pictures of that. He's
21 right along the edge of this westernmost side of the
22 top of this structure.

23 BY MR. REES:

24 Q And if you would, why don't you explain what we're
25 seeing with this photo.

1 A This is basically roughly the perspective that the
2 involved officers would have had. This is looking to the
3 south. This is on the top of the parking structure. This
4 is where the cigarette butts were and the shell casing.
5 There's a cement wall about this tall, and then it drops
6 over the edge right there, where the ramp goes down around
7 to leave. There's about a 30-foot distance between that
8 point and here (indicating).

9 Mr. Morgan is actually lying down right between
10 those cables and the edge, laying back that way. Right over
11 the cement wall is down to 4th Avenue. And these are about
12 19 feet tall (indicating). These are sheer cement walls,
13 there's no ladders or anything to get up there. So we tried
14 to figure out how he got up there.

15 Like you heard in the 911 call, he made his way up
16 there. We figured he had to have gone from here, walked
17 along this narrow -- it's only eight inches wide or so,
18 cement, jumped up on this, and across the front edge of the
19 cement, before he gets to those cables, there were scuffs
20 long about four feet down. And we looked, he had brown
21 colored hiking boots on, and the front of them had fresh
22 scuff marks on them. So it looks like he was probably --
23 maybe he had his arms over the top of this thing, and
24 scooting along until he can climb up on top of that
25 structure.

1 When he mentioned in the 911 call that the
2 officers would not be able to get to him, that's true. He
3 was way up there, and there was no way, no ladders or
4 anything. These cables go down into an enclosed fenced in
5 area, where there's power boxes and I believe cell phone
6 communications equipment.

7 Q And when you say that he's not visible, that's
8 because on the other side of this wall, then, there's a
9 drop?

10 A Correct. It's on the other side of this wall,
11 that cement ledge also goes down like maybe a foot, because
12 it's a short little drop off, and then that's consistent
13 with the whole top of that structure.

14 Q You mentioned the bullet fragments that were found
15 in the parking area. And were you able to determine likely
16 why those were present?

17 A Just that there were five rounds fired, we know
18 that, and they would have struck something out there.
19 Whether they hit the cement or the wires or something in
20 that line of fire, bullet fragments will go amazing places,
21 they will turn up in places you wouldn't imagine. These
22 were quite a ways back, so they must have struck somewhere
23 on that face.

24 Q What does this photo show?

25 A This picture is taken basically standing over

1 where Brad Morgan is right now. So to the best of my
2 ability, this is Brad Morgan's perspective of where the
3 officers were. They would -- officers would have been
4 standing somewhere in this area right in here, the shell
5 casings were found in here (indicating). One went over the
6 edge, so somewhere in there is where the officers were
7 standing.

8 Q And is this the narrow wall you were talking about
9 that you would walk over to get up onto the structure that
10 is here in --

11 A That's correct. This is the narrow -- you would
12 have to climb up and walk along that edge, and then we found
13 the scuff marks along -- you can't see them, they are just
14 out of view on this side. But he would have had to have
15 gone across the top of this wall, up on top of the round
16 pillar and then scooted across to get to the top.

17 Q These photographs were all taken on the morning of
18 the incident; correct?

19 A That's correct.

20 GRAND JUROR: Can I ask a question? What was
21 the time that ended the 911 call? What time was that?

22 THE WITNESS: He said that the officers are
23 going to talk to me now, and then the officers say,
24 "We are contacting him now," and that's at 3:35.

25 GRAND JUROR: Okay.

1 BY MR. REES:

2 Q And then what does this picture show?

3 A This is Mr. Morgan, again, with a perspective
4 looking down to where the officers would have been standing.
5 This is looking to the north. And the red backpack he
6 described in the 911 call, he had a couple hooded
7 sweatshirts on and jeans, the work boots. You can see the
8 white scuffing across the front of them that I mentioned.
9 In his right hand is what turned out to be the black plastic
10 toy handgun. This picture, you can't tell as well, but his
11 finger is actually still on the trigger.

12 Q And was this photographed before the body was
13 moved in any way --

14 A Nothing has been touched.

15 Q -- he was placed that morning?

16 A That's correct, nothing has been touched at this
17 point.

18 Q Can everyone see this? Now, I asked you as part
19 of this investigation to bring that black toy gun that was
20 found in the hand of Brad Morgan.

21 A Yes, I have it. You want me to explain how we got
22 to this (indicating)?

23 Q First, why don't we look at the black gun if you
24 have that first, and we'll talk about the other. All right.
25 So is that the very toy gun that was found in Brad Morgan's

1 hands?

2 A Yes, it is.

3 Q If you can just hold it up so everyone can see,
4 what did you note about that when you looked at it?

5 A When I finally made it up on top of structure and
6 got a close look at it, I could see looking at the tip of it
7 that there was some orange coloring underneath. And you
8 could see imperfections, it was obviously painted over. And
9 then I had learned, obviously, prior to going up there, that
10 it was fake. But once I looked at it, uhm, once I got close
11 like I am right now, a foot away, you can visually see the
12 paint imperfections when you look at it closely, and that's
13 what I saw.

14 Q What about the appearance in terms of, you know,
15 in terms of being a replica of an actual semiautomatic
16 handgun?

17 A Oh, it's perfect. I mean, it looks exactly like a
18 semiautomatic handgun.

19 Q Do you mind kind of walking around and showing it?

20 A Sure. I don't know if you want to see a different
21 side? I can turn it, if you look at the back, you can down
22 the grips and certain parts of it, you will see green
23 underneath, where it's spray painted black. You can see the
24 other colors shining through like on the back of it. And on
25 the tip that most toy guns come with orange tips, you can

1 see the green on the back of the grip, green inside of it.
2 As you move it, you can tell there's green underneath.

3 GRAND JUROR: Do you have a gun that is that
4 size, that's a real gun that we could see?

5 THE WITNESS: I do, but it's in my holster.
6 I can't take it out of the holster. I can show it to
7 you holstered.

8 GRAND JUROR: I just wonder how similar they
9 look.

10 MR. REES: We can bring in a real gun that's
11 been made safe. The detective can't bring out his
12 loaded gun. But we will show that to you.

13 GRAND JUROR: I think we need to see that, I
14 mean not knowing a lot about guns.

15 MR. REES: Sure. I'm guessing from your
16 question you are not familiar with handguns.

17 GRAND JUROR: No, I'm not.

18 MR. REES: Fair to say. Sure, we'll bring it
19 in for you.

20 THE WITNESS: Anybody else want to see the
21 under part of it?

22 BY MR. REES:

23 Q All right. So let me ask you about some of the
24 items of evidence that the investigators found in this case,
25 and notably the receipt for the purchase of that toy gun.

1 A At around 10:00 to 10:15 that morning, we were
2 able to, with the help of Portland Fire and Rescue, bring
3 Mr. Morgan off of the roof top and down onto the actual
4 parking structure. The deputy medical examiner came and did
5 his initial examination of Mr. Morgan. And while looking in
6 Mr. Morgan's wallet, we located a receipt from Interstate
7 Fred Meyer up in north Portland at Lombard and Interstate.
8 And there was a purchase on there for something called a
9 Peace Keeper for \$5, and a Monster energy drink, and then
10 the can deposit was on that receipt as well.

11 Q So, what was the -- maybe you said it, the time
12 and date of the purchase of the Peace Keeper?

13 A It was for the day before, on 1/24 of 2012.

14 Q All right.

15 A And the purchase time on receipt was 16:13, so
16 4:13 p.m.

17 Q All right. Folks, I'll pass around a photocopy of
18 that receipt. Were you able to go, or other investigators
19 able to go to that Fred Meyer to look at surveillance video
20 to see whether Brad Morgan could be seen making a purchase
21 at that time and date?

22 A Yes. Myself and my partner went out to Fred Meyer
23 that day, and I showed the receipt to the security there.
24 They were able to bring in from the shelf what that item
25 was, based on the item number, which was a toy handgun for

1 \$5.

2 And so I had them pull up that exact time on their
3 surveillance system, and I observed someone at that time,
4 4:14, make the purchase. You can actually see on the video
5 the red backpack, the same clothing Mr. Morgan is wearing.
6 You see him lay the gun, it's a self check out he goes to.
7 You see him lay the gun down and the drink, and make the
8 purchase and leave.

9 Q And what is that item, then, the Peace Keeper,
10 that's actually sold for kids as a toy gun?

11 A Correct. It's -- I actually brought one.

12 Q This is in the box as sold at Fred Meyer?

13 A That's correct.

14 Q Okay.

15 A And the item number on the back of the packaging
16 matches the item number on the receipt. So I knew it was
17 the same item that was purchased.

18 Q On the box, is this correct, it actually says that
19 this is a replica of a 9 millimeter semiautomatic handgun?

20 A Right. It's 9 millimeter Peace Keeper, has a
21 moving slide chamber on the back of it. It says, authentic
22 military styling. It's the kind where if you pull the
23 trigger, the slide -- the top part of the gun actually
24 cycles back and it makes a noise like a gun being fired.

25 Q Why don't you go ahead and pass that around, too?

1 GRAND JUROR: I mean, does it sound like a
2 real gun being fired?

3 THE WITNESS: You can do it, it will work.
4 It doesn't sound real. You can pull the trigger and
5 we can hear it. It's not going to do anything, it
6 just makes a noise, if you want to.

7 BY MR. REES:

8 Q You're saying the slide moves back on the gun,
9 just like the slide on an actual semiautomatic handgun?

10 A Yes.

11 GRAND JUROR: But it doesn't sound real.

12 THE WITNESS: No. I mean, no.

13 BY MR. REES:

14 Q In addition to that purchase, did you also find a
15 receipt for a purchase at -- I'm not sure how to pronounce
16 this.

17 A We did

18 Q Was it Knecht's Autoparts?

19 A We did, Knecht's.

20 Q I will pass this around also. Where did you find
21 this receipt I'm passing around now, what's it for?

22 A That was found inside of his backpack, in Mr.
23 Morgan's backpack, as well as a can of Krylon spray -- black
24 colored spray paint. So, you looked at the receipt and
25 there's a couple of letters on it, you can see K-R-Y, so we

1 at that point thought this is going to be the receipt for
2 the purchase of the paint.

3 My partner and I went to Knecht's Auto Parts and
4 talked to staff there, and they confirmed that was what the
5 purchase was for, the can of spray paint. And the receipt
6 was dated just the same time as the -- or, excuse me, the
7 same date as the gun purchase, but the time shows one minute
8 prior. There's no way to tell if each store's computers are
9 on the right time or not, but they are both purchased around
10 the same time.

11 That auto parts store is located two or three
12 blocks to the east, basically, I think Mississippi is the
13 avenue right there at the light, that's where Knecht's
14 Autoparts Store is. We talked to the staff there and they
15 confirmed it was a paint purchase, and they remembered Mr.
16 Morgan buying the can of spray paint. They said he was
17 really quiet, didn't say anything.

18 Q So that store, the Knecht's Auto Store and
19 Interstate Fred Meyer, would be just a few minutes apart on
20 foot; is that right?

21 A Yes, that's correct.

22 Q And you said that the can of black Krylon spray
23 paint was in the backpack Mr. Morgan was wearing?

24 A Correct. And then we looked -- back at our
25 forensics lab, we pulled the cap off, and you could tell it

1 had been sprayed, there was paint residue on the nozzle.

2 Q In the 911 call Brad Morgan stated he had a knife.
3 Was a knife located at the scene?

4 A Yes. There was a knife sitting on top of that air
5 conditioning vent unit on top of that structure.

6 Q Any other items found that were noted?

7 A Just the cigarette pack and the can of Monster
8 energy drink.

9 Q All right.

10 GRAND JUROR: What was the size of the knife?

11 THE WITNESS: I think it had about a
12 four-inch blade on it.

13 GRAND JUROR: What kind of knife?

14 THE WITNESS: It was like a hunting style
15 knife.

16 BY MR. REES:

17 Q I'm going to pass around, it's a very brief time
18 line that captures a couple of these events mentioned by the
19 detective, just for you. And some of these events you have
20 not heard about yet, but you are going to in just a moment.
21 And as you hear more evidence, if you wanted, anyone who
22 wants to use this, it's set up on a calendar format. You
23 can use it and make notes on it as well. If you can pass it
24 around.

25 GRAND JUROR: Can I ask a question? Was

1 there a robbery reported that coincided with him --

2 THE WITNESS: Not that we have found out yet.
3 We had a robbery detective respond that night to start
4 investigating that call, and so far no one has come
5 forward with that incident.

6 GRAND JUROR: Okay.

7 BY MR. REES:

8 Q What did you learn about the background of Brad
9 Morgan?

10 A A lot of it was just with his relationship with
11 Korena Bartley. Uhm, I know they had a child together, and
12 there's been issues with restraining orders being served and
13 restraining orders being violated.

14 Q Did you receive information about a suicidal past?

15 A Somewhat. It was more recent. Just in December
16 of last year, just a month prior, there was a call where he
17 was on top of a roof of the house where Korena was, and his
18 mom was out there. And he was like two stories, he was on a
19 roof top, and he was threatening to jump, making suicidal
20 statements at that point.

21 Eventually, he climbed down on his own after that
22 incident. And that was the arrest for a restraining order
23 violation which came out on that case.

24 Q What about a criminal past?

25 A Yeah. There's been several citations for driving

1 things, minor in possession of alcohol, stuff like that.
2 And criminal-wise, you know, several restraining order
3 violations, domestic violence calls, arrest warrants. I
4 showed six different arrests for burglary between 2006 and
5 2010, trespass, disorderly conduct, stolen vehicles. And
6 like I said, a lot of missing/runaway reports filed on Brad
7 Morgan, as well, from his parents.

8 Q Were you able to determine the last associate of
9 Brad Morgan who saw him prior to this incident?

10 A Yes. The best we can tell it was a lady named
11 Christina Swartwout. And I learned that he was at her
12 residence out near 162 and Glisan around 10:00 or 11:00 that
13 night.

14 Q The night of Tuesday, January 24th; correct?

15 A That's correct.

16 MR. REES: Any questions for Detective
17 Slater?

18 GRAND JUROR: What is the relationship, do we
19 know, between Swartwout and Brad?

20 THE WITNESS: Christina?

21 GRAND JUROR: Yeah.

22 THE WITNESS: I think she called him his
23 cousin, but I don't know if that was confirmed, but
24 they were just close. She knows Korena and some other
25 friends up in Washington. They are all really close.

1 MR. REES: Anything else?

2 GRAND JUROR: These problems he had with the
3 police was prior to the birth of his baby or during or
4 what time frame was that?

5 THE WITNESS: Most of it's prior, yes. Since
6 the baby was born, there's been some restraining order
7 violations and some domestic violence issues, and then
8 the burglaries and car thefts and that kind of stuff
9 was long before.

10 GRAND JUROR: Before the baby was born?

11 THE WITNESS: Yes.

12 MR. REES: All right. Thank you, detective.

13 THE WITNESS: Thank you.

14 LARRY LEWMAN,
15 called as a witness in behalf of the
16 State, being first
17 duly sworn, was examined and testified as follows:

18 EXAMINATION

19 BY MR. REES:

20 Q Doctor, if you would please spell your first and
21 last name slowly for us.

22 A Last name Lewman, L-E-W-M-A-N, first name Larry,
23 L-A-R-R-Y.

24 Q Dr. Lewman, please tell the grand jury your
25 occupation.

1 A I'm a physician. I specialize in pathology with a
2 subspecialty in forensic pathology. I'm currently one of
3 the four forensic pathologists on the office of the Oregon
4 State Medical Examiner. We investigate deaths under the
5 State Medical Examiner's law, and determine the cause of
6 death and the manner of death, and perform autopsies if
7 necessary.

8 Q Can you give us a brief summary of your training
9 and experience in the field of medicine?

10 A Sure. Graduated college, Kansas State University,
11 1963, with a BA in premedicine or predoctor degree. Off to
12 the University of Kansas School of Medicine in Kansas City,
13 graduating with the M.D. or the regular doctor's degree in
14 1967. Then off to the Institute of Pathology at Case
15 Western Reserve University School of Medicine in Cleveland,
16 Ohio, where I received specialty training first in anatomic
17 pathology, which is the medical specialty of pathology as
18 it's practiced in the hospital setting, reading microscopic
19 slides to see if a tumor is malignant or not, doing
20 autopsies on people dying of diseases found around hospitals
21 like cancer, stroke, heart attack and the like.

22 Following completion of that, then I
23 subspecialized in forensic or medical-legal or so called
24 criminal pathology. If you watch CSI, and some of that
25 stuff on T.V., you get a vague, but pretty distorted idea of

1 what it's all about. But it's the investigation of
2 unexplained deaths. Most of these are natural deaths, all
3 of the violent deaths, the suicides, the homicides, the
4 accidents, the child abuse, the drug overdoses, deaths
5 involving guns and knives and beatings and bludgeonings and
6 all of those things.

7 I assumed my position with the State of Oregon in
8 1971, and I'm still there. So I have been in the office 40
9 years, still sit at the same desk I did when I came here.

10 Q During that time, you have conducted I guess
11 countless autopsies, or maybe you know the number.

12 A Probably 10,000 or so. I haven't counted them.

13 Q Did you perform an autopsy on a body identified as
14 that of Brad Morgan?

15 A I did.

16 Q What date was that?

17 A I did that at 9:00 in the morning on Thursday,
18 January 26th.

19 Q All right. Where was that performed?

20 A At the State Medical Examiner's Office.

21 Q Can you explain to the grand jury what's meant by
22 the terms cause and manner of death?

23 A Okay. ORS 146, that's the law that governs the
24 investigation of violent and unexplained deaths in Oregon,
25 it's the Medical Examiner's law. It requires the medical

1 examiner to determine the cause of death, that's a disease
2 or injury, to set in motion the change of events that leads
3 to the death. We're also following an investigation of all
4 of the facts, the autopsy, to determine the manner of death.
5 Manner of death means is this a natural disease, a suicide,
6 a homicide, an accident or undetermined, which means that
7 after all of this, we don't know. That's the requirement
8 that the medical examiner independently makes and so
9 certifies on the death certificate.

10 Q So in this case, what was your determination of
11 the cause of death of Brad Morgan?

12 A The cause of death was a gun shot wound to the
13 head, it struck him approximately here (indicating), went at
14 a slightly downward angle, mainly front to back angle,
15 struck vital parts of the brain, including the brain stem,
16 which controls the heart and respiration and those important
17 things. So he collapsed and died very quickly. I recovered
18 the bullet, and gave it to the ballistics people.

19 Q The bullet did not exit the skull; is that
20 correct?

21 A It did not exit. I got it from right against his
22 skull on the back side.

23 Q All right. Did you note any other indications
24 that Brad Morgan had been struck by a bullet other than
25 the one that you saw in his brain?

1 A There was one other gun shot that did not hit him,
2 it went through his clothing on the right side of his chest,
3 went through a sweatshirt and a coat, but did not touch him,
4 in and out.

5 GRAND JUROR: Where?

6 THE WITNESS: Right about here (indicating).

7 BY MR. REES:

8 Q You're indicating on the right side of his body,
9 under his arm?

10 A Correct. Just the chest area right here, just
11 grazed in and out of the clothing right here (indicating).

12 Q All right. And then what was your determination
13 of the manner of death?

14 A This is ruled a suicide, it's what we call suicide
15 by cop, it's a very well defined entity, and it's based on
16 the background information. I reviewed the 911 dispatcher's
17 call which was very, very patient, she spent a lot of time
18 with him, he made several statements. His girlfriend or
19 ex-girlfriend actually called our office, our investigators
20 talked with her. He texted her or emailed something that
21 night talking about ending it all.

22 So the background investigation was pretty clear,
23 plus his -- the way he did things. You don't up and point a
24 gun at the police, real or not. You don't really have a
25 choice to, "hand me this to let me see what it looks like,

1 to see if it's real," you know, or let them fire and hope
2 they miss. You see a lot of it.

3 Q In reaching your medical opinion of the manner of
4 death being suicide by cop, what are the hallmarks that
5 you're looking for?

6 A Primary, the background investigation and the
7 behaviors at the scene. He made statements to several -- I
8 think there was a cousin that he talked to, he talked about
9 suicide. He actually mentioned suicide by cop. He talked
10 about that, or jumping off a building.

11 Q And you noted that this is a manner of death that
12 is well documented amongst --

13 A Very well documented.

14 Q All right.

15 A And we don't call it all the time, if there's any
16 doubt, we would call it undetermined.

17 Q You said in this case the bullet went through the
18 brain stem. Uhm, I want to show you a photograph of Brad
19 Morgan as he was found by the police.

20 A Okay.

21 Q Is this positioning physically consistent with
22 someone who's been shot through the brain and received the
23 injuries you observed?

24 A Yeah. He's going to collapse instantly, and
25 really have no purposeful movement.

1 Q All right. I asked this because, of course, in
2 the movies, we're always seeing someone shot who then
3 violently flies back, and there's lot of motion; is that an
4 accurate depiction of what happens?

5 A No. You will fall where gravity takes you. If
6 you're bent over this way, you will go forward. If you --
7 he obviously bounced off of some of that stuff. He's going
8 to have no purposeful movement, no way to prevent his fall
9 with an injury like that.

10 Q And in the photo, the replica gun is still grasped
11 in his right hand. How does that happen?

12 A Well, he's -- if it's, you know, in there and he
13 collapses suddenly, he's going to have no purposeful
14 movement. That doesn't surprise me.

15 Q Any possibility of medically being able to
16 resuscitate and treat a person who has been shot like this?

17 A Not in this area, no. There are gunshots to the
18 brain that you can survive, this is not one of them. The
19 brain stem is a critical area that controls everything from
20 here on down (indicating), including heart and respiration,
21 essentially.

22 Q So, essentially, he was killed instantly; is that
23 correct?

24 A Yes. His heart may beat on for a while as a
25 functional thing, but he's not going to have any -- no

1 chance. This could have happened in a hospital emergency
2 room, and they couldn't have really done anything.

3 MR. REES: Any questions about that?

4 GRAND JUROR: Okay. So, there's nothing
5 mentioned about any kind of drugs; so did you find
6 anything in his system?

7 THE WITNESS: We're not through with that.
8 The routine drug screens were negative. He was
9 positive for marijuana. The alcohol is not done yet,
10 it's not back from the toxicology lab, it's not
11 finished yet. But he had marijuana in his system.

12 GRAND JUROR: When is that going to be
13 finished?

14 THE WITNESS: It depends on when they get it.
15 I don't do these, they are done by the toxicology lab
16 upstairs. They just batch them, and run it through.
17 They won't do, you know, one at a time, it's too
18 expensive and it's not cost effective. So they'll do
19 it as part of a batch.

20 MR. REES: Anything else for Dr. Lewman?

21 Thank you, doctor.

22 MICHAEL SMITH,
23 called as a witness in behalf of the
24 State, being first
25 duly sworn, was examined and testified as follows:

1 EXAMINATION

2 BY MR. REES:

3 Q Detective, please state and spell your name,
4 slowly.5 A Michael Smith, first name M-I-C-H-E-A-L, and last
6 name Smith, S-M-I-T-H.

7 Q Are you employed by the Portland Police Bureau?

8 A Yes, I am.

9 Q What's your current position?

10 A I'm a detective in the robbery detail, and then
11 I'm also on our SERT team, tactical team, which is our
12 version of a SWAT team.

13 Q SERT stands for what?

14 A Special Emergency Reaction Team.

15 Q How long have you been employed by the Portland
16 Police Bureau?

17 A It will be 25 years in April.

18 Q In your capacity as a member of SERT, were you
19 paged out to respond to downtown Portland on January 25th of
20 2012?

21 A Yes, I was.

22 Q What time did you receive that page?

23 A At approximately 4:07 in the morning, a.m.

24 Q What basic information did you receive when the
25 page came out?

1 A That there had been a shooting, officer involved
2 shooting, with a -- classified as a suicidal subject.

3 Q And was it known at that time whether this subject
4 was still armed and active or not?

5 A No. We were told that after the shooting, he had
6 disappeared from the view of the officers, and couldn't be
7 seen by anybody at that time. We didn't know if he was
8 alive up on top of this roof area or not.

9 Q And so can you summarize what was done by yourself
10 and others in order to get a safe view of the subject?

11 A Yes. Uhm, as you saw, the top of the elevated
12 corner building in this parking structure, initially we had
13 a small, little robot that's hand held, it looks like a
14 cylinder shape with little rubber tires on the end, it has a
15 little eye on it. That was thrown up on top of this
16 structure. Uhm, and it sends back -- we would have been
17 basically down underneath this, this is the 9th floor, so
18 down basically from here to here is a pretty good span. We
19 would have been down underneath this structure (indicating).

20 It got tossed up and thrown over here and landed
21 up on top of the structure, the roof structure where the
22 subject was found. Using that, they moved it in such a way
23 where they located the subject lying over in this area, and
24 they could actually see some leg. So we went into this
25 structure, into a door, tried to find a roof access, but

1 there was none. We then placed -- got a ladder, placed it
2 over this far side, over on that side, and then I was the
3 first one up the ladder.

4 Officer C. Rno and Officer Wilcox were also with
5 me. Uhm, we also -- and we were keeping an eye on it with
6 the -- other SERT members were underneath here, keeping an
7 eye on the subject's movement with the little robot.

8 I climbed up on top, there's a little -- on top in
9 the middle here, there's a little bit of a metal, probably
10 about the size of maybe this open area here, and it's like
11 the top of a vent or where vents come out and stuff from
12 inside of the building. Once we climbed up, I went one side
13 and Officer Wilcox went around to the other side.

14 Q If you use this photo, just make sure, we might
15 want to pick it up so they can see over here.

16 A Absolutely. When I came around, I would have been
17 coming from just like this, so basically I come at this
18 angle. As soon as I'm probably fifteen feet away, and
19 around this metal box that's in the middle, I see him lying
20 there, and that's exactly how he was when I saw him. I shot --
21 I've got my light, using a light on my weapon which is a
22 Glock handgun, and looking at him, I could see that his face
23 was real -- an ash color, and he was not moving at all. And
24 so we made the approach to him, and it looked, obviously, he
25 had that gun still in his hand.

1 I had to probably get within a foot of it to be
2 able to tell it was a fake gun. And I used the light on my
3 gun to really look at it and then to literally look towards
4 the end of the barrel, and saw that the barrel was enclosed,
5 to see -- to be able to see that it was a fake gun.

6 Q How far away were you about before you could tell
7 that it was not a real semiautomatic handgun?

8 A Within a foot, like twelve inches to be able to
9 really look. And what I focused on, I have been around
10 firearms a long time, I focused on the ejection port where
11 the bullet will come out. You can see that it was, you
12 know, it was a solid plastic piece. But it was hard it to
13 tell.

14 Q You mentioned that you're using an artificial
15 light to see. At the time that you made contact, was this
16 still before sunrise?

17 A Yes, it was dark. There was some wind, a little
18 bit -- a threat of rain. There was some ambient light from
19 the parking structure lights, but you couldn't see very well
20 at all without using your flashlight on our weapons.

21 Q Prior to your determination that Mr. Morgan was
22 deceased, was it the working assumption of the members of
23 the SERT team that he potentially was still alive and armed
24 with a weapon?

25 A Yes.

1 MR. REES: Do you have any questions about
2 that, folks?

3 GRAND JUROR: How long did it take you -- you
4 said you got the page at 4:07 a.m. How long did it
5 take you to get to the scene?

6 THE WITNESS: 4:07, we were paged out. At
7 4:49 hours, we were on the roof of the parking
8 structure. At that same time is when the robot was
9 deployed. At 4:56 hours there was -- we also had some
10 sniper observer team that was able to look down and
11 try to see -- basically our perimeter, see it with
12 optics.

13 BY MR. REES:

14 Q Could you put that in plain English? What's that
15 mean, perimeter observation?

16 A Yes. We, basically, part of our element, are
17 snipers like you have seen probably on T.V. And they, you
18 know, had used magnification like optics for -- like on
19 their rifles, but also for like spotting scopes, to be able
20 to see things at a distance.

21 Q And they were looking from some of these other
22 downtown buildings?

23 A Correct.

24 Q To see if they could see anything?

25 A Correct.

1 Q Were they able to tell through the scopes whether
2 Mr. Morgan was still active or not?

3 A No. They could see him in the corner, but not
4 very well. But they weren't seeing movement, but they
5 weren't -- they couldn't see like detailed information at
6 all.

7 GRAND JUROR: Were they in place before he
8 was shot?

9 THE WITNESS: No, no, no. These were people
10 that would have been--

11 GRAND JUROR: After?

12 THE WITNESS: Yeah. These were -- would have
13 been on the SERT Team. And they would have been paged
14 out at the same time I got paged out. So it would
15 have been all at the same time.

16 GRAND JUROR: I see. So there weren't any
17 officers looking down on him from any other buildings
18 before he was shot?

19 THE WITNESS: Not that I know of, no.

20 GRAND JUROR: So you said 04:56 hours -

21 THE WITNESS: At 0 -- where did I last --

22 GRAND JUROR: 04:56 hours.

23 THE WITNESS: Yes. That's when they were
24 deployed to the nearby roof, and that was the sniper
25 teams. And then about 5:03 is when we see, using the

1 robot, we were able to see the feet and legs. And,
2 again, this thing is right down on the -- so you can't --
3 it's hard to say that -- you can't just pull up and
4 see that picture. It's like you pull up, you'll see
5 pieces, like part of a leg or foot or something,
6 because it's just a little guy. But it gives you some
7 information on what to -- some intelligence for it.

8 Uhm, and then we attempted -- we did approach
9 on the roof at 5:27 hours, is when we actually were on
10 top and we found -- and at 5:28 is when our SERT medic
11 with the fire bureau was called up to give medical
12 attention. And at 5 -- approximately 5:29 hours the
13 SERT medic called -- he pronounced the subject was
14 deceased.

15 GRAND JUROR: What time was that?

16 THE WITNESS: At 5:29. And it took a little
17 bit -- like what I talked about earlier, we went -- we
18 thought there was potential roof access. So we were --
19 and we were still understanding that this guy was up
20 there moving around, and potentially was alive, maybe
21 just laying there in the corner. So we had to be very
22 safe to do it. We couldn't find roof access, so then
23 we came up with the ladder plan. So there's --
24 there's the time from basically 5:03 until 5:27,
25 that's what it took to get all that done.

1 MR. REES: All right. Thank you, Detective.

2 GRAND JUROR: One more question. So
3 basically, he's up here, and you're down here, correct
4 (indicating)?

5 THE WITNESS: Correct.

6 GRAND JUROR: That's the angle?

7 THE WITNESS: Yeah. And it's -- I don't have
8 all of the specific -- they probably have the
9 specifics of how high this building is. It's just a
10 little corner structure, it's totally separate, it's
11 kind of a weird deal, how it's set apart from the
12 regular parking structure.

13 GRAND JUROR: Okay.

14 CHRISTINA SWARTWOUT,
15 called as a witness in behalf of the
16 State, being first
17 duly sworn, was examined and testified as follows:

18 EXAMINATION

19 BY MR. REES:

20 Q If you can please tell us your first and last
21 name, and spell both names.

22 A My first name is Christina, my last name is
23 Swartwout, C-H-R-I-S-T-I-N-A, last name S-W-A-R-T-W-O-U-T.

24 Q All right. Christina, you knew Brad Morgan for
25 about the last ten years?

1 A Yeah, about ten years.

2 Q And how would you describe your relationship with
3 him over the years?

4 A Uhm, well, I would say we were pretty close, best
5 friends for the first couple years. I guess we got so close
6 it was kind of like a love-hate relationship, it was pretty
7 good. We never argued or anything like that.

8 Q You started to say, I think, that it was a
9 love-hate relationship, like a brother and sister?

10 A Yeah. We used to pick on each other as kids.

11 Q Okay. And at some point, did you guys go out on
12 some dates together?

13 A Yeah. Uhm, we went on a couple of dates. We
14 started dating around Cinco de Mayo of 2004, we would go on
15 like little dates here and there, movies and stuff.

16 Q Did he at some point live at the same place that
17 you did?

18 A Yes.

19 Q And when was that?

20 A Uhm, we and my boyfriend, moved in with Brad and
21 Korena in July of 2010, and we lived with them until August
22 of 2011.

23 And then they moved back in in December and moved
24 out before Christmas.

25 Q And when you say December and before Christmas, do

1 you mean just this last December of 200 --

2 A Yes, 2012 -- or 2011.

3 Q 2011. Okay. So they briefly for a few weeks
4 moved back in and moved back out?

5 A Yes.

6 Q And this is your place out on -- right on the
7 Portland-Gresham border, I guess on northeast 162nd?

8 A Yes, that's correct.

9 Q Now, did you see Brad Morgan on the evening of
10 Tuesday, January 24th, 2012?

11 A Yes.

12 Q And about what time did you see him?

13 A Uhm, he arrived at my house around 6:00, and left
14 around 10:00.

15 Q All right. And this would be 6:00 in the evening?

16 A Yes.

17 Q And did he come by himself?

18 A Yes.

19 Q And you told me that you were playing video games
20 and just kind of hanging out, I think?

21 A Yeah.

22 Q Did he talk to you about what was going on in his
23 life that night?

24 A Briefly. He had told me that, uhm, you know, he
25 had to go to court for, I guess the last incident that him

1 and Korena had been in, which was when they were at my
2 residence when we lived there, I want to say it was like the
3 15th or the 17th, around then. Uhm, he spoke to me about
4 going to court about that. He said that Korena was trying
5 to file for full custody or something like that of Kannon,
6 their son. He talked about going and filing against that
7 for partial custody.

8 Q Kannon is their baby?

9 A Yes.

10 Q Kannon with a K?

11 A It's K-A-N-N-O-N.

12 Q So he talked to you about that, and --

13 A He had kind of talked about how he was trying to
14 get along with her, but it seemed like every time he tried
15 to talk to her or get together with her, she didn't really
16 want to.

17 Q All right.

18 A It kind of bothered him, I guess.

19 GRAND JUROR: Did he seem really agitated,
20 upset about it?

21 THE WITNESS: No, he didn't. Usually, he
22 would kind of get a little irritated about it, not
23 exactly like irritated, but kind of upset, like sad, a
24 little frustrated. But he seemed more at ease with
25 it, he seemed like he had come to terms with what was

1 going on, and that he was done being angry. And he
2 was now trying to pursue getting his son, instead of
3 sitting in the same spot being like always mad, what
4 am I going to do about this? He was actually doing
5 something about it, so he seemed not as upset as
6 usual.

7 BY MR. REES:

8 Q You said he did make a statement at some point
9 about whether life would be worth living; is that correct?

10 A Yeah. He had said that Korena was turning
11 everybody against him. He felt like the world would be
12 better off without him. I mean, that's not his exact quote,
13 but that's along the lines of what he had said. That's what
14 I remember him saying.

15 Q And when did he make that statement to you?

16 A Uhm, when he was talking about getting custody of
17 Kannon or pursuing partial custody.

18 Q So this statement was that night of January 24th
19 of 2012?

20 A Yes.

21 Q Is that right?

22 A Uh-huh.

23 Q And then you say he left at about 10:00 that
24 night?

25 A That's correct.

1 Q Is that right?

2 A Yes.

3 Q Did you know where he was going?

4 A He told me he was going home. We told him it was
5 getting late, and our neighborhood isn't very, you know --
6 it's kind of dangerous. We told him he could stay the
7 night. He's like, "No, I need to get home."

8 Q And was there anything unusual about the way he
9 said good-bye to you?

10 A Yeah, he lingered. He must have said bye like
11 five times to me and my boyfriend, and we just assumed that
12 he missed living with us. We were all pretty close at one
13 point. We just assumed that he missed living with us, and
14 plus it was like an hour bus ride home. So I just figured
15 he missed living there, didn't like traveling on the bus
16 forever.

17 Q What do you think now?

18 A I think that, you know, it kind of seems like he
19 came to say good-bye in a sense.

20 Q All right, any questions about that, folks?

21 GRAND JUROR: Where was he living?

22 THE WITNESS: Uhm, with his mom and dad in
23 north Portland. I don't know the exact address.

24 GRAND JUROR: That's fine.

25 GRAND JUROR: Did you all share in any

1 recreational drugs together?

2 THE WITNESS: Huh-uh. Me and Brad had gone
3 to the bar once after he turned 21, but for being
4 someone that just turned 21, he didn't even like to
5 drink very much, so --

6 MR. REES: Are you asking if they smoked pot
7 that night?

8 GRAND JUROR: Alcohol, could be drugs, but
9 did you -- no marijuana, ever?

10 THE WITNESS: No. Oh, well, maybe when we
11 were like 13 and 14 or something, but --

12 MR. REES: I think you mean that night,
13 right?

14 GRAND JUROR: Yeah, that night.

15 THE WITNESS: No.

16 GRAND JUROR: Any time hanging out, it was
17 not a regular thing he did?

18 THE WITNESS: No. No.

19 GRAND JUROR: That you know of?

20 MR. REES: Okay. Thank you, very much.

21 WHITNEY SMITH,
22 called as a witness in behalf of the
23 State, being first
24 duly sworn, was examined and testified as follows:

25 EXAMINATION

1 BY MR. REES:

2 Q Go ahead and sit down, please. And if you could
3 state your name and spell your name.

4 A Whitney Smith, W-H-I-T-N-E-Y S-M-I-T-H.

5 Q Ms. Smith, how are you related to Brad Morgan?

6 A I'm his blood cousin.

7 Q And I understand that you met your husband through
8 him?

9 A Ten years ago, yes.

10 Q Is it correct over the years, you have been very
11 close to Brad Morgan?

12 A Yeah. We were actually talking about a couple
13 months ago getting an apartment all of us or a house, so we
14 have been close all our lives.

15 Q Recently, however, did Brad Morgan indicate to you
16 that he no longer felt close to you?

17 A Yes.

18 Q And did he tell you why he no longer felt close to
19 you?

20 A Because I was still in contact with Korena after
21 the problems that they had, and he had seen on a Facebook
22 post that Korena wanted to tell me something, and he wanted
23 me to tell him what she told me. And I told him I wouldn't
24 do that to her.

25 Q Korena is the mother of his child; right?

1 A Yes.

2 Q And you're good friends with Korena Bartley?

3 A Yeah.

4 Q And Brad Morgan was aware of that?

5 A Yes.

6 Q He knew the two of you talked all of the time?

7 A Uh-huh.

8 Q And so on Monday, January 23rd, 2012, I understand
9 that Brad Morgan sent you a posted message on Facebook; is
10 that right?

11 A It was just a general post on Facebook, yes.

12 Q What did it say?

13 A It was saying that he loved his mom, loved his
14 dad, loved his sister, and loved his son, Kannon, but to
15 fuck me and fuck Korena.

16 Q Did you respond to that post?

17 A I did. I told him that it was humorous that he
18 thinks that what I'm doing by not telling Korena or telling
19 him what Korena was doing is wrong, because I'm family and I
20 had posted that. And I sent another post, and that was for
21 his mom, Shelly, who is my aunt, saying that she shouldn't
22 be sticking up, and putting Korena down for what Brad has
23 done. But that she should be slapping Brad across the head
24 saying, why are you hitting your baby's momma? And he ended
25 up deleting that whole post, taking it off, so no one could

1 read it, and directly texting me to my phone.

2 Q What did he say?

3 A Well, he was cussing at me, telling me that I'm
4 wrong, and that I have an obligation as family to let him
5 know what's going on with his son. Uhm, and we got into an
6 argument about the fact that he hasn't really been a good
7 supporter for his family. That Korena when she was pregnant
8 with Kannon, she was going to school, working, and he was
9 sitting at home smoking weed all day, and I don't approve of
10 that. And we got into an argument, and then he told me that
11 he no longer considers me family, and not to give him the
12 honors of crying for him when he kills himself (witness
13 crying).

14 GRAND JUROR: What?

15 THE WITNESS: When he kills himself -- to not
16 give him the honors of crying for him when he kills
17 himself.

18 BY MR. REES:

19 Q And that statement that he made to you about,
20 essentially, I think he's saying, don't cry for me when I
21 kill myself; is that right?

22 A Yeah, because our --

23 Q And just so we're clear, when did Brad Morgan say
24 that to you?

25 A That was Monday.

1 Q January the 23rd?

2 A Yeah.

3 Q Okay. Just take a second to compose yourself,
4 just because the court reporter has to write down what
5 you're saying.

6 A Yeah (witness crying).

7 Q Okay. You told me earlier that Brad Morgan had
8 made other statements to you about wanting to die; is that
9 right?

10 A He had done a lot of Facebook posts over the last
11 month probably, and I read up on them, because I could tell
12 they were progressively getting worse, just his feelings and
13 how he was talking about Korena. And I have it on my phone
14 right now, what the last two Facebook posts that he posted
15 Wednesday of that night or that morning, one at 3:05 in the
16 morning and one at 3:15 in the morning.

17 Q And just so we're clear, these are two posts that
18 he made on --

19 A The 25th.

20 GRAND JUROR: January 25th?

21 BY MR. REES:

22 Q Wednesday, January 25th; is that right?

23 A Yep.

24 Q And so why don't you go ahead and read for us the
25 first post.

1 A First one was -- which was at 3:08 in the morning,
2 "What's the best way to die? Get shot or jump to my death?"

3 Q And you're holding your --

4 A My cell phone, reading it off of Facebook right
5 now.

6 Q Okay. And what was the post right after that?

7 A "We will see what comes first. I'm sorry, Kannon,
8 I love you. But do not let having your blood father around
9 mess with you. And if any guy hurts your mother, show him
10 who's boss."

11 Q What time was that posted?

12 A That was at 3:15 in the morning.

13 MR. REES: Are there any questions?

14 GRAND JUROR: The second one, could you read
15 that again?

16 THE WITNESS: "We will see what comes first.
17 I'm sorry, Kannon, I love you. But do not let having
18 your blood father around mess with you. And if any
19 guy hurts your mom, show him who's boss."

20 MR. REES: Any other questions?

21 GRAND JUROR: I do have a question. Did you
22 know him to smoke pot a lot, and that's -- and he
23 didn't have a job or --

24 THE WITNESS: All the time.

25 GRAND JUROR: Was he going to school?

1 THE WITNESS: His dad has never worked since
2 I can remember, all he's done is smoke weed. My dad
3 is a pot head. My uncle has MS, so he smokes all of
4 the time. Even the most successful uncle we have,
5 there are four of them, he lives in California, he's
6 still an alcoholic and a pot head. So it's very -- my
7 grandmother, actually, she died a couple months ago.
8 She smoked up until she died. So it was all -- it was
9 like a family thing.

10 GRAND JUROR: What day was the message
11 posted?

12 THE WITNESS: The 25th. The first at 3:08,
13 and the second one was at 3:15.

14 MR. REES: Anything else? Thank you.

15 KORENA BARTLEY,
16 called as a witness in behalf of the
17 State, being first
18 duly sworn, was examined and testified as follows:

19 EXAMINATION

20 BY MR. REES:

21 Q Korena, could you tell everyone your first and
22 last name, and spell your name?

23 A First and last name is Korena Bartley, K-O-R-E-N-A
24 B-A-R-T-L-E-Y.

25 Q How old are you?

1 A I'm 20.

2 Q You're 20. You're the mother of an eight month
3 old; right?

4 A Uh-huh.

5 Q What's his name?

6 A Kannon.

7 Q Who's the father of the child?

8 A Brad Morgan

9 Q How long were you and Brad Morgan together?

10 A Like three years.

11 Q All right. And over that three year relationship,
12 you have lived in different locations with him; right?

13 A Yeah.

14 Q Where have you lived?

15 A Uhm, we lived with his parents, uhm, and the
16 apartment on 162nd, Glendoveer Estates, and then back at his
17 parents'.

18 Q Okay. And I understand that after Kannon arrived,
19 some of the living situations didn't work out so well; is
20 that right?

21 A Uh-huh.

22 Q What was the living situation like after the baby
23 was born?

24 A Uhm, the apartment was moldy, and everybody in the
25 apartment did stuff that I didn't want my kid to grow up

1 around.

2 Q At some point, you lived with Brad's parents too.
3 How did that work out?

4 Q Horrible. Their house is not suitable for a baby,
5 it's not suitable for anybody, really, but --

6 Q And it looks like another area of stress for you
7 was that Brad wasn't working and you weren't working, so
8 sounds like things were pretty tight as far as money; is
9 that right?

10 A Yeah. No, money. What little bit of money we
11 had, it would do him buying weed and cigarettes.

12 Q Was that something you guys would fight about was
13 him spending money on pot instead of on the baby?

14 A Yeah, all the time.

15 Q Let me ask you now about some very recent events.
16 Uhm, I understand that on Tuesday, the 24th of January, you
17 had some contact with Brad Morgan; is that right, by phone?

18 A Yeah.

19 Q And do you remember what he was asking about?

20 A Uhm, on Tuesday the 24th, he called me from a
21 private number. And when I answered it and figured out it
22 was him, I hung up the phone, I did not talk to him that
23 day.

24 Q Okay. And here's what I'm referring to, I think --
25 I thought he called you at like 2:00 in the afternoon asking

1 to see if he could have Kannon that night; was that
2 incorrect?

3 A That was the day before. That was before that.

4 Q Oh, that was before?

5 A I think that was like Monday or something, because
6 he called me from a private number asking to see Kannon,
7 because I didn't let them do -- have him while I went to
8 school Monday, like I originally planned. Okay. So, Kannon
9 has been with Brad the days I go to school, on and off type
10 thing, which is not what the restraining had, the
11 restraining order had that Kannon was with Brad Tuesdays and
12 Thursdays from 3:00 to 7:00.

13 But I started letting him go Mondays and
14 Wednesdays when I was at school from -- his mom -- Brad's
15 mom would pick Kannon up from me at 7:00 in the morning, and
16 I would let him stay there until like 7:00 at night, and
17 that would be his weekly visit or his visits, instead of
18 Tuesdays and Thursdays. And then he would have him
19 Saturdays from like 2:00 in the afternoon until sometime
20 Sunday morning, just depending on what Brad wanted to do.

21 And then the last Sunday that I went to pick
22 Kannon up from Brad's mom, she and I had a conflict. And
23 after that I called and said -- told her she wasn't doing
24 this, I was not dropping him off to her any more, somebody
25 else had to do it.

1 Q Was that the Sunday before this happened?

2 A Yeah. And then Monday Brad called me to ask about
3 everything going on, and I told him, "I don't want to talk
4 to you, there's a no contact order, restraining order," end
5 of call.

6 Well, then he called me like about ten times that
7 day --

8 Q I'm sorry. He called you ten times?

9 A About ten times, on Tuesday --

10 Q Tuesday, the 24th.

11 A Yes.

12 Q Okay.

13 A Then I finally answered the phone, and he asked
14 about seeing Kannon. I said, "If you want to see him, your
15 visit starts at 3:00, ends at 7:00, no earlier, no later,"
16 and hung up the phone. Nobody tried to call me to do the
17 visit or anything, so they didn't do the visit.

18 That night, I was with a friend, because nobody
19 called to do the visit, so I made other plans for me and
20 Kannon. So I went to the friend's house, and Brad called
21 and left tons of voice mails on the phone.

22 Q And, again, this would be the night of the 24th?

23 A Yeah.

24 Q And did you pick up the phone or hear those voice
25 messages on the night of the 24th?

1 A Yeah.

2 Q You did?

3 A I answered it the first time, when I saw the
4 private number, because I had been talking to a detective
5 about filing the restraining orders and stuff, and they
6 always call from unknown and private numbers. So, I
7 answered the phone to see who it was, it was him. I hung up
8 the phone.

9 Q Did he leave some voice messages on that Tuesday
10 night, of the 24th that you --

11 A Yeah.

12 Q -- later heard or listened to on Wednesday,
13 January 25th?

14 A Yeah.

15 Q All right. I'm going to start back from the first
16 message, Tuesday, 10:53 p.m. on the 24th. Does everyone
17 have a copy of the transcript now?

18 (A tape recording of the voice messages was
19 played, and is inserted here in the
20 transcript.)

21

22

23

24

25

(Playing voicemail from phone-Tuesday 10:53 PM) "Will you please talk to me KORENA. I don't understand what the hell your problem is. Just answer the phone and talk to me. I'm in a bad situation right now and I swear to God I just need to talk to you."

(Playing voicemail from phone-Tuesday 11:02 PM) "Talk to me KORENA. You put me through so much now you're going out with some other fucking guy, maybe playing around with his little kid or whatever the fuck you got posted on facebook to make yourself feel better. I fucking hate you now. I literally have no reason to live. If you don't want to be with me, can you let me fucking see my son when I'm supposed to. I fucking hate you. I will see you in hell. I'm headed downtown to kill myself right fucking now, I swear to God. Better watch the fucking news you little bitch. (Playing voicemail from phone-Tuesday 11:10 PM) "Quit being such a fucking bitch and answer your phone. Just let me know fucking know that you're with somebody else and you're gonna fucking bitch out on me or do whatever the fuck. Just let me know what the fuck your plans are, what your up to because I'm literally about the jump off this fucking building. Answer the fucking phone." (Playing voicemail from phone-Tuesday 11:24 PM) "(Unintelligible) what the fuck is that dude, I swear to God man, I fucking hate you KORENA. You can't even be man enough to answer the fucking phone and talk to me. You're just gonna get another restraining order against me so you can block my phone number, delete me from facebook, just erase me out of your whole life. And I'll make it easy on you, tomorrow I won't exist anymore. So, and it won't make a difference. You go ahead and melt over whoever you want to. And you can be clinging of KANNON all you want. Just remember, I died hating you. And I will haunt you if it's possible. And I'll make sure that my son is happy. Obviously, you think he's happier without his father. You'd rather just hop into a new relationship with somebody else and so you can mess somebody's life up. I loved you, I, I, we had a family, and getting kicked out of my own house, and you kicked, kicked me out of the apartment, and then you leave the apartment. Leave my friends high and dry. And are, I fucking hate you, goodbye."

(Playing voicemail from phone-Tuesday 11:27 PM) "I hate you. Answer your phone. And you could prevent what I'm about to do if you'd just answer your phone. I'm gonna give you until midnight and that's that. If not, you know, I hope being dead's happier. And I hope that you die from an STD from some other guy. 'Cause what you done is ridiculous and that's what you deserve. Yes, I know I'm

being disrespectful by giving you all these calls, but all I want to do is talk to you, and, uh, yeah. Fucking answer your phone." (Playing voicemail from phone)
Tuesday 11:44 PM "I'm heading over to BRITTANY's house right now. I'll see you over there in a little bit. You can't answer the fucking phone, I'll talk to you in person."

1 BY MR. REES:

2 Q Korena, had Brad Morgan used threats like this,
3 threats of suicide, against you in the past?

4 A All the time. That's why when I got these voice
5 mails, I just brushed it off like it was nothing.

6 Q I understand that there was an incident in
7 December, was it, where he had specifically said that his
8 feet were sliding off the building?

9 A That wasn't in December.

10 Q When was that?

11 A That was in like August.

12 Q Do you remember what that call was?

13 A Yeah. Uhm, he had done a visit with Kannon,
14 Kannon was only like a couple of weeks old. And after the
15 visit, that's when I had the first restraining order. And
16 that restraining order had it to where we can still talk,
17 but over the phone and set up visitation and talk about our
18 son. So I had texted him and told him to call me so that we
19 could set up an actual time and day to do the visitation,
20 instead of just being random, spur of the moment, today is a
21 good day, tomorrow is not or whatever.

22 So, he called, and our conversation ended up
23 turning into why we broke up and why everything happened the
24 way it did. And then we started arguing, so I hung up on
25 him. He called me back saying he was standing on the

1 overpass over a bunch of cars on a bridge or whatever, and
2 that his feet were slipping, and the phone went totally
3 dead. And I tried calling him back, because I thought he
4 actually killed himself. And then he called -- I finally
5 got a hold of him again, and he said that the phone -- the
6 battery just died.

7 Q You told the detective who interviewed you that
8 you wanted to send a message out to the police officers that
9 shot Brad; is that right?

10 A Yeah.

11 Q What's the message?

12 A I just want to talk to them, because I know that
13 they have to have issues, that they shot somebody, and they
14 probably feel bad about it or something. And I don't want
15 them to have bad feelings about it, because, clearly, Brad
16 wanted to die. Clearly, Brad wanted to commit suicide
17 himself, but Brad didn't have the heart to do it himself.
18 He didn't have the guts to jump off a building, to shoot
19 himself or do anything. So he had to find a way to get
20 somebody else to do it for him.

21 He wanted attention. I don't think he thought
22 that the cops were actually going to shoot him. He probably
23 thought he was just going to be an attention grabber, get
24 some attention, get some sympathy, and get me back. But he
25 made a stupid decision, and had a fake gun on him and got

1 shot, and it's his fault. Clearly, if he didn't want to get
2 shot, he would told the cops he didn't have a gun in his
3 pocket if hed a fake one, whatever, and told them to come
4 get it themselves, and not pull it out and wave it in front
5 of a cop, not point it at a cop. That's just plain out
6 stupid.

7 MR. REES: Are there any questions?

8 GRAND JUROR: So let me get this straight, so
9 you had a restraining order on him; right?

10 THE WITNESS: Uh-huh.

11 GRAND JUROR: The restraining order said he
12 could have Kannon Tuesdays and Thursdays from 3:00 to
13 7:00?

14 THE WITNESS: Uh-huh.

15 GRAND JUROR: But Brad had Kannon Mondays and
16 Wednesdays from like 7:00 to 7:00?

17 THE WITNESS: Okay. So CSD had told me to go
18 get the restraining order, and not let Brad have
19 absolutely any kind of visitation whatsoever with
20 Kannon. I went against that, because of -- the reason
21 I got the restraining order is because Brad and I woke
22 up at like 7:00 in the morning with Kannon because he
23 was screaming, he was teething, poopy, I don't even
24 know, don't even remember. But it was for -- the baby
25 woke up, woke Brad up. And all Brad could say was, "I

1 just want to sleep," and he started being rude towards
2 me, told the baby to shut up.

3 And so I defended my son, and I got -- told
4 Brad off, told him he needed to stop, and the argument
5 led to him pushing me while I had my son in my arms.
6 So I tried going to call the police, he hung up my
7 phone. I tried calling them four times -- the police,
8 twice on my phone in the apartment, he wouldn't let me
9 call from the apartment, so I weaseled my way out the
10 door.

11 I went to the farmer's market next door to my
12 house and tried to call, he followed me in there and
13 hung up the receiver. So, I ran back outside, went to
14 the pay phone that was right across the street, used
15 the pay phone, he hung that up. And luckily there
16 happened to be a sheriff driving by, so I flagged down
17 a sheriff.

18 GRAND JUROR: Okay. Did he hit you?

19 THE WITNESS: He pushed me into the door.

20 GRAND JUROR: Uh-huh.

21 THE WITNESS: And he also shoved me while I
22 had my son in my arms into the closet.

23 GRAND JUROR: Did he ever hit you?

24 THE WITNESS: He never actually hit me, no.
25 But I wasn't going to let it get to that.

1 GRAND JUROR: Right.

2 THE WITNESS: Our arguments usually are
3 arguing fights, screaming at each other. He is
4 throwing stuff around, almost hit me while I was
5 pregnant. That's when I should have drawn the line.
6 Every time we had a fight, it got worse. And I
7 couldn't take the chance of our next fight and him
8 beating the daylights out of me. He pushed me while I
9 had my son in my arms. What was I supposed to do, sit
10 there and let it keep happening?

11 MR REES: Okay. All right. Thank you, very
12 much, Korena.

13

14 (Whereupon, Grand Jury adjourned at 11:45
15 a.m.)

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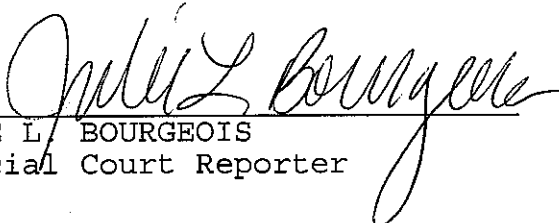
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1 STATE OF OREGON)
) ss.
2 County of Multnomah)

3 I, JULIE L. BOURGEOIS, an Official Court Reporter
4 for the Multnomah County Circuit Court, hereby certify that
5 I reported in stenotype the foregoing testimony and
6 proceedings had in the aforementioned case; that thereafter
7 my notes were reduced to typewriting under my direction, and
8 that the foregoing transcript, consisting of 64 pages, is a
9 true and correct transcript of said oral proceedings.

10 Witness my hand in Portland, Oregon, this 14th day
11 of February, 2012.

12
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14 
15 JULIE L. BOURGEOIS
 Official Court Reporter
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1 IN THE MATTER OF THE INVESTIGATION)
2 OF THE DEATH OF) MULTNOMAH COUNTY
3 BRADLEY LEE MORGAN,) DISTRICT ATTORNEY'S
4 Deceased.) OFFICE NO. 2236553-1
5) PORTLAND POLICE
6) NO. 12-7018
7) GRAND JURY CASE

8 VOLUME 2

9
10 GRAND JURY NO. 2 PROCEEDINGS

11 The Grand Jury No. 2 hearings conducted on
12 Tuesday February 14, 2012, were transcribed by Official
13 Court Reporter.

14
15
16
17 APPEARANCES:

18 Conducting the examination: Deputy District Attorney
19 Donald Rees.

20
21
22
23 Estelle T. Keating
24 Official Court Reporter
25 1021 S.W. Fourth, Room 420
Portland, Oregon 97204

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I N D E X

James Nett	66
James Richardson	97
Leland Samuelson	117
John Myers	137
Timothy Nathan Hoerauf	151

1 FEBRUARY 14, 2012, 8:30 A.M.

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

3 JAMES NETT,

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

7 EXAMINATION

8 BY MR. REES:

9 Q Please state your name, spell your first and
10 last name.

11 A My name is James, last name is Nett. N, as
12 in Nancy, E-T-T.

13 Q And what's your occupation?

14 A I'm a police officer for the City of
15 Portland.

16 Q How long have you been a police Officer?

17 A I have been a police officer City of
18 Portland, this is my 11th year. Prior to that I was an
19 Officer with the Great Falls Police Department in Great
20 Falls, Montana.

21 Q What's your current assignment?

22 A My current assignment is uniform patrol,
23 North Precinct, night shift.

24 Q And were you working on January 25th, 2012?

25 A Yes, I was.

1 Q And did you respond to a call regarding a
2 suicidal subject at 318 S.W. Morrison Street?

3 A Yes, I did.

4 Q Where were you when you received that call?

5 A I was up in North Portland. I worked the
6 area around St. Johns. And so I was covering on a call
7 where we had pursued a vehicle, a stolen vehicle, and
8 it had crashed into a garage. The subject had bailed
9 from the car and left the car in motion, and he had --
10 the pilotless vehicle had gone into the side of a
11 garage. I was at N. Haven Avenue and Butler, in that
12 area around the University of Portland area.

13 Q And why were you called to downtown Portland
14 then?

15 A The Sergeant on the scene had put out a
16 city-wide request for an Officer with an AR-15 rifle to
17 come downtown to Central Precinct to assist.

18 Q All right. And what was your understanding
19 of why that request was being made?

20 A At the beginning, it was just the request for
21 the tool that I had. They said they were on a parking
22 garage with a potentially despondent subject, who had
23 said he had committed several robberies. It was very
24 sketchy. You don't get a whole lot. First the service
25 or the tool announcement comes out, and then they try

1 to feed you more as you are going there.

2 Q You have special training and certification
3 to carry the AR-15 rifle, correct?

4 A Yes.

5 Q And so you drove to the downtown location?

6 A Yes, I did.

7 Q If you could use the photograph behind you.
8 Why don't you show the Grand Jury where you arrived and
9 where you positioned yourself?

10 A Let me orient myself to the picture. Okay.
11 I came from -- I came across the St. Johns Bridge and
12 down essentially Front, past, oh -- past Station 8, the
13 fireboat station, everything that way, if you are
14 familiar with the Front Street area. I came in under
15 the bridge, switched my radio to Central Net, told them
16 I was arriving in the area and to have someone, the
17 central officers, talk me in, which is the safe route
18 in. They advised that I could come up Morrison, and it
19 was between Three and Four.

20 So I came up Morrison. This is Morrison
21 right here, I think, right? Yeah. Four, Three,
22 Morrison. Okay.

23 Q That's on the southern -- you are indicating
24 on the south side of Morrison?

25 A This is Third Avenue. This is Fourth Avenue

1 side, and this is Morrison.

2 Q Morrison then, I think we are all agreeing,
3 is the southern-most street there?

4 A Morrison up, Yamhill down, that's the way you
5 want to avoid the trains.

6 Q Tell us about your approach.

7 A I approached to the Third Avenue side. There
8 was a Central Precinct Officer there. I parked my car
9 on Third Avenue, started to get my gear out, put my
10 coat on. I knew I was going to need certain things. I
11 pulled my rifle out of my rack in the car, and he said,
12 "Oh, it's up on the top floor. You don't want to walk
13 it." He directed me to which entryway on the Third
14 Avenue side to go in. He said, "Go all the way to the
15 top."

16 So I drove all the way up, and then I ended
17 up coming around to the top end. And this is my car
18 right here (indicating on photo).

19 Q So, you parked your car there, which is on
20 the, I guess, Taylor side or the north side of the
21 parking structure?

22 A Correct.

23 Q And where did you go from there?

24 A So I exited my vehicle. Let me get on this
25 side; it's a little easier so I don't have to go back to

1 everybody.

2 So I exited my vehicle, adjusted, made sure
3 all my gear is tucked in like my coat. I had my rifle
4 slung over my coat and everything, positioned my rifle
5 in a downward position and just made it was just
6 slinging straight down so it wasn't super obvious.

7 And then I started to walk up in a -- it
8 would be more of a southerly direction. And one of the
9 officers -- and later when I got closer to him, I
10 realized it was Sergeant Holbrook -- came back and met
11 me about here. And he kind of briefed me on what was
12 going on.

13 Q All right. And what -- what did he tell you
14 was happening?

15 A Well, as I exited my car, I could see the two
16 of them talking. I could see a subject standing up
17 here on the top of this elevator tower, whatever it is.

18 Q When you say "the two of them," who would
19 that be?

20 A It was Sergeant Holbrook and who I later
21 found out who it was, it was Officer Scott.

22 Q And could you see -- you said you saw the two
23 of them. Could you see the subject that they were
24 talking to?

25 A I could. He was elevated. So he was very

1 easy to see as far as position-wise, because he's about ,
2 ten to twelve feet above them, but on the same plane.

3 So I'm getting out of my car, walking this
4 way, and I can see they are engaging. They are both
5 facing this way engaging someone.

6 When I approached, Sergeant Holbrook, who was
7 further to the east, turned around and walked back and
8 talked to me.

9 Q All right. And what did he tell you
10 generally was happening?

11 A I told him I was here. I was his rifle. I
12 also advised him I also had a less-lethal shotgun. We
13 had a short discussion about this subject; said he had
14 a knife and he had committed robberies is what he was
15 saying and what he had said on the phone. So we had
16 kind of passed the beanbag route.

17 And then Sergeant Holbrook expressed to me he
18 was making subjects about wanting to hurt them, so we
19 decided the rifle was going to be the better tool than
20 the beanbag.

21 Q All right. And so where did you go after
22 that conversation?

23 A We had another discussion as to
24 position-wise. They were far apart. They were
25 probably -- Officer Scott was closer to the wall on the

1 Fourth Street side, and Sergeant Holbrook was probably
2 14 or 15 feet or so to his left. And we talked about
3 my position with the rifle. I didn't want to be
4 shooting between them if I had to take a shot.

5 So we talked about what my backstop
6 potentially could be and where I would like to be on
7 almost the same plane or the same line that they were.
8 I didn't want to be behind them.

9 So, we had a discussion about the impact of
10 the rifle and how sometimes it can be an antagonistic
11 thing to certain people. So we decided to not bring it
12 up, but to put me over further to the east, behind this
13 concrete pillar right here. And that if they moved
14 closer together, that would give me a angular shot,
15 where I wouldn't be shooting between them and they
16 would be far enough to the west that they would be safe
17 if I had to take a shot.

18 Q All right. You can resume your seat. But
19 you were indicating that you took a position at the
20 center of the building, essentially, which is the ramp
21 for cars?

22 A This would be the down, the downward ramp,
23 the downward red ramp. And I was right at that -- it's
24 about a 14 by 14 concrete pillar, about five feet high.

25 Q And that's multiple car lengths away from

1 where the subject was, right?

2 A Correct.

3 Q You did not fire any shots during this
4 incident, correct?

5 A Correct.

6 Q What was your purpose of being in that
7 position with a rifle?

8 A My position with a rifle is it's more
9 accurate fire at a longer distance, a much faster
10 round, a much more precise round. It's a round that
11 works against body armor. And my job, I was there to
12 cover the two people that were actively engaged in
13 dialogue with the subject. They were trying to engage
14 him and trying to talk to him and figure out why he was
15 there and what needs we could meet at that time. And
16 my job was kind of an overview, as a -- as a protective
17 cover, per se.

18 Q And if you could explain, Sergeant Holbrook
19 and Officer Scott, who were speaking to the subject,
20 Brad Morgan, is this correct that they did not have
21 their firearms out while they were talking to him?

22 A Correct. Up until just right before the
23 event happened, the entire time-frame during -- when I
24 walked up and when they were there talking to him,
25 engaged, did not have their firearms. They were

1 holstered. When I set up in my position and Sergeant
2 Holbrook went back to Officer Scott and got close to
3 him more on the west side, they still had their weapons
4 holstered.

5 Q All right. And so you were in that position
6 just in case something bad happened, since they didn't
7 have their guns out, that you would be prepared, if
8 necessary; is that correct?

9 A Yes.

10 Q What was the lighting like at that time of
11 the morning up there on the top of the parking
12 structure?

13 A It's downtown lighting, but it's downtown
14 lighting ten floors up, eleven floors up. So if you
15 think about downtown, most people who experience
16 downtown, everything is lit from above shining down if
17 you are on the street.

18 If you are ten floors up, the lighting is all
19 ambient, far-away lighting. It's reflective neon on
20 edges of buildings. It's business buildings where the
21 janitors are on, and you get a little bit of light, but
22 it's not projected light. It's light that you can see.

23 And then in the parking garage, all the
24 lights in the parking garage are basically
25 straight-down lighting to light the surface where your

1 car is, not for you to look up past the lighting.

2 Q And so from your perspective, what was the
3 lighting on this person, Brad Morgan? As I understand,
4 in addition there were some spotlights placed on him,
5 right?

6 A Correct. Let me show you. It will be easier
7 here. The car in front of my vehicle has a spotlight
8 on the driver's door. It was shining this direction.
9 And there's a car here, on the south -- I'm sorry, all
10 turned around here -- southeast corner, and it was
11 shining this way across the subject.

12 And I recall when I was looking around, that
13 the light from the car on the southeast corner created
14 a giant shadow on the building to the west. So that
15 the subject, when he was talking and moving, I was
16 seeing out of my peripheral vision a giant shadow of
17 him being cast on the back of that building from this
18 car's spotlight.

19 Q So, you described the lighting to Detectives
20 as difficult or different. And, in summary, what does
21 that mean?

22 A Heavily shadowed. There was ambient light,
23 but it's not light that -- you could see things right
24 in front of you. They were dimly lit, but there was
25 big contrasting light. And you have two spotlights

1 coming at 90-degree angles from each other creating,
2 casting shadows. And then he -- the subject is above
3 all the parking lot lights, because he's on top of a
4 parapet, if you would, that's not supposed to be lit.
5 It's supposed to be intentionally dark up there. So
6 it's difficult to see. And we're looking up through
7 lights. And what we're seeing past the subject is
8 either a shadow in our peripheral vision or back-lit
9 buildings that are blocks away, that you are seeing off
10 in the distance.

11 Q After you took your position that you
12 indicated back away from the elevator shaft tower, did
13 Sergeant Holbrook return to the spot next to Officer
14 Scott to continue talking to this subject?

15 A Yes.

16 Q Could you hear anything that was being said?

17 A Yes.

18 Q And do you recall anything that was said?

19 A I could hear bits of dialogue. The first --
20 the first bits of dialogue were very soft. The cadence
21 was easy, more conversational. It wasn't loud, so I
22 had to struggle to hear it.

23 My job with the rifle, my job is to kind of
24 oversee the entire event and what's happening for
25 safety-wise. So I'm listening, I'm looking, and I'm

1 hearing bits and pieces, because the conversation is
2 fairly soft. I'm hearing pieces of, "We're here to
3 help you. What can we do to help?" These aren't exact
4 quotes, but these are the general tenor of the
5 conversation from Sergeant Holbrook and Officer Scott.

6 And the responses from the subject were, you
7 know, "You can't help me." But they were -- he was
8 relaxed. He was kind of leaned over. He wasn't
9 moving. He was standing still.

10 Q Did you notice anything else about what the
11 subject was doing?

12 A He was only -- what caught my attention to
13 him and what drew a lot of my focus is he had his right
14 hand buried in a coat pocket. He had an outer coat and
15 then his backpack over the coat. And so when he was
16 talking, he was only dialoguing with one hand.

17 Q You are gesturing?

18 A With his left hand, I'm sorry.

19 Q His right hand --

20 A His right hand, I had more of a side profile,
21 a right-side profile of the subject from my position,
22 so that was the arm closest to me. And that hand
23 remained -- I don't think I ever saw him remove it.
24 Any time that I was there his right hand was in that
25 pocket. And when he would gesture and talk, even

1 though it was a soft gesture or a hand movement, he was
2 only making it with his left hand.

3 Q All right. And I see you have estimated your
4 distance to be about 65 to 75 feet away from the
5 subject at that time?

6 A Yes.

7 Q As you are watching then, what do you see
8 happen?

9 A As I'm -- as I'm watching, the tenor of the
10 conversation -- first of all, I notice his hand, his
11 right hand, stays in the pocket, which instantly
12 flagged my attention, that that's not normal
13 conversational. Even people who are upset, emotional
14 people, will use both hands to emphasize when they are
15 trying to get a point across, especially if you are on
16 the tenth floor of a parking garage, making statements,
17 you are emoting a lot of things. And I have been in
18 situations with suicidal people on bridges before, on
19 the St. Johns Bridge in particular, and they are moving
20 both hands. They are trying to tell you how they are
21 feeling. They are making big, sweeping motions to get
22 the point across that this is how I'm feeling. Either
23 they are pointing to their chest or they are pushing
24 "stay back", and both hands are involved.

25 His right-hand is buried in that pocket, and

1 he's only doing any kind of additional movement with
2 that left-hand.

3 Q All right. And what happens from there?

4 A So, the volume tempo increases. So the
5 volume, I can now hear a lot more of the subject's
6 conversation between Officer Holbrook, Officer Scott.
7 I don't know if the exact phraseology is right, but
8 it's "I'm going to kill you." And it's more -- there
9 is more emotion behind it. There is more dynamic
10 behind it. And Officer Scott very calmly, "Why would
11 you want to kill us? We're here to help you," trying
12 to bring it down. And, you know, not necessarily not
13 you, but I'm going to kill what you represent.

14 Q Just to be clear for the record, this -- this
15 is the subject saying --

16 A This is the subject saying this to Officer
17 Scott and Sergeant Holbrook.

18 And now he's starting to move. Because I'm
19 watching him through the front sight of my rifle. He
20 is now starting to move forward-to-back in his
21 orientation, which would be -- so we get this right
22 here, he is moving towards Officer Scott and Sergeant
23 Holbrook and then back. So he is moving, taking a
24 couple steps this way and then a step or two back this
25 way, as he is getting a little more agitated. So he is

1 moving north to south in just a few steps. So that's
2 changing my orientation to him through my sights.

3 But the whole time he's moving, increasing
4 his volume, the rapidity of his words, he is saying the
5 same thing about -- he said that, "I am going to kill
6 you. It's not you necessarily, but what you
7 represent" -- multiple times, emotion and volume, the
8 hands moving a little more. And so it's obviously
9 he's -- he's spinning up. He's now standing upright.
10 He's got a lot of force behind his volume and his body
11 language.

12 Q And what do you hear after that and see?

13 A I'm -- I'm watching him. His arm pushes
14 down, and he is making these statements about killing
15 -- "I'm going to hurt and kill you." It's not you.
16 It's what you represent. I'll be okay." And he is
17 tossing these phrases out there that are now starting
18 to make sense. They are kind of strung along, some
19 real passion behind them. I didn't hear exactly what
20 it was, but I hear Officer Scott or Sergeant Holbrook,
21 I don't know who it was, say, "No, don't do it." He
22 must have made some sort of mention of something,
23 because out of my peripheral vision and hearing, I can
24 hear that now Sergeant Holbrook and Officer Scott,
25 their volume, there is some -- "Hey, don't do it.

1 Don't do it." They are serious. They are trying like,
2 "Don't do something dumb. Just continue to talk with
3 us."

4 They are giving commands now. And I can hear
5 both of them draw. These plastic holsters that we are
6 issued have a very distinct sound when the -- when you
7 pop this open, you can hear it. And then when you
8 draw, the gun comes out, there is a distinct -- we call
9 it "the bucket". You can hear a firearm come out of
10 the bucket.

11 And I'm watching the subject over my front
12 sight, and I can hear them, "No, don't do it. Don't do
13 it." I'm watching the subject's hand ratchet, like he
14 is trying to reach for something in his right coat
15 pocket that I can see. And he pushes down. I can see
16 the coat pocket kind of sag more to the right. And
17 I -- about the same time I'm hearing them say, "No, no,
18 no," that hand is still buried in there.

19 I hear the buckets, that snap from the
20 overloop, and I can hear the plastic bucket scoop and I
21 know they are drawing. I can't see them drawing,
22 because I'm focused over my front sight, but I can hear
23 them drawing.

24 And just about the time I hear them draw,
25 the -- and it -- they are clearing, I can hear the

1 sound -- his arm starts -- his elbow starts to come in
2 an upward motion. So he is trying to remove his hand.
3 His hand is coming out now. And I'm watching. And you
4 can hear. It's really spun up now. And it's going
5 very fast. I hear the buckets, and I hear the snap. I
6 know they are drawing. They are saying, "No, no, no."
7 I'm watching his hand come up.

8 And all of a sudden I see something in his
9 hand. His fist is gripped and it's around something
10 black. And it's starting to clear the coat pocket.
11 And he is still kind of moving, and he is very
12 animated.

13 And I have a basic side profile shot, maybe a
14 little bit of his chest in plain view. And then I see
15 what's black. I can't guarantee it's a gun, but it's
16 gun shaped. It's black. He clears the pocket and
17 starts to push it forward in the direction of Sergeant
18 Holbrook and Officer Scott.

19 Q And you are indicating with your hand. Was
20 he holding the black object in a manner consistent with
21 a gun?

22 A It was consistent. It was coming out. He
23 was gripping it. He was reaching downward into a
24 pocket. When he came out, his grip and palm looked
25 consistent -- his fist was closed. I couldn't see any

1 fingers. He cleared the pocket of the coat. It was a
2 black gun-shaped object. And then he pushed it out in
3 a manner that would be consistent of holding a gun and
4 starting to bring it to bare towards an object you are
5 going to shoot.

6 Q And you are gesturing with your --

7 A Right hand.

8 Q -- right arm extended straight out from your
9 body?

10 A Yes.

11 Q Pointed outwards as if to point a gun.

12 A He didn't have to raise it that far due to
13 his elevated position. He is maybe 17, 18 feet from
14 Sergeant Holbrook and Officer Scott. And he's got ten
15 to twelve feet of elevation. So he doesn't have to
16 raise the gun potentially all that high to aim at
17 Sergeant Holbrook.

18 Q Because they are below him?

19 A Because they are below him.

20 Q And so what -- of course, this is happening
21 in a matter of seconds?

22 A Fraction of a second.

23 Q Or fractions of seconds. You have taken a
24 lot longer to explain what you are seeing than it
25 actually happened. What's going through your mind when

1 you are seeing, hearing these things?

2 A I am thinking that he has -- I can hear it.
3 I'm hearing Sergeant Holbrook and Officer Scott, their
4 voices start to escalate. I know I'm missing part of
5 the puzzle here because I'm on the outside and I'm far
6 away. But they are saying, "No, no, no, no." They are
7 escalating and he -- Sergeant Holbrook had mentioned to
8 me the subject had made statements about killing them,
9 wanting to hurt them. And in the back of my head, I
10 have seen this hand in this pocket this long time, this
11 long time. He hasn't moved his right-hand from his
12 coat pocket. And when I hear their voices, Sergeant
13 Holbrook and Officer Scott's voices start to escalate
14 and their cadence start to change and go more toward
15 command and I hear the buckets and the snap come out of
16 the holsters, I'm very focused on my front sight.

17 I know what my job is. I'm there to protect
18 them. They are at the point where they are drawing
19 their weapons, and I'm very focused. My front sight
20 and my sight aperture is right on the subject. But
21 he's moving, and my backstop in that direction, I had a
22 very narrow window to shoot, because my upward angle
23 and my down-range angle was the side of the Hilton
24 Hotel.

25 Q And what was your concern about that?

1 A I have a weapon system that goes three times
2 farther than a pistol and is traveling almost three
3 times as fast as their pistol rounds.

4 Q Did you assume that there would potentially
5 be people inside of the Hilton?

6 A I assumed -- it's the downtown hotel -- that
7 any of those windows that as he was shifting -- the
8 corner of the Hiltons, if you are familiar with the
9 Hilton building, they have a corner cap each side.
10 It's concrete. And it goes out about -- if you looked
11 at it, the corner's rounded, about ten to twelve feet
12 either side of the corner is hardened concrete.
13 Immediately on either sides of those corners are guest
14 room windows, multiple floor levels of guest room
15 windows.

16 Q So, did that prevent you from firing your
17 rifle?

18 A Yes. At the moment, yes.

19 Q If that backdrop had been different, would
20 you have fired your rifle?

21 A Yes.

22 Q And can you explain why you would have done
23 that?

24 A Because I have to account for not just my
25 target and my job to defend Officer Scott and Sergeant

1 Holbrook and I'm there for them, I have to account for
2 the public at whole. And I have to account for that
3 round and where it goes. Even if I hit the subject, if
4 it goes through him, I have to account for that round
5 and what the potential damage could happen after that
6 round goes through my job.

7 Q All right. I think you are explaining why
8 you didn't fire?

9 A Uh-hum.

10 Q If the backdrop had been different, I believe
11 you said you would have fired?

12 A Yes.

13 Q So, the question is why would you have fired
14 your rifle if you believed the backdrop was safe?

15 A Because of the totality of the circumstances.
16 The officers I was engaged to protect had made contact
17 with this individual. I was watching the entire
18 situation spin and spin and spin up. The subject was
19 exhibiting behaviors -- as I mentioned earlier, that
20 right hand is buried in his coat pocket, is very
21 inconsistent with other people in mental health crisis
22 that tried to explain themselves. That hand had its
23 own agenda, and I was watching that person.

24 And at the point that he starts to pull out
25 something black that's weapon-shaped and the downward

1 angle, he doesn't have to raise his weapon up to get to
2 a plane with them. All he has to do is clear that
3 pocket and stick that thing out, and he could almost
4 hip point it, given the downward angle, I would have
5 shot. He could have potentially even shot through that
6 coat, just by lifting that thing, his coat, towards
7 them.

8 But at the point that he ratchets down into
9 that coat, pulls out in a pistol grip a black
10 pistol-shaped object and starts to push it towards the
11 officers I am assigned to protect, I would have -- if I
12 had had a solid concrete backstop, say another concrete
13 parking garage, yeah, I would have taken the shot.

14 Q You did not fire.

15 A I did not.

16 Q So what did you see and hear happen then at
17 that moment?

18 A Right at the moment that the gun-shaped
19 object came out, right as I was watching my backstop
20 change from concrete to windows, I heard pop, and then
21 I think three more -- I think I heard a total of four
22 shots in very rapid succession. I was still looking
23 through my sights.

24 After the second or third shot, the subject
25 fell. And the subject was standing on that elevator

1 shaft cover. And I could only see him from about the
2 knees up. He had a concrete ledge -- he was already
3 elevated above me, but then he had a concrete lip that
4 stood up. So I could only see him from about the knees
5 up.

6 So after the string of shots from Officer
7 Scott and Sergeant Holbrook, the subject fell and was
8 gone from my vision.

9 Q I take it that because you were looking
10 through your rifle sight, you did not see who was
11 firing the shots?

12 A I did not.

13 Q After the subject then dropped from your
14 view, were you ever able to see him again?

15 A No.

16 Q What's your estimation of time from your
17 arrival on the top of this parking garage to the moment
18 when the shots were fired?

19 A Maybe four minutes.

20 Q All right. Any questions about that?

21 JUROR: Officer Nett, from your
22 advantage, you were still looking up at him?

23 A Yes, I was looking up.

24 Q The distance between you and the defendant
25 was how far?

1 A I want to say about 75 feet. But I had an
2 upward angle.

3 Q And could you see the muzzle blast of both
4 the officers?

5 A I could not. I was --

6 Q So you didn't know which one -- I mean, you
7 even by listening couldn't tell if one or both of them
8 had shot? You just heard?

9 A I knew the officers when they re-engaged
10 after Sergeant Holbrook and I had had our discussion
11 about Sergeant Holbrook and Officer Scott moving closer
12 to give me a much larger margin of safety, they were
13 probably within four feet of each other standing side
14 by side. So I couldn't tell who was firing, couldn't
15 see muzzle blasts or anything like that, no.

16 Q How far exactly do you think they were,
17 17 feet away, approximately, shooting up?

18 A In that range. I'm guessing they were
19 probably 17 to 18 feet away from the subject when they
20 fired.

21 BY MR. REES:

22 Q And maybe, Officer Nett, just so we're clear,
23 maybe you could just show us again on the photo where
24 you were, where Officer Scott and Holbrook were
25 generally and where the subject was at the time of the

1 shooting?

2 A Right here by this yellow dot and the No. 4
3 was where the subject would have been standing.

4 Q You are indicating the top of elevator shaft?

5 A The top of the elevator shaft.

6 Q All right. And Sergeant Holbrook and Officer
7 Scott were to the north of him. And Officer Scott was
8 closest to the Fourth Street side along the concrete
9 wall, edge of the parking garage. Sergeant Holbrook
10 was probably about four feet to his left. And they
11 were probably within an arm's distance of this concrete
12 wall right here that runs along this upper edge. And I
13 was back here at this corner post of the downward ramp,
14 right there.

15 MR. REES: Is that clear for you?

16 JUROR: Very good. Thank you.

17 JUROR: Officer Nett, maybe I did not
18 hear you, but with the ambient lighting and the
19 lighting from the police vehicles, so that gave you the
20 vision of a black object, even though it was black?
21 I'm trying to -- I'm trying to picture you being at the
22 place where you are at, that you showed on the
23 picture --

24 A Yes.

25 Q -- and that angle that you have and with the

1 lighting the way that it was, I'm just trying to get a
2 picture of --

3 A This --

4 Q -- how clear --

5 A This car's spotlight is shining straight on
6 his right-hand side.

7 Q Okay.

8 A This is the car spotlight that's creating,
9 casting a giant shadow. So the right-hand side of the
10 subject is my best lit side.

11 Q Okay.

12 A So this is the one that I look over off my
13 peripheral vision and look over here and I see a giant
14 30-foot shadow outline of the subject kind of on this.

15 Q Okay.

16 A Like if you do the shadow thing with the
17 lamp?

18 Q Right.

19 A Just a super-enlarged version. So the
20 spotlight here, I have got the entire right-hand side
21 of the subject on top of this thing, all his whole
22 right side is illuminated.

23 BY MR. REES:

24 Q For the record, you were indicating a patrol
25 car that's parked on the Morrison Street side to the

1 east of the subject?

2 A Yes.

3 MR. REES: Anything else?

4 JUROR: So, he was wearing a black
5 jacket?

6 A I don't recall what color the jacket was, to
7 be honest, ma'am. I could see it was a contrasting
8 color compared to the black. I don't recall exactly
9 what color jacket he had. But with this spotlight on,
10 I could see it come out. And it was gun shaped and
11 black in comparison to a white hand. It wasn't a
12 steel-colored gun. If it was a metallic gun, I would
13 have seen reflection. I was a black gun-shaped object
14 coming out of his coat pocket.

15 Q And so the two police officers, how much of
16 their bodies were showing over the wall that they were
17 standing behind?

18 A From my angle, that's really hard to tell.
19 Officer Scott -- have you met Officer Scott yet?
20 Officer Scott is a large individual, much larger than I
21 am height-wise. So I don't know exactly how much of
22 their body. And are you talking about how much of
23 their body --

24 Q Is showing?

25 A -- from this person's vantage point?

1 Q Yeah.

2 A Ma'am, I have no idea. I was never at that
3 point, so I couldn't tell you.

4 Q And how tall is that wall?

5 A Four-and-a-half feet maybe.

6 Q So shorter than we thought originally?

7 A I don't know, ma'am. I'm hazarding a guess.
8 I didn't measure it or anything. I'm just guessing.
9 It's a concrete retaining wall to keep you and your car
10 from going over an edge.

11 Q So then you said the rifle was a better
12 option than a beanbag. What's a beanbag?

13 A It's what's called a less-than-lethal round?
14 It's a -- it's a Kevlar sock filled with lead shot.
15 And it comes out of a shotgun round. It comes out,
16 it's fairly unstable to the point for distance, because
17 it's coming out of a sock. It's got a little tail on
18 it. So imagine -- it's like a beanbag. Imagine a
19 beanbag when you were a kid -- round one, though, not a
20 square one -- with a little bit of a tail on it to help
21 it stabilize in flight. And they are good for -- oh,
22 we're taught that the maximum distance is, you know,
23 about 20 yards is about the maximum distance. The
24 further out they go, the less accurate they are.

25 And they are used to -- they are used to

1 engage someone who might be a threat. Let's say
 2 someone has a broken beer bottle and they want to
 3 challenge us, they don't want to comply, "Hey, put the
 4 beer bottle down. We don't want to fight with you; do
 5 what we ask." "I'm not going to do what you ask," the
 6 other person says. "Hey" -- and we are taught as
 7 beanbag operators, "Okay I'm going to give you a
 8 command to do this," but it's not necessarily used in
 9 deadly force situations. It's for in a situation where
 10 potentially we want to try and gain compliance and not
 11 hurt the person. They are far enough away, I am behind
 12 a car and I can deliver -- it would be like getting hit
 13 with a golf-ball sized object, about the same weight,
 14 little over an ounce, coming at you about a hundred
 15 miles a hour. But when it hits you, it's going to
 16 deform a little bit. It's going to cause some pain.
 17 But they are not always effective, because given the
 18 thickness of the clothing you are wearing and the
 19 distance we're firing it, it's a rapidly depleting
 20 energy object. Does that make sense?

21 So the further you are away -- if I shot
 22 someone with a beanbag round or less-than-lethal round
 23 at 30 feet, it's going to deliver quite a bit of impact
 24 and it's going to make you hopefully comply with, "Put
 25 the broken beer bottle down."

1 The more I back up and go away, one, the less
2 accurate I'm going to be. And, two, it's going to lose
3 its energy. It's going to loose its ability to
4 encourage you to drop the broken beer bottle. Does
5 that make sense?

6 Q Yeah. So there wasn't enough time to kind of
7 get closer to do that option?

8 A And that was the conversation that Sergeant
9 Holbrook and I had about bringing up an additional
10 weapon system to a person who is going to maybe see
11 that as maybe that's the challenge that's going to make
12 them commit to an act.

13 BY MR. REES:

14 Q Well, was the factor also that there was an
15 indication this person had a gun?

16 A I hadn't heard much about the gun, but he had
17 mentioned he had committed a robbery and he at least
18 had mentioned he'd had a knife. And so --

19 Q Well, let me ask it another way. Did
20 Sergeant Holbrook indicate to you why he didn't think
21 that it would be appropriate to use this beanbag round
22 at that time?

23 A Sergeant Holbrook said he had mentioned that
24 he wanted to try to kill officers. He had mentioned he
25 committed a robbery earlier in the evening and that

1 given the potential that he had some sort of weapon
2 system to involve himself in a robbery and his intent
3 and his vocalized decision that he wanted to try to
4 kill officers that we had gone past the beanbag, we had
5 kind of skipped that -- if you will, skipped that tool
6 and gone onto the next tool.

7 Q Okay. So the Sergeant indicated to you,
8 based on what he had determined up to that point by the
9 time you arrived --

10 A Yes.

11 Q -- that he wanted you to use the rifle for
12 cover?

13 A Correct. He had been on the scene much
14 longer. He had dialogued with the subject. I never
15 dialogued with the subject. So I was going that he was
16 the expert at the scene. I was a tool. We had the
17 discussion. We talked about the specifics of what my
18 tool could do, and then I went where he wanted me to
19 go.

20 MR. REES: All right. Is there anything
21 else from the Grand Jury?

22 * * * * *

23

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25

JAMES RICHARDSON,

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

EXAMINATION

BY MR. REES:

Q Officer, for the record, could you please state your first and last name and spell your first and last name?

A James Richardson, J-A-M-E-S, R-I-C-H-A-R-D-S-O-N.

Q How are you employed?

A Through the Portland Police Bureau as a patrol Officer.

Q How long have you been a police officer?

A Seventeen years.

Q And what's your current assignment?

A I patrol Southwest Portland, and I work a night shift.

Q And on January 25th, 2012, you were on duty, correct?

A Correct.

Q And you were working as a field training Officer; is that correct?

A Correct.

1 Q So what does that mean?

2 A So I train new recruits that are going to be
3 working the streets eventually on their own. So we
4 have a probation period where they will work with a
5 coach.

6 Q And who were you working with that night?

7 A Tim Hoerauf.

8 Q That was the Officer on probation that you
9 were training?

10 A Correct.

11 Q And so he's riding with you in your patrol
12 car?

13 A Correct.

14 Q And did the two of you then respond to a call
15 that came in at about 3:30 that morning?

16 A Yes, we did.

17 Q And what was the information that you got
18 from the call?

19 A The basic information was that the -- there
20 was a subject on top of a parking structure that was
21 going to commit suicide or attempt to commit suicide.
22 He didn't give us a location of the parking structure
23 he was at. He was just on the top of a parking
24 structure. And we basically then had to begin looking
25 to figure out which parking structure he was on.

1 Q And how did you go about doing that?

2 A We were actually the -- the area I patrol is
3 way out in Southwest Portland, kind of like towards
4 Lake Oswego. So when this call came out, we weren't
5 assigned to it. We started just coming downtown to see
6 if we could help out somehow.

7 So there was another Officer that went to the
8 parking structure where he ultimately was at, and he
9 waited for someone else to show up to go with him to
10 check the top. And so we volunteered to go meet up
11 with him and go up as a group to the top floor to see
12 if the subject was up there. And this is Officer Scott
13 that's on the Three and Morrison parking garage.

14 Q All right. As you are driving in from far
15 Southwest Portland to downtown Portland, were you
16 getting any additional updates or additional
17 information about what exactly was happening?

18 A Yeah. There was -- there was an update that
19 the subject could see an officer going around the
20 parking structure below. There was a mention that he
21 had committed a robbery earlier involving a knife.

22 Q All right. And when you arrived in the area
23 of S.W. Morrison in downtown Portland then, where did
24 you go?

25 A So, we entered the parking structure from the

1 Fourth Avenue side. You come in from Fourth Avenue,
2 then you have all the odd-numbered floors. And if you
3 come in from Third, then you have all the even-numbered
4 floors. So we went in off of Fourth Avenue. And
5 Officer Scott was waiting at the seventh floor, which
6 would be just one under the very top. And so we
7 basically entered there, got up to the seventh floor,
8 met up with him.

9 Q Behind you is an aerial photograph of the
10 parking structure you are talking about. Feel free to
11 walk up to the board if you want to show the Grand Jury
12 then where you went.

13 A Okay. So, we would be underneath here. I
14 don't know if everyone can see that. So we would be
15 underneath here where we met up before we came out and
16 then kind of came out this direction.

17 So -- so as we came out, actually our backs
18 are to him, because he is standing up here. So we're
19 going out this way, and we're kind of -- Officer
20 Scott's in front of us in his patrol car and then we're
21 behind in our patrol car. So we're kind of looking
22 back to see if anybody is behind us as he's leading the
23 way. And you are kind of going up, so this is like up
24 and behind you. So it's hard to see anything up on the
25 roof. So this is elevating up so that when you get to

1 about here, then you are pretty close to the same
2 elevation as the roof.

3 And so when he turned around and we came up
4 next to him, I looked across, and then I could see him
5 standing over here.

6 Q When you say "him", you mean the subject --

7 A Correct.

8 Q -- who had called the police?

9 So was that the first time you were actually
10 able to see up on top of the elevator shaft?

11 A Right.

12 Q And from that distance, which is really
13 across the top of the building, were you able to see
14 anything about what the subject was doing?

15 A He was just in this area, and you could see
16 that he was talking on the phone, which would be to
17 our -- most likely our dispatcher, who was relaying the
18 information.

19 Q Did you have an understanding at that time
20 then this subject had been in cell phone contact with
21 the 911 dispatcher for kind of a prolonged period of
22 time?

23 A Correct, because he was relaying how he could
24 see us driving around below looking for him.

25 Q Okay. So, after you realized that you are

1 now seeing this person on top of the elevator shaft,
2 where did you go?

3 A So, Officer Scott was already facing this
4 direction. He went and parked the patrol car here.
5 And I used my patrol car, parked it about here, because
6 we were going to use this light pole as sort of an
7 observation point. He parked here with his door open,
8 and me and my trainee came out and got behind this pole
9 right here.

10 Q All right. And where did you go from there?

11 A So, there is a point where we need to --
12 because he's up here and the street's below, we have to
13 shutdown the streets to protect the citizens. So he is
14 still up there walking, talking, and we're on the
15 radio -- Officer Scott, I should say -- directing in
16 additional police cars to start shutting these streets
17 down so that cars and people can't walk underneath.

18 Q All right.

19 A Ult --

20 Q I'm sorry.

21 A Ultimately, Officer Scott and Sergeant
22 Holbrook, who is now on scene -- I can't specify at
23 what point he arrived on scene.

24 Q But he arrived after you?

25 A Yeah.

1 Q All right.

2 A -- met up, and then they came over -- there
3 is only -- these are two separate levels. So we're on
4 one level, and this is actually not even accessible
5 from our level. So you have to come down this and jump
6 to the -- to the next lower part.

7 Q And you are indicating the northern half of
8 the parking structure, I believe?

9 A Right.

10 Q Because there is two different ramp systems,
11 as you described, that go to every other floor of the
12 building?

13 A Correct. And so there's about a two or three
14 foot difference between this -- this roundabout that
15 takes you back down and out and the eighth -- this
16 would be the eighth floor leading up.

17 Q Okay.

18 A So they made -- they made their way across
19 this we'll call it a roundabout, the exit way out, to
20 the eighth floor, where they met up with Officer
21 Myers -- so there was three of them -- and began to
22 come up over here where they could get closer to more
23 of a conversational distance.

24 Q Sergeant Holbrook was the supervisory officer
25 at the scene, I take it?

1 A Correct.

2 Q And what position did you ultimately get into
3 on top of the structure?

4 A So, my trainee and I were posted up behind
5 this light pole.

6 Q All right.

7 A At some point, when the three -- Officer
8 Myers, Sergeant Holbrook and Officer Scott -- were
9 walking up to get closer to talk, something happened,
10 and Officer Myers was somehow not welcomed. I don't
11 know what had transpired, but he ultimately then had to
12 come back and leave the two of them and came back
13 across and over to us and told me that I needed to
14 switch with him. And I don't know what the exact
15 wordage was that went between the subject and Officer
16 Myers, but he said that I needed to switch. I said,
17 "That's fine."

18 So he then moved over, I believe, to this
19 patrol car. My trainee stayed here behind the pole.
20 And then I came back over and met up with them and
21 regrouped.

22 Q And you are indicating, when you said you
23 regrouped, that would be with Officer Scott and
24 Sergeant Holbrook; is that right?

25 A Correct. And they at this point had gotten

1 to what would be like the ledge of the eighth floor
2 that gets to a dead end with about a three-foot
3 concrete wall that would protect any cars from going
4 off the end of the eighth floor and drop down onto the
5 floor below.

6 Q All right. And were you involved in speaking
7 to the man who was on top of the elevator shaft?

8 A Yes.

9 Q And what -- feel free to sit back down.

10 A Okay.

11 Q What -- what did you say and what did he say?

12 A So, Officer Scott was the primary person that
13 was conversing with the subject. And usually we'll
14 have sort of a designated person that carries most of
15 that conversation and tries to gain a relationship, a
16 rapport with the person.

17 And so during his conversation, he might take
18 a break or run out of something to say or there could
19 be a pause. And so I would step in, and I would -- I
20 would start giving kind of like my offerings. "Hey, we
21 can help." And then Officer Scott has a bit of a lull,
22 a chance, he can regroup, he can think of new things to
23 say, sort of a quick break for him.

24 So I jumped in and for a couple minutes
25 talked to him, basically gave the same offerings that

1 "We can help you. We have resources," those sorts of
2 things.

3 Q And how did that go?

4 A Nothing was being accepted, I guess you could
5 say. We would offer something, and then it would just
6 basically get shot down.

7 Q Do you remember what he said -- when you say
8 it was shot down, do you remember what he said?

9 A Yeah, I think actually I have some notes in
10 here. I know that he had made references that nothing
11 has ever worked. He's tried this before. It never
12 works. I know at one point I offered to -- I told him
13 that I would stay with him through the whole process of
14 going to get help and be with him so he didn't feel
15 like he just got abandoned.

16 JUROR: Excuse me. What did you say?

17 A I said at one point I offered to stay with
18 him throughout like the whole process so that if he
19 were to come down and we went to like a hospital or
20 something, that I would go with him everywhere to make
21 sure that he had the attention that he needed.

22 JUROR: And what did he say?

23 A Everything was basically, "That's not going
24 to work," to that effect.

25 JUROR: Okay.

1 A Yeah, it says here I noticed he said, "No,
2 I'm not. I don't want help." And then he would get
3 aggressive, and he would say -- allude to the fact that
4 the police are part of his problems. "The police are
5 what, you know, got me on one side."

6 BY MR. REES:

7 Q And --

8 A I did find a couple other. He just said,
9 basically -- you know we were saying, "Hey, we can get
10 you some help." He was saying, "No, it doesn't work.
11 It hasn't worked for me."

12 Q And then as time goes on, did he make any
13 statements which were threats against the police?

14 A Yes.

15 Q And what did he say?

16 A At one point he says, "What if I killed --
17 killed or shot you?" He said it somewhat abrupt, "What
18 if I killed or shot you?" And we immediately went into
19 de-escalation mode. We didn't want to go that route,
20 talking like that. So we kind of -- we were like,
21 "That would kind of a bad thing. Let's, you know --
22 let's talk about something else," just to get away from
23 that whole topic.

24 Q Based on your training and experience, what
25 is going through your mind as a veteran police officer

1 when someone who is talking about killing themselves
2 suddenly starts talking about hurting another person?
3 What's going through your mind when he says that?

4 A Well, I'm not sure if anyone has heard the
5 term "suicide by cop," but that's a big factor. And
6 that is the person that, for whatever reason, they
7 don't want to do it, and then they can put a police
8 officer in that position.

9 Q So, is that what you are thinking at that
10 point, that maybe this is a person who is going to take
11 some sort of drastic action, which would essentially
12 force the police to use deadly force?

13 A With this scenario, the fact that he is up
14 high, possibly getting ready to jump and then making
15 that statement because he's suicidal, that would be the
16 right assumption.

17 Q All right. So what did you do when you heard
18 him say that?

19 A Like I said, we "Hey, that would be bad," and
20 we're kind of making it light. We don't want him to
21 think -- whoa, don't get too serious here. We wanted
22 to keep it light. We were, "Yeah, that would be bad,"
23 then kept going with, "Hey, there is other options we
24 can try."

25 Q And so you continue a conversation with him?

1 A Yes, but during these statements, when he
2 did -- when he made that statement, he did put his hand
3 up on his side by his rib area, is what I would
4 describe it as. And so there was a definite attention
5 to that right hand when he put it there.

6 And as I recall, there wasn't something there
7 to like grab. It was just like he had put it here.
8 And I didn't see like a pocket or anything like that
9 that he was like trying to reach into. He just had it
10 by his rib area. And that hand was kind of moving
11 around, and then it started to just kind of stay in
12 this area during the conversation.

13 Q What did that make you think?

14 A Well, this -- this obviously to me is a
15 gesture that he is reaching for something and to keep
16 it there is he's either holding his hand there to hold
17 it, if there was something hidden underneath his shirt,
18 or if maybe it was close to that area where the hand
19 could go, like down to the waistband or, you know, into
20 a pocket that's nearby.

21 Q And so when you see that, was there some
22 determination that something else needed to be done in
23 terms of the response to the situation?

24 A So, when he said it and then we tried to
25 de-escalate and change the subject to something else,

1 he didn't dwell at that point on any -- on "Hey, I am
2 going to shoot you" or anything. He didn't go back to
3 that. He kind of changed over to a different topic,
4 but his hand still stayed there while we changed
5 topics. And maybe for a couple minutes -- there is a
6 point coming up where I actually leave the area, so I
7 can't -- I can't say how long it continued there or if
8 it moved to different areas on his body when I leave
9 the area.

10 Q All right. At some point did you become
11 aware that the Hostage Negotiation Team was being paged
12 out?

13 A Yes. Because he kept putting roadblocks up
14 every time we came up with options or different
15 suggestions, we felt that we weren't breaking that
16 barrier yet and that we should have someone else come
17 in and try a different approach. And so I believe
18 Sergeant Holbrook broadcasted to start them.

19 Q All right. And then you mentioned you
20 stepped away. And why did you step away?

21 A So, it's probably been about eight or ten
22 minutes from when this has all been going on. My radio
23 battery goes out, and we're not by any police cars.
24 We're up kind of isolated. And then it's about 3:30 in
25 the morning, and this is what I'm wearing.

1 Q And you are wearing a short --

2 A -- which is a short-sleeved shirt. So I knew
3 that H & T was going to come and we were hopefully
4 going to get this to continue on for, you know, until
5 we could get him down. So I told my Sergeant, "I'm
6 going to go back and I'm going to get my coat." And we
7 kind of conversed real quick about watch the right
8 hand, so we both were on the same page, that we were
9 seeing the same thing.

10 And then I began walking back. And I should
11 probably go back up here to show you the path.

12 Q Sure.

13 A So, I was right about here. Sergeant
14 Holbrook was to my left at this point when I separated
15 from him. And Officer Scott was right here.

16 So I walked back, and that's -- I believe
17 that's when I noticed Officer Nett had shown up and
18 taken up a post right here at that corner.

19 Q You saw him in that position?

20 A As I -- as I went back.

21 So I just basically retraced my path and got
22 back over the eighth floor to the roundabout that would
23 get you back to the ninth floor to my patrol car.

24 Officer Myers met me at my patrol car. We
25 switched batteries. We can switch batteries because

1 he's at a patrol car and all of our cars have radios
2 inside of them if he needs to broadcast.

3 Q And you are indicating on the east side of
4 the building now, on the opposite side of the building
5 from the southwest corner where the subject is
6 standing, right?

7 A Correct.

8 Q And when you -- before you walked over there
9 to that eastern edge of the building, did you or
10 Officer Scott or Sergeant Holbrook have your firearms
11 pulled out of your holsters?

12 A No.

13 Q And what was the reason for that given that
14 this person had indicated they were armed with a
15 weapon, had made some potentially threatening
16 statements?

17 A First, if we -- if we drew out our weapons,
18 that would immediately escalate the whole situation.
19 So that's the least that we -- we want to keep that out
20 of his mind.

21 And, second, we have about a three-foot
22 concrete barrier across here, as what we would call
23 hard cover, where we would expect a bullet not to
24 penetrate it. And we also have a distance across over
25 here if -- basically, with a knife, you are not going

1 to be attacked with this gap. So we tried to keep the
2 guns holstered at this point.

3 Q And so then you had just testified that you
4 had gone back then to the eastern side of the building
5 and were exchanging batteries?

6 A Battery, and then I grabbed my coat, put that
7 on, and then began walking back down the roundabout to
8 the eighth floor, where I would hop that rail. And it
9 was about right when I hopped the rail I heard a pop,
10 pop, pop, pop, and I knew shots had been fired. I
11 believe that it was even broadcast immediately after
12 that over the radio, so they can start the right
13 notifications for medical and such.

14 I continued -- so this is an elevation, so I
15 don't get a real clear view of what has taken place
16 until I get around this corner of the -- I guess it
17 would be the west side of the eighth floor. And at
18 this point then I can see Officer Nett, Sergeant
19 Holbrook and Officer Scott are all three now in like
20 sort of a straight line.

21 So -- and I didn't see the subject up here.
22 So I moved up to where Officer Nett had previously
23 been. And this is a pretty good -- probably I would
24 guess three-foot-wide square pillar, concrete pillar,
25 that I took cover behind. And our next step in the

1 situation like this is that we need to bring these
2 people back to a safer location so that we can get
3 any -- anyone who is involved in the shooting out of
4 the scenario.

5 So I gave them basically commands to move
6 back and then left over to my location.

7 At this point, I'm under the impression that
8 since all three were up here, that all three had shot.
9 So I told them that they could go back down and
10 underneath the parking structure to get out of the
11 scene. Being involved in a shooting, I mean, there is
12 a lot of things going through your head. So we
13 wanted -- we want to get them out and have someone who
14 hasn't had to shoot stay at the scene to have a more of
15 a solid ground, I guess you could say, in decision
16 making. That's when I learned that Officer Nett had
17 not shot, and he offered to stay here and maintain that
18 original post he was at.

19 And then I went with Officer Scott and
20 Sergeant Holbrook back out of the scene and down below.

21 Q All right. Go ahead if you want to sit down
22 again?

23 A Okay.

24 Q In those seconds before you heard the
25 gunfire, while you were returning from the opposite

1 side of the parking structure, did you have any
2 indication that -- that the shooting was about to begin
3 or that something was happening?

4 A No. Actually, as I was going across the
5 rail, it actually kind of surprised me. It was just a
6 quick -- I didn't expect it. So I don't know what
7 transpired, but --

8 Q All right.

9 JUROR: Do you recall how many shots?
10 Like do you remember how many you heard?

11 A I estimated six. But if it's simultaneous or
12 after -- it's hard to count.

13 JUROR: And you couldn't hear -- from
14 where you were you couldn't hear any dialogue
15 anymore --

16 A No.

17 Q -- by going back to your car?

18 A Right. When you go on these -- the various
19 levels, they are all tiered. So when you go over the
20 rail, you are actually lower, and they are blocked by
21 basically the garage ramp until you round the corner.
22 And I'm at a distance that I don't know if I would
23 have -- you know, looking eye to eye to him and Officer
24 Scott, who was doing most of the talking with his back
25 turned to me, I don't know if I would have heard any

1 dialogue from him.

2 Q So when you were up with Officer Holbrook and
3 Officer Scott, did you talk about -- I mean, do you
4 have time to have dialogue about what to do with this
5 person? I mean, if you had to shoot him, what you were
6 going to do and all those things? Do you talk about
7 those things or not?

8 A We don't. We don't -- we did not talk about
9 if we had to shoot him, I guess if that's what you are
10 asking.

11 Q You didn't call for a rifle backup?

12 A They will typically -- they will typically --
13 that's Officer Nett had an AR-15. So they will
14 typically, if they hear a serious call like this, they
15 will respond.

16 Q And his hand most of the time that you saw
17 him was outside of his jacket?

18 A When I saw his hand, it looked to me from my
19 angle to be about where his ribs are.

20 Q Inside or outside the pocket?

21 A Outside.

22 Q And then when you left, you don't know what
23 happened after that?

24 A Correct.

25 BY MR. REES:

1 Q All right. Anything else, ladies and
2 gentlemen?

3 MR. REES: Thank you, Officer.

4 * * * * *

5

6 LELAND SAMUELSON,

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

10 EXAMINATION

11 BY MR. REES:

12 Q Please be seated. And if you could, please
13 state your first and last name and spell your names?

14 A Leland Samuelson, L-E-L-A-N-D,
15 S-A-M-U-E-L-S-O-N.

16 Q And what is your occupation?

17 A I'm a forensic scientist with the Oregon
18 State Police. I work in the Crime Laboratory in
19 Clackamas, and within our laboratory, we all have
20 specialized areas that we work in. And I'm a forensic
21 firearm examiner.

22 Q How long have you been a forensic firearms
23 examiner?

24 A Almost 14 years.

25 Q And how do you become an examiner?

1 A Yeah. Well, first just to back up, to be
2 hired as a forensic scientist, you have to have a hard
3 science degree in one of the life or physical sciences.
4 My degree is in chemistry with a minor in physics.
5 Then within the different areas of the lab, there is
6 different specialized training that you have to
7 participate in.

8 So, to be a firearms examiner, it's
9 approximately a year-and-a-half training program that's
10 sponsored as a partial -- as an apprenticeship under a
11 journeyman examiner.

12 Then we also have outside training that we
13 attend by the FBI laboratory, the Alcohol Tobacco and
14 Firearms. We attend training by the different firearm
15 manufacturers as well as ammunition manufacturers. And
16 then we also belong to an organization called the
17 Association of Firearm and Tool Mark Examiners that
18 sponsors annual training and literature, journals.

19 Q As part of your training, you have toured
20 firearm manufacturers, you have seen how weapons and
21 ammunition are actually made, correct?

22 A That's correct.

23 Q And have you also had the opportunity to
24 examine a large number of various firearms,
25 specifically handguns?

1 A Yes, thousands of cases.

2 Q All right. And then just on a day-to-day
3 basis at the lab, what exactly are you doing in terms
4 of your firearms examinations?

5 A Yeah, primarily, as a firearms examiner, we
6 look at any evidence related to the use of a firearm.
7 So it could be examining different guns, themselves,
8 handguns, shotguns, rifles. We look at the fired
9 components of ammunition, bullets, cartridge cases. We
10 look at -- when you discharge a firearm, you also have
11 gunshot residues that come out as part of the burning
12 of gunpowder in the firearm. Those can be left on
13 skin. They can be left on clothing. So we will look
14 at those to try and determine if we can do positional
15 of -- of people in a scene.

16 We also will look at the functionality as far
17 as if the firearm has been tampered with, if it's been
18 altered. So anything related to the use of a firearm
19 at a crime scene.

20 Q All right. Yesterday, during the hearing on
21 this case, when shown the black painted toy gun used by
22 Brad Morgan, one of the grand jurors, who is unfamiliar
23 with handguns, asked whether the toy gun actually
24 resembled a real gun in appearance. And so you have
25 been asked whether you could answer that question and

1 whether you could show this Grand Jury the toy gun and
2 compare it to one of the actual handguns that you have
3 at the lab?

4 A Okay. Yeah, and I have -- I have that here.
5 I'm going to put gloves on, and I'll pass -- I'll hold
6 the gun, but I'll pass it around.

7 I also brought an actual real working
8 firearm. I don't have any live ammunition with me and
9 the gun is in a safe condition.

10 So, the first thing I'm going to do is I am
11 going to show you -- so this is the toy gun that was
12 recovered. This is an example of a replica firearm.
13 Typically, these toys are made to resemble some type of
14 real firearm. They are scaled down to fit like a
15 kid-sized hands.

16 But this particular firearm, it has the
17 features of a semi-automatic pistol.

18 So somebody asked what exactly does a
19 semi-automatic pistol look like? So the gun is
20 unloaded and safe. So, this is a Smith&Wesson model
21 469 semi-automatic pistol. What the semi-automatic
22 pistol is designed to do, it's designed to take a
23 magazine that's loaded with ammunition. They are
24 stacked. It's inserted into the grip of the firearm.
25 And then this is the frame. Then on top of the frame

1 is this piece that slides back and forth. It's called
2 the slide. So the slide is designed so that by
3 retracting it and letting it go, the first cartridge is
4 load into the barrel from the magazine and it's ready
5 to fire. The hammer comes back. And if I pull the
6 trigger, the hammer comes forward, the bullet comes out
7 and then what happens is the pistol automatically
8 retracts the slide, it pulls out a fired cartridge
9 case, and then it's going to drop and it's going to be
10 ready to fire again. Then all I have to do is let my
11 finger off the trigger, and it's going to keep going.
12 So every time I pull the trigger, the gun's going to
13 fire.

14 So this replica firearm --

15 Q And just for the record, in your left hand
16 you are holding the plastic spray-painted black replica
17 firearm and in your right hand you are holding an
18 actual semi-automatic handgun?

19 A Yes.

20 Q Okay.

21 A So you can see now this replica toy gun has a
22 lot of the same features a real semi-automatic pistol
23 would have. For example, you can see the front sights,
24 the rear sights.

25 Okay. This piece here is a rotating safety

1 selector lever. So if it's rotated down, now you can
2 see the trigger has been disengaged, it doesn't do
3 anything. If I rotate it back up, then you can see how
4 it actually is firing the gun.

5 Q You are indicating now on the actual handgun?

6 A Yes. So this firearm here, this replica, has
7 the safety. It's placed in the same general position
8 as the semi-automatic pistol. It's designed to be
9 operated with the thumb so it can be flipped, toggle on
10 and off with the thumb. I'm holding this in my right
11 hand, same orientation.

12 The next feature I would like to show you is
13 the magazine button. So you push the button to drop
14 the magazine out to reload the gun. The replica also
15 has a cut out of the magazine. See the slide is
16 designed on rails. It's designed to slide back and
17 forth.

18 Q You are indicating on the replica handgun?

19 A Replica versus on the semi-auto.

20 Now, this lever here is called the slide stop
21 lever. And you see there is a notch in the slide. The
22 slide stop lever is designed so that if I slide -- pull
23 the slide to the rear, it can lock in place. That's
24 just kind of as a safety proof, last shot gets fired,
25 the slide will lock to the rear.

1 The replica gun has a slide stop, same
2 general position with a notch designed for catching.

3 This is the hammer, so this one has a hammer
4 spur, which allows me to actually grab a hold of that
5 to cock it. The actual firearm has got the hammer in
6 the back position with the knurling, where someone can
7 actually grip it to cock it.

8 And then the last, if you can just look at
9 the general grip features, the grips both have a -- on
10 the replica pistol, it's got the serrations on the back
11 strap of it for holding it. It has a protrusion here
12 on the frame on each of them. It's designed to protect
13 you from the hammer as that hammer comes back, so it
14 doesn't actually strike the web of your hand.

15 So, all in all, this is actually a close
16 representation of the Smith&Wesson 459. It's just kind
17 of a scaled-down model.

18 Q So the real handgun that you are displaying
19 you are saying is a Smith&Wesson?

20 A Model 459.

21 Q And what caliber round does that shoot?

22 A That is a nine-millimeter.

23 Q And is that the same round commonly used by
24 law enforcement?

25 A Yes, it is.

1 Q And is that gun, the Smith&Wesson,
2 specifically designed for self defense or for killing
3 other people, as opposed to being a hunting gun?

4 A Yeah. I would not typically think of it as a
5 hunting weapon, so, yeah.

6 Q Is there any -- in looking at the two -- just
7 for the record, because obviously everyone is seeing
8 this, but how do they compare in terms of size and
9 shape?

10 A Yeah. The size and the shapes, very, very
11 close. Slightly smaller grip handles on the replica,
12 as you can see.

13 JUROR: How much smaller?

14 A Probably a quarter-inch shorter.

15 Q Can you show us by laying them next to each
16 other?

17 A Sure.

18 JUROR: Not much?

19 A This one, of course, looks a little bit
20 longer because this is actually part of the magazine
21 that's been put on there. That actually is designed --
22 is an extension for your hand.

23 JUROR: So what's that, quarter of an
24 inch, half-inch difference?

25 A I would say probably a quarter-inch longer --

1 shorter on the replica.

2 JUROR: What about the width here?

3 A The width? Well, let's see, maybe an eighth
4 of an inch narrower. Not much, especially when it's
5 held. You look at my size of a hand, it's really, you
6 can't see that.

7 BY MR. REES:

8 Q All right. Mr. Samuelson, feel free to sit
9 down. You have shown the Grand Jury just one example
10 of an actual semi-automatic handgun. To be sure, there
11 are hundreds, if not thousands, of different types of
12 handguns; is that correct?

13 A That's correct.

14 Q And do they come in a variety of sizes, some
15 which would be larger and some which would be smaller
16 than the toy replica in this case?

17 A Yeah. A variety of sizes. There is
18 different styles. The semi-automatic pistol is just
19 one example. There is also pistols that are designed
20 as a single shot, so you just load the cartridges one
21 at a time. There is a whole different class of
22 firearms termed revolvers, which have a cylinder which
23 revolves and allows you to put in up to maybe six,
24 five -- maybe even up to eight cartridges. As you fire
25 each time, the cylinder rotates around to select the

1 next round in the firearm versus the magazine that they
2 are stacked in.

3 Q Now, if I could direct your attention
4 specifically to this case and the investigation of an
5 Officer-involved shooting in downtown Portland. Were
6 you asked to examine some of the evidence in the case
7 at the Oregon State Police Crime Lab?

8 A Yes, I was.

9 Q What did you examine?

10 A I looked at both of the officers -- and I
11 don't have their names as far as which Officer had
12 which gun, but I was asked to look at two Glock
13 semi-automatic pistols. I was asked to look at a
14 variety of fired bullet fragments. And then I was
15 asked to look at several cartridge cases that were
16 picked up at the scene and try and determine if I could
17 tell which of the bullets came from which particular
18 firearm, which of the cartridges came from which
19 firearm.

20 Q How many cartridge cases were delivered to
21 the lab?

22 A Let me -- five.

23 Q And what's the process then of matching
24 cartridge cases to a gun?

25 A Yeah. Let me -- first, just so we all know

1 the same terminology, so we hear officers talk about
2 slugs or rounds or bullets. But we like to be specific
3 of what we talk about.

4 So this would be an example of a replica of a
5 cartridge that gets loaded into that magazine. So
6 these are stacked in there. So Portland Police duty
7 weapons are a semi-automatic pistol. They are similar
8 to the one I just showed you. They are slightly
9 different. They are a different manufacturer, but they
10 function essentially the same.

11 So the cartridges are loaded in. This is a
12 cartridge. It's made up of the bullet that's loaded
13 into it.

14 This is the cartridge case. The cartridge
15 case is actually filled with gun powder, which is
16 burnt, works as a propellant. Then at the base of the
17 cartridge is a primer. And the primer is a little cup
18 that's put in the base of the cartridge case that has a
19 high explosive so that when it is struck by a fire pin,
20 that shock starts the burning process.

21 So, when we are examining evidence from the
22 scene, we have the bullets that are fired out of the
23 barrel. Then we have the cartridge cases that are
24 automatically ejected out.

25 So, when the firearm is manufactured, there

1 is lots of tooling, machining that's used to make the
2 firearm. The barrels have grooves that are cut through
3 the barrel that grab a hold of the bullet so the bullet
4 comes out spinning, kind of like a football. And that
5 gives it stability in flight.

6 Well, those machining grooves are going to
7 create corresponding grooves in the barrel, which are
8 going to take up these scratches in the barrel, which
9 we call individual or accidental characteristics.

10 The cartridge case is going to have a
11 supported area from that pressure that's going to
12 contact the firearm in a portion called the breach.
13 Well, the breach is machined out, and that leaves all
14 this scratching and rough surfaces that are taken on by
15 this softer metal, which is usually brass.

16 So the brass is in contact with the hard
17 steel. And then the firing pin, itself, when it hits
18 that, it's going to leave marks. So we what we do, we
19 have cartridge cases and bullets that are collected at
20 the scene. We take the unknown firearm or the
21 questioned firearm. We'll test fire it in our range.
22 We take the bullets. We look at all the test-fired
23 bullets side by side under a microscope, and then we
24 determine how much agreement is found within the known
25 markings.

1 And then we'll take the unknown and we'll put
2 that side by side and see if we can show that the
3 unknown has the same level of markings as known test
4 fires.

5 And the process with the cartridge case is
6 the same. We use a microscope, and we look at all
7 these individual markings found from the primer, from
8 the breach amongst our knowns. And then we'll put the
9 unknown on there, and we will see how that corresponds.

10 And we have done studies in our laboratory --
11 and they have been done internationally by firearms
12 around the world -- where we have taken ten consecutive
13 manufactured, for example, Smith&Wesson pistols, that
14 have been made one after the other, and you can take
15 test fires out of every one of those consecutive-made
16 firearms and the test fires, themselves, will look all
17 different. They are unique to one another. And that's
18 kind of the basis how we can establish that agreement.

19 Q All right. So in this case, were you able to
20 match the five spent cartridge casings that were
21 provided to the lab to either of the two police
22 officers' weapons that you examined?

23 A Yes. So the -- there was a Glock Model 17
24 serial No. KDD812. I was able to match four fired
25 cartridge cases to that specific pistol.

1 The other Glock pistol was serial No. EEP274
2 U.S. And I was able to match one cartridge case to
3 that firearm.

4 Q And so does that indicate to you that the
5 firearm with the serial number that ends in 812 then
6 fired four rounds -- or fired four times and that the
7 weapon that ends with 274 U.S. fired one time?

8 A That's correct.

9 Q And just to go back really to where you
10 started this morning then, how do you make that
11 connection?

12 A Basically, so we took both of those firearms
13 and we took their test fires from them in our lab.
14 Then we compared each of these five unknown cartridges.
15 They come to us individually packaged. So we look at
16 each one of those. We look at, for example, unknown
17 number one, we look at Glock Exhibit 1 and then we look
18 at them next to Glock Exhibit 2. Then we're able to
19 just start putting them together so that unknowns one,
20 two, three, four were fired from this gun. Then this
21 one actually matches this one over here.

22 Q Yesterday, Dr. Larry Lewman testified that he
23 removed a spent bullet from the skull of the deceased
24 in this case. And Detective Slater has indicated that
25 was sent to the lab. Did you receive a spent bullet

1 for inspection in this case?

2 A Yes, I did.

3 Q And were you able in this case to match that
4 bullet to one of these two police officers' guns that
5 you mentioned?

6 A No, I was not.

7 Q And what's the reason for that?

8 A Primarily -- now, when we look at bullets --
9 again, I'm going to pass these around. I think it's
10 kind of an important factor. A lot of people think we
11 always match bullets back to guns. And the fact of the
12 matter is sometimes we can't. When the barrels are
13 manufactured -- and I mentioned that there is a
14 machining process that cuts the rifling in. You take a
15 look at this, hold it up to the light, you can see
16 those rifling grooves.

17 Q What is that we're looking at?

18 A This is a nine-millimeter semi-automatic
19 pistol barrel, and you can actually see cut grooves in
20 the rifling. If you hold it up, you can actually see
21 the small scratches within the rifling that leaves the
22 markings on the bullets.

23 Now, the next one I will pass around is out
24 of a Glock semi-automatic pistol. You can see as you
25 look down this one, it has a very shiny almost mirrored

1 finish to it, very smooth inside. You can see the
2 difference. It should be apparent how much cleaner
3 looking and smooth looking that one is. It almost is
4 more of a mirrored-like finish process to it.

5 JUROR: So these grooves will mark both
6 the cartridge and the bullet?

7 A Those are marking just the bullet only.

8 BY MR. REES:

9 Q Since she asked that question, maybe you want
10 to just briefly explain again where the marking on the
11 cartridge -- because the cartridge never goes through
12 the barrel, right?

13 A Let me pull this firearm out so you can see.
14 This is just an example. This is not a Glock. This is
15 a Smith&Wesson, but again it's going to leave the same
16 markings.

17 So, in general, we have this surface right
18 here is called the breech face. You can see there is a
19 little hole where the firing pin comes through. This
20 is the breech here. So that cartridge case, kind of
21 like a can, it's held with extreme high pressures in
22 there. And as that bullet goes out, it's Newtons
23 Second Law that for every motion there is an opposite
24 reaction motion, so that's pressing that cartridge case
25 back into that breech. It's almost like when you play

1 with Play-Doh and you take something soft and mash it
2 into that surface, it takes up those markings. That's
3 where those breech face cartridge case markings come
4 from.

5 JUROR: Gotcha.

6 A The point of looking at those two barrels is
7 Glock uses a manufacturing process that leaves a very,
8 very smooth, almost mirrored-like finish. It doesn't
9 have that really rough gouging that's going to really
10 scratch at the bullets, allowing us to match that. The
11 Glock-style rifle, it's very difficult to match
12 bullets.

13 Q In this case, is it correct that each of the
14 officers' firearms are identical in terms of the make
15 and manufacturer and, therefore, in the characteristics
16 of the barrel?

17 A Right, exactly. They have the same general
18 rifling characteristics.

19 Q Meaning that forensically you can't tell
20 which gun in this case shot the bullet that was removed
21 from the deceased's skull?

22 A That's correct.

23 Q All right. Are there any questions about
24 that?

25 JUROR: So the -- those officers, they

1 carry Glocks, correct?

2 A That's correct. And I just want to make it
3 clear, though, back to the point with the bullets. We
4 do attempt to match those back, because again a firearm
5 also, not only is it those markings when it's first
6 manufactured, but they also get used, abused, dropped
7 and damaged and those leave markings. We make an
8 attempt. We try and a match the bullets back. Often
9 what happens is we just say there is some rifling, but
10 there is not enough to make that positive ID or to
11 exclude one of them.

12 MR. REES: Any other questions for this
13 witness?

14 JUROR: The first serial for the first,
15 made the four shots?

16 A The Glock, it's KDD812. That's a Glock Model
17 17.

18 JUROR: That was four shots, right?

19 A Yes.

20 JUROR: I have a question. There's a
21 finish on the handgun that you brought in on the
22 outside that's very nice and kind of shines. It has a
23 sheen to it.

24 A Uh-hum.

25 Q Would you say that toy gun had that same kind

1 of sheen to it on the outside?

2 A Uhm, no. It's a -- definitely more of a flat
3 versus more of a gloss on the actual firearm that I
4 brought in.

5 JUROR: One question. I couldn't write
6 fast enough. Can I get the model numbers on each one
7 of them again?

8 A Sure. Of the Glock pistols?

9 Q Right.

10 A They are both a Model 17.

11 JUROR: Model 17, but I need the specific
12 numbers, the serial numbers. You hold them side by
13 side, they are the same to me.

14 A So the first one that I examined was serial
15 No. KDD812. The next one is EEP274 U.S.

16 JUROR: Going too fast.

17 A I'm sorry.

18 JUROR: Can you do it over again?

19 A Yeah. EEP274 U.S.

20 Q S or F?

21 A S, as in Sierra.

22 BY MR. REES:

23 Q Let me see, at this point, are there any
24 other questions at this point for the firearms
25 examiner?

1 JUROR: I have one more. Those
2 cylinders -- those you showed us that has the smooth.

3 A That is the barrel.

4 JUROR: Those are smooth inside. The
5 other one has?

6 A It has actually cut rifling out of it, yes.

7 JUROR: So those were the barrels?

8 A Yes.

9 JUROR: Okay. I just wanted to make sure
10 I had it right.

11 BY MR. REES:

12 Q Let me ask one more question. Going back to
13 the issue of the toy replica gun in this case spray
14 painted black versus an actual semi-automatic handgun,
15 you -- having seen, tested and examined handguns for
16 the last 14 years as a firearms examiner, would you
17 think looking at that toy gun that it was a real
18 handgun?

19 A Yeah. Given, you know, a certain stand off
20 distance and possibly the lighting, partially concealed
21 in a hand, pointed at me, the fact that it has the
22 gripping surface, the trigger, the sight posts on it as
23 well as that actually has the cutout of a muzzle so if
24 it was pointed at me, I would be -- my initial reaction
25 would be that that is an actual firearm that's being

1 pointed at me, seeing that, particularly with the fact
2 that especially it has been modified, painted. Because
3 again any toy gun is typically going to have a bright
4 orange surface. It's going to be some kind of a color
5 that's not typically associated with firearms; could be
6 green or something or orange. But once you paint them
7 black like that and it has those same features, to me,
8 it's -- I would -- I would mistake it as a real
9 firearm.

10 MR. REES: Are there any other questions
11 about any of his testimony or anything else for the
12 firearms examiner? Okay. Thank you very much.

13
14 * * * * *

15 JOHN MYERS,

16 Was thereupon called as a witness on
17 behalf of the State and, having been first duly
18 sworn, was examined and testified as follows:
19 all right.

20 EXAMINATION

21 BY MR. REES:

22 Q Officer, if you could please state your name
23 and slowly spell your first and last name?

24 A John, J-O-H-N, Myers, M-Y-E-R-S.

25 Q Are you a Portland Police Officer?

1 A I am.

2 Q How long have you been a Portland Police
3 Officer?

4 A Going on 17 years.

5 Q What's your current assignment?

6 A Central Precinct working night shift.

7 Q I understand that you actually are just
8 coming off of that shift. How long have you been up at
9 this point?

10 A At this point, I think I've been up for about
11 15, 16 hours.

12 Q Were you one of the officers that responded
13 to the parking structure on S.W. Morrison on Wednesday,
14 January 25th, 2012?

15 A Yes, I am.

16 Q All right. And when you responded,
17 generally, what was your understanding of what was
18 happening at the parking structure?

19 A My understanding what was going on is there
20 was a possible suicidal subject that was claiming that
21 he was going to jump off the building, the parking
22 structure.

23 Q And what were you doing? Who were you with
24 when you first got that information?

25 A Well, when I first got the information, I was

1 on a traffic stop with Sergeant Holbrook on another
2 case on the other side of town -- or a little further
3 uptown. And Sergeant Holbrook broke away to go to this
4 call.

5 When I was on this call, I was waiting for a
6 tow for no insurance. They were asking for more
7 officers to get into the area. That's when I left my
8 traffic stop and went to assist on this call.

9 Q All right. It looks like you were at -- the
10 traffic stop was out at 19th and W. Burnside?

11 A That is correct.

12 Q All right. So from there, then, did you
13 drive down to the area of S.W. Third and Morrison?

14 A I did.

15 Q And how did you determine where this subject
16 was?

17 A Well, when I arrived on scene, I broadcast I
18 was there, where did they need me? Sergeant Holbrook
19 got on there and asked me to come up to the ninth floor
20 where he was at.

21 Q Behind you is an aerial photograph of the
22 parking structure. If you want, you can stand up and
23 go over. Just don't block the Grand Jury. Are you
24 able to show us from that photograph where you went?

25 A Yes. This is my car right here.

1 Q So you are indicating --

2 A That's on the -- sorry, the northwest corner.

3 Q All right. And where did you go from there?

4 A Uhm, when I parked my car there, I
5 immediately walked up to where Sergeant Holbrook and
6 Sergeant -- or Officer Scott were, and it's right at
7 the down ramp from the ninth floor next to the pillar
8 that was right -- right there. There was a pillar
9 there, basically right in the center of the parking
10 structure.

11 Q Were you able to see the subject who had
12 called 911?

13 A Yes, I was.

14 Q Where did you see him?

15 A The subject was standing on the southwest
16 corner. There is like an elevator shaft. So it's
17 actually elevated above the parking garage. And he was
18 standing on that elevator shaft facing us, the
19 officers.

20 Q And could you see whether he was moving or
21 doing anything in particular?

22 A At that time when I arrived, he was talking
23 to Officer Scott. Officer Scott was talking to him.
24 When I arrived, Sergeant Holbrook asked me to position
25 myself on the right side of Officer Scott, to basically

1 stand next to him and be with him as Sergeant Holbrook
2 was going to stay on the radio and communicate what was
3 going on and other resources coming into the area,
4 where they needed to be.

5 Q Can you show us generally where Officer Scott
6 was then on the parking structure?

7 A Yes. Officer Scott was standing right at
8 this pillar, again basically at the center of the
9 parking structure.

10 Sergeant Holbrook was on his left, and then I
11 positioned myself on the right of Officer Scott.

12 Q Go ahead. If you want to sit back down, and
13 when you are ready, if you could tell the Grand Jury
14 what happened then?

15 A Okay. So, when I arrived, Sergeant Holbrook
16 asked me to stay on the right side of Officer Scott. I
17 looked over at the individual, the subject, and
18 immediately the subject said, "Get him out of here. I
19 don't want him here. Make him leave."

20 And actually, I had a surprised look on my
21 face, like is he talking about me? I just got here.
22 And Sergeant Holbrook asked, "Do you know this
23 Officer?" He goes, "Yeah, I don't want him here. Get
24 him out of here."

25 So, again, that was a surprise to me, because

1 I have never seen this subject before, at least that I
2 can recall. So Sergeant Holbrook asked me to go switch
3 places with Officer Richardson on the other side of the
4 parking garage and stay with his recruit. So that's
5 what I did is I went around the parking garage and
6 jumped over the barrier and switched spots with Officer
7 Richardson.

8 Q And what was your understanding of why you
9 moved away then based on the request of the man sitting
10 on top of the elevator shaft?

11 A Well, my understanding and my feeling was
12 that my presence was irritating him for some reason.
13 Whether or not I looked like somebody or, you know, or
14 something. But my presence irritated him. So we
15 wanted to take that away as far as the irritation and
16 remove me from the area so that the subject wouldn't be
17 concentrating or focusing on me, which would irritate
18 him more. So --

19 Q All right. Was there something -- did he
20 specify that there was some physical characteristic
21 that you had that he was sort of, you know, seeming to
22 focus on?

23 A He didn't specify a characteristic, just "Get
24 that Officer out of here. I don't want him here." So
25 Officer Scott is probably about 6'2", 6'4" and I'm

1 5'4", so there is quite a bit of difference between the
2 two of us. So I don't know.

3 Q Okay. I'm sorry. I'll have you go up to the
4 picture one more time. Where did you move then after
5 he said he didn't want you up close?

6 A So, when I was asked to leave the area in the
7 center of the parking garage, I walked north and then
8 walked eastbound. And I jumped over the barrier right
9 here, which put me down back on the ramp of the parking
10 structure for the even side. Blue is the even side.
11 Red was the odd side. So it put me down on the eighth
12 floor. And Officer Richardson was positioned on the
13 east -- southeast corner, basically southeast side of
14 the parking structure over here. And I switched spots
15 with him. And that's when Officer Richardson went back
16 over where I was originally at.

17 Q Go ahead. Why don't you move your seat back
18 in so everyone can hear. Sorry about that.

19 A Okay.

20 Q What do you see happening then as you are
21 back there? Are you able to see Officer Scott and
22 Sergeant Holbrook from that position?

23 A Yes. I can still see them. They are in an
24 elevated position off -- well, basically in front of
25 me, so that all three of the officers were in an

1 elevated -- they are on the ninth floor. I'm on the
2 eighth floor, but I can see. I have a perfect view of
3 them.

4 I see Officer Scott and Sergeant Holbrook
5 engaging in a conversation with the subject, and
6 basically they are just talking about -- I know that
7 when I was there, when I first arrived, Officer Scott
8 was asking him, "Is there something -- what's going on
9 in your life? Did you just go through a recent break
10 up? Is there a relationship issue? Is that why you're
11 here?" I remember hearing the subject telling Officer
12 Scott, "I did go through a break up, but it's not
13 recent." So it wasn't something that we felt right
14 then and there that it just happened within an hour
15 ago. But there was a dialogue going on. And I could
16 see that they were continuing to talk.

17 The subject would pace. Once in a while he
18 would walk on the other side of the elevator shaft. He
19 would start smoking a cigarette. And then I believe he
20 had later on what I identified I thought was an energy
21 drink looking through a pair of binoculars, is he took
22 a sip of something, put it back down and walked back
23 over towards the corner or the edge of the elevator
24 shaft and continued talking with Officer Scott and
25 Sergeant Holbrook.

1 Q I don't know if it was possible to tell from
2 where you were standing if he seemed to be pacing on
3 the exposed street edge of the structure or on the edge
4 that is closer to the parking area, itself?

5 A Yes. He was -- he was actually on the
6 exposed street side. So if you look at the diagram,
7 there is a -- on top of the elevator shaft, there is a
8 box that looks like it's basically, I believe, an air
9 conditioning unit. And he was on the west side of that
10 air conditioning unit close to the edge of the parking
11 structure. In fact, Officer Scott, I remember him
12 broadcasting and Sergeant Holbrook broadcasting over
13 the air, "Okay. He is walking closer to the edge."
14 That's when Sergeant Holbrook got another Sergeant to
15 start blocking off the sidewalk and the streets just in
16 case he actually did jump.

17 Q Because from that edge that you just
18 described, it's a fully-exposed drop to the street nine
19 stories below?

20 A Correct, yes.

21 Q What happens then from your perspective after
22 you move across to the other side of the building on
23 the eastern side?

24 A As I'm over there, I'm checking with the
25 officer recruit that was there, Officer Richardson's

1 partner, and just making sure he is in a safe spot.

2 I actually went over and would go over to the
3 car, because -- listen to the radio, turned down the
4 radio a little bit.

5 And then things -- it just seemed like we
6 were making progress. They were talking. Nothing was
7 out of the ordinary. It seemed like they had a good
8 dialogue going on. Even though I couldn't hear what's
9 was gone on, I didn't see anything agitating, but he
10 would still walk back and forth on that elevator shaft.

11 At that time Officer -- I don't know how many
12 minutes went by, but there was some time that went by.
13 Officer Richardson walked over, because it was getting
14 pretty cold and wanted to get his jacket out of the
15 trunk of his car. And while he was there, he asked me
16 to switch batteries for our radios because his radio
17 was going dead. So I gave him my radio -- or my
18 packset battery for his radio. I switched batteries
19 with him.

20 And then at that time Officer Richardson
21 started walking back. I then turned around and started
22 looking at the subject, and at that time when I turned
23 around and looked at the subject -- I'm going to show
24 you -- but basically what I seen is the subject
25 standing on the elevator shaft facing Officer -- or

1 Sergeant Holbrook and Officer Scott. And he had -- he
2 was standing like a squared position with feet about a
3 shoulder-width apart and both arms forward and what
4 looked like to me is a gun in his hands pointing at the
5 officers. And then I heard pop, pop, pop, pop, pop.
6 To me it kind of surprised me, because it sounded like
7 firecrackers going off. Then I seen the subject fall.

8 At that time I immediately took cover, made
9 sure Officer Richardson's partner was okay and that he
10 was behind cover. I looked over, and I seen the
11 officers starting to take cover over there as well,
12 Officers Scott and Sergeant Holbrook. And I don't know
13 where Officer Richardson was at that time. But it was
14 all just kind of slow motion.

15 When the subject fell, there's a -- kind of
16 like a border around the elevator shaft. It's probably
17 about two, three feet, maybe, high, a cement border.
18 So, when he fell, we couldn't see him.

19 So, once we basically kind of looked at each
20 other, made sure everybody was still standing up, at
21 least the officers, that we all could physically see
22 each other, I went to each one of the police cars that
23 were there, the three police cars, and turned the
24 spotlights onto that elevator shaft, so that way we
25 could have better lighting. I didn't know if the

1 subject was hit or if he just fell or what had
2 happened, what kind of condition he was in. So I
3 wanted to get as much lighting on that elevator shaft,
4 the top of it, so we could see a movement, if he was
5 walking around, or if he moved around or a gun came
6 over the edge and started shooting some more.

7 Q Just to go back, if I could, to make sure the
8 record is clear, when you were talking about hearing
9 the popping sound of the gunfire, you stood up in a
10 position with your feet slightly apart, and both of
11 your arms fully extended from about waist height
12 straight out with the hands together. And was that a
13 position that appeared to you to be consistent with a
14 firing stance of someone shooting a handgun?

15 A Yes. It's a firing stance that's taught very
16 regularly to people who shoot firearms.

17 Q In that brief moment in time when you saw
18 that and you heard the popping sounds, did you have an
19 understanding at that moment of who was shooting?

20 A I didn't know who exactly shot at that time.
21 Because when I turned, I looked, I seen the subject
22 again in that description, the position that I seen him
23 in, and I heard the pops. I didn't see any muzzle
24 flashes, so I didn't know who fired first. It just
25 basically -- it all happened so fast.

1 MR. REES: All right. Any questions
2 about that?

3 JUROR: When you hear shots, you can't
4 tell what direction they are going in, right? You
5 can't tell whether they are going one direction or the
6 other in the position that you are in?

7 A Well, I am standing on the other side of the
8 parking garage and there are cement walls around. I
9 just knew the shots were in front of me. I didn't know
10 which direction they were going. I could see the
11 subject, which direction he was pointing what looked to
12 me to be a firearm at the officers where they were
13 standing at last, so --

14 Q So, did you notice that he took an object out
15 of his pocket? Did you see that part?

16 A No. No. Like I said, when I turned around
17 and I looked, he was already in that stance with his
18 arms pushed straightforward. And I distinctively
19 remember seeing a firearm in his hands. Like I said,
20 it happened so fast, but, you know, being an active
21 shooter myself and a police officer for almost 17 years
22 and growing up around firearms, you know, it was
23 just -- it was weird seeing a firearm being pointed at
24 a police officer.

25 MR. REES: All right. Thank you,

1 Officer.

2 * * * * *

3 TIMOTHY NATHAN HOERAUF,

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

7 EXAMINATION

8 BY MR. REES:

9 Q Please be seated, and when you are ready,
10 please state your full name and spell your first and
11 last name.

12 A My name is Timothy Nathan Hoerauf. First is
13 T-I-M-O-T-H-Y, and last is H-O-E-R-A-U-F.

14 Q We've got this fan going and the window is
15 open and there is the street noise. So speak up.

16 A Okay. Will do.

17 Q Why don't you tell these folks your
18 occupation?

19 A I'm a police officer with the City of
20 Portland.

21 Q How long have you been a police Officer?

22 A It's about 13 months.

23 Q All right. So, on January 25th, 2012, we
24 understand that you were working with your assigned
25 field training officer, correct?

1 A Yes. I was with Officer Jim Richardson.

2 Q All right. And were you with him then in his
3 patrol car when a call came out a little after 3:00 in
4 the morning regarding a -- some kind of situation at a
5 parking structure in downtown Portland?

6 A Yes, I was.

7 Q And do you remember generally what kinds of
8 information you received on that call?

9 A Uhm, there was a call regarding a suicidal
10 person who was on -- who was claiming to be on a
11 parking structure. He didn't say which parking
12 structure he was, somewhere in the downtown area. I
13 believe there was also some information in the call
14 that he had been involved in some other kind of
15 incident earlier in the evening. What that was I
16 wasn't sure of at the time.

17 Q And so where did you and your partner go?

18 A My partner and I responded from deep
19 southwest Portland, the other side of 405. After a
20 quick trip up here from about 12th, we proceeded to the
21 area of Four and Morrison, where there was a SmartPark
22 parking garage where this person claimed to be.

23 During our response to the call, we were
24 trying to locate this person because he didn't give an
25 exact location. So sometime during the call in the

1 information given, the subject relayed to the
2 dispatcher that he could see a police car driving
3 around somewhere below him.

4 At the time Officer Scott, who was operating
5 that patrol car in the downtown area, said that he was
6 nearby this parking structure at Four and Morrison, the
7 SmartPark, so we kind of through the process of
8 elimination figured that he was there. And that's
9 where my partner and I responded to, is to the Four and
10 Morrison entrance of the SmartPark.

11 Q Okay. And if you would, Officer, why don't
12 you go up -- you can walk over there to the large
13 photograph we have that shows an aerial view of the
14 parking structure. Can you point out to us generally
15 where you went on the parking structure?

16 A Initially, we entered from this side. This
17 is the west side of the building. And the entrance
18 forces you to drive around the exterior perimeter to go
19 up.

20 Sometime during the call Sergeant Holbrook,
21 our on duty supervisor, said that Officer Scott, who
22 was the first responder, the primary Officer to the
23 scene, that he would wait for cover. And we were the
24 cover car.

25 So we staged up at about the fourth floor, I

1 would estimate, and developed a quick plan to go to the
2 top and see if this person was there.

3 So, after just a quick conversation car to
4 car on about the fourth floor, we drove up. We
5 continued to drive up together and briefly stopped just
6 below -- I believe the top floor is the ninth floor,
7 if I am not mistaken. I believe it's the ninth --
8 stopped here and proceeded towards the east side,
9 towards the east side of the parking structure. And
10 there is a wall on the northeast side that forces you
11 to turn around or go back down the structure.

12 We didn't initially see him on any of the
13 usable space for parking. We couldn't find anybody.
14 And as we turned the car around, my partner saw the
15 subject was actually standing on the southwest side on
16 top of -- on top of a box, essentially. And there is a
17 brick structure that covers the top of the stairs, the
18 stairwell. And he is standing on top of this.

19 And once we communicated that to Officer
20 Scott and notified dispatch that this person was
21 actually here, cover cars started arriving. That's
22 when Sergeant Holbrook arrived and this became a -- and
23 this became a valid thing for us. So we were actually
24 going to work this.

25 Q From your perspective, could you see whether

1 the man on top of the elevator shaft was making any
2 kind of movements or doing anything in particular?

3 A Initially, once I was there, I could see him
4 standing up there. It looked like he was talking on
5 the telephone. I believe he was talking to
6 dispatchers, because we were getting pretty regular
7 updates from our dispatch of what this person was
8 saying.

9 He was standing there. He was -- I didn't
10 notice any particular gestures -- wearing a -- wearing
11 some kind of hooded jacket or a sweatshirt or something
12 like that, wearing a backpack. I didn't see any
13 weapons visible.

14 And we illuminated -- we illuminated where he
15 was at with our spotlights from where we were. This is
16 my car located here. It's on the -- my car is the one
17 pointing south on the southeast side. And it's the
18 first one ahead of the Charger. So I'm driving the
19 Crown Victoria. So we waited there.

20 Q I'm sorry. Just in terms of your location,
21 you are -- because you are in the southeast corner, you
22 are on the opposite corner then from this subject, who
23 is in the southwest corner --

24 A Yes.

25 Q -- of this building, which takes up a city

1 block?

2 A Yes.

3 Q All right. And did you stay in that position
4 throughout the incident?

5 A Throughout this entire encounter, we exited
6 our cars and I took up a position standing on the
7 interior portion. There's a lightpost and a wall. And
8 I was standing behind that, observing the subject as he
9 stood on the southwest corner, with a pair of
10 binoculars that were in the back of our car.

11 Q So, you moved a few feet closer?

12 A Just away from -- away from the car to a
13 place where I had good cover, somewhat concealed from
14 his view, and had clear eyes onto him.

15 Q Okay. Go ahead and take a seat, please, and
16 I want to ask you about what you were able to observe
17 while you were looking through the binoculars from that
18 position. What did you see happen?

19 A Uhm, shortly after we arrived, Sergeant
20 Holbrook arrived and Officer Myer arrived. There was
21 some -- some quick conversation. A plan was developed
22 that Officer Scott, Sergeant Holbrook and Officer Myer
23 would go see if they could get closer, to actually
24 communicate with him, because it was too far from where
25 we initially parked to actually speak with him.

1 I stayed in my position, and I was there with
2 Officer Richardson, who was standing nearby.

3 On top of the structure that he was standing
4 on, we weren't sure how he actually gained access to
5 that. There is a door that leads into the stairwell.
6 A lot of times there is roof access, like the stairwell
7 will just continue up and there is usually a locked
8 door or something. I wasn't sure if maybe he had the
9 ability to exit that door and go down the structure.
10 So I felt my position was important, because if we
11 talked him out or got this person to come out, he would
12 likely exit through that door. So in the event that
13 occurred, that was my function.

14 So Sergeant Holbrook, Officer Scott and
15 Officer Myer walked around towards him and got to a
16 position where they could speak to him. And I don't
17 know how much you guys -- how much you guys know or how
18 much you have been told of where they were standing,
19 but I can demonstrate that to you or show on the
20 diagram, if you like.

21 Q If you were able to see that, go ahead and
22 show us what you saw personally.

23 A I wasn't watching them walk over, but I know
24 they walked over towards my right and went around the
25 exterior perimeter of the building to get to him. I

1 continued to maintain visual contact with this person.
2 I didn't see any particular movements. I noticed that
3 he -- once the officers made contact with him, he hung
4 up his phone. I don't know if he stored it away in a
5 packet or something like that.

6 Q And you have stated from your vantage point
7 that you could see him drinking some kind of beverage
8 from a black can?

9 A Right. So, as I'm watching him -- this is
10 taking place over the course of a couple minutes --
11 he's -- he's drinking out of it looked like some kind
12 of aluminum can. I thought it may have been like a
13 Monster energy drink or something. He is drinking,
14 takes a couple drinks of it. And when he finishes it,
15 there is some kind of metal box up there, maybe an air
16 conditioning unit or some kind of access box for
17 lighting or electronics or something. I couldn't see
18 what it was, but there was this box on top. And he
19 sets this can down with -- with sort of authority.
20 It's almost as though he -- you know, like someone will
21 take a shot at a bar and slam it down. I noticed this,
22 and I thought it was -- it was just notable. I didn't
23 know what to think of it at the time, but it's notable,
24 just watching mannerisms. If there was anything I
25 could communicate to the officers who were closer or

1 communicate via radio that I thought was important, I
2 would have done so.

3 So, he has this action where he sets this can
4 down. It's pretty deliberate. It was loud enough that
5 I could hear it from where I was at.

6 A short time later, I see him take like a
7 pack of cigarettes or something out of his -- out of
8 his jacket pocket. He lights one. He smokes it. And
9 as this is going on, I'm thinking that he's preparing
10 to jump, that mentally he's preparing to jump. This is
11 almost like symbolic. Kind of like your last cigarette
12 in front of the firing squad or something like that.
13 This is sort of symbolic, and I'm anticipating that he
14 is going to jump almost at any time.

15 And he continues to smoke the cigarette.
16 Somewhere in this -- when this is going on, I guess he
17 communicated to Officer Myer that he didn't like him
18 for whatever reason or he didn't want him there, he
19 didn't like his presence. And Officer Myer told me he
20 didn't know why, but he came back to my position and
21 switched positions with Officer Richardson. So Officer
22 Richardson went where they were actually contacting him
23 and was there for some period of time.

24 Officer Richardson came back towards the car,
25 where I was at. And he made mention to me to watch --

1 to watch his pockets. And I was doing this, and I -- I
2 somehow communicated to him that, yes, I was watching
3 the pockets, because he was digging his hand into
4 jacket pockets, pants pockets. And these are things we
5 are cognizant of as police officers because people's
6 hands can pose a threat to us. We don't know what they
7 are doing with their hands.

8 And I think during this encounter, it was
9 probably important for the officers who were making
10 contact with him not to be shouting commands at him,
11 not to tell him "Keep your hands out of your pockets"
12 just in fear that this person is kind of on edge, they
13 are standing on top of a building, might jump. You
14 don't want to jeopardize that by pushing them farther
15 over the edge.

16 So I don't know that they were in command of
17 his actions or were telling him what to do. And I
18 couldn't hear what was going on, but I'm just watching
19 this.

20 Q About how much time goes by while you are
21 watching this, do you think?

22 A I would estimate about 15 minutes.

23 Q All right.

24 JUROR: How many?

25 A I would estimate about 15 minutes or so. I

1 wasn't watching a clock when this was going on. But
2 during this, resources are being called for. Sergeant
3 Holbrook is requesting additional resources --

4 Q Meaning what?

5 A -- via radio. He is calling for initially
6 Project Respond, and they are our mental health
7 responders. You know, frequently we work together with
8 them just because they have clinical expertise that we
9 don't. They are frequently dealing with the same
10 people we are and our jobs overlap oftentimes quite a
11 bit. Initially we get there to assess the validity of
12 this, what's going on. And they can assist alot of
13 times. They will have access to mental health
14 providers or, you know, if the person communicates they
15 are on some kind of medication, they actually know what
16 the medications are. And they can assist greatly.

17 So, when they -- when they recognize that
18 this person is having a mental health crisis,
19 absolutely this is not a cry for help or something, he
20 is in crisis, they call for them.

21 Shortly after there was a call for -- I
22 believe it went out as H&T, hostage negotiators, but I
23 think they intended to say crisis negotiators,
24 basically different names for the same unit, the same
25 organization. But they have the same function, and

1 generally they work under more -- more strenuous or
2 dangerous conditions. They have the ability to do that
3 because they are police officers and not mental health
4 professionals.

5 A lot of times the Project Responders are
6 somewhat reluctant to come to a scene that's not safe.

7 Q Project responders being --

8 A Project Respond, the organization, unless we
9 make the scene safe and, you know, ensure that there
10 are no weapons, they are happy to come talk. But a lot
11 of times, you know, that might be a telephone call they
12 make or something like that.

13 Q Just to be clear, Project Respond being
14 nonpolice?

15 A Nonpolice mental health professionals that
16 assist us when dealing with mentally ill people.

17 Q Okay. So both Crisis Negotiation Team and
18 Project Respond were called at some point?

19 A Were requested.

20 Q And you were aware of that. What do you see
21 happen after that?

22 A Shortly after Officer Richardson came back to
23 my location and we conversed, I see the subject. He
24 puts his hand in his -- it looked like he put it in his
25 pants, his right hand, put it down the front of his

1 waistband. He rested it there for a second, brought it
2 out. And then he did it again, but he left the hand
3 there for just slightly longer. And this was
4 different, because prior to that, he was digging in
5 jacket pockets, which didn't alarm me that much because
6 he pulled his cigarettes out of there and he was
7 keeping his hands there. I figured it's somewhat
8 natural to keep warm because it was cold that night.

9 But after he holds his hand in his pants for
10 some period of time, I see this person extract a pistol
11 out of his pants and point it towards Sergeant Holbrook
12 and Officer Scott. He extends his arm, I would say
13 seventy-five percent. He doesn't take a traditional
14 two-handed combat pistol stance that you might see in
15 military police or something like that, but it's more
16 of an instinctive pointing that an untrained person
17 would do. And he points this at Sergeant Holbrook and
18 Officer Scott.

19 I hear initially two quick -- two quick pops.
20 And they seemed somewhat quieter to me, at least at the
21 time. These two pops sounded like quiet -- quiet
22 gunshots to me.

23 Then after that, subsequently, I hear several
24 more shots. I'm not sure exactly how many. But they
25 just seem louder. And I can attribute that to maybe

1 guns being fired from two different locations. So I
2 thought perhaps he had fired at -- at Sergeant Holbrook
3 and Officer Scott. So I was under the impression that
4 he may have shot or I heard shots coming from two
5 different guns.

6 My other theory, in thinking about this since
7 that occurred, is the first two rounds kind of caught
8 me off guard. I wasn't expecting it. So after those
9 occurred and I realized he is actually shooting, I just
10 became more aware. That fight or flight response, you
11 became hyper-aware, you know your senses heighten and
12 things like that.

13 So I -- after the first two, I hear these
14 subsequent rounds being fired. The subject kind of --
15 kind of crumples forward, I guess that's the word I
16 could use for it. But he hunches forward from this
17 standing position with his arm extended with the pistol
18 in it and then -- and then falls.

19 This all occurred over the time period of a
20 couple seconds. So it was the time it took me to drop
21 the binoculars and set them on the ledge and draw my
22 own pistol and point it to where he was at. By the
23 time my front side reached where he was standing, he
24 was -- he was down. He was gone completely out of
25 sight behind a wall. There is about, at least from my

1 perspective, maybe two-and-a-half or three-foot wall
2 that surrounded the top of where he was standing up.

3 From there I held cover. I believe Officer
4 Myer called "Shots fired" on the radio to notify
5 everyone else that shots were fired. And from there
6 notifications were made, Sergeants requesting
7 additional cover. And I just held cover.

8 I know Sergeant Holbrook and Officer Scott
9 retreated from the area. They somehow made a tactical
10 retreat back to a safe location. And we waited -- we
11 waited there maybe ten minutes until we were relieved
12 by officers from North Precinct that came and relieved
13 my position.

14 Q Prior to the shots being fired, were you able
15 to hear from your position any verbal commands or any
16 statements?

17 A No, I didn't -- I didn't hear commands. I
18 didn't hear specific statements or words. All I heard
19 from where I was standing was just a spike in tone of
20 voice. I didn't know who it was coming from, but just,
21 you know, from time to time as the conversation
22 occurred, someone would just get louder and then it
23 would trail off. And I couldn't hear what was being
24 said.

25 Q Is this correct, that you were watching these

1 events through the binoculars?

2 A Yes.

3 Q And so when you saw what you described in
4 terms of the subject pulling out a gun and pointing it,
5 what were you thinking at that moment in time when you
6 saw that through the binoculars?

7 A My -- my response is this person posed an
8 immediate threat towards Sergeant Holbrook and Officer
9 Scott, that he intended to kill them. I drew my weapon
10 with the intention of firing. The target was just gone
11 by the time I got there. It was completely over. This
12 took place so quickly. In fact, I -- at least my
13 initial perception is that this person fired at them.

14 Q Meaning you thought that the subject shot the
15 police?

16 A I thought the subject shot first. That's the
17 fact that I -- well, my perception is that I heard two
18 quieter shots first and then I heard the subsequent
19 ones. I think that was probably part of that
20 perception. That's why I thought that way.

21 MR. REES: Any questions from the Grand
22 Jury.

23 JUROR: You were exactly how far from
24 the -- your position to -- to the --

25 A Exact distance? I don't know.

1 JUROR: Wild guess?

2 A At the time I thought between 50 and
3 70 yards.

4 JUROR: Fifty and 70 yards.

5 And you stated that you saw him -- his
6 hand in his pocket. For about how long a time do you
7 figure that was, a few minutes?

8 A I didn't think it was his pocket, but
9 somewhere in his pants. I don't know if it was his
10 waistband or like a pocket that he had on his jeans or
11 something like that. He did it a couple times, first
12 relatively quickly where he just placed it in there and
13 then pulled it out. The second he probably just rested
14 it there maybe ten seconds or so.

15 And then it was shortly thereafter he did
16 that that he actually pulled -- pulled the pistol out.

17 JUROR: He pulled his right hand out and
18 pointed it directly like that. It was not a two-hand
19 position; it was a one-hand position, is that what you
20 are saying?

21 A From what I thought. Again, I'm seeing a
22 side profile. I'm seeing his right side, and it's --
23 at least the way our spotlights were aimed at him, one
24 side of his body was very clear to me. The other side
25 was completely dark. You know, it's like --

1 JUROR: Where was Myers in your --
2 proximity to you?

3 A He was somewhere behind me, maybe near my
4 car. The thing is he switched positions a number of
5 times during this entire encounter. He was at times at
6 Sergeant Holbrook's car and at times near my car. I
7 know he had a short -- pretty short exchange with
8 Officer Richardson when he came back to the car. So
9 they were behind me somewhere, and I was, again,
10 looking through binoculars focused on the subject.

11 Q Do you think they had a better view, Myers
12 and Richardson, than you?

13 MR. REES: He can't really answer that
14 question, whether he had a better view. He can only
15 answer what he saw from his view through the
16 binoculars.

17 JUROR: Okay. Thank you.

18 MR. REES: Would you like him to show you
19 though on the picture where he believed Officer Myers
20 was at the time?

21 JUROR: Well, he showed me kind of at the
22 corner where he was. Now I was curious where the other
23 two officers were.

24 BY MR. REES:

25 Q Why don't you show us on the photo, if you

1 are able to?

2 A Again, I was right around this light pole, on
3 either side of it. I know Officer Myers was at times
4 at Sergeant Holbrook's car, taking a position inside
5 the door. And I know when he conversed briefly with
6 Officer Richardson somewhere behind my car, but, again,
7 that was behind me and I'm focused ahead. So I wasn't
8 able to see.

9 Q So that's east of your position?

10 A Yes, just east of where I'm at, approximately
11 a car length away.

12 Q Did Officer Myers have a pair of binoculars?

13 A He didn't have his own pair, but after -- I
14 know at one point I let him look through the binoculars
15 prior to the shooting. And then after the shooting, I
16 was holding cover. I had my pistol drawn in case the
17 person jumped back up. And during that time, he was
18 looking through the binoculars. So I had them set on
19 the ledge, and he was also observing.

20 Q Okay. But at the time that you were looking
21 through the binoculars, it sounds like Officer Myers
22 did not have a pair of binoculars, right, because you
23 were sharing your binoculars?

24 A We were sharing. So at the same time, no.

25 Q That's what I meant, at the same time. The

1 answer is no.

2 A No.

3 MR. REES: Any other questions?

4 All right. Thank you, Officer.

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1 STATE OF OREGON)
) ss.
2 County of Multnomah)

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4
5 I, Estelle T. Keating, Official Court
6 Reporter of the Circuit Court of the State of
7 Oregon, Eleventh Judicial District, certify that I
8 reported in stenotype the foregoing proceedings in
9 the above-entitled case.

10 I further certify that my stenotype
11 notes were reduced to transcript form by
12 Computer-Aided Transcription under my direction.

13 And I further certify that the words
14 spoken in transcript pages 60 through 169 are
15 accurate an record.

16 Dated this 28th day of February,
17 2012, at Portland, Oregon.

18
19
20 
21 Estelle T. Keating
22
23
24
25

1 MULTNOMAH COUNTY GRAND JURY

2 DEATH INVESTIGATION

3 Deceased: BRAD L. MORGAN)
4) DA Case No. 2236553-1
Date of Incident: January 25, 2012) PPB Case No. 12-7018
5 Location: 318 SW Morrison,)
6 Portland, Oregon)

7 VOLUME 3

8 TRANSCRIPT OF PROCEEDINGS

9 BE IT REMEMBERED that the above-entitled
10 transcript of Grand Jury proceedings was heard, commencing
11 at the hour of 9:20 a.m. on Wednesday, February 15, 2012 at
12 the Multnomah County Courthouse, Portland, Oregon.

13
14 APPEARANCES

15 Mr. Donald Rees, Deputy District Attorney,
16 Appearing on behalf of the State;

17
18 JULIE L. BOURGEOIS
Court Reporter
19 Multnomah County Courthouse
1021 SW 4th Avenue Rm. 311
20 Portland, Oregon 97204
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23
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25

1	INDEX OF WITNESSES	PAGE
2		
3		
4	DAVID SCOTT	170
5	RASHELLEY MORGAN	206
6	RANDY MORGAN	210
7	MAX JOHN HOLBROOK	219
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
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1 TRANSCRIPT OF PROCEEDINGS 2/15/12 9:20

2

3 DAVID SCOTT,

4 called as a witness in behalf of the

5 State, being first

6 duly sworn, was examined and testified as follows:

7 EXAMINATION

8 BY MR. REES:

9 Q Please state your name and spell your first and
10 last name.

11 A Okay. My name is David Scott, D-A-V-I-D
12 S-C-O-T-T.

13 Q And what's your occupation?

14 A I'm a police officer with the Portland Police
15 Bureau.

16 Q How long have you been a police officer?

17 A Nine years.

18 Q And what's your educational background?

19 A I went to Portland Community College, got my
20 associate's degree there, and then studied at Portland State
21 for a few years. I ultimately got hired by Lake Oswego
22 police and never finished the degree there, so about four
23 years of college.

24 Q So you worked for the Lake Oswego Police
25 Department before coming to Portland?

1 A I did, Yes.

2 Q How long was that?

3 A Three and-a-half years.

4 Q All right. And so altogether then, you have been
5 a police officer for how many years?

6 A Well, nine. I was a community service officer, a
7 little bit different job in Lake Oswego, and was hired as a
8 police officer when I came to Portland in 2002.

9 Q What assignments have you had with the Portland
10 Police Bureau, officer?

11 A I have worked uniform patrol since I have been
12 here, so at various precincts.

13 Q What precinct are you currently assigned to?

14 A Central Precinct.

15 Q What days of the week do you work?

16 A I work Saturday night through Tuesday night.

17 Q And what shift do you work?

18 A Night shift.

19 Q What time does that begin?

20 A It begins at 10:00 p.m.

21 Q So, in this incident, you begin your shift, I
22 would say, on Tuesday, January 24th, 2012; is that right?

23 A Technically, actually I started my shift two hours
24 late that evening, so I guess it would have been Wednesday
25 morning at about midnight.

1 Q So, just kind of back you up, then, you started
2 your shift at about midnight on that date?

3 A On that night, yes, I did. I took F-2, we call
4 it, the first two hours of the shift off.

5 Q Okay. Prior to this call at 318 Southwest
6 Morrison, had you had any unusual events or occurrences on
7 your shift up to that point?

8 A Nothing unusual. It was a busier shift than I
9 normally have, but just regular kinds of calls.

10 Q What call were you on or what was going on
11 immediately preceding this call to the parking structure?

12 A I had just left a call at a youth facility, New
13 Avenues for Youth. And because I was working the downtown
14 district, that has the precinct building at the Justice
15 Center, within it, one of my duties that night was to
16 relieve the desk clerk for her lunch break. I was driving
17 towards Central Precinct to do that, and also to grab a bite
18 to eat for myself.

19 Q All right. And then did you respond to a call
20 regarding a robbery suspect/suicidal person who was calling
21 911?

22 A Yes. I'm not sure I'd call him a robbery suspect.

23 Q Okay. To put it another way, what information did
24 you first receive about this incident?

25 A Sure. The dispatcher came on the air and asked if

1 someone had taken a robbery call on Washington Street. And
2 from the radio communications that happened after that, it
3 appeared that no one had. And I certainly was not aware of
4 one myself. And so then she dispatched me to the parking
5 garage where there was supposed to be a man up on the roof.

6 Q And what did you do when you arrived there?

7 A The first thing I did was stop at 4th and
8 Washington. I found that parking garage which turned out to
9 be 318 Southwest Morrison -- I'm sorry, I stopped at 4th and
10 Morrison, not 4th and Washington. And I looked at the
11 building, saw it had nine floors. So I thought perhaps this
12 was the building that the dispatcher was referencing in the
13 call.

14 Q Could you see anything at that point?

15 A No. I got out of my car and looked at the
16 building, I looked up at the top of the building, I couldn't
17 see anyone up there. There was a gentleman walking by on
18 the sidewalk, I spoke to him briefly, asked him if he called
19 911, he said no, and I kind of warned him. I said, "Well,
20 we got a call that someone said they wanted to jump off a
21 building. I don't know which building it is. Just be
22 careful, just in case," because he was on the sidewalk.

23 Q So where did you go from there?

24 A From there, I drove into the parking garage on the --
25 I guess it would have been the west entrance, the vehicular

1 entrance into the parking garage.

2 Q Go ahead and describe for us, then, where you go
3 from there and what you see.

4 A Okay. So, I stayed in my patrol car, drove into
5 the parking garage. And this particular parking garage, you
6 drive around the parking spaces and essentially you're
7 driving up a spiral. So I slowly drove around that spiral
8 in a counterclockwise kind of direction, slowly going up the
9 floors. As I did that, I was watching all the ledges,
10 trying to see if there was anybody in the building. I
11 didn't see anybody as I was going up. You just want me to
12 keep going?

13 Q Sure.

14 A So when I got up to essentially where the 9th
15 level starts, the levels are split. So when you get to the
16 9th level, you're not actually on the top yet to -- if you
17 looked straight up, you're looking at sky, but it's
18 technically the 9th level.

19 About then I heard a radio transmission about the
20 person who was calling 911 said he possibly had a gun, so
21 Sergeant Michaelson came on the radio and told me to wait
22 for cover officers before I went all the way to the top of
23 the parking garage.

24 So, at that point I actually backed up a little
25 bit to where I was on the 7th level, which was the next

1 level down that I could access. When you go in from the
2 west side, as I understand the layout of this building now,
3 you have access to just the odd levels, skipping the even
4 ones, you enter those from the other side. So when I backed
5 up one level, I was at the 7th level at that point. Then I
6 waited for another officer to join me before going up to the
7 top of the building.

8 Q Who was that?

9 A That was Officer Richardson, and he had a trainee,
10 his name was Officer Hoerauf.

11 Q Once they arrived, did you continue up to the top
12 of the structure?

13 A Yes.

14 Q And if you would like to illustrate your
15 testimony, feel free to move up to the board with a large
16 photograph, and maybe you can show us where you went, as you
17 reached the top of the building.

18 A Okay. If that would be helpful. Okay. So, I was
19 on the west entrance, the blue side. As you see on this
20 exit spiral in the center here, there's one with an orange
21 railing and one with the blue. I was on the blue part of
22 this. And, essentially, after Officer Richardson joined me,
23 he pulled up to my car. I said, "Let's go to the top of the
24 building and look and see if this guy is up there." At that
25 point, we had no idea if this was even the right building.

1 So I drove -- continued the spiral up with Officer
2 Richardson following in his patrol car. And where you
3 emerge onto the roof of the building is this opening here,
4 which is the, I believe, the southwest corner; is that
5 right? I think that's on the southwest corner of the
6 building. So I drove out from under that, and continued my
7 kind of circle around up here to the east side of the
8 building. And as I do that, I'm kind of visually scanning,
9 looking around the railings and so forth to see if I can see
10 anyone up there, at that point I couldn't.

11 And so I continued around -- half way around the
12 roof of the building, I realized that there was a point here
13 where I couldn't drive any farther, because of the way the
14 spirals are, you know, they alternate. So I started to turn
15 my car around. And as I did that, I'm still looking, I
16 still can't see anyone. I get on the radio and I say, well,
17 you know, 857, which is my radio number, I said, "So far the
18 roof is clear, I'm not seeing anybody up here," something to
19 that effect. This is my car here, pointing to this Dodge
20 Charger parked right here in the photograph, kind of at the
21 top of the blue ramp (indicating).

22 And so I did a U-turn, 180 degrees. And as I make
23 that radio transmission, and then after I'm turned around,
24 Officer Richardson at that point was in his car kind of
25 parallel to me, but facing the other way, about to make the

1 U-turn essentially, and he goes, "Dude, he's right up there,
2 right above you," which startled me for a second. He
3 explained that he meant over here at the southwest corner on
4 top of this elevator shaft structure. So I was able to kind
5 of crane my head and look over there, and at that point I
6 saw someone standing up on top of that (indicating).

7 I stopped my patrol car here where it is in the
8 photo, put my spotlight on and pointed it toward the person
9 that I could see up on top of the structure here, and got
10 out of my car.

11 Q From that distance, from really one side of the
12 parking structure to the other, which encompasses a city
13 block, how much illumination did you get with the spotlight?
14 I mean, how well lit was the person on top of the elevator
15 shaft?

16 A Uhm, not very well. Our spotlights aren't much
17 brighter than a typical car headlight. So if you can
18 imagine, it's a little bit more focused, I think. But if
19 you can imagine something slightly brighter than a car
20 headlight illuminating someone, I'd guess that to be about
21 200 feet away, it's not terribly bright.

22 Q All right. When you turned on the spotlight,
23 could you see whether the person on top of the elevator
24 shaft was doing anything in particular as far as movements?

25 A I could. It looked like he was on the phone, with

1 the phone in his left hand, and just slowly pacing back and
2 forth, uhm, looked pretty calm. And he would kind of look
3 over at us toward where our cars were, and then look back in
4 the other direction. He would take a couple of steps in
5 either direction pretty slowly, but nothing drastic.

6 Q What did you do at that time?

7 A After that, another officer parked a patrol car
8 here on the south -- along the south wall of the structure.
9 I don't know which officer that was at this point, but I was
10 still trying to figure out which corner this was that the
11 gentleman was on, because I got turned around going up the
12 spiral. So I had my compass directions off a little bit.

13 Q You mean which corner in terms of directionality;
14 is that what you meant?

15 A Right. Essentially, I wanted to broadcast to
16 other officers coming to the call and to officers that might
17 be down on the street, which corner of the building he was
18 on, so that everyone knew exactly where he was. So, to try
19 to figure out where I was, I walked over here to this wall
20 which turned out to be the south wall, and looked down
21 trying to see street signs (indicating). Uhm, I couldn't.
22 But Officer Richardson pretty quickly figured out he knew
23 somehow based on the buildings downtown or something, which
24 direction we were facing, and let everybody know that it was
25 the southwest corner.

1 Over here I was -- I did a couple of things while
2 I was here by the south wall by this patrol car. Uhm, one,
3 I was trying to get a better look at the layout of the top
4 of this parking garage to determine where we should be, and
5 also to see from a different angle, you know, what this
6 elevator shaft structure really looked like. Because from
7 what I could tell when I came up, it was over on the east
8 side, and even when I got to the south side, it's this
9 elevator thing sticking up about fifteen feet, and there's
10 really no way to get up there, no stairs, no ladder or
11 anything like that. So I tried to figure out how a person
12 who was up there, got up there. I was trying to figure out
13 if there was a safe place for us to be on the roof. And
14 then I also looked down over edge to see if I could see
15 which -- get my bearings and figure out which direction I
16 was facing so that I could tell other officers where this
17 person was.

18 While I was here at this edge, I saw a police car
19 driving west along Morrison Street here (indicating), I
20 think it's Morrison, and I saw the roof number on that car.
21 And I got on the radio and I said to him, "Hey, I want you
22 to block off traffic so nobody can" -- I think I said drive
23 or walk on that corner. So I said, "The next intersection
24 you come to, stop there and block it off." He stopped
25 pretty close to the building, and so then I said, well, go

1 across the intersection and he did, so I figured he was
2 safe.

3 After that, I noticed Sergeant Holbrook had joined
4 us up on the roof, and was on this inside corner of the -- I
5 guess that's the -- we'll just call it the center column of
6 the parking garage, if that makes sense. And he was back
7 here by these other two patrol cars, and he motioned to me
8 to come over to him. So at that point, I ran back over to
9 where Sergeant Holbrook and Officer Richardson -- he was
10 still there, I joined them back there at this point on this
11 corner here (indicating).

12 Q Where did you go from there?

13 A From there I had a conversation with Sergeant
14 Holbrook who said, "Let's go -- you and I walk around so we
15 can get closer." And so what he meant, he kind of pointed
16 over here to the center spiral. So Sergeant Holbrook and I
17 walked north along the inside of the parking area here onto
18 the blue ramp. And once you get at about what I would
19 describe as the 90 degree point here on this ramp because
20 it's a spiral, there's a way to hop over the railing right
21 there, and get onto the other side, the orange side, which
22 we previously didn't have access to with our cars. So we
23 walked there, we hopped over the railing, walked west along
24 the inside wall here that surrounds the center column, and
25 we stopped at this pillar here on the corner, which would be

1 the northwest corner of the opening in the center of the
2 building.

3 Uhm, I talked briefly with Sergeant Holbrook that
4 my intention was to talk to the person that was up on top of
5 the elevator shaft, and try to get him to come down.
6 Basically, at that point my thinking was, is, you know, he's
7 been on the phone. From what I gathered from what the
8 dispatcher told us, he hadn't been entirely cooperative with
9 the information he was giving. Because, like I said, when I
10 got to this parking structure, I didn't know even if this
11 was the exact parking structure that I needed to be at. We
12 were still kind of in the mode of finding which building, if
13 any, this person was on. You know, I had a pretty good idea
14 this might be it, because it was nine floors.

15 One thing he had said to the dispatcher that they
16 relaid to us was that he was on the 9th floor of a building.
17 And somehow it came out that it was a parking structure.
18 I'm not sure if he said that or if they figured that, and
19 that he could see Pioneer Square. And so from, you know, if
20 you look down Morrison Street, I think you can see a little
21 bit of Pioneer Square.

22 Uhm, but I knew that the information he had given
23 dispatch wasn't 100 percent forthcoming. I knew that they
24 had been talking to him. I knew he was still up there, and
25 my goal at that point was to talk to him face-to-face, make

1 that human connection with him, and try to basically
2 establish a dialogue with him, and see if I could convince
3 him to come down without jumping, which is what I thought he
4 was going to do. I thought that was his intention was to
5 jump.

6 So, to that end, from here, I started to yell to
7 Mr. Morgan as he was standing up here, and this, again, is,
8 you know, probably close to 150 or 200 feet away. And even
9 at 4:00 in the morning with a little bit of kind of
10 background noise that was going on, I couldn't hear him at
11 all what he was saying, and I didn't think he would hear me
12 from this point.

13 So I talked to Sergeant Holbrook and I told him I
14 wanted to get closer. He agreed we needed to. And so we
15 walked together to the top of the orange ramp here
16 (indicating), and stood kind of by this pillar. I tried to
17 talk to Mr. Morgan again, this time I could hear him a
18 little bit better, but I couldn't talk to him. I couldn't
19 communicate with him, because if he turned his head at all
20 or anything like that, I just couldn't hear the words he was
21 saying. And I still didn't think he could hear me very
22 well.

23 So I told Sergeant Holbrook I wanted to get even
24 closer. And there's this -- at the top of the exit where I
25 drove out from, there's a wall that stands about four feet

1 high, which is across an open area from the elevator shaft.
2 So I told Sergeant Holbrook I wanted to go over there so I
3 could get close enough to talk to this guy. Again, he
4 agreed, and so we walked there together. As I started to
5 walk, I introduced myself to Mr. Morgan. I said, "I'm
6 Officer Scott." I had heard on the radio that his last name
7 was Morgan, I kind of missed or had forgotten his first
8 name. I said, "Mr. Morgan, I'm Officer Scott. I would like
9 to talk to you. I would like to come a little closer, if
10 that's okay." He said that it was. And as we were starting
11 to walk that way, I was pretty comfortable he was okay with
12 talking to me at that moment.

13 So as Sergeant Holbrook and I were walking over
14 there, is when I said, "I'm Officer Scott, you're Mr.
15 Morgan; right?" He said, "Yes." And I asked Sergeant
16 Holbrook, what was his first name, and he said Brad Lee. I
17 said, "Is it okay if I call you Brad Lee?" And he says, if
18 you'll excuse me, he says "Fuck no," and kind of laughed,
19 you know, people don't like their full names oftentimes. I
20 said, "How about Brad?" He said, "Okay, that's fine."

21 So we get over to the wall, and I say, "Well,
22 Brad, uhm, my goal here is that I want to talk to you, and
23 I'm going to try to get you to come down from there without
24 jumping, without hurting yourself; is it okay if I try to do
25 that?" He said it was.

1 Q Officer, if I may show you another photograph,
2 does that perspective show what you were seeing at that
3 point when you had moved towards the southwest corner of the
4 structure?

5 A Pretty close, yeah. I think from looking at this
6 photograph, I would have been standing over here toward the
7 left edge of where this picture is framed. But I remember I
8 could see the Wells Fargo Tower back behind him. So this
9 is, yeah, the general area where we were standing at that
10 point.

11 Q All right. Then I'll have you then return to your
12 seat. Have you had as part of your police training, crisis
13 intervention training or CIT training?

14 A Yes.

15 Q And what is that and what does it consist of?

16 A Essentially, the crisis intervention training is
17 general training for police officers to be able to deal with
18 people who are in mental crisis for mental health issues.
19 And so that training covers things like how to communicate
20 with people. I remember a big part of it was if someone is
21 autistic, ways to try to kind of break through that and be
22 able to find out what they need. And a lot of it is
23 recognizing when someone is in a situation that perhaps is a
24 mental illness thing as opposed to something else, why they
25 were behaving the way they are.

1 Q So when you had this now verbal exchange with Mr.
2 Morgan, what did you observe about his demeanor at that
3 point?

4 A Mr. Morgan was very calm, he was lucid, he was
5 part of the conversation. He didn't have any trouble
6 communicating with me. Uhm, he had clear thoughts. I could
7 understand everything he was telling me. He didn't seem
8 like a person who was in crisis to the point that he was out
9 of control. Uhm, I was able to communicate with him
10 effectively or that's what I thought at the time. And like
11 I said, he was just very calm and matter of fact about what
12 was going on.

13 Q At this point is Sergeant Holbrook standing up
14 next to you?

15 A Yes. Sergeant Holbrook was on my left.

16 Q Any other police officers standing right in your
17 immediate vicinity?

18 A After a short time, officer Richardson had joined
19 us. He was there for part of our conversation with Mr.
20 Morgan. As far as I know throughout the conversation,
21 Officer Richardson was the only other officer that was
22 there.

23 Q Did any one of you take the lead, so to speak, in
24 trying to have a conversation with Mr. Morgan, or did that
25 just vary as the conversation ebbed and flowed?

1 A I took the lead on talking to Mr. Morgan. I was
2 dispatched as the primary officer. Uhm, it was a fluid
3 conversation. So Sergeant Holbrook and Officer Richardson
4 interjected a few times, but I was the primary person
5 talking to Mr. Morgan.

6 Q We have seen a photograph, you're driving a marked
7 police car, uhm, are you also wearing your regular Portland
8 Police Bureau uniform displaying a badge?

9 A Yes, I was.

10 Q All right. How does the conversation go, then,
11 after you made that initial contact and discussed how he
12 wanted to be addressed?

13 A Well, I started off by asking why he was up there.
14 Uhm, to answer your question, I thought it was going pretty
15 well, because when I asked him why he was up there, he said
16 it was about his girlfriend, had something to do with his
17 girlfriend. And that he had made some bad decisions in his
18 life, and so many that he figured he had no options. And
19 that he had sought help in the past, but could never find
20 the right person to help him.

21 Uhm, so, as this conversation got started, I was
22 thinking, okay, well, he seems to be giving me sincere
23 information about what is happening. And I thought that I
24 was starting to develop a rapport with him, kind of that
25 connection. So I thought it was going pretty well. I

1 thought I was getting through to him, we were communicating
2 effectively.

3 So, we talked about various things. Like I said,
4 he said that he hadn't found the right person to help him.
5 And I said, "Well Brad, we have resources that perhaps you
6 haven't heard of like Project Respond." I mentioned that to
7 him, I said, "Have you ever heard of Project Respond?" He
8 said, "No, I haven't." I said, "Well, they deal with people
9 who are going through hard times." I can't remember exactly
10 how I put it. But perhaps -- I said, "Maybe these are some
11 people you can talk to after this is over, we can hook you
12 up with someone to talk to."

13 And this was a point where Officer Richardson
14 interjected, I heard over to my left, he said, "Yeah, man.
15 We will stay with you the whole way. We have resources, we
16 will stay with you, we will make sure that you get some
17 help." Mr. Morgan at this point said to me, he says, "What
18 makes you the right person?" I said, "Well, I'm not saying
19 I'm the right person. I'm saying maybe I can get you to the
20 right person, and that's what I want to do."

21 So we started talking some more about the
22 possibilities for people for him to talk to. He didn't
23 really answer about the Project Respond thing or us getting
24 him resources. So I said, "How about family? Do you have
25 family that you can talk to after you come down?" He said --

1 I couldn't hear this part, because even being as close as we
2 were, when he would turn his head, because he kept kind of
3 pacing back and forth throughout our conversation. So every
4 now and then he turned his head away, and I couldn't hear
5 the response, but he said something about his mom. And I
6 had the impression that might not have been the best
7 relationship. I don't know.

8 And at some point he told me that he had a son, an
9 eight month old son. So we talked about that. And I said
10 "Brad, if you jump, if you died tonight, you know, you can't
11 be your son's dad any more." He said, "Well, he's fine. He
12 has a father figure." I took that to mean -- actually, he
13 said something to the effect of his girlfriend has a new
14 man, and his son, Brad's son, had a father figure in his
15 life

16 I said, "Well, there are father figures and there
17 are dads." I said, "You're his dad. You're always going to
18 be his dad. And the one thing I do know, if you end your
19 life tonight, you can never be his dad again." I said, "You
20 have a chance to fix things, unless you jump." And he said,
21 basically, that he had messed up things so badly, that he
22 didn't have a chance to fix them.

23 Uhm, I offered something to him I had heard
24 another police officer years ago say that suicide is a
25 permanent solution to a temporary problem. And basically

1 his response to that was that his problems were permanent.
2 I was starting to get the impression he didn't see a way out
3 from whatever it was that was affecting him.

4 So we continued to talk. I continued to try to
5 find ways to convince him to come down. I knew that was
6 going to be precarious if I accomplished that, because I
7 could see that there was no -- like I said before, no
8 staircase, no ladder or anything getting up on top of this.
9 At some point in the conversation Sergeant Holbrook asked
10 Mr. Morgan, "How did you get up there?" And Mr. Morgan
11 pointed to a railing which would be essentially the east
12 side of the building, the railing that goes along the edge
13 of the parking structure. And from where the parking spots
14 are, it extends all the way along the building, and
15 essentially to the elevator shaft. But there's a section of
16 ten or fifteen feet where all -- it's an eight-inch wide or
17 so, kind of a concrete railing. And he pointed to that and
18 he said, "Well, I walked across that." It's like you're
19 balancing to walk cross this, with about a twenty foot or
20 fifteen foot drop on one side, and then nine stories on the
21 other.

22 He said he hopped up on a little pillar, and then
23 climbed up. So, that told me, number one, there's no way we
24 could go up and get him. And once -- if I convinced him to
25 come down, it was kind going to be kind of a difficult

1 proposition. I figured we would probably have to have the
2 Fire Bureau come out with a ladder or something to rescue
3 him from up there.

4 So we continued to talk. At one point Sergeant
5 Holbrook started talking to Mr. Morgan. And then while he
6 was talking, this -- I heard our lieutenant from our shift
7 get on the radio calling Sergeant Holbrook. I got on the
8 radio and said, "Well, he's talking to the guy right now.
9 I'll go to the other radio to talk to you," essentially.
10 When I went over and talked to the lieutenant, he goes, "You
11 don't have to do this. But keep in the back of your mind
12 that we can call the crisis negotiators," which is the
13 police bureau's -- I knew them as the hostage negotiation
14 team. The name changed to crisis negotiators, if you need
15 them. And as he's saying that, I'm watching Mr. Morgan up
16 on top of the structure, and I see him looking down over the
17 edge on the east side there, and actually at that point I
18 thought he was going to jump.

19 Q And that would be the street side?

20 A The street side. And he's looking down over the
21 edge. I told the lieutenant, I said, "Yeah, I think that's
22 going to be a good idea." So I went back to our dispatch
23 channel, and made the call for them, so it got them started.

24 Q What was your sense, if you have a sense, of how
25 much time you had spent talking to him up to that point?

1 A Looking back on it, I would say it had been maybe
2 five minutes or so.

3 Q And do you recall what your verbal approach was
4 with him, and your sort of physical approach during that
5 conversation?

6 A Well, I was trying to keep it calm, uhm, and low
7 key. I didn't want to seem threatening to him, because what
8 I believed at that time the danger was, was that he was
9 going to jump off the building, and I didn't want to provoke
10 that somehow. So I just tried to keep a pretty calm
11 demeanor.

12 I'm actually told by other officers and by people
13 I talk to that I have a good way, I guess, of talking to
14 people. So I thought, well, hopefully, I can bring that
15 into play here, and I can use that, if that's true. In
16 fact, Mr. Morgan at one point even said, "Oh, this is why
17 they pay you guys so much, because you're good at talking to
18 people." And that was encouraging to me, because I thought,
19 wow, he's saying I'm good at talking, so, hopefully, that
20 means that he's getting -- he's understanding at least what
21 I'm trying to say.

22 So, yeah, the whole time I tried to keep it low
23 key, "Hey, we're here to talk, you know." And I told him,
24 like I said, "My goal is to talk you into coming down
25 without getting hurt," so I didn't present like a

1 threatening or in an aggressive demeanor toward him. I
2 didn't want to do that.

3 Q Okay. And now to go back to the chronology, you
4 had just said, I believe, that you indicated to the
5 lieutenant that you thought it would be a good idea to alert
6 the crisis negotiation team; is that correct?

7 A That's right.

8 Q Okay. And that was -- that conversation with the
9 lieutenant, was that by radio?

10 A It was.

11 Q So what happened after that?

12 A So after I made the call to dispatch for the
13 negotiators to come out, of course, we continued to talk to
14 Mr. Morgan. And, you know, he said things like, at one
15 point he made a comment about 4 -- he looked at his watch or
16 something and said, "Oh, it's almost 4:20. 4:20 would be a
17 good time to jump." And 420 is kind of, I guess a marijuana
18 culture thing.

19 And actually before that, he told me that --
20 because I asked him again, I said, "Why are you up here
21 tonight? What's going on?" And he said that, again, I
22 couldn't hear part of it, it was something to do with his
23 girlfriend, and that he wanted her and then someone else, I
24 couldn't hear who he said, to -- first he said he wanted to
25 make a scene, and he said he wanted his girlfriend and

1 someone else that I couldn't hear, to know what he had done.

2 So at that point I'm thinking, oh, boy, his plan
3 is to get a bunch of people here, and so that there's -- so
4 it's a big deal, a big call, a lot of people here, and then
5 he's going to jump. And then when he made the reference to
6 420, actually, when he said that, I turned around, there was
7 somebody behind me, I think it was Richardson. I said,
8 "What time is it?" And what I thought I heard was 4:11.
9 Looking back on things, I don't think that was accurate.
10 But what I heard was 4:11, and so I thought, well, okay, I'm
11 working with a nine minute deadline now. So I wanted to
12 keep Mr. Morgan engaged and try to keep him away from the
13 ledge if I could.

14 You know, we were saying things like, "Step back
15 from the ledge," and stuff, and he would, he kept pacing.
16 But more and more as the conversation progressed, especially
17 after the comments about making a scene and about 420, he
18 would look down over the edge, down to the street.

19 At one point he looked down there and he said,
20 "Oh, there's a police car down there. I wonder if I will
21 land on that." He says, "Oh, they moved it. That guy must
22 care about his car." He said something, he goes, "It's
23 pretty high, isn't it?" I said, "Yeah, Brad, it's really
24 high." He said, "Well, if I jump feet first, I will
25 probably still die, won't I?" And I said, "I think you

1 will. I really don't want you to do that. I think you
2 would die if you jump."

3 So it definitely seemed like he was maybe trying
4 to work up the courage to jump off that building, is what I
5 thought was happening. And I knew that there was -- I had a
6 finite amount of time to try to talk him out of it.

7 Q Up to this point, did you perceive a particular
8 danger to yourself or the other police officers posed by Mr.
9 Morgan?

10 A Outwardly, no, I didn't think so. Uhm, I knew
11 that at some point in his conversation with the dispatcher,
12 that a gun had been mentioned. I didn't know how they came
13 to that information. They didn't say anything to us about,
14 you know, any kind of threats he made with it. So, I took
15 that into account and I had it in my mind. But my sense
16 while I was talking to Mr. Morgan while he was up there, was
17 that the real danger in the situation is that he was going
18 to jump.

19 And I thought, you know, it's my job, it's my duty
20 to try to prevent that, to try to save him, I guess, from
21 doing that. You know, and I know that if somebody is in
22 crisis, they are not necessarily thinking clearly about
23 these things. So my hope was that I could somehow break
24 through that enough that I could convince him to come down.
25 My goal was, if I could get him to come down, basically, was

1 to take him into protective custody, to take him to the
2 hospital so that he could be evaluated by a doctor, and
3 hopefully get him some help. I was not thinking about
4 criminal charges or anything like that.

5 In fact, I guess he had mentioned on the phone to
6 dispatch early on in the thing, that he had just done a
7 robbery, that's where that question about if there had been
8 a robbery on Washington Street took place. And he mentioned
9 that early on when he was talking about the poor decisions
10 he made, he said, "Well, I just robbed somebody." At that
11 point Sergeant Holbrook said, "Well, Brad, we checked and we
12 heard about that, we checked and there hasn't been a call.
13 I think you're okay there, let's not worry about that right
14 now." So, yeah, my concern, the danger of the situation was
15 that Mr. Morgan was going to jump off the building.

16 Q So what happens then in the conversation after he
17 mentions some of these things you have said where he asked
18 you if you thought he would die, you know, if he jumped feet
19 first and some of these other statements, where does the
20 conversation go from there?

21 A From there, I think it deteriorated pretty
22 quickly. He said something while he was standing still at
23 the edge looking down at 3rd Avenue on the east side of the
24 building there, he said, "What would happen if I pulled a
25 gun out right now?" And my response to that, what I thought

1 was, gosh, I don't want to say, "Well, I'm going to shoot
2 you." So, I said, "Brad, why would you ruin our lives?"
3 Trying to kind of build on that personal thing and maybe
4 make him see me as a person, and I don't want to be involved
5 in that situation, and perhaps that would convince him not
6 to do it.

7 And he just kind of nodded, and then shortly after
8 that, he walked to the edge of the elevator structure, which
9 was closest to where Sergeant Holbrook and I were standing.
10 From there, he reached down toward his waistband, and
11 because he had mentioned killing us, he had mentioned a gun,
12 at that point I thought, holy crap, he's actually going for
13 a gun. And so I reached for my gun and drew it. I could
14 hear Sergeant Holbrook already yelling at Mr. Morgan, you
15 now, "No, no, stop." In fact, just before he reached for
16 the gun, Sergeant Holbrook said, your know, "He and I both
17 have kids. Why would you do that, why would do that to us?"
18 At that point I actually stopped and thought, yeah, wow, I
19 do have kids.

20 And so, Sergeant Holbrook and I are standing
21 there, Mr. Morgan reaches with his right hand toward his
22 waistband area, and there was a -- what looked like a pocket
23 to me, maybe like a hooded sweatshirt type pocket, that I
24 had looked at before during our conversation and I thought,
25 it's too small to have a weapon in there, it just looked

1 small. And the way he -- what he did next was he pulled --
2 I saw his hand come back out towards basically away from his
3 body, and I could see the side of a black, semiautomatic
4 pistol.

5 I could see it clearly. I could see the grooves
6 on the back of the slide that serve as a grip for when
7 you're pulling the slide back. I could see that it was all
8 black. I could see it. And I could see the side of it,
9 because as he pulled it out from wherever it came from, I'm
10 still not sure exactly where it came from, because it sort
11 of shocked me, because that pocket I thought, there's no way
12 he pulled that out of that pocket. He pulls it out
13 sideways, basically toward -- away from the side of his
14 body, and then, uhm, swept it forward, toward us. And this
15 was happening as I was drawing my gun.

16 Uhm, Sergeant Holbrook, like I said, as all this
17 was unfolding, was obviously drawing his gun as well, and
18 was yelling, "Brad, no, stop, don't do it. Stop." And
19 Sergeant Holbrook started firing. I actually tried to fire,
20 as soon as I was up on target, and I had a malfunction with
21 my gun. My gun didn't fire. And so, I went through the
22 process of getting past that malfunction to get my gun
23 working again.

24 Q Which consisted of what?

25 A So the first thing we do, if you try to fire and

1 it doesn't fire, it's called tap and rack. If you've heard
2 of that, essentially you -- it's a semiautomatic pistol, so
3 the magazine goes into the grip that you hold. So, the tap
4 part of that is, come up and basically hit the bottom of the
5 magazine, to make sure that it's seated. Because if it's --
6 if somehow when you draw it or something, if the magazine
7 pops out a little bit, things won't be lined up to work
8 properly.

9 And then racking means to grab the slide, pull it
10 back as hard as you can, essentially, let it go to cycle the
11 weapon, which if there's some kind of a jam or you have a
12 defective bullet in the chamber, it gets that -- hopefully,
13 it gets rid of that and it puts a fresh live round in there,
14 and makes it ready to fire.

15 So, as I'm going through that process, I'm, you
16 know, very, very briefly when it first happened, I glanced
17 down at my gun in surprise, and then looked back up at Mr.
18 Morgan. So, what I knew was happening while I was doing the
19 tap and rack, I'm watching and thinking he's going to shoot
20 us, because I can still see he has got the gun out towards
21 us. Sergeant Holbrook fires. I heard and saw out of the
22 corner of my eye, two shots. I don't know if he fired more,
23 but that's what I was aware of. And I saw no change with
24 Mr. Morgan, except that this whole time while I was fixing
25 my gun, Mr. Morgan was moving downward. And as I watched

1 this, I was thinking that he's not falling. He's moving
2 down, and what it looked like he was doing to me was kind of
3 leaning forward at the waist, I could still see the gun out
4 in front of him. And I had no indication that Sergeant
5 Holbrook had hit him with his shots. There was no way to
6 know.

7 So when I finished my clearance of my gun, the tap
8 and rack, I came back up on target. Mr. Morgan was still --
9 I could still see the gun out in front of him. I still, you
10 know, this whole time my thought is, one of us is about to
11 get shot. One of us is either going to get killed or
12 seriously injured by this guy, and I have got to do
13 something.

14 And so after I had my malfunction cleared, I came
15 up on target aiming at Mr. Morgan, I still believed he was
16 very much a threat. He still had that gun, and I fired one
17 shot. I aimed at -- we aim for center mass, which is, if
18 you're looking at me kind of where my tie is in the chest
19 area here, because -- the reason we do that is, you're
20 essentially aiming for the biggest target you can. If
21 you're off, you know, you can still have a chance to stop
22 the threat. So I aimed at what I perceived to basically be
23 the center of Mr. Morgan up there.

24 I took one shot, and then after that, he continued
25 downward, I think fell, and was out of sight completely.

1 There was kind of a lip around the edge of the elevator
2 structure that while he was standing up there I thought it
3 was maybe an inch or two, but looking back on it, I think
4 it's probably higher, because when he fell, I couldn't see
5 him at all anywhere, I mean, he just disappeared from my
6 sight.

7 Q And so when he disappeared from sight, did you
8 know whether he had been actually hit by gun fire or not?

9 A I still didn't know. I couldn't see. If he had
10 been hit, I didn't hear him. I didn't hear him scream out
11 or anything like that, or grunt or anything. There was just
12 no response, you know, nothing I could hear or see that led
13 me to believe he had been hit.

14 Q Did you at that moment know whether any officers
15 had been hit by gun fire?

16 A I did not.

17 Q Did you know whether Mr. Morgan had fired any
18 shots?

19 A I didn't, no.

20 Q Just to back you up, uhm, if you could just tell
21 us your thought process on pulling your gun out of your
22 holster; why did you do that?

23 A We -- as police officers we train about this
24 principle, you've probably heard of it, it's the
25 action/reaction principle. Which basically is that the

1 notion that a person can take an action, they can think
2 about an action, decide to do it, and then take that action
3 so quickly, that a person trying to react to it, is at a
4 huge disadvantage. Because what happens is, once you have
5 made the decision to make an action or take an action and do
6 it, all those things are out of the way. But the person
7 reacting to it, their mind still has to perceive the threat,
8 recognize that something is about to happen, make a decision
9 to stop it, and then act.

10 And so, the reason that I started to draw my gun
11 when he was reaching to his waistband is because I know
12 that if he -- I mean, he's already got such a time advantage
13 on me at the point that he's even reaching down, that I
14 needed to get that process going. It was time to react to
15 that, and it had to happen quickly.

16 Q What about your decision to fire, can you tell us
17 about that?

18 A Yeah. Uhm, I very much believed that my life,
19 that Sergeant Holbrook's life were in danger. I thought
20 that Mr. Morgan was about to shoot us.

21 Q Could you see, after you removed your gun from
22 your holster, did you have a picture of Mr. Morgan? Could
23 you see what you believed to be the gun in his hand at that
24 point?

25 A Yes.

1 Q And can you tell us or show us how he was holding
2 it?

3 A Sure. Like I said, after he drew it out from
4 around his waistband somewhere and pulled it out sideways,
5 he essentially swept it straight forward toward us
6 (indicating).

7 Q You're extending your right hand out.

8 A Extending my right hand out forward in front of
9 me. And the downward motion I described, basically, he's --
10 what I saw was Mr. Morgan kind of lean forward with the gun
11 pointed out in front of him, with his right hand toward us
12 (indicating).

13 Q What about other options, whether it would be to,
14 you know, to run or seek cover, or use some other defensive
15 tool other than a firearm, were those considerations at all?

16 A At that point none of those things were an option.

17 Q Why not?

18 A Uhm, well, with respect to running, there was
19 nowhere to run to. Cover, my concern with the cover is that
20 even though I had the wall there, at that point with Mr.
21 Morgan on this edge closest to us and aggressively trying to
22 shoot us, hiding down behind that wall would have been
23 potentially disastrous for us, because he could have come
24 back over the way he came, and then, again, we're at such a
25 disadvantage that I don't think we would have been able to

1 defend ourselves from there.

2 As far as other force options, when someone is
3 about to kill you, I mean, really the only force option you
4 have at that point is deadly force. Anything else I believe
5 would have been ineffective. Really, there were no other
6 force options even to use at that point, so --

7 Q And is it correct to say that his action came as a
8 surprise to you in the sense that you had this face-to-face
9 contact and conversation with him, which you said you
10 believed it was going well up to a certain point; was it a
11 surprise?

12 A It was. Yeah. I thought -- at a certain point in
13 the conversation I actually thought I was going to witness
14 this guy jumping off the building. And the whole time I was
15 talking to him, even at the points where I thought I was
16 kind of getting through to him and making a connection with
17 him and making some progress, that whole time, my fear up
18 until the point where he pulled a gun out, was that he was
19 going to jump off the building.

20 In fact, looking back on when he said, you know,
21 "What if I pulled a gun out right now?" You know, that
22 certainly heightened my awareness of the gun thing. And,
23 well, I shouldn't say that, I was aware of it the whole
24 time. What I mean is, I knew that he was thinking about
25 that, and that was just before he actually pulled it out.

1 But, you know, even then I thought, well, is he just trying
2 to provoke us into shooting him, because he didn't pull a
3 gun out at that point. So up until the point that I saw
4 that gun, it was very much, this guy is going to jump off
5 the building. That's what I thought was going to happen.

6 MR. REES: Questions from the grand jury?

7 GRAND JUROR: So, it all happened so fast, I
8 mean, from the point that he said, "What if I got out
9 a gun and shot you," how many minutes or seconds was
10 that?

11 THE WITNESS: That's a good question. From
12 that first comment, the way I remember it now, it was,
13 there was very little time between that and when he
14 walked to the edge, uhm, closest to us. As far as
15 when he was actually doing it, yeah, I mean that was
16 maybe a couple of seconds at the most at that point.
17 I don't recall, uhm, a long time delay between those
18 two events, between when he asked the question, "What
19 would happen if I pulled a gun out," and when he
20 actually did, it happened pretty quickly.

21 GRAND JUROR: So, basically, Officer Scott,
22 his demeanor was pretty much the same. He was just,
23 you know, I mean, it wasn't like all of a sudden
24 getting violent, or acting, you know kind of in
25 disarray. He just said out of the clear blue, "What

1 if I pulled a gun out?" Just, you know, because the
2 conversation prior to that, he didn't seem like he was
3 getting agitated, you know, he just pretty much said
4 this is what is going to happen, and it happened?

5 THE WITNESS: Right. That's accurate. His
6 demeanor was very calm the entire time. In fact,
7 there was even a point in the conversation where I
8 thought he was going to get kind of hostile towards
9 me, because it was I think after I talked about
10 getting him some resources. He started to talk about --
11 he said something like, you know, "Well, you wear that
12 uniform, you guys go through red lights all of the
13 time. You guys have beaten me up before."

14 And so that was kind of a red flag, at that
15 point I thought, uh-oh, is he going to start getting
16 aggressive there? And even then, he really didn't. I
17 said something about, "Brad, that wasn't me. I've
18 never met you before, have I?" And he said, "No." And
19 then we just returned to talking about what he was
20 doing up there. Even then, he didn't get aggressive
21 towards us at that point, he stayed calm the entire
22 time.

23 GRAND JUROR: So was it close to the 4:20
24 time when this happened?

25 THE WITNESS: Well, looking back from what

1 I've learned since then, it was about 4:01. At the
2 time I thought it was pretty close, because when I
3 asked someone what time it was, I thought they said
4 4:11. But not -- I didn't think we had reached that
5 4:20 yet, I thought I still had some time.

6 GRAND JUROR: Okay.

7 MR. REES: Thank you, Officer Scott.

8 RASHELLEY MORGAN,
9 called as a witness in behalf of the
10 State, being first
11 duly sworn, was examined and testified as follows:

12 EXAMINATION

13 BY MR. REES:

14 Q Go ahead and have a seat. Then I'm going to ask
15 you to tell everyone your name, first and last, and then
16 spell your name slowly.

17 A Okay. My name is R-A-S-H-E-L-L-E-Y, Morgan,
18 M-O-R-G-A-N.

19 Q Okay. Now, you were not served a subpoena to
20 appear in front of this grand jury?

21 A No.

22 Q But you have come here this morning with your
23 father, Randy Morgan, and he just told me that you want to
24 say something to the grand jury; is that right?

25 A Uh-huh.

1 Q What would you like to say?

2 A Uhm, I am kind of confused about all of this. But
3 I do think that there was a crime committed. There's
4 several things that the police did wrong in that situation.

5 Q All right. Now, you're not a witness to any of
6 the events that happened on the parking structure; correct?

7 A Yeah. But knowing my brother, you know, knowing
8 who he was, knowing the side of the story that's been spoken
9 so far, is what I'm going by.

10 Q Where are you getting that information?

11 A Well, the news, of course, you know, you can't
12 listen to everything. But, uhm, most of the stuff that I
13 read on my brother's Facebook, it seemed like there was
14 another conversation going that we couldn't see. He was
15 responding to someone by Facebook. And if you looked at the
16 time clearly, the time started like right before he left the
17 house, the day prior to his death, and then it stopped when
18 he got to his friend's house. And then the last two things
19 that he posted on Facebook, was when the cops were there at
20 4:00 a.m. right before he died. And that was just to say,
21 "I don't want anyone to take over my spot as a father to my
22 son," because he knew that there's no way out of it.

23 Q Are you the older or younger sister of Brad
24 Morgan?

25 A I'm the younger.

1 Q How old are you?

2 A 19.

3 GRAND JUROR: How old?

4 THE WITNESS: 19.

5 BY MR. REES:

6 Q Is there anything else you wanted to say?

7 A No. I can point out some reasons, but I don't
8 think you guys want to hear those.

9 Q I guess I'll leave that to the grand jury.

10 GRAND JUROR: I think anything you want to
11 say, you should say.

12 THE WITNESS: Well, two of the crimes I think
13 that were committed is, one of them was leaving my
14 brother up there for six hours before they took him
15 down. That's just like spitting on him, you know. I
16 don't think any of you guys would want your family
17 member who just got shot, to lay up there for six
18 hours before they recognize him as dead.

19 And the second one is that they should have
20 had him fire first to prove that he was an armed man,
21 and that he was a danger to the society, and that it
22 was a real gun.

23 GRAND JUROR: It's Rashelley?

24 THE WITNESS: Yes.

25 GRAND JUROR: You said at 4:01 a.m. he was at

1 a friend's house posting on Facebook?

2 THE WITNESS: No. That was right before he
3 died. I don't know where it was, and I have not found
4 his phone to find out what else was on the phone.
5 But, uhm, it was at 4:00 a.m. right before he got shot
6 that he posted it.

7 And from what I heard from my mutual friends
8 of my brother, he left their house at 10:00 p.m. the
9 prior night. I don't know what happened between those
10 times, but he stopped texting right when he got to
11 their house, to someone that was like -- someone who
12 was harassing him, I believe. If you look on
13 Facebook, it sounds like someone was harassing my
14 brother. And he had to leave our house, you know, to
15 go to vent at someone else's, which is our mutual
16 friend. And somehow he felt like he had to leave that
17 house. And the last comments were at 4:00 a.m., and
18 it was just to recognize that if anything happened to
19 him, he did he not want his fathership to be replaced
20 by someone else, which it already is, you know.

21 MR. REES: All right. Thank you.

22 THE WITNESS: Thank you for listening.

23

24

25

1 RANDY MORGAN,
2 called as a witness in behalf of the
3 State, being first
4 duly sworn, was examined and testified as follows:

5 EXAMINATION

6 BY MR. REES:

7 Q Please have a seat.

8 A I'm going to show you a picture, that's Brad and
9 son. Brad and his son. I don't know, they look very happy,
10 if you ask me. Would you like me to pass it around to take
11 a better look? There's more pictures, family pictures,
12 Brad, himself, these are all when he was alive, you know,
13 when he's alive.

14 I don't know that I should show you pictures after
15 he's dead, but I do have them. If somebody would like to
16 see them, they might have to sign a waiver, but I would very
17 much like them to see them.

18 MR. REES: Well, I would leave that to the
19 grand jury.

20 THE WITNESS: Right there, they are
21 available.

22 MR. REES: All right. Does anyone want to
23 see those?

24 THE WITNESS: I had to sign a waiver. From
25 what I'm told by the DA, is that Brad was shot

1 basically right here (indicating).

2 BY MR. REES:

3 Q That's not what I said.

4 A Where? Where did you say? Let me hear it.

5 Q You, know, again --

6 A You repeat what you said. I'm not amnesic.

7 Q You've indicated you wanted to make a statement to
8 the grand jury. This is the time to make it if you would
9 like to make it. I expressed to you last week my
10 condolences, if you recall, for the loss of your son.

11 A Oh, so you're actually going to make me show
12 these?

13 Q Is there a statement you want to make to the grand
14 jury?

15 A You told me Brad was shot where? If you really
16 want to hand a toy gun to your kid after that, if you're
17 responsible, I suppose, go ahead. That doesn't show you
18 are. But I don't know if you know this, but Beaverton has a
19 toy ban already for -- you can only have a toy gun -- you
20 can only have a toy gun in your backyard, private property,
21 unless it's brightly colored or clear. So there has been
22 other people that paid attention.

23 Q You have been in front of the courthouse after
24 this has happened picketing, trying to encourage passage of
25 a law that would ban the sale of toy guns I guess; is that

1 right?

2 A Not ban -- well, ultimately, that would be great.
3 But I don't want to take the privileges of, you know,
4 parents away from their kids.

5 Q So what are you encouraging?

6 A I'm encouraging that people be responsible for the
7 toy guns that are on the streets. I don't mean just kids,
8 they can't read the ultimatum on the back, the disclaimer.
9 The disclaimer says you may be shot by cops and this and
10 that. How is a three year old, five year old, which the
11 package is labeled both, how are they supposed to read that
12 disclaimer and understand it? That to me, no less than an
13 18 year old is responsible for any kind of disclaimer.

14 Q Any questions about that? Anything else you want
15 to say about that?

16 A About toy guns? I was curious as to how much
17 experience the cop has towards toy guns? Do they take any
18 classes? Nobody can answer that. How come I'm not allowed
19 to see the coroner's report?

20 GRAND JUROR: Can you tell me what kind of a
21 person Brad was, in your eyes? This is information --

22 THE WITNESS: I can. I have got a whole
23 portfolio.

24 GRAND JUROR: I don't want that. No, I want
25 you, just with your own words, what kind of a person

1 was Brad?

2 THE WITNESS: Brad was a very loving person.
3 He loved and offered his ways and his time to anybody.
4 Very loving person, and that's what basically must
5 have put him on top of the roof. He just wanted his
6 son, and that's the only way that he felt he could get
7 help, because he's tried every other avenue. He had
8 been in this courthouse two or three times with his
9 mom to try to get help. We have paperwork.

10 The courthouse failed him and any other
11 avenues failed him, because he didn't have insurance.
12 I have tried getting help as a veteran. I had to wait
13 24 hours for a phone call back. Yeah.

14 GRAND JUROR: So, do you know what might have
15 led up to the events? What was Brad doing the night
16 before?

17 THE WITNESS: The night before?

18 GRAND JUROR: To your recollection?

19 THE WITNESS: The night before that, he spent
20 the night at our house. And we had just got through
21 installing a water recycling system, actually a couple
22 of different kinds, rain barrels and that. We were
23 all through the week prior to that, we had projects.
24 I got drawings, projects, you name it. He was very
25 focused and very talented. This is very out of sight

1 and out of mind, and I guarantee you, he didn't think
2 he was going to wear a bullet.

3 GRAND JUROR: What were the visitations like
4 with his son? What was the visitation schedule like
5 with his son?

6 THE WITNESS: He would get told that he was
7 going to get visitation, and he would get turned down,
8 you know, just minutes before. Uhm, one of the last
9 visits went -- my lady, she was the mediator because
10 of all of this. She was like a half hour late, she
11 called the cops. Next day, Brad gets a bad report
12 from the cops, you know, what happened, whatever,
13 which was only like three or four days before this.

14 He's also -- he's been pounded by his
15 girlfriend left and right, restraining orders. Last
16 night we had visitation, it was all about the money
17 that she's not going to get. The money that she's
18 going to get for social security for the son. She's
19 very upset about the money she's not going to get for --
20 the husband distress fee or grant or whatever. It's
21 like, oh, my gosh, how am I going to move now? I
22 believe it's her third time for getting that grant.
23 She's very focused on that kid, Kannon, bringing her
24 in money.

25 And now that I think that she's realized that

1 it's not really necessarily going to happen like that,
2 she's more than willing to let us have our visitation.
3 It's like she's almost shoving him on us. It's like
4 vice versa. When would you like to have him, any
5 time, any time, as long as you want.

6 GRAND JUROR: Okay.

7 THE WITNESS: Wow. It's like, why couldn't
8 it have been like this a month ago?

9 GRAND JUROR: So was Brad working?

10 THE WITNESS: He was. His last paycheck was
11 over \$500, and the one before that was \$77.

12 GRAND JUROR: Where was he working? You
13 don't have to tell me where.

14 THE WITNESS: A temporary agency. I was out
15 there, and I guess that's frowned upon, but he tried.

16 GRAND JUROR: Okay.

17 GRAND JUROR: Are you aware of Brad
18 committing other suicide attempts?

19 THE WITNESS: Uhm, I am aware he was on a
20 roof about two weeks before that, trying to get a
21 glimpse of his son. And, yes, he threatened, he
22 didn't want to be hauled to jail over that, so he did
23 threaten that he would jump. And that evening, we
24 didn't put any pressure on him, but we got him down
25 and took him home. And the next day I talked to him

1 about it, and he said, "Dad, I feel like a fool. I
2 wish I had never done that. I know that didn't help
3 my matters any." That's his only other clue of any
4 kind of, any kind of words, so help me God.

5 GRAND JUROR: Do you know if Brad was ever
6 under the influence of any drugs or alcohol, or
7 anything like that?

8 THE WITNESS: He did not like alcohol. And
9 me being honest, he puffed a weed once in a while.

10 GRAND JUROR: You saw him do that?

11 THE WITNESS: No, I wouldn't allow it, but I
12 know that he did. I would not allow that. He knew
13 that.

14 GRAND JUROR: I don't have any more
15 questions.

16 THE WITNESS: Supposedly, according to the
17 DA, Brad was shot somewhere down here (indicating),
18 which would be terminated, instantly. But Brad was
19 actually shot right here, right there (indicating), at
20 an upwards angle, that's just about enough to knock
21 you out and down.

22 And there's a lot of high rise buildings, I
23 investigated, there's several buildings in the area,
24 even the parking structure across the street has a
25 better view than just where they were standing. Brad

1 could have been checked on a little better than he may
2 be in a wait. My understanding is that Brad may have
3 been in a wait, is for the reason they didn't check on
4 him for hours.

5 I saved a life six months ago, honestly, a
6 heart attack victim after five minutes. He's all the
7 way here, all the way there. I have been taught
8 several life saving techniques. I can think of six
9 real easily, if you would like to hear them. I also
10 have been -- put a gun in my hand of several different
11 kinds, and taught how to kill. I'm a veteran. It
12 wasn't my duty, I made sure of it, but I was taught to
13 protect myself and others. I was taught the rules. I
14 was taught the Geneva Convention. I don't believe --
15 Brad wasn't in the military, but I believe that we are
16 at war, and we are at war. And Geneva Convention was
17 not used on him, and that's a war crime.

18 MR. REES: Anything else from the grand jury?

19 GRAND JUROR: Nothing else.

20 THE WITNESS: Do all you want to take my word
21 for the bullet up here, rather than down there
22 (indicating)?

23 GRAND JUROR: We heard from the doctor.

24 THE WITNESS: It's very -- it's not really
25 gruesome. I washed his face and everything. They

1 actually left him bloody.

2 GRAND JUROR: We already heard from the
3 doctor.

4 THE WITNESS: Well, that's not -- that's what
5 I'm trying to say is you heard and what I was
6 guaranteed, that the coroner would not lie. And from
7 what I'm gathering, the coroner lied.

8 GRAND JUROR: Not according to --

9 THE WITNESS: There's a cover-up. Look,
10 look. There he is. There's the bullet hole at the
11 top of the head (indicating). That's not the spinal
12 cord. That's not the -- nothing to do with the upper
13 body, I mean the neck area. You see (indicating)?
14 It's way up there at the top of the head. I didn't
15 even see it until I washed his face.

16 GRAND JUROR: Okay.

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1 JOHN HOLBROOK,
2 called as a witness in behalf of the
3 State, being first
4 duly sworn, was examined and testified as
5 follows:

6 EXAMINATION

7 BY MR. REES:

8 Q Sir, if you would please state your name and
9 slowly spell your first and last name.

10 A Yes. My name is Max John Holbrook, my first name
11 spelling is M-A-X, my last name spelling is H-O-L-B-R-O-O-K.

12 Q What is your occupation?

13 A I'm a police officer with the city of Portland.

14 Q How long have you been a police officer?

15 A I have been with the city of Portland since
16 February 1st, 1995, and I was employed as a police officer
17 in Utah for just shy of three and-a-half years before that.
18 So just about 19 years.

19 Q What's your educational background?

20 A I graduated high school, I did about just shy of
21 two years of college. And I have had quite a bit of
22 training through the Portland Police Bureau, through the
23 District Attorney's office, through the state, and through
24 other agencies throughout the country.

25 Q Have you received any special training in dealing

1 with mentally ill persons or persons in crisis?

2 A Yes. Uhm, a couple years ago, the police bureau
3 required every officer to go through CIT training, which is
4 crisis intervention training, which emphasized dealing with
5 mentally disabled, mentally ill people. I worked downtown
6 as a patrol officer, uhm, and downtown deals with people
7 with mental disabilities and mental handicaps and issues on
8 a daily basis, because downtown is where all of the social
9 services are centered. So, working as a patrol officer, I
10 dealt with mentally ill people on a routine basis.

11 I have been assigned to Central Precinct since
12 January or -- sorry, June of 2005 -- 2006. Uhm, six months
13 as a patrol officer, then I got promoted to sergeant, and I
14 have been down there at Central Precinct the entire time.

15 Q At the patrol level, what's the distinction
16 between an officer and a sergeant?

17 A The distinction would be the patrol officer
18 responds to all of the radio calls. Dispatch calls up,
19 tells the officer where to respond to, what the problem is.
20 And so they respond to a wide myriad of different calls. It
21 could be anything from a robbery to a tree across the road,
22 and the whole gamut in between.

23 The sergeant is supervising the patrol officers,
24 so he can respond to calls. Typically, he will go assist to
25 make sure the call is progressing well. His duty -- his

1 jobs include making sure reports are written, make sure the
2 staffing levels are -- so that patrol districts are staffed
3 properly, field any complaints that may come in about
4 officers, any concerns that citizens may have, any issues
5 that may arise amongst the officers. There's a whole myriad
6 of supervisory responsibilities that a sergeant has.

7 Q All right. And were you working on January 24th,
8 January 25th, 2012?

9 A I was.

10 Q What time did you begin your shift?

11 A I began an afternoon shift on January 24th at 4:00
12 in the afternoon. I began my regular shift at 10:00 p.m.,
13 and continued on from there.

14 Q Did anything unusual occur during the time you
15 were working prior to this call that you will be testifying
16 about in a minute?

17 A There was -- it was a fairly busy night from the
18 time I started working the afternoon shift, on. There was a
19 fight that occurred outside of the -- my mind is going blank
20 on the name of the bar. It's located on Southwest 3rd and
21 Stark, uhm, where some street kids were involved in a fight,
22 somebody got hurt. From there, I responded over to an
23 individual that shot himself in the parking lot of the fire
24 bureau. Turned out it was a suicide in the parking lot.
25 The individual had a note, said he was dying from

1 Alzheimer's disease, and had everything kind of wrapped. So
2 that was a little unusual for a night.

3 A little later on around midnight, there was a
4 call that came out about a disturbance underneath the
5 Hawthorne Bridge that the caller said he was threatened with
6 a knife. And then he went over to the precinct which is
7 about two or three blocks away where the officer took the
8 report and spoke with the complainant, the caller.

9 Q All right. What were you doing immediately before
10 the call that led you to the parking structure at 318
11 Southwest Morrison?

12 A I was covering an officer, Officer Myers, on a
13 traffic stop. He had been dispatched to a disturbance at
14 the McDonald's on Northwest 19th and West Burnside Street.
15 We located the car that was involved in that disturbance, he
16 had initiated a traffic stop, so I was acting as cover on
17 that.

18 Q And then what was the call that came out sometime
19 around 3:18 in the morning, that led you to downtown
20 Portland?

21 A The call came out that dispatch asked if somebody
22 recalled a robbery that occurred under one of the bridges, I
23 believe they said the Morrison bridge, that involved a
24 knife. I immediately began thinking of the incident under
25 the Hawthorne Bridge. I believe I mentioned that over the

1 air, that there was another incident on the Hawthorne
2 Bridge, it could have been similar.

3 Dispatch told us that they had a person on the
4 line that said he had robbed somebody at knife point under
5 the Morrison Bridge earlier in the night, and that he wanted
6 to jump off the 9th floor of a building. He told us that he
7 could see Pioneer Courthouse Square from where he was at,
8 but didn't have an exact location.

9 Q So what did you do when you got that call?

10 A I told Officer Myers that I was going to leave
11 him, because another officer had come up. So I left Officer
12 Myers and started over toward 10th and Morrison -- yeah,
13 there's a parking structure at Southwest 10th and Morrison.
14 We had had several people in the course of the past few
15 years jump off that bridge, a suicide -- or off that parking
16 structure, rather, so I responded over there. I couldn't
17 remember how many floors it had, but I figured that was
18 fairly close to Pioneer Courthouse Square, so I would check
19 that while other officers were checking other structures
20 downtown.

21 Q All right. What happened after that?

22 A While I was going to the top of that floor or that
23 parking structure, or maybe it was while I was coming down,
24 I can't remember, there was nobody in that parking
25 structure. While I was checking the parking structure

1 there, dispatch told us that the caller had mentioned
2 suicide by cop. And when they asked if he had a weapon, his
3 response was, "Possibly."

4 At that point, Officer Scott had been dispatched
5 as the primary officer, to continue looking for the person.
6 He was checking the parking structure at Southwest 4th and
7 Morrison. Uhm, Sergeant Michaelson came over the air and
8 told him to wait until other cover came. We had started
9 other cars from different areas of the precinct to start
10 checking other parking structures in the downtown area.

11 I finished leaving the parking structure, I was
12 checking, started heading towards the 4th and Morrison
13 address thinking that -- because that was also just a couple
14 blocks off from Pioneer Courthouse Square, so that was a
15 likelihood. Somebody mentioned there were nine floors on
16 the 4th and Morrison structure.

17 As I started -- when I arrived at the parking
18 structure, I started my ascent, I heard Officer Richardson
19 say that he was with Officer Scott, and they were going to
20 finish going to the top floor. They arrived at the top
21 floor just a few seconds before I did.

22 Q All right. There's an aerial photograph behind
23 you, if you want to walk up there, maybe you can show the
24 grand jury where you were and the other officers.

25 A Okay. When -- let's see if I can get my bearings

1 straight. Okay. Uhm, when we arrived, Officer Richardson
2 and Scott had pulled their cars in -- we came in from --
3 there's two entrances to the structure, one from 4th, and
4 one from Southwest 3rd Avenue. We had come on from
5 Southwest 4th Avenue, which put us arriving at the top floor
6 on -- let's see, which direction is north? I'm thinking
7 that way is going to be north, off to the right in the
8 photograph is north. So we actually came in from driving
9 south, turned east, and they pulled their cars so they were
10 eventually facing north again.

11 I stopped my car at the southeast corner, theirs
12 were parked in front of me facing north. As I scanned the
13 top of the parking structures, you know, the parking
14 structure, I noticed an individual standing on the southwest
15 corner, down near this little box that's depicted in the top
16 of the elevator shaft.

17 Q All right. And so where did you go from there?

18 A From there, I advised dispatch that we saw a
19 person standing over there, I believed it was same person.
20 Dispatch had advised that he had a backpack. This person
21 over here seemed to be thin, had a backpack, and was on top
22 of the parking structure. So I figured that this was
23 probably the individual we were looking for.

24 At that point, I turned my car around and
25 positioned my car where it's at right now. This is my car

1 that's on the the furthest south wall, closer to the east
2 side (indicating). I turned on my spotlight to try to
3 illuminate the top of the stairwell as best I could.
4 Officers Richardson and Scott both turned their cars around.
5 Officer Richardson's car is the first -- the southernmost of
6 the two that are facing south, and Officer Scott's is the
7 northern car that's facing south.

8 Once I illuminated him, I went over to where
9 Officer Richardson and his partner were at. I didn't
10 mention Officer Richardson at the time had a trainee,
11 Officer Hoerauf. Officer Scott came over to us and we tried
12 to make up a plan as far as what was the next step and what
13 we needed to do.

14 Q All right. At this point, could you see whether
15 the man on the elevator shaft was doing anything in
16 particular?

17 A Uhm, the distance that's covered here is -- the
18 parking structure covers the whole block. So we were at
19 least three-quarters of a block away from him. It was dark,
20 not very well lit, except for my little spotlight that was
21 well over half a block away from him. It was hard to see
22 exactly what he was doing. He was wandering around the top
23 of the structure. I remember there was a dark colored can,
24 a tall can. I don't know whether it was an alcoholic
25 beverage or energy drink. In my mind I latched onto energy

1 drink, that he would sip from periodically as he was sort of
2 meandering around the top of the parking structure.

3 We had kind of taken a position by this light
4 around the center courtyard, for lack of a better
5 explanation, and were watching while we're trying to decide
6 what the next steps were going to be.

7 Q All right. And did you take the lead on that, or
8 did the -- the assigned Officer Scott do that?

9 A I pretty much took the lead on that. I asked
10 Officer Hoerauf and Richardson if they would remain --
11 actually -- I believe I asked Officer Hoerauf and Richardson
12 at the time if they would remain near this post and keep an
13 eye on him as cover. I walked over to see if there was a
14 way we could access the other ramp, which would have been
15 the 3rd Avenue entrance. The two intertwine as a double
16 helix as they ascend the parking structure.

17 We quickly found out we were able to access the
18 other side by walking down the ramp and hopping over a
19 little wall. So I asked Officer Scott if he would walk over
20 and start to make contact with the person. We walked over
21 to where the ascent from the 3rd Avenue side would begin,
22 which is on the westernmost side of the parking structure,
23 and started speaking -- trying to have a conversation with
24 the individual, from the down ramp on the western side.

25 Q All right. And was it possible to initiate some

1 conversation, then, with the subject on the elevator shaft?

2 A It was. As we approached, I asked Officer Scott
3 if he would do the main speaking, and I was going to try to
4 coordinate all of the other issues that were arising and
5 needed to be handled.

6 Q Okay. Ultimately, where did you end up then in
7 the parking structure?

8 A Uhm, at this time, we were right over by the down
9 ramp. As we started to speak with him, he hung up the phone --
10 he was on the phone with dispatch. I heard him tell
11 dispatch he was going to hang up and speak with the
12 officers. He hung up and we had a conversation for a couple
13 minutes at this distance. He was speaking with us, but the
14 distance that we were covering there, was making
15 conversation fairly difficult.

16 So we approached the -- a little closer to the
17 wall that was separating the two levels, and continued to
18 have our conversation with Morgan -- Brad Morgan was his
19 name. And we continued to have our conversation with Mr.
20 Morgan from a little closer to the wall.

21 Q Go ahead, and you can take your seat back. Thank
22 you. At that point, what was your assessment of any threat
23 or danger posed by this person on the elevator shaft?

24 A It was difficult to get a good read on the danger
25 level. He had mentioned -- told dispatch, suicide by cop,

1 which is going to raise some red flags in my mind. When
2 dispatch had asked him if he had a weapon, and they told us
3 he responded, "Possibly." I didn't see any weapon with him,
4 and -- but, the fact that he didn't deny having a weapon
5 raised the possibility in my mind that he could be armed
6 with something.

7 Where he had said that he had robbed somebody at
8 knife point, that was -- he mentioned that pretty quickly in
9 our conversation, that he had robbed somebody at knife point
10 under a bridge earlier in the night, that also raised the
11 issue that he could be possibly armed with a either knife or
12 something else. The distance we were at, I was not
13 concerned about a knife, I was more concerned about a gun.

14 Uhm, where he was speaking with us, in my
15 experience as a law enforcement officer and as a person,
16 when somebody starts to speak with you, the longer you can
17 be speaking with somebody, the better the chance of having a
18 positive communication and being able to make a connection
19 with somebody is. So as he was speaking with us, I saw that
20 as a good sign.

21 However, during our conversation he did mention --
22 he did ask about our guns, about that he wanted to kill
23 himself. At one point he asked how fast we were. And when
24 he would start to focus on our weapons and our guns, we
25 tried to steer the conversation away from that topic,

1 explained to him that he didn't want to do that, that it
2 would be bad. We tried to steer the conversation more
3 toward him and speaking with him about issues that he was
4 facing.

5 Q And you said, I believe, Officer Scott took the
6 lead in the conversation with Brad Morgan?

7 A Yes, he did. Uhm, at times he -- the conversation
8 would lull a little bit, and I would jump in to try to
9 continue the conversation, moving hopefully in a positive
10 fashion.

11 Q And did you think you were moving towards
12 resolving the situation?

13 A Again, it was fairly hard to get a good read,
14 because when we were speaking with him there were times that
15 I thought we were making some good progress, and other -- at
16 other moments where he would start to talk about, "It
17 doesn't matter any more, I'm just going to kill myself,"
18 where I got the impression that maybe we weren't making such
19 good progress. So it was kind of a mixed bag in my mind.

20 Q Okay. And so what happens, then, as far as your
21 assessment and determination of what else might be done in
22 terms of responding to the situation?

23 A Well, there were several things in my mind that I
24 know need to be set up in place. We have several different
25 resources that we have available to us. One, I wanted to

1 make sure that nobody else came up into the parking
2 structure. I wanted to make sure that we didn't have any
3 other citizens coming into a situation that was still
4 progressing, and could possibly be dangerous to them. I
5 wanted to make sure we were as safe as possible as officers.

6 We needed to make sure that if in the eventuality
7 he did jump off the structure, that he wouldn't hurt anybody
8 who may be down below. So we had Officer -- Sergeant
9 Michaelson had responded, and had started setting up the
10 scene down at the street level.

11 Uhm, I also had to start to consider the
12 possibility that he did have a gun, and what would happen if
13 he did pull out the gun. So I contacted dispatch and had an
14 AR operator, somebody who is trained in the AR-15 respond to
15 our location.

16 Q And I'm sorry to interrupt. Can you explain what
17 that is, what the AR is and why you thought that would be
18 important to have that person at the scene?

19 A The AR-15 is a rifle made by Colt that -- handguns
20 have a short distance that they are accurate for. An AR-15
21 has a much longer distance, which would enable officers to
22 stand further away, take a little safer position. I wanted
23 as many resources as possible to be up on -- up there
24 available to us.

25 Q Okay. And so I interrupted you.

1 A That's all right.

2 Q You said you did that, and what else did you do in
3 terms of resources?

4 A After we had been speaking with Mr. Morgan for a
5 few minutes, I believe it was Officer Scott asked if we
6 should contact Project Respond. At that point I figured
7 that was a good time to contact Project Respond. He also
8 mentioned the hostage negotiation team, which has changed
9 their name to I think Crisis Response Team, if I'm not --

10 Q Or Crisis Negotiation Team?

11 A Crisis Negotiation. There you go. I still have a
12 habit of referring to them as HNT, Hostage Negotiation Team.
13 So if I refer to them as that, please forgive me.

14 So we called for Project Respond, which are mental
15 health workers that I believe they actually work for the
16 county. They will respond out to help people in crisis, get
17 them involved with the mental health community, so that they
18 can -- once the situation is resolved, they can hopefully
19 help that person continue with treatment and some therapy
20 afterwards.

21 Q Let me ask you about Project Respond.

22 A Yes.

23 Q If they had arrived before this incident
24 ultimately resolved as it did, would those mental health
25 professionals approach a subject like this and begin talking

1 with him, or would they stay back because of safety
2 concerns?

3 A They would not have approached, I would not have
4 allowed them to approach this situation. Uhm, there's a
5 couple of reasons. It's been my experience with people who
6 are being very cooperative on, say, for example, I remember
7 a specific incident on the Burnside Bridge, where they
8 responded and they showed up on scene, and they were not
9 going to come up -- and they told me that they wouldn't come
10 up and actually speak with the person until we had them away
11 from the bridge, that it was all sort of sanitized and
12 secure, and the scene was safe and sterile.

13 In this situation, where he said he possibly may
14 have a gun, he had been talking about suicide by cop, uhm, I
15 was not -- would not be willing to introduce unarmed
16 citizens into this situation. I don't think -- I think it
17 would have been reckless and careless on my part, and
18 extremely dangerous to subject them to that situation.

19 In my mind, I had already figured out when they
20 did arrive, I was going to have them staged at least a floor
21 down below, so that if he came down, we could start to have
22 a connection made between them and him, and get him hooked
23 up to the services that apparently he was in need of.

24 Q Ultimately, did you call both Project Respond and
25 the newly named Crisis Negotiation Team?

1 A Yes, we did.

2 Q All right. After that happened, what occurs from
3 your perspective with Brad Morgan?

4 A He continued to speak with us and talk back and
5 forth. At this point Officer Richardson had come over to
6 our location, Officer Scott's and my location. Officer
7 Myers had arrived and had taken up a position over by my
8 police car.

9 Uhm, so, Mr. Morgan continued to speak with
10 Officer Richardson and Officer Scott, while I tried to
11 coordinate people responding, where we needed people and
12 what not. Uhm, during breaks from while I was speaking with --
13 trying to coordinate things, I would also try to interact
14 with Mr. Morgan. He was watching us quite closely. At one
15 point while we were talking to him, I had taken out my
16 notebook I keep in my rear pocket and pulled it out, and was
17 starting to write, and he mentioned something about that I
18 just drew my gun. And I reassured him, no, that's my
19 notebook. He said, "You reached back by your gun." I
20 showed him, that's where I keep my notebook, and this is
21 what it is.

22 So it demonstrated to me he could see us very
23 well, very clearly, that he was watching us very closely
24 while he was interacting with us and he was very aware of
25 what our motions and action were. Our conversation

1 continued with him for several more minutes.

2 While one of the concerns I had was if he did pull
3 out a gun and we had to shoot, where were our bullets going
4 to go? He was at the time probably 20 to 25 feet away from
5 us. He was elevated a little bit from us. And the only
6 backstops that I could see were buildings that were a couple
7 of blocks away. One was the Hilton, which is a little off
8 to the west. There was another office building that
9 appeared to be dark, had a few lights on inside, but they
10 didn't seem to be changing, so it appeared to me it was
11 dark.

12 Q And is that illustrated in this photograph?

13 A Yes, it is. I will show you which one I was
14 looking at. The dark major building that's taking up most
15 of the background, was the office building that appeared to
16 be dark. The Hilton, I believe, is the next one off to the
17 right. I think it is Yamhill Street runs east and west
18 parallel with the parking structure. And we were -- from
19 this position, we -- while we were speaking with Mr. Morgan,
20 he was by this little box on this elevated portion. We were
21 on the wall closest to the front of the picture, down where
22 the numbers are at.

23 But as the conversation was unfolding, we weren't
24 stationary there the whole time. We would sort of walk back
25 and forth. At one point I tried to position myself as best

1 I could so that the office building was behind Mr. Morgan
2 and me, so that that would be our backstop if anything had
3 to happen.

4 Q What was your thinking on that, wanting the office
5 building behind him and not the Hilton Hotel.

6 A There were several lights on inside of the rooms
7 in the Hilton. I was figuring that if the lights were on at
8 3:00 in the morning in the rooms at the Hilton and there
9 were probably people in there where they were still awake,
10 or waking up, the office building seemed to be more empty
11 than the Hilton. And so if bullets were fired and would go
12 that direction, hopefully they would be hitting an empty
13 office building, rather than an occupied hotel room.

14 Q And so if you could, moving through time, what
15 happens at this point?

16 A Uhm, at this point, I move over, and I have a
17 short conversation with Officer Richardson. I explained to
18 him my concern about how this is progressing. And he
19 actually looked over, I remember thinking, well, this could
20 go about 50/50, 50 percent good resolution where he comes
21 down, we get him some help, 50 percent possibly a bad
22 resolution where he jumps or pulls out a gun, whichever way.
23 This was the inner dialogue I was having with myself.

24 I went over to speak with Officer Richardson, and
25 one of the first things he said was, "This could go about

1 50/50 either way." And this stuck out in my mind, because I
2 thought that's exactly what I was thinking.

3 I told him, well, thinking about that, if we have
4 to shoot, if he pulls out a gun, we need to make sure that
5 we have a good back stop. He said, well, I'm kind of
6 chilly, my platform is not going to be very stable. He was
7 in a short-sleeved shirt. So he said that he was kind of
8 starting to shake, because he was getting cold. Officer
9 Richardson has a practice of wearing short-sleeved shirts.
10 I don't think I have ever seen him with a jacket on. I
11 told him, "I have a jacket in my car, why don't you go grab
12 mine." He says, he's got his in his car, I said to go get
13 it and come back. So he left to go back to his police car
14 to grab his jacket, and left Officer Scott and me speaking
15 with Mr. Morgan.

16 Uhm, shortly after Officer Richardson left, Mr.
17 Morgan again started to talk about -- if I could back up
18 really quick. At one point while I was on the radio, I
19 heard Officer Scott say -- well, I heard Mr. Morgan say he
20 did not want to die a murderer. While I was on the radio, I
21 don't know what led up to that conversation or that comment,
22 but that obviously stuck out in my mind. I was thinking
23 good, this is a good comment, that means hopefully he's
24 starting to have a connection with us, and maybe he doesn't
25 want to try to kill us. Because all through this, that was

1 obviously a thought in my head, that I had to weigh danger
2 between us and the successful resolution of getting Mr.
3 Morgan off of the structure.

4 After Officer Richardson left and we continued to
5 have our conversation, Mr. Morgan then started once again
6 talking about how officer -- how police were always beating
7 him up, and how he was -- he felt picked on and victimized
8 by the police. We tried to assure him that we were not
9 those police, that we had never had contact with him. And
10 he said that doesn't matter, that it's -- killing a cop
11 doesn't count as murder. And he asked how fast we were if
12 he pulled out a gun. Again, we tried to steer the
13 conversation away, "You don't want to do that." I mentioned
14 to him, "You don't want to die a murderer, you said so
15 yourself." Again, he reiterated that that doesn't count
16 with cops, it's more what we represent than who we are. At
17 this point, I was becoming a little more concerned about how
18 the situation now was progressing.

19 Uhm, when we were speaking -- again, I'm going to
20 have to back up, I apologize for not being chronological.
21 At one point during our conversation several minutes
22 earlier, Mr. Morgan had reached under his jacket and put his
23 hand either in a pocket or near his waistband, which really
24 concerned me. I know from training and experience that most
25 people carry weapons in waistband, mid-section area. When

1 he did that, his hand was -- appeared to be flat, he didn't
2 seem to be grabbing and manipulating something underneath,
3 which was somewhat of a comfort, but I was concerned about
4 his hand being underneath his jacket area. Through the
5 whole conversation, he never removed his hand.

6 Uhm, typically, as safety practices, cops like to
7 be able to see people's hands. If we can see their hands
8 and know they are empty, we know there's no weapon involved
9 and we know that we are a little more safe. I would rather
10 be punched than stabbed or shot. So a lot of times when
11 somebody puts their hands inside a pocket or a jacket, we
12 ask them to take their hands out. At this point, I didn't
13 specifically address that with Mr. Morgan, because the
14 conversation seemed to be going in a positive direction.
15 And I felt that if I gave him a direct order and sounded
16 fairly confrontational, that could tip it in a direction we
17 didn't want to go. Uhm, but it also reinforced in my mind
18 that he could possibly have a gun or weapon underneath his
19 jacket.

20 So fast-forwarding back up to where he starts
21 talking about killing us, and that we don't count, uhm, we
22 had moved over toward the corner where the office building
23 was in -- was our backdrop. He starts telling us that he
24 doesn't care about us, and that the police have been beating
25 him and doing bad things to him for his whole life. Uhm, at

1 this point, he pulled out a dark object, and had his hand
2 over the top of it. I believed it was a gun that he pulled
3 out. I took a quick step back, drew my gun, and fired two
4 or three shots at him.

5 Q And can you explain why you made that decision to
6 do that?

7 A At the time he pulled out the gun, I had to think
8 about not only my safety, but Officer Scott's safety. I'm
9 responsible for my partner to make sure that we all go home
10 safe at night. The typical reflex response time for
11 somebody is three-quarters of a second, which basically
12 means if I do something, it's going to take you
13 approximately three-quarters of a second for your brain to
14 process and to send a signal to your hands to react and
15 move. When somebody pulls out a gun, they have already got
16 that initiative, that advantage on me. Uhm, so I drew my
17 gun, believing he had the intent to pull out from our
18 conversation, pull out the gun and shoot at either me or
19 Officer Scott. I drew my gun and immediately fired.

20 Q And when you were firing the gun, were you aiming
21 at a particular target?

22 A I was aiming toward the center portion of his
23 body. The reason being is that when one is in a high stress
24 situation, the body goes into a survival mode.
25 Physiological aspects are such that the body is designed to

1 try to protect itself and save itself, and so your fine
2 motor skills disappear. You don't -- your main motor skills
3 are what are reacting. Uhm, and, so, to aim at the biggest
4 portion increases the chance of hitting the target. You're
5 going to have fewer stray bullets going around. Uhm, and
6 it's easier to get a quick target acquisition on a larger
7 target.

8 Q Do you know how many times you fired?

9 A It was two or three times. I know that once they
10 took all the bullets out of my gun afterwards, I was missing
11 four rounds out of there. So, commonly, I try to load up my
12 magazine with 17 rounds, and one goes in the chamber of the
13 gun. So typically, I will have 18 rounds. But, I know that
14 from other people's past experiences, it is possible that
15 somebody can miscount and load one too many or one too few
16 into a gun. I recall firing two or three rounds.

17 Q That's your recollection or memory or perception
18 is that you fired two or three times?

19 A Yes.

20 Q And when you did that, could you tell whether that
21 was having any affect on the person you were shooting at?

22 A It did not. Uhm, I remember firing the two or
23 three rounds, and watching Mr. Morgan slowly start to turn.
24 Uhm, I remember that there were a thousand things that went
25 through my mind all in just a fraction of a second. I

1 remember after firing the first two or three rounds,
2 thinking that didn't have any affect. I also thought this
3 is a really, really bad situation, and we have to end this
4 now.

5 Uhm, I remember him moving the gun in my
6 direction. I took a -- I dropped down to my knee, took a
7 little better aim and squeezed one more round. Uhm, this
8 all happened probably within the space of maybe two or three
9 seconds at the most. Uhm, as he was drawing -- bringing the
10 gun up toward me, again, a thought went through my mind, I
11 haven't seen any muzzle flash. I did sort of a quick mental
12 evaluation, okay, I'm not hit. I'm still here. But this
13 has to end quick. I took a little better aim and squeezed
14 the trigger one more time, and he immediately dropped out of
15 sight.

16 Q Did you know at that point whether he had been
17 struck by gunfire or not?

18 A I did not know if he had. Uhm, I was fairly
19 confident that my shot was placed well. Uhm, and so when he
20 immediately dropped out of sight after that last round, I
21 thought that he had hit, but I didn't know for sure. I know
22 that he dropped out of sight, and I couldn't see where he
23 went.

24 Q And that was in response to your final shot; is
25 that correct?

1 A Yes.

2 Q Okay. When that was happening, were you -- did
3 you have any awareness of what Officer Scott was doing?

4 A I remember hearing one shot from my right, which
5 is where Officer Scott was. Whether he fired any more than
6 that or not, I don't know.

7 Q Do you recall whether any verbal commands were
8 made at this time?

9 A I don't know. I don't recall giving him any
10 verbal commands. I know in training where we have
11 simulation with what's called the FATS machine, it's a
12 Firearms Training Simulation, where there's shoot or don't
13 shoot situations projected onto a screen and we are equipped
14 with guns that shoot little pellets at the screen, I have in
15 the past spoken to the screen while firing at the screen.
16 But in this situation, I don't recall whether I said
17 anything when I drew my gun and fired or not.

18 Q What was your stress level at that moment, would
19 you say?

20 A On a scale of one to ten, it was probably a
21 fifteen or twenty. Give me a second. When I took an
22 inventory sort of -- sorry. Okay. When I --

23 Q Do you need a minute or --

24 A No, I'll be okay. When I took an inventory, I
25 thought, well, I'm still here, I'm okay. Uhm, the thought

1 crossed my mind too, one of us could get shot over this, so
2 it was scary.

3 Q Did you feel at this time or now looking back,
4 that there were any other options other than using deadly
5 force in that situation?

6 A I have thought about a lot of that since this,
7 and, no, I don't. Uhm, there are several reasons for that,
8 too. I had no time to -- when he pulled out the gun and was
9 pointing at us, you have to react right then. If you
10 hesitate, we could have been dead, me or my partner, and I
11 find that unacceptable.

12 I have heard people suggest we duck down behind
13 the wall, which we were behind a cement wall. I don't think
14 that was a viable option. We would have then been trapped
15 and subjected other officers to the same danger to rescue
16 us. He would have then also been free up on the roof to
17 either shoot at other officers who were on the roof, or
18 other officers who were down below. And, uhm, officers who
19 would have had to respond to our location to rescue us,
20 again, have been subjected to an equal amount of danger.

21 At that point I had the opportunity and the
22 ability to stop the situation and remove us from the danger
23 the only way I saw how.

24 Q When you saw what you believed to be a gun in his
25 right hand, what did you think he was doing?

1 A I thought he was pulling out a gun to shoot us.

2 MR. REES: Any questions from the grand jury?

3 GRAND JUROR: How long a time was it when you
4 saw this gun, actual gun, from the time you saw the
5 gun and the time you could react and shoot?

6 THE WITNESS: Less than a second. When he
7 pulled it out, I immediately stepped back and drew my
8 gun and came up on target and fired.

9 GRAND JUROR: So officer -- Sergeant
10 Holbrook, when you say rounds, because I don't know
11 what rounds are, does that mean like --

12 THE WITNESS: Bullets.

13 GRAND JUROR: Okay.

14 THE WITNESS: Each round is a bullet fired
15 out of a gun?

16 THE WITNESS: One bullet.

17 GRAND JUROR. Yes. Okay.

18 BY MR. REES:

19 Q Let me follow up on the question about the amount
20 of time. What's been your training and experience regarding
21 hesitation at that moment, because I think you said it was a
22 second. What's your training and experience for an officer
23 in that situation to wait?

24 A If I understand the question correctly, the
25 training is, don't wait, because the longer you wait, the

1 more danger you're in, the more opportunity the person has
2 to take aim and fire. Uhm, and I'm not personally willing
3 to roll the dice that the guy is a bad shot or not. Uhm, my
4 job is to take care of my family, first of all, so I can't
5 do that if I'm hurt or dead. So, when somebody pulls up a
6 gun and points it at me, I don't have the luxury to wait and
7 find out if it's a fake gun or a real gun. Uhm, this was a
8 distance, again, of about 25 or so feet at 3:30 in the
9 morning, so it was dark. And I believed that if I didn't
10 react then, either myself or Officer Scott could have been
11 shot.

12 GRAND JUROR: I'll ask you the same question
13 that I asked the Officer Scott. Prior to him moving
14 back and grabbing, his demeanor was pretty much just
15 mild, he was not getting radical. He just all of a
16 sudden, things just broke down and he just made a move
17 that was threatening to you; is that correct?

18 THE WITNESS: No. For -- we were talking
19 with him for probably 20 minutes or better. During
20 that time, there were ups and there were downs. There
21 were times when he was calm and quite responsive, and
22 I thought, oh, great, we're making good progress.
23 There were other times when he was fairly
24 confrontational, that I thought, oh, this is not going
25 well. This is more or less trending in a good, I

1 thought positive direction, until Officer Richardson
2 left. Once Officer Richardson left, then he started --
3 kind of with the anti-police, "You guys, I don't care
4 if I kill you or not," and started to get himself more
5 animated and more excited.

6 His demeanor right before he pulled his hand
7 out from under his jacket, his hand had been under his
8 jacket almost the whole time we were talking. Before
9 he pulled his hand out from under his jacket, his
10 demeanor had changed quite a bit. He had become more
11 excited, more agitated, more animated and
12 confrontational.

13 GRAND JUROR: So there wasn't any question in
14 your mind as far as, "No, don't, don't, don't!" It
15 was just boom, it happened so fast, it was just react.

16 THE WITNESS: Yeah. He didn't give us any --
17 didn't telegraph that he was going to be pulling it
18 out, aside from his previous comments, "Well, how fast
19 are you? What would you do if I pulled out a gun?"
20 He mentioned that a couple of times during this
21 conversation with us. Prior to him pulling out the
22 gun, he didn't say, "On three, I'm going to pull out
23 the gun, here it comes," he just did it.

24 GRAND JUROR: Can I just make a comment,
25 because I had a really hard time with some of the

1 testimony earlier about, this was a toy gun, and how
2 can you tell the difference between a toy gun and a
3 real gun. You didn't have time to; right? I mean,
4 there was nothing, and it was the shape of a gun that
5 you were familiar with; is that what you're telling
6 us?

7 MR. REES: Can I put that in a form of a
8 question?

9 GRAND JUROR: Yeah.

10 MR. REES: Was your question this, did you
11 have any doubt in your mind of whether you were seeing
12 an actual handgun; is that the question?

13 GRAND JUROR: Yes, thank you.

14 MR. REES: Just to repeat that. When you saw
15 that, at that instant in time, was there any doubt in
16 your mind that you were seeing a handgun?

17 THE WITNESS: No, I believed it was a gun.
18 If I had thought it was a cell phone or a set of keys,
19 I would not have shot.

20 GRAND JUROR: Yeah.

21 MR. REES: Does that answer your question?

22 GRAND JUROR: Yeah, totally. I mean, see, I
23 didn't know it was the one second time period, and I
24 didn't know, you know, it's hard when you're
25 describing -- when people describe the actions, that's

1 what's happening, what the time frame is. And I was
2 trying to think, well, could you tell that it was a
3 toy. And now I understand --

4 THE WITNESS: As he pulled it out, it was
5 immediate. Again, I didn't want to give him -- I
6 wanted to give him as little opportunity as possible
7 to get a good aim, and hurt either me or my partner.

8 BY MR. REES:

9 Q And I think as witnesses have described this event
10 and broken it down, they have taken 30 seconds or a minute
11 to describe this entire event. But, it's my understanding,
12 correct me if I'm wrong, that it actually happened in almost
13 the blink of an eye, from the time he reached and pulled,
14 and when you saw that; is that correct?

15 A Yes. Like I said, from the time he pulled until
16 the time I fired my two or three rounds, it was probably
17 less than a second, maybe two, by the time I was done with
18 the first volley of bullets.

19 Q Uh-huh.

20 MR. REES: Anything else? All right. Thank
21 you, sergeant.

22 THE WITNESS: Thank you.

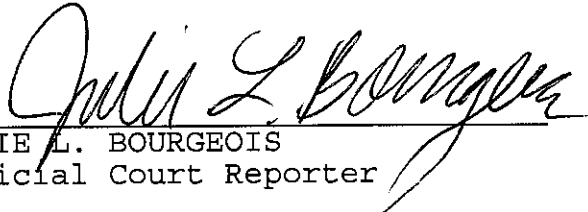
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24 (Whereupon, proceedings adjourned at 11:55
25 a.m.)

1 STATE OF OREGON)
2 County of Multnomah) ss.

3 I, JULIE L. BOURGEOIS, an Official Court Reporter
4 for the Multnomah County Circuit Court, hereby certify that
5 I reported in stenotype the foregoing testimony and
6 proceedings had in the aforementioned case; that thereafter
7 my notes were reduced to typewriting under my direction, and
8 that the foregoing transcript, consisting of 83 pages, is a
9 true and correct transcript of said oral proceedings.

10 Witness my hand in Portland, Oregon, this 22nd day
11 of February, 2012.

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15 JULIE L. BOURGEOIS
16 Official Court Reporter
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