

1 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**

2 **FOR MULTNOMAH COUNTY**

3
4
5 In re: Death Investigation) **MOTION TO RELEASE TRANSCRIPTS OF**
6) **TESTIMONY BEFORE THE GRAND JURY**
7 PPB Case No. 10-97006)
8 DA No. 2207518-1)

9
10 The State of Oregon, by and through deputy district attorney Greg Moawad moves the Court
11 for an order publicly releasing transcripts of testimony heard by the Multnomah County grand jury
12 in the above entitled matter. Presiding Judge Jean Kerr Maurer signed an order authorizing the
13 recording of all testimony in this matter. After hearing the testimony of witnesses, the grand jury
14 concluded its consideration of the matter on December 8, 2010 by returning a not true bill as to any
15 criminal charges against any involved parties. The grand jury has no plans to consider the matter
16 further.

17 The State believes that the Court’s authority to record grand jury testimony verbatim is not a
18 creature of statute. Specifically such recordation does not constitute the “minutes” of the grand jury
19 under ORS 132.080 that are required to be destroyed in the case of a not true bill under ORS
20 132.430. Actual transcripts of grand jury testimony can be disclosed when such disclosure is
21 constitutionally mandated or in the public interest. *Cf. State ex rel Drew v. Steinbock, 286 Or 461*
22 *(1979); State v. Hartfield, 290 Or 583 (1981).*

23 In this particular case, there has been much public interest in whether appropriate police
24 procedures were followed in the shooting death of Craig Bohler. The public has a specific interest
25 in reviewing sworn testimony regarding the conduct of its police bureau and in making such public
26 policy determinations as it sees fit. Indeed, in this instance, the city commissioner in charge of the
27 Portland Police Bureau has specifically requested that the grand jury transcripts be released to the
28 public. The ability of members of the public to inspect public records generally is a policy
29 mandated by state law *unless there are specific prohibitions on such disclosure that do not exist in*
30 *this instance.* ORS 192.420(1).

31 Under these special circumstances, the State believes that the general policy of grand jury
32 secrecy articulated in *State ex rel Johnson v. Roth*, 275 Or 883 (1977) does not apply.

33

34 Dated this 8th day of December, 2010

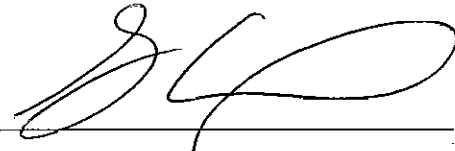
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Greg Moawad, OSB 94389

Deputy District Attorney

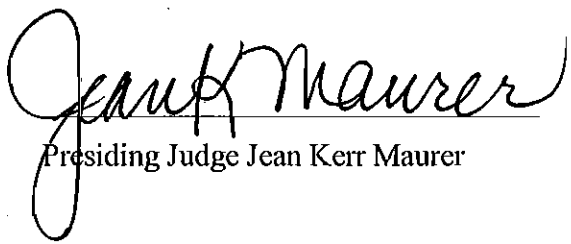
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

In re: Death Investigation) ORDER RELEASING TRANSCRIPTS OF
) TESTIMONY BEFORE THE GRAND JURY
PPB Case No. 10-23336)
DA No. 2207518-1)

Having reviewed the State's *Motion to Release Transcripts of Testimony Before the Grand Jury* in the matter of the grand jury death investigation with regard to Portland Police Bureau case number 10-97006, District Attorney's case number 2207518, the Court hereby orders that the transcripts of testimony before the grand jury in this case shall be publicly released.

Dated this 14 day of December, 2010


Presiding Judge Jean Kerr Maurer

JULIE L. BOURGEOIS
Official Court Reporter
c/o Judge Janice Wilson
554 Multnomah County Courthouse
1021 S.W. Fourth Avenue
Portland, OR 97204
(503) 988-3918

DATE: December 10, 2010

TO: Mr. Greg Moawad
Deputy District Attorney

RE: Grand Jury Death Investigation: Craig Boehler
DA Case NO. 2207518-1
Appearance fee: 4 hours on 12/6/10 and
1/2 hour on 12/8/10 - \$157.50
Transcript fee, 157 pages - \$549.50

TOTAL DUE: \$707.00

Thank You

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MULTNOMAH COUNTY GRAND JURY
DEATH INVESTIGATION

Deceased: CRAIG BOEHLER)
Date of Incident: November 23, 2010) DA Case No. 2207518-1
Location: 11066 SE Cherry Blossom)
Drive, Portland, Oregon)

VOLUME 1
TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled Grand
Jury proceedings were heard, commencing at the hour of 1:00
p.m. on December 6, 2010, at the Multnomah County
Courthouse, Room 618, 1021 SW 4th Avenue, Portland, Oregon.

APPEARANCES

Mr. Greg Moawad and Ms. Amber Moser,
Deputy District Attorneys,
Appearing on behalf of the State.

JULIE L. BOURGEOIS
Court Reporter
Multnomah County Courthouse
1021 SW 4th Avenue Rm. 554
Portland, Oregon 97204

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TRANSCRIPT OF PROCEEDINGS 12/6/10 1:05

1

2

3

CORINA BERNA

4

called as a witness, being

5

first duly sworn, was examined

6

and testified as follows:

7

EXAMINATION

8

BY MR. MOAWAD:

9

Q Have a seat there. Could you tell these folks who

10

you are?

11

A My name is Corina Berna, maiden name B-O-E-H-

12

L-E-R. I'm the sister to Craig Boehler.

13

Q Could I have you spell your first name and current

14

last name to make sure I have it correct?

15

A First name is Corina, C-O-R-I-N-A, B as in boy, E-

16

R-N as in Nancy, A.

17

Q How old are you?

18

A I'm 44.

19

Q I understand you were living at 11066 Southeast

20

Cherry Blossom?

21

A Correct.

22

Q Whose home is that?

23

A That is my mother's home.

24

Q How long has she lived there?

25

A Uhm, I think about ten years now, since my

1 grandmother died.

2 Q Okay. What ended up with you moving back into
3 that house?

4 A I'm chronically ill, and the caretaker that I had
5 was not a good fit, uhm --

6 Q Where were you living at the time prior to moving
7 back in?

8 A Apartments that were on McLaughlin, Miramonte
9 apartments.

10 Q Are you on medication today?

11 A Uhm, some that I took early this morning.

12 Q What was that?

13 A Uhm, I took my one Klonopin, uhm, Ibuprofen, uhm,
14 seven methadone, Prilosec and Zantac, Zofran, uhm, I think
15 that basically does it.

16 Q Is there any of those medications that interfere
17 with your ability to understand what is going on here today?

18 A No.

19 Q I don't need a name, but tell me what your
20 condition is that required you to move back to the house on
21 Cherry Blossom?

22 A Basically, what made me move back in is because my
23 caretaker was stealing from me, and I couldn't afford to pay
24 for it any more.

25 Q In more general terms, what is your health

1 condition?

2 A My health condition, it's large fiber neuropathy.
3 It's somewhat -- it's in the category of neuropathys.
4 There's a secondary name, dysautonomia, means basically
5 instability of the nervous system. Your autonomic nervous
6 system is a part of your system that tells your heart how to
7 beat, tells your kidneys how to work, it tells, you know, it
8 affects your sweat glands, it affects your blood volume. It
9 basically affects everything.

10 My kidneys in the last four months, I have had to
11 see a kidney doctor because my kidneys are starting to shut
12 down. I'm on a feeding tube in the left lower quadrant of
13 my stomach. It goes into the jejunum, a J-tube, jujunostomy
14 tube. The jejunum is in the small intestine, so it bypasses
15 my stomach.

16 Q What's your health prognosis? What do your
17 doctors tell you about your future?

18 A It's grim. I'll end up dying from it. But, you
19 know, it's -- they give me three to five years, it's been
20 seven. I'm stubborn, I'm a fighter. I don't give up that
21 easy.

22 Q How are you physically in terms of your physical
23 ability?

24 A As far as --

25 Q Compared to prior to having the disease? Do you

1 have difficulty lifting things, pushing things, moving
2 furniture?

3 A Oh, yeah. Oh, yeah.

4 Q Normal day-to-day stuff you used to be able to do,
5 you no longer can do?

6 A Yeah. And when you asked me that question, see, I
7 used to be very heavy into hiking. I would hike three days
8 a week, and usually I would hike anywhere from eight miles
9 round trip to fourteen miles round trip, and I take the
10 dogs. I was very avid about doing stuff like that, and it
11 was wonderful having my kids there with me because they
12 loved to do it too.

13 Q And I assume from your statement earlier the last
14 seven years, there's been a change in your pattern and
15 practice?

16 A Yes.

17 Q Okay.

18 A Yes.

19 Q I want to talk to you a little about growing up
20 with Craig. Can you tell these folks where you did that?

21 A Uhm, I grew up with Craig. I was born here and
22 when I was about six weeks old we moved to Hawaii because my
23 dad used to work with Otis Elevators. He put the elevators
24 in the main island where the observatories are. So we lived
25 there I think if I recall correctly, about four, four

1 and-a-half years.

2 Q Okay. Where did you move after that?

3 A Here to Portland, Oregon,

4 Q Let me ask you, you mentioned Craig's last name
5 was pronounced Boehler --

6 A Boehler, it's German.

7 Q Okay. Was Mr. Boehler older or younger than you?

8 A Two years older.

9 Q And how long did you live with him or in the same
10 house with him as a child?

11 A Basically all my teen-age life.

12 Q I understand your father was a gun collector and
13 hunter?

14 A Yes.

15 Q And both you and Mr. Boehler had the opportunity
16 to shoot with him and hunt with him?

17 A Yes. We both went through NRA and we both were
18 taught how to shoot, plus he was in the military.

19 Q Mr. Boehler was?

20 A Yes.

21 Q When was that? How old was he?

22 A I'm trying to remember.

23 Q Okay.

24 A Probably 18.

25 Q Okay.

1 A And he went into the Army and I went into the
2 regular Army for a year. I spent a year in the regular
3 Army, and then I spent five years in the Army National
4 Guard.

5 Q How about Mr. Boehler's military service, how long
6 did that last?

7 A I didn't keep track. When we were 18, basically
8 mom was so fed up with everybody in the house she told
9 everybody to get the F out of the house, you know.

10 Q Okay.

11 A You know, I stayed behind. I rented the basement.
12 I always rented from her.

13 Q At about that time, 18 or so, is that
14 approximately when Mr. Boehler went into the Army in your
15 mind, when he was 18 or so?

16 A Yeah.

17 Q We're talking decades ago, not the last five or
18 seven years?

19 A Yeah. That's why it took me longer to answer that
20 question.

21 Q Okay. Mr. Boehler was not living with you folks
22 at Cherry Blossom. Where was he living as of the date of
23 this incident? Do you know what city he was in?

24 A Yeah, Portland. He lived on the streets.

25 Q What was he over at the house doing that day? Do

1 you know why he was there?

2 A Not exactly, no, I don't.

3 Q Do you remember the first time you saw him that
4 day?

5 A Yeah.

6 Q When was that? Was that morning or night?

7 A Uhm, more afternoon.

8 Q Okay. How did he arrive at the house? Did he
9 come with somebody or come on his own?

10 A Well, my stepdad picked him up from jail, uhm, and
11 drove him back.

12 Q Are we talking about the night of the incident or
13 are we talking about another time?

14 A Can you repeat the question, please?

15 Q Sure. Are we talking about the night of this
16 incident where you are saying your stepdad picked him up
17 from jail, or another night?

18 A Back up a little bit, the question before that.

19 Q How did Mr. Boehler arrive at the house? Was he
20 by himself or with somebody else?

21 A My mom -- actually, he arrived by himself.
22 However, my mother and Gary, my stepdad, went and drove down
23 and got him. Now, if I remember correctly, he supposedly --
24 he had -- my brother had a catheter. So every month he had
25 to have it changed. So, once a month mom would go down and

1 get him or Gary would go get him or both of them would go
2 get him. They go get him, and bring him back, and then they
3 took the catheter out. So, mom and I were under this
4 understanding that was when he was coming up to get the
5 catheter changed. He said he was going to go to an AA
6 meeting after that, but I knew better than that. I knew he
7 wasn't going to go to an AA meeting after that, because when
8 he stayed with me awhile, he would say, oh, I'm going to go
9 to this place that I like out here to eat at. And I said
10 okay. And, uhm, I lost my point.

11 Q You knew he wasn't going to --

12 A Yeah. I knew he wasn't going to basically go to
13 an AA meeting or go eat dinner at one of the shelters.

14 Q Because of what you knew about him, what did you
15 think he was going to go do?

16 A I knew he was going to go drink or do meth or
17 something.

18 Q When you saw him that night, the night where this
19 incident occurred, did you believe he had been out drinking?

20 A Uhm, yeah, I did. I smelled alcohol on his
21 breath. Also my mom, she drinks occasionally, and she had a
22 couple of fifths of vodka that she hid. And he kept going
23 to the office, and I found this kind of odd. And I followed
24 him into the office, and when I followed him in the office I
25 caught him glug, glug, glugging down this fifth of vodka.

1 And I'm like, what are you doing? He's like, well, he goes
2 shh, it's your mom's and mine secret. She just doesn't want
3 Gary to know about it.

4 Q Did you have a discussion with your mom about
5 hiding vodka before Mr. Boehler arrived or did you --

6 A No, I didn't know where she hides it, there was no
7 reason to have a discussion.

8 Q Okay.

9 A You know.

10 Q Do you know why she was hiding it?

11 A Yeah, because Craig is an alcoholic.

12 Q Have you seen Craig intoxicated before?

13 A Oh, many times.

14 Q Okay. And does he have the same personality or
15 different personality when he is intoxicated?

16 A He's an asshole.

17 Q Is that intoxicated or not intoxicated?

18 A Both.

19 Q Is there anything unique about him and his
20 personality when he does drink in your experience with him?

21 A He's very violent, very mean, that's about all I
22 can say about him. He's very violent, very mean. Uhm,
23 people are afraid of him. I mean, it's like mom and I have
24 both talked to each other. If we see my brother walking
25 down the street and it was 10:00 at night and we were on the

1 same side, we would both walk across the street on the other
2 side and just because even of his appearance.

3 Q You knew when he got home he had been drinking a
4 little bit, you smelled alcohol on him?

5 A Yes, I could smell it.

6 Q Did you notice his attitude or demeanor when he
7 first came to the house, was he the drunk Mr. Boehler or was
8 he still sociable?

9 A I don't know who he was any more.

10 Q Okay.

11 A Okay.

12 Q How often do you have -- did you have contact with
13 him?

14 A That's the truth. Well, let's see, when he first
15 moved back up from Seattle, my mom had breast cancer, I
16 think that was 1995 or 1996. He made my life a living hell.
17 I lived with this man and I rented the basement from mom for --
18 or the whole house, I should say, pretty much because she
19 this was before her and Gary were married. And this was one
20 of these things that, let me see, he got in trouble for --

21 Q Let me stop you there. To the extent we can, I
22 want to talk about just this night; is that okay?

23 A Okay.

24 Q This night he came home, started drinking alcohol
25 out of the office it sounded like. Did you notice a change

1 in his personality that night as the night progressed?

2 A I thought I answered that said; yes.

3 Q Well, how did you notice that change? How did he
4 present?

5 A He's mean, and he's an asshole and he gets worse.

6 Q What did he do that led you to believe he's drunk,
7 he's getting mean and --

8 A Uhm --

9 Q Did you have one conversation him with, did you
10 watch him do something?

11 A Uhm, I'm slow, so if you can just please give me a
12 minute.

13 Q Absolutely.

14 A His behavior would change. He would bring things
15 up that should be water under the bridge and should not be
16 brought up at all. Uhm, we have got into many arguments.
17 He gets drunk, he is like Dr. Jekyll and Mr. Hyde, okay?
18 When he gets drunk, he would call me a fucking bitch or a
19 spoiled, fucking bitch, or I get everything on a gold
20 platter or this or that. Let me see, he sniffed paint in
21 front of my kids. These are things he does when he gets
22 drunk.

23 That night, uhm, let's see, he said to me, he
24 wanted me to assign over 50 percent, okay? My dad died
25 about a year, year and-a-half ago, and he wanted me to sign

1 over 50 percent of my assets to him. His exact words is, I
2 know you're going to die, I know you're going to die soon,
3 so I would really like it if you would just sign over, you
4 know, the stuff to me, because your kids are no good, you
5 know. They ruined everything for you, you know, at times,
6 and yada, yada, yada. That's some of the meanness, you
7 know.

8 Q Okay.

9 A Uhm --

10 Q At some point you ended up in the garage with him;
11 is that accurate?

12 A Yes. There's no smoking in the house.

13 Q Okay.

14 A We smoked cigarettes in the garage.

15 Q I understand during the time you were with him in
16 the garage, there was an incident with him that made you
17 feel personally unsafe and upset with him?

18 A Yes. He started rubbing my shoulders and --

19 Q What did you do after that?

20 A Basically, I, you know, pushed his hands and said,
21 don't touch me like that.

22 Q Where did you go?

23 A At this time I finished my cigarette. Then I went
24 upstairs, was going to watch Letters From Juliet. He came
25 upstairs and asked if he could sleep with me and watch the

1 movie. And I said, I don't care, just, you know, I didn't
2 say just be mellow, that's what I was thinking. As long as
3 he's mellow, it's fine. If he gets out of hand, he's out.

4 Q And what happened?

5 A You know, uhm, we ended up going back downstairs
6 because I wanted another cigarette.

7 Q Did you end up fighting with him down there?

8 A We ended up arguing. Uhm, because, again, he was
9 rubbing my shoulders and verbally started going into detail
10 about a sexual abuse situation.

11 Q Okay. There was a second incident in the garage
12 that made you personally feel unsafe, is that what I hear
13 you saying?

14 A Yes.

15 Q After that, what happened? Where did you go?

16 A I tried to run upstairs and go in my room and lock
17 the door, but unfortunately I didn't get up the stairs fast
18 enough to do that because he was right there.

19 Q What happened?

20 A Then I went out of the room and I went and tried
21 to go into the living room and sit down and watch T.V., and
22 then he went in there. And then he tried preaching to me
23 out of the Bible. And I am like, don't you know what I
24 said, Craig, just leave me the F alone. Just leave me
25 alone, just let things be, you know. I went back

1 downstairs, smoked a cigarette. I was going to shut the
2 garage door, and right as I shut the garage door, he shoved
3 it open on me.

4 Q You're talking about the door into the house from
5 the garage?

6 A Yes.

7 Q Okay --

8 A Okay. He came into the garage. He started going
9 into detail about a sexual abuse that happened, and I lost
10 it, because I had forgotten about it. And when I say I lost
11 it, I emotionally had a break down. I started screaming at
12 him, to tell him to leave me the fuck alone, just go, go lay
13 down, get out of my way, stay out of my way. I don't want
14 to talk to you, I don't want anything to do with you. Just
15 leave me alone.

16 And I ran upstairs, and, you know, and then I seen
17 him come upstairs. So I ran back downstairs into the
18 garage. And I was screaming at him the whole time not to
19 follow me. My mom finally got up, she came into the garage,
20 she sat down, I'm in the garage and she's trying to figure
21 out what's going on. I'm telling her the things he is
22 saying is way inappropriate. And at that time, he came back
23 in and he was trying to talk to mom, I honestly don't
24 remember what about, but he brought a Bible in with him.
25 And I looked at him and said, you're going to -- excuse me,

1 you're going to preach to me out of the Bible, after you
2 just brought up an incident of a sexual abuse that I blocked
3 out until you had to open you're big, fucking mouth?

4 Q When did Mr. Estes come into that confrontation?

5 A Well, I ran upstairs, and in front of the closet
6 if you come in the front door, you go straight, it goes down
7 the stairs. I ran up the stairs, which I should not have
8 done to begin with. I passed out, I had a seizure.

9 Q How does that seizure show itself? How would
10 someone from the outside say she's having a seizure right
11 now?

12 A Let's see, I'm drooling, I'm spitting, choking,
13 wailing, I hit my head against the closet probably about
14 five, six times.

15 Q Is involuntary muscle movement a safe way in terms
16 of you --

17 A Probably pretty much close to grand mal seizure.

18 Q When you came out of the seizure, what did you
19 see?

20 A When I came out of the seizure and stood up, I
21 heard Gary come upstairs. And I don't remember what Gary
22 said, but he said something about, if you don't back off,
23 I'm going to shoot you. And the next thing I know, my mom
24 is upstairs, she's to the right of him, and Gary fired the
25 weapon. And I guess I sort of tripped out, because I have

1 never seen anybody get shot. And I know the bullet went
2 right through him, and I was in shock because of everything
3 that was happening. And I'm going, where did the bullet go,
4 because the bullet went straight through him.

5 Q Through who?

6 A My brother, Craig.

7 Q Where was Craig in relationship to Mr. Estes?

8 Where was Mr. Boehler in relationship to Mr. Estes?

9 A Maybe a foot away, two feet.

10 Q Were they standing near something recognizable?

11 A The stairs. The stair railing. Maybe two feet
12 away from each other.

13 Q Other than the, if you don't back off, I'll shoot
14 or words to that effect, did you hear anything else between
15 the two of them?

16 A My brother did not even flinch when he got shot.
17 I mean, he didn't flinch at all. You know, you get a bee
18 sting, most people go, ouch. He didn't flinch. He stood --
19 I don't know how the transaction happened, but my mom ended
20 up being to the left, he ended up being more to the right
21 against the top railing. And he says, it's going to take
22 more than one fucking bullet to put me down.

23 Q That's your brother to Mr. Estes?

24 A Yes.

25 Q Did you see any physical contact or threat of

1 physical contact after the shot was fired between Mr.
2 Boehler and Mr. Estes?

3 A My brother said that -- he went through the
4 kitchen, and it's like a circle, okay. You go -- here's the
5 railing, here's that, you go through the kitchen, then
6 there's a dining room. Then you go this way, the living
7 room is along here, then there's the front door, then
8 there's a closet. And then you go to the stairs, and
9 there's a railing, so it's like a circle.

10 He -- my brother walked this way, I thought he was
11 going in the kitchen. I walked around this way. And I
12 realized that he walked into the living room, his back was
13 facing towards me, and the blood spot ended up being about
14 yea big around approximately. I can't say.

15 Q You're indicating just because this is being
16 written down, your fingers are about a foot apart?

17 A Yeah, about a foot in circumference around a thing
18 of blood. I mean, you get shot, you bleed.

19 Q Sure.

20 A You know. But the funny thing about it was he was
21 furiously digging through his bags, and because the blood
22 was getting worse I screamed to mom, you know, just probably
23 out of shock and panic, to call 911.

24 Q Were Mr. Boehler and Mr. Estes facing each other?

25 A No. Wait, when?

1 Q At the time of the shot?

2 A Yeah.

3 Q Okay. How far apart were they?

4 A I just said they were about a foot apart.

5 Q I'll slow down just a minute.

6 A I can't really take this.

7 Q Okay. Would you like to take a break?

8

9

10 GARY ESTES,

11 called as a witness,

12 being first duly sworn,

13 was examined and testified as follows:

14

EXAMINATION

15 BY MR. MOAWAD:

16 Q Have a seat. Tell the folks who you are.

17 A My name is Gary Estes.

18 Q Could I have you spell your first and last to make

19 sure I have it right?

20 A G-A-R-Y E-S-T-E-S.

21 Q How old are you?

22 A 76

23 Q I understand you're retired?

24 A Yes.

25 Q What did you retire from?

1 A I had an automotive business here in town, but I
2 had to get out of it due to health, about 1999.

3 Q And you were privy to what just happened here?

4 A Yes.

5 Q When Ms. Berna left having a fairly normal
6 conversation with her, can you give these folks a little bit
7 of background about her, why she may have had the reaction
8 to the conversation?

9 A Give me a moment here to collect my thoughts here,
10 folks. She's dying. Her kidneys are 50 percent shut down.
11 She takes medication as some nourishment through a tube
12 surgically inserted into her. And she's living a fine line
13 of exploding or going into a seizure, or is as normal as any
14 of us sitting here chatting. You cannot figure which one of
15 the three you're going to be in mini-seconds, just so you
16 know.

17 The thing that scares me to death is the toll it's
18 taking on my wife, her mother, Judy. That's the scary part
19 that's grinding her down. It's a very difficult thing to
20 watch your child go through something like this.

21 Q When did you meet your wife, Judy?

22 A About 1986 or 1987. We have been going together
23 and moved into -- well, her mom, we had to put her into a
24 rest home. Her dad had a stroke, we put him in. So we're
25 both sitting here with two homes, dating, so why don't we

1 just buy their home, and I'll sell mine and then we kept the
2 other one and bought the other home and Corina and her
3 family were in that one, it worked out.

4 Q How long have you been in the home on Cherry
5 Blossom?

6 A 1999.

7 Q I would like to talk a little about weapons in the
8 house.

9 A Yes.

10 Q You own firearms in the house?

11 A Yes.

12 Q Tell us about those.

13 A Yes. I just last year went elk and deer hunting
14 with my son, and I bought a .300 Weatherby Magnum rifle with
15 a Leopold scope, because we were going back to eastern
16 Oregon deer hunting and elk hunting. And my guns had been
17 stolen probably about nine years prior, I just never
18 bothered to buy another rifle or anything. I said, I'll go
19 get one of those. But I had the opportunity to buy a
20 Browning side by side, 12 gauge shotgun, which I dearly love
21 to use. And it's -- I always kept it, it has a beautiful
22 case, always kept it in that case clean and put away. And I
23 also did the same thing with the Weatherby. I kind of hid
24 it, because having had your guns stolen, I had not got
25 around to buying a safe yet. I had that one hid in another

1 part of the room.

2 Q Let me slow you down and ask you in terms of
3 starting with the Weatherby -- .300 Weatherby Magnum is a
4 significant chambering for a rifle. What type of distances?

5 A .30-06. Five hundred yards -- okay. When I was
6 a sniper in Marine Corps, 1500 yards was the normal thing we
7 shot at, we always practiced at 1000 yards. I had it scoped
8 on 200 yards. And so we spent time getting excited and to
9 get the feel of the weapons. And then I had a 9 millimeter
10 Parabellum.

11 Q I'll have you speak up a little for the court
12 reporter.

13 A I had a 9 millimeter Browning Parabellum pistol.

14 Q Let me ask you in terms of the rifle, where was
15 the rifle hidden in house?

16 A We had a cabinet in the bedroom, we stored things,
17 DVD's, that sort of thing, old sheets and stuff. And I hid
18 it on the bottom underneath the sheets. It was well hidden.
19 Anybody looking for a gun down there would have a difficult
20 time finding it.

21 Q You mentioned a 9 millimeter hand gun, where was
22 that?

23 A Night chest, right next to the bed.

24 Q Okay. What was your purpose having that?

25 A I always kept one there out of habit unloaded.

1 Q And you mentioned the shotgun?

2 A Yeah. Was hid.

3 Q Where was that?

4 A Downstairs. There was a -- originally, it was a
5 family room, we had a circular bar like this. I had it
6 hidden back behind that on the shelf.

7 Q And in a separate location from the rifle?

8 A Yes.

9 Q You had a .22 pistol?

10 A Yes.

11 Q Where was that?

12 A That was upstairs in the desk.

13 Q Was that placed in some place that would be
14 considered hidden?

15 A Pretty well, yeah. It was a file cabinet hidden,
16 even I forgot it was there half the time.

17 Q Do you stick it in one of the hanging file
18 cabinets? I was confused from the reports.

19 A It was a drawer on the desk, you had a little
20 drawer, up top larger drawer for the file cabinet, down
21 below, it was down there.

22 Q With the other files?

23 A Yeah, uh-huh. Uh-huh.

24 Q And as we discovered, you also owned a flare gun?

25 A That was part of the -- again, my wife's first

1 husband had a collection of roughly twenty, thirty weapons.
2 The flare gun was part of that collection, so we retrieved
3 those guns and I sold them to a gun dealer. But, he didn't
4 want anything to do with the flare gun. It was a Navy flare
5 gun, so we had a box or something, we kept that. And then
6 there was a Luger which somewhere was lost in the fire.
7 Another fellow and I went through the whole area where that
8 was kept, we couldn't find that. And everything else was
9 sold.

10 Q When you say their father, you're talking about
11 Mr. Boehler and Mr. Berna's natural father?

12 A Yes.

13 Q Okay. You had a hot and cold, maybe mostly cold
14 relationship with Mr. Boehler. Tell the folks a little
15 about that. And the reason we're getting into this,
16 ultimately, you hear the argument taking place, you bring a
17 gun into that. Tell me a little about your experiences with
18 him, what you knew about him that led you to believe, I need
19 to bring a gun into that fight?

20 A You never really knew what was going to happen.
21 You just sort of -- you walked around on glass with bare
22 feet all the time. One minute he could be just fine, and
23 then the next minute if he's drinking, and he was an
24 alcoholic, or if he's on drugs, you're dealing with a time
25 bomb. You never knew which he was. Uhm, but as he was dead

1 sober, he was not a bad person to be around. But the minute
2 he crossed the line getting drinks and that sort of thing,
3 he was somebody you did not want to be around.

4 Q Have you seen him in that condition prior?

5 A A couple of times. Judy and I sort of vacated the
6 area when that happened and he was like that. Uhm, for
7 example, in front of this building one night, again, this is
8 hearsay, he got mad at the police department. There were
9 seven squad cars out front, and he punctured all their tires
10 on all seven of them.

11 Q Hold on a second.

12 MR. MOAWAD: For grand jury purposes, this goes
13 into his decision making that night, so it's acceptable for
14 that purpose. You're not to consider that for voting
15 purposes.

16 A You never knew. And January 1, he was at
17 Willamina, he lived at his dad's house, he was living down
18 there. The latest was -- he did go to prison for picking up
19 a gun and was going to fire and shoot this guy, he got three
20 years, and got out in a year and-a-half.

21 Q You knew this about him prior to the night we're
22 talking about here?

23 A Yes. This is in the background -- his historical
24 background. He's in and out of jail constantly. Let's see.
25 Okay. Knowing all of this, and his temperament, and then

1 January 1, he gets -- he went down to the bar, he should not
2 be drinking, he's shooting pool, he breaks a pool cue over
3 somebody's head. They call the police, and then he's --
4 I'll take you two guys out, don't even worry about it. Oh,
5 boy.

6 Well, they didn't take him out, they had him down
7 on the ground, he got out away and went home. And two more
8 policemen came there. They had him down, got him cuffed,
9 put him in the car and he went to jail. That was about
10 January 5th of this year. Then he was released in the last
11 of August of this year. Again on parole, but he had to
12 check into a rehab center for six months. That's the
13 current --

14 Q Okay. Let me ask you, had you had any experiences
15 with him which he did express displeasure about the police,
16 he wanted to fight with or kill the police?

17 A He never said anything out loud to me. It was
18 just the other happenings around that I knew were there,
19 because Judy would talk to me about it.

20 Q Had she had conversations with him about those
21 things?

22 A Oh, yeah, I'm sure she had.

23 Q Let's talk about the day prior to the incident,
24 talking about the 22nd. I understand you and Ms. Hart drove
25 down to Willamina to pick him up?

1 A Yes.

2 Q Talk about what he had.

3 A He had a doctor's appointment at 2:00 that
4 afternoon at OHSU, which is fine. We dropped him off, we
5 went on home. He said, I'll see you about 7:30 or 8:00.
6 And I heard stumbling coming up the stairs.

7 Q Let me ask you before we get there, had you
8 noticed anything amiss with his personality or demeanor?

9 A Not that day. Now, that's the other side.

10 Q Yes.

11 A Dead sober. He even called on his cell to see
12 where we were, told him we would be there such and such a
13 time, fine. And he had his stuff out front ready to load
14 into the car, and everything was just fine. Just fine. And
15 we drove up here for his appointment and we went on home,
16 knowing we would not see him until 7:30 or 8:00.

17 Then I heard stumbling coming up the stairs, I
18 thought, that's Craig. I opened the door and he came in and
19 he just kind of breezed by me, and, boy, I mean fast. He
20 went into the living room, I said, "Judy, I'm going
21 downstairs, take care of stuff. I'm going to read down
22 there for awhile." And I was talking to his mom, and then
23 it was at this time I didn't see or hear of him any more
24 that night until everything broke loose about 1:30 in the
25 morning.

1 Q Let's talk about that, things breaking loose at
2 1:30. What's the first thing that draws your attention to
3 something being amiss?

4 A You just heard Corina going down the hall, magnify
5 that by many more times coming down the stairs from
6 upstairs. Now, to let everyone know here, we can hear our
7 little dog walk across the floor upstairs when we're
8 downstairs, that's how the sound does reverberate to the
9 lower level. So, at 1:30, Judy and I are just sound asleep,
10 and then this screaming, blood curdling screaming, you son
11 of a bitch, don't you ever touch me again. And it just --
12 the volume kept growing, and out the garage, down the
13 stairs, out the garage door, the door slams. And, of
14 course, Judy jumped out of bed, and tore into the garage and
15 screaming and yelling and the sobbing, it just kept flowing.

16 Q Do you hear anyone other than Corina in the
17 screaming and yelling?

18 A Judy I think was trying to calm her down. I could
19 hear Judy's voice every now and then trying to get things
20 settled down. And then I guess Craig came down, she went,
21 get that son of a bitch -- you get out of here, God damn it,
22 and the volume grew. So Judy came in and I said, shall I
23 call 911 and diffuse this thing? No, no I'll handle. Okay.
24 God bless. So I didn't do any more than that, and they
25 moved the whole program upstairs and then it just got

1 violent.

2 Q What leads you to the conclusion it was violent?
3 What did you hear?

4 A Banging on the floor, screaming and banging on the
5 floor like somebody is being thrown down on the floor.
6 That's all I could surmise. I thought this is getting way
7 out of hand. Why I got the gun, I don't know, but I did,
8 locked and loaded, put it on safety, went upstairs to see
9 what was happening. I didn't know what I was going to run
10 into, I didn't have an idea.

11 When I got to the top of the stairs, Corina was
12 down flat on her back, stumbling and screaming. Judy was
13 here bending over her, and Craig was standing up with his
14 fists kind of -- I said, Craig, just go sit down. Oh, you
15 going to shoot me with the gun? No, just go sit down. That
16 was it. No more conversation between the two of us. He
17 turned and came at me.

18 Q Where were you in relation to the stairs?

19 A Standing on the top, almost the top stairs. I
20 thought, uh-oh, he's just like he was going to shove me down
21 the stairs. I spun, I started to fall and two things
22 happened, the gun went off. I was lucky enough to catch the
23 stair rail in my left hand to keep myself from going head
24 first onto the floor below. I got my footing and went down
25 the stairs into the bedroom, got into the bedroom, locked

1 the door and called 911.

2 Q In terms of, you motioned with your hand
3 describing how Corina is down on the floor, Judy is next to
4 her, and Craig is standing over them. Because this is being
5 reported by the court reporter, could you give us a physical
6 description of how far apart they are -- how far apart they
7 are from you, those sorts of things?

8 A They are probably twenty feet from me, that would
9 be -- that even might be a little too far, but fifteen to
10 twenty feet.

11 Q Okay.

12 A Corina was down on the floor, and then Judy was
13 almost like on her knees trying to take care of Corina.

14 Q Close to one another?

15 A Oh, yeah.

16 Q And let me ask you, you made a motion with your
17 hand. We heard Corina talking about seizures. Did it
18 appear that's what was going on?

19 A It could have been that's why she was jumping, and
20 I have seen that before. Craig was there, and I thought
21 just not in a good posture, just like (indicating).

22 Q Again, for the court reporter, describe what
23 you're doing, what led you to believe --

24 A Like he was maybe going to grab somebody, his
25 mother or I don't know. I don't know, that's what I saw.

1 So I said, Craig, please, just go sit down. And, boy, he
2 turned and he took off after me. And his arms were up like
3 he was going to push me downstairs. I spun, that's when I
4 started to fall, the gun went off. I didn't know it went
5 off, hardly -- I grabbed the rail -- knew where the bullet
6 went. As far as I'm concerned, I don't have a clue where it
7 went. Because I caught myself, got down the rest of the
8 stairs, on down there, and that's when I dialed 911 to
9 report the incident. We need a police immediately, and a
10 shot's been fired.

11 Q You mentioned one of the things Mr. Boehler said
12 to you was, are you going to shoot me, or words to that
13 effect. One of the other things you mentioned at least in
14 the interview with Detective Sponhauer out here was that Mr.
15 Boehler said to you, shoot me, almost as if was a command.

16 A He did say that.

17 Q Do you recall when in the interchange here?

18 A As he was coming towards me, I didn't even answer.
19 I didn't want to shoot him, that was a positive, I wanted to
20 diffuse this thing. And that's when he just came at me.
21 And so I started to fall, and the gun went off. And I got
22 myself downstairs, and the lady said to get rid of the gun.

23 Q Who is the lady?

24 A 911 lady. And Judy just came in, I took out the
25 rounds and said, here's the gun, get rid of it. I got rid

1 of the bullets. Still I'm on the phone with 911, and then I
2 hear tremendous pounding on the door from outside.

3 Q Which door?

4 A Our sliding door to the bedroom, big glass door.
5 I pulled the blind aside, and I'm officer whoever, please
6 raise your safety bar so I could open the door. And I did
7 that, he said, I got to get you out of here right now. I
8 didn't have time to ask what is going on. He grabbed me and
9 he said, get your slippers and robe on, and we're out of
10 here that fast.

11 As we were going down the driveway, he got a hold
12 of me, I started to slip on the ice. I looked to the left,
13 I said, well, there goes Corina with two officers, they are
14 dragging her down the street as fast as they can go. Where
15 is my wife? He said, don't worry, she's with my partner in
16 the other car, she's fine. He put me in the other car, and
17 there I sat for just a little bit.

18 Here came another officer, he got in and asked me
19 some questions. Then he moved the car and stopped and he
20 said, I'll be back in a little bit, I have to check
21 something over here. And he did, he came back, and we drove
22 all the way around. And all the way around is a two-mile
23 drive around the hospital, and all that to get to where the
24 command center was being set up. At the time I didn't even
25 know what that was. I thought, what's all going on? There

1 was a bus with people in it, an ambulance. I'm going, what
2 is going on?

3 Then next thing the door opens and, I'm officer
4 so-and-so with SWAT. I need you to identify this person.
5 She had these papers, she's got Craig's picture. Is that
6 Craig? I said, that's Craig. And facial? Yes, facial is
7 still the same. Thank you, and she was gone. My heart was
8 really letting go. I had a very difficult time breathing.
9 It was getting worse. So I got the officer, I said, I'm
10 really having trouble breathing, a hard time breathing. So
11 over came the ambulance people. Next thing, I'm on a gurney
12 being put in the ambulance, oxygen was being pumped into me.

13 One officer came over, I don't mean to stop you, I
14 have to ask you few questions quickly, which he did. Don't
15 know what he asked, I don't know. Around the corner we went
16 to the Seventh Day Adventist emergency, and they really got
17 everything rolling. Next thing I know I'm getting something
18 shot into my stomach fast, two pills, and a doctor came in.
19 He said, I should have talked to you about this. We didn't
20 have time to fool with your heart -- whatever, the enzymes.
21 I don't know, but here's normal, here's death, and you're
22 right there.

23 Q Between the two?

24 A Between the two. And we don't like you to be
25 there, we want you down here. Oh, God, that's great. But

1 then I stayed there, calmed down. And the same officer I
2 talked to in the ambulance came into the hospital. And he
3 sat down in the emergency room where I was. We had a long
4 chat, really calmed me down. I'm glad he was there. He
5 said, you're going to have to wait until a detective comes,
6 they'll interview you and give you the play-by-play. I
7 didn't know what was going on. I had no clue.

8 I said, is my wife okay? Yes, she's over here,
9 and Corina is over here. We're not allowing any of you to
10 be together. Okay. Anyway, Mark and the other gentleman
11 came in and they visited, we talked for about an hour. And
12 in the meantime, they found out we had Kaiser, and they had
13 to transport me from that hospital to Kaiser. So one of the
14 police officers took care of all that. She said, when
15 you're all done, I have an ambulance here and they are
16 waiting for you in emergency at Kaiser Sunnyside. They have
17 a room for you. I guess I was worse than I thought.

18 Q How long did you stay in hospital?

19 A Until noon the next day, but they had --

20 Q Go ahead. Well, let me ask you a couple of
21 questions before we get completely out of the house. Did
22 Mr. Boehler know where your firearms were in the house?

23 A I don't know. Honestly, I don't know.

24 Q Had you ever shown him? Ever gone shooting or
25 hunting with him?

1 A No. See, when he got of out of prison, he's not
2 supposed to be around guns.

3 Q And you knew that?

4 A Yeah. That's why when he lived down there, we got
5 all the guns out of the house -- our house, so I could get
6 out and get the things sold. We didn't want to keep them
7 either, so I never told him where the guns were, not at all.
8 And where he got this gun and stuff, I don't know. I have
9 no idea. Unless he found one, I don't know. I have no
10 answer for any of that.

11 Q Sure. Do you have any idea why he choose to fire
12 on police officers that night?

13 A None. Other than his incident I told you out here
14 in front, stabbing all of the police car tires. And then
15 again, the fight with the police, at the first of the year.
16 Other than that, that sort of sets a pattern. Maybe he
17 thought this is it, let's go out in a blaze of glory or
18 something. I don't know. I don't know if he was on meth.
19 His sister told me he started taking meth since he got out
20 of jail last time, and definitely into the booze.

21 Q You didn't have enough contact that night to make
22 that --

23 A No. I didn't. Let's see, how long does it take
24 to walk through the front door and go down, that's ten
25 seconds. Let's go crazy, twenty seconds.

1 Q You folks have questions for Mr. Estes? No.

2

3

MARY ANNE TOOPS,

4

called as a witness,

5

being first duly sworn,

6

was examined and testified as follows:

7

EXAMINATION

8

BY MR. MOAWAD:

9

Q Have a seat. Tell the folks who you are.

10

A Mary Anne Toops.

11

Q Spell your first and last name?

12

A M-A-R-Y T-O-O-P-S.

13

Q And what do you do for living?

14

A Portland police officer.

15

Q And how long have you been employed in that

16

capacity?

17

A For twelve years.

18

Q And tell us a little about what your training and

19

experience have been, what types of assignments have you

20

been on?

21

A Entire career, with the exception of having worked

22

through at the time five precincts as a probationary

23

officer, I was assigned to east precinct for about eleven

24

years.

25

Q What types of calls do you respond to in your

1 capacity?

2 A As patrol officer I respond to all types of calls,
3 domestic disturbances, fights, child welfare calls. And
4 when I'm not on radio call, I have an opportunity to do self
5 initiated activity such as traffic stops or talking with
6 folks, things of that nature.

7 Q You worked the 23rd of November?

8 A I did.

9 Q And responded to 11066 Southeast Cherry Blossom
10 Drive?

11 A Correct.

12 Q Tell the folks a little about the nature of the
13 call you received.

14 A Well, the nature of the call was that there was
15 some sort of disturbance at a residence, and that it was
16 between a son and daughter, father got involved, son tried
17 to push dad down the stairs, and that someone was
18 accidentally shot. I was riding with a partner that night,
19 we decided to go to the call being as we were at east
20 precinct, and it was not from far from the precinct.

21 Q How far into your shift were you that point?

22 A Oh, probably a couple of hours.

23 Q And when you get a call to respond to locations
24 where you know somebody has been shot, what's that indicate
25 to you about potential dangers to responding officers?

1 A Well, it indicates to me that obviously there's a
2 lot going on in the dynamics of the call. You know,
3 initially, you're thinking, you know, what is the nature of
4 the information, what would the plan of action be to make a
5 safe approach if that is feasible? Or if that's not
6 feasible, at least to gather as much information as possible
7 to make contact with whoever is in the home, you know,
8 making a phone call into the place or if people have already
9 come out to gather intelligence.

10 Q How about in knowing there may be a gun in the
11 location as well? You're not responding, for example, to a
12 hospital where someone was shot, but a scene where someone
13 has been shot.

14 A Correct. You know, it's unknown how many people,
15 could have been more than one person who has access to a
16 gun, uhm, how many guns. I mean, there's a lot of things
17 that tie into it, and it's important to try and develop a
18 plan and make the safest approach as possible.

19 Q When you say safest approach, tell the folks, for
20 example, where you parked, how you made the approach on foot
21 to the location, what you saw?

22 A Well, by the time my partner and I had parked, I
23 could see there were a row of cars parked along Cherry
24 Blossom. I probably walked maybe a couple of blocks up, the
25 house was up a hill. Uhm, I personally -- it was obvious

1 there were a lot of police officers that had already
2 converged on the scene, based on number of cars I saw
3 parked, not only to the west of the house, but to the east
4 of the house. And I could already see there were a number
5 of officers that had converged onto the driveway itself.

6 And I walked up the driveway of the house west of
7 the actual house. And I walked up the driveway and just
8 stood by a couple of cars parked in the driveway to observe
9 what was going on.

10 Q What could you see occurring inside of the house
11 at this point?

12 A Inside of the house, I noticed that the upstairs
13 northeast corner window, I could hear and I could also see
14 things being thrown around. Up against the window, up
15 against the wall, I could hear loud banging noises. I could
16 see the window that faced Cherry Blossom, it was just kind
17 of waving in and out.

18 Q What did that indicate to you about what was going
19 on inside?

20 A Well, prior to that there was an update from
21 dispatch that the son and father were still fighting, so I
22 took that as, oh, perhaps the fight is still continuing in
23 that room. That's just based upon seeing, you know, what I
24 saw, things being thrown around, hearing banging noises.

25 Q Did you later learn the spat had been removed from

1 the house prior to your arrival or near to your arrival?

2 A I saw a woman come out onto driveway, and I also
3 saw two officers carrying who looked to be a woman, I did
4 not see a third person.

5 Q Okay. What did you do after arrival at the scene,
6 initial assessment, where did you go?

7 A Well, a sergeant had indicated over our radio to
8 all officers to back away from the residence, that the
9 subject was inside barricading himself, get to hard cover.
10 And that's when things were starting to happen as far as
11 getting eyes around the entire house, getting streets
12 blocked off. So I then went down to my car.

13 At that point I decided to grab my rifle, because
14 over the air they were asking for people that had rifles to
15 go to make sure there were rifles that were all around the
16 house.

17 Q Let me ask you to slow you up a little, not to
18 interrupt. You mentioned you said hard cover, what's hard
19 cover?

20 A Hard cover is basically where you would take up a
21 position to where if -- let's say you were perhaps to take
22 gunfire, that would at least provide you with adequate
23 protection, like an engine block, steel door, concrete wall.
24 And that's versus concealment, which would be, it wouldn't
25 provide you that protection, such as, you know, maybe a wood

1 fence or a plate of glass.

2 Q Hard cover is something, if I'm correct, you would
3 think a bullet wouldn't get through; concealment is
4 something you could sort of hide behind, but a bullet could
5 get through?

6 A Correct.

7 Q And I know that may sound like a dumb question,
8 assume I don't know anything about guns, what is the
9 significance of asking for folks with rifles to respond and
10 set up a perimeter, as opposed to a duty weapon you all
11 carry?

12 A Well, a rifle can be -- for one thing, it can be --
13 if a subject was at a distance, a rifle could afford a
14 better means to use that tool, if your target was at a
15 distance. The caliber of the rifle that we use, it's -- I'm
16 trying to -- it's optimal for the kind of urban environment
17 we work in. It's lighter, it's faster as far as --

18 Q Talking about the bullet, itself?

19 A Right. Right. So it wouldn't be something that
20 would go through walls, per se, versus our primary firearm,
21 our handguns which those bullets are a little heavier and
22 they could pass through walls. Being a rifle operator, we
23 train to shoot up to 100 yards for qualifying. So, it's
24 just a good tool if you need accuracy, and, you know, if
25 your target is at a far distance.

1 Q Let me ask you in terms of qualifying for pistols,
2 what is that range typically shot?

3 A Maximum range for qualification is 25 yards.

4 Q As opposed to 100 for the rifle?

5 A Correct.

6 Q You ended up in the backyard of this house along
7 with a couple of other officers. Can you describe when you
8 got into the backyard, what it looked like and where you
9 ended up?

10 A Sure. We were not in the backyard of the house
11 itself, but there were three officers, and one with a
12 ballistics shield went into the yard of the house that lined
13 up with the actual target house. And I eventually caught up
14 and went into that backyard. The yard we were in, it was
15 elevated from the actual target house. And so if you were
16 to look at the actual target house, you actually -- if you
17 were to look at the second story, because there was a ground
18 level and a second story of the target house, you have to
19 actually look down at an angle.

20 And the backyard that we were in, uhm, there was a
21 fence, and it looked to have maybe lattice work at the top,
22 and there were a lot of trees, a lot of bushes in the
23 backyard. And we were assessing, trying to find which, you
24 know, spot would be the best to see the entire back of the
25 house or the only one spot where you could do that, where

1 you could see the entire back side of the target house.

2 Q Where was that in relation to the target house?

3 A It would have been to the south. There was only
4 one spot. Myself and three other officers were basically to
5 the south of the house or the three side.

6 Q What's the one side of the house?

7 A That would be the north side of the house.

8 Q In this case or every case?

9 A Uhm, just probably every case, yeah.

10 Q Okay.

11 A Looking straight on at the front of the house is
12 your one. And then to the east would be your two, to the
13 south is three, and to the west would be your four.

14 Q Am I correct in saying the one is the front, and
15 you worked effectively clockwise around the house to get to
16 the two side, three side, four side?

17 A Correct.

18 Q Is that so you can communicate with other officers
19 you're at the four side of the house, they know which side
20 you're talking about?

21 A Yeah. It just gives it a quick reference to be
22 able to identify one, two, three, four as opposed to south,
23 north, east, west corner. It's a better, quick definition
24 to where you're at.

25 Q So, that's all right. I interrupted. You're in

1 the backyard of the house. What are you observing about the
2 house while this is going on?

3 A Uh-huh. So, basically, I got back there, and I
4 saw there was an Officer Filbert who was on the far east
5 corner up on some ivy, and then Officer Doran and Officer
6 Lemons were in the middle of the backyard, maybe more to the
7 west.

8 I noticed that the yard of the house we were in,
9 there was a back porch light on, and also a light on in the
10 room of the house of the backyard we were in, that faced the
11 target house. So, I went knocked and the door made contact
12 with the homeowner and explained to him it was Portland
13 Police, there was an incident going on to the house behind
14 him, and that there were officers in his backyard, and if
15 there was any way he could turn off those lights. He said
16 he could do that, so he did that, which helped to darken our
17 position. Because with the lights on, it kind of back-lit
18 us and gave us a disadvantage of trying to keep ourselves
19 from being detected.

20 I went back into the backyard and I noticed that
21 it looked to me like pretty much every light to the windows
22 that faced -- that were to the south of the house was on.
23 Uhm, I noticed that the north -- I'm sorry, the southeast
24 top window the blinds were shut, but it looked like things
25 were pushed up against it. And the far southwest window

1 looked to me to be the kitchen blinds were open, you could
2 see a table and chair that were just sitting right on top of
3 the table. I could see the glare of the television. Uhm,
4 and I --

5 Q Let me ask you, I don't mean to interrupt. But
6 the blinds are shut in that window to your right as you're
7 facing the back of the house. But the blinds are mashed up
8 against window. What did that indicate to you what was
9 going on, on the other side of the wall?

10 A I took that as perhaps that was the room that the
11 person was barricading themselves in. Uhm, being that I-- it
12 looked like a black box or ottoman or something was up
13 against the window. But there were updates I was hearing on
14 the radio from other officers who were in positions around
15 the house that they were seeing him moving around, moving
16 about the house. And I was hearing a lot of gunshots from
17 inside of the house.

18 Q Talk to us about those, how long had you been at
19 the scene approximately before you heard the first gun shot?

20 A Oh, perhaps ten minutes.

21 Q And in terms of gunshots, are we talking about
22 volleys or talking individual gunshots? Describe that for
23 us.

24 A You would hear one, then you would hear seven,
25 then three. They all sounded to be inside of the house,

1 they were muffled. Just a few here, a lot more here, maybe
2 one, two, just seemed to be a continuous barrage of gun fire
3 within the house.

4 Q And did those shots sound the same or different
5 than one another or could you tell?

6 A Sometimes seemed like it was different. Like some
7 of the shots seemed like they had a deep, muffled noise, and
8 others seemed like they had kind of a little pop. So it
9 seemed to me just from hearing from that, obviously there
10 were different kinds of guns being shot in the house.

11 Q At some point you got the distinct impression you
12 were being fired on?

13 A Uh-huh.

14 Q Tell the folks, did you notice anything about the
15 initial sound from that gun shot, and what lead you to the
16 conclusion that you were being fired upon?

17 A Well, I had taken a position where Officer Lemons
18 was at with the ballistics shield, which was kind of in the
19 middle of the backyard there. And we had just kind of knelt
20 down behind it. He was kind of in front of me, but to my
21 left, and I was a little behind him and to the right. Uhm,
22 and there was a tree to our right that had -- I just
23 remember it had a bunch of -- like the trunk was butting out
24 in all directions, and there was a huge bush next to us. So
25 we were kind of stacked one in front of the other.

1 And all of a sudden, boom, and it just -- all of
2 the gun fire that I had heard up to that point was
3 definitely inside of the house, and this was definitely
4 outside of the house. Just a loud boom, and I felt like
5 something go past my head. I could hear wood cracking, at
6 the same time I felt something bounce off my arm and face
7 like debris. I don't know if it was the fence or the tree,
8 but it was all instantaneous. And it was obvious to me at
9 that point that the shot was definitely towards us.

10 And, we -- Officer Lemons and I immediately
11 retreated, I went one way and he went the other. I didn't
12 hear anything after that, but I definitely thought at this
13 point that perhaps he had the drop on us, saw us, and took a
14 shot at us, and we immediately tactically retreated.

15 Q Let me ask you in terms of, there's a difference
16 perhaps between someone shooting towards you and at you. In
17 this case, what did you feel?

18 A Well, at that moment, at this instant, I felt
19 that, you know, he must have seen us, because he took a shot
20 at us. But it's possible that, you know, either he saw us
21 and took a shot at us, or he randomly cranked a round off
22 out of the house. But like I said, all shots up to this
23 point were on the inside of the house. This was definitely
24 outside, and I felt it was in our direction. I could hear
25 something go past my head, and I thought for sure at this

1 instant that, oh, you know, he is shooting at us, so we
2 immediately retreated.

3 Q At the time that shot was fired, could you see the
4 suspect?

5 A I did not see him, no.

6 Q Is that why you did not return the fire?

7 A That was part of it, and the other part of it was
8 I think at the time that -- I know in the time I would have
9 taken to perhaps get to a position to try and return cover
10 fire, I would have had to literally knock over Officer
11 Lemons. And then once I got up to the fence to take the
12 time to assess, okay, where did that come from, I think the
13 time I would have done that thinking, okay, he definitely
14 knows where we're at, he just took a shot at us, he would
15 have had the drop on me, I believe. I would have had to
16 take time to assess where to put the cover shot, and
17 obviously it was better served, the decision I made, to take
18 the time to retreat safely and tactically.

19 Q If you knocked over Officer Lemons, what happens
20 to your ballistic shield?

21 A It could compromise his safety. He's handling
22 this bulky shield, it puts him at risk, puts me at risk. I
23 mean, there's a lot of what-ifs that could have come of it.
24 But let's say if Officer Lemons and I both were to have been
25 shot, it puts now other officers at risk if they were -- if

1 we were not able to safely remove ourselves. And it could
2 have created a very unsafe situation, not only for us, but
3 for other officers. So that split second decision was
4 better made obviously to tactically retreat.

5 Q I hand you State's Exhibit 4, is that your
6 physical condition in the uniform you were wearing that
7 night?

8 A It is.

9 Q No further questions.

10 MR. MOAWAD: Any grand jurors have questions for
11 officer Toops?

12 EXAMINATION

13 BY GRAND JUROR:

14 Q Were you aware it was a .300 Weatherby being fired
15 at you? Was that information -- had that information been
16 given to you?

17 A Not yet.

18 Q Not at this point?

19 A Not at that point.

20 Q What's the caliber of the weapons that -- the
21 rifles that you use?

22 A .222 caliber Colt AR-15.

23 Q Okay -- Thank you.

24

25

1 GARY DORAN,
2 called as a witness,
3 being first duly sworn,
4 was examined and testified as follows:

EXAMINATION

BY MR. MOAWAD:

7 Q Have a seat. Tell the folks who you are.

8 A Officer Doran, D-O-R-A-N, I'm with the Portland
9 police. I have been with them almost four years now.

10 Q What have you been doing in that capacity?

11 A Patrol officer.

12 Q And day to day, what's that look like?

13 A Day to day taking calls, we have free time doing
14 self-initiated activity.15 Q I understand you were dispatched to the call on
16 the 23rd of November as a cover car. Tell the folks a
17 little about what that means, what's a cover car mean?18 A Uhm, when people are dispatched, there's a primary
19 officer who is assigned to the call, and then other officers
20 are assigned as cover is needed. For example, a hazard in
21 the road, you need one car as primary. Something like this,
22 you have two or three cover cars.23 Q What's the purpose of the cover car to the primary
24 officer?

25 A It's, you know, to help with the investigation, to

1 help with their safety.

2 Q From a tactical standpoint, your job is to make
3 sure the officers do what they are set out to accomplish and
4 do so safely?

5 A And can do so safely.

6 Q When you got to the location, where did you go?

7 A When I got there, I went to the back of the house
8 with Sergeant Gunderson and Officer Lemons and K-9 Officer
9 Sweeney. We all kind of met up back there within a pretty
10 short time.

11 Q What was your purpose in going to that location?

12 A Our call was a man who had --

13 Q I'm sorry, let me rephrase it. In going to that
14 location of the house to the back, what was your purpose in
15 going to the back of the house?

16 A To get our eyes on the back of the house, to make
17 sure somebody doesn't come running out the back and ambush
18 us.

19 Q Is that part of your duty as cover is to provide
20 that type of support?

21 A It is.

22 Q When you got into the location where you're going
23 to watch the backside of the house, I understand it ended up
24 not being ideal. What about that situation made that
25 untenable?

1 A Given the information that we had, that a shot had
2 already been fired in the house, it was a really small area
3 where there wasn't any cover. He started kind of
4 barricading himself in the house, putting things up on the
5 windows and the doors. And it's really unusual for
6 something like that to happen.

7 In my experience when a call starts with a shots
8 fired, and then somebody starts barricading themselves in
9 the house, it usually turns into something bigger. And so
10 for us to be standing right at the back of the house with no
11 cover, it was an extremely dangerous situation I thought,
12 because more shots would probably be fired and we would have
13 no protection.

14 Q So what did you do after reaching that conclusion?

15 A At that point we decided we needed to find a
16 better, safer spot. So, Officer Lemons and I went to --
17 Officer Lemons grabbed a little ballistic shield. Sergeant
18 Wolfe and Officer Lemons and I ran around the block to 11035
19 Southeast Madison.

20 Q When you say little ballistic shield, describe it
21 size-wise what we're talking about.

22 A If we're -- it's sitting on the floor, it probably
23 stands this high (indicating).

24 Q We have a court reporter here, give us a
25 description in terms of feet.

1 A Three feet -- about three feet, I want to say two
2 feet wide.

3 Q Okay. How are those designed? What are those
4 designed to assist officers with?

5 A They are designed to absorb smaller rounds, 9
6 millimeter, you know, handguns, pistols. They are not going
7 to stop a rifle round. We recently started using those
8 within the last year. The sergeant carries them. I have
9 only been able to use it twice, they are pretty new to the
10 department.

11 Q Three feet high and even narrower in terms of side
12 to side?

13 A Right.

14 Q I presume from that size, it is not good for
15 multiple people to try to get behind?

16 A No. It's difficult for even one. You're going to
17 have a lot exposed in the lower extremities.

18 Q At some point in this you realized this ballistic
19 shield was not going to provide you any cover; what did you
20 do?

21 A At that time myself and Officer Lemons went to the
22 backyard at 11035 southeast Madison, and that's the house
23 that is directly behind the house we were called to where
24 the disturbance was. So we were sitting in the backyard, to
25 get an eye on the house. And when we got back there, I

1 heard a shot, and at this point I thought he had shot
2 himself.

3 Q What did the sound of the shot make you think?

4 A That it was a single shot, he was in there, what
5 we were told by himself. It's just one of those situations
6 that you're standing outside of the house, with all of the
7 information we had up until that time, and you hear a single
8 shot and nothing for several seconds. That was just the
9 most logical thing for me was he shot himself.

10 But, as we were standing back there, then a little
11 time later I could see him moving around, he's wearing a
12 black T shirt. I can see his arms and his neck through a
13 little space probably six to eight inches wide where the
14 curtains were open. And you could tell he was digging in
15 drawers or a bag or he was, you know, manipulating
16 something. He definitely had deliberate, intentional
17 movement.

18 Q Do you know what room he was in at that point?

19 A At this point if you look at the back of the
20 house, it's on the bottom floor on the far right southern
21 side, it would be. A little bit more time went by, there's
22 still no cover, just a little more concealment. We had some
23 brush you could get behind to conceal yourself, but still no
24 cover in this backyard.

25 And a little bit of time went by, then there were

1 a couple more shots and a few more shots. Somewhere in this
2 time, Officer Toops had arrived with her rifle. And we
3 decided that she should stand with Officer Lemons behind the
4 shield, and I could kind of work up the yard, find a
5 different spot that was a better place for her to deploy her
6 rifle.

7 So, I kind of moved a few feet to the north, it
8 would be along the fence line, and you could hear another
9 six or seven shots. And all those shots up until this point
10 sounded like a small handgun to me. Then, uhm, I was kind
11 of trying to move around to find a better spot, there was a
12 little chicken wire about the size of quarters, covering a
13 fence that was probably three foot high. I wanted to say up
14 to about my waist and chicken wire above that. So, I was
15 trying to find a better spot where there was not chicken
16 wire. If he did come storming out of back of the house, I
17 would be better to engage him if I was not blocked by the
18 chicken wire.

19 So I started kind of moving along the fence line
20 looking for a better spot. And there were the houses that
21 were behind us, kind of the lights were coming on and off.
22 So I would stop, because I didn't want him to see me moving
23 in this backyard. And then a little bit more time went by,
24 and then some louder shots by a rifle or shotgun, some
25 higher power. And I could feel the concussion and I felt

1 debris hit my head and my right ear. So at this point I
2 turned around and I ran it's a few feet. And there's a
3 little, I want to say, three-foot high brick wall I jumped
4 behind. And I saw Officer Toops running and she jumped
5 behind the wall.

6 We started talking, I'm okay, you okay? Yeah,
7 we're okay. But I didn't see Officer Lemons at this point.
8 He was up with Officer Toops, I didn't see him running, so I
9 was concerned maybe he was down on the ground behind the
10 shield. So we called for him a few times, and finally got
11 on the radio. He answered up and said he was on other side
12 of the house, he had gone the other way.

13 So at this point there was no doubt in my mind
14 that he was shooting at me, and the debris I felt on my
15 head, it was pretty close.

16 Q As far as debris, what type of things are you
17 thinking that might have been? Were you close enough to a
18 bush or, you know, a tree limb or what type of thing are you
19 talking about?

20 A It could have been, you know, a piece of the
21 chicken wire. It could have been branches or, you know, if
22 there's a free hanging -- there was a, you know, sticks and
23 just yard debris, it would have taken some of that off.

24 Q Let me ask you in terms of returning fire, would
25 you have done so if you could have identified a target and

1 done so safely?

2 A At that point I absolutely would have, because I
3 knew he was shooting at me. But at this point I didn't know
4 where he went, because he had moved from this room that I
5 had seen him in earlier, and I didn't know where he was at
6 that point.

7 KIM PONTO,
8 called as a witness,
9 being first duly sworn,
10 was examined and testified as follows:

11 EXAMINATION

12 BY MR. MOAWAD:

13 Q Go ahead, have a seat. Tell the folks who you
14 are.

15 A Kim Ponto.

16 Q Spell your first and last name to make sure I have
17 it correctly.

18 A K-I-M P-O-N-T-O.

19 Q I understand you live very near 11066 southeast
20 Cherry Blossom?

21 A I'm 11047, directly across the street and one
22 house down.

23 Q I understand you were home the night this happen?

24 A Uh-huh.

25 Q Tell the folks what drew your attention to this

1 thing going on?

2 A We were asleep, and we just heard some commotion
3 outside, so my husband and I looked out the window. At the
4 time, the officers were escorting the mom, I don't know what
5 her name is, and the daughter, into the car down the street.
6 So at this time we noticed there was a lot of officers in
7 our neighborhood, and we were not sure what was going on.
8 We just continued to watch out the window for a few minutes
9 until we thought we heard gunshots. We were not sure, but
10 it sounded an awful lot like gunshots.

11 At that time we called 911 to find out what was
12 going on, if there was anything we should be doing. They
13 told us there was an incident and we should get everybody --
14 we had two kids upstairs, got them and took them downstairs
15 into the basement.

16 Q When you first heard gunshots, can you give more
17 detail in terms of maybe the number you heard or over what
18 period of time or do you have any idea at all?

19 A I would say probably four or five at the time.

20 Q Okay.

21 A And then not too long after this, we noticed they
22 were bringing in armored cars. Still at that point, we were
23 not sure what was going on. We were trying to use our
24 computer to kind of research incidents around the
25 neighborhood.

1 Q When you say bringing in armored cars, were you
2 watching or hearing that?

3 Q We watched it. We saw one come in and another one
4 a few minutes later.

5 Q In terms of total number of shots you heard from
6 start to finish, can you give us an idea?

7 A I would say five and ten. We heard a lot of
8 noises. We were not sure if it was shots, if it was tear
9 gas, if it was lights being broken. There was a lot of
10 random noises.

11 Q Approximately how much time passed in your
12 estimation from the first shot you heard until the last shot
13 you heard or what you believed was the last shot?

14 A Maybe two hours.

15 Q Okay.

16 MR. MOAWAD: Any other questions?

17 GRAND JUROR: What was the time frame you
18 gave to his question, please?

19 THE WITNESS: Two hours approximately. Maybe
20 an hour and-a-half.

21 GRAND JUROR: Thank you.

22

23

24

25

1 KEITH SASAKI,
2 called as a witness,
3 being first duly sworn,
4 was examined and testified as follows:

EXAMINATION

BY MR. MOAWAD:

7 Q Have a seat there. Tell these folks who you are.

8 A Keith Sasaki.

9 Q Can you spell your first and last name to make
10 sure I have it correctly?

11 A K-E-I-T-H S-A-S-A-K-I.

12 Q You live at 11105 Cherry Blossom Drive?

13 A Yes.

14 Q Where is that in location to the incident that
15 we're here to talk about?

16 A Directly cross the street.

17 Q All right. And were you home this night?

18 A Yes.

19 Q And tell the folks a little about what drew your
20 attention to the incident getting up and running?21 A At around 12:45, we take our dogs out before we go
22 to sleep. And we had gone out through the garage to the
23 backyard, we saw officers in front of our driveway putting
24 our neighbor in the car. I was wondering what was going on.

25 Q Your neighbor, who is that?

1 A An elderly man.

2 Q Where the --

3 A Where the shooting occurred, yes. So I peeked out
4 from the side of my house, I saw officers all the way down
5 the street. And at this time the officer told me to go back
6 in our house. They said there's someone with a gun
7 shooting.

8 Q Up until then, had you heard anything?

9 A I had seen lights, but no sirens. And I thought
10 it was just a street cleaner.

11 Q How about gunshots, heard any gunshots up until
12 then?

13 A I heard one pop, I thought it was a car
14 backfiring, because our house is pretty well insulated. So
15 it was pretty muffled. I assumed it was a car backfiring.

16 Q Where did you go in your house when you returned?

17 A We stayed upstairs for a bit. It was not a minute
18 before the officer came to our back door and asked us to
19 turn off the lights on the outside of our house and directly
20 on the porch and carport, and on the down side of our house.

21 Q Did you hear any gunshots after that?

22 A Yes, I did. I don't know what time it was or how
23 far along into the incident it was. But the SERT team was --
24 their vehicle was right in front of our house, and there was
25 somebody standing on the passenger side of the truck blaring

1 instructions over his bull horn.

2 Q Have you any idea what he was saying?

3 A I heard him say, put down your gun, come out with
4 your hands up, to the garage, because their garage door was
5 open. I heard him say that about two or three times. Then
6 I peeked out the window, and I said, you know, this is not a
7 good thing. I was right behind him. So I walked away from
8 my window, and not 30 seconds later I heard two bullets hit
9 the side of our house.

10 Q Do you know approximately how many shots you heard
11 from start to finish?

12 A I heard those two shots, and once the fire
13 started, I heard a bunch of shots go off. But I assumed it
14 was ammunition started exploding in the fire. I don't know
15 if it was him shooting at the officers or what was going on.
16 I didn't see any officers returning any fire.

17 Q All right. Let me hand you what's been marked
18 State's exhibit 52, is that an accurate depiction of the
19 view from your house to the house there on Cherry Blossom?

20 A Yeah, pretty close.

21 Q And then 47, we'll zoom in here.

22 A That's one bullet hole and another one right
23 there.

24 Q What level of your house is this?

25 A That's the second floor.

1 Q What's on the second floor?

2 A Living room.

3 Q Okay. I guess we'll do the same with 48, 49, 50
4 and 54, can you just go through those and tell the folks
5 what those are pictures of?

6 A This is the wood paneling of one of the bullet
7 holes. This is the upstairs living room.

8 GRAND JUROR: You're home, again, sir?

9 THE WITNESS: Yes. And 49 is the same level,
10 second floor, a little further as you're facing the
11 house, a little further to the left. 48 is same
12 bullet hole. And 54 is the view from the neighbor's
13 house across the street.

14 BY MR. MOAWAD:

15 Q That location where the ladder is, that's where
16 the bullet strikes were?

17 A Right. Exactly.

18 Q Did either of the bullets -- obviously, the one on
19 the brick did not, but the other bullet make it into your
20 house?

21 A No.

22 Q Just into the wall?

23 A Yeah.

24 Q Any other questions for Mr. Sasaki?

25

1 JUDY HART,
2 called as a witness,
3 being first duly sworn,
4 was examined and testified as follows:

5 EXAMINATION

6 BY MR. MOAWAD:

7 Q Have a seat there. Would you tell the folks who
8 you are?

9 A My name is Judy Hart.

10 Q Spell your last name, please.

11 A H-A-R-T.

12 Q How old are you?

13 A 70 years old.

14 Q I understand you used to live at 11066 Southeast
15 Cherry Blossom Drive?

16 A Correct.

17 Q Who else lived there with you?

18 A My husband, Gary Estes, and my daughter, Corina
19 Boehler.

20 Q How long had you and Mr. Estes lived in that home
21 approximately?

22 A About 2001 or before that.

23 Q I understand that home had been in your family for
24 awhile?

25 A Yes. I had purchased the home for my mother.

1 Q How long had they lived in that house?

2 A Since about 1970.

3 Q I understand you and Mr. Estes had gone down to
4 pick up Mr. Boehler at his home, to pick him up and bring
5 him to Portland for medical treatment. Can you talk to the
6 folks about your interaction with him that day, the 22nd,
7 prior?

8 A That was Monday, the day we picked him up. We
9 picked Craig up about 10:30 in the morning. And he seemed
10 sober and was showing us through the residence he was living
11 in, which had been his father's home, and showing us the
12 things that he had done in the way of cleaning.

13 Q It sounded like Mr. Estes and you had a pretty
14 normal interaction with him during that time frame?

15 A Yes. He had wanted to stop by a food bank to pick
16 up a food box that he would later take back to his home, so
17 we took him to McMinnville to where the food bank was. He
18 picked up the food box, he had put some things in the back
19 of our car. And what with picking up the food box and the
20 time frame, we were a little late getting him to OHSU
21 Medical Center that he had. But he had called ahead and she
22 said that's fine, you know, if he was fifteen minutes late,
23 they would still see him.

24 Q Do you remember approximately what time his
25 appointment was?

1 A His appointment was for 2:00, and we commented
2 normally his appointments are 2:30, that would have worked
3 out just fine. We probably got him there at 2:15. He was
4 to have his catheter changed.

5 Q How long a procedure is that normally?

6 A Pardon?

7 Q How long a procedure is that normally?

8 A I have no idea, because typically we would -- this
9 had been going on for two months or better. We would drop
10 him off and go home. And so I'm not sure how long the
11 procedure would take, but that day he was also to have some
12 tests to determine a course of action which would have to be
13 surgical as far as to remove the strictures in his penis,
14 urethra, whatever.

15 Q Typically -- it sounds like you dropped him off a
16 couple of times. Typically, how did he make his way back to
17 your home, do you know?

18 A He would take the trolley from OHSU to downtown
19 Portland, and eventually take the MAX out to 122nd and
20 Burnside and walk up to our house. He said he was going to
21 go to an AA meeting before coming to the house, and possibly
22 stopping some place to get a bite to eat.

23 Q Okay.

24 A Uhm, he got to our house about I think it must
25 have been 7:30, somewhere between 7:30 and 8:00.

1 Q Is that about the time you would have expected
2 him?

3 A That's about the time he said he would get back to
4 the house.

5 Q Where did you first have contact with him at the
6 house that night after he arrived?

7 A Uhm, when he first came in, he had gone up to the
8 front door, and I think Gary let him in. And he said
9 something about he had been to an AA meeting, and he had led
10 the group. It is such a blur. Eventually, he asked me
11 something about uhm, could -- did I have any 7-Up? I said
12 no, I had been meaning to get some, but I hadn't. And he
13 wanted to go to the store. And I finally said, no, we can
14 do it tomorrow. There's some grape Kool-aid things to drink
15 in the fridge.

16 Q Was he planning on spending the night?

17 A He was going to -- he was going to stay through
18 Thanksgiving. Uhm, we had planned to have him stay for
19 Thanksgiving dinner and have the grandkids come over. So,
20 yes, he was going to stay for a few nights.

21 Q Did you notice anything out of the ordinary during
22 the contact you had with him that night prior to going to
23 bed?

24 A Uhm, prior to our -- my going to bed, uhm, I don't
25 know, not particularly out of the ordinary. He seemed a

1 little agitated, I guess might be the word. He seemed kind
2 of frustrated I was not going to take him to the store to
3 get 7-Up.

4 Q When you conclude he's agitated, what about his
5 behavior makes you draw that conclusion?

6 A He seemed a little antsy, kind of pacing, uhm, and
7 I can't even remember what I was doing at the time to
8 remember if I was trying to do something on the computer or
9 I don't know.

10 Q One of the things that Corina told us while we
11 were talking to her was you had had some vodka I believe in
12 the house you had hidden?

13 A Yeah.

14 Q Tell the folks a little about why that was?

15 A Uhm, because Craig was and is an alcoholic, and he
16 was on probation and going to -- supposed to be going to AA
17 meetings three times a week. And I thought I would hide the
18 vodka so that he wouldn't be tempted to drink it. But,
19 obviously, I didn't hide it in a very good place.

20 Q Where did you hide it?

21 A Uhm, one of the back bedrooms we use for an office
22 area, desk, computer, that type of thing, file cabinets. So
23 back in the closet, I just put the liquor.

24 Q In addition to sort of what I call legal reasons
25 why he should not drink on probation, that sort of stuff,

1 had you also noticed personality changes with him when he
2 drank?

3 A Craig was what you might call Jekyll and Hyde, as
4 far as he could be really nice to be around, but he was a
5 mean drunk, a really mean drunk. And I was scared of my own
6 son when he drank.

7 Q Emotionally or physically scared?

8 A Emotionally. At the same time I never knew for
9 sure what he might be capable of. I know that once after he
10 had been drinking, he purposely ran a red light and hit
11 another car. It was fortunate at that time that he didn't
12 kill some other people or his wife was in the car, he was
13 mad at his wife at the time. I didn't know what he was
14 capable of.

15 Q Had you seen him be violent at home after
16 drinking?

17 A Craig, although he frightened me because of any
18 number of incidents, Craig always tried to -- I don't know
19 if you say put his best foot forward as far as his mother,
20 tried to present himself as being okay. So --

21 Q Had you ever had incidents with him that you
22 observed after drinking where he became violent to somebody
23 in the family or friends of the family?

24 A It's not so much that I had observed it, as
25 friends of his had told me things. His wife had told me of

1 incidences where he became violent with her. And, of
2 course, he had been in jail several times as a result of
3 incidents that had happened, so I was aware of that.

4 Q His sort of personality issues, were those in your
5 mind attributed mostly to alcohol or drugs or -- when he's
6 drinking or --

7 A Mostly to alcohol and drugs, and he had anger
8 issues, a lot of anger issues.

9 Q One of the things obviously that we don't have an
10 answer for is why he chose to, you know, on this night shoot
11 at police officers?

12 A I found that hard to believe or even that he had a
13 gun. I mean, I guess --

14 Q He had not talked to you at all about distrust for
15 the police or disliking the police or anything like that?

16 A Uhm, I knew that he distrusted the police, he
17 disliked the police. Uhm, yes.

18 Q He had talked to you about that?

19 A Yes.

20 Q When was the last time?

21 A Because they did not treat him well.

22 Q Okay. When was last time he expressed that to
23 you?

24 A That's a good question. I think my mind is gone.

25 Q That's okay. Was it more recently or more

1 distantly?

2 A I was trying to think of the incidents that took
3 place in, uhm, Willamina. And I guess he felt somewhat
4 justified in his, what did you call it, uhm, police tried to
5 restrain him and he --

6 Q Fought with them?

7 A He fought with them, yes.

8 Q You mentioned one thing I want to follow up on,
9 and that was you found it hard to believe he had a gun.
10 Obviously, there were guns in the house that belonged to Mr.
11 Estes. We talked about those. In your mind, did Mr.
12 Boehler know where those were or were those safely hidden
13 from him?

14 A In my mind, I didn't think he knew where they
15 were.

16 Q You had not seen Mr. Estes show Mr. Boehler the
17 guns or go hunting with him, those sorts of things?

18 A No. They had never gone hunting together.

19 Q I know one of the things that you and Mr. Boehler
20 talked about that night was with estate issues dealing with
21 his dad. Can you talk to us a little about that?

22 A Uhm, he wanted to know -- that's why I was in the
23 office. Uhm, he wanted to know where the folder was, I
24 think maybe for the guns and for a suit that had been filed
25 by a nephew against the estate. A suit -- lawsuit.

1 Q Was his interest a financial interest or was it a,
2 I want an update type interest? Can you give us insight
3 into that?

4 A He was very, very angry, very angry, and he had
5 talked to me several times. His father was a gun collector,
6 and he had a number of pistols and rifles, which the nephew
7 had removed from the home. And the nephew returned the guns
8 to us, and I don't think he returned all of them to us.
9 That was an area of dispute that Craig was angry about.

10 But, uhm, my husband had taken them to a friend of
11 his son's to get an idea of what the various pistols and
12 rifles might be worth, because he is supposed to be quite
13 knowledgeable, so he gave us a run down of the prices or
14 what he felt the value was. Later on, he said -- later on
15 he said that he highly recommended a specific gun dealer
16 that was in the Canby area or someplace down there, to deal
17 with as far as selling the guns.

18 So, Gary, my husband, had taken the guns to that
19 particular gun dealer. And he came back to the house, and
20 he had a price list from the fellow, and it had a couple of
21 columns of figures. One was if we did a consignment, that
22 this is what he thought he could sell them for, his
23 commission would be twenty percent, and these are the things
24 that would need to be done to the guns to ensure like
25 cleaning them, what the cost was associated there.

1 Then he gave a price that he would just give us X
2 number of dollars, and that was for each of the guns. I was
3 not really happy with what he was going to give us cash, but
4 at the same time, the gun dealer had explained that some of
5 the guns weren't safe to shoot unless they had certain
6 repairs done to them. So that if we kept the guns and tried
7 to sell them ourselves individually, then we would end up
8 with some liability of if something happened.

9 Q Where did the dispute over money enter into this?

10 A Anyway, I'm getting long winded.

11 Q That's okay.

12 A The issue was, I finally said, go ahead, just sell
13 them to the dealer. I said, I'm not really happy with the
14 price, but we really need to just be done with it. And so
15 supposedly this fellow is whatever. The guns were sold for
16 X number of dollars. And Craig was really pretty furious
17 about it. He felt like we had given the guns away.

18 Q Okay. These guns -- were these guns some of which
19 Craig had grown up shooting with his dad? Was there some
20 sentimental value attached with them as well?

21 A No, I don't think so, with this particular set of
22 guns.

23 Q Were there other guns that went to family or
24 something like that?

25 A No.

1 Q Okay. Corina said she and Craig or she and Mr.
2 Boehler had both, you know, gone shooting with dad, that
3 type of stuff?

4 A That's true, yeah, they had. But I'm not aware
5 that any of the guns we were selling were actually those
6 that they had gone out shooting with their dad.

7 Q When did Mr. Boehler express -- was it this night
8 where he expressed frustration about the price, or was it
9 another night?

10 A Well, he had expressed frustration from the time
11 that I said, yes, we went ahead and sold the guns, and I
12 gave him the price list and all of the information. And I
13 didn't realize he was going to be that angry.

14 Q How long ago was that where you had done the
15 actual transaction?

16 A That was two or three months ago, it's been
17 awhile.

18 Q Then on the 22nd where he returns from the doctor,
19 you're in the office going through the paperwork, how did
20 that come up again? Did he bring it up? What did he say?

21 A He had indicated he wanted a copy of the gun list,
22 and that he wanted to discuss it some more. But we didn't
23 really discuss it, particularly that evening.

24 Q What else was discussed that evening with regards
25 to finances? You mentioned he was very angry that evening,

1 I'm trying to get at it.

2 A I said he was kind of agitated and kind of pacing.

3 Q Sure.

4 A Well, uhm we didn't really have much more
5 interaction, because my husband and I typically go to bed at
6 8:00, 8:30. And so, I pulled the folder out for him and
7 gave it to him and went downstairs and went to bed.

8 Q Do you think it was about 8:30 that night?

9 A I think it was about 8:30, maybe 9:00 when I got
10 down there. Gary had gone downstairs to bed first.

11 Q What happened later in the night that woke you?

12 A Uhm, well, for some reason I couldn't sleep very
13 well. But I could hear Craig and Corina talking upstairs
14 and down -- our room that we sleep in is on the ground
15 level, split entry home, so the living area is above and
16 sound carries quite a bit.

17 Q I'm going to show you State's exhibit 1, is that a
18 photograph of your house?

19 A Yes, that's the photograph of the house.

20 Q Okay.

21 A And so, like I say, our bedroom is on the lower
22 level next to the garage, and then the living area is
23 upstairs. And I could hear them talking upstairs and
24 Corina's voice was getting a little louder. I can't
25 remember why, but I got up, and I don't know if I called

1 upstairs to make sure the heat is turned down or something.
2 And then I said, and, you know, if you keep your voices down
3 a little bit, and then I went back and laid down.

4 And I don't know how much later it was that I
5 heard Corina out in the garage just sobbing and crying. And
6 I went out there and I sat -- I'm a smoker, I only smoke in
7 the garage, I don't smoke in the house. So there's a couple
8 of chairs and little table out there. She was in the one
9 chair, I sat down in the chair next to her. And, you know,
10 what's going on? What's happening?

11 Q She's out there alone?

12 A She's out there by herself. And Craig came down
13 in the garage, he had a Bible in his hand and he kept trying
14 to push me off my chair.

15 Q Physically?

16 A Physically. You know, shoving and shoving. And
17 he wanted to read a passage from the Bible to Corina. And
18 Corina was saying, get away from me with your damn Bible.
19 And she got up, and I'm trying to say something, but Craig
20 is kind of still pushing on me. And I stood up and Corina
21 ran upstairs, and Craig went up after her. And, uhm, I'm a
22 little slow, I don't run upstairs.

23 Q Sure. Did the other two run up the stairs?

24 A The other two had run up the stairs. And I was
25 getting kind of more up to the top, there's a stairway that

1 goes up, then a landing, then another stairway up. And I
2 heard a crash and Corina was out on the floor. And I don't
3 remember for sure what I did. Oh, I talked to her for a
4 minute, and then --

5 Q Is she at the top of the stairs alone?

6 A No, Craig was standing there, and it's all such a
7 blur. I just -- Corina is on the floor and I'm talking to
8 her, Craig is standing there, uhm, I get her up on her feet,
9 everything happened so fast.

10 Q What do you remember happening next?

11 A Uhm, I can't remember if we said something, uhm,
12 before -- that's part of why I was so slow getting upstairs.
13 When I came into the hallway from the garage towards our
14 bedroom, uhm, Gary said, should I call 911? And I'm like,
15 well, give me a minute. Uhm, sometimes you don't know what
16 to do or when to do it.

17 Uhm, but, yeah, I wanted to call 911. And I said,
18 wait a minute. But then that's where when I got upstairs,
19 Corina had fallen on the floor. And then Gary came upstairs
20 and turned around, and Gary had a gun. And I don't remember
21 precisely what he said, it's all such a blur.

22 Q Do you remember the tone of what he said or what
23 the words -- the effect of --

24 A Well, what I recall is he wanted Craig to get out
25 of the house, just get out. Get out. And Gary had been

1 downstairs most of the time, so that all he was hearing was,
2 you know, what was going on in the garage, that interchange
3 here, and hearing Corina fall on the floor upstairs. And
4 I'm not sure what happened between Corina and Craig before I
5 got upstairs.

6 Uhm, and -- but, yeah, it was to the effect of,
7 you know, get out of the house, or get out of the way. Get
8 out of the house. And, uhm, Craig sort of started towards
9 Gary, and Gary fired the gun.

10 Q Can you tell me a little bit about the move? I
11 mean, talk to me a little, you said Craig started towards
12 Gary, it could be a saunter or a charge, what did it look
13 like to you?

14 A It looked pretty aggressive, it was (indicating).

15 Q One of the things, we have a court reporter here,
16 and you raised your hands like he's going to put hands on
17 Gary. Is that -- would that be a safe way to characterize
18 it?

19 A That would be a safe way to characterize it. It
20 was unknown what was in his mind or what he was going to do,
21 but it was a like I say, it was kind of an aggressive
22 situation, such a blur.

23 Q Was there anything you heard said which could help
24 us in figuring out what was going on? You can hear Mr.
25 Boehler, you recall hearing Mr. Boehler saying anything to

1 Mr. Estes while this is occurring?

2 A No, it's such a blur, I --

3 Q Do you recall talking to the detectives we have
4 out here in the hospital the morning after this happened?

5 A Uhm, yes, at some point in time.

6 Q Do you recall telling them you heard Mr. Boehler
7 say words to effect of, I can take you, old man, during that
8 time that he was moving forward?

9 A Yeah, he did say something like that, I remember.
10 Especially I remember the old man part, because --

11 Q How far apart were Mr. Boehler and Mr. Estes at
12 the moment Mr. Boehler started moving towards Mr. Estes, do
13 you recall?

14 A Uhm, Gary must have been on the -- I think he had
15 one foot maybe on the second step from the top. And Craig
16 was -- I don't know, a couple of feet from him -- from the
17 top step.

18 Q And that's when he first started moving towards
19 Mr. Estes, or is that at the end when the gun was fired?

20 A That's when he sort of made a gesture like he was
21 moving that way, yeah.

22 Q Do you know how much, if any, of that distance was
23 closed -- that's a bad question. Had Mr. Boehler moved any
24 closer to Mr. Estes prior to the gun being fired, or were
25 they pretty much in the same position when the gun was

1 fired?

2 A I honestly don't know.

3 Q Let me ask you this, where were you in
4 relationship to the two of them? Were you behind one of
5 them, to the side of one of them, what do you recall seeing?

6 A My back initially was turned, because I was facing
7 Corina it seems like, and so I turned -- I guess I was
8 standing sideways.

9 Q Can you give me an estimate of approximately how
10 far you were from Mr. Estes when you heard the shot?

11 A Uhm, seems like I was just a few feet -- I mean,
12 just a few feet. I mean, I wasn't very far from where Craig
13 was standing.

14 Q Can you picture yourself when you heard the shot
15 and then looked, or were you looking when the shot was
16 fired?

17 A I think I was looking when the shot was fired.

18 Q Do you recall whether or not you could see the
19 gun, or were you looking at Mr. Boehler's back or what
20 picture presented to you?

21 A I could see the gun in Gary's hand, yes.

22 Q And could you see -- what of Mr. Boehler then
23 could you see? What I'm trying to get a sense of, what I
24 have in my mind's eye may not be accurately where you are.
25 I heard you sort of describing being up with Corina in the

1 hall, and almost looking back to the stairwell, your back
2 was to them dealing with Corina, or whether I'm picturing it
3 directly different than what you are describing. Can you
4 give us a sense when you are looking back at Gary, do you
5 see the gun in his hand, can you describe where you see Mr.
6 Boehler and what of him you see?

7 A At some point in time I turned, and seems like
8 Craig and I were sort of across from each other. And Craig
9 was facing the stairs where Gary was.

10 Q How did he react to the gun shot, Mr. Boehler?

11 A Uhm, he didn't.

12 Q When did you realize he had been shot?

13 A At first I didn't think he had been shot, because
14 he had no reaction of any kind, not physically, not
15 facially, nothing. Uhm, he turned around and started
16 walking in the direction down the hall in the direction
17 towards the living room area, and I could see then a blood
18 patch on his back. And Corina started -- I can still hear
19 this part, saying, Craig, you have been shot. Craig, you
20 have been shot. We have got to call 911. Call 911.

21 And so, Gary had gone back downstairs, and I said,
22 Gary is probably calling 911. So, I went downstairs to
23 check and make sure that he had called 911, and I realized
24 he was on the phone talking with 911. And I think maybe I
25 was going to go back upstairs, I'm not --

1 Q At some point -- Mr. Estes said at some point he
2 gave you the gun when he was on the line with 911; what did
3 you do with that?

4 A Oh, that's right. Uhm, he handed me the gun and
5 said put this away. And so, there's a cabinet covered thing
6 down there, under one of the front windows, and so I slid
7 that open, I tucked it inside where we have some-- where we
8 have some sheets and pillow cases. It was -- he put it in
9 the holster thing, and I slipped it in with the sheets and
10 pillow cases.

11 Q Okay. One of the things that Ms. Berna, Corina
12 said to us was that she had watched Mr. Boehler get into
13 your vodka and drink out of your bottle. Did you have any
14 sort of interaction with him after waking up thinking that
15 he's been drinking, or did you even have time to make that
16 assessment?

17 A I thought that was a good possibility when he was
18 trying to push me off the chair, and I was telling him no,
19 no.

20 Q But you didn't smell any alcohol on him or that
21 you recall, or have him slurring words or doing anything
22 that would indicate he had been drinking?

23 A Uhm, his eyes and face were kind of -- his eyes
24 were kind of droopy and his face was flushed.

25 Q And when you had seen him drinking in the past, is

1 that sometimes how he would physically present, droopy,
2 flushed face?

3 A Yeah.

4 Q Okay.

5 MR. MOAWAD: You folks have questions for her?

6 I'm sorry I have one more question for you. Ms.
7 Berna mentioned, Mr. Boehler had brought up this incident
8 that had occurred years ago that made her feel unsafe. When
9 did you learn about that incident between them?

10 A Oh, when she was maybe 30, 32, something like
11 that. It makes a mother feel pretty stupid not to have been
12 more aware.

13 Q And she shared that with you?

14 A Yes.

15 Q Okay.

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1 ROBERT BROWN,
2 called as a witness,
3 being first duly sworn,
4 was examined and testified as follows:

5 EXAMINATION

6 BY MR. MOAWAD:

7 Q Tell these folks who you are.

8 A Robert Brown, B-R-O-W-N, Portland police officer.

9 Q How long have you been employed as a Portland
10 police officer?

11 A Twelve years.

12 Q And I understand you were working on November
13 23rd?

14 A Correct, yes.

15 Q And responded to this address on Cherry Blossom in
16 response to the call. Tell the folks a little about what
17 your observations were when you arrived.

18 A My observations. Uhm, when I first got there, I
19 didn't know exactly where this house was, and, you know,
20 what was going on. I got there a little late, I was way out
21 of my district taking another call. Excuse me.

22 When I got there, I pulled up, there were police
23 cars that were pretty close to the actual house. I pulled
24 up in the line of police cars, got out and I went up to
25 another officer, Officer Geds, his real name is Gedemynas

1 Jakubauskas, we call him Geds. But he was standing in some
2 bushes looking around the corner.

3 I walked up to him and I asked him, you know where
4 this house is at? And he kind of pointed, he was right
5 there. He didn't have any kind of cover, anything like
6 that, he was just -- it was just bushes. He told me it was
7 the house that he was looking at. We were really close. I
8 told him, let's back off, uhm, because at that time he kind
9 of briefed me that the guy in the house could possibly have
10 a gun.

11 Q Where did the two of you go?

12 A We went directly across the street to kind of keep
13 an eye on it, to -- I guess it would be kind of to the
14 southeast of the house, to kind of look -- make sure nobody
15 came out the front of the house. At this point, we were
16 kind of standing, just kind of looking to make sure he
17 didn't actually come out the front door or out the garage.
18 The garage door was up at that point.

19 Uhm, we were on a balcony across the street just
20 kind of watching. At this point we heard a gun shot at this
21 point.

22 Q Is that gun shot singular or plural?

23 A It was singular at this point. So, uhm, we kind
24 of said, hey, this is not a good place for us to be, let's
25 go find some cover, concealment. And the gun shots

1 continued at that point sporadically. You would hear one,
2 two, nothing for, you know, a minute or two, and then a
3 couple more.

4 Q Was there anything about the nature of the sounds
5 that led you to believe the gun was being fired inside
6 versus outside the house?

7 A Yeah. It sounded like at this point there were --
8 they did -- they were definitely inside of the house. It
9 didn't sound -- if you were outside and a gun is being
10 fired, I think it makes a louder noise. It sounded like at
11 this point he was still inside of the house.

12 Q Did that change during the development of this
13 incident?

14 A It did. There was a couple of shots that sounded
15 like they were definitely outside. And I knew that Officer
16 Toops was on the back side of the house. Uhm, after hearing
17 the shots, it sounded like it was coming from outside. I
18 heard her get on the air and say, we've got to move. We got
19 to kind of get out of here, get some cover.

20 You could tell if you worked around someone,
21 you're always taught on radio to kind of keep calm. You
22 could tell that it was amplified just by what she was
23 saying, how she was saying it, her voice. I knew at this
24 point that, you know, the rounds were pretty close to them
25 or they had to move to get out of that situation.

1 Q And you mentioned in your report those shots
2 specifically right before radio transmission from Toops
3 either side, sounded like they were fired from outside or
4 from a high caliber rifle. Can you describe what about
5 those sounds made you believe that it was true?

6 A It was definitely louder. The ones inside you
7 could definitely tell they were kind of muffled, uhm, maybe
8 possibly from a hand gun. Uhm, the one that sounded like it
9 was outside was either high caliber or he was definitely
10 outside, that's what it sounded like to me, being across the
11 street from the house.

12 Q Talk about what happened next with the SERT
13 officers rolling up in armor, when did the suspect's
14 attention turn to you?

15 A Uhm, we knew SERT was on the way, and it doesn't
16 take them very long to get there. We heard, you know, I
17 heard sirens coming in, knowing that they are coming. Then
18 we were briefed several times on the radio that makes sure
19 you take cover, because SERT guys are going to come up in
20 their van, and that the gentleman is probably going to start
21 firing at the SERT.

22 Q Why is that? What about the SERT vehicle
23 announces itself?

24 A No.

25 Q What about a SERT vehicle rolling into a scene

1 where you have an active shooter can draw fire?

2 A Any time you have something like that, I think,
3 you know, he could fully see this coming up on him, to where
4 maybe he would see an officer here and there, but everybody
5 was taking cover. Everybody was trying to hide from the gun
6 shots. He could actually look out the window and see the
7 vehicle coming up towards him. It moves very slow, and they
8 put the lights, you know, up in his window.

9 Q Spot lights from the SERT vehicle?

10 A Correct.

11 Q At some point you realized you were being fired
12 on. Tell the folks what you heard, saw, felt and how you
13 drew that conclusion?

14 A At this point, I didn't have -- cover and
15 concealment is when somebody, you know, you think they can't
16 see you, cover is having hard cover so where if a round does
17 come at you, you are going to be protected. I did not have
18 cover. I was behind a small little tree trying to get deep
19 into the ground so I didn't take a round.

20 I heard a couple of shots and the tree that was
21 above me, I heard one of the branches snap off. Uhm, I
22 don't know necessarily if he was firing at me, because I
23 don't think he could have saw me, but it was definitely in
24 my direction.

25 Q What did you see and hear SERT doing at this point

1 with regards to gas deployment?

2 A Uhm, when they rolled up, I heard numerous shots.
3 They have a different radio that they are on, different
4 radio frequency that they talk on. Not ours, the regular
5 officer frequency. So I didn't know exactly what they were
6 saying, but I knew that a lot of rounds were being fired at
7 their vehicle.

8 Basically, I heard -- I saw the lights, they kept
9 on putting big spotlights on the windows so he couldn't
10 actually see them. Then I heard loud pops, and I knew it
11 was the gas. And I got a fair taste of that gas, it's not
12 really nice.

13 Q That's on this night?

14 A Yeah. Being across the street and it being that
15 strong, the gas coming at you, at one point I did start
16 coughing. I had to put my head down to try and not to
17 breathe any of that stuff.

18 Q I understand at one point during the incident did
19 you get an opportunity to see him, the suspect in this case,
20 Mr. Boehler, armed? Tell the folks when that took place,
21 what you saw?

22 A Yeah. Towards the front of the house upstairs
23 there was I guess a living room window. Uhm, I did see him
24 walk by looking out the window towards, you know, the
25 street, and where we were. He had what it appeared to be a

1 rifle, and he had it kind of down this way, kind of blading
2 himself like we do, looking like this, looking out the
3 window. And then he went up and did the blinds to where we
4 couldn't see in the window any more.

5 Q Approximately how many shots did you hear done in
6 the muffle, what sounded like inside the residence versus
7 those you described outside, but also being out through the
8 window? Can you give us an idea of the best estimate of
9 shots that night?

10 A My best estimate, I can't tell you how long we
11 were out there. I know it was real cold at this point. I
12 would say 15 to 20 shots inside, and the couple that were
13 louder, I think there were two or three that seemed like
14 they were louder.

15 Q All right. I have no further questions.

16 MR. MOAWAD: You folks have questions for the
17 officer?

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EXAMINATION

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2 BY GRAND JUROR:

3 Q The loudness, would you associate it with a
4 high-powered rifle as opposed to a pistol, or associate it
5 with a shotgun as opposed to a pistol?

6 A You know, it could have been either. It just
7 sounded like it was up close and kind of personal at that
8 point, where I was not too concerned about the ones you
9 could hear away, that's definitely inside of the house and
10 he's shooting maybe a T.V. or something. I don't know. But
11 the ones that were louder, they definitely get your
12 attention.

13 Q Muzzle is outside of the building?

14 A Yes.

15 Q Back side of the house, the high ground and this
16 fence, did that bring the noise of muzzle outside to the
17 front of the house on an echo; you think it would do that?

18 A Possibly. Uhm, we were told -- we had the
19 information that he had -- he definitely had a handgun, 9
20 millimeter, possibly a shotgun and a large hunting rifle, I
21 guess somebody said, with a scope, so like a Winchester.
22 And any time, you know, if I'm outside and I have kind of a
23 place to hide a little bit, I'm not all that concerned about
24 a handgun being that far away. But when you talk about,
25 hey, he's got a hunting rifle and possibly a scope on it, in

1 our training we have done the whole -- they videotaped it
2 and they basically said, you know, get outside and kind of
3 surround this house. We're going to video tape from inside,
4 saying, you know -- pretty much giving you the scenario,
5 this guy has a high powered rifle. We'll show you how much
6 of a target you are when you think you have cover. And that
7 still sticks in my mind, they showed me several times
8 popping my head up and I'm dead if that guy sees me. You
9 can sit in there and kind of sit in a corner, kind of take
10 cover and with a rifle like that, it's a little scary.

11 Q Okay. Thank you.

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1 CORINA BERNA
2 previously called as a witness,
3 and duly sworn,
4 was examined and testified as follows:

5 EXAMINATION - CONTINUED

6 BY MR. MOAWAD:

7 Q Ms. Berna, you're still under oath. Come in and
8 have a seat. Let me start by saying, I understand this is
9 difficult for you, and I'll try to make this as painless as
10 possible. I have a few more questions for you and then we
11 will cut you loose.

12 One of the things that we know from your testimony
13 prior was that you had a seizure at the top of the stairs.

14 A Uh-huh.

15 Q And so you may or may not have been aware of other
16 things going on. And so what I want to talk to you a little
17 bit starting at the top of the stairs, you're having a
18 seizure. The first time that you recall what is going on
19 next, can you talk to us about that? Are you on the ground
20 or up, what is that?

21 Q First of all, when I had the seizure, a lot of
22 people when they have seizures they can hear things, but
23 they cannot respond.

24 Q Okay.

25 A Okay. And for me, it sounds like, say I was

1 talking to you across the room, it would almost seem like we
2 were talking through fake cups say as kids, you're way
3 across the other building. You know --

4 Q Would muffled be a fair way to describe it?

5 A Tunnel, being muffled, whisper, faint. So I could
6 hear that there was some commotion going on, but I was not
7 sure exactly the commotion. And it only lasted -- it was
8 not a long one, thank goodness, uhm, it lasted a few
9 minutes -- three or four minutes.

10 Q Do you have a sense of time when you're having a
11 seizure after you had one, can you say that was a short one
12 or that was a long one or does somebody have to tell you?

13 A Uh-huh. No, I can kind of -- I can tell by paying
14 attention to my body. I'm very in tune to my body, I have
15 to be.

16 Q During that time of this seizure, do you recall
17 anything other than voices? Can you say male voices, female
18 voices, anything that was said?

19 A Yeah, it was just my brother and Gary.

20 Q Can you give us an idea what was said or what the
21 tone or tenor of the conversation was?

22 A Yeah, which I already said was when I was stood up
23 behind him, Gary had said something to the fact, and like I
24 said, I can't repeat it verbatim, but he said something to
25 the fact of, oh, God, now -- what did he say, something

1 like, you better move or you better something, or I'm going
2 to shoot you.

3 Q That's Mr. Estes talking to Mr. Boehler?

4 A Right. Correct. And then that's when he fired
5 the weapon.

6 Q Okay. How far were you in distance from --

7 A I was only about three feet.

8 Q Okay.

9 A At that time.

10 Q You're looking at -- towards Mr. Estes. Can you
11 see Mr. Boehler as well at that time, or are they in line?

12 A The back of them.

13 Q Both of them or talk to me about that.

14 A Okay. Like I said, it's like a circle, the house.
15 Okay. It's a split level home, but it is a split level
16 home, there's two different types. One type, you walk
17 upstairs, and you go in and you -- there's a platform, you
18 either go down or you go up. Okay. Now the other split
19 level home, you go straight all the way up to the top floor,
20 okay. You go straight back, and then the stairs go down.
21 There's a platform here, then you can go out back and
22 there's stairs that go down here. And then right to the
23 right on the, you know, the door to the garage, you go the
24 other way, and it's the bedroom. Well, there's two bedrooms --
25 well, actually one bedroom and a family room. They use the

1 family room as a bedroom, and they use the little dinky room
2 as a closet.

3 Q Okay.

4 A Now, the seizure, when it happened was right in
5 front of the closets which put my feet probably three feet
6 away from the front door, which probably put my head at this
7 time about five feet from the back of Craig. So I stood up.
8 When I stood up, I stood up this way. That means the front
9 door was behind me. Okay. So Craig, I took a step forward,
10 and Craig was standing about three feet from me. And I was
11 behind him.

12 Q Oh. And where --

13 A Okay. That's when I heard Gary said something
14 like, you better move, or I'll shoot you.

15 Q Okay. Where is Mr. Estes standing?

16 A He's standing probably three, four -- three stairs
17 down maybe.

18 Q Okay.

19 A Four stairs down max.

20 Q Are the stairs on the other side of Craig from
21 you, or on the other side? That's what I'm trying to figure
22 out.

23 A No. As I said, when you go up to the front door,
24 you walk straight forward, and the stairs that go down and
25 there's a platform and the other stairs go down. Okay. So,

1 the stairs were right in front of me. So here's Craig at
2 the very top of the stairs. He did not take a step down.
3 Okay. Gary is down the stairs, because he was coming up
4 from his room, that was a family room.

5 Q Okay.

6 A So, he's on, you know, the third or fourth stair
7 from the top where Craig was stopped, standing, and if Craig
8 is here, you go one, two, three.

9 Q Got it. Okay.

10 A Okay. Now, what I heard, and I know Gary has got
11 a gun, is, like I said, something like, if you don't move,
12 I'm going to shoot you. Next thing I know, he shot him. My
13 mom was to the right, Craig is here at the top of the
14 stairs. Okay. It's a metal railing that comes up the
15 stairs, okay. If you're at -- if you're where Craig is at
16 the very top of the stairs, before you take one step down,
17 it kind of -- the railing goes about six inches like this,
18 and then goes like this about three feet, and then it goes
19 this way. It goes like this end, end, end and there's the
20 kitchen.

21 Now, my mom was like right here. So, she was
22 about two feet right -- two feet to the right of him. Now,
23 I was right behind him, I was in shock. Because, I mean,
24 like I said, I never seen anybody get shot except for on
25 T.V. And I knew the bullet went through him, because I was

1 looking at the back of him and the blood mark at this time
2 was probably about three inches by three inches or four
3 inches by four inches. And so, of course, that freaked me
4 out, I'm going like this, going where's the bullet? Where's
5 the bullet? Because it went through him, so where did it
6 go? And I was behind him.

7 Q The line from the gun to Gary to you -- to Craig
8 to you was a straight line?

9 A Yes.

10 Q Okay.

11 A Yes.

12 Q That's what I was trying to figure out.

13 A Yep, and so that's --

14 Q Prior to the shooting, did you see Craig move
15 towards Gary?

16 A I am not sure. Okay. That is when I was having
17 the seizure, and I could hear the commotion -- I could hear
18 commotion, but I did not see that.

19 Q Okay. After the shooting, how did Craig react?

20 A He didn't even flinch. Like, that's what I
21 mentioned before, it's like a circle, okay? I don't really
22 recall how mom and Craig switched. All I know is all of a
23 sudden, how I described the railing coming out like this,
24 this, this. Okay. So, the railing was this way, was three
25 feet, the railing this way towards the kitchen, was about

1 three feet. Okay. Craig was standing up. Say you're
2 standing upright, and he was standing and he was like this
3 holding the railing looking at Gary and saying, it's going
4 to take more than one fucking bullet to put me down.

5 And from there, Craig went into the kitchen. I
6 thought he was going to go in and get a rag or something,
7 because he didn't even flinch. I mean, I don't know if it
8 was shock. I mean, I know what shock is like, you know,
9 sometimes you are -- you don't even realize it, you know.
10 Uhm, it's just my opinion, from knowing Craig, I have seen
11 him sniff paint, I have seen him do meth, I have seen him
12 play Russian roulette, I have seen him do a lot of crazy
13 things and that's why I don't care for my brother.

14 Q Okay.

15 A Uhm --

16 Q You mentioned after the shooting we talked about
17 the interview that you gave to Detective Sponhauer out here
18 and Detective Wattum. After the shooting, did you see Craig
19 go after Mr. Estes physically, do you recall that today?
20 Not -- he didn't get to him, but he tried to fight him?

21 A I didn't say that.

22 Q Okay.

23 A That's not --

24 Q You don't recall that today for sure, let alone
25 saying that?

1 A No, I know for a fact I didn't say that.

2 Q Okay. One of the things that struck me in the
3 interview you did give to the same detectives, you said when
4 it comes to police, you said, I think he, Mr. Boehler, got
5 what he wanted, referring to that night?

6 A Oh, yeah, I did say that.

7 Q Can you talk to me a little about that? What
8 about this does not surprise you?

9 A It doesn't surprise me, because it's been an
10 ongoing thing. I mean, if you're the DA, you should see the
11 list of times he's been in jail.

12 Q But there was not anything he said to you that led
13 you to -- what I'm getting at -- yeah, I can look at a
14 record saying this probably means this is going to happen,
15 but this is fairly unusual in terms of --

16 A No, it's not unusual with Craig. Not with Craig,
17 no.

18 Q Okay, I don't --

19 A Okay, fine. I'm just saying, all I'm using that
20 for is, I'm saying that he's my brother, I have seen a lot
21 of stuff that he has done to people, to himself. He went
22 out and was so --

23 Q I don't mean to be rude to you, but I want to stop
24 you. I don't know what the answer to the question is.

25 MR. MOAWAD: Anybody have questions for Ms.

1 Berna?

2 EXAMINATION

3 BY GRAND JUROR:

4 Q From what you could see, did it appear to you that
5 Craig was coming towards your stepdad, and that's why the
6 shot happened, or do you think -- can you talk a little bit
7 about that part?

8 A I think Gary was protecting himself by shooting
9 him, because there have been incidents in the past where
10 Craig has attacked Gary. That's where I think the officer
11 may have made the mistake about how I said it. Or maybe I
12 made a mistake.

13 BY MR. MOAWAD:

14 Q I'll read you a transcript of what you said and
15 you can let me know. It says -- I was mistaken. Mr.
16 Boehler going after Mr. Estes occurred prior to the
17 shooting. Your quote is, put it this way, when he was shot,
18 he was still going after Gary to fight him. He was trying
19 to push him down the stairs, and mom was pulling him back.

20 A Yes.

21 Q Do you recall that happening?

22 A Yes.

23 Q Okay. Do you recall your mom trying to pull him
24 back?

25 A Yes.

1 Q That was my bad question prior.

2 A Yes. That statement I will agree with totally.
3 Craig hated Gary with a passion. With a passion. I don't
4 know if that's hearsay.

5 Q Well, you observed it or --

6 A He told me.

7 Q Shows a state of mind. He told you?

8 A There's been a couple of times -- there's several
9 times I was around Craig when he was totally -- I don't know
10 if you -- if he was on meth, I can always tell when he's
11 drunk. And I pretty much can tell when he's on meth, but I
12 mean, it's hearsay. Uhm, but he did not want to be back on
13 the streets.

14 Q And was that coming for him?

15 A Yeah, it was, because the Boehler estate, the
16 home, was only, you know, the economy has dropped a lot. A
17 lot of people lost a lot of equity in their homes. And my
18 dad had a first mortgage, he had a loan and then a first
19 mortgage, or how does that work? It's a loan and a second
20 mortgage.

21 Q Sure.

22 A Uhm, and it came to like 130,000, the house is not
23 worth 130,000.

24 Q The house that Mr. Boehler was living in?

25 A That was our house, 50/50.

1 Q Which you received from your father's inheritance
2 after your father's death?

3 A Yes.

4 Q Was that house going to be foreclosed upon?

5 A Yes. We were going to foreclose it because we
6 couldn't sell it.

7 Q And did Mr. Boehler have any place to go to live?

8 A No -- well, I take that back. There is what is
9 called the Grand Round Shop, he could have gone and stayed
10 there. There was a little apartment. Basically, the Grand
11 Round Shop, what it was, was dad made it into a shop where
12 he could rebuild engines and rebuild old cars and he had a
13 race car. Uhm, there was a little apartment above the shop,
14 but it needed a lot of help. And Craig was thinking that if
15 I gave up -- like I said in the beginning, he wanted me to
16 sign a piece of paper giving him my 50 percent, so he would
17 have the Grand Round Shop perfectly free and clear, so he
18 would have a place to stay. Because what he said to me
19 downstairs is, I don't want to live on the streets again and
20 I'm not going to.

21 Q This was the financial discussion you had prior to --
22 that was that night?

23 A Prior to the shooting or -- yeah.

24 Q And had you signed that document for him?

25 A Hell no, because I have kids.

1 Q Okay. I understand.
2 MICHAEL CHAPMAN,
3 called as a witness,
4 being first suly sworn,
5 was examined and testified as follows:

EXAMINATION

6
7 BY MR. MOAWAD:

8 Q Have a seat there. Tell these folks who you are.

9 A Officer Mike Chapman.

10 Q You say Officer Mike Chapman, an officer with what
11 bureau?

12 A Portland Police Bureau.

13 Q How long have you been employed in that capacity?

14 A Over seven years now.

15 Q I understand you were working November 23rd?

16 A Uh-huh.

17 Q You arrived at the location where the incident
18 took place?

19 A I did.

20 Q Tell the folks about your initial observations
21 about the scene.

22 A Dispatched to a call of a man who had possibly
23 been shot. Before arriving on scene, other officers arrived
24 on scene, kind of taking over the primary role. I saw them
25 approaching the house. I grabbed a long gun, there was talk

1 of gun play. I approached the house, as a long cover. Upon
2 reaching the house, there was an elderly woman coming out of
3 the garage on the ground floor who looked panicked. I
4 surveyed the house, noticed up on the second floor, there
5 was a male who was in the process of barricading the front
6 door and windows to either side of the door.

7 Q What does barricading mean? What did you actually
8 see?

9 A Saw him placing undescribed objects against the
10 window, which would be to the west side of the house, in the
11 bedroom to the east side of the house on the front. Saw him
12 place what looked to be a folding style table up against the
13 window, large enough to cover the length of both windows.

14 Q As an officer approaching a scene where somebody
15 needs help, what concerns does that type of behavior give
16 you?

17 A Tells me somebody is creating a tactical advantage
18 for reaching out and possibly doing harm from behind a
19 barricade.

20 Q What else did you see at the scene before backing
21 up?

22 A Again, just maintaining my concentration on the
23 male and his activities. I saw my partner who I arrived
24 with, at the bottom of the house on the east side, escorting
25 an elderly male out from a slider door area and taking him

1 to safety. And I saw a second female being escorted off the
2 property who was panicked.

3 Q Uhm, I understand at some point you heard what you
4 believed to be gun fire. Tell the folks where you were and
5 what you heard?

6 A Initially after the three people came out of the
7 house, we secured them and we could see the male actively
8 barricading himself upstairs. We moved back to the edge of
9 the driveway, I took up a position -- you have a picture?

10 Q You want a picture or the map?

11 A A picture would be great. Uhm, we moved back,
12 moved over to the side here where there's possibly a foot
13 and-a-half of elevation between ground level and where the
14 retraining wall is, and took up a position here with long
15 coverage on the house. And we would be there a little bit
16 devising what we were going to do as far as approach, and
17 sergeant was coordinating that. And we heard a single shot
18 ring out, it sounded to come from down in the garage area.

19 At this point we were trying to figure out if the
20 male inside had shot himself or what was going on at this
21 point. Again, sergeant was formulating our plan, a couple
22 of minutes into that we heard a string of fire which sounded
23 to me to come from two different calibers, one being a large
24 caliber, one being a small caliber.

25 At that point we drew back even further, concerned

1 we were going to be in the range of fire possibly taking
2 fire. It was now apparent the person inside had not shot
3 themselves. And given the presence of gun fire, and the
4 long of it, it is my belief officers were going to become
5 targets of gun fire, we couldn't come up with a another
6 reason why somebody would fire off that many shots at one
7 time.

8 Q Approximately how many shots did you hear?

9 A There were several volleys that came out. First
10 one was approximately five shots, that's after the single
11 shot. At this point, I took my rifle, I moved across the
12 street, to the west of the location, and took up a point
13 where I could see all locations of the front of the house.
14 That's the only rifle that had position to look up on the
15 west side of the house on the window up there.

16 Q During the time you were there, you had seen the
17 same male you saw barricading windows, where he was, what
18 did you see?

19 A Correct. He was traveling across the front
20 placing items up there. You could see him moving window to
21 window. At one point he started closing all the blinds of
22 the windows to the front side and turning off all of the
23 lights. There was one bedroom where he put up a table
24 across the windows. Blinds were opened, but he shut off all
25 of the lights which was a cause for concern, because it

1 basically gave him no back lighting and a clear view out
2 onto us. We had street lights on us.

3 Q There was a vehicle parked in the street in front
4 of the house between you and the house that announced your
5 presence; can you tell the folks what that was?

6 A There was a large SUV marked down the side clearly
7 "POLICE" with our colors on it, lights on top of it, grill
8 on the front.

9 Q At some point you heard over the radio officers
10 were being shot at. Can you tell a little about what you
11 heard as far as developments after that time frame?

12 A Again, after that time frame, we had officers from --
13 Officer Toops over radio, there was fire coming in her
14 direction. A male -- the male was disappearing from a line
15 of sight from the front of the house to the back of the
16 house, telling me that he traveled from both sides. I could
17 see him pass occasionally in front of the west side window
18 the blinds were not drawn on, but as far as the rest of the
19 area, the dark house or any of the windows up front, we did
20 not have a clear line of sight on him when he went behind
21 the windows.

22 Q Were you present when the SERT vehicle arrived,
23 the armor?

24 A Correct.

25 Q Tell us how you utilized that vehicle?

1 A Well, I would say the position I was at with my
2 cover officer acting as my radio officer, would be more
3 concealment than cover, in that we were concealing ourselves
4 from the suspect, but if he shot at us we didn't have any
5 barriers to stop the bullet. With the armor announcing they
6 were going to approach, it was my belief given the rain of
7 fire and the shots fired out the back towards the other
8 officers, that more than likely that the armor vehicle would
9 become a target. And the armored vehicle would be between
10 us and the house, I didn't want to be back drop for any
11 possible shots coming out.

12 So as armor approached, we waited until it got
13 between us and the target location, and used that
14 opportunity to back out and take hard cover behind the
15 engine blocks that could stop rounds that were coming,
16 hopefully. Armor proceeded past us, and made a turn at the
17 house, and I mean I believe within seconds was taking fire
18 from the house.

19 Q And I understand the fire, correct me if I'm
20 wrong, the fire you heard in terms of sound was the same
21 type you heard earlier coming from inside of the house?

22 A That's correct. You could tell by the report
23 outside, it was muffled in nature, so it was coming from the
24 interior, versus somebody who had moved taking shots from
25 the outside where echoes would sound without interruption.

1 Q You heard a different type of report from
2 locations outside of the house shortly after that. Give us
3 an idea of time from when the vehicle took fire to the other
4 different sounds, approximately how long that was?

5 A I couldn't tell. I couldn't give you approximate
6 time. It was enough time for several shots, upwards in the
7 neighborhood of, I want to say at least twelve shots coming
8 from inside of the house, before I heard shots from outside
9 of the house.

10 Q Did you hear more shots after that -- after the
11 shots from the outside?

12 A No, I heard a string of three shots in succession
13 from the outside, and after that I heard no more sounds of
14 gun fire. I heard sounds of gas being launched, that has a
15 distinct noise.

16 MR. MOAWAD: Any more questions?

17 H4

CHAPMAN

18 EXAMINATION

19 BY GRAND JUROR:

20 Q Was any communication -- how often was
21 communication from the police going into the house, like
22 ever, was --

23 MR. MOAWAD: We'll have folks who are doing
24 the communication tomorrow that may be better able to
25 answer that.

1 GRAND JUROR: Okay.

2 BY GRAND JUROR:

3 Q There was actually a fire that had broken out at
4 this point or are we having people from there that will
5 tell us?

6 A I didn't observe the house on fire. By the point
7 there was a report of a fire, we had been removed from the
8 north side of the scene to the command center.

9 Q After the three shots you heard, then you heard
10 the three shots that were the gas?

11 A The gas.

12 Q Okay.

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1 DOUG GUNDERSON,
2 called as a witness,
3 being first duly sworn,
4 was examined and testified as follows:

EXAMINATION

5
6 BY MR. MOAWAD:

7 Q Have a seat. Tell the folks who you are.

8 A Doug Gunderson, G-U-N-D-E-R-S-O-N.

9 Q What do you do for living?

10 A Sergeant at Portland Police, east precinct.

11 Q We talked to a lot of patrol officers. Tell us
12 how your job differs from that of a patrol officer?

13 A My job is to supervise the officers as they go
14 about their functions at an incident. And it's to help make
15 sure everything that needs to get taken care of gets taken
16 care of in a safe and effective manner.

17 Q You worked the morning of this incident, the night
18 of and into the morning, and responded to a call at the
19 11066 Southeast Cherry Blossom Drive. Can you give us an
20 idea what type of information you had access to on the
21 radio, what type of call it was?

22 A We heard it was a disturbance. I understood there
23 was a person there that was shot during a struggle. Uhm,
24 that the caller -- there was a little bit of confusion as to
25 whether the caller was a man or a woman; that the fight was

1 still going on upstairs between the adult son and somebody
2 else; and that the person who had the gun was putting the
3 gun away. It was unloaded and supposedly locked up. And
4 the fellow upstairs, the adult son causing the problem that
5 was fighting, did not have access to the weapons.

6 Q When you got to the house, where did you direct
7 people to? Where did you go?

8 A I took a team of officers to the back of the
9 house.

10 Q And what was your point in doing that?

11 A To secure the house and to secure that area so
12 that, pardon me, the problem person didn't have the
13 opportunity to get outside and about in the neighborhood.

14 Q And I understand you had an opportunity both to
15 hear audible communication on the radio about suspect's
16 movement and observe some yourself. Start with what you
17 heard broadcast on the radio at this time about his
18 movement.

19 A I heard that the person was upstairs moving around
20 about in the upstairs portion of the house.

21 Q And then you had an opportunity to make some
22 observations, personal observations; tell the folks about
23 that.

24 A I heard the glass breaking on the upstairs,
25 easternmost window on the back side. And I thought that the

1 guy was going to jump out of the second story window in an
2 attempt to escape, and that was not the case. But there was
3 a lot of banging and I believe the window was broke.
4 Another officer broadcast over the radio that it appeared he
5 was barricading the window.

6 Q And were your audible observations meaning the
7 things you heard consistent with that in barricading?

8 A Yes. After I realized he was not coming through
9 the window, yes.

10 Q Approximately how long had you been on the call
11 prior to hearing the first gun shot?

12 A Gosh, I can't tell you that with a degree of
13 certainty. My ability to convey and remember time was
14 askew.

15 Q Are we talking minutes or talking about an hour?

16 A Oh, minutes, roughly ten minutes.

17 Q And I understand you also had some visual
18 confirmation of the sound you heard; how did you see that,
19 where did you see that?

20 A The first round I heard go off inside of the
21 house, I heard the sound of the report, and I saw a flash
22 through the window on the lower level, easternmost side.

23 Q And are we talking about it still in the backyard?

24 A I'm in the -- I'm --

25 Q Behind the house?

1 A There's a fence along the west side of the house,
2 and a gate that leads to the backyard. There's actually --
3 there's a gate that leads to the backyard. And we're
4 outside of the gate essentially in the next door neighbors'
5 yard, and I'm watching the back of the house. And from that
6 position where I was, I could -- that's what I could see and
7 hear.

8 Q What did you hear next?

9 A Well, I heard the Sergeant Steigleder call out for
10 the SERT team.

11 Q Is that in response to gun fire?

12 A It's in response to the incident. The gun fire
13 was the deciding factor for calling them out right then,
14 yes.

15 Q And I understand you heard some gunshots that
16 followed that. Tell the folks a little about when those
17 occurred. I don't mean necessarily in time, how close to
18 the radio call to call out SERT and what the radio traffic
19 and responses were to that?

20 A There was a span of time, four minutes to fifteen
21 minutes realistically without looking at time frame for when
22 things were occurring, that additional -- I heard additional
23 shots being fired from the house. And then there were even
24 more shots fired subsequently. Uhm, I remember hearing a
25 number of shots that appeared to occur inside of the house,

1 that had that muffled sound.

2 And then I heard a string of like three or more
3 other shots that were much louder, that had a sound that
4 they were outside. However, I didn't see the fellow
5 outside. But it sounded as if the gun fire was occurring
6 outside.

7 Q In response to those unique sounds, there was also
8 radio traffic from officers about those gunshots; can you
9 tell the folks what you heard?

10 A Yeah. Prior to those shots going off, I directed
11 some officers around to the yard behind the target house,
12 and I think that -- I didn't know what the address was, I
13 think it ended up being 11035 on Madison. And there were --
14 I sent officers back there to get distance from the bad
15 guy's house, and afford some cover and some concealment so
16 they could do their job, safely watch the house and activity
17 that is going on.

18 After I heard the louder shots, they reported over
19 the radio that they were too close, that they may be taking
20 some rounds in their direction. I don't recall exactly what
21 it was that was said, but that was the message that was
22 conveyed, that they were in the line of fire.

23 Q And where did you go, where did you direct your
24 folks to go?

25 A We ultimately moved further west in the yard, to

1 the west side of the target house. And we gave up our
2 visual surveillance of the back of the target house, and
3 paid attention to the west side of that house, because it
4 was just not safe enough for us to stay where we were and
5 mind the door and the windows to that house. We couldn't
6 stay there.

7 Q Were you effectively removed at that point or SERT
8 came and took over?

9 A SERT did come and take over, but were we removed,
10 I don't understand the question.

11 Q You at some point were relieved -- I don't know
12 the technical term -- by SERT. They came and took over the
13 position of the perimeter?

14 A Yeah, 20 minutes or 40 minutes later.

15 Q Approximately how many shots did you hear fired
16 during the incident?

17 A The total incident, roughly 30 shots I heard. I
18 didn't count each one, but there was roughly 30.

19 Q Any other questions for the Sergeant?

20 GRAND JUROR: Did you actually see the house
21 in flames?

22 THE WITNESS: No.

23

24

25

1 JASON LEMONS,
2 called as a witness,
3 being first duly sworn,
4 was examined and testified as follows:

5 EXAMINATION

6 BY MR. MOAWAD:

7 Q Tell these folks who you are and --

8 A Jason Lemons, L-E-M-O-N-S, police officer with the
9 Portland Police Bureau.

10 Q We took folks out of order, they have to go on
11 shift right now, so I apologize.

12 Let's talk to you about the incident. Obviously,
13 Portland Police Bureau, tell the folks how long you have
14 been there?

15 A I have been there twenty months as a patrol
16 officer.

17 Q Did you have law enforcement experience before
18 that?

19 A No, I did not.

20 Q And I understand you were working the 23rd of
21 November?

22 A Yes.

23 Q And responded to the Cherry Blossom address?

24 A I did.

25 Q How did you get attached to the call?

1 A I self attached myself, heard the call come out
2 over the radio. I was in the area, I attached myself on the
3 NBC.

4 Q When you got to location, where did you go?

5 A When I got to location, I parked behind several
6 patrol cars already there, walked up to the house and
7 noticed a lot of officers already in front of the house.
8 And I just went around to the right of the house, the back
9 of the house.

10 Q When you get to that location, eyes on the house
11 now, what did you observe?

12 A Well, while back there I observed a gentleman in
13 the, would have been the north -- excuse me, northwest
14 corner of house, upstairs in a kitchen. I didn't know who
15 it was at the time. I knew kind of the parameters of why we
16 were there. I got on radio and said there's a subject, a
17 male, dark, bushy hair in what appears to be the kitchen. I
18 couldn't tell what he was doing, but it looked as though he
19 could be getting a glass of water, fixing himself something
20 to eat. It looked like he was at the counter doing some
21 unknown kitchen-like activity.

22 Q You mentioned some areas of the house had been
23 barricaded. What did you see that allowed you to draw that
24 conclusion?

25 A I saw the subject leave what I believed to be the

1 kitchen area. At the far end of the house, back of the
2 house, would have been the southeastern, the house sits
3 weird directionally, I apologize. It was the far end of the
4 house, upstairs there was a window, and I started seeing,
5 because of the way light hits the window, something moving,
6 panes of glass slightly, and I heard a lot of banging in
7 that room. My current location, all I could tell was
8 something was banging at the window.

9 Q What happened next? What did you hear or see that
10 developed?

11 A I believe at this point we heard what sounded like
12 gunshots, took cover. I was behind at the time a manor
13 stone brick wall that separated the two properties.

14 Q What happened?

15 A I was -- there were a number of other officers.
16 Sergeant Gunderson told me to get -- somehow get into the
17 backyard of the house directly behind there and get better
18 eyes on the three side of the house, the back of the house.

19 Q And is the three side of the house, the back side
20 of the house every time?

21 A Every time.

22 Q Doesn't matter as to direction?

23 A Didn't matter direction.

24 Q One is the front, two will be working clockwise
25 around the house?

1 A Yes, clockwise.

2 Q And I believe the purpose of that is so that on
3 radio, you can go to a house you have never been at, and
4 when someone says three side --

5 A Everybody knows that's the back of the house.

6 Q Okay. Talk to me a little about either trying to
7 hide, get cover, what that looked or felt like sort of
8 thing.

9 A That current location, I had that manor stone wall
10 that was -- I'm short, but the wall was probably about four
11 feet. I was more than able to get hard cover behind that
12 wall. I was ordered to leave that location by Sergeant
13 Gunderson, grab a ballistic shield and somehow get in the
14 back of the residence behind that house.

15 Q How did you do?

16 A I went around the front of the house, down the
17 road and then up around the block actually and ran up to
18 that house.

19 Q Who were you there with?

20 A I was there with Officer Toops, Officer Doran and
21 Officer Filbert.

22 Q At some point you made a decision that that
23 location -- the new location was unsafe for you and the
24 other officers. Tell the folks about what happened that led
25 you to that conclusion?

1 A Officer Toops was the long rifle, AR rifle here,
2 and I worked -- we're behind the house, got into a position
3 along the property line, center of the fence where we were
4 in some heavy brush. We didn't have hard cover, we just had
5 the concealment, but we had -- our eyes were completely on
6 three side of the house, we were centered on that property.

7 At the time shots were firing, I believe that they
8 were from my location, and because they were inside of the
9 house, I didn't believe that they were being fired outside
10 of the house at this point. I thought they were fired from
11 inside of the house, but we did hear shots being fired.

12 You want me to continue? Okay. I could see the
13 subject going back and forth on the three side, the lower,
14 would have been my right hand corner room, there were drapes
15 opened approximately six inches. I could see him coming and
16 going into that room. And when he came, he knelt down, I
17 couldn't see what he was doing. I could see he was knelt
18 down doing something, I didn't know what. And then he would
19 leave that area and we would hear the shots being fired.

20 At this one point, I left that area and Officer
21 Toops and I -- we were shoulder to shoulder. She was on my
22 right side, we hear a series -- a volley of shots, if you
23 will. And one of the rounds I heard the air displacement,
24 which I'm familiar with from my time in the service, it
25 passed what I believe to be within two feet of me. It was

1 that whiz of air displacement that the round makes. As it
2 passed, it hit debris we were in front of, and sprayed wood
3 or branch debris in my face and jacket and such.

4 Q Where was Officer Toops in relation to that?

5 A Officer Toops was right next to me. We were
6 essentially shoulder to shoulder.

7 Q Would that round have gone on the other side of
8 her or between the two of you in your estimation?

9 A In my estimation, I believe it came probably
10 between the two of us.

11 Q At this point am I safe to say, based on your lack
12 of cover, you didn't feel you could -- in addition to not
13 having identified the target, you didn't feel you could
14 return fire into the house?

15 A Correct. I did not see a muzzle blast. I did not
16 see a target. I knew we took a round very close to us, and
17 at this point the very idea was to get to hard cover.

18 Q If you could have safely returned fire to an
19 identifiable target at that moment, would you have?

20 A Absolutely.

21 Q Where did you go?

22 A I was on left -- Toops on the left, and somehow we
23 crossed paths, I don't know how. Toops on left. I ran up
24 hill to the house directly behind me and around to the front
25 of the house, and Officer Toops the opposite direction.

1 Q During the time you were at the location,
2 approximately how many shots did you hear fired?

3 A I would say looking back on it now, there was
4 other sounds of the electrical popping that I thought were
5 gunshots at the time. But I would say a minimum of 20 is
6 what I heard. I didn't count the shots, strictly an
7 estimation.

8 Q No one expects you to. You mentioned in your
9 report one of the sounds had a -- shots had a distinct sound
10 to you. Talk to the folks about that.

11 A Yes. The one shot -- the last shots, one of the
12 last shots I heard from my location, I was now in front of
13 the house directly behind the house in question on Cherry
14 Blossom, but it was a sound that was -- sounded as though it
15 was fired from outside, not the muffled sound from a shot
16 being fired inside.

17 Q Did you pass a couple of SERT officers as you were
18 heading out, coming in?

19 A Yes.

20 Q And have an opportunity to relay to them that
21 Officer Lemons had taken fire?

22 A Officer Toops.

23 Q Officer Toops, excuse me.

24 A Yes. Our job once we got back to hard cover, our
25 job at the front of the house was to maintain the area in

1 back of the house. If somebody left the house, we had
2 officers outside on the front, but did not have eyes on the
3 back, so we didn't know if somebody left the house then.
4 While there, two SERT operators came to our location and
5 wanted information on where we were, where we took the shots
6 from, where the subject house was. It was dark, a lot of
7 brush back there. I took them around to the corner of the
8 house, got as close as I was comfortable, feeling to get
9 pointed to a light in the house, told them what room that
10 was in relation to the rest of the house, pointed to where
11 we were. And they said, go back, and at this point they
12 moved in.

13 Q Safe to say based on experience you had in that
14 yard, you were happy to be relieved?

15 A Very much.

16 Q Any questions?

17 EXAMINATION

18 BY GRAND JUROR:

19 Q When you speak of a loud blast that struck you as
20 being outside of the house, a shotgun, high powered rifle?

21 A High powered rifle.

22 Q Could it have been an open window, in the muzzle
23 inside of the building?

24 A I was around the front of that house from where
25 the blast was, and anybody who has been around gun fire of

1 any type, if there's a wall or angle, the same gun can sound
2 so much different.

3 Q Yes, it can.

4 A With just the noise relaying off a building --
5 excuse me, a wood building, versus a glass building side
6 wall, there's just so many distinct sounds.

7 Q But the opposite side of the coin would be
8 similar, if I'm in direct line, you're inside of a building,
9 you have got the muzzle of the weapon in front of an open
10 window, you're shooting at a 90 degree angle from me, it is
11 going to sound very, very like you're shooting at me?

12 A Correct. Correct.

13 Q Just curious, but a shotgun blast can be
14 tremendous?

15 A Yeah.

16 Q As far as noise is concerned?

17 A It's distinct and different, yes.

18 Q Okay.

19 GRAND JUROR: Thank you.

20

21

22

23

24

25

1 JERAMI MCKINLAY,
2 called as a witness,
3 being first duly sworn,
4 was examined and testified as follows:

5 EXAMINATION

6 BY MR. MOAWAD:

7 Q Tell the folks who you are?

8 A Jerami McKinlay, M-C-K-I-N-L-A-Y, Portland Police
9 Officer.

10 Q I understand you were working the 23rd of
11 November?

12 A Yes, sir.

13 Q You approached the target location on duty in
14 uniform, all that kind of stuff?

15 A Yes.

16 Q Tell the folks a little about when you first
17 rolled up to the house itself, approaching on foot, what do
18 you see? What's your sort of job description while you're
19 there?

20 A I arrived with Sergeant Steigleder and a few other
21 officers. We walked up to the house, but we were keeping a
22 little bit of distance, at first not knowing if there was
23 still a gun involved inside of the house somewhere. We
24 confirmed over the radio through the dispatchers that they
25 said the guns had been put away, that nobody had acces to

1 them at this point. And once we heard that, we decided it
2 was safe to approach.

3 So as a group of probably five of us started
4 walking up to the house. There was a few of them that
5 started going towards the open garage door that's on the
6 main level, right of the driveway. And then the main
7 entrance to the house, the front door is on the second
8 level. So since nobody else started going up to the door, I
9 started up those stairs to try and make contact with anybody
10 that was on the upper level or if somebody came out, so
11 there would be somebody to be able to talk to that person.

12 Q Can you give us as you approached the front door,
13 you had an opportunity to see somebody. Give us a physical
14 description of what the person looked like.

15 A White male, probably in their 40's, wearing a
16 black T shirt. Would you like more than that?

17 Q Tell me what happened?

18 A As I was walking up the flight of stairs to get
19 towards the platform where the front door is located, I got
20 to about maybe two or three steps from the top, which then
21 puts me about four or five feet away from the door. And I
22 saw the person that was wearing the black T shirt, we later
23 found out was Craig Boehler. He walked up to the door which
24 the screen was closed, but the front door itself was opened.
25 I saw him walk to the door, he looked directly at me.

1 I said something to the effect of stop, or talk to
2 me, or hang on, something like that, trying to get his
3 attention. I know he saw me, because we made eye contact.
4 But then he grabbed the door, shut it, and I heard him lock
5 it. There's a picture window just to the right of that
6 door, it had no shades on it. There was lights inside, so I
7 was able to step up with a couple of feet to the right and
8 look through the glass, and I could see him grab a chair,
9 wedge the chair up underneath the door handle like you see
10 in movies, somebody trying to block the doors so nobody
11 could open it.

12 He then proceeded to get other pieces of furniture
13 and pull them over there to also put in front of the door to
14 barricade himself in.

15 Q What did you and other officers do, you know, with
16 that information?

17 A I was relating that information down to the other
18 officers down on ground level. I could tell they were
19 trying to get the other individuals from the house out at
20 the time, so I stayed at the window for a little while, I
21 could still see Mr. Boehler. I could see he didn't have any
22 weapons in his hand at this time, so I didn't feel like I
23 was in enough danger I needed to move immediately.

24 As soon as they said they had all of the other
25 people out of the house, they told me we were going to back

1 out. At that time, I backed down the steps and we moved
2 away from the house a little ways.

3 Q Where did you end up?

4 A Well, initially we moved out, there's a couple of
5 cars in the driveway and we moved back just so we were
6 behind one of the cars and to try and regroup now that we
7 had moved back away from the house, and figure out what our
8 next plan was going to be. While we were standing there, we
9 heard a single gun shot from inside of the house. At that
10 point I believed and somebody else said out loud, on
11 confirming what we were all thinking, Mr. Boehler shot
12 himself. That being said, obviously, we still are being
13 careful and we're going to use as good a plan as we can to
14 make sure everybody is safe.

15 Q Where did you go from there?

16 A From there, we backed out a little further,
17 several officers, and one of them -- I guess two of them
18 were Sergeant Gunderson and Officer Lemons who I believe you
19 spoke with both of them already, had put themselves on the
20 back corner of the house to keep an eye on the back. I went
21 back to where they were at, but because they and a couple of
22 other officers, I can't remember who they were with, already
23 taking position to get to see the back of the house from a
24 relatively safe place and they had cover.

25 I didn't have anywhere to go that was productive

1 at this point, so I stood beside the house for a short
2 period of time. At some point somebody asked for somebody
3 to get a ballistics shield, which is a hand carried shield
4 to carry out in these situations. I was going to go out and
5 get that. I moved from the back of the house, back out
6 towards the front. As I got out there, I realized somebody
7 else was saying they were going to go get the shield. So I
8 stopped doing that and was just back behind some of the cars
9 in the neighbor's driveway to the west, while we were still
10 trying to come up with the next step of our plan to organize
11 what was going on.

12 While we were there, I realized that the -- I
13 didn't know who it was at first, but Officer Keller as it
14 turns out was across the street, with his rifle. And he was
15 over there by himself as far as I could tell. Typically,
16 when I have somebody with the rifle, we have a second person
17 with them to act as a person who can be on the radio, so
18 that they can be focused on what their main job is, to be a
19 second set of eyes and to have somebody with their hands
20 free in case we have to actually take somebody into custody.
21 So I made myself that person, went over to the north side of
22 Cherry Blossom and found another -- Officer Keller was
23 behind a tree more or less directly across from the house,
24 and in front of the house that sits there. I found another
25 tree, that tree that was 20 or 30 feet away from him, and we

1 could see each other and we had different views of the
2 house, because of where the shrubs were and he could see
3 parts I couldn't see.

4 Q While you were there, you had shots from inside of
5 the house and radio traffic about officers taking fire. Can
6 you describe that?

7 A Yes. While standing over there, we heard several
8 volleys of shots from inside of the house during the whole
9 course of the time we were there. During one of them, I
10 heard another officer who I later found out was Mary Toops,
11 get on the air and say they had been shot at behind the
12 house. So at this point I realized for the first time that
13 he was not just shooting inside of the house, he was
14 actually shooting out trying to hit -- shoot at officers.

15 Q You got a firsthand view of when SERT, the armor
16 rolled up. Tell the folks about that.

17 A SERT folks showed up, there was a few of them
18 behind me where I was at. They would have the armored truck
19 pull in and to have me over the air say they were going to
20 move and everybody get hard cover. They believed there was
21 a possibility they might start taking fire as they got into
22 position. They moved the truck into more or less directly
23 in front of the house on the street, which was kind of
24 directly in front of me and a little off to my left. And
25 probably within just a couple of minutes of when they've

1 pulled up, we started getting rounds coming at us from
2 inside of the house to where we were standing.

3 Officer Keller was was behind the tree here, I was
4 here, and SERT truck was right here. And the bullets I
5 believe at that time were going over the SERT truck and in
6 between the two trees that Officer Keller and I were
7 standing in. I don't -- I'm sorry, go ahead.

8 Q Any other questions for Officer McKinlay?

9 GRAND JUROR: No.

10 MICHAEL FILBERT,
11 called as a witness,
12 being first duly sworn,
13 was examined and testified as follows:

14 EXAMINATION

15 BY MR. MOAWAD:

16 Q Tell these folks who you are.

17 A Michael Filbert, F-I-L-B-E-R-T, Portland Police
18 Bureau.

19 Q You worked November 23rd?

20 A Yes, sir.

21 Q Responded to this scene?

22 A Yes.

23 Q At Cherry Blossom. Tell the folks where you ended
24 up initially?

25 A I went to the back of the house through the -- I

1 was at 11025 Southeast Madison. I went through the backyard
2 of that house on Madison, and I had an eye on the southeast
3 corner of the house on Cherry Blossom.

4 Q I understand during the time you were stationed
5 there, you had heard some unique sounding reports -- firearm
6 reports; tell the folks about that.

7 A First shot we heard was from the southeast corner
8 of the house. There was a single shot, sounded to me like
9 maybe a nine millimeter. And then there was a pause for a
10 few minutes, until more shots started coming out. We could
11 hear a more high powered rifle or shotgun, something to that
12 effect.

13 Q And at some point you developed the belief that
14 officers were being fired on; how did you develop that
15 belief?

16 A I could hear the rounds coming our way. And I was
17 just returning to the backyard of the Madison house when the
18 rounds started coming. And I could hear rounds flying by
19 and hitting the house as I was entering there. Then Officer
20 Lemons had been right in front of me, and he turned around
21 started running back towards me. And then we both took off
22 to the other side of the house.

23 Q Onto Madison?

24 A Right.

25 Q Were you with the group that had contact with the

1 SERT officers that showed up?

2 A Yes.

3 Q You described one effort at loud hailing the
4 house. Tell the folks what that is and what you heard?

5 A We couldn't -- I couldn't hear exactly what they
6 were saying, because they were on the other side of him two
7 houses. We could just basically hear the loud hailing over
8 the PA announcing, this is Portland police, and from there I
9 don't know.

10 Q Okay. Fire ultimately started at the location.
11 Were you in a position to be able to see that?

12 A I could see smoke and I could see the flames just
13 over the top of the roof from behind the house where we
14 were.

15 Q Not in a position to see where or when it started
16 in relation to everything else?

17 A No.

18 Q Any other questions? You're free to go. Thank
19 you very much.

20

21 (Whereupon, Court adjourned at 5:00 p.m.)

22

23

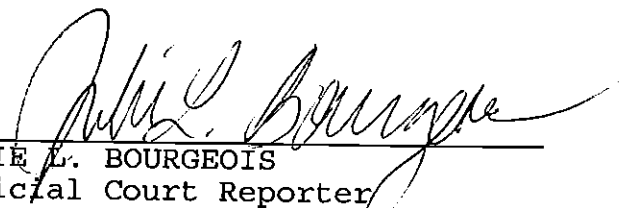
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1 STATE OF OREGON)
2 County of Multnomah) ss.

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 138 pages, is a
9 true and correct transcript of said oral proceedings.

10 Witness my hand in Portland, Oregon, this 9th day
11 of December, 2010.

12
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15 
16 _____
17 JULIE L. BOURGEOIS
18 Official Court Reporter
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1 MULTNOMAH COUNTY GRAND JURY

2 DEATH INVESTIGATION

3

4 Deceased: CRAIG BOEHLER)

5 Date of Incident: November 23, 2010)

6 Location: 11066 SE Cherry Blossom) DA Case No. 2207518-1

7 Drive, Portland, Oregon)

8

9

10

11 VOLUME 2

12

13

14 TRANSCRIPT OF PROCEEDINGS

15

16 BE IT REMEMBERED that the above-entitled Grand

17 Jury proceedings were held, commencing at the hour of 1:40

18 p.m. on December 7, 2010, at the Multnomah County

19

20

21

22 APPEARANCES

23

24 Mr. Greg Moawad and Ms. Amber Moser,

25 Deputy District Attorneys,

26 Appearing on behalf of the State.

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ESTELLE T. KEATING

Court Reporter

Multnomah County Courthouse

Portland, Oregon

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I N D E X

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KAREN GUNSON,

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. MOAWAD:

Q Have a seat there. And could you tell these folks who you are?

A My name is Dr. Karen Gunson, and I'm the State Medical Examiner for the State of Oregon.

Q Can I talk you into spelling your first and last so I have it correctly?

A My first is K-A-R-E-N, G-U-N-S-O-N.

Q Tell these folks a little bit about what your job duties are in your current assignment?

A As State Medical Examiner, I'm in charge of all death investigations in the State of Oregon. And we have a particular law that governs our office, which is ORS 146. So we are in charge of investigating all deaths that are non-natural, essentially. So homicides, suicides, accidents, drug overdose, death on the job and death in State custody are some of the cases that we look at; plus a lot of natural disease, people who die at home who are not under care of a physician. And so as a result of that, we do a lot of autopsies, and we spend a

1 lot of time arriving at the cause and manner of death on
2 the cases we examine.

3 Q You act in a supervisory capacity and a
4 practical capacity. Explain that a little bit to the
5 folks.

6 A As State Medical Examiner, I have administrative
7 duties other forensic pathologists don't have, but I'm
8 also first and foremost a forensic pathologist or
9 physician who does autopsies and works in the death
10 investigation system. So I still do about 180 to 200
11 cases a year in that capacity as well as my other duties.

12 Q And working backwards, let's talk a little bit
13 about your career. Can you tell these folks a little bit
14 about your background in the practice of forensic
15 pathology, when you got started, approximately how many
16 autopsies you performed a year, those sort of things?

17 A I graduated from Whitman College in Walla Walla,
18 Washington in 1976 with a Bachelor of Arts Degree in
19 Biology, and I have a Bachelor of Science Degree in
20 Zoology from Oregon State University, which I got in
21 1977. From 1977 to 1981 I went to medical school at
22 Oregon Health Sciences University, only at that time it
23 was called University of Oregon Medical School, that long
24 ago. And so I graduated from there in 1981 with my M.D.
25 Degree, and I was asked to stay on as a resident or

1 trainee in anatomic and clinical pathology.

2 An anatomic pathologist is somebody who looks at
3 tissues that are removed at the time of surgery, like for
4 biopsies, to diagnose cancer, things like that. They
5 also do autopsies on people who die in the hospital. And
6 a clinical pathologist is somebody who looks at blood,
7 urine and other bodily fluids to help diagnose disease in
8 people in the hospital. That training takes four years,
9 so I completed that in 1985.

10 In 1985, I went to work for the Oregon State
11 Medical Examiner's Office as a Deputy State Medical
12 Examiner. And I have been there ever since. So I have
13 been there for 25 years. And in 1999 I was made the
14 State Medical Examiner.

15 At the beginning of my tenure at the Medical
16 Examiner's Office, I did more autopsies than I do now. I
17 was doing somewhere around 200 cases a year, possibly a
18 few more. And so since I have been there for 25 years, I
19 have done somewhere around maybe 4,000, more than 4,000
20 autopsies.

21 Q I know this is not a fair question, but can you
22 give me an estimate of approximately how many autopsies
23 you have conducted that have involved gunfire?

24 A Oh, my. Well, we have about -- we have lots of
25 gunshot wound deaths during the year. A lot of them are

1 contact gunshot wounds, which are suicides. But most of
2 our homicides we have about 50 or 80 of them, depending
3 on the year, are gunshot cases, so hundreds, a couple --
4 three, four hundred, I think. A lot.

5 Q Okay. Fair enough.

6 And I understand you were assigned or assigned
7 yourself to do the postmortem for Mr. Boehler in this
8 case?

9 A Yes, sir.

10 Q And can you tell these folks, beginning with
11 sort of the outside process, the injuries you observed on
12 the outside of Mr. Boehler's body. I have given you some
13 photographs to use as you see fit. Can you describe what
14 was obvious to you, your trained eye, from the external
15 observation?

16 A Well, to begin with, Mr. Boehler had sustained
17 what we call "radiant heat injury". He hadn't actually
18 been engulfed in flame, but there had been very hot air
19 around him. So radiant heat injury will cause tanning of
20 the skin and really tightening up of the skin and distort
21 certain features.

22 So, for instance, the eyes become milky white
23 because of the heat, and the face will become quite tight
24 and stiff because of the heat. And the hair becomes
25 frizzled, and many times it will fall out because of that

1 heat artifact.

2 And also the clothing are burned from the body.
3 So he had shreds of burned tee shirt and burned sweat
4 pants and one slipper on his foot as well as some
5 undershorts there.

6 But he also had a belt around his waist that had
7 a holster in it. Now, the holster was empty. And the
8 belt was one of those plastic woven kind of belts, so it
9 sort of had fused.

10 He also had a meat cleaver in his pocket of his
11 pants. And so this is State's Exhibit 79, a picture of
12 the meat cleaver. Here's part of the pouch and holster
13 that was found around his waist.

14 Just to give you an idea about -- in State's
15 Exhibit 81, here's what I mean by "heat artifact". Of
16 course, with the heat there is a large deposition of soot
17 from the fire that was present.

18 I just want to show you this one picture, which
19 is State's Exhibit 82. The reason I want to show you
20 this is because one of the things that I noticed was that
21 he was a bright cherry pink. His skin, the color in the
22 skin, the post-mortem settling of the blood, was a bright
23 cherry pink color. And I would like to have you think
24 about that for a minute while we talk about other things.

25 I'm sorry. I didn't arrange these exactly when

1 I was out there, so I'm just going to kind of do that
2 here.

3 Now, in addition to the changes that he had,
4 uhm, as far as the heat artifact, he actually had four
5 entrance wounds from gunshot wounds. So we'll start with
6 one that we call gunshot wound number one, but that's
7 just for our purposes of identification.

8 And in State's Exhibit 90, you can see that
9 gunshot wound number one is located in the right side of
10 the chest, sort of at the junction of the chest and
11 abdomen, but lower in the chest. And I have it -- it's
12 framed here with this ruler. So you can see that there
13 is a gunshot wound there.

14 Q Sorry to interrupt you, but is there anything
15 about that gunshot wound that tells you the type of
16 ammunition used, consistent or inconsistent with the
17 other wounds, for example, or distance from which that
18 shot was fired?

19 A I'm glad you asked, because there are certain
20 features of this wound that tell us that this is a
21 contact gunshot wound. So, if we look at State's Exhibit
22 number 91, it's a close shot of this wound. And there
23 is -- there is soot, not from the fire, but from the
24 firing of the weapon. And it's been received into the
25 skin around the gunshot wound here.

1 And also, if you look right here, sort of at six
2 o'clock on the gunshot wound on this picture, there is a
3 little line of abrasion or skin scrape right there along
4 the edge of the wound, and that's a muzzle imprint where
5 the gun has been tightly put up against the skin. And as
6 the weapon is fired, there is an expansion of gas and it
7 causes the skin to bulge back against the end of the
8 weapon. So we call that a muzzle print. Of course,
9 there is this searing of powder around the wound. So
10 there is a contact gunshot wound in his chest.

11 Now, this wound is interesting in that -- this
12 bullet has an interesting path in that it never enters
13 into the right chest cavity. It just tracks around the
14 chest and exits in the back. And you can see the exit
15 wound here. I have two or three pictures of it, on the
16 right back.

17 Now, we're looking here are the buttocks down
18 here and the head would be here. And this is State's
19 Exhibit 83. And there is this large wound here. We're
20 going to ignore this one for a minute, but there is this
21 large wound right here. This is the exit wound from that
22 first gunshot wound.

23 Now, this gunshot wound is just essentially a
24 flesh wound in that it never touches anything that's
25 vital, no vital structure is hit. But it does exit. And

1 so it's going from front to back, if we're talking about
2 the path of the bullet going from front to back. Of
3 course, it goes a little bit right to left as it exits
4 out the back. And it's a very small amount above to
5 below, 46 inches there from 42 inches. So -- but this
6 wound has an entrance and an exit, and we don't get a
7 bullet from it.

8 Now, there is a gunshot wound entrance, which is
9 right next to this wound. Here's our exit, this large
10 wound. But here we have another entrance wound. And if
11 we look at picture 84 -- I think perhaps 85 might even be
12 better. If we look at this picture, you can see once
13 again -- it's a little bit more cleaned up, and you can
14 see the exit wound here and this much smaller entrance
15 wound. And as a general rule of thumb --

16 JUROR: Number two?

17 A This would be number two.

18 As a rule of thumb, an exit wound is larger than
19 entrance. Not always true, but as a general rule.

20 This wound goes into the soft tissue behind the
21 chest cavity and actually enters into the abdomen just
22 left of the spinal column. And it's about at what we
23 call lumbar one and two. So it's just below the rib
24 cage, where the rib cage starts. And it enters into the
25 left chest -- I'm sorry, the left abdomen just beside

1 that spinal column.

2 Because it was so close to the spinal column, I
3 took out the vertebrae so I could see what the spinal
4 cord looked like, and at that level it's really not the
5 true spinal cord. It's something -- it's all these
6 strands of nerves that are going down to the legs called
7 the cauda equina or horse's tail. I was looking to see
8 whether there was any injury to them.

9 Now, I did not find any bleeding there and I
10 didn't find any of them had been transected. The bullet
11 hadn't gone through that area, but it passed very close
12 to the spinal cord in that area. Sometimes when that
13 happens, we get something called "spinal shock", where it
14 affects the nerves because of the passage of the bullet,
15 because there is a temporary cavity and it shocks the
16 spinal cord. So we can never be sure if we don't see
17 injury, but there is that possibility that we had some
18 cord shock because of the passage of the bullet.

19 Now, this bullet ended up going through loops of
20 small bowel, and it grazed the large bowel here on the
21 left side and it damaged some of the mesentery, which is
22 that part -- it's like a fine mesh that holds all the
23 bowel in place. And it also has the blood vessels in it.

24 There was about 400 cc's or a little less than a
25 pint of blood, maybe right around a cup-and-a-half of

1 blood, in the abdominal cavity. It didn't hit the aorta,
2 the big vessel. It didn't hit like a kidney or anything
3 like that. It just hit a few loops of small bowel. And
4 it exited over here on the left side of the body.

5 Now, this particular bullet -- of course, it's
6 gone now, so I can't tell you exactly what it is, but the
7 exit wounds are really two wounds, one larger and one
8 smaller. So it's clear that the bullet as it passes
9 through the body is splitting up. As it exits, it also
10 fractures ribs 11 and 10 on the right, and it causes
11 quite a gaping hole in the chest wall as it exits.

12 Now, there is a -- what we would call gunshot
13 wound number three -- oh, by the way, here is the -- here
14 are the exit wounds here. And this is State's Exhibit
15 88. And you can see there is a large wound and a small
16 wound here on the left side of the body.

17 I don't think I have a picture of our third
18 gunshot wound, but the third gunshot wound is also on the
19 right side of the body. And it is sort of at the
20 junction of the lower back and the upper part of the
21 buttock. And this is a very irregular gunshot wound, and
22 it is surrounded by abrasions and lacerations. And a
23 laceration is a skin split. And abrasions, of course, is
24 a skin scrape. And that's shrapnel from the bullet. So
25 this irregular gunshot wound that's present in the right

1 hip area is actually what we call an atypical gunshot
2 wound, and that's because it has gone through an
3 intermediate target.

4 So in this case I think that the intermediate
5 target was probably a window. And as the bullet passes
6 through that window, instead of going in a straight line
7 and turning on its long axis, it begins to tumble. And
8 as it tumbles and then strikes the skin, it causes a very
9 irregular entrance wound. And also because of that
10 tumbling, it's starting to break up. There are small
11 bits of metal that are coming off of it.

12 When we have an intermediate target like that, a
13 lot of the kinetic energy of the bullet is lost going
14 through the target, and it never exits the body after it
15 does that. So this bullet hits the body, it's breaking
16 up even as it does it, and as I'm looking at the X-rays
17 of that area, I can see a fine spray of metal into the
18 soft tissue of the buttock area. Once again, this is a
19 bullet that does not strike any vital structures.

20 And finally, we have a large gaping gunshot
21 wound that's present in the arm, in the right arm.
22 State's Exhibit 93 shows this gunshot wound. And this
23 picture, we're looking at it from the back and side. You
24 can see it's quite large. This is another example of an
25 atypical gunshot wound where the bullet has gone through

1 an intermediate target. It strikes the skin, and
2 surrounding the area where the large wound is, there is a
3 stippling pattern as well as fragments of bullet and
4 possibly glass, because this has gone through glass once
5 again.

6 And this actually exits slightly -- and there is
7 a little bit of abrasion on the skin on the side of the
8 chest wall, but it does cause a shattering fracture of
9 the -- past this around here -- shattering fracture of
10 the right humerus, which is the big bone in your upper
11 arm. So here you can see the X-ray we have taken with
12 that fracture. And you can see all these little dots
13 here. Those are the pieces of shrapnel or bullet that
14 have just shattered or broken up in the body.

15 JUROR: Where did that enter at?

16 A It entered here, and some of the shrapnel exited
17 here. But most of it is scattered about in the arm. So
18 sort of on the back side of the arm area, and then it
19 comes out over -- over towards the middle part. It's a
20 little bit hard -- the pictures, he is laying on his
21 stomach when we took those pictures. The body is laying
22 on the stomach.

23 BY MR. MOAWAD:

24 Q Let me ask you, Doctor: We have been through
25 the wounds, the firearm wounds. I want to take you back

1 to wound number one. You referred to that as a contact
2 wound and during your testimony said it was tight and
3 pressed against the body. Of course, there is always
4 shades of gray, but when you say it's a contact wound and
5 tightly pressed, you mean exactly that, is that accurate?

6 A Yeah, at least a portion. Now, I have to say
7 there is some searing around the edge, so it could be
8 that maybe one little part of the muzzle of the weapon is
9 not against the skin, but we know that one part is
10 because we can see the muzzle imprint there.

11 Q So we're not talking about it might be two
12 inches from the body. We're talking when the gun was
13 fired, the gun was actually pressed against the body?

14 A Yes. And finally -- okay. So now we have got
15 all these gunshot wounds. We have got one in the arm.
16 We have one in the chest, but doesn't go through anything
17 vital. We have one in the buttock area, but doesn't go
18 through anything vital. And of course we have the one in
19 the abdomen, but that one doesn't cause enough bleeding
20 to cause death. So in my opinion, none of these gunshot
21 wounds caused his death. They are there, certainly would
22 have caused pain, but they don't cause his death.

23 But remember that I talked to you about how
24 bright pink his color was and his blood is bright pink
25 and his muscles are bright pink? And when we look at his

1 airways, they are full of soot. And if you look at
2 this -- I'm sorry, this is sort of a bloody picture, but
3 I'm going to show it to you anyway. This is his larynx.
4 This is after I have taken his voicebox out and I have
5 opened it up from behind, so you are looking like from
6 behind to ahead -- we're looking from behind. And you
7 see all this black stuff in there? That's soot. And the
8 only way he can get soot in his airway is to be breathing
9 smoke, breathing smoke from the fire.

10 So what we did was a special test for carbon
11 monoxide of the blood. And it's a concentration of how
12 much carbon monoxide is attached to the red blood cells.
13 And he has 49% and 49% is a lethal level of carbon
14 monoxide. So he died of carbon monoxide poisoning. He
15 did not die from his gunshot wounds.

16 Q Do we have any results at this point back for
17 blood alcohol level or drugs?

18 A I do not, because I sort of pulled all the stops
19 trying to get the carbon monoxide level right away for
20 the cause of death, but I don't have the actual
21 toxicology yet for him.

22 MR. MOAWAD: Do you folks have questions for
23 Dr. Gunson?

24 JUROR: In terms of these wounds, wouldn't -- it
25 sounds like you are saying the gunshot wounds weren't the

1 cause of death, but would they have incapacitated him
2 enough that he would be -- instead of running out of the
3 burning building, he was -- had to be in there breathing
4 in and asphyxiating from that?

5 A None of them actually hit the brain or heart
6 that would have caused him to stop moving. I am worried
7 that the one that went through his abdomen -- and I
8 talked about how close it passed by the spinal cord --
9 whether or not that might have caused what we talked
10 about, the cord shock, where he would have been
11 temporarily incapacitated so he couldn't move his lower
12 extremities. And certainly -- it also depends on the
13 tolerance to pain and so forth, because this wound in his
14 arm would have -- obviously caused a shattering fracture
15 of the humerus, which would have been extremely painful
16 and might have caused him to lose consciousness as well.

17 But I can't say any of that for sure. It would
18 have -- it would have to depend on other witnesses and
19 what they said about what happened, what they saw after
20 these shots were fired.

21 JUROR: You had mentioned 1.5 cups of blood had
22 gathered in one spot. Where did the blood gather?

23 A That was in the abdomen. And most of it was
24 concentrated on the left, but it was present throughout
25 the abdomen. And when we talk about people dying from

1 blood loss, we really need to have a quarter of their
2 blood volume gone. In a man of this size, that would be
3 about five liters or so. So we would be looking at two
4 or three times what we found in his abdomen. It really
5 would have been considered pretty innocuous if you were
6 talking about a trauma case they were taking care of at
7 Emmanuel or something. They probably would have given
8 him one unit in order to handle that.

9 JUROR: Do you ever know how old gunshot wounds
10 are? Could you tell which one was done first besides
11 which one was done like the last one?

12 A That is something we can't tell, and we have
13 never been able -- unless there is a witness who can say
14 this is the order they came in, it's very rare that we
15 can tell you what the order is that they came in, because
16 they all look pretty -- they are all coming within
17 minutes -- within maybe even seconds of each other.

18 JUROR: Did I hear you correctly without the
19 round we can't tell what caliber made the wound?

20 A That's right. Now, I can tell you the one in
21 his chest -- I mean, we can vaguely say the one in his
22 chest is certainly not from a .22 or .25 or something
23 like that. It's got to be a larger caliber.

24 MR. MOAWAD: .30, maybe 4 --

25 A A .38, 9mm, something like that. The other ones

1 that are atypical, it's hard for me to tell, very
2 difficult. Because they are tumbling I can't get a good
3 size. One of them is large.

4 JUROR: The exit wounds there is bringing out
5 some bone mass?

6 A Yeah.

7 JUROR: Number two, did I hear correctly you
8 were asked concerning a blood check for alcohol, drugs,
9 it has not been completed as of yet?

10 A That's correct. It hasn't been completed. It's
11 in the works.

12 MR. MOAWAD: Thank you.

13 MEREDITH HOPPER,

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

17 **EXAMINATION**

18 BY MR. MOAWAD:

19 Q Can you tell us these folks who you are?

20 A My name is Meredith Hopper, H-O-P-P-E-R. I'm a
21 detective with the Portland Police.

22 Q And I understand you responded to this scene
23 after the fire was extinguished due to a rather unique
24 set of circumstances. Can you tell these folks about
25 that?

1 A Correct. One of the sergeants on scene called
2 me by cell phone, asked that I return to the house
3 because the fire investigators had located what they
4 believed to be a hand grenade under the arm of the
5 deceased in the house.

6 Q And did you have an opportunity to view that
7 item?

8 A Yes, I did. I spoke with the fire investigator,
9 who was actually in the house looking over the fire. And
10 he took a digital photograph of that hand grenade. I
11 looked at it. I confirmed that it appeared to be
12 something that looked like a hand grenade.

13 I entered the home, and I visually inspected it
14 and I realized what I believed to be a hand grenade was
15 in a type of -- kind of like either a fanny pack or some
16 kind of satchel-type thing is the best way I can describe
17 it.

18 Q Is that item, satchel or fanny pack, an item
19 that Mr. Boehler was wearing?

20 A I can't confirm whether he was wearing it or
21 not. Where he was laying, it was under his shoulder
22 area. So he very well could have been wearing it. I
23 couldn't tell if he was wearing it. It was almost like
24 he laid back and it was behind his shoulder area. So he
25 definitely could have been at some point.

1 Q What portion of the grenade was visible to you?

2 A It was kind of the area where the pin goes in
3 and the spoon that comes over the top of it was visible
4 and probably about half an inch of the body of the
5 grenade was visible.

6 Q And what are the concerns for first responders
7 in terms of showing up at a scene like this where you
8 have an item like that as far as your safety?

9 A Well, obviously, I mean, if it is a true hand
10 grenade, it's somewhat volatile, it can be if the pin
11 isn't accurately secured; or oftentimes we see hand
12 grenades that are what we call improvised to where they
13 can be kind of manipulated to where, technically, if the
14 pin is in the hole, so to speak, and the spoon is on,
15 it's safe. Sometimes people like to improvise them to
16 where it may appear the pin is in and spoon is on, but in
17 fact it's not. I wasn't sure at that point if it was a
18 true hand grenade and it was safe or if it had been
19 improvised.

20 Q How did you go about discovering what it was?

21 A I exited the scene. I called for a bomb
22 technician to arrive with me. I discussed the
23 circumstances of what I had observed initially with him.
24 We came up with a plan. We actually removed the satchel
25 from underneath the deceased very carefully. And upon

1 further examination, we realized the hand grenade
2 actually had a hole drilled in the bottom of it and I
3 could see inside and there was no explosives, et cetera,
4 inside.

5 Q And just for descriptive purposes, is this the
6 type of thing you might find in the Army-Navy surplus, a
7 desk-weight type deal?

8 A Yeah, it could be. Usually, what they do if its
9 a souvenir-type thing, they will drill out the hole and
10 people will put them on their desk. I have one on my
11 desk -- kind of a novelty type item. They look real and
12 it potentially could have been a real hand grenade at
13 some point in time, but the bottom had been drilled out
14 of it.

15 Q Any questions for the detective?

16 JUROR: Did you take any photographs of this
17 hand grenade. Is it a relatively modern hand grenade,
18 not a pineapple?

19 A It's a pineapple, not baseball grenade now.

20 BY MR. MOAWAD:

21 Q Wouldn't be easily confused with a smoke
22 grenade?

23 A No, it wouldn't.

24 Q Thank you.

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TODD GRADWAHL,

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. MOAWAD:

Q Tell these folks who you are.

A My name is Todd Gradwahl. My first name is T-O-D-D; last name is G-R-A-D-W-A-H-L, a detective with the Portland Police Bureau. I have been a detective for over three years. I have been with the Portland Police Bureau for 16 years, and I have been on the Special Emergency Reaction Team, I believe, for at least over ten years or eleven years at this point.

Q You are the first SERT member that we've had in here, so you go ahead and defined what SERT stands for. Tell these folks a little bit about what SERT is and how it's used.

A SERT is -- we have two sergeants. We have 24 operators usually. I'll get more into the operators. Then we have K-9 officers assigned to our unit. We have Intel officers assigned to our unit.

Q What does Intel stand for?

A Intelligence. So they are officers that are assigned to our team to gather data and information. If

1 we're going to do a search warrant, they will try to get
2 phone numbers inside the house, find a little background
3 on who they are, if they have a criminal history. They
4 will sometimes work with other agencies. Through the
5 phone or radio they will give us like updates, "The
6 suspect has now turned on a porch light." This is
7 information valuable to us, they will feed to us for
8 example. They will do a lot more, but that's some of the
9 things they do.

10 Q Can you tell me a little bit more how being
11 involved with SERT is different from your average patrol
12 officer? Yesterday we heard from a lot of patrol
13 officers, respond in patrol districts to that sort of
14 thing. How is SERT different from that?

15 A SERT is different in the fact that this group of
16 individuals, I refer to as the SERT Team, train. More
17 often than not we train every other week, on a Wednesday,
18 Thursday. So usually it comes out to about four days a
19 month we are doing training, sometimes more. Sometimes
20 our training days get cut short because we get called in
21 to do something else, but we work together as a team.

22 Common goal in some of the training we do is for
23 high-risk search warrants. Some are tactical call-outs
24 like the incident that you are all hearing about right
25 now. We also provide dignitary protection and various

1 other things.

2 The way we're different is SERT members, they
3 will -- it will usually be a pool of people that put in,
4 usually test about every two years. The turnover is not
5 huge. So we'll usually bring on a couple people every
6 couple years. They will join the team. There is a
7 try-out process they go through; a selection process,
8 interviews, numerous obstacles they have to go through to
9 get on the team. It's usually about a three-day process.

10 Once they are on the team, like I say, this is
11 when the training really kicks in. And on those train
12 days, usually there is one range day every two weeks,
13 then one practical scenario-based training or search
14 warrant training where we are really working on the
15 skills or thought process that goes into what we may see
16 in the real world, whether it's a hostage situation, a
17 high-risk search warrant. We'll just repeat and practice
18 over and over and try to be proficient in our skills as a
19 team.

20 Street officers have very good skills. There is
21 lots of talent out there, but we're different because we
22 come from all over the city, different divisions,
23 detectives. Some guys work the Drug Unit. Some guys
24 work the Gang Unit -- show up together, train together
25 and we're able to work together with armored vehicles,

1 K-9's.

2 Q So that would be the next question. In terms of
3 obviously SERT is a volunteer unit you both have to
4 express an interest and go through the testing process.
5 You don't get assigned to SERT, for example?

6 A Correct.

7 Q And then on top of that, you folks also have day
8 jobs, if you will, in the Police Bureau in terms of
9 either patrol or detectives, those sort of things; is
10 that accurate?

11 A Correct. Our two sergeants on the team are
12 full-time SERT Team members, you know. As you can
13 imagine, there is lots of paperwork and meetings and
14 things like that they have to deal with. You will, I
15 believe, talk to both of them throughout today, at least
16 one of them. But they are the full-time people.

17 The rest of us, right, we have a day job. And
18 it comes out to about 75% or probably even lower, maybe
19 60% with all the other stuff we do; like I'm a Gang
20 Detective. I'll do that 60% of the time. About 40% of
21 the time I have SERT responsibilities.

22 Even within the SERT Team we have specialized.
23 Like I'm on our rope cadre, which means I'm a rappel
24 master. So if it's a situation we need to get down in
25 one of these buildings, I'm going to be one of the ones

1 setting up the ropes, one of the ones going down the
2 ropes with the group. We have about five on the team.
3 We have guys that train in stuff that would be on the
4 water. Some guys train on stuff that would be like if we
5 need to blow a hole in this wall to get through this
6 wall. We have specialized people even within our team.

7 Q How does SERT get activated in the sense of
8 something is going on in the city and we need a team of
9 folks to appear? How does word get out to you either in
10 your day job or your home that you need to go someplace?

11 A So it kind of either happens two ways. It's
12 going to be a planned mission, we get heads up ahead of
13 time. We all carry pagers and it's going to be,
14 "Tomorrow we're doing a search warrant. This is what
15 time we're going to meet to brief it." Then we'll go do
16 it.

17 The other way is we'll get activated, which is
18 how we refer to it as that. We'll be at home. Our pager
19 will go off and it will show an address to go to and a
20 brief description of what happened. The way that gets
21 activated is usually through the Bureau of Emergency
22 Communications. And what will happen is the
23 highest-ranking officer on scene, which oftentimes is a
24 sergeant, will be at the scene and realize things are
25 going bad or this fits the SERT criteria, either an armed

1 barricaded person in a residence, a hostage situation.
2 You know, maybe the guy is saying he has explosives,
3 things of that nature, or they feel we need to call the
4 Special Emergency Reaction Team, SERT, to deal with this
5 issue because we're not equipped to handle it as it
6 stands right now. Generally, it's the highest-ranking
7 officer on scene that can make that decision.

8 Q Then let's talk about November 23rd. You
9 obviously at least were working in a SERT capacity that
10 day, responded to this location. Tell these folks a
11 little bit about your initial page-out and then how you
12 gather information even while you are going to a location
13 to respond to a call?

14 A On this incident, which is similar to a lot of
15 these incidents, at home -- at home in bed, or at home
16 mowing the lawn, whatever it is, the pager goes off; look
17 at the pager, see what it is. This one showed an address
18 near 110th and Cherry Blossom. I can't remember exactly
19 what it said. Reports of shots fired and then it gives
20 us a staging location, where do you want us to go right
21 now? So it said to, I think, come to 106th and Cherry
22 Blossom, something like that. I can't remember if I
23 gathered that later. Anyway, the initial page comes out,
24 which means "Hurry up, get going, get to a radio as quick
25 as you can and get coming this way."

1 And this night it was icy out. It was slick
2 out. Everybody was being more cautious, took a little
3 bit longer to get there. But once I started getting on
4 the radio, I believe I was listening to our SERT channel
5 for a little bit. Then I started listening to East
6 Dispatch.

7 Q Where are you getting on the radio?

8 A I have a car that's a city car that has a radio
9 actually in it, just a police radio like you will see
10 with the mic that comes up. Then I have a hand-held pack
11 set, like the kind you carry on your belt that I have
12 also.

13 On this one, I know that I was at least
14 listening to the SERT channel that we use, which SERT
15 uses that. EDU, which is Explosive Disposal Unit, uses
16 it and Hostage Negotiation Team also uses the same
17 channel. So this is the tactical channel where we can
18 talk without interrupting the main call that's going on.

19 Got on the radio, started listening in, realized
20 that there had been shots inside the house, and that's
21 why the police responded; and that police had showed up
22 and the police were getting shot at was the information I
23 am collecting or at least in my mind what I'm collecting.

24 There was confusion on -- I think amongst some
25 of us at that point -- at least for myself I can speak

1 on -- whether the person inside was still by himself or
2 was there more than one person still inside? That's one
3 of the first things that go through our mind. Do we have
4 a hostage situation, or do we have somebody barricaded in
5 the house? Which when I say, "barricaded", refusing to
6 come out of the house that's still armed and a threat.
7 So that's some of the things I was trying to figure out
8 myself.

9 Part way through the call, I believe, Officer
10 Gore, one of our K-9 officers assigned to our Special
11 Emergency Reaction Team, said he thought everybody was
12 out except for the one person was still left inside.

13 Then some information came on that the suspect's
14 father believed he had shot the suspect. But yet
15 officers were still -- this guy seemed to be moving
16 freely in the house. So my mind was thinking if he's
17 hit, he's not hit real bad because he is still moving
18 through the house. And the information, you know -- I
19 think there is another update that everybody is out of
20 the house except him at that point.

21 Q We're going to talk to some of the command staff
22 shortly about decision-making in terms of planning how to
23 engage Mr. Boehler. But can you talk to us specifically
24 about what role you were assigned and how you ended up
25 ultimately engaging him?

1 A The role I was assigned, as soon as I got there
2 started getting my gear on -- I was one of the first ones
3 there -- and there was a plan to deploy some sniper
4 observers on the outside.

5 At this point, containment is one of our biggest
6 concerns. If this guy gets out of a back window, back
7 door, then we have him in the blocks and we don't know
8 where he's at and it makes it more dangerous to
9 everybody. At this point, if he's in there, we wanted to
10 contain him in there until we got eyes on the place so we
11 could then call him out.

12 So we made a plan to start sending some people
13 out on foot, you know, that were using camouflage as
14 concealment. And there are skills that they train in to
15 get eyes on the back of the place.

16 Q Let me stop you there. Not to interrupt, but I
17 want to follow up. We saw one picture of, for example,
18 Officer Toops yesterday, who was dressed in typical
19 Portland blue uniform. We're going to see a picture of
20 one of the SERT guys dressed in camouflage. Can you
21 explain a little bit about why the different attire,
22 different purposes and how you were dressed that day as
23 well?

24 A Okay. The different purpose, uniform officer
25 wearing the blue uniform, gold badge, all those things,

1 that's what you want for a uniform officer. You know,
2 for the majority of the time you want that visibility.
3 That if you are walking down a sidewalk and you see --
4 you need help, you can go approach them. You know they
5 are a police officer by their attire.

6 When we show up in these type of situations
7 where we have somebody that's armed and we already know
8 they have been shooting at the police, we want to use
9 concealment. We have concealment, which means if
10 somebody shoots a gun, concealment is not going to stop
11 that bullet from hitting us.

12 Cover is the other thing, which is even better,
13 which is if they do shoot, this is something that's going
14 to maybe stop that bullet, like an armored vehicle.

15 Generally, our sniper observers, containment,
16 inner perimeter -- these are some of the terms you may
17 hear -- those people go out, they don't have the luxury
18 of riding in armored vehicles up to one of these
19 locations where somebody is shooting. They are going to
20 have to rely on their skills of dressing in camouflage
21 attire to blend in with their environment and move slow,
22 not be backlit by the light. So they are knowing that
23 they are exposed at all times, generally. You know,
24 maybe -- they can maybe be in a house looking through a
25 window, but the glass isn't going to stop a threat. But

1 they are relying on their skills in concealing
2 themselves.

3 Q How were you dressed that day?

4 A I was dressed in green -- or like kind of a
5 mint-green pant. I had on a brown and green vest and
6 lighter kind of a khaki with a lighter green. I
7 believe -- you know, then a helmet and I believe I had
8 worn a rain jacket or camouflage rain coat over the top
9 of all that.

10 Q What were you tasked with specifically in
11 engaging Mr. Boehler?

12 A I was tasked in getting in the first armored
13 vehicle, which we referred to as our Bear truck, which is
14 a bigger piece of armor, a diesel truck, 26,000 pounds,
15 big armored vehicle. Once the other guys were deployed
16 to drive up front, I was assigned to be one of the
17 persons on the team to deploy gas, if need be. And we
18 had a gas plan in place and the authority to -- we could
19 put gas in the house if he started firing at our
20 positions once we got up there.

21 Q So let me refer to that, if I could, just for my
22 purposes, as plan B. If he begins firing, you are going
23 to deploy gas. What was plan A?

24 A Plan A was, like I said, to get this place
25 contained, you know, get our threat neutralized in one

1 location so he can't come out, at least get eyes on all
2 sides so if we see him come to a window, we can give
3 updates, "He's in the upper level now, he's in the lower
4 level," and then eventually -- you know, that was kind of
5 the immediate action to get this place contained so he
6 can't get into a neighbor's house or whatever it may be.
7 But let's get eyes on it, get these uniform officers that
8 are out there that have been out there for quite
9 sometime, already taken fire, they don't have the luxury
10 of camouflage, armored vehicles, let's get them to safety
11 and out of that area.

12 Q Obviously you are hoping plan A ultimately will
13 be surrender, is that fair to say?

14 A Oh, correct.

15 Q Plan A didn't come to fruition. Instead it
16 sounded like plan B. Talk to these folks a little bit
17 about rolling up. We have the negotiator out here, I
18 believe, as well, that will talk about the communication.
19 But talk about your observations, what you are feeling,
20 what you are thinking, then ultimately the gas
21 deployment?

22 A My personal observations, we left our staging
23 location down a little bit to the west, I guess we'll
24 say. As we went to pull up in front of the house, I was
25 looking out the glass windows that we have, the ballistic

1 windows, and I noticed that the garage door was open on
2 the house, had a lower garage door. And then I noticed
3 in one of the big picture windows on the second level
4 above the garage, I could see somebody moving from left
5 to right, stand in front of the window clearly
6 silhouetted, had the blinds that run horizontal, they
7 were, you know, cracked that you could see the silhouette
8 of a person come stand in front of that window. And so
9 other people saw it, were talking about that. "Okay he's
10 at the window." I think somebody broadcast on the radio.

11 Then as we started to try to get our piece of
12 armor in position that we could get out the side door
13 without being exposed to him, we had to kind of turn it
14 around, information I heard over the radio was he's in
15 the basement -- or in the garage. Somebody said he had a
16 gun and he's trying to close the garage door, but the
17 garage door went back up.

18 So, at that point, he was out of peoples' sight
19 from what I knew until we got out of our armored vehicle
20 and got my gas gun, getting ready to do something. We
21 had to make a plan if he's going to come out and
22 surrender where we're going to have him come out and take
23 him into custody.

24 And then shortly after that I started hearing
25 gunshots, so we all, you know, made sure we were behind

1 the armor. It seemed like there was several gunshots.
2 To me it seemed like it was around ten gunshots possibly
3 being fired.

4 And then I heard over the radio that he is
5 firing at the Bear truck. So I knew that, okay, I
6 already have the authority to put gas in this place. At
7 this point, because he's shooting at us, but we also
8 didn't want to stick our heads out from behind the armor.
9 So I ended up climbing up into the armored vehicle. We
10 have these ports, I guess, gun ports about that big,
11 probably about six-inch circles or maybe a little
12 smaller, that I opened up and I launched a warm gas
13 canister in the upper right window above the garage, the
14 same window that I had seen him in earlier.

15 Q Let me ask you -- we're going to get that with
16 Lieb here in a moment. But describe for us briefly what
17 is warm gas?

18 A Warm gas is -- we have these smokeless --
19 Sergeant Lieb is probably going to talk more about those,
20 but there is a pin -- it's called a "spoon" is what we
21 call it, but kind of a plunger that comes up. Once you
22 pull that pin out, let go, that activates the canister to
23 start producing a smoke. It looks like a smoke. We call
24 it warm gas, because that's the way it comes out. It's
25 heat that projects that smoke out of this gas canister, I

1 guess we'll say.

2 Q How are those canisters deployed?

3 A They are deployed -- just pump, twelve-gauge
4 shotgun, has a special attachment on the barrel that you
5 drop this canister into it, you load one of these special
6 launching cartridges that create enough pressure that it
7 shoots that canister out, and then, you know, it comes
8 out. And it depends on, you know, the angle and the
9 velocity that you are shooting it with.

10 Q What is the purpose behind the deploying gas?

11 A The purpose behind deploying gas is one thing it
12 obstructs the subject's vision. It impairs them, makes
13 them start coughing, their nose run.

14 JUROR: They are tear gassed?

15 A Their skin kind of burns, not like bubbling
16 burn, but you know, it's hot. We go through some
17 training and, yeah, it's an irritation at that time. So
18 once you are exposed, you probably want to take a shower
19 if you got a big dose of it. But it's just to limit
20 their vision and capabilities to continuing firing at us
21 is the main purpose.

22 BY MR. MOAWAD:

23 Q How many canisters of warm gas did you deploy?

24 A I initially deployed the one above the garage in
25 the upper right window, and then I had to reload. And

1 Officer Gradwahl -- another Gradwahl, my brother, Chad
2 Gradwahl -- he then deployed some cold gas, which is a
3 different launching system. You are going to have him?

4 Q He is going to talk about that.

5 A He will talk about that.

6 I went back, because we tried to share this same
7 small port. I tried to put one in the garage where we
8 had seen him earlier. There was a car in the garage. So
9 when it hit the back bumper of the car, it bounced out a
10 little bit, by that back area of the garage.

11 That was my initial gas response until after I
12 heard, you know, a short time after that sniper shot
13 taken -- or I heard gunshots and "Sniper shot taken," and
14 they believed the suspect went down. And a short time
15 after that, Sergeant Lieb wanted me to put more gas in a
16 different section of the house that we hadn't gotten gas
17 in yet on the upper levels where I tried shooting that
18 warm gas at, the upper left window on the front of the
19 house.

20 Q At some point, things fell quiet in terms of
21 gunshots?

22 A Right.

23 Q Do you recall having vision of the house when
24 the fire started?

25 A Yes.

1 Q And where's the first place in the house that
2 you visibly saw a fire or smoke?

3 A If you are looking at the front of the house, it
4 would be the lower left is where I believe I first
5 started seeing fire in that area.

6 Q You deployed gas into the garage area and into
7 the upper right?

8 A Yes. But then I later deployed more gas in the
9 upper left.

10 Q And you said the fire that you observed started
11 was in the lower left?

12 A Yes.

13 Q Can you give us any sense of time between gas
14 being sent into the house and the fire starting?

15 A The initial gas volume when I fired that first
16 round, there was that one. Then I bet it was maybe even
17 ten minutes later before I did my second volley of gas,
18 which the first one hit below that top left window and
19 dropped straight down. Then the next one went in the top
20 left window. I'm guessing it was somewhere in the
21 ten-minute mark. I haven't looked at the call yet to
22 verify that.

23 Then another gas team -- or other team members
24 deployed some other gas. And it was maybe two or three
25 minutes after that maybe that we started seeing some

1 flames.

2 Q Okay. Any other questions for Detective
3 Gradwahl?

4 JUROR: I just wondered if you could recap where
5 the warm gas canisters were fired and then the cold gas
6 that you mentioned?

7 A The cold gas, I didn't launch that, so I
8 probably wouldn't be the best to talk, but I can talk
9 about the ones that I fired. It would make it easier if
10 I had one of the pictures to go off of, but I could
11 definitely draw.

12 This is the garage, where it was closed. It's
13 hard to tell from this picture, but I think -- I don't
14 even want to say. It's hard to tell from this picture.
15 But I think this is the door area. Exhibit 1, is that
16 it?

17 BY MR. MOAWAD:

18 Q Yes.

19 A So, my first round went in this window up here.
20 My second round hit -- there is a -- the second
21 round hit a car right here and bounced in this area, I'm
22 referring to a car in the open garage bay.

23 Then there is the break in the action after the
24 sniper shot was taken. My third round hit the -- just
25 below the top left window and dropped down or bounced

1 back several feet.

2 My fourth round went through the top left
3 window.

4 JUROR: I missed the third round.

5 A Right here below the top left window.

6 BY MR. MOAWAD:

7 Q Didn't make it into the house?

8 A Didn't make it in, no.

9 JUROR: And you think that you saw the fire in
10 that bottom?

11 A That's where I remember seeing a fire, in this
12 area. There are some big bushes. You might see in the
13 picture there are some big bushes. That is actually
14 after the Satellite I think or the Google, so the bushes
15 may or may not be exactly like that right now. I don't
16 know what time of year that was taken. But, yeah, this
17 area I remember seeing a fire, down in that lower left.

18 MR. MOAWAD: Thank you.

19

20 CHAD GRADWAHL,

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

24 **EXAMINATION**

25 BY MR. MOAWAD:

1 Q Tell these folks who you are?

2 A Officer Chad Gradwahl, G-R-A-D-W-A-H-L.

3 Q Tell these folks what you do for a living?

4 A I work for the Portland Police Bureau.

5 Q And where are you assigned currently?

6 A Gang Enforcement.

7 Q I understand you also have some SERT capability
8 as well or assignment as well?

9 A Yes.

10 Q And how long have you worked with SERT?

11 A For five years.

12 Q And I understand you responded to this Cherry
13 Blossom incident. Tell these folks a little bit about --
14 we heard from Detective Gradwahl about typically these
15 type of call-outs; listening to the radio on the way in,
16 gathering information, that sort of thing; is that the
17 same thing you engaged in on your way out there or were
18 you first briefed on arrival?

19 A No. I was listening to the radio on the way in
20 as well.

21 Q Approximately how long did you have radio access
22 before arriving at the location?

23 A Oh, probably ten to 15 minutes.

24 Q And you were also given a role in the Bear truck
25 I believe in deploying gas if Mr. Boehler ended up

1 shooting at the armored vehicle? We heard obviously from
2 Detective Gradwahl that occurred. Can you tell these
3 folks a little bit about the type of gas you were armed
4 with?

5 A I was shooting what we call a "cold" gas. It's
6 a launchable cartridge that you shoot, and then when it
7 hits something hard, it releases a liquid CS gas.

8 Q And the launch vehicle, as opposed to being a
9 pump twelve-gauge shotgun, what does the launch vehicle
10 for cold gas look like?

11 A It's approximately two feet long or so, and it's
12 got a cylinder that has six rounds in the cylinder. And
13 then you put the cartridges, they are about six inches
14 long, into the cylinder, fire them.

15 Q In terms of uses, how does cold gas differ from
16 warm gas?

17 A Uhm, the cold gas, uhm, is a liquid. It has a
18 small payload or a small amount of liquid in it. So it
19 has to hit something hard to release that liquid.

20 Where the warm gas, like Detective Gradwahl
21 shot, is an actual canister, you know, that when it's
22 working just releases gas from that canister, more of
23 like a smoke-type of gas.

24 Q In terms of reliability for deploying gas, is
25 warm gas more reliable than cold gas?

1 A Yes, as far as its effectiveness.

2 Q Talk to us then a little bit about your
3 involvement in the gas blend. You are in the Bear. It's
4 been fired upon. Talk to us about your reaction to that
5 and what you ended up doing?

6 A Uhm, Detective Gradwahl and I used what we call
7 a "port hole" in the side of the Bear. So it's a little
8 section that we're able to move out of the way. It's
9 like probably a six-inch round circle in the side of the
10 Bear that we're able to shoot out of and still have good
11 protection from him shooting back at us. And so we took
12 turns firing from that one port hole in the side of the
13 Bear.

14 Q And Detective Gradwahl used a picture, which you
15 can also use the photograph, which is State's Exhibit 1.
16 Can you describe your deployment of cold gas in this
17 incident?

18 A It's a lot easier for you guys to use this as a
19 reference, and I'll just show you. So I fired one shot
20 that hit high above the window here, and the next shot
21 went into the window.

22 Q And you are describing the left uppermost window
23 on the front of the house?

24 A Correct. And then this is a door here, and
25 there is a window to the right of the door. And I fired

1 two rounds to that window that's right of the door. So a
2 total of four rounds prior to the shooting.

3 Q Prior to the shooting, you also heard a radio
4 broadcast that dealt with fire. Can you describe to
5 these folks what you heard?

6 A Officer McConnell had said over the air that
7 he's -- that the suspect was lighting something on fire
8 inside. And then it was just right after that where I
9 heard the gunshots of Officer McConnell.

10 Q After the announcement that the shooting had
11 occurred, did you deploy additional gas?

12 A Yes. Sergeant Lieb directed us to put gas on
13 this lower level, because prior to the -- the shooting,
14 uhm, we had just put gas in this second level. We hadn't
15 had a chance to start putting gas in the lower level.
16 And so we didn't know where the suspect went or what his
17 condition was. And so we started deploying gas in the
18 lower level.

19 I fired two -- there is some stairs here. It's
20 kind of hard to tell, but I believe there was two windows
21 over here. This door I'm not quite sure what that is
22 reference to. It's kind of hard to see in these
23 pictures, but I fired one round in each one of these
24 windows, and then I fired my third round at the bottom
25 level, was above this light here, high; then my fourth

1 round went into this light here.

2 Q Those were cold?

3 A The same cold gas I had used prior. All eight
4 rounds were cold gas rounds.

5 Q Those cold gas rounds are pressure deployed;
6 there is no flame or anything associated with those?

7 A Correct. It's just -- it's a -- a munition, I
8 guess, that is plastic and it goes and has a little
9 payload of liquid in it. So when it hits something hard,
10 it breaks apart, then that liquid, it makes like a big
11 spray on the wall.

12 JUROR: And this gas is flammable?

13 A No. Cold and is not flammable?

14 JUROR: But when that liquid hits oxygen, I
15 guess, it results in a gas?

16 A Well, the gas is a term we all kind of think of
17 kind of more of that smoke, you know, you see in the
18 movies like the tear gas. This is more like if you see
19 somebody pepper spray somebody like that, that sort of
20 liquid -- when this liquid gets in the air, it's still
21 called a gas. I don't know all the science behind it.

22 BY MR. MOAWAD:

23 Q It's sort of like an irritant to the senses?

24 A Right, correct.

25 MR. MOAWAD: Any other questions? Come on out.

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MIKE LIEB,

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. MOAWAD:

Q Go ahead, have a seat there. Tell these folks who you are?

A I'm Mike Lieb. I'm a Sergeant with the Portland Police Bureau. And since July of 2005, I have been one of two sergeants on SERT.

Q And is that a full-time assignment?

A It is.

Q And tell these folks a little bit in terms of a full-time SERT Sergeant versus someone who is called in for calls and training and that sort of thing. What additional job duties do you have?

A I push a lot of paper. I -- I purchase equipment, see that equipment gets repaired, keep -- do time keeping, write lots of after-action reports, see to our training, the reservation of training sites; so just a litany of things, all the administrative things that keep the team running.

Q And how about on scene, what are your additional duties?

1 A My job is leader of the team. I'm ultimately
2 responsible for the operational level, for my rank for
3 decisions, actions that are taken on a call.

4 Q I want to talk about methodologies to end the
5 type of situations SERT might be called in for. Describe
6 for us, if you would, the best case scenario on down to
7 the worst case scenario in terms of not necessarily
8 result, but in terms of what do you hope to accomplish
9 when SERT responds to a scene and is needed in law
10 enforcement intervention?

11 A What we hope to do is bring everything we need
12 to resolve these events safely. We have a lot of
13 training behind us. We have a lot of specialized
14 equipment. Our ultimate goal is always to resolve these
15 events safely. We always consider that a win.

16 You know, in terms of methodology, probably the
17 most -- well, probably the most common way we resolve
18 most of the incidents we respond to is the way we
19 actually want to resolve these incidents. Usually just
20 some verbal communication and ultimately we get a
21 surrender and no force is used, no property is damaged,
22 nobody is hurt and it's safe and we end up, you know,
23 resolving the situation that way. And that's the
24 majority -- that's the majority of how these events are
25 resolved.

1 Q What other types of avenues do you have
2 available to you in terms of law enforcement intervention
3 if, you know, surrender doesn't occur or you can't
4 negotiate some sort of surrender?

5 A And as I said, you know, the first thing we hope
6 for is surrender. You know, we -- we look at our
7 options, what we try to present to the incident
8 commanders, bring us layers of options. We work closely
9 with and train with our hostage negotiators. So if
10 negotiations are involved, you know, we facilitate that
11 by getting negotiators to where they need to be to bull
12 horn or to, you know, a lot of times they will need
13 observations that our members relay back to them so they
14 can gauge the reactions to their dialogue and
15 negotiations with the suspects.

16 We bring an assortment of less-lethal tools that
17 we're trained and able to use, everything from, you know,
18 like rubber 37-millimeter batons, which we call "impact
19 munitions", to chemical agents. We utilize K-9. We
20 utilize Taser. So if we end up in some sort of situation
21 or an event progresses such that there is some show of
22 force or some use of force involved, we have the tools
23 and the training to use the least amount of force to see
24 if we can safely resolve an event. And so we can
25 utilize, you know, any one of those tools or any

1 combination of those tools.

2 Of course, the highest level of force we would
3 use would be deadly force. And -- yeah, so --

4 Q Am I safe in concluding that you -- one of your
5 charges effectively, in these situations, one of the
6 expectations is that you will resolve them with the least
7 amount of force that can be used to reach a successful
8 conclusion?

9 A Correct.

10 Q I want to talk to you a little bit about gas.
11 That's one of the things we're here having a look at.
12 There are, as I understand it, three types of gas. There
13 is cold gas, warm gas and hot gas. Can you talk to these
14 folks a little bit about first and foremost what's the
15 purpose of gas? And technically, why you might choose
16 one over the other? Are there advantages or
17 disadvantages of any of those types of tools?

18 A First off, there is really only -- well, there
19 are several types of gas. But what we're talking about
20 here and mostly what we use is CS gas. What we're
21 talking about are three different types, we're actually
22 talking about three different types of delivery systems
23 for one type of gas, which is CS gas.

24 We have several different types of gas delivery
25 systems. Most of our gas is launchable, meaning we can

1 launch it with a, you know, firearm-type launcher that
2 will deliver it from distance with some relative
3 accuracy.

4 Q Why is that desirable from a law enforcement
5 perspective?

6 A To create distance and what we call "stand off",
7 so we don't find ourselves involved, whenever possible,
8 in a close confrontation, a close dangerous
9 confrontation. We don't want to sometimes take offensive
10 action that might pressure or cause to happen or send us
11 down a road where we might get a negative response from a
12 suspect. So we will -- and then also there is -- and
13 largely because of the safety margin involved with
14 distance, if we can stay farther away and do the job that
15 we need to do, we're safer when we can do that.

16 The other thing about launchable gas systems is
17 that they can be launched from behind cover, such as
18 other armored vehicles. So with minimal amount of
19 exposure in some cases, you know, we can use an armored
20 vehicle -- for example, lean out real quickly, deliver
21 gas where we want it to be, then get back behind cover.

22 Q I interrupted you then in talking about the
23 three types of delivery systems for the gas.

24 A Right.

25 Q Can you talk first to cold gas?

1 A So, yeah. What Chad here was referring to was
2 like cold gas. That's just -- that's just a common term
3 for non pyro-technique gas. It's not burning gas. There
4 is nothing about the delivery system that involves
5 anything burning. And our primary round that we use for
6 that is a 37-millimeter cartridge that is a light to
7 medium barricade penetrating cartridge that contains a
8 capsule of liquid CS.

9 What happens is when it's launched against an
10 object like a window or through a medium-sized interior
11 door, it can penetrate, go through it; it ruptures the
12 capsule and the liquid gas splashes in the area where the
13 round came through the barrier.

14 That is good for delivering gas into maybe
15 confined spaces. It's the best thing that we have for
16 delivering gas through barriers like interior doors or
17 even interior sheetrock walls, because we can penetrate
18 through these medium barriers, get some gas in there.
19 And if it's a smaller area and it's confined and
20 unventilated, it can get enough gas in to start causing
21 irritation, the ultimate goal being to dislodge the
22 suspect from wherever they are barricaded and hopefully
23 they -- you know, get a surrender out of it.

24 So that's primarily what we use the
25 37-millimeter what we call "cold" gas, but it's really

1 liquid gas delivered from a 37-millimeter projectile.

2 Q How does the warm gas differ from the cold gas
3 in terms of delivery system?

4 A The warm gas is a much more effective delivery
5 system, but it has its trade-offs. It can't be launched
6 from as far away and it can't be launched with as much
7 accuracy as the 37-millimeter. But what it does for us
8 is it has a significantly higher payload, and it is a
9 smoke-delivered chemical agent, so that it actually will
10 permeate multiple rooms. It will -- it will get into
11 places the liquid CS will not get into. It will go under
12 doors. It will move from room to room. And it's carried
13 by the smoke, so the smoke tends to fill up a structure
14 and move throughout a structure and bring the CS with it.

15 So, if we have a large house -- well, if we have
16 just a complete house, we don't have, say, the suspect
17 pinned down in a room or barricaded in a small, confined
18 area, we want to -- we want to get CS in on him somewhere
19 in this house. The desirable chemical agent would be to
20 deliver -- would be the warm tri-chamber, which we use
21 because we know we're going to get it almost everywhere
22 into that house and wherever he is in there he is going
23 to be affected by it.

24 Q Obviously, there is a desire in some cases to
25 get gas on the suspect, meaning in the room that they are

1 in?

2 A Yes.

3 Q But other times your desire is to keep a suspect
4 from moving into other areas of the house?

5 A Right.

6 Q For example, why might you deploy in a basement
7 floor area when you know the suspect is in the second
8 story?

9 A You know, it goes along with several other
10 tactical choices that we might make. But if we look at a
11 house, say, and it has multiple levels and for one reason
12 or another one of the levels is -- would be difficult or
13 it would be a dangerous clear -- maybe the approach is
14 bad -- Maybe what we're talking about is the upper
15 levels, where we know if the suspect is up in the upper
16 levels our approach is going to be exposed and we would
17 like to deny that person access to the upper levels to
18 make, you know, our approach and our entry into the
19 structure safer, we might choose to deploy gas into the
20 area to drive them -- hopefully to drive them out of
21 there and into one of the lower levels.

22 Likewise, with the basement, basements tend to
23 be confining, the approach tends to be confining. You
24 usually have to go downstairs; your channeled, stairs can
25 be dangerous, bad guy can be back in corners. We want to

1 drive them from the basement hopefully to another level.
2 We can put CS gas into the basement and hopefully deny
3 that area to them or drive them to an area that's more
4 advantageous to us.

5 Q Let talk about the last gas system, that being
6 hot gas. Tell us a little bit about that.

7 A We have hot gas in our inventory, but I have
8 never been around when we have used it. By and large we
9 consider that a potentially -- a potential deadly force
10 type of tool in that this gas burns very hot. The
11 delivery system, itself, becomes very hot and the risk of
12 fire is too great to use it unless we were for some
13 reason intending to start a fire. So we -- though we
14 have it in our inventory, if we were in a situation where
15 our last option might be to start a fire, then that would
16 be the gas we use. In my time on the team we have never
17 used that.

18 Q And that was not deployed in this case?

19 A Correct.

20 Q Could you briefly describe so these folks can
21 picture what is the delivery system for that?

22 A For --

23 Q For hot gas.

24 A For hot gas we have single 37-millimeter
25 launchers, which look like a handgun with a big

1 blunderbuss type of barrel. We put the one cartridge in
2 there and they fire one shot at a time.

3 Q And that launching methodology is different than
4 the warm gas launching methodology?

5 A In terms of?

6 Q What we heard from Detective Gradwahl is he used
7 a modified twelve-gauge shotgun to launch as opposed to
8 the 37-millimeter.

9 A Correct.

10 Q There is no risk of confusing the two?

11 I want to talk to you about this specific
12 situation as we get into planning the response. Can you
13 talk to these folks as a SERT Sergeant sort of about the
14 difficulties in terms of responding to someone who is
15 barricaded in a house at night, what types of unique
16 risks are there to responding officers?

17 A Well, one is containment. You know, one of
18 the -- well, two of the first principles involved in any
19 barricaded type situation are containment and isolation.
20 You know, if this is a situation, as in the other night,
21 where we have got an armed person in the house and the
22 circumstances of the call are such that we need to
23 contain this person for the safety of the neighborhood so
24 that they can be controlled so that the incident can be
25 contained and resolved hopefully safely, we are going to

1 contain this event and try to contain and keep this
2 person in this area with the hopes that we are going to
3 be able to do things to try to control the event within
4 this contained area.

5 The other concept, isolation, is to prevent
6 others from coming into this area and being endangered by
7 the situation. So we're not just keeping the suspect in,
8 but we're also keeping others, who might wander into this
9 scene, out.

10 So one of the biggest -- you know, one of the
11 priorities -- and I'll get onto the risks of officers
12 after that -- is again to contain the event and begin
13 efforts to try to control it, resolve it.

14 Now, in terms of risk to officers, it kind of
15 depends, you know, what the circumstances of the
16 barricaded situation might be. In this particular case,
17 we had information going into it that shots were being
18 fired. Sometimes that's the case. Sometimes that's not
19 the case. But what we do is one of our -- in our efforts
20 to, you know, effect one of those first priorities, the
21 containment, we have our sniper teams. We call them
22 Inner Perimeter Teams. They go out and they are the ones
23 that first begin the containment around the location.
24 And they have got to go out and for -- you know -- you
25 know, their safety measures and for tactical reasons

1 their deployment is stealthy. They don't want to be
2 seen, give their positions up.

3 When you are on the outside of one of these
4 structures -- by "structures", I mean house, building
5 whatever we're talking about here -- be it day or night;
6 sometimes it's very difficult to see into windows, into
7 doorways, into these buildings. But from inside it's
8 relatively easy to see out, whether it be from ambient
9 lighting, such as street lights, porch lights or daytime.
10 So our snipers, you know, their craft is about getting
11 into these locations with stealth, using camouflage, not
12 being seen, because they are in fixed posts and they are
13 very vulnerable out there.

14 If their position is spotted and if we had
15 somebody barricaded in the house that was intent on
16 shooting a police officer, you know, these officers could
17 be shot at, could be shot. So that's one of the biggest
18 risks in the initial deployment regarding a barricade is
19 getting our perimeter out, getting this priority, this
20 first mission of containment accomplished and get our
21 people safely into hidden positions where they can
22 contain it, where they can relay information to us, where
23 they can be our eyes and ears, in essence.

24 Q You have got the perimeter set up both for
25 containment and isolation at this point?

1 A Yes.

2 Q Talk to us a little bit about what advantages a
3 gunman inside the home has with regard to familiarity
4 with the inner workings of the house, with regard to
5 cover and concealment and finally with regard to high
6 ground, sort of tactically what -- how does that change
7 the fight?

8 A You know, in terms of knowledge of the area in
9 and around a house, you know, the resident or the person
10 familiar -- that lives there or is familiar with the
11 location is obviously going to have the advantage of
12 knowing the layout, you know, knowing what is outside the
13 windows, knowing what's normal for the area or what
14 appears out of place; and that's important when, you
15 know, our snipers are building their hides or making any
16 changes, you know, to the area they are hiding in. If a
17 person is familiar and can look out in their backyard or
18 along the fence, see something is different, they might
19 be able to figure out where our snipers are. So they
20 have the advantage of familiarity.

21 In terms of within the building, they have all
22 the advantages. They know the sounds of the house. They
23 know the layout of the house. They know what it sounds
24 like when the back door slides open. So in terms of
25 trying to move with stealth and move into a structure

1 undetected when somebody is inside that's familiar with
2 the structure, that is the last option. That is a very
3 difficult thing to accomplish without some force levelers
4 like chemical agents.

5 High ground, as in this address, virtually all
6 of our positions, save for -- well, a couple on the two
7 side where there were no windows and a couple on the back
8 side there, the upstairs windows had high ground over
9 much of what we did out there that night.

10 And high ground gives you a more commanding view
11 over the area around you. It's easier to see a broader
12 area, see movement, see things that are happening when
13 you are able to look out over this and down on it.

14 And then, of course, the military recognized
15 high ground as strategic ground because you never want to
16 have to fight uphill. It's always disadvantageous to
17 fight uphill.

18 But our main concern is with the commanding view
19 the upstairs windows have over the area where we are.

20 And then -- and then the other one was
21 concealment.

22 Q Concealment versus cover that might be available
23 to someone that's unknown to you?

24 A So in this particular case, you know, our
25 information responding to the call and what I later saw

1 was that most of the curtains were drawn. And the ones
2 that I could actually see what they were, they were
3 actually louvered blinds. And, you know, you can cant
4 those blinds such that from inside you can look out and
5 see, but from outside it's very difficult to look back in
6 because of the cant on the blinds.

7 And so, you know -- you know, bad guys want to
8 shoot at the police or fire rounds, they can be
9 relatively indiscriminate. Police, we're accountable for
10 all of our rounds. So, you know, all it takes really
11 for, you know, a suspect in this house, for this guy in
12 this house, to put us at a disadvantage is to louver the
13 blinds such that he has concealment. He doesn't have
14 ballistic protection. He has concealment. If we can't
15 identify him, we can't take a shot at him. We're not
16 indiscriminate shooters. He can see on our part perhaps,
17 some movement, figure out where we are and there is
18 nothing to stop him from putting a round towards those
19 areas. Does that speak to concealment?

20 Q Let me talk to you a little bit about this
21 specific house. I think you have an overhead of --
22 diagram of this house and the house behind it as well?

23 A Uh-hum.

24 Q And Todd Gradwahl drew a picture that coincides
25 with the photograph of the front of the house. Can you

1 talk to these folks a little bit about your decision with
2 regard to the gas plan and with regard to rolling the
3 armor up? How did you decide what your SERT officers
4 were going to do?

5 A When our first members arrived on scene, we --
6 Andy Shearer, who's a Sergeant on our team, and Terry
7 Kruger shortly after him had a conversation, were briefed
8 up by the on-scene Incident Commander. They were given
9 direction to immediately begin establishing a SERT
10 perimeter around the location, to prepare a gas plan, to
11 insure that we had a good perimeter off of side three,
12 which was the back of the house and when they were ready
13 to roll armor up and to be ready to implement gas, if
14 that were needed or to, you know, be prepared to make an
15 arrest if the suspect were to surrender.

16 So the -- the initial missions that were given
17 out for SERT members by the other SERT sergeants were to
18 begin getting the containment up around the location,
19 getting the sniper teams out around, specially off the
20 back side of the location.

21 Then in preparation for carrying out the next
22 part of our mission, which was to develop and have
23 prepared a gas plan, get armor set up the way we wanted
24 it, get a team with the armored vehicle, be prepared to
25 move it up; that was prepared just about the time I

1 arrived.

2 I checked in with several of our members there.
3 We had our launcher loaded, ready to go, our CS gas
4 launchers. We had a negotiator with us in the armored
5 vehicle, and we had our -- we picked our K-9 officer up.
6 We had our K-9 officer with them and we had a plan in
7 place for where we were going to position the armor in
8 the street off the front of the house so we could have a
9 good view, so we could see, so our PA announcement would
10 be effective, so our negotiator could see and a position
11 where if we needed to we could launch gas from and get
12 them into the majority of the windows that we would want
13 to get it into.

14 Q And in this house, what windows would those be?

15 A Well, pretty much all of them you can see. If
16 we needed to get a gas deployment in a very effective
17 high concentration of gas in and -- you know, we
18 anticipated it was quite possible the guy could shoot at
19 us. So we were prepared to get gas into every area that
20 we could.

21 Q And why not simultaneously in this case deploy
22 armor on the back side as well?

23 A There was no way to get armor to the back side.
24 What was it? Madison Street across the back is one of
25 those strange twisty streets and one of those, I guess,

1 like 70-ish subdivisions where the lots are all pie-
2 shaped, you know, unusual shapes and then everything is
3 very sloping there. This is all -- this whole -- this
4 main house here, the one behind and the houses around are
5 basically built on the side of a hill. So there was no
6 way to get to the backyards of any of these houses behind
7 the primary location there with a vehicle.

8 Q So talk to us a little bit about when the armor
9 rolls up. Where are you at this point physically?

10 A I am physically in the armored truck that we
11 drove up.

12 Q And is that the Bear or the one basically in
13 front of the driveway there?

14 A It is the Bear truck that ended up on the street
15 in front of the driveway.

16 Q And talk to us then about -- obviously shots are
17 coming out, you learned they are directed at Bear. This
18 may sound -- I know this is going to sound like a silly
19 question, but you had made the plan if this occurs, we're
20 going to do this prior to sending your folks out there.
21 Why not just go out there and hope for the best, that
22 this guy is going to give up? Why set up a plan B for
23 your officers?

24 A Well, because you just -- you know, you always
25 want -- you have to anticipate things maybe not going the

1 way that you expect or that you hope. So that when and
2 if that does happen, you are not caught without a
3 response, you are already prepared, you are already --
4 you are ready to respond, you have a plan in place.

5 Everybody involved in the mission has been
6 involved in the discussion, so everybody has a role and
7 knows what they are going to do. And we layer our
8 planning that way. You know, here's our primary plan.
9 This is what we're shooting for. We're hoping to drive
10 up, get the negotiator on the PA and best case scenario,
11 this guy comes out with his hands up, surrenders, in
12 which case we take him into custody.

13 Q Let me interrupt you there. In fact, in this
14 case, despite knowing the fact he had fired on multiple
15 officers prior to Bear rolling up, you had set up a plan
16 for an arrest team and assigned folks to help make an
17 arrest?

18 A Correct. That was one of our primary missions
19 with going forward with armor. One was to create a
20 position with armor that we had some cover to operate
21 from, to launch gas from and contain the front of the
22 house, but also our primary -- our primary initial
23 attempt was going to be to see if we could negotiate a
24 surrender and just arrest this man.

25 Q We're going to hear from someone in lieu of the

1 negotiator with the negotiator's report here shortly, so
2 I'm not going to talk to you about that. Ultimately,
3 obviously shots are fired. How does your team respond to
4 that?

5 A Let me say, too, we went out knowing this person
6 had an assortment of weapons with him. Including our
7 information was he had a scope Winchester 30 hunting
8 rifle, which is an extremely accurate, extremely powerful
9 rifle. So our concerns were -- were that, you know, we
10 had to be careful about what we did, how and what extent
11 we exposed ourselves from behind this armor because with
12 a rifle like that, you can very accurately place a shot
13 at great distance. And if we were to be leaning out from
14 behind armor to make observations or to deliver gas, if
15 it came to that, or, you know, taken any other action, we
16 could easily be exposed. And that's also a very
17 devastating weapon. We certainly don't want to see any
18 of our members get shot with that. And so there was --
19 you know, everybody was aware of that, and all of our
20 actions were based on -- you know, with regard to our
21 movement, our use of armor, were based on the possibility
22 that he could have access to that rifle.

23 The other thing of concern there, especially
24 when you are dealing with like high ground and we're
25 behind an armored vehicle is the high ground actually

1 limits the amount of safe space you have to be in,
2 because if he is up here looking down over a vehicle that
3 is parked in the street like this and we're back here,
4 his -- his field of view is like that down to the street.
5 And so we are basically -- the high ground puts us at a
6 disadvantage because, you know, it limits the area behind
7 that armored vehicle where we're actually safe.

8 Q Let's talk about skipping ground for a moment as
9 well. Can you talk a little bit about -- that's an
10 extreme angle. Can you talk about some other risks about
11 high ground or skipping ground?

12 A That's the problem with standing behind a
13 vehicle, too. Of course, the vehicle is off the ground.
14 And, you know, if anybody were to shoot at us from the
15 other side of the vehicle and hit the pavement, you
16 always have to be concerned for your feet and legs
17 because rounds can skip. In fact, at one point when we
18 were being -- when shots were going off, one of our guys
19 heads up things, just reminded everybody, said to
20 everybody, "Watch your feet he could skip rounds under
21 the vehicle." It made everybody think if I don't need to
22 be standing here, I'm going to step up on the running
23 boards. No sense keeping my feet exposed.

24 Q I sort of jumped you ahead a little bit.
25 Prior to shots being fired, you made some

1 observations, as you were rolling up in the armor, of
2 what you believed to be the suspect. Can you talk to
3 these folks a little about this?

4 A Some of this stuff might be a little out of
5 sequence, but it's my recollection. And you know others
6 might have different snippets of different recollection
7 or our sequencing might not be perfect. But what I
8 remember as we first rolled up, I was looking out one of
9 the armor windows and trying to get the vehicle oriented.
10 And the first thing I noticed was the garage door coming
11 up. And when it came up, I saw him. And there was like
12 a red sports car right here. And I saw him on the other
13 side of that red sports car against the back wall of the
14 garage.

15 And I could see him looking at us. And he
16 walked one way and was looking, and he walked the other
17 way, and then -- and then he walked out of my view this
18 way, which I assumed was back up into the house.

19 And it was as he walked back up into the house
20 there that one of our snipers said he had a gun in his
21 hand. I did not see that. I only saw him from about
22 here up, because he kept the car between myself and him.

23 And then -- so at this point, I'm watching
24 intently in the windows. We're just about -- just about
25 bringing the vehicle to a stop. I'm seeing him in there,

1 and we have Jim McCausland, Detective Jim McCausland, who
2 is one of our hostage negotiators, I tell him to start
3 giving him surrender announcement or PA announcement,
4 something to that effect.

5 So Jim gets on the PA, and he starts telling
6 him, I think, to put his hands up or something like that,
7 the standard surrender commands. That's when he's
8 looking at us, then he just goes off back into the house.

9 Q No verbal response or physical response?

10 A No. I didn't see anything other than kind of
11 scanning us, looking around. He walked over towards one
12 side of the car, then back and then back up into the
13 house.

14 Q Prior to the shots being fired on Bear, you
15 believe you saw him again. What window was that?

16 A Well, I -- and -- I believe, but I can't say for
17 sure it was him -- I was watching then the windows to see
18 some indication of movement or try to track where he
19 might be going in the house.

20 Now, this window had the blinds drawn, as I
21 said, and there was -- it's my recollection that there
22 was a TV going, because what I was seeing was like TV
23 images flickering through the blinds. So this kind of
24 looks like movement, too. But in the midst of like these
25 TV images flickering through the blinds, I'm thinking at

1 some point I see a silhouette step behind the blinds.
2 And I'm watching, hoping I'm going to see something that
3 at least indicates to me that is for sure what I'm
4 seeing.

5 And then I actually hear at that point at least
6 one shot -- I can't remember if that was the time I heard
7 like one lone round or a couple rounds. And I'm watching
8 this, and I cannot tell if bullets are coming out of the
9 window. I can't say for sure it is this guy. I think it
10 is. It looks like that to me. But it just -- I can't
11 say for sure.

12 Q You ultimately heard that he was firing on Bear
13 and the gas was deployed. Can you talk to these folks a
14 little bit about when you saw gas deployed and where you
15 saw it deployed?

16 A Yeah. The initial gas deployment occurred on
17 our side. We had the two Gradwahl brothers that you
18 heard from, Todd Gradwahl was launching the warm
19 tri-chamber from the shotgun, and Chad Gradwahl was
20 launching the 37-millimeter liquid CS.

21 And we were trying to get them into these
22 windows, as I said, as many of these windows as we can.
23 I can't recall off the top of my head now where Chad got
24 all of his liquid CS, but I know Todd put one in this
25 window, bounced one off the car here, bounced one off the

1 siding here and then got one in there. And then Chad was
2 able to put liquid CS in several of those windows.

3 Q After the shooting and after the gas plan was
4 finished, at some point you realized there was a fire in
5 the house. Can you give us any idea how much time
6 elapsed between, for example, the initial gas deployment
7 and someone's visual confirmation there was fire?

8 A I can give it to you off the CAD printout based
9 on our broadcasts.

10 Q We'll actually have that. Just best of your
11 recollection?

12 A Oh, I forget now. You know, something like 20
13 minutes, 23 minutes, somewhere in there between -- I
14 could be totally wrong on this -- between our initial
15 deployment of gas -- the first rounds and the fire.

16 Q Okay. Where did you see the fire begin? Where
17 did you first make visual contact with the fire?

18 A Downstairs slider.

19 Q To your knowledge, what types of gas were
20 deployed into that downstairs corner?

21 A We attempted to get two rounds of warm gas into
22 that downstairs slider. One of them hit the curtain and
23 dropped just inside the slider, and I saw it the day
24 after the fire. It was still sitting there.

25 Another round -- the actual operator that

1 delivered the round thought it bounced off. The cover
2 officer that was with him said it actually lodged between
3 the bypass slider panels. You know, the glass sliders
4 are framed. One frame bypasses the other. And it
5 actually hit in there, forced itself in there and
6 stopped, lodged between the two slider panels and
7 discharged. Those were the only two rounds of warm gas
8 that we fired at the slider.

9 The only other gas that we delivered into this
10 basement area was Chad Gradwahl attempted to get -- as I
11 recall -- liquid CS into this window here adjacent the
12 stairs.

13 Q And we're going to have the fire folks here
14 shortly. But in your opinion, was this fire started by
15 gas canisters?

16 A Well, I -- how I'd answer it is this: I believe
17 no. I think we're going to be able to account for the
18 rounds that were fired when this investigation is done.
19 Well -- but here's my caveat: This round that was
20 lodged -- was seen to have lodged in the slider, that
21 area -- and you will hear from the fire investigators --
22 was completely melted by the heat of the fire. So I was
23 told by one of the fire investigators that if that round
24 lodged there, it is gone forever. The slider frame,
25 everything just melted. So it's possible we may never

1 account for that -- that round. I may never see the
2 spent canister. My hopes are when I get a chance to see
3 the spent canisters that I will be able to actually
4 account for the rounds we fired by brand and based on who
5 fired them where.

6 My personal opinion on this -- take it with
7 salt, because I don't know -- that's what the
8 investigation is going to bear out. But I think both our
9 rounds ended right there at the slider. One lodged in
10 the slider and one just inside the threshold. And that
11 the cause -- the point -- the source of the fire, the
12 point of origin for the fire is going to be farther back
13 in the basement.

14 Q In fact, the flames you saw were inside the
15 window as opposed to the side of the house there?

16 A Actually, the fire was well under way by the
17 time we first saw flames at the front. It was going --
18 it was going strong on the back side. And then when it
19 started showing here, it was just, whew, and it was
20 coming out.

21 Q In your experience, the fire started further
22 back in the house and made --

23 A Based on my walk through the scene with the fire
24 investigators. A lot of this is preliminary. I'm no
25 expert. Their investigation might show something else

1 when it's all said and done. I walked away from those
2 discussions. What I saw on the scene, discussions with
3 my team members were of the opinion that we -- that our
4 gas canister -- one of our gas canisters did not start
5 that fire.

6 Q Let me --

7 A Now, here's something else, too, I want to throw
8 in, too. It was the way the fire took off. The fire
9 took off from the time the members first started
10 reporting it, it was going strong. And what can happen
11 sometimes is when we -- if there is something smoldering,
12 if there is a fire -- and this is again all
13 speculation -- but if there is a fire and we break the
14 glass by introducing -- you know, we break the glass, we
15 break the windows and let the air in, these fires will
16 just take off. So, you know, we don't know that didn't
17 happen, too.

18 Q Let me ask you -- we're running a little shy on
19 time. I guess I want to move you into ultimately you
20 developed a safety plan with Portland Fire Bureau to
21 cover fire folks who are coming to fight the fire and to
22 attempt to locate the suspect. Can you talk to these
23 folks a little bit about why firefighters need SERT cover
24 to fight a fire in this case?

25 A Well, it became pretty chaotic. As you know, we

1 have been shot at, one of our members had fired shots.
2 We had done a gas deployment. We still had not seen the
3 suspect again and now the house is going up in flames.
4 And we have a very unstable situation. The condition of
5 the suspect we don't know what that is. All we know is
6 we fired shots. Now we don't see him anymore. And now
7 this house is on fire and there are adjacent houses that
8 we're starting to worry about.

9 And there was a few moments there of trying to
10 think about how can we maintain some tactical integrity
11 here as we shift this to a fire-fighting operation.
12 Because once it becomes a fire-fighting operation, it is
13 going to be tough to protect these firefighters and still
14 allow them to do what they need to do to put the fire
15 out.

16 So we did the best that we could. I mean we
17 tried to get there in front of them and be in front of
18 them. And as this house is becoming fully consumed,
19 we're trying to get up there with them. And we're cops.
20 We're not firefighters. And eventually one of them --
21 one of our own SERT medics, who went and talked with like
22 the team leader, you know, the team leader out there
23 fighting the fire, came back to me and said, "You are
24 just in their way. You guys, they appreciate the fact
25 you want to try to keep them safe, but you need to get

1 out of their way so they can fight their fire."

2 What they didn't tell us, what I didn't know
3 is -- and I'm speculating here to some degree, too --
4 they were probably assessing and realizing there was
5 nobody going to be alive in that house at that point.
6 But we didn't know. The garage was not -- there were no
7 flames coming from the garage, but there were flames
8 coming from everything else, and we were just trying to
9 protect them.

10 Q Was one of your concerns effectively, to borrow
11 a phrase, playing possum, that there might be somebody
12 wounded, not fatally, still in the house that could harm
13 first responders?

14 A We don't know his position. All we know is we
15 don't see him anymore. And, you know, I -- yeah, so I
16 mean, worst case scenario, if this guy is not
17 incapacitated and he wants to start shooting, firing,
18 unless we're up there to protect them, they would be --
19 you know, they wouldn't have any way to protect
20 themselves. They have hoses in their hands.

21 JUROR: A couple questions: One is the other
22 officers or detectives, they said that the gases that you
23 launched weren't flammable at all, and yet now it sounds
24 like there is some question whether there was the ability
25 to cause a fire by one of the canisters. Can you explain

1 that to us?

2 A Yeah. There is potentially some ability to
3 cause a fire. These -- these rounds are designed to be
4 flameless and not fire starting. And they are designed
5 to be suitable for indoor use and suitable for launching.

6 How they are designed is you have a fuse on them
7 with a spoon, just like a grenade. And then you have an
8 aluminum body. And there is a pyro-technic chamber
9 within these canisters. And there is material in there
10 that burns, and it is that smoke that carries the gas
11 throughout a location, you know, carries it all over,
12 anywhere the smoke goes.

13 This pyro-technic chamber is contained within
14 two other chambers so that no flame from within that
15 chamber can reach the outside of the canister. In tests,
16 they have taken these canisters, rammed them in
17 newspapers and discharged them, and supposedly they will
18 not cause paper to combust.

19 JUROR: This is the warm?

20 A This is the warm gas. The canister would be hot
21 to the touch. It's pyro-technic in its core, but we call
22 it warm gas just to distinguish it from the term cold gas
23 and hot gas. These are designed to not cause fires.

24 Does that answer your question?

25 JUROR: Some it does. I think that's okay for

1 now.

2 But the second thing is it sounds like you guys
3 are hearing on the radio that you are getting fired at in
4 the Bear?

5 A Uh-hum.

6 BY MR. MOAWAD:

7 Q Are you not able to hear shots being fired at
8 the Bear, and were there any signs of bullets on the
9 Bear?

10 A No signs of bullets on the Bear. It's -- and
11 the people that could hear that the rounds were coming
12 our direction were -- and I'm not sure if this is
13 everybody, but some of the ones that were hearing it were
14 the guys that were actually in perimeter positions behind
15 us and a little higher in the yard behind.

16 MR. MOAWAD: You will recall Officer McKinlay
17 yesterday said he could hear bullets striking over the
18 top of the Bear and between he and the other perimeter
19 officer.

20 JUROR: Okay.

21 A So from my position at one point inside the
22 Bear, looking out the window and another point when shots
23 were being fired outside the Bear, I could not tell there
24 were rounds. I could not tell where they were coming
25 from, the windows, and I couldn't tell what direction

1 they were being fired, because it's really dependent on
2 where you are, where you are standing to be able to hear
3 the sound of bullets passing or bullets striking things.

4 JUROR: And you didn't see anything on the Bear?

5 A No, checked the Bear and did not see anything.

6 JUROR: About how much time transpired from when
7 you first saw flames in the lower left and the Fire
8 Department arrived, the firemen arrived?

9 A Wow, it seemed like they were there quick,
10 because the flames took off. The fire -- or the power
11 lines, which actually ran right over the top of us,
12 started to crackle and catch fire on the back side. And
13 so we needed to move and backed the armored vehicle up.
14 And we are backing that up and had to stop all of a
15 sudden because here comes a wave of firefighters and fire
16 trucks right up behind us.

17 And the other thing is, you know, kind of my
18 sense of time with all this happening, it's hard to be
19 accurate. But it seemed to me like they were there
20 quickly. When the calls came in from the snipers on the
21 back there were flames coming out of the house, there
22 were medics that were coordinating fire response with
23 PFB. So when we see flames on the front and the power
24 lines start catching fire and we're backing up, they are
25 already responding from the 122nd and Madison station.

1 So it was quick. It seemed quick.

2 JUROR: Most certainly I can appreciate that.

3 JUROR: One other question, too. The first
4 reports of fire were from the back?

5 A Yeah.

6 MR. MOAWAD: All right. Why don't you come out?

7 PETER H. McCONNELL,

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

11 **EXAMINATION**

12 BY MR. MOAWAD:

13 Q Go ahead, have a seat there and tell these folks
14 who you are.

15 A My name is Peter H. McConnell,
16 M-C-C-O-N-N-E-L-L. I'm a police officer with the City of
17 Portland. I have worked for the City of Portland as a
18 police officer for a little over 17 years now.

19 Q And tell these folks a little bit what your
20 current shift is, your current assignment is.

21 A I'm currently assigned to uniform patrol at
22 North Precinct and work the afternoon pre-relief shift.
23 I start my shift at 3:00 in the afternoon, and I work
24 until 1:00 a.m. My current days off are Friday,
25 Saturday, Sunday. We work a four-day, 10-hour shift.

1 Q I understand you are also currently a volunteer
2 with SERT as well.

3 A Yes, I am. It's a detached assignment, meaning
4 we respond by pager to call-outs or we have a planned
5 high-risk search warrant. We have training two days a
6 week, on Wednesday and Thursday, every other week, where
7 I work six days at North Precinct and then two days I'm
8 assigned to SERT for training.

9 Q And do you have a specific role with SERT or
10 specialties?

11 A I'm assigned to the inner perimeter as a sniper.

12 Q And talk to us a little bit about, first of all,
13 basic law enforcement training, Basic Academy, that sort
14 of stuff, talk to us about when you went through those
15 types of training.

16 A When I was hired approximately October of 1993,
17 I went to the Oregon Basic Police Academy, DPSST is what
18 it was called then. The name has changed now. It at the
19 time was an eight-week course where you cover all the
20 disciplines related to law enforcement at a very basic
21 level, the basic laws, firearms, SERT police tactics.
22 And then once you completed that, you were certified with
23 the State as a police officer.

24 Portland at the time had an 18-month
25 probationary period, where you worked with a field

1 training officer. There were three phases: Phase one,
2 two and three. Phase one and two, you were assigned with
3 a field training officer. You rotate through the
4 precincts and work with the field training officer. At
5 some point in time you are cut loose to phase three,
6 where you are still on a probationary status, yet you are
7 out working in a uniform patrol car by yourself.

8 Sometime during that time -- for me I think it
9 was during phase two, you attend the Portland Police
10 Bureau Advanced Academy, which at that time was an
11 eight-week course and focused on things more specific to
12 law enforcement in the City of Portland, the techniques
13 that the City of Portland uses in doing a high-risk
14 vehicle stops, for instance.

15 And once you graduate that, you complete your
16 18-month probationary period, which I did. And I was
17 assigned to what was then called Northeast Precinct. I
18 worked the afternoon shift up until I reached about the
19 four-and-a-half-year mark, and then I transferred to the
20 Tactical Operations Division, where I worked for twelve
21 years either as a member of what was called the Youth
22 Anti-Violence Task Force, the Gang Enforcement Team in a
23 uniform capacity on afternoon shift. I was an acting
24 detective for Gang Enforcement Team on two separate
25 occasions, for either nine months or three months,

1 depending which one it was. Towards the end I was an
2 investigator assigned to Gang Enforcement Team on day
3 shift.

4 And during the past 16, 17 years, the Portland
5 Police Bureau has a yearly in-service -- I guess I should
6 say probably for my first eight years it was a yearly
7 in-service where one week out of the year you would
8 attend four, five days of in-service training. These
9 past six or seven years it's been broken up certain times
10 throughout the year. One day we may go do patrol,
11 vehicle operation, training out at PIR, wherever the
12 training site is; then three or four months later there
13 may be two days of classroom, other mandatory training.
14 So there has been an ongoing training cycle for my entire
15 17-year career.

16 Q How about firearm specific training, maybe in
17 this particular area with regard to the AR-15?

18 A I was certified in the AR-15 through the
19 Bureau's AR-15 program. That occurred while I was at the
20 Tactical Operations Division maybe ten years ago. I'm
21 not sure exactly when that was, but it has been quite
22 awhile ago.

23 I became a member of SERT approximately four and
24 a half years ago. The AR-15, or in this case the M4, is
25 one of the primary weapons we deploy with. We qualify on

1 a quarterly basis, just as is required if I were to carry
2 one on the street as a uniform patrol officer.

3 As I said, we train every other week. Normally
4 we go to the range on Wednesday. We don't necessarily
5 qualify with each weapon system every time we go to the
6 range, but typically we try and fire -- we have kind of a
7 training schedule set up where you practice with your
8 pistol. You practice with your AR-15, or on the IP we
9 are also assigned 308 Remington bolt guns and we will
10 practice with those as well.

11 Q How does the mechanism differ between the AR-15
12 and the 308 bolt gun?

13 A The AR-15 is a semi-automatic rifle. It's
14 magazine fed. Once you chamber a round, it's loaded. If
15 you pull the trigger, that round will discharge. And
16 then it's a gas operated weapon system, so it forces the
17 bolt back, it ejects the spent casing. And then as the
18 bolt goes forward, it strips the next round off the
19 magazine and chambers it. So if you pull the trigger
20 again, it will fire.

21 With our 308 bolt guns, those are
22 semi-automatic, but it's a manual bolt action. So once I
23 load it and I chamber a round, if I were to pull the
24 trigger on the bolt gun, I would have to unlock the bolt,
25 pull it back, which would then eject that spent casing,

1 then I would have to physically push the bolt forward,
2 lock it down. It would strip off the next round, chamber
3 it and once I locked the bolt down, it would be ready to
4 go again.

5 Q In addition to the four days a month where you
6 have SERT specific training, have you undergone any other
7 training with regard to SERT deployment?

8 A As I said, normally on Wednesdays we go to the
9 range. Thursdays are typically scenario days. So we
10 practice scenarios, either warrants or a call-out, kind
11 of a scenario-driven training, whether it be a hostage
12 rescue situation, a barricaded subject, you know,
13 anything you can think of that we might respond to over
14 the course of the year, we try to train for those
15 functions.

16 We also do what's called iteration training
17 where it may not be scenario driven, but we want to
18 practice what we call slow clearing a house or warrant
19 entry into a house, things of that nature. So instead of
20 it being within a scenario where you may only do it once,
21 you are doing it over and over and over again to build
22 that repetition.

23 Q I would like to talk to you a little bit about
24 sort of general philosophy, if I could, in terms of being
25 a police officer and, more specifically, being SERT

1 officer. Sort of heading into an incident, what's your
2 ideal outcome in every case, realizing you can't always
3 achieve that? But what is your ideal outcome heading
4 into a situation?

5 A The ideal outcome is that the situation is
6 resolved using the lowest level of force necessary,
7 preferably no force necessary, and that the situation is
8 resolved with everybody coming out okay on the officer
9 side and the citizen's side and the suspect's side, there
10 are no injuries and everyone goes home at the end of the
11 night.

12 Q I would like to talk to you -- obviously this
13 occurred November 23rd. I would like to talk to you
14 about the background leading up to that the night of
15 November 21, leading into the 22nd, which would be the
16 day prior. Can you talk to us a little bit about where
17 you were assigned and what your job duty was that day?

18 A So the 21st would have been a Sunday.

19 Q Correct.

20 A So the 21st being a Sunday, I don't work that
21 day. So I was at home. I don't remember exactly what I
22 did on Sunday the 21st other than it was football day,
23 and so I recall watching the Sunday night game. I think
24 I went to bed probably around 10:30 or 11:00 and then
25 woke up on what would be Monday the 22nd somewhere

1 between 7:00 and eight o'clock.

2 Q What does Monday the 22nd look like? If you
3 can't remember specifically -- was that a work day for
4 you?

5 A Monday, the 22nd, was my Monday, as it turns
6 out. So I go to work and have to be in uniform ready to
7 go at 3:00 in the afternoon to start my shift.

8 What I can recall from that day is I ended up --
9 I went running at a sports facility very close to my
10 house. I ended up going and lifting weights for awhile
11 and got to the precinct around 2:30 or so, enough to make
12 sure that my uniform was all set and change into it and
13 make the three o'clock roll call on time.

14 Q And do you recall heading into work that day
15 having any illnesses, lack of sleep, anything unusual in
16 terms of your normal work day routine?

17 A No. Everything was normal.

18 Q And at the time were you taking any prescription
19 or nonprescription medication?

20 A I wasn't taking any prescription medication. I
21 do take an over-the-counter vitamin, but I honestly don't
22 know if I took it that day or not. Normally I do.

23 Q Obviously nothing ingested drug-wise that would
24 impact your ability to perceive or recall events that
25 were taking place in the incident we're going to talk

1 about?

2 A No.

3 Q Did you have any arguments or disagreements with
4 family, spouse, supervisors in the 48 hours or so leading
5 up to this incident?

6 A No, I didn't.

7 Q And were there any other factors going on in
8 your life that I haven't asked about that may have
9 impacted your mental state?

10 A No.

11 Q In terms of work that day, the 22nd, can you
12 talk to us a little bit about -- obviously, you are on
13 patrol. Can you give us a sense the number of calls you
14 responded to, the types of calls you responded to, that
15 sort of thing?

16 A It was a very unremarkable shift. Probably the
17 thing that stood out the most is that I think snow was
18 forecast. There are a lot of fender benders, a lot of
19 traffic accidents. There was some slight snow and heavy
20 rain during the shift, which really didn't factor in one
21 way or the other.

22 I didn't respond to any what we call "hot
23 calls". The one that sticks out in my mind is somebody
24 called in and had purchased a cell phone off of Craig's
25 List. When they tried to activate it, they were told it

1 was stolen. So they called non-emergency, wanted to turn
2 it into the police. I think that's the last report I
3 wrote that night in preparation, and planned to go home.

4 Q And you didn't go home?

5 A No.

6 Q Talk to us a little bit how you were notified
7 that your presence was necessary for a SERT call-out?

8 A I just parked my patrol car in the south parking
9 lot of North Precinct and logged out my MDC, which is my
10 computer we have in the car. This was probably about 20
11 minutes to 1:00 a.m. So I unloaded the trunk of my car,
12 set my gear that I take out with me in the gear room near
13 the south entrance and was going to check my mailbox,
14 clean it out before I left shift.

15 And Officer Jason Harris, who is also a member
16 of SERT and works the same shift with me, came up to me
17 next to the mailbox and asked if I had been listening to
18 this call on East Precinct, which I told him that I
19 hadn't and turned my radio over to East Precinct. We
20 listen to North Dispatch, since that's the precinct we
21 work. So I hadn't heard anything about the call.

22 I turned my radio over to East Precinct. He
23 gave me a brief history, and it sounded like it was a
24 domestic disturbance where somewhere during that a round
25 had been fired off in the house. I didn't really get all

1 the details, but I continued to listen to how that call
2 progressed as I finished doing whatever I was doing down
3 by the mailboxes.

4 Q Let me ask you why, as a SERT member, might a
5 call like that get your attention?

6 A One, because there was a round discharged in the
7 call. You know, it automatically kind of ups the threat
8 level. There is obviously a firearm involved. Not only
9 is there a firearm involved, but a round has been fired.

10 The Portland Police respond to plenty of calls
11 every day where firearms are involved or at least in the
12 call there supposedly is a firearm involved. But very
13 rarely is it a firearm is actually discharged during this
14 call. By that I mean the call that you are responding to
15 involves a firearm actually being fired.

16 So Jason -- Officer Harris, obviously saw the
17 potential -- I think he was right -- that this could turn
18 into a call-out where SERT would be activated to come
19 deal with that call. And we want to try to get as much
20 information as we can related to that call. And since he
21 and I were both working at 1:00 a.m., we had the benefit
22 of actually listening to the call develop and coming up
23 with a plan should SERT be activated how we would respond
24 to that.

25 Q At some point, you did get a SERT call-out. How

1 did that call arrive to you?

2 A What I recall was in listening to this radio
3 call, as I finished changing back into my civilian
4 clothes in the locker room, I heard that the family was
5 now out and it was just the suspect inside the house. At
6 that point in time, I thought this isn't going to be a
7 SERT call-out. It will resolve itself through
8 negotiations and the person will surrender to the uniform
9 officers.

10 That being said, Officer Harris and I made a
11 plan that if this did end up being a SERT call-out, we
12 would quickly drive back to the precinct and he would
13 drive our equipment van and I would drive the Bear truck,
14 which are housed within North Precinct. So I kept my
15 radio on, but I walked out to my car. And at the time I
16 had a SERT first responder car, so all my SERT gear was
17 in the trunk. I just started scraping off the snow and
18 ice from the windshield when I heard on the radio the
19 officers had heard a shot come from the house. I heard
20 one of the sergeants say, "We're going to activate SERT."

21 So at this point in time, I scraped the rest of
22 the ice off the windshield and drove the car around to
23 the SERT bay, which is on the back side of North
24 Precinct, and began pulling all my gear out of the trunk,
25 just kind of setting it on the ground in anticipation of

1 throwing it into one of these vehicles and heading to the
2 scene.

3 Officer Harris was already in the SERT -- was
4 opening the big SERT bay door. He pulled the van out. I
5 threw all my gear just on the floor in the van and went
6 and got in the Bear truck, pulled the Bear truck out of
7 the bay and we shut the bay door and we started heading
8 to the staging area, which I think was listed at 106 to
9 107 on Cherry Blossom Drive.

10 Q Were you dressed at that point in what you would
11 wear that evening?

12 A No, I wasn't. I had to be wearing my work
13 blues. Just because there is inclement weather, you
14 don't know whether you are going make it home, get stuck
15 on the freeway. I had blue jeans on, two tee shirts,
16 long-sleeve tee shirt I had under my uniform I had worn
17 for the shift, and I had a waterproof jacket on and
18 baseball hat, I think.

19 Q I'm jumping ahead a little bit. Where did you
20 ultimately get dressed?

21 A I got dressed in the van, in the SERT van. This
22 would have been -- I think it ended up getting parked
23 just short of 107th Avenue on Cherry Blossom Drive.

24 Q What were you dressed in?

25 A I was dressed in my almost normal gear that I

1 would wear on a call-out. There is some information that
2 we haven't talked about yet, but basically it became
3 clear that getting on the perimeter was of the utmost
4 urgency based on officers felt they were being shot at
5 while we were in route. So since I knew it happened to
6 be 27 degrees at this point, the rain and clouds are
7 cleared off so it now was almost a clear night and I was
8 probably going to put on everything I could to stay warm.
9 So I just left my jeans on. I pulled on my Gortex pants,
10 which are camouflage pattern, over my blue jeans. I put
11 my pistol belt on. I put my normal vest, bulletproof
12 vest that I wear on. I pulled one of my BDU tops on over
13 that, put my equipment vest on over that, then put my
14 Gortex top on over that. On the IP because we really --
15 we kind of hide in plain sight --

16 Q What is IP?

17 A Hide.

18 Q You said "on IP"?

19 A Inner perimeter. IP is short for "inner
20 perimeter", where I'm assigned. We hide in plain sight,
21 so we put camouflage face paint on our face to lighten
22 the brightness and hopefully avoid detection.

23 On this night, because it was cold, I put a
24 black Balaclava on, which is basically a hood where only
25 my face shows. I put what we refer to as a boonie hat

1 on. I grabbed my bolt gun and I grabbed my AR-15 and
2 left the van to look for the Sergeant in Charge or
3 assistant incident leader in charge to get instructions
4 to where I was going or, if those guys weren't there
5 yet -- because I think Officer Harris and I were the
6 first two to arrive -- to find out who the incident
7 Commander was and get an assignment from them.

8 Q I warned you we were getting ahead of ourselves.
9 I want to talk about the drive from the precinct out to
10 the location on Cherry Blossom. Did you do that with a
11 radio?

12 A Yes. The radio on the Bear truck was referred
13 to what we refer to SHE-1. That's an acronym. That's
14 the radio net it is on. Typically on any call-out, once
15 our pager goes out, get up, dress, turn on radio to SHE-1
16 net.

17 In my case, it would be "SERT 25, I'm in route."
18 So in this case, Officer Harris and I were already in
19 route and we were listening to other officers come on,
20 letting them know they received the call and were in
21 route.

22 At some point in time Officer Sean Gore, I
23 believe is the person that was broadcasting that, who is
24 a SERT K-9 officer, but he also works regular patrol as a
25 K-9 officer. He began giving updates as to what was

1 happening at the call, because at this point in time I'm
2 no longer listening to East Dispatch. I'm not getting
3 that direct access. The Dispatcher is also giving
4 updates on the call, but I recall Officer Gore stating
5 that now multiple shots had been fired and officers
6 believed they had been shot at.

7 Q Let me pause just for a second before we get
8 into SHE-1. You talked a little bit about what you heard
9 from East Precinct Dispatch. Is there anything we
10 haven't talked about from East Precinct Dispatch that was
11 ultimately relevant to decisions that you made that
12 night?

13 A I'm not sure I heard this from East Precinct
14 Dispatch or I heard this on SHE-1, but at some point in
15 time I became aware that the suspect had access within
16 the house to a semi-automatic pistol, a shotgun and then
17 some type of high-powered rifle. I don't remember
18 specifically if I ever got the exact type of it. I
19 remember like a 270 Winchester or 300 Winchester magnum,
20 which are just different types of high-powered weapons,
21 but I was aware of he had a semi-automatic pistol, a
22 shotgun and rifle in the house.

23 Q Just by way of explanation, I probably ought to
24 ask you this. Everybody else who has been here today has
25 had a report they have written, a CAD printout, that sort

1 of thing. You have not; is that accurate?

2 A That's correct.

3 Q So everything from the date of this incident
4 that you are testifying to is -- you are doing from
5 recollection as opposed to even refreshing your own
6 recollection by looking at a report?

7 A That's correct.

8 Q As an inner perimeter guy, why is it important
9 for you to -- or I guess why is the information about the
10 different types of firearms available to a subject in the
11 house important for you to know?

12 A It's important to know the type of firearm that
13 you are dealing with. Most of the time we go in with a
14 mindset that, you know, we're not going to know and even
15 the information we get may not be accurate.

16 But in this case, someone who has access to a
17 high-powered rifle, which typically you are talking about
18 a hunting rifle, those rifles are much more accurate than
19 someone that's shooting at you with a pistol. One
20 question that was asked -- I'm not certain this ever came
21 out -- I think it was answered in the affirmative was --
22 does this rifle have optics on it or does this rifle have
23 a scope? Especially in my job, that makes it very
24 difficult, because as I said, we're kind of hiding in
25 plain view. But if you have the ability to, you know,

1 really focus in on an area by the use of optics, uhm, you
2 know, something that may appear as part of the backdrop,
3 which is what I'm trying to accomplish by wearing all
4 this camouflage gear and painting my face, you know, it's
5 much different if you are looking at something with a
6 naked eye 30 or 40 yards away. But if you have the
7 ability to use some type of scope or optics and you are
8 looking at it like what would be perceived to be the
9 distance we are here now, the use of that backdrop kind
10 of goes away. Plus, the ability to accurately put rounds
11 on target is a huge concern, not to mention that
12 typically any high-powered rifle will go through any
13 ballistic vest that I am wearing or at least the
14 ballistic vest that I was wearing that night. It will
15 also go through anything that was standing behind in that
16 backyard, which we'll talk about later.

17 And in most cases, not all, depending on the
18 trajectory, it will go through houses, go through cars,
19 it can go through an engine block. When you are talking
20 about a high-powered rifle, you are talking about a
21 weapon that will go through pretty much any barricade.

22 The only thing we have on SERT to combat that is
23 our rifle shield, which is stored in the back of the van.
24 The bad part about the rifle shield is that all assembled
25 it probably weighs 400 or 500 pounds. It's broken up

1 into, I think, nine sections. It has been awhile since I
2 have assembled it. It's put on a platform with wheels.
3 We typically roll it into position. You really can only
4 get a couple guys behind that.

5 The other two things that we have to combat that
6 type of weapon are two pieces of armor: The Bear truck,
7 which I had driven out, and the Bear cat, which is our
8 smaller piece of armor that, at least when I arrived, I
9 was sure was coming to the scene. But those are
10 typically used at the front of the residence, which we're
11 trying to get containment on. So I didn't have any of
12 those options available to me in the backyard.

13 Q So, with that knowledge then that he has got a
14 higher-powered rifle in addition to other types of
15 firearms, how does that impact your decision-making in
16 terms of where you go, what you do?

17 A I want to put as much cover or as many barriers
18 between me and that high-powered rifle as possible, which
19 in this case really wasn't possible. And I have to be
20 extremely careful about the noise that I make. I have to
21 be extremely careful about being seen. And as I'll talk
22 about a little later on, it's a very eerie feeling,
23 because we ended up going into a backyard where officers
24 already believed they were shot at.

25 And everything in my mind was amplified. Every

1 step that I took on the frozen snow and ice seemed like
2 it was beating a couple of gongs together or something.
3 So it was -- it was -- it had the hairs on the back of my
4 neck standing straight up.

5 Q After your switch from East to SHE-1, if in fact
6 you heard that information about the high-powered rifle
7 and realized it may have come out on SHE-1, is there any
8 information you heard during the trip from the precinct
9 to the location on SHE-1 that's relevant to your decision
10 making?

11 A I recall asking on SHE-1 if anybody knew where
12 these shots were coming from. If I did end up being one
13 of the first IP members there, I wanted to deploy to
14 where the shots were coming from. I don't think I ever
15 got an answer to that. At least I don't remember that.

16 I remember as we were getting off I-205 at the
17 Stark Street exit that I believe again, it was Officer
18 Gore came on the radio and kind of stepped back a little
19 bit from the statement that he made that officers were
20 sure they were getting shot at. I mean, to me it still
21 sounded as if the officers were shot at, but it wasn't
22 100% certain. So I took that into account as I was going
23 to make decisions as this call-out progressed.
24 Originally, I got information that officers were sure
25 they were shot at. Now maybe it's not 100%. I need to

1 investigate that a little more before I start making my
2 decisions.

3 And so I had probably five or ten minutes before
4 I was deployed. But to, me as we were arriving at the
5 scene, that was a huge piece of information to process
6 and factor into the decisions.

7 Q So, as you arrive at the location, there is
8 another either SERT briefing or officer in charge
9 briefing effectively there; information is not provided
10 to you over the radio, but provided to you in person,
11 word of mouth?

12 A This wasn't as normal. This call-out wasn't a
13 normal call-out. It was rapidly evolving. This is the
14 only call-out like this I have been on in my
15 four-and-a-half years, which consists, between search
16 warrants and call-outs, maybe 150 events.

17 Like I said, as soon as I got there, we parked
18 the Bear truck, jumped in the van. Officer Harris and I
19 were both getting changed, getting our gear.

20 I was the first one out of the van. I looked up
21 towards 110th -- past 107th, I should say, and I saw
22 someone that I recognized as a SERT member. He was
23 talking to, I believe, the incident Commander captain,
24 Mike Lee. So I ran up to them. It ended up being
25 Sergeant Andy Shearer.

1 I overheard their conversation, and what I took
2 from it was that on side three, which is the back side of
3 the house the suspect is in, officers had to pull out of
4 that backyard because they felt they were being shot at.
5 And there was really no containment on the back side of
6 the house.

7 I told Sergeant Shearer that I was geared up and
8 ready to go and I could go to side three. He turned to
9 me and he had his notebook out. He said, "The officers
10 are in front of 11035 S.E. Madison Street. Go find a
11 partner and go get on side three and get containment."

12 Q So, let me ask you -- I don't mean to interrupt
13 you. At this point you learned officers have been fired
14 on in the backyard. Talk to me a little bit about how
15 that makes you feel and how that impacts decisions that
16 you are going to make down the road.

17 A Let me back up a second. I might have
18 overstated when I said Sergeant Shearer said they pulled
19 out of there because they were shot at. I don't
20 specifically remember that. Where I get the information
21 that they are sure they are shot at is when I actually
22 meet up with them.

23 Q Okay.

24 A I guess what I should take away from that
25 conversation is that they did not have containment on

1 side three. They pulled out of the backyard.

2 Q Okay.

3 A So at this point, we're standing at about 107th
4 and Cherry Blossom Drive. Sergeant Shearer points to
5 what would be the south and, he says, "That's Madison
6 right there," and so I look back, and I don't see anybody
7 that's geared up and ready to go, but I know Officer
8 Harris is in the van getting ready.

9 So I go to the van, yell at him, "Hey, you and I
10 are partnered up. We're going to side three. Come out.
11 We're going." At this point, I can see numerous uniform
12 cars, some of which have people in the backseat, which I
13 rightly or wrongly take to be people already evacuated
14 from the house.

15 There was one uniform officer there I asked if
16 he had anybody in his car. He said he didn't. I said,
17 "Okay I need you to drive me up to this address."

18 Officer Harris got out of the van. We loaded
19 our gear in the back of that car, and this uniform
20 officer drove us up Madison Street.

21 I'm familiar with the area in general, but I
22 didn't know exactly where the house was. Like prior to
23 this I wouldn't have been able to tell you that 110th cut
24 through between Madison and Cherry Blossom. So because
25 of that, we saw the street sign at 110th and we decided

1 we would walk the rest of the way.

2 Right at 110th up Madison ends up being a 15,
3 20-degree slight hill up to 11035 S.E. Madison. I ended
4 up running up that hill. What I remember about that is I
5 was running up the hill. On the radio, they advised that
6 a shot had just been fired from the house. I knew I was
7 close. I was probably actually only two houses away at
8 this point. What I thought was odd is I didn't hear that
9 shot at all.

10 So we ended up -- or I ended up getting to the
11 driveway of 11035 S.E. Madison, and there were four
12 uniform Portland Police officers there. There were three
13 males and one female. And, honestly, if I knew them, I
14 didn't recognize any of them at that time.

15 So, I talked to the two that were closest, one
16 of which I believe her name is Officer Toops, T-O-O-P-S.
17 I'm not sure who the male officer was I talked to, but
18 the first question I asked, I asked him, "Are you sure
19 you were shot at?" And unequivocally both of them told
20 me, "Yes, I am sure we were shot at." And they described
21 having wood go over the top of their heads. Whether that
22 be a bullet that hit branches or it impacted a house or
23 it hit a fence, I'm unclear, but in that five to
24 ten-second conversation I had with them, there was no
25 doubt in my mind that they had been shot at.

1 They had said they had been in the backyard of
2 the house we were now standing in front of. Because they
3 were shot at, they pulled back to the position they are
4 now in, in the driveway, which really didn't afford them
5 any view of the back side of the house the suspect was
6 in.

7 They told me that the house at 11035 S.E.
8 Madison had been evacuated and that the owners or they,
9 I'm not sure who, but unfortunately now the door was
10 locked, which I heard that and I kind of groaned, because
11 that's exactly where I wanted to be, in that house,
12 because it would afford me the best place to hide. And I
13 was hoping that it would be higher than the house the
14 suspect was in.

15 So, at this point, Jason Harris had linked up
16 with me. He may have been there for awhile, but this is
17 when I noticed he was up with me. And I broadcast on the
18 radio, which was still SHE-1, that we had linked up with
19 the officers at Madison and they were certain that they
20 had been shot at and that we were going to breach the
21 front door to the house on Madison to get inside.

22 At which point, Officer Harris kicked the front
23 door in. And the house was completely dark. We went
24 inside the house, announcing as quietly as we could that
25 we were the police. We were told that the house had been

1 evacuated. Sometimes they miss somebody.

2 I didn't want to use my flashlight. I thought
3 any use of the flashlight within that house could draw
4 fire from the suspect. So as quietly as we could,
5 without using flashlights in a completely dark house, we
6 tried to go through every room, which we did. And we
7 felt certain there was no one there in the house.

8 Once that was done, I started getting my gear in
9 order and ready for the call-out. By that I mean I have
10 now gone from 27 degrees to a 75-degree house that I
11 think I'm going to be in for the foreseeable future. So
12 I whip off my Gortex and gloves. I had to get my bolt
13 gun out of the bag, and I load four rounds in my bolt gun
14 and chamber a round to make sure that it's ready.

15 Then I start looking to see what I can see from
16 this house. What I was hoping to see from this
17 completely-dark house was the entire back side of the
18 house the suspect is in with no -- nothing blocking my
19 view and good vision to the windows and preferably
20 anything on the ground floor; if the suspect were to get
21 out on the back side, that we would be able to see that
22 and take some kind of action to prevent him from getting
23 out in this residential neighborhood. Unfortunately,
24 that was not the case.

25 As we're doing this, I should explain that we

1 don't want to disturb anything in the house. We don't
2 want blinds to move. We don't want lights to come on.
3 We want this house to look exactly like the suspect has
4 seen, if he had looked at that house before. So I'm
5 peeking around the corner of the blinds.

6 In the living room of this house is a great big
7 picture window, which I try to look around. And I don't
8 see anything other than the backyard of the house that I
9 am in. There is a lot of trees. I can kind of see a
10 little bit of light, which will end up being the left
11 side of the house the suspect is in. There is a couple
12 windows there. But there is nothing in this window that
13 I can use.

14 I go check a bedroom window. There is nothing
15 there.

16 I go to the extreme left or west end of the
17 house that we're in, and immediately what catches my eye
18 is that there is a window that I want to look out, but
19 there is also a slider that leads out to an elevated
20 deck. There is snow on that deck.

21 Now, since the clouds have moved off, there is
22 what felt to me like a full moon, but is probably only a
23 half moon and it's bright. To me it felt the sun was
24 shining. I didn't want to look out this window until I
25 could minimize the sight from the slider. The blinds

1 were up. I tried every which way to pull, tug, get these
2 blinds down. I figured if I pull too hard I'm going to
3 rip these blinds off. That's not going to fix anything.

4 So I finally peeked out this window, and there
5 was nothing. There was nothing I felt we could use to
6 our advantage inside this house.

7 So Officer Harris and I talked briefly. I said,
8 "Hey, we can't get anything out of this house. We're
9 going to have to go in the backyard."

10 So I now did the reverse, put my Gortex back on,
11 found my gloves. I felt my bolt gun loaded. I slung it
12 on my back, and I grabbed my drag bag, which is what
13 contains the bolt gun.

14 We went out in the driveway. I set my drag bag
15 down, asked uniform officers to watch it. We kind of
16 looked at our options. We could go around the right side
17 of the house or the left side of the house.

18 For some reason we chose the left side of the
19 house. I don't know why that was. To get to the left
20 side of the house, you kind of go down --

21 Q There are some photographs here, if any of that
22 would be helpful in that stack?

23 A I can show you this one here. This is where I
24 met up with the officers and I had that conversation.
25 The front door of 11035 is right here.

1 Q That's Exhibit 37, for the record.

2 A This path kind of goes down and slopes downward,
3 and over here would be the deck, which I don't have a
4 picture of right now.

5 Anyhow, so I scouted in along the left side of
6 the house. Like I mentioned earlier, there was now ice
7 covering the path. Every footstep I took there was that
8 horrible crunching sound of stepping on frozen snow.
9 Honestly, every step I took I was expecting some round to
10 at least be directed into the backyard. I did not want
11 to go down there, but unfortunately there was no other
12 way to even get containment if you jumped into the back
13 yard of that house.

14 So Officer Harris and I went down the back side
15 of that house, and we made it across a wooden deck that
16 creaked even louder than the snow. We made it past that,
17 and we were now underneath this porch. We just kind of
18 waited there on a knee to kind of survey what we had.

19 And what I could see was a backyard that
20 extended probably 20 feet from the back of the house on
21 Madison to what looked like to me, what I would have said
22 was a six-foot high wooden fence, and there were scraggly
23 trees up and down that fence line. We were almost to the
24 left edge of the property line.

25 So, I scouted around directly behind the house.

1 There was kind of a sunken retaining wall that led to
2 what I assume is the basement of the house on Madison. I
3 liked that because it afforded me good cover up to about
4 my waist line.

5 But once I got there, I couldn't see anything.
6 So I then came back, met up with Officer Harris. We
7 talked briefly, and we didn't think we were going to get
8 any better than this. Sergeant Kruger, who is the inner
9 perimeter sergeant, was asking if we had established
10 containment on side three. So we relayed to him via the
11 radio "Well, if anybody comes in the backyard of this
12 house, we'll be able to deal with them, but right now we
13 can't see the back of the house the suspect's in." So he
14 acknowledged that. I think he then wanted to set up
15 containment on side two and four of the house the suspect
16 was in.

17 At some point in time I became aware I think he
18 asked us if it would be beneficial for us to have a K-9
19 here, so he was going to dispatch a K-9 to our position.
20 So I tapped Officer Harris on the shoulder said, "Hey,
21 stay here. I'll be back in ten seconds."

22 I went up, and I found Officer Dorn, who is one
23 of our SERT K-9 members, was now up with the uniform
24 officers in front of the house. I asked him if his dog
25 would be quiet.

1 We have three or four dogs on SERT, and some
2 can't keep from barking to save their lives. Luckily,
3 Officer Dorn's dog is extremely quiet. You can go poke
4 it in the eye and it probably wouldn't bark, not that I
5 would recommend doing that. He said, "Yep, my dog is
6 quiet." I said you are going to come back down here, be
7 with Officer Harris. Officer Dorn and I went back down,
8 linked up with Officer Harris.

9 At this point, I didn't like our position
10 because we couldn't see anything. Again, I could see
11 these lights, which ended up being windows. I wasn't
12 100% sure that was the house we were supposed to be
13 watching.

14 At one point -- it may have been before we
15 brought Officer Dorn down there -- we actually got one of
16 the uniform guys, brought him back in the backyard, and
17 he said, "Yeah, those are the windows that are on the
18 left edge of the house."

19 So, Officer Dorn and Officer Harris stayed in
20 the backyard, and I wanted to go make one more run in the
21 house on Madison to see if there was anything we could
22 get from that position, because I think it would be
23 better for us to hide in and would offer us a little bit
24 of cover, you know, if rounds started coming our way.

25 So this time when I went in there I started

1 opening up the blinds about two or three feet. I took my
2 bolt gun on the lowest power setting, started looking
3 through the scope. If we were clearing the inside of the
4 house -- we call "slicing the pie" -- to just see what I
5 could see from each aspect as I walked through that room,
6 and I couldn't see anything. I did the same thing in
7 that bedroom and that window by the slider, and there was
8 nothing I was going to get in that house that would
9 afford me or us an advantage to keep containment on that
10 situation.

11 So, I went back down and linked up with Officer
12 Harris and Officer Dorn. At this point, I was too close.
13 My bolt gun wouldn't really be of any use, so I set it on
14 the ground up near the house.

15 I have a bipod normally on my AR-15. I took
16 that off, set it on the ground. And as all this is
17 going, there has been updates what other people are doing
18 and whatnot.

19 Somewhere along the line I heard that they could
20 see the suspect in the side-floor window. Now that I
21 have said that, I need to back up a second. There was a
22 part that I skipped over prior to deploying out of the
23 van. Officer Cathy Kent, who is one of our SERT Intel
24 officers, as I was getting changed provided me with the
25 ODL photo.

1 Q What is ODL?

2 A Oregon Driver's License photo of the suspect,
3 Mr. Boehler, which was a black-and-white photo, but it
4 kind of gave me a likeness of him and height and weight
5 description.

6 And at some point along the lines, a description
7 had been broadcast that the suspect was supposed to be
8 wearing a black tee shirt and gray sweat pants.

9 So, I'm now back in the backyard with Officer
10 Harris and Officer Dorn. And we're probably 15 feet from
11 the fence at this point. And so I go up and have a
12 conversation with Officer Harris and tell him that we're
13 going to scout out that fence and see what we can see.

14 So we end up slowly creeping up to the fence
15 line. And as this is going, I'm kind of cringing for the
16 noise at least I think we're making. Also now, because
17 the moon is behind us, the moon is to the south of us, so
18 I feel we're backlit in this position. And the closer we
19 get to the fence, the less foliage we have in front of
20 us. The light from these windows, the two windows that I
21 can see and it ends up being at least one window I
22 couldn't see initially on the ground floor, feels like
23 they are shining in our face and illuminating us as we
24 get to the fence line. What I like is now we can at
25 least clearly see two windows in the house. I can now

1 clearly see inside this house.

2 So as we get up to the fence line, we stay
3 about, I don't know, two or three feet from the fence.
4 And I kind of turned and looked behind us, and I see a
5 big bush. I point that out to Jason, or maybe Jason
6 points it out to me. We're going to try to stay up with
7 that bush right on our back so it would block the
8 moonlight and it would afford us a little more of that
9 hiding in plain view.

10 Somewhere during this I hear broadcast from
11 Officer Corno that he can see the suspect in the garage,
12 that he is armed with a pistol and a rifle. And then
13 shortly after that -- or maybe it was the same
14 broadcast -- that he is going to the back of the garage
15 and the garage door is closing.

16 So at this point, I step forward all the way up
17 to the fence, and I now realize that the two windows that
18 I have seen at various times through this call-out are on
19 what we call level two, or the second floor, of this
20 structure and that's where my feet are in the backyard
21 basically on the other side of that fence, it slopes down
22 ten or fifteen feet. When I get to the edge of the
23 fence, I can now see another window directly below the
24 one I have been looking at. Now I realize there is a
25 door to the right of that window, maybe about five to ten

1 feet. So when I'm right at the fence line, I can see two
2 windows and a window and a door on the ground level. And
3 this is a concern for me because my job being on side
4 three is to broadcast observations, but obviously not let
5 the suspect come out in the backyard and get past our
6 position. So now I'm kind of torn between staying back
7 from the fence, staying in the dark and being able to
8 keep at least visual containment on this garage window;
9 at least what I think is a garage window where the
10 suspect was last seen. I'm also concerned at any moment
11 he is going to come out of the door on the three side and
12 he is going to be in the open air in the backyard.

13 Somewhere during this also I believe I hear
14 Officer Meyer say that they could actually see some kind
15 of barricade either on a window or on a door. I don't
16 know where Officer Meyer was to make that observation,
17 but I believe I heard that somewhere on the radio.

18 So I decide, since I believe this guy is now on
19 the ground level, I'm going to stay pretty close to that
20 fence line. I still think I'm tucked in the trees enough
21 with my camouflage so he won't see me. It's also a
22 concern for me, as disciplined as you want, I'm drawn to
23 watch the light. I am cognizant I can see the light on
24 the ground floor and light by the kitchen window. There
25 are also parts of the house further down that are

1 unlighted, dark. I'm sure there are windows down there.
2 It would be totally feasible for the suspect to be in
3 those windows and my focus would not be drawn to him
4 because he would be sitting in the dark and I would have
5 the light bouncing off me from those windows that are
6 lit.

7 At some point in time, I thought I saw a shadow.
8 So this door that's on the three side on the ground floor
9 has got what I think is a window to the left of it. I
10 thought I saw a shadow pass by there, but I wasn't
11 certain enough with that information to broadcast it. It
12 may not have happened, but it also may have been someone
13 passing behind that door.

14 And so I'm just maintaining that position. And
15 it's probably a much shorter time than it's taken me to
16 explain it, but all of a sudden -- let me -- I keep
17 talking about windows, and I probably ought to name them.
18 So this is marked State's Exhibit 28, which I'll use to
19 start out with. This window here that I am pointing to,
20 which is the extreme left edge or western window on the
21 back side, as I go through this narrative, I'm going to
22 call that the dining room. I don't know for a fact
23 that's the dining room.

24 JUROR: Is that the Madison house or Cherry
25 Blossom?

1 A This is the house the suspect is in. This would
2 be 11066 S.E. Cherry Blossom. So I'm going to refer to
3 this window as the dining room window, just based on what
4 I saw that night. I could be wrong, but I believe that's
5 the dining room.

6 This smaller window right here, which is to the
7 right of it on the back side, I'll refer to that as
8 kitchen window, just based on its placement, again what I
9 saw that night. I could be wrong.

10 Then in this picture, you can see that there
11 appears there was a window looking through the three
12 side. This would be one side window here, and I term
13 that the living room, based on what I saw that night.
14 Again, I don't know that as a fact.

15 Then this is another picture here when I went
16 out there later in that day that shows you -- so this is
17 the dining room window right here that's now boarded
18 over. This is the kitchen window here that's now boarded
19 over. This window here I took to be the back of the
20 garage. So this is the window when I went up after
21 Officer Corno broadcast, "He is in the garage; he is
22 going to the back of the garage," that's the window I was
23 trying to focus on.

24 This window here is where the door was on side
25 three. You can't see it, but I think there was like --

1 would be a foot by height of the door glass to the left
2 of that. This is where I thought I saw that shadow, but
3 I could have been wrong.

4 So at this point, we're still up at the fence
5 line -- at least I'm still up at the fence line. Then in
6 that -- one thing I glossed over or didn't mention, in
7 that dining room window, one of the reasons I call it a
8 dining room window, which I thought was odd, maybe it has
9 no bearing whatsoever, but there was a chair, which I
10 believe is actually sitting up on top of what I believe
11 would be the dining room table. So as I look through
12 that window to the left, I see that chair sitting there.
13 You know, that coupled with the reports that he had been
14 trying to barricade the doors or windows, I just noticed.
15 It really wasn't an impediment to me, but I thought it
16 was odd.

17 So after this information of him being in the
18 garage and after I possibly saw the shadow in the window,
19 all of a sudden he appears coming from the kitchen, but
20 he appears in the dining room.

21 BY MR. MOAWAD:

22 Q Where do you first make visual contact through
23 that dining room window or kitchen?

24 A Dining room window. I see this person is
25 wearing a black tee shirt, what I determine to be

1 light-colored blue jeans. They could have been gray
2 sweat pants, but height and weight matched the physical
3 description. The only thing I noted that was odd was
4 that the suspect's hair appeared to be longer than what
5 it was in the ODL photo I had been provided.

6 Q Let me ask you in terms of -- you mentioned he
7 came from the kitchen. You obviously had eyes on at this
8 point, the kitchen window. Did that jolt you thinking,
9 "I missed him through the kitchen window," the first
10 visual contact with him that is the dining room window?

11 A The first visual contact with him I remember is
12 through the dining room window. I don't remember ever
13 seeing him through the kitchen window. It's possible
14 that I did. I remember all these observations being made
15 through the dining room window.

16 Q What's going through your head, I guess is what
17 I'm getting at, when you realize -- you are looking
18 through all these windows in the house trying to make
19 visual contact with him, then all of a sudden he's in the
20 window in front of you? As an officer, who is trying to
21 hide and be effective and communicate information, is
22 that concerning to you that the -- that the guy is right
23 in front of me before I saw him or had any idea he was
24 coming?

25 A It definitely showed he was mobile throughout

1 the house and he could be on the second story or the
2 first story and, you know, except for that one window, I
3 couldn't see him. So I mentioned earlier how if he were
4 in different parts of the house that were dark, that
5 would afford the suspect an advantage, I definitely would
6 not be able to see him and possibly he could see me or
7 other officers.

8 Honestly, I was surprised when I first saw him,
9 but I also said, "That is the guy." He matches the
10 clothing description. He matches the physical
11 description with the exception of the hair. But I also
12 wanted to make sure that it was the suspect. I had been
13 told via radio, I believe it was, that he was supposed to
14 be the only person in the house, but, you know, it's one
15 of those things I had to be sure that that is the
16 suspect.

17 As I see him in that window, I mean, I'm
18 concerned that he sees me. But he didn't make any
19 reaction that he was aware of my presence. I can see
20 from about the hips up maybe, and he is walking quickly
21 with a purpose. And he starts to go towards the living
22 room or the front of the house. I start to broadcast I
23 think my observations that, "Hey, the suspect is now on
24 level two. He's on the three side of the house. He is
25 coming to the one side of the house."

1 And as he gets closer to the front of the house,
2 I can see more of the suspect as far as height-wise. Now
3 I realize in his right hand, between his hip and his knee
4 he is holding a black semi-automatic pistol. I'm trying
5 to broadcast that information. I'm not sure that it went
6 out. I'm trying to process all this information as
7 quickly as I can.

8 I'm concerned, you know, based on, you know,
9 through this entire incident, which has now spanned, I
10 don't know, I would estimate 30 or 40 minutes. There has
11 been shots fired throughout. There was a shot fired at
12 officers that I met up with. There has been a shot
13 that's coming from the house since I have been on the
14 scene as I was going up to meet with those officers, but
15 I don't have the time to process, you know, should I take
16 immediate action against this suspect as he goes to the
17 front of the house?

18 What I do see is I try to broadcast on the
19 radio. With his left hand to me it looks like he is
20 trying to move some blinds, similar to ones that are
21 hanging here. I would have thought they were drapes.
22 Honestly, I didn't take any notice of them before until
23 he went up there with his left hand and tried to move
24 them. Then before I could do anything, he moved to the
25 right and he was out of my sight, blocked by an interior

1 wall; which I believe is between the kitchen and the
2 living room. Again, I don't know that as a fact, but all
3 of a sudden he was out of my sight to the right.

4 Shortly after that, it seemed like within
5 seconds, there was a broadcast by an officer at the front
6 of the house -- I want to say it was Sergeant Shearer;
7 I'm not positive about that -- that a shot had just come
8 from the front of the house. Immediately what went
9 through my mind is that was a suspect and he just shot at
10 officers in the front of the house. And I had a horrible
11 feeling that the next transmission would be, "Yeah, we've
12 got an officer down." Luckily, that didn't happen.

13 I heard Sergeant Shearer call for CS gas to be
14 introduced into the house. This is an option and really
15 one of the few options that we have available to us to
16 try and diffuse a situation in several different ways.
17 One, it's advantageous to us because it forces a suspect
18 or an individual to focus on something other than the
19 action that they are taking, in this case, shooting at
20 the police.

21 I don't know if any of you have any experience
22 with CS gas. I've had to go through it several times as
23 part of my training, either in the military or as a
24 member of the Rapid Response Team or here as a member of
25 SERT. For me, personally, it's a horrible experience.

1 No matter what mind set I take, I'm going to try and
2 defeat this gas, I can't do it. I give up. I run away
3 from it as fast as I can. I can't see. It has a
4 horrible reaction to me. But everybody is different and
5 it affects people differently. I have seen people in
6 training be able to stay in a gas cloud and still
7 function through it. I don't see how they do it, but
8 people can do it.

9 And so I started hearing -- I should back up.
10 When that -- when it was broadcast that a shot came from
11 the front of the house, I never heard it, which I thought
12 was strange.

13 Shortly after Sergeant Shearer asked for CS to
14 be introduced into the house, I started hearing what I
15 presumed to be either less-lethal launchers, meaning like
16 a 37-millimeter gas gun, or what we refer to as the L8.
17 Both those are cold gas launchers or shotguns being fired
18 that would launch warm gas canisters into the house. I
19 clearly heard those.

20 I turned to Officer Harris, who was with me, and
21 I told him to get his mask on, because we want to partner
22 up. We don't want to both not have a gas mask on and
23 then we fall prey to the affects of CS gas and then we're
24 not effective on side three. So I am assuming he was
25 doing that. At one point I turned and looked, and I

1 could see him down on one knee putting his gas mask on.

2 I remember seeing the suspect emerge from the
3 living room coming back to the dining room. I could see
4 that there was starting to have a gas cloud behind him,
5 but not very thick at this point.

6 He had what I'll term a rag in his left hand. I
7 remember it kind of being tan or brownish in color. I
8 tried to think back what would you bring out from the
9 living room, and one thing that I thought of is maybe
10 like the covers you put on the edges of a couch. I'm not
11 sure that's what it was. But I termed it as a rag, I
12 think, on the radio.

13 So he kind of paused in the dining room window
14 and with his right hand I saw a motion that I believed he
15 was trying to light a lighter, Bic lighter, that classic
16 flicking-your-thumb motion, and I broadcast this on the
17 radio that the suspect was now back on the three side and
18 he had some kind of rag and was trying to light it on
19 fire. I never actually saw a Bic lighter in his hand or
20 any type of lighter. It was more on the motion and where
21 his hand was in relation to what I thought was a rag.

22 Q Approximately how far from him are you at this
23 point physically?

24 A I would have estimated at the time at about
25 15 yards. It may have been less than that. But about

1 15 yards, ten to 15 yards maybe. Again, I'm standing on
2 the fence line and I'm about even, slightly above the
3 dining room window is my position.

4 Q You are watching him now doing something you
5 thought was lighting a fire. How does that impact your
6 decision making? What's going through your mind about
7 what's occurring?

8 A There was a horrible feeling that went through
9 my mind at that point because the first thing I thought
10 is this guy has turned the gas. Now he wants to blow the
11 house up. The house blows up, where I'm standing we're
12 in a bad way. Officer Harris, Officer Dorn, we have no
13 protection. If that house is filled with natural gas and
14 now he is lighting it on fire, there is going to be a
15 terrific explosion. It didn't happen. Thank goodness.
16 I don't know if there is natural gas to the house, but
17 that went through my mind. Then the suspect disappeared
18 in the kitchen and he's out of my view.

19 I don't remember broadcasting anything on the
20 radio at this point. I think there are still gas rounds
21 going into the house. The one thing I noted is that it
22 wasn't having the desired affect as far as it wasn't
23 incapacitating the suspect. I mean, he still obviously
24 had some kind of plan.

25 He now emerged from the gas cloud with at least

1 a rag and what I believed to be something he was trying
2 to light it on fire with, and now he's moved deeper in
3 the house. And he was not, at least from the brief
4 actions I saw, he was not surrendering.

5 Q And did he go towards the kitchen window or
6 towards the living room after trying to light something
7 on fire?

8 A Towards the kitchen. Then there was a brief
9 time when I didn't see him. I don't remember how long
10 that was. It was probably only a few seconds.

11 And, again, I haven't reviewed any radio tapes
12 or talked to anybody. And so the events may be just a
13 little bit different as I describe them. But what I
14 remember is he comes from the kitchen through the dining
15 room towards the front of the house again. And then he's
16 gone out of my view. Then he runs very quickly.

17 At this point, in my mind there has already been
18 a shot fired at officers from the front of the house by
19 the suspect. This incident has been going on and there
20 have been shots fired at officers throughout. I'm
21 concerned that if he goes to the front of the house one
22 more time, it gives him the opportunity to shoot at the
23 officers that are out there. I think this guy is an
24 immediate threat to those officers. I think he is an
25 immediate threat to me throughout this whole thing. I

1 had no doubt that if he saw me he would have shot at me.
2 But right now I'm concerned that there are officers, SERT
3 officers and uniform officers and even citizens that are
4 still in homes that haven't been evacuated that if this
5 guy goes to the front of the house again he has the
6 opportunity to shoot, at the very least, at the police
7 officers out there.

8 At this point, I make a decision that I am not
9 going to let him get to the front of the house again. I
10 know at least the last place I saw him he's in the
11 kitchen. So I think if I see him again it's going to be
12 in the dining room. I don't remember if I'm looking over
13 the top of my scope on my AR-15 at this point or if I'm
14 looking through my scope, but I take kind of a focus on
15 the right side of that dining room window.

16 The suspect emerges into that dining room window
17 again. He now has this rag, whether it's the same one or
18 different one, over -- or to his face with his left hand,
19 like he's attempting to defeat the affects of the gas.
20 His right arm appears to be down at his side straight.
21 It's not in a swinging motion, like most people would
22 normally walk. It's actually in the same position that
23 first time when I saw him walk to the front of the house
24 where he ends up holding the pistol down between his hip
25 and his knee.

1 Q What did that make you believe about what he had
2 in his hand?

3 A I believed that he had the pistol in his right
4 hand at this point. However, I never saw it. However,
5 he began to turn and go to the front of the house.

6 At this point, for the reasons I mentioned
7 earlier, because I didn't want him to get to the front of
8 the house and have the ability to shoot at officers
9 again, I felt he was an immediate threat, I fired at the
10 suspect. I fired three times.

11 The suspect stopped and then dropped straight
12 down below the window, the dining room window.

13 I could see where my rounds hit in the window.
14 And based on the suspect's reaction and looking at those
15 rounds, where they impacted in my mind's eye as to where
16 the suspect was when I shot, I felt I hit the suspect
17 probably three times.

18 I broadcast on the radio that I had fired at the
19 suspect and where the suspect was and that the suspect
20 had dropped down and was no longer in our sight -- or my
21 sight, I should say.

22 After that I don't remember if -- at some point
23 during all this officers were doing a roll call, which is
24 something that we do after we're shot at. I don't
25 remember if that was before I shot or after. I know that

1 they continued to launch CS gas into the house. Still to
2 this point I wasn't affected by the gas. I'm not sure if
3 Officer Harris had his mask on at this point or not.

4 But I told Officer Harris that I could hold my
5 position and keep an eye on where I last saw the suspect.
6 What seemed like two or three minutes later -- could have
7 been much less than that, could have been more -- I
8 started smelling the gas that either didn't make it into
9 the house or was now coming out of the house through
10 broken windows. And so I told Officer Harris to come
11 take my position while I put my mask on.

12 As I did that, I pointed to the window where I
13 had last seen the suspect and where I shot at the
14 suspect. I told him that the suspect had dropped
15 straight down and I believed that he was just under that
16 window sill. And once Officer Harris was oriented, I
17 stepped back and started putting on my gas mask.

18 I put my mask on, and immediately I think
19 because the Balaclava I was wearing was probably now
20 soaked with sweat, both of my eye lenses fogged up, and I
21 couldn't see anything, which was somewhat frustrating. I
22 tried several times to what we call clear our mask and
23 get that condensation moisture out of it. It didn't have
24 much effect. By the end of it, I could kinda see out of
25 the bottom of my right eye, which definitely isn't

1 optimal. I went up there, stood with Officer Harris.
2 Either Sergeant Lee, Sergeant Kruger asked if we needed
3 to be relieved. I think I replied that we were fine and
4 we could hold that position as long as necessary.

5 A short time after that, Sergeant Kruger and
6 Officer Frasier arrived. Sergeant Kruger asked who had
7 shot, and I told him that I had shot. He had Officer
8 Frasier replace me and pulled me back kind of under the
9 deck and asked for what had happened. So I basically
10 briefed him as to where the suspect was, that I felt I
11 hit the suspect, that he probably was right down under
12 the window frame.

13 Then Sergeant Kruger went up with Officers
14 Frasier, Harris and Dorn. I tried to continue to clear
15 my mask. I remember sitting on a small retaining wall
16 that was in that backyard. I don't know how long we had
17 been there after we got relieved, but at some point in
18 time we started hearing some popping sounds. And there
19 was a flurry of activity on the radio. Somebody was
20 asking, "Is somebody breaking out on side three?"

21 Then I heard on the radio, "No, no one is
22 breaking out, but there is flames coming from the house."
23 I never saw any of the flames. I heard the pops. I
24 never went back up to the fence line once I was relieved.
25 I stayed there a little longer, but my mask never cleared

1 so I ended up going up to -- going up to the front
2 driveway.

3 Before I went up there, I told Sergeant Kruger
4 where my bolt gun was, that it was loaded where my bipod
5 for the AR-15 was. I tried to clear out the lenses of my
6 mask up in the driveway. It really wasn't working.
7 There was no reason for me to go back there. I stood
8 there until the end of the call-out.

9 At some point, the Fire Department arrived and
10 tried to put water on the fire through the backyard of
11 the house on Madison. Once it became clear on the radio
12 they were going to come through the house on Madison and
13 just knowing how tight things were, I asked Sergeant
14 Kruger if I could go back down there, recover my bolt gun
15 and bipod, and he told me that I could.

16 So, I recovered those two pieces of equipment.
17 I unloaded the four rounds that I loaded into my bolt
18 gun, stored it in the drag bag, which was still in the
19 driveway. I left my bipod for my AR-15 on top of the
20 drag bag.

21 Sergeant Kruger asked who I would like as my TIC
22 officer or Traumatic Incident Officer. I asked for
23 Officer Stradley, who is my normal partner on the IP, and
24 stood in that driveway for pretty much the rest of the
25 call-out. At some point Officer Stradley went and got

1 his car and brought it up there to the house on Madison
2 and he and I sat in the car just because at this point I
3 was getting pretty darn cold.

4 I think the crime scene was set up. I remember
5 seeing the crime scene tape. I stayed in that car with
6 Officer Stradley until Sergeant Kruger had been given
7 word by detectives that we were released from the scene,
8 and we were told to go to East Precinct to meet with
9 detectives.

10 I left my AR-15 rifle on top of my drag bag in
11 the driveway under Sergeant Kruger's care and went to
12 East Precinct.

13 Q Officer, let me ask you in terms of that
14 ultimate decision to fire upon the suspect in this case,
15 based on what you knew and what you had observed, did you
16 have any other options available to you?

17 A No. I felt that there were no other options.
18 You know, this individual had continued to fire at the
19 police throughout this entire event. I saw no changes in
20 the suspect's behavior that would lead me to believe that
21 if he went to the front of the house again that it was
22 going to be any different. You know, one of the things
23 that we bring to the table with SERT is we have our
24 negotiators, HNT, which are called out with us. I heard
25 on the radio that they were coming. Sometimes if they

1 are there in time in a normal call-out situation, one of
2 the negotiators would be put in the Bear truck or Bear
3 cat, attempt to negotiate through loud hail.

4 Typically, the uniform component in a standard
5 barricade situation would try to negotiate via a PA. I
6 don't know if this happened other than I know at this
7 point I hadn't been advised that any attempts at
8 negotiations were successful, and I don't think that if
9 we had a negotiator -- maybe we did, but if we had a
10 negotiator there, that he was going to be able to
11 establish any type of communication with the suspect
12 based on the actions that I saw. You know, any
13 less-lethal options that I have with me, which really at
14 that point was just my Taser, would not have penetrated
15 the window of that house. And I was too far away, I
16 believe, and really it's not an appropriate response to
17 an armed subject that's shooting at the police.

18 I didn't see in the brief time that I had to
19 make my decision any options that I could do or that the
20 team could do that would prevent the suspect from
21 potentially harming officers or citizens other than what
22 I did.

23 Q Is there anything that I have not talked to you
24 about that's important for these folks to know about?

25 A Not that I can think of at this time.

1 MR. MOAWAD: You folks have questions?

2 JUROR: In terms of -- it sounded like three
3 things that we have talked about; that there is a fire
4 that we saw -- that a fire was being started in the back
5 of the house. I'm not sure if you didn't see him
6 actually set something on fire and you didn't see the
7 flames, how -- like -- can you tell us -- what can you
8 tell us about --

9 A About the fire?

10 JUROR: -- about the fire, what you were able to
11 see?

12 A The only thing that I saw is what I have talked
13 about earlier. Where as I recall, as the gas was
14 deployed, he emerges from this starting-to-emit gas
15 cloud, and he has the what I term as a rag in his left
16 hand. As he enters the kitchen, he is doing what I call
17 the classic Bic lighter with the thumb, trying to
18 initiate a flame with a lighter. I never saw a lighter
19 in his hand, but based on his body motion and actions,
20 that's the first thing that came to my mind. I never saw
21 a flaming rag. I never saw him running through the house
22 with anything on fire. So I don't want to overstate
23 that.

24 But also, you know, as I mentioned earlier, at
25 one point in time I thought I saw a shadow go by the back

1 door. And, obviously, in my position it's very important
2 to update people as to where the suspect is and what the
3 suspect is doing. And in that case I wasn't certain
4 enough to broadcast that information on the radio.
5 However, in this case, not only was I updating the rest
6 of the team on where the suspect was, but I was certain
7 enough in his actions that I broadcast on the radio that
8 I felt he was trying to light something on fire.

9 And then he disappeared in the kitchen and for
10 an unknown period of time -- I really can't tell you how
11 long it was before I saw him again -- I didn't see any
12 flames appear in the kitchen. Once -- once it became
13 obvious there was a fire in the house, I never saw -- I
14 never saw any of the flames, period. I was never back up
15 at the fence line. I couldn't tell you where the fire
16 first became noticed in the house.

17 JUROR: Thank you.

18 JUROR: I'm familiar with the 308 7.26, 508
19 Winchester.

20 A 308 Federal true is what my 308 was loaded with.

21 JUROR: Your AR-15?

22 A It's .223 caliber. 5.56 equivalent for the
23 military.

24 JUROR: Okay. Thank you.

25 JUROR: Could you see over the back fence? Like

1 the back fence over Madison, were you able to -- did you
2 have to like hunch down, or were you able to see over it
3 standing?

4 A I didn't have to hunch down. Let me look for a
5 picture here.

6 So, this is a picture. This is State's Exhibit
7 28. This is the dining room window, which I mentioned
8 earlier. This is the fence line. You can see as it
9 relates to the house, it's kind of sloping down in a
10 45-degree angle. So I think I mentioned in my earlier
11 description that when I first went in that backyard, my
12 thought that everything was a six-foot wood fence.

13 So this is State's Exhibit 31. It's a picture
14 taken from underneath that deck, looking towards the
15 position where I was and Officer Harris was when I fired.
16 And I can see here's the small retaining wall that I was
17 later sitting at. That may not be a six-foot fence.
18 That may only be a four-foot fence like in the middle of
19 the backyard where we never were, but down here -- so I'm
20 left of these yellow placards. You can see where this
21 fence angles down.

22 So, at the point where I was standing, I bet
23 that fence when I went right up to it was only about to
24 my waist line, somewhere between my waist line and my
25 chest. So I could clearly see these level two windows,

1 the dining room and the kitchen window, but to see the
2 level one windows, which I think are the back of the
3 garage and then that door, I had to get right up to the
4 fence and almost kind of stand on my tip toes, just --
5 even though the fence was shorter, just to be able to see
6 down that slope.

7 JUROR: So he's actually shot upstairs?

8 A Through this window right here. So the glass is
9 no longer in it due to the fire, I presume. But when I
10 fired, my rounds went through the right side of this
11 window.

12 JUROR: Okay.

13 A And for sure, in listening to the radio tapes,
14 if you do that, this would be referred to as side three,
15 level 2, window one, is what that would be referred to
16 as.

17 JUROR: Is that a map of the two buildings
18 there? Would that help clarify the reason why that fence
19 charges down at an angle, would that help?

20 A No, I understand --

21 MR. MOAWAD: I don't think that shows that.

22 Thank you.

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JASON ANDERSON,

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. MOAWAD:

Q Go ahead, have a seat there. Tell these folks who you are.

A An investigator, Jason Anderson, with the Portland Fire Bureau.

Q And tell these folks a little bit about your experience with the Fire Bureau. How do you describe your job?

A I have a total of 15 years in the Fire service, nine years with the Portland Fire Bureau and three years -- and five of that was three years as Fire Investigator.

Q What is your expertise in terms of investigating fires?

A My expertise is in the origin and cause, investigation, determining basically where the fire's origin and cause was.

Q We are at this point about 14 days since this incident. Where are you in terms of your investigation?

A I'm at the very beginning of my investigation.

1 Most of where my investigation is going to lead off is
2 going to be after these proceedings have concluded and
3 I'll have access to the officers to be able to discuss
4 and interview each officer as a witness towards the fire.

5 Q Is also interviewing the firefighters that
6 responded to the scene important to your investigation?

7 A That is.

8 Q Have you done that yet?

9 A Not yet.

10 Q Approximately how many people are on your list
11 to speak with prior to doing an origin and cause
12 analysis?

13 A I have approximately 25 people to conduct
14 in-depth interviews based on fire observations that were
15 seen at the scene and fire investigations that were
16 conducted.

17 Q In terms of the area of origin, not the actual
18 location of the fire beginning, do you have at this point
19 a preliminary analysis of where the area of origin in
20 this fire is?

21 A Actually, there is -- there is a main area of
22 origin which we have identified, and there is also a
23 secondary area origin also.

24 Q Talk to us about that.

25 A Basically, in analyzing all the fire patterns,

1 talking with the firefighters and the officers and
2 reading the initial fire reports, we were able to
3 determine where the majority of the fire damage came
4 from; it was originated down in the northeast corner
5 bedroom on the first floor or, as the police officer
6 referred, it would have been side one, level one in that
7 1, 2 corner of the space, which I believe was the bedroom
8 of Gary Estes, the homeowner.

9 We found a second area of origin actually up on
10 the second level, just inside the main entryway toward
11 the west, up on the north wall.

12 Q You also found something unusual dealing with an
13 animal in the house that is atypical for fires of this
14 nature. Can you describe that?

15 A Yes. Basically, what I had done is after I
16 conducted -- I can go back and explain how the fire
17 investigation progresses, if it helps them understand.
18 Obviously, when you look at a fire scene, there is
19 damage. So it's different than a homicide, theft,
20 anything like that.

21 What we have to do is we have to layer the fire
22 scene, so to speak. For instance, you know, sheetrock
23 will fall off the ceiling and land down on the fire
24 scene. Insulation will fall down, land on the scene. So
25 what we have to do is we have to kind of layer that down.

1 In going through that, we will find different
2 objects throughout the debris. You may see a lamp in
3 this room. However, in a fire room, depending whether
4 it's made of metal or plastic, it may be a lump of
5 plastic on the floor in a ball or maybe something we
6 recognize.

7 As we were going through that northeast corner
8 bedroom, the main room of origin, there are a couple
9 things that led us toward this area. One is all the
10 springs of the mattress were what were called "annealed".
11 The heating exposure caused them to weaken significantly
12 to where they were a lot less thicker where they were on
13 the other side of the bed to that higher heat exposure.
14 Also, there is a night stand located in that area.

15 Actually, I can give you a map what the area
16 looked like. There are a couple photos of the fire and
17 also a diagram I have done of the room of origin so you
18 can kind of take a look at.

19 It was the side closest to the sliding glass
20 door is where we isolated that specific area. As I was
21 going through that area of origin layer of debris I found
22 one of the owners canines deceased laying on that area of
23 the bed. That was very unusual. Typically, in my
24 training and experience, animals will simply run away,
25 much like human beings will, away from a fire.

1 We had interviewed the owner, who said the dog
2 does have -- is unable to just jump up and off the bed.
3 However, I would have typically found the dog on the far
4 corner of the bed, per se, if it's not going to jump off.
5 But you never, ever find the dog in the area of origin.

6 Q What does that lead you to believe about the
7 health of the dog at the time of the fire?

8 A That, at this point, actually is undetermined.
9 Talking with Gary Estes, the owner of the animal, said
10 the dog was in good health, unable to jump up and down
11 off the bed on his own. However, a dog properly
12 motivated, gravity will take hold, they will typically
13 jump off the beds to escape fire.

14 What we were able to do was seize the animal
15 with consent from the homeowner. The animal was taken to
16 the Oregon Humane Society where necroscopy is being done
17 by Dr. Ottoman.

18 Q What are your suspicions about the potential
19 cause of death for that animal?

20 A Based on initial fire patterns observed and
21 placing that as my area of origin, at this point one of
22 the possibilities that the dog was deceased prior to the
23 fire.

24 Q How would a dog in a case like this be deceased
25 prior to the start of the fire?

1 A That could be from -- it could be from smoke
2 inhalation. Being in the area of origin, I would find
3 there would probably be more trauma, I would say, gross
4 trauma whether it be by gunshot, blunt force trauma.

5 Q Trauma inflicted by an outside actor?

6 A It could be, yes.

7 Q How about the source of origin or area of origin
8 in the upstairs, where was that located?

9 A That was located just immediately to the west of
10 the main entry doorway along the north wall. There is
11 actually a picture of it in the photos there that I
12 handed. And it gets back into -- I can -- I don't know
13 if I can see which ones. It should be -- it looks like a
14 really small -- that is the upstairs. It's just to the
15 right of where --

16 Q Go ahead, get up.

17 A I feel much better when I can get up, actually
18 walk around, show you what we're looking at.

19 As you can see on the springs, this is the
20 annealing, I was talking about. This is where I put the
21 area of origin. It's the springs. Can you see where
22 they all fold down? That area right there.

23 Also, if you look at the bed frame, right here,
24 this is basically right tucked into this area is where I
25 found it. The canine was actually found right here.

1 Where is the other one? There's the bed frame
2 again. This is where I placed the area of origin. The
3 canine is right here. There is a lot of damage to this
4 area. The bed, the nightstand and doorway was completely
5 consumed by fire.

6 That second area of origin, this is the one I
7 was referring on the second level; here the main entry
8 doorway, glass right here. Here's the front upstairs
9 window to the living room, and then this is that
10 second -- you can see what -- this is what we call a "V"
11 pattern. It looks like a V. Okay. What happens is when
12 the fire actually is building, the fire has to go up.
13 You think of a campfire, you put a ceiling over it, wall
14 behind it, the campfire is going to go up, hit the
15 ceiling, start spreading out. All that spreading out,
16 all that heat is going to bank down. That, what you will
17 see is heat on the ceiling. As it banks down, that
18 creates this pattern of damage called a "V" pattern. It
19 almost points to where the fire is.

20 This is one with another area of origin we
21 identified.

22 JUROR: This is upstairs, you said?

23 A That's upstairs, correct. And typically when
24 we're investigating this, this is much different than a
25 homicide, per se, where you see the -- or take, let's

1 say, a car accident where you see the broken taillight;
2 you see the vehicle, you see the person laying there.

3 What we have to do is not only be able to put
4 together the facts, but what I had to be able to do and
5 what we're in the process of doing is we have to look at
6 the fire being three ways: Undetermined, meaning I have
7 no idea really what caused the fire; accidental in
8 nature, where I have to be able to pinpoint an accidental
9 ignition source or incendiary or arson, meaning a human
10 introduced fire. So when you are there at that bedroom,
11 all that damage, you have to look at not only the fact of
12 this is where the fire started, but it didn't start in
13 this wall outlet, this wall outlet, the ceiling panel,
14 this wall outlet over here. I have to isolate all the
15 accidental ignition sources.

16 At this point, the electrical system of the
17 house was intact. There was no reason to believe there
18 was any type of electrical malfunction that led to the
19 source of this fire. That is one accidental ignition
20 source that's already ruled out.

21 BY MR. MOAWAD:

22 Q As of today, are you in a position to be able to
23 tell us whether this fire was begun via gas canister or
24 via intentional arson?

25 A At this point, I cannot. That is -- that is the

1 ongoing part of my investigation. There is a lot more
2 research to be conducted based on the gas canisters.
3 Obviously, you guys have had the benefit of listening to
4 a lot of testimony, which is what -- if I could be the
5 fly on the wall on that -- probably would have sped my
6 vision up a lot.

7 However, at this point I can't rule one way or
8 the other. What we have to do is I have to take all the
9 information that's obtained at the end of the
10 investigation, and being a fire investigator, we can't
11 draw a conclusion prior to the end of the gathering of
12 all the evidence. Right now I'm still in the gathering
13 phase. Once I've gathered all the evidence I can, then
14 form a hypothesis based on the evidence I have, this is
15 the most likely fire scenario that has gone on. Once
16 that hypothesis has been developed, I have to look back
17 see if it's a tested one or not. If it is proven to be
18 worthy, I can come up with my determination.

19 Q What I believe is my last question -- and these
20 folks may have questions to you, in terms of --
21 regardless whether there was an intentional arson fire or
22 begun as a result of a gas canister --

23 A Uh-hum.

24 Q -- one of the things that's been consistent is
25 there is a lag in time between the action that could have

1 started the fire, whether it be arson or gas, and the
2 appearance of flame.

3 A Uh-hum.

4 Q As a fire investigator, can you explain why that
5 could occur?

6 A Yes, I can. Fire dynamics are very complex. It
7 takes a lot of training, a lot of experience. Part of
8 being a firefighter, one of the benefits is I have been
9 inside a lot of burning buildings, so I have witnessed
10 the dynamics firsthand.

11 One of the things, I went through the reports to
12 look at -- it's hard to place a timeline on, per se, it's
13 hypothetically, purely hypothetically a fire could have
14 started in that basement bedroom where I have placed my
15 room of origin for the fire. And it could be a small,
16 what they call incipient fire; much like you would either
17 introduce a candle to the mattress, let's say, where you
18 are going to have a little bit of flame but there is not
19 really enough that it going to be 10, 15-foot flames and
20 be spreading really fast.

21 There is a couple reasons for that. If the door
22 to the room is closed and the sliding glass door is
23 closed and the windows are closed, there is only so much
24 oxygen in that compartment. So when you have a high fuel
25 source like a mattress, per se, which is where I believe

1 the fire had started, it would not take long for that
2 oxygen to start to be depleted. Therefore, the fire is
3 going to go down, much like a smothering effect.

4 So, hypothetically, if that is what happened, a
5 fire could have started down there, could have been
6 undetected. And based on what I have read of reports,
7 the window glass on the right side was broken out by
8 launching a couple soft rounds, per se, broke the slider
9 glass, that introduced air into the structure at that
10 point. That could allow that what would have been a
11 smoldering prior at this point to now have the option to
12 start building up over time to the point where, once it
13 has enough oxygen, the heat built back up, you are going
14 to have that flaming process starting -- continuing
15 again.

16 That is one explanation for it.

17 MR. MOAWAD: You folks have questions?

18 JUROR: When we're looking at their picture
19 right here, are you saying that that slider over in the
20 bottom left, that was the bedroom where you think that
21 the mattress was?

22 A That is the bedroom. The room of origin, yeah,
23 as I have placed it, is right here. This is the room of
24 origin for where the fire went. This is the back or is
25 this the front? That should be up there.

1 Let's use the photograph, because that's not an
2 accurate depiction. As we look at this, the room of
3 origin is going to be right down in here, which isn't a
4 clear picture where this metal awning is, the sliding
5 glass door and there is a window here. The actual area
6 of origin inside is closest to that one, two corners
7 right in here. As you are looking at those photos, the
8 head of the bed is up against this wall over here, this
9 west wall. And that's the closest area where I have
10 placed that fire.

11 JUROR: Second point of origin is upstairs?

12 A The second point of origin that I found was
13 right up here. It was right on the interior wall of
14 this. A little bit had actually burned through on the
15 outside, which to me -- the hard part about this also,
16 you see a lot of damage on those photos. Portland prides
17 itself on being an interior fire department, meaning we
18 go inside, put on all the air packs, go inside, spray a
19 lot of water quickly on fires, which means it's room and
20 contents only. There is a lot less damage.

21 However, based on the dangerous situation and
22 for safety issues on this, all of our fire fighting
23 efforts were focused on the outside; meaning that when
24 the firefighters arrived, they didn't go into the
25 structure. They didn't enter, they didn't get close,

1 they simply sprayed a lot of water from the outside,
2 which is a very ineffective way to fight fire, which
3 caused a lot more of the damage that you are seeing in
4 the photos. So it makes it a lot harder for us to come
5 up with a very simple this is what it is. There is ones
6 you can walk in, you go, "Yep, right there," and you are
7 out in 30 seconds. This is not one of those.

8 JUROR: Is it possible for a fire to start in
9 one part of the house, but be visible from another part
10 from the outside different than where it started first?
11 Like one end of the house it starts, but from the outside
12 it's visible on the other end of the house before -- you
13 know, from the end it started at?

14 A It's a good question. There are so many factors
15 that fall into it, per se. On the front of the house,
16 based on where I say my fire started, and that's where I
17 know the fire had started in this particular area of the
18 room, just by having the door closed, the blinds being
19 drawn down, if in fact that was the case -- Actually, as
20 I said, you are privy to more information than I have
21 been so far. So you may have better information than I
22 do. If those blinds are closed, if the sliding doors are
23 closed, now you have a way for the fire to be trapped.
24 If there is so much as a window on the back side of the
25 house being broken open, anything like that, that's a

1 ventilation source which will draw the fire from that
2 particular area of the house towards that particular
3 area. Because fire likes three things. It likes heat,
4 oxygen and fuel. And there is a fourth one, chemical
5 chain reaction, but that gets more complex for the
6 chemistry lesson today.

7 So that's one way it can happen is by being
8 drawn that way either by wind. It can be drawn by
9 ventilation source. It can be drawn even by the furnace
10 being running in the house, depending how it's blowing.
11 The duct work in the house can do it. That's why the
12 hard part for me is right now I have at this point
13 isolated the area I believe is area of origin. Anything
14 can change that depending on the information I'm going to
15 receive. We're such a small part what happens with the
16 investigation, because what I have to do is take every
17 bit of the information and make sure that every fire
18 pattern that I am seeing matches up with that.

19 An explanation for these springs being annealed
20 the way they were and collapsed and all that could have
21 been had somebody said the left side of that window was
22 broken. I would have said, you know, that's probably not
23 my area of origin because that's next to the ventilation
24 source. With more air, you are going to have more
25 damage. But after confirming that no, it's the right

1 side that was damaged most, it makes me much more
2 confident -- you see how that kind of tips the scales?
3 It makes me much more confident that, in fact, the right
4 side of the bed or the foot of the bed should have been
5 more damaged because it is by the air source where it's
6 going to have higher heat production, everything else.

7 So it's very confusing, I'm sure, where you are
8 sitting. But it's in its infancy right now.

9 JUROR: Is that the only window in that bedroom?

10 A This window right here, yes, and then the
11 sliding glass door.

12 JUROR: The sliding glass door. So there is a
13 window and sliding glass door?

14 A That's correct. On that diagram it shows both.
15 The one that should be passed around, it shows that there
16 is the window -- yeah, there you go. And there's a good
17 overhead layout. That -- that makes it easier to show
18 you.

19 JUROR: This is the window, this is the slider?

20 A Yes, even though it's the opposite.

21 JUROR: This is this heavy fire damage?

22 A This is where I put the heavy fire damage, right
23 in the corner.

24 JUROR: This is where the dog was found?

25 A Correct.

1 JUROR: Did you notice anything about the dog,
2 beside it being charred? Were there any gunshot wounds
3 or anything you noticed on the dog?

4 A It's a good question. The problem is when
5 tissue gets burned, it tends to shrink, much like if you
6 think about putting a turkey in the oven, per se. So
7 gunshot wounds and things like that are very hard to be
8 discernible just by looking at an animal because the
9 tissues and everything are going to shrink around. That
10 hope is going to go away unless there is a large exit
11 wound. I didn't perform a very detailed examination.
12 I'm not an expert on canines. That is why we decided to
13 go ahead, let Oregon Humane Society do that. We have not
14 got the results of there examination yet.

15 JUROR: Will a less-lethal amount of gas kill a
16 canine or person?

17 A Are you talking about deployed gas?

18 JUROR: Yes.

19 A I did interview the officers who have deployed
20 these gases in the past, and they have had no affect on
21 canines.

22 BY MR. MOAWAD:

23 Q In fact, they have entered places with their
24 canines. A large amount of it won't kill?

25 A It won't remove the air from the room or

1 suffocate somebody in that particular way. It will make
2 somebody extremely uncomfortable. I have experienced it
3 before. It makes you feel like you are choking,
4 something like that, but it doesn't, per se, extinguish
5 the oxygen in the air or anything else, like other
6 extinguishing agents would do. No. Good question.

7 MR. MOAWAD: Would you like to step out?

8

9

10 (Proceedings concluded.)

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1 STATE OF OREGON)
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 2 County of Multnomah)

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I, Estelle T. Keating, Official Court Reporter of the Circuit Court of the State of Oregon, Eleventh Judicial District, certify that I reported in stenotype the foregoing proceedings in the above-entitled case.

I further certify that my stenotype notes were reduced to transcript form by Computer-Aided Transcription under my direction.

And I further certify that pages 1 through 7 contain a full, true, and accurate record of my stenotype notes.

Dated this 3rd day of November, 2010, at Portland, Oregon.


 Estelle T. Keating

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MULTNOMAH COUNTY GRAND JURY
DEATH INVESTIGATION

Deceased: CRAIG BOEHLER)
Date of Incident: November 23, 2010)
Location: 11066 SE Cherry Blossom)
Drive, Portland, Oregon) DA Case No. 2207518-1

VOLUME 3
TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled Grand
Jury proceedings were heard, commencing at the hour of 1:00
p.m. on December 8, 2010, at the Multnomah County
Courthouse, Room 618, 1021 SW 4th Avenue, Portland, Oregon.

APPEARANCES

Mr. Greg Moawad and Ms. Amber Moser,
Deputy District Attorneys,
Appearing on behalf of the State.

JULIE L. BOURGEOIS
Court Reporter
Multnomah County Courthouse
1021 SW 4th Avenue Rm. 554
Portland, Oregon 97204

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WITNESSES

MARK SPONHAUER:

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1 TRANSCRIPT OF PROCEEDINGS 12/8/10 1:00

2

3 MARK SPONHAUER,
4 called as a witness,
5 being first duly sworn,

6 was examined and testified as follows:

7 EXAMINATION

8 BY MR. MOAWAD:

9 Q Tell the folks who you are.

10 A Detective Mark Sponhauer, S-P-O-N-H-A-U-E-R. I'm
11 a detective with the police bureau.

12 Q I would like to kind of go over sort of an
13 overview of this scene and criminal investigation. Let me
14 start with the criminal investigation. In terms of audio
15 recordings you prepared for us, you prepared two sets of
16 BOEC or radio transmissions. Tell the folks about where
17 those came from?

18 A I had requested certified copies from the Bureau
19 of Emergency Communications, and they sent those to me.
20 They were copies of east precinct dispatch group, and what
21 was labeled SHE-1, which is a SERT dispatch group.

22 Q Have you received full and accurate copies of all
23 of the calls relevant to this -- all the radio transmissions
24 relevant to this incident?

25 A Yes.

1 Q Are those records kept in the normal practice of
2 your business?

3 A Yes.

4 Q How about with regards to the 911 call?

5 A Same way. It is tracked the same way and was sent
6 to me on recording.

7 Q You provided me with a full and accurate copy of
8 those recordings?

9 A I did.

10 Q I would like to direct your attention to a report
11 written by James McCausland. Tell the folks who he is.

12 A McCausland is a detective with the police bureau,
13 and at that time he was at the scene as role of hostage
14 negotiator team. He was in one of the armored vehicles that
15 rolled up in front of the house. He used the public address
16 system on the vehicle, which is very loud. And he asked for
17 the occupants of the house to come out. He provided
18 instructions how to do that, basically come out of the house
19 with hands in the air, obey police commands.

20 He repeated that three times, and replaced the
21 word occupants with the name of Craig Boehler. He used
22 Craig's actual name, Craig Boehler, come out of the house.

23 Q Was there any response to his repeated calls for
24 communication?

25 A No.

1 Q Then let's move on, if we could, to the scene. I
2 understand you ended up entering the home after the fire was
3 extinguished?

4 A Correct.

5 Q And had an opportunity to view Mr. Boehler's body
6 as well as some items of physical evidence. I have got
7 State's exhibit 98, go ahead and stand up there and have a
8 look at this. And can you point out to the folks what items
9 are documented there, starting with the inside of the house
10 that are of evidentiary value.

11 A Inside of the house, number 1 here on the
12 fireplace hearth is the flare gun. And number 2 and 3 are
13 gas canisters, spent gas canisters. Number 4 is a bandolier
14 that held shotgun rounds. Number 5 is a 22 caliber handgun
15 that was at his feet. Number 6 is a lighter under his body
16 that was discovered when he was lifted.

17 GRAND JUROR: Cigarette lighter?

18 THE WITNESS: Yes.

19 BY MR. MOAWAD:

20 Q With regards to the flare gun, when that item
21 opened, what was located in that?

22 A Uhm, a shogun round with a primer that had been
23 dented, but not enough to discharge -- dented, not enough to
24 discharge a round.

25 Q To your knowledge, is a 12-gauge shotgun

1 comparable in size with a flare that would have been used in
2 that gun?

3 A Yes, the rounds fit very nicely in the flare gun,
4 like it belonged there.

5 Q With regards to the item at the feet of Mr.
6 Boehler, the pistol that was located there, was that item
7 loaded?

8 A Uhm, yes it was.

9 Q And I'm handing you State's exhibit 6, can you
10 describe what that is to the grand jury?

11 A This is the flare gun. It was by the fireplace
12 hearth there. And that is the round that was taken out of
13 the flare gun that had the dented primer.

14 Q State's exhibit 62?

15 A And this is the flare gun as it was as we found it
16 at rest on the fireplace here, this upstairs.

17 MR. MOAWAD: We're going to pass it around.

18 BY MR. MOAWAD:

19 Q State's exhibit 72?

20 A This is the flare gun that was open, the breech
21 was open and a photograph taken of the rounds that were in
22 there.

23 GRAND JUROR: That round was not active like
24 a used -- like a bullet?

25 THE WITNESS: Yes, the primer was dented, but

1 it just was not dented enough to discharge.

2 BY MR. MOAWAD:

3 Q What's that indicate to you about the intended use
4 for that round in that flare gun?

5 A Well, the only way that this little round dot in
6 the center can get dented, is if a firing pin strikes it.
7 All hand guns and rifles have this pin, you pull the
8 trigger, the mechanism hits, the firing pin comes down and
9 hits the bullet and discharges the bullet.

10 Q And so the dent in the primer, correct me if I'm
11 mistaken, indicates somebody had tried to fire that shotgun
12 shell?

13 A Correct.

14 Q Why don't I hand those around? I'll move on to
15 the next item avenue those have made their way around. And
16 I handed you State's exhibits 10, 67 and 65. Can you tell
17 folks what is contained in those photos?

18 A This item 4 corresponds -- is the bandolier found
19 besides Craig's body. As you can see the shotgun rounds
20 that are in the bandolier.

21 GRAND JUROR: Is a bandolier like a -- what
22 is another name for bandolier?

23 THE WITNESS: Perhaps a gun belt. It wraps --
24 typically, people wrap it around their shoulder, over
25 the neck. It hangs on one side of their body.

1 BY MR. MOAWAD:

2 Q Is the purpose of that having access to ammunition
3 to reload a weapon?

4 A Rather quickly, yes.

5 GRAND JUROR: That was on his body or next to
6 his body?

7 BY MR. MOAWAD:

8 Q Get to the next picture.

9 A Here's a picture of the bandolier which is right
10 there (indicating), which is again number 4 there.

11 Q Final photograph?

12 A Kind of an overall picture of Mr. Boehler on his
13 back in the upstairs living room.

14 Q Pass those around. While they are looking at
15 those exhibits, exhibits 7 and 9 are photographs of items 2
16 and 3. Tell the folks what's contained in those
17 photographs?

18 A Both these items 2 and 3 as displayed in the crime
19 scene diagram. These are the spent gas canisters.

20 MR. MOAWAD: Hold on to those.

21 GRAND JUROR: I had been understanding he was
22 in the dining room when this happened, and you're
23 saying this is -- he was in the living room?

24 THE WITNESS: Dining room, living room, they
25 run together right here. Dining room here, living

1 room here, kitchen here. Kitchen here.

2 BY MR. MOAWAD:

3 Q You recall Officer McConnell's testimony was that
4 he believed it was the dining room, that's where that
5 verbiage comes from. But he had not been inside of the
6 house.

7 GRAND JUROR: I'm assuming that's the
8 bandolier I'm looking at here just off here?

9 THE WITNESS: Correct, that's it.

10 GRAND JUROR: Oh, yeah, there it is, right.

11 GRAND JUROR: Was the grenade found near him?

12 MR. MOAWAD: You can testify from your
13 recollection of Detective Hopper's report.

14 THE WITNESS: Yes. Detective Hopper told me
15 and I read in the report that the dummy shot or dummy
16 grenade was found like partially under his body. Yes.

17 BY MR. MOAWAD:

18 Q I handed you another series of four photographs.
19 When describing them, refer to exhibit number, and tell the
20 folks what's in the pictures?

21 A State's exhibit 70 is item number 5, placard
22 number 5, which is a 22 caliber handgun found at his feet.

23 Q We'll pass those around.

24 A I should say, you will see a little silver portion
25 here, that's where the grip was that had been burned, melted

1 off. That's why you see silver.

2 Q Go ahead.

3 A State's exhibit 73 is the same item, just a close
4 up view as it was picked up and held with a magazine clip
5 that had been pulled out. And State's exhibit number 74 is
6 the same handgun found by his feet, the slide partially
7 pulled back. You can see the round in the chamber ready to
8 be fired. And this is the same exhibit that's been laid out
9 for the photograph, you can see the three bullets that had
10 come out of the magazine, which holds the bullets.

11 And State's exhibit number 76 is placard number 6,
12 which is the mechanical lighter, the blue lighter that was
13 found under his body when he was moved.

14 Q That item was function tested by a criminalist?

15 A Correct.

16 Q Was it found to be working or not working?

17 A Yes. Working. And the next two pictures, State's
18 exhibit 77 and 12, is just closer up photos of the same
19 item.

20 Q Moving off the main floor at this point, I handed
21 you another exhibit; can you tell the folks what that is?

22 A State's exhibit number 13, which is a 12 gauge
23 shotgun that has been partially disassembled by the police.
24 Uhm, that was found by Detectives Slader and Kammerer on the
25 bottom floor. So as we look at the diagram, this is the top

1 floor to the bottom floor directly behind it, right in this
2 corner of what would be -- what was being used as the master
3 bedroom. There was a fireplace downstairs there, and there
4 was a wet bar beside the fireplace, and that's where this
5 gun was found.

6 Q State's exhibit 14.

7 A And this is a 9 millimeter handgun, also found
8 downstairs in that same lower bedroom, master bedroom.

9 Q And State's exhibits 15 and 16?

10 A And these are two photos of the same gun. This is
11 the back half of the gun, this is a scoped rifle, it was a
12 Weatherby .300 Magnum. And the next photo is the front half
13 of that same gun.

14 Q Where was that item found?

15 A That was found also in the same master bedroom
16 downstairs.

17 Q If I can sort of revisit the kitchen versus dining
18 room issue with State's exhibit 66, this might be of
19 assistance to the jury in placing Mr. Boehler either in the
20 living room or the dining room. Can you explain what that
21 picture is of, where Mr. Boehler is located in the picture?

22 A Sure. This is the picture looking north to south.
23 The window in the background faces the backyard. And that
24 would be what's referred to as the dining room. And then
25 further forward in the picture is the living room area. And

1 Mr. Boehler was found right in here. In fact, his feet
2 might be kind of underneath this insulation right here.

3 Q Now, with regards to items of evidence retrieval
4 that were seized outside of the home or observed outside of
5 the home, I'm handing you State's 35; can you tell the jury
6 what that is?

7 A Looking at the bottom half of this diagram, this
8 is the house directly south or behind or in the backyard of
9 the Boehler residence, and there is a fence line right in
10 here. And there's this tree that's in the northwest corner
11 of the yard. And items 1, 2 and 3 are the shell casings
12 from Mr. or Officer McConnell's rifle, and that's what these
13 represent on 2 and 3. There's close-ups of those, but those
14 are their positions.

15 Q I'll pass that around, 30 and 28 will provide a
16 little perspective for them. Explain what those pictures
17 are of.

18 A State's exhibit 30, this is stepped back so the
19 picture is taken looking north, so looking north towards
20 this residence. And we're in the backyard, so the
21 photograph was taken right about here. In here somewhere,
22 you look and see the tree, and Officer McConnell's gun
23 casings are in here. And this photo is representative of
24 where Officer McConnell was standing with his viewpoint,
25 looking in that window right there.

1 Q On exhibit 98 -- you're talking about the one
2 window drawn in on State's exhibit 98?

3 A Yes.

4 Q Go ahead and have a seat there. I know there were
5 at least two homes hit by fire coming -- by shots coming out
6 of this house. Can you describe for the folks where the two
7 homes were located in relation to the Cherry Blossom home?

8 A One of them was this residence here. And on the
9 upstairs there's two levels to the house, on the upstairs,
10 right in here is a window which was impacted by a bullet.

11 Q And how about the other house?

12 A The other house, if it's right here, it was
13 impacted about half way up, right below a window. And just
14 to the left of there looks like a brick fireplace on the
15 outside.

16 Q If we looked at what would be the number two side
17 of this house, am I correct in concluding from the radio
18 transmission and testimony there are no windows and doors on
19 that side of the house?

20 A Correct.

21 Q No opportunity for someone to fire in that
22 direction?

23 A Unless they fired through the wall.

24 Q Okay. Go ahead and have a seat. Detective, how
25 long have you been with the bureau?

1 A About, it will be 25 years this summer.

2 Q Approximately how much firearm training have you
3 had?

4 A Hundreds of hours.

5 Q One of the basic four safety rules with regards to
6 firearms is never have your finger on the trigger until
7 you're ready to fire. From a law enforcement perspective,
8 you get some unique training in that regard; can you tell
9 the folks a little about that?

10 A Sure. It's human nature to have sympathetic
11 finger pull. You get scared, things just go wrong with your
12 fingers, that would be a bad thing on a gun. So, from the
13 very beginning of our firearms training, we're taught to
14 hold the gun with your finger off the trigger. And we
15 practice that over and over and over. We never stop
16 practicing that, that's part of our firearms training.
17 Because you can get this inadvertent finger pull when
18 startled, somebody bumps you, you fall, anything can cause
19 this reaction.

20 And it's my experience that early on in training
21 officers, they have their fingers on the trigger all of the
22 time. It takes a lot of training and discipline to keep
23 their finger off the trigger.

24 Q I believe it's called sympathetic trigger pull.
25 Can that same thing happen when you reach or grab for

1 something?

2 A Yeah. Lots of things can cause it.

3 Q Does that include when you're grabbing with a
4 handgun in your right hand, grabbing for something in your
5 left hand, can your right hand also convulse in the same
6 grabbing motion?

7 A Totally, yeah.

8 Q You folks have questions for Detective Sponhauer?

9 EXAMINATION

10 BY GRAND JUROR:

11 Q Was there fingerprints found on the weapon, on the
12 firearms?

13 A They have not been tested for that. It's been my
14 experience it would be very unlikely to get fingerprints
15 after what they were exposed to in the fire. It's rare for
16 us to get fingerprints off a gun when it's not been exposed
17 to the elements.

18 Q Was it possible to tell whether shots had been
19 fired except for the one flare gun from -- like the scoped
20 rifle, had that been shot, could you tell that at all?

21 A Uhm, no. It was, you know, what it was exposed
22 to, there's so much stuff on it, you know, we would have to
23 submit it to the crime lab and see if they can.
24 There were no casings or anything around it, you could see
25 on any of those, they were not tagged.

1 The problem with the residence, there was so much
2 fire damage and so much stuff there, you would almost have
3 to like take a mining pan for gold or something and have to
4 go through that finely and sift through things to find
5 stuff, there was so much debris.

6 BY MR. MOAWAD:

7 Q There's a huge amount of damage caused by the
8 fire, but also caused by the fire fighting. Tell the folks
9 about that.

10 A Absolutely. They pumped a lot of water into the
11 place all along, including out the lower sliding glass door
12 in the lower level, items spewed out of there from some of
13 the water, water pushed stuff down the street. That house
14 is on an incline, there was stuff coming down the street in
15 the water. And then fire fighters just excavating the house
16 to keep, you know, hot spots down and stuff. They are
17 moving stuff around, throwing stuff out. It was hard to
18 reconstruct that.

19 BY GRAND JUROR:

20 Q I wondered, you don't expect a lighter to go
21 through the fire and still be operable; are they vulnerable?

22 A I'm not an expert in those devices. You look at
23 the photo and see the body, rolled up the carpet is intact
24 there and just fine.

25 BY GRAND JUROR:

1 Q We found no evidence the 300 Weatherby was ever
2 used from inside the house; in other words, he strictly
3 stuck to the small arms?

4 A We don't know that.

5 Q As far as we can tell?

6 MR. MOAWAD: In terms of evidence, one form
7 of evidence is testimony, and you heard from several
8 officers who said it sounded like a high powered
9 rifle. You can give it the weight you're able to.

10 BY GRAND JUROR:

11 Q Was the animal -- did you notice any animal in the
12 lower bedroom at all? Were any pictures taken of that, if
13 the animal was still there?

14 A There might have been. I don't recall anything
15 obvious from looking through crime scene photos of the bed.
16 It was pointed out to me. It was not obvious, but it was
17 not right on top looking down on the bed. That area was
18 very unsafe to go into, so fire fighters told us not to go
19 in there or step on the roof line above it. I didn't get in
20 there very far.

21 Q Was the whole house damaged by the fire? Was any
22 room intact?

23 A That was not damaged? The garage portion did not
24 look to me to be damaged beyond much except smoke damage.

25 Q Were there any casings found in the garage -- used

1 casings?

2 A No, I don't recall any casings found in the
3 garage.

4 MR. MOAWAD: All right.

5

6 (Whereupon, Court adjourned at 1:30 p.m.)

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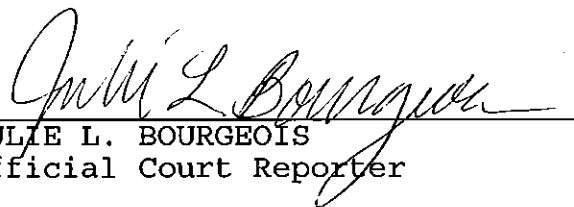
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1 STATE OF OREGON)
2 County of Multnomah) ss.

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 19 pages, is a
9 true and correct transcript of said oral proceedings.

10 Witness my hand in Portland, Oregon, this 8th day
11 of December, 2010.

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JULIE L. BOURGEOIS
Official Court Reporter