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

Deceased: DARRYEL DWAYNE FERGUSON )  
Date of Incident: 12/17/10 ) DA Case No. 2208762-1  
Location: 12110 East Burnside ) PPB 10-103413  
Portland, OR )

VOLUME 1  
TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled Grand  
Jury proceedings were heard, commencing at the hour of 4:00  
p.m. on Tuesday, December 28, 2010 at the Multnomah County  
Courthouse, Room 618, Portland, Oregon.

APPEARANCES

Mr. Robert Leineweber, Deputy District Attorney,  
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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1 TRANSCRIPT OF PROCEEDINGS 12/28/10 4:00

2

3 SHEENA RAE DAVIDSON-THELIN,

4 called as a witness,

5 being first duly sworn,

6 was examined and testified as follows:

7 MR. LEINEWEBER: Have a seat. Tell us your  
8 name.

9 THE WITNESS: Sheena, full name Sheena Rae  
10 Davidson-Thelin, R-A-E D-A-V-I-D-S-O-N-T-H-E-L-I-N.

11 EXAMINATION

12 BY MR. LEINEWEBER:

13 Q And do you go by Davidson-Thelin?

14 A Yes.

15 Q Where do you live?

16 A Right now we're going to live with my mom at her  
17 address after this happened to make sure she's okay.

18 Q 12110 East Burnside?

19 A I assume so, I don't know the address.

20 Q Apartment 201?

21 A Yes.

22 Q How long have you been there?

23 A We moved in Monday before Christmas. I don't know  
24 the dates, I could look at the calendar.

25 Q This incident occurred on December 17th.

1           A    The 13th, we did -- right, that second Monday, the  
2   13th.

3           Q    Oh all right. And when you said we moved in who  
4   are we talking about?

5           A    Jeremy, and our son Gavin.

6           Q    Who is Jeremy?

7           A    My fiance.

8           Q    The father of your child?

9           A    Yeah.

10          Q    Gavin is your baby?

11          A    Yes.

12          Q    And he's 3?

13          A    Yes, he's 3.

14          Q    And where were you living prior?

15          A    Southeast 72nd Avenue.

16          Q    How was it the three of you moved to your  
17   mother's?

18          A    We're between apartments. The other was covered  
19   in mold, and we did not want to spend Christmas there. The  
20   mold got really bad. She said to come over, we'll stay for  
21   Christmas, and then move into a new apartment. And we  
22   decided to stay with her while she works through all this.

23          Q    Tell us about the apartment, how it was set up,  
24   who was staying where? How big of an apartment is it?

25          A    Two bedroom, one bath.



1           Q    Okay.  How long did your mom live there; do you  
2   know?

3           A    I think they moved into that one in October, and  
4   lived in the complex for two years.

5           Q    And your mother is Marsha Lawson?

6           A    Yes.

7           Q    And who else was living in the apartment?

8           A    Darryel Ferguson.

9           Q    And how long have you known Darryel?

10          A    I met him once, Thanksgiving 2002 I want to say,  
11   and we went to the casino all together once.  And then I  
12   have not seen him since.

13          Q    Okay.  And so has he been your mother's companion  
14   for many years?

15          A    Yes.

16          Q    And what was your -- what has your relationship  
17   been like with him?

18          A    Didn't really talk to him.  The first -- when I  
19   stayed the first time when staying with him, he got the cops  
20   called on him for hitting her, so after that I stopped  
21   talking to her -- my mom, because she went back to him.  I  
22   said, I'm not going to have that part in my life.

23          Q    When you first -- I'm sorry, when you first met  
24   him?

25          A    Yeah.

1           Q    Were you staying with them during Thanksgiving,  
2   not this year?

3           A    No, Thanksgiving of 2002.  I went to college at  
4   Western, came up and stayed at my grandma's.  I went over  
5   there one night, spent the night at her house.

6           Q    And was there domestic violence between the two of  
7   them?

8           A    Yes.  I called the cops on the two of them.

9           Q    He was arrested that night?

10          A    Yes.

11          Q    Did you stay with your mother that night?

12          A    I went back to grandma's the rest of week, went  
13   back to my house on Saturday, because I was still going to  
14   school.

15          Q    I see.  You didn't see him again until you moved  
16   into the apartment?

17          A    We saw him a few days before we moved in.  She  
18   came to the mall and he tagged along, and that's the first  
19   time I saw him after all that.

20          Q    And how did you get along with him after you moved  
21   into the apartment with him?

22          A    I felt kind of put off by him.  I kept playing the  
23   thing from Thanksgiving.  My mom kept saying he changed, but  
24   to me I'm like a little wishy-washy about that.

25          Q    Did she say how he changed or why he changed?

1           A    She said he became alcohol free.  And when he went  
2   through the cancer, I guess he had straightened up, she  
3   said.

4           Q    Did he have some physical issues or some medical  
5   issues going on that you were aware of?

6           A    I knew he -- I just found out he found another  
7   lump on his lung, he told us that.  And he was sick a lot of  
8   the time we were there, because he would stay in the  
9   bedroom.

10          Q    I see.  Did he have -- so, he had cancer?

11          A    Yeah.  That's what we were told.

12          Q    Any other physical conditions or disabilities?

13          A    We were told he had AIDS.

14          Q    Was he taking a lot of medications for those two  
15   issues?

16          A    I think so.  I didn't look in medicine cabinets.  
17   I don't know what he was taking.

18          Q    And so when you moved in, they went from two  
19   people in the apartment to five people in the apartment?

20          A    Yes.

21          Q    How was that?

22          A    It was okay.  Uhm, Gavin liked it.  He liked  
23   having more people to play around.

24          Q    Your son?

25          A    Yes.  He like having more people to play trains

1 with.

2 Q He's your child?

3 A Yes.

4 Q How was your relationship with Mr. Ferguson during  
5 that time you were there with him?

6 A It was okay. He got on Gavin's level a lot,  
7 played trains with him, had Gavin set up the trains. Gavin  
8 liked it when he came out of the room to play cars or  
9 something.

10 Q Had you noticed anything about him that he had  
11 changed from the person you knew before?

12 A He seemed -- it seemed like he changed. I have  
13 done a lot of CJ classes -- criminal justice classes, so you  
14 can't believe everything that -- I want to say people's  
15 persona, the act they put on. So I felt he was trying to  
16 get in my good graces.

17 Q Did you ever see him exhibit any anger?

18 A Uhm, when he called Arron's, the Rent-To-Own  
19 place, he didn't like what they said, and he yelled at the  
20 people a lot, a rent-a-center place.

21 Q For furniture?

22 A Yeah. He told the person that he better whatever,  
23 I couldn't -- all I heard was, you better stop saying what  
24 he was saying, because he knows when he gets off work and he  
25 could be there to hurt that person, I assume after work.

1 Q I see. When was that?

2 A I can't --

3 Q Was that during the days --

4 A Leading up to the incident.

5 Q I see. Okay. And when your mother told you he  
6 stopped drinking, did you see that as well that he was not  
7 drinking any more?

8 A Yes. He didn't drink anything besides milk and  
9 Kool-aid and soda pop.

10 Q You ever see him with a gun?

11 A No.

12 Q Did you ever -- did he ever lead you to believe he  
13 had a gun?

14 A Yes, he told Jeremy there was a gun in the house.  
15 And then we asked my mom, Marsha. She said it was a BB gun,  
16 because we have other people's houses we could have stayed  
17 at. We were calling and telling them that if he has the gun  
18 in the house, we're going to leave, so, yeah.

19 Q You didn't see it yourself?

20 A No, we never saw it.

21 Q Okay.

22 A Well, I never saw it. I don't know about Jeremy.

23 Q Tell us about the night of the shooting, the night  
24 that Mr. Ferguson was shot. Were you in the apartment that  
25 night?

1           A    Yes.  I was asleep in the back room, we were all  
2   three asleep.  I woke -- Gavin and me woke up to it.

3           Q    Tell us about what time this was?

4           A    I have no idea.  I just know what time the cops  
5   called to have us come out.

6           Q    What time was that?

7           A    4:07, because it stuck to my phone.  Otherwise,  
8   there's no clock in the room, I didn't think to look at my  
9   cell phone when that happened.

10          Q    And what time do you think you went to bed that  
11   night?

12          A    I think about around 11:00.  We put in a movie for  
13   Gavin to watch, we went to sleep.

14          Q    Was Mr. Ferguson at the apartment when you went to  
15   bed?

16          A    No, he was across the hall, I believe.

17          Q    And do you know how long he had been across the  
18   hall?

19          A    I don't know.  I think he left that evening around  
20   5:00 or 6:00, somewhere in there.

21          Q    Was your mother with him?

22          A    No, she stayed with us.

23          Q    Did he come back at all during that period of time  
24   after he left?

25          A    Not that I saw.

1           Q    So, did you hear any noises that night that woke  
2   you up, or just the phone call?

3           A    The gun shots woke me up, that's what I heard.

4           Q    Okay. How many do you think you heard?

5           A    At first I only thought it was two to three, and  
6   then everyone told me there were 16.

7           Q    You thought?

8           A    I only -- I couldn't count. I was wide awake,  
9   like, what happened?

10          Q    What did you do after you heard it?

11          A    My mom ran into the room. She said she thought he  
12   had gotten tased and stay in the room and a cop would  
13   eventually get us. So we sat in the room the whole time.

14          Q    How long was that?

15          A    I have no idea.

16          Q    Okay.

17          A    Because I didn't look at the time. And then the  
18   cops at 4:07 called and said, walk out of the room.

19          Q    Who walked out?

20          A    Jeremy, Gavin and me.

21          Q    Your mother, was she already out?

22          A    She had already been out.

23          Q    Tell us what happened as you exited your room?  
24   What did you see?

25          A    We walked out there, way on this side was cops

1 with a gun and they told --

2 Q You mean into the hallway?

3 A Yeah, into the hallway when we left the actual  
4 apartment. Then we ran down the hall to the other side  
5 where there was cops, they escorted us down the stairs.

6 Q Where was your mother at this time?

7 A I assume with the other cops. She had gone and we  
8 sat there for a long time, it felt like forever.

9 Q And was Mr. Ferguson's body still in the  
10 apartment?

11 A Yes. We had to walk over his body.

12 Q Where was it in relation to the door?

13 A Here's the door, here's the hallway going into the  
14 living room, the body was there (indicating).

15 Q Right in front of the door?

16 A Yeah.

17 Q Inside?

18 A Yeah, inside. We had to step over his arm and  
19 blood to get to the door to get out.

20 Q I see. Did you see anything else, see any weapons  
21 or anything?

22 A I didn't see anything.

23 Q Okay.

24 MR. LEINEWEBER: Anybody have any questions?

25 GRAND JUROR: Thank you.



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

5 MR. LEINEWEBER: Tell us your name.

6 THE WITNESS: Jeremy Mankins, J-E-R-E-M-Y  
7 M-A-N-K-I-N-S.

8 EXAMINATION

9 BY MR. LEINEWEBER:

10 Q How old are you, Mr. Mankins?

11 A 31.

12 Q And you're living with Sheena?

13 A Yes.

14 Q And your son?

15 A Uh-huh.

16 Q Are you living at 12110 East Burnside?

17 A I believe that's the address. I didn't know it  
18 when they were asking me first, then I had to study it so I  
19 would know it.

20 Q How long have you lived there?

21 A Since last Monday.

22 Q Okay.

23 A I believe, yeah, before Christmas.

24 Q How did that come about?

25 A We had to move out of where we are staying. I'm

1 on unemployment, and they didn't want to make payment  
2 arrangements. We had to move out. They let us stay there  
3 until after the holidays, then we would get our own place.

4 Q Tell us what the living situation was in the  
5 apartment?

6 A It was fine. Darryel, Marsha, my son, Gavin, and  
7 I in the back bedroom, everything was fine.

8 Q How did you get along with Darryel Ferguson?

9 A No problems. None, whatsoever. I was -- really,  
10 from what I saw, I had only met him one day prior to Monday.  
11 Other than that, he seemed -- he got long great with Gavin.

12 Q How did he appear to you physically?

13 A Because he's been sick a lot, on a lot of  
14 medications, other than that he was tired a lot, sit in his  
15 room, listen to music, play his golf game or play with  
16 Gavin, everything else seemed just fine.

17 Q Uhm, did you ever hear him get upset with anybody?

18 A Earlier in the day he got upset with the people at  
19 Arron's Rent-a-Center place. They were harassing him,  
20 calling him all of the time. He would raise his voice and  
21 get mad at them. Then he was like, you guys talk to my  
22 attorneys, and he hung up. He got a little heated about  
23 that. After he got done yelling at the guy, Marsha was  
24 like, you shouldn't say that I know where you live, where  
25 you're working at. He apologized and said he was not mad or

1 anything, sorry he raised his voice. The guy pushed the  
2 right buttons.

3 Other than that, no, he didn't get mad when we  
4 were around him. So --

5 Q Is this the first time you had ever met him when  
6 you moved in?

7 A No. The week before, I think it was a Thursday,  
8 we went and met him at the mall for the first time and took  
9 pictures and stuff for Gavin. That was the first time I  
10 personally met the guy. I didn't really know him.

11 Q Did you know whether he had a gun or not?

12 A I know it was a BB gun. I questioned him about  
13 it. I saw him hide it under the bed one day. He pulled me  
14 in and said, I have this. I said, wait a minute. Is this a  
15 handgun? He tried to tell me it was a real gun. I said,  
16 that's not going to happen. I didn't want it around Gavin  
17 or me.

18 Q Did it look real?

19 A It did the first time. I had only seen the back  
20 of it. I went out and questioned Marsha, he's telling me he  
21 has a real gun, like it's a .45 or something. She said, no,  
22 it's a BB gun. I said, are you sure, one hundred percent?  
23 She said, yes, it's mine, I bought it for protection when he  
24 was in the hospital. I said, it looks real. She said, no,  
25 it's a Ce2 hand powered.

1 Q Did it have the orange tip?

2 A I only saw the back end, not the front. I don't  
3 know if it had a tip or not.

4 Q Why did he show it to you?

5 A He was trying to pull the whole protect the family  
6 thing. I was like, that's great, but I'm not interested in  
7 it, showing me where it was hidden and stuff. I was like,  
8 that's cool. I don't care. I went to Marsha and said, I  
9 don't want to be here, don't want my son around it or  
10 Sheena. If that's a real gun, he can't even have it. She's  
11 like, no, she made certain to point out it was a BB gun.

12 GRAND JUROR: That was the mother?

13 THE WITNESS: Marsha

14 GRAND JUROR: Was that your lady's mother?

15 THE WITNESS: Sheena's. I went to Marsha  
16 Davidson, the mother, yes, Darryel's life partner is  
17 what she called herself, went to her in the kitchen.  
18 I was like, he's telling me he has a real gun. She  
19 said, no. I'm like, he's telling me it's a real gun,  
20 when I go places, I go strapped. She's like no, no,  
21 no. I said, no, no, I'm not going to have it.

22 BY MR. LEINEWEBER:

23 Q I'm going strapped, what's that mean?

24 A It means he has a gun like the movies. I don't  
25 use that terminology.

1                   GRAND JUROR: It looks like a real gun to  
2                   you?

3                   THE WITNESS: Yes, from the back. I never  
4                   saw the front of it, I just saw the handle.

5           BY MR. LEINEWEBER:

6           Q    Tell us about the night of the incident.

7           A    I was asleep and --

8           Q    Did you -- what time did you go to bed?

9           A    We watched a couple of shows, I think it was 11:00  
10           or 11:30-ish I believe we all went, and Gavin fell asleep.

11          Q    Was Mr. Ferguson in the apartment?

12          A    No. He was gone almost the whole day. He left at  
13           4:00 or 5:00, he was gone. I don't know what he was doing,  
14           but I went to sleep, we woke up to gunfire. I was laying  
15           there, so I was asleep. But I was kind of like I could hear  
16           things. I was kind of like awake a little bit. I heard  
17           yelling and I heard lots of gunfire, and that's when we all  
18           woke up.

19          Q    Okay. Prior to the gunfire, did you hear anybody  
20           knock on the door?

21          A    No.

22          Q    Do you recall talking to Detective Steed about  
23           that evening?

24          A    Yeah.

25          Q    Okay. Do you recall telling him you heard a knock

1 and Marsha said, don't go there with the gun?

2 A You know, I don't remember. I might have. I  
3 don't remember if I heard a knock or if I didn't, because I  
4 don't know.

5 Q Let me.

6 A I might have said it.

7 Q This is what Detective Steed said when he talked  
8 to you. He said, I then asked Mankins if he could recall  
9 anything that was said after he went to bed and before he  
10 woke up. Mankins said he was asleep. As he was waking up,  
11 he thinks he heard something about a knock on the door and  
12 Lawson saying something about, don't go there with the gun  
13 or something like that?

14 A Oh, oh, oh, yeah, yeah, I remember. I was -- man,  
15 this is hard to remember. I was kind of in -- awake, I hear  
16 things in my sleep. And I remember hearing something about  
17 her saying, don't answer the door with a gun. I do, yes, I  
18 do remember that.

19 Q All right.

20 A And then I heard a command of something, either  
21 get down or drop it, hands up, one of those three. I don't  
22 remember which it was. And then all of the gunfire and it  
23 was a lot.

24 Q Okay.

25 A I do remember saying something about her saying,

1 don't answer the door with that.

2 Q Okay. And then another voice saying?

3 A I heard the voice, either drop it -- I didn't hear  
4 put the gun down. Either drop it, get down or hands up. It  
5 was something, because I got the elevator to hear through,  
6 and, you know --

7 Q When you say that there's an elevator --

8 A Our room is here, the elevator is right in front  
9 of us. The apartment is like an L kind of thing. All night  
10 long we hear the elevator going up and down, clanging. It's  
11 not -- yeah. I heard him yell at him and heard gunfire.

12 Q Did you go out into the living area?

13 A I did. Marsha -- after everything happened,  
14 Marsha came in, opened the door, because first thing I  
15 grabbed for my son and her, I stayed there. And she opened  
16 the door, came in, guys, don't come out here, they fired  
17 tear gas. I thought, if they fired tear gas, we would know  
18 it.

19 So, she shut the door, in a couple minutes I  
20 looked over and made sure they were fine. I wanted to check  
21 on Marsha. I walked outside, sat down on the couch, looked  
22 over at her, she's staring at the floor. I look over my  
23 shoulder, the couch is facing -- the door is here, couch is  
24 here. I turned around, I saw Darryel laying on the ground  
25 in the doorway, and he twitched a little. I looked at her

1 and I said, did they tase him? She said, I don't know. I  
2 said, I'm kind of in shock. I'm like, okay, I got up and  
3 walked back into the bedroom.

4 Q You heard several shots?

5 A I heard a lot of shots, more than nine shots. I  
6 would say even with echoes, it was a lot.

7 Q Okay. So, how long did you stay in your room?

8 A After I came out and went back in?

9 Q After you went back in.

10 A After I stayed in there until the police called  
11 and told us to come out.

12 Q Do you know how much longer that was?

13 A Awhile, at least a half hour I'm thinking.

14 Q Did you see the gun you had seen before?

15 A I never saw a gun. I didn't look that hard, but I  
16 didn't see a gun, no.

17 Q Okay.

18 A I didn't know he had been shot still.

19 GRAND JUROR: There was -- the mother said,  
20 don't go there to the door with the gun?

21 THE WITNESS: Yeah, Marsha.

22 GRAND JUROR: Okay.

23 THE WITNESS: That's what I heard.

24 GRAND JUROR: No, it was not the mother --

25 THE WITNESS: It was my girlfriend's mother.



1 GRAND JUROR: Yeah, that's what I'm saying.  
2 That's the same person --

3 GRAND JUROR: And then the knock, did you  
4 hear the knock?

5 THE WITNESS: I don't remember, I might have.  
6 I'm not one hundred percent sure. That was a week or  
7 so ago. It is hard to remember exactly every detail,  
8 I know that.

9 GRAND JUROR: Haven't you thought about it a  
10 lot since then?

11 THE WITNESS: I have. It's still kind of  
12 fuzzy, I mean.

13 GRAND JUROR: Can you tell me if there's  
14 activity by anyone to launch a civil suit?

15 THE WITNESS: What do you mean?

16 GRAND JUROR: You know what a civil suit --

17 MR. LEINEWEBER: Can we talk about that?

18 GRAND JUROR: Okay. The building that you  
19 are all in --

20 THE WITNESS: Uh-huh.

21 GRAND JUROR: Is it normal to walk to the  
22 door with the gun?

23 THE WITNESS: I don't know. I don't think  
24 so. I'd only been there a week. I mean, I had been  
25 there a week.

1 GRAND JUROR: The area that you're in, is  
2 there a lot of violence in that area within your all  
3 apartment?

4 THE WITNESS: I don't know. I grew up in  
5 Clackamas. I had an apartment before, all out in  
6 Halsey. It was fine, just down the street. It was  
7 fine. I was down -- because it's 122nd and Burnside.  
8 I used to live off 122nd and Halsey over there, it was  
9 fine. I don't know about Burnside.

10 BY MR. LEINEWEBER:

11 Q How long did you live in the apartment since this  
12 happened?

13 A Monday, so one, two, three, four days. It was a  
14 Friday morning, technically. So since Monday. I don't know  
15 how the area is, honestly.

16 GRAND JUROR: Just a couple of days?

17 THE WITNESS: Just a few days.

18 GRAND JUROR: The question was, has there  
19 been any activity to your knowledge about anybody  
20 filing a civil suit to gain monetary advantage over  
21 this incident?

22 THE WITNESS: Not, that I'm aware of, no; not  
23 yet, no.

24 GRAND JUROR: Thank you.

25 MR. LEINEWEBER: Anything else? Thank you.

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

5                   MR. LEINEWEBER: Tell us your name, please?

6                   THE WITNESS: Terrie Baer, T-E-R-R-I-E  
7                   B-A-E-R.

8                   EXAMINATION

9                   BY MR. LEINEWEBER:

10                  Q   Where do you live?

11                  A   12110 East Burnside, apartment 202.

12                  Q   How long have you lived there?

13                  A   I lived there about four years, going on four  
14                  years.

15                  Q   And 202, I take it, is right across the hall?

16                  A   Right across the hall.

17                  Q   From Marsha Lawson and Darryel Ferguson?

18                  A   Right.

19                  Q   How long have you known those two?

20                  A   I have known them for about two years about, yeah.

21                  Q   Did they live in a different part of the building?

22                  A   They lived on the third floor and then they  
23                  recently moved down to 201.

24                  Q   Okay. Okay. And so you have known Darryel  
25                  Ferguson for quite awhile?

1           A    Yeah.

2           Q    How would you describe your relationship with him?

3           A    He was a great friend.  He would give his shirt  
4 off his back to you.  Uhm --

5           Q    When was the last time you saw him?

6           A    Uhm, the night of the incident he was at my house  
7 for a little while.

8           Q    How long of a time was that?

9           A    Most of the evening.  He was in and out, oh, most  
10 of the evening.  He was running upstairs, to, you know, do  
11 guy things, I guess, hang out with guys and then --

12          Q    Was there something going on upstairs you were  
13 aware of?  Was there a party or anything like that?

14          A    No.  All I know of is that Jose called him and  
15 asked him if he would come up.

16          Q    Okay.

17          A    And so he did.

18          Q    Okay.  And when Ms. Baer was -- excuse me, when  
19 Mr. Ferguson was in your residence with you, what were the  
20 two of you doing?

21          A    We drank some beers and we smoked a little pot.  
22 We were just talking about his situation.

23          Q    What did he tell you about his current situation --  
24 his living situation?

25          A    His current living situation, he said he just

1     wasn't feeling happy about it. He wasn't feeling happy  
2     about it. But, you know, it was his girlfriend's family,  
3     and he wanted the best for his girlfriend.

4             Q     Did he seem upset about these other people now  
5     living in the apartment?

6             A     He was a little upset about it, little things you  
7     notice. Just little things like not cleaning up after  
8     themselves. He was a very tidy person.

9             Q     Uh-huh.

10            Q     Was he having problems with the small child being  
11    in the home?

12            A     He just wasn't used to a small child being in the  
13    home.

14            Q     That's one of the things he brought up?

15            A     Yeah.

16            Q     How was he getting along with Ms. Lawson's  
17    daughter, Sheena?

18            A     I believe he was getting along with her pretty  
19    well. He didn't say anything negative or anything about  
20    them.

21            Q     Did he talk to you about his health issues?

22            A     Yes. He told me that he had been throwing up  
23    blood earlier, and poop -- I don't know how to say that,  
24    going number two had blood in it.

25            Q     Okay. Was that -- were you aware of what his

1 medical issues were?

2 A Yeah. Yeah.

3 Q What were they, what did he tell you?

4 A Uhm, that he had HIV, and that he -- I knew about  
5 his cancer, but I think that his HIV was flaring, because  
6 being a care giver I know they flare up once in awhile, the  
7 bleeding and stuff.

8 Q Was he taking some particular medications you were  
9 aware of?

10 A Yes. He told me he took six Clozapines.

11 Q What were those for, do you know?

12 A Clozapines are for to calm your nerves down when  
13 you get anxious.

14 Q Was he going through some depression as well?

15 A Yes, he was depressed, but by the time he left he  
16 was happy and he --

17 Q How much do you think he had to drink when he was  
18 in your apartment?

19 A I would say about four beers. We had taken some --  
20 he bought two six packs and, uhm, then he also took some  
21 beers when he went to Jose's house too.

22 Q He probably had more up there?

23 A Yeah.

24 Q And, uhm, how did you think he was -- well, did he  
25 tell you about the medications he was taking? Had he taken

1 more than you felt was safe for him at the time?

2 A The Clozapines. I told him that was too much to  
3 be taking.

4 Q How many did he say he took?

5 A He said he took six.

6 Q That's quite a few?

7 A That's quite a few with alcohol on top of it, it's  
8 not a good combination.

9 Q How he's behaving, it was a concern to you, did it  
10 raise questions in your mind?

11 A No. No.

12 Q Did it raise concerns in your mind, the mixture of  
13 alcohol and the medications he was taking?

14 A I'm -- well, it has concerns to me when people  
15 over take medications and add alcohol with it. But as far  
16 as it goes with Darryel, uhm, he seemed just pretty calm  
17 and, you know.

18 Q Did he -- did his medication and alcohol, did it  
19 raise concerns, you talk to Ms. Lawson about it that night?

20 A Yeah, I did talk to Marsha.

21 Q There was something going on?

22 A Yeah. That night I kept in communication with  
23 Marsha Lawson telling her that, you know, we were having  
24 beers, that he told me he took six Clozapine, and that he  
25 went to Jose's house.

1           Q   And did she say anything about the Clozapine to  
2   you?

3           A   She told me, no, she didn't think he took that  
4   many. Because she had control over them, and she only knows  
5   of two that he took, so --

6           Q   So he must have found it, is that what she said?

7           A   Yeah. I don't know.

8           Q   Do you recall talking to Detective Michaels,  
9   Michelle Michaels?

10          A   Uh-huh.

11          Q   She wrote in her report, she said, Ms. Baer said  
12   Clozapine made him wigged out, he acted like he was on meth,  
13   especially when mixed with alcohol?

14          A   Yeah. If he took too much, he would act all  
15   wigged out, kind of, you know, I guess wigged out to me  
16   means like hyper and like a meth addict.

17                GRAND JUROR: You said that this young lady  
18   told the officer that he acted as if he was like on --  
19   like he was wigged out, whatever it was, is what you  
20   told the officer?

21                THE WITNESS: Yeah. If he used too much  
22   Clozapine and alcohol.

23                GRAND JUROR: If he did?

24                THE WITNESS: Yeah.

25                GRAND JUROR: You sound like you know; do you



1 think he took that many?

2 THE WITNESS: I personally don't think he  
3 took that many. I know that he probably took two at  
4 the most.

5 GRAND JUROR: You was describing at the time,  
6 you was describing to the cop that if you took six,  
7 you would act crazy, crazy?

8 THE WITNESS: Yeah, I would act hyper and  
9 crazy, yeah.

10 GRAND JUROR: Yeah.

11 BY MR. LEINEWEBER:

12 Q Did he ever mention having a gun to you?

13 A That night he did have the gun at my house. He  
14 was carrying it around with him. I don't know why.

15 A Had you ever seen it before?

16 A I have seen it before, yeah.

17 Q With him?

18 A Yeah.

19 Q Is it something he would regularly carry?

20 A He just kept it close by him. He felt like he  
21 needed to have some protection or something.

22 Q Did he show it to you that night?

23 A Yes.

24 GRAND JUROR: It was a real gun?

25 THE WITNESS: No.

1 GRAND JUROR: How did you know that?

2 THE WITNESS: It was -- I'm not really much  
3 of a gun expert, but I -- he told me it was like a BB  
4 gun, uhm, it had like a red tip on it.

5 GRAND JUROR: Had he not told you that, would  
6 you have thought it was a real gun?

7 THE WITNESS: No, I wouldn't have thought  
8 that, it didn't look like a real gun.

9 BY MR. LEINEWEBER:

10 Q When you talked to Detective Michaels, you told  
11 her that Mr. Ferguson had a gun that looked like a real  
12 pistol to her. Mr. Ferguson told her it was a pellet gun,  
13 it looked real to you and he always had it with him?

14 A Yeah. Maybe I'll rephrase that. Yes.

15 Q Is that it?

16 A Yes. It was a -- it was heavy, was really heavy,  
17 because I know before it is heavy. That's where I probably  
18 was talking about it.

19 Q Did he have any disputes with other people in the  
20 building that night?

21 A Yes, he had a dispute with my upstairs neighbor,  
22 Chad.

23 Q Is that the man that is out here now?

24 A Yeah. Me and Darryel were smoking a cigarette, we  
25 can't smoke in our apartment building, we were on the

1 balcony smoking. And he just kept trying to talk to  
2 Darryel, and Darryel kept telling him, I don't want to talk  
3 to you.

4 Q Do you know what that was about?

5 A Uhm, he -- Darryel didn't like him.

6 Q He was one floor above?

7 Q Yeah, on the third floor above me.

8 Q They are talking back and forth?

9 A Uh-huh.

10 Q And, again, talking to Detective Michaels, you  
11 said Mr. Ferguson talks a lot of smack and gets into  
12 altercations with others?

13 A Yeah. He talks -- he is cocky with people. You  
14 know, if they -- he would get cocky with people.

15 Q You said -- tell me if this is correct. She said  
16 that Mr. Ferguson threatens folks all of the time.

17 A No, no, he never threatened all of the time.

18 Q Sometimes?

19 A Yeah, but he would --

20 Q Would he do that with the gun?

21 A I don't think so.

22 Q How long did he stay in your apartment with you?

23 A He stayed -- the first time he stayed for probably  
24 like an hour, and then he went-- the first time he left, he  
25 went downstairs to talk to another neighbor on the third

1 floor. Uhm, and then he came back up, and then that's when  
2 Jose called him. So he was only in my apartment for like 20  
3 minutes at this time. Then he came back, probably stayed  
4 about another half hour or so.

5 GRAND JUROR: How big is this apartment  
6 building?

7 THE WITNESS: It has got four floors.

8 GRAND JUROR: What floor are you?

9 THE WITNESS: The second floor.

10 GRAND JUROR: You stated he went down to the  
11 third floor. Is that what you said on your last  
12 comment, Mr. Ferguson went down?

13 THE WITNESS: He talked to a person from the  
14 third floor.

15 BY MR. LEINEWEBER:

16 Q So, when was the last time you saw him that  
17 evening?

18 A Uhm, I think it was about -- I told Detective  
19 Michaels it was about 11:30, but I wasn't really sure of the  
20 time. You know, I was not really watching the clock, you  
21 know.

22 Q How much do you think you had to drink that night?

23 A I had three beers.

24 Q He had more?

25 A He had more than me. I still had a beer in the

1 refrigerator.

2 Q He was going back and forth between your place and  
3 upstairs?

4 A And upstairs, yeah.

5 GRAND JUROR: Would you say in your apartment  
6 building -- would you say everybody else knows he  
7 carries that gun?

8 THE WITNESS: No, I wouldn't say everybody  
9 knows.

10 GRAND JUROR: Do you know Jose?

11 THE WITNESS: Yes.

12 GRAND JUROR: What do you know about Jose?

13 THE WITNESS: I don't know much about Jose.  
14 I just know that I called them, Darryel and Jose, two  
15 Alpha males trying to protect the females in the  
16 building.

17 GRAND JUROR: Would you say the area you are  
18 in is a rough area?

19 THE WITNESS: Yes, it is a very rough area.

20 GRAND JUROR: How about the building you all  
21 are in?

22 THE WITNESS: Our building?

23 GRAND JUROR: People within the building?

24 THE WITNESS: I think it's pretty, you know,  
25 okay.

1 GRAND JUROR: Family orientated?

2 THE WITNESS: Somewhat. There is a lot of  
3 criminals that have come in. The manager -- I also  
4 clean for the apartment building, they have a criminal --  
5 there's criminals that have been on probation for a  
6 period of time and changed their life around, and they  
7 can move in there.

8 GRAND JUROR: Okay. Do you think it's  
9 uncommon for people to be carrying guns around that  
10 apartment complex?

11 THE WITNESS: No, I don't believe in that.

12 GRAND JUROR: But I mean for safety purpose?

13 THE WITNESS: For safety purposes, I don't  
14 think so.

15 BY MR. LEINEWEBER:

16 Q Did you ever ask Mr. Ferguson why he carried that  
17 gun with him?

18 A Yeah. He said he never -- you can never be too  
19 protective.

20 Q Okay. So, when did you first realize that  
21 something had occurred outside of your apartment?

22 A Well, that was kind of strange. That night before  
23 Darryel came back that last time, I had taken my Trazodone,  
24 and with the mixture it makes you sleepy. And I heard a  
25 knock, I thought it was a knock at my door. And I must have

1       thought that it was Darryel coming back over or something.  
2       And I looked out my peep hole and just saw Marsha coming out  
3       with her hands up.

4               Q     Did you hear anything else?

5               A     No, I didn't. Once I go to sleep, I him a sound  
6       sleeper.

7               Q     Okay.

8                       MR. LEINEWEBER: All right. Thank you, very  
9       much.

10                    GRAND JUROR: One question. You said you had  
11       some beer and you said you also had some pot?

12                    THE WITNESS: Uh-huh.

13                    GRAND JUROR: Did you go out onto balcony to  
14       smoke that?

15                    THE WITNESS: No, we smoked it in the  
16       apartment.

17                    GRAND JUROR: About how much pot did you  
18       have?

19                    THE WITNESS: I had a 20-sack, like a half of  
20       an eighth of weed.

21                    GRAND JUROR: I have no idea what that is.  
22       Is it like a cigarette rolled up stuff? I have never  
23       done pot, so --

24                    THE WITNESS: It's hard to describe. Let me  
25       think.

1 GRAND JUROR: Compared to this pen?

2 THE WITNESS: Compared to that pen, it would  
3 have been like this across a bag, half way across the  
4 bag (indicating).

5 BY MR. LEINEWEBER:

6 Q Did you smoke it out of a pipe or roll it?

7 A In a pipe.

8 Q How many pipefuls do you think you had?

9 A I had two with him.

10 MR. LEINEWEBER: Okay.

11 GRAND JUROR: Did Mr. Ferguson smoke with  
12 you?

13 THE WITNESS: Yes.

14 GRAND JUROR: Why did you bring up the  
15 methamphetamine you mentioned as the symptoms looked  
16 similar to.

17 THE WITNESS: Because I used to be a meth  
18 addict, and I know what the reactions of a meth addict  
19 are.

20 GRAND JUROR: And do you know any history of  
21 Darryel being involved with methamphetamine?

22 THE WITNESS: Uhm, just a little bit of his  
23 history that he talked to me about, yeah.

24 MR. LEINEWEBER: Anything else?

25 GRAND JUROR: Nothing.



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

5                               EXAMINATION

6       BY MR. LEINEWEBER:

7           Q    Tell us your name, please?  
 8           A    Jose Mediano.  
 9           Q    Spell it, please.  
 10          A    J-O-S-E.  
 11          Q    Last name?  
 12          A    M-E-D-I-A-N-O.  
 13          Q    And where do you live?  
 14          A    On the third floor, 304 Ventura Park Apartments.  
 15          Q    How long have you lived there?  
 16          A    About seven months.  
 17          Q    And do you live alone?  
 18          A    No.  
 19          Q    Who you live with?  
 20          A    My girlfriend and my son.  
 21          Q    Okay. And did you know Darryel Ferguson?  
 22          A    Yes, I did.  
 23          Q    How did you know him?  
 24          A    Uhm, he was one of the first people I met when I  
 25       moved in the building.

1 Q Okay.

2 A Really nice guy, always brought my kids candy,  
3 friendly. I had three kids that adored him, so --

4 Q When was last time you saw him?

5 A That night the 17th, I believe it was.

6 Q What were the circumstances in which you saw him?

7 A He stopped by my home two days prior to this  
8 incident, and dropped off a Christmas card and some candy  
9 canes for my kids. I have the Christmas card. And a few  
10 days went by, one of the Russians that lives on the fourth  
11 floor came down and we purchased some alcohol that night.

12 Q And this is the night of the shooting?

13 A Yeah. I called Darryel, asked -- Darryel -- if he  
14 wanted to come up and have a beer with us. He said, yeah,  
15 sure. He came up, had a beer.

16 Q How many do you think he had?

17 A He had one when he came to the house, he was  
18 drinking a Mickey's and we were drinking the Four Lokos. I  
19 think I had two, but to my frame that's like too much. So I  
20 spent most of the night on the floor rubbing the carpet and  
21 saying how soft it felt.

22 I heard some commotion behind me, I don't recall  
23 turning around because I was facing this way and the front  
24 door is behind us where the counter is. And all I remember  
25 is telling Tim, the big Russian guy, to get your beer and go

1 home, it's time for everybody to leave.

2 Q What was happening?

3 A I don't know.

4 Q Was there a dispute between Tim and the --

5 A I couldn't comprehend what was going on. I had  
6 the whole drunken feeling, I just knew it was time for  
7 everybody to go home. When I said for them to go home,  
8 Darryel had come over, he sat down next to me on the floor  
9 and he says, man, I didn't think you were going to be this  
10 drunk. And I said, yep. And he rubbed the side of my head,  
11 he says, well, I love you. I'll see you later. Then I got  
12 woke up at 4:00 in the morning.

13 Q Now what happened at 4:00 in the morning?

14 A The police knocked on my door and asked us to  
15 evacuate the building.

16 Q So, when you talked to Detective Michaels, you  
17 remember that, Michelle Michaels?

18 A Yeah, I believe so.

19 Q Okay. She said that at some point in the evening  
20 or early morning hours of December 17th, Mr. Mediano --

21 A Uh-huh.

22 Q -- determined he reached his limit of beer and  
23 told everyone to go home?

24 A That is correct.

25 Q She then writes that an argument started between

1 Mr. Ferguson and the Russian guy?

2 A And that's why I'm assuming that's what started  
3 behind me and made me want people to go home about. I  
4 wasn't quite sure what was going on.

5 Q You said it was around this time Mr. Ferguson told  
6 all of them he had a gun?

7 A Yeah. I think from what my girlfriend told me as  
8 well, she witnessed it. I was face down on the floor, to be  
9 honest with you guys, I was really, really drunk.

10 Q At the time you talked to Detective Michaels, had  
11 you talked to your girlfriend about this?

12 A Yeah. That morning as we were walking out, she  
13 said she had seen the gun that night.

14 Q Because you said Mr. Ferguson told them it was  
15 a .45?

16 A Yeah.

17 Q And you knew what this meant?

18 A I just assumed it was an Air Soft gun.

19 Q Why is that?

20 A I didn't think Darryel to be that way. He didn't  
21 give me that type of vibes, as a friend, as a neighbor.

22 Q But he displayed a gun to you before that time?

23 A In the elevator at approximately four days, maybe  
24 five days, he was waving it around. I was like, man, put  
25 that crap away. I don't want to see it.

1 Q He showed you the gun then?

2 A And that's the same day I got the Christmas card.  
3 Shortly after that in the elevator he brought the Christmas  
4 card and four candy canes over to the kids.

5 Q During the elevator encounter, he pulled a pistol  
6 from his waist band and held it in the air?

7 A Uh-huh.

8 Q What did he say, why did he do that?

9 A He's like, I'm not scared of anybody in this  
10 building.

11 Q Then put it back in his pocket?

12 A Uh-huh. And not to further the situation, I  
13 didn't ask questions, I left it alone.

14 Q And had he recently threatened you about that?

15 A Not me, not me face-to-face, no. A couple of  
16 weeks, two to three weeks back before all this incident  
17 happened, one of my neighbors, which would be Chad, came to  
18 me and told me that he had talked to the landlord about  
19 Darryel brandishing a gun, and telling him in the elevator  
20 wherever it might have been, that he was going to shoot me.  
21 And again, I didn't see Darryel that way.

22 Q The gun you saw him have, it looked like a real  
23 gun to you?

24 A I wasn't fixed on it, staring at it. I looked for  
25 the orange glow, like there was no orange tip. So I assumed

1     it was an Air Soft gun.  I was like, forget it.  I don't  
2     want to know more.

3             Q     When you talked to the detective, you said it  
4     looked like a real gun to you?

5             A     Uh-huh.  So nowadays, all air soft guns they make  
6     pretty much look real, the color.

7                     GRAND JUROR:  Why is the Christmas card  
8     important?

9                     THE WITNESS:  This was the last thing I got  
10    from him.  And I have had people tell me in the  
11    building that it was me that started a fight with him,  
12    and I didn't have any altercations with him.  I got my  
13    Christmas card, he came and visited my kids, and that  
14    was that.  So there was no altercation between him and  
15    I.

16                    GRAND JUROR:  You brought that as evidence  
17    that there was not an issue between you and him?

18                    THE WITNESS:  Yeah, signed by Marsha and  
19    Darryel from 201.

20                    GRAND JUROR:  Why do you think that's  
21    important to tell us that?

22                    THE WITNESS:  It's important to me because he  
23    was a friend.

24                    GRAND JUROR:  Okay.

25                    THE WITNESS:  And that's what I want to show,

1           he was a friend to me. I was not threatened in any  
2           way out of the ordinary. I mean, every once in awhile  
3           people joke around, I'm going to shoot you in the butt  
4           with a BB gun or something silly.

5           BY MR. LEINEWEBER:

6           Q    Is that what he said in the elevator?

7           A    No. The BB gun thing happened a long time ago  
8           when they had problems with the residents behind the  
9           building. There was three or four houses in a lot and had  
10          homeless people coming in drinking. And I walked my dog  
11          back there, and he was like, lucky, almost shot you in the  
12          butt, thought you was a homeless guy breaking in.

13          Q    Did he ever say during that night -- you told the  
14          detective Mr. Ferguson had a code saying something, be  
15          careful with the coat, it has a gun in it?

16          A    Uh-huh. He said he had a gun in his pocket.

17          Q    You described Mr. Ferguson as being a little hot  
18          headed?

19          A    If pushed. I never really pushed him. I just  
20          kind of brushed everything off, went about my business.

21          Q    Okay. And you said you were not able to determine  
22          a degree of intoxication he had because you were extremely  
23          drunk?

24          A    I was -- apparently my girlfriend told me I was  
25          caressing the carpet and making carpet angels. I was in one

1 of those moods, I could not roll over because I would have  
2 thrown up. And I just laid there and told everybody how  
3 much the carpet felt so nice.

4 Q Anything else?

5

6

7

8 CHAD CROSBY,

9 called as a witness,

10 being first duly

11 sworn, was examined and testified as follows:

12 MR. LEINEWEBER: State and spell your name.

13 THE WITNESS: Chad Crosby, C-H-A-D C-R-O-S-

14 B-Y.

15 EXAMINATION

16 BY MR. LEINEWEBER:

17 Q You live in the Ventura Apartments?

18 A Yes, I do.

19 Q How long have you lived there?

20 A Uhm, about three and-a-half months.

21 Q Okay. That's at 121, 122 and Burnside?

22 A Yes.

23 Q And did you know Darryel Ferguson?

24 A I didn't personally know him. I knew who he was.

25 I talked to him a couple of times.



1 Q Were you with him the night he was shot?

2 A I was at Jose's at this time. Jose was my next  
3 door neighbor. I since moved down to the second floor.

4 Q Just down the hall from where he had lived?

5 A I was right next door to Jose on the third floor.  
6 Now I live on the second floor.

7 Q Okay.

8 A Uhm, I was visiting Jose the evening that Darryel  
9 got shot.

10 Q Okay. Tell us about the party at Jose's or the  
11 gathering, I should say.

12 A He was having friends over, playing video games,  
13 you know, goofing around, YouTube.

14 Q Had you had anything to drink that night?

15 A I had not, no.

16 Q How about Jose?

17 A I think he might have had a beer or two.

18 Q I understand he was pretty intoxicated?

19 A He drinks all of the time, so, you know, I don't  
20 really pay attention to how much he was drinking.

21 Q How about Darryel?

22 A I don't know if he was drinking or not. I think  
23 Jose might have made him a drink.

24 Q Uh-huh.

25 A Uhm, that's possible. But I can't say for sure, I

1 don't remember.

2 Q Tell us about your interaction with Mr. Ferguson  
3 and the party, the gathering?

4 A Everybody was friendly, and I was surprised  
5 because a couple of days earlier, Darryel had been on the  
6 elevator and lifted up his jacket, showed me what appeared  
7 to be two pistols, told me he was going to kill Jose. So --

8 Q Was Jose in the elevator?

9 A No, Jose was somewhere else.

10 Q Uh-huh.

11 A So I told Jose, this guy tells me he's going to  
12 kill you, man.

13 Q When you saw these guns in his waist band, what  
14 did they look like?

15 A Looked like pistols.

16 Q Automatics?

17 A Yeah, .45's.

18 Q Did you ask him what the issue was?

19 A I didn't want to get involved, you know. You  
20 know, I'm fairly new to the building, so I was just like, I  
21 didn't really say anything.

22 Q Did you have any issues with or arguments in the  
23 past with Darryel at all?

24 A No, I didn't.

25 Q He never showed you any gun and threatened you?

1           A    He showed me his guns, but never threatened me.

2           Q    Is that the only time he showed you guns he had?

3           A    Yeah.

4           Q    What about at Jose's place, did he let it be known  
5 he had a gun there?

6           A    Uhm, no. Not to me, he didn't.

7           Q    Did you hear him saying anything to anybody about  
8 it?

9           A    No, I didn't.

10          Q    How long were you there with him?

11          A    At Jose's apartment?

12          Q    Uh-huh.

13          A    Uhm, I don't know, maybe twenty minutes.

14          Q    Not very long?

15          A    Not very long, no. I left because I didn't really  
16 feel comfortable with the situation.

17          Q    Why is that?

18          A    Because the guy showed me what appeared to be two  
19 real pistols, and told me he was going to shoot Jose.

20                   GRAND JUROR: That was the same day?

21                   THE WITNESS: No. That was -- when he showed  
22 me the pistols, that was a few days earlier. And so,  
23 then he came over to Jose's house, and so I just  
24 decided, you know, this is -- something is not right  
25 here. I don't want to be involved with this, you

1 know. Guy says he's going to basically put the  
2 warning out he's going to shoot Jose, and here he is  
3 over at Jose's house. I don't need to deal with any  
4 of that, so I left.

5 BY MR. LEINEWEBER:

6 Q Where did you go from there?

7 A I went to my apartment.

8 Q Okay.

9 GRAND JUROR: Were you there before Darryel  
10 or come after Darryel?

11 THE WITNESS: I was --

12 GRAND JUROR: Was Darryel already there?

13 THE WITNESS: I was there before Darryel, and  
14 Darryel came over.

15 GRAND JUROR: Okay.

16 THE WITNESS: To the best of my knowledge.

17 GRAND JUROR: How big is where you all were?

18 THE WITNESS: It's four stories.

19 GRAND JUROR: The apartment you all was in,  
20 was everybody in the same room?

21 THE WITNESS: Everybody was in the living  
22 room.

23 GRAND JUROR: Some people in the kitchen?

24 THE WITNESS: Right, the kitchen. Here's the  
25 living room, here's the kitchen and counter top right

1 in the middle.

2 GRAND JUROR: So the whole room is like open?

3 THE WITNESS: Yeah, it's all open.

4 BY MR. LEINEWEBER:

5 Q What happened after you left?

6 A I went home, and, uhm, like I started watching  
7 television. And then like fifteen minutes or so later,  
8 someone knocked on my door. I got up to see who it was, it  
9 was Darryel. And I told him -- I probably told him to kick  
10 rocks and get out of my space. I didn't want to talk to  
11 him.

12 Q Why was that?

13 A Because the guy is an idiot. He really was. He  
14 told me he's going to shoot this guy, and here he is trying  
15 to be his best friend. I don't need to be around that  
16 craziness.

17 Q Well, was he acting that way this night?

18 A Well, he was being friendly that night.

19 Q And were you suspicious?

20 A Yeah, basically. And it was just stupid drama I  
21 don't want to be caught up in. I told him to kick rocks,  
22 leave me alone.

23 GRAND JUROR: What's that mean?

24 THE WITNESS: F off.

25 GRAND JUROR: Get lost.

1 BY MR. LEINEWEBER:

2 Q Had you ever complained to the management about  
3 Darryel?

4 A Yeah, I did. I told the manager that this guy was  
5 threatening to shoot Jose, and the manager told me that I  
6 was crazy, and that Darryel would never do anything like  
7 that.

8 GRAND JUROR: Could have been the reason --  
9 did he have any reason, or what the reason could be?

10 THE WITNESS: Apparently, him and Darryel are  
11 friends or were friends, and he just told me I was  
12 crazy, and that Darryel would never do anything like  
13 that. And, you know, what am I going to do?

14 GRAND JUROR: Didn't you question why -- a  
15 statement, he was going to shoot Jose, and you ask why  
16 would he want to shoot Jose?

17 THE WITNESS: I asked Jose, why would this  
18 guy want to shoot you? He said, I don't know.

19 GRAND JUROR: And that seemed acceptable?  
20 I'm not trying to question your judgment. I guess I  
21 have heard a lot of testimony about shooting and from  
22 a lot of different people. No one offered an  
23 explanation as to why he would want to shoot Jose.  
24 And it seemed like there would be conversation that  
25 would go on, and people would come up with an

1 explanation. You talked to the manager about it.

2 THE WITNESS: That's why I left. I didn't  
3 know why he would want to shoot Jose. That's why I  
4 left and I came over to Jose's house.

5 GRAND JUROR: Nobody had apparent knowledge  
6 of why Darryel would want to shoot somebody?

7 THE COURT: I didn't have knowledge of it.

8 GRAND JUROR: When he said that to you, you  
9 really believed him?

10 THE WITNESS: Yeah.

11 GRAND JUROR: He had a serious face, he had  
12 the demeanor of, kill that mother fucker as soon as I  
13 see him?

14 THE WITNESS: Yeah, except he didn't show any  
15 anger. He was just like, I'm going to kill him. When  
16 somebody is like that, they are usually pretty  
17 serious. I just decided I don't really want to get  
18 involved with it, it's not something I really need to  
19 deal with. So I just tried to keep a little distance  
20 from it.

21 BY MR. LEINEWEBER:

22 Q Had he ever threatened you?

23 A No, he never threatened me.

24 Q You remember making a call to the apartment  
25 manager saying, look, I have a problem with this guy. He's

1 threatened to kill me and is running around saying stuff  
2 about me, it's not true?

3 A He never threatened to kill me. He threatened to  
4 kill Jose. He told me he was going to kill Jose. So --

5 Q Okay.

6 A I told the manager that he said that, and the  
7 manager told me I was crazy, like I said.

8 Q Okay.

9 GRAND JUROR: One particular day you all was  
10 out on the balcony, and you was on the third floor, he  
11 was on the second floor, you all had words; is that  
12 true to your knowledge?

13 THE WITNESS: I remember talking -- the lady  
14 that cleans the hallways lived below me when I was on  
15 the third floor, and they were downstairs. And we had --  
16 I said -- we were talking back and forth or something,  
17 they were yelling off the balcony -- I was yelling off  
18 the balcony, not yelling, raising your voice to talk  
19 to someone in the parking lot below. And they had  
20 mentioned something like, be quiet. Be quiet. I  
21 said, I don't need to be quiet, it is not after 10:00  
22 yet. You're supposed to be quiet after 10:00. That's  
23 respectful, the 10:00 to 10:00 rule.

24 I said, I don't need to be quiet, it's not  
25 10:00 yet. That was basically it. Darryel was not in



1           the conversation, it was the neighbor below, he was  
2           over at her house when she said that.

3                   GRAND JUROR: It was nothing Darryel said to  
4           you, it was you to her and you to people that were  
5           down on the ground?

6                   THE WITNESS: Right.

7                   MR. LEINEWEBER: Anything else?

8  
9  
10

11                   MARSHA LYNN LAWSON,  
12           called as a witness,  
13           being first duly  
14           sworn, was examined and testified as follows:

15                   MR. LEINEWEBER: Tell us your name, please.

16                   THE WITNESS: Marsha Lynn Lawson.

17                   MR. LEINEWEBER: Spell your first name and  
18           last name.

19                   THE WITNESS: M-A-R-S-H-A L-Y-N-N, last name  
20           L-A-W-S-O-N.

21                                   EXAMINATION

22           BY MR. LEINEWEBER:

23                   Q All right. And, Ms. Lawson, where do you live?

24                   A 12110 East Burnside, apartment 201 Portland,  
25           Oregon, 97216.

1 Q And how long have you lived there?

2 A In that apartment, two months.

3 Q How long in the building?

4 A Since July of 2008.

5 Q That's the Ventura?

6 A Ventura Park Plaza.

7 Q And who lived in the apartment with you?

8 A Darryel Ferguson. Sheena Davidson, Jeremy  
9 Mankins, and Gavin Davidson. They just started staying with  
10 us.

11 Q That's your daughter?

12 A My daughter.

13 Q The father of her child?

14 A My son-in-law and my grandson.

15 Q Tell us about the apartment, how big is it?

16 A It's a two bedroom.

17 Q She had one of the bedrooms?

18 A Yes.

19 Q And you and Mr. Ferguson had the other bedroom?

20 A Yes, sir.

21 Q And how long had your daughter and fiance and  
22 child lived there?

23 A Just four days.

24 Q Okay. What was the plan?

25 A Uhm, for them to stay with us temporarily, unless

1     they found out if Jeremy was going to get an extension on  
2     his unemployment.

3             Q     Was it explained to Mr. Ferguson it was a  
4     temporary situation?

5             A     Yes, it was, we both agreed on it.

6             Q     How was he with that, was he all right?

7             A     At first he was concerned, it was his illnesses  
8     and having other people in the house that would accept his  
9     illnesses and medications and just the whole daily routine  
10    of what we went through when he got up until he went to bed,  
11    like his medications, his eating habits, restroom habits.  
12    And he was kind of concerned about, uhm, Gavin you know,  
13    being a little noisier and nosey because we're not used to  
14    having children around.

15            Q     He was a little stressed about the whole  
16    situation?

17            A     Yeah, a little stressed.

18            Q     And tell us about what was going on with his life  
19    at the time.

20            A     Darryel is a cancer survivor.

21            Q     Was he still dealing with cancer?

22            A     Yes. He went into remission October of 2009.  
23    During the process of cancer, he became an AIDS patient, HIV  
24    with AIDS. Depression, hepatitis, uhm, just everything in  
25    general.

1 Q Dealing with a lot of issues?

2 A Yeah. The different types of medications to take,  
3 how he had to take them, eating habits, sleeping.

4 Q And then we were putting a new mix into the  
5 situation --

6 A Yes.

7 Q -- with your family?

8 A Yes.

9 Q And had the two of you talked about that a lot?

10 A It was kind of swung upon us. My daughter had  
11 gone on line, and stated that they had a week and-a-half to  
12 find a place, they were running out of time. And I asked  
13 her what was going on, and it was more or less me saying,  
14 you know, more or less for the grandson of having a place to  
15 stay.

16 Q Uh-huh.

17 A So we discussed it. And at first, we were going  
18 to say no, then we both decided on yes.

19 Q Okay. And were you employed during this time?

20 A Yes, I was Darryel's home care worker.

21 Q You get assistance from the State to get that or  
22 paid by the State?

23 A I was paid by the State. I was unable to work  
24 outside of the home.

25 Q How long had it been since he had been able to

1 work outside of the home?

2 A Uhm, when I met Darryel ten years ago, he was not  
3 working. He was I believe just getting social security at  
4 the time or right before we met.

5 Q What was that from?

6 A Getting hurt on the job. He was a -- worked on  
7 the sky walker on the bridges.

8 Q Did you know him at that time?

9 A No. I didn't meet Darryel until 2000 -- the year  
10 2000.

11 Q And you had been with him since that time?

12 A Yes, 2002. Actually, we got together November the  
13 4th of 2000.

14 Q So, basically with his medical issues and what was  
15 going on with him, that was his entire focus on his life, I  
16 suppose, in dealing with those issues?

17 A Yes.

18 Q Tell us about the day that this incident occurred,  
19 what was going on that day?

20 A Uhm, we had woke up -- had woken up in the  
21 morning. I had gotten up early, then Darryel got up and  
22 then the kids got up. Everybody was in a pretty good mood.  
23 It was still kind of a little uncomfortable for everyone.  
24 So, I received my check that day, and I asked Darryel if he  
25 wanted to go Christmas shopping with me. He said he didn't

1     feel well, so I went ahead and went by myself.

2             Uhm, we spoke on the phone numerous times. It was  
3     always that way when one of us was out of the house away  
4     from each other. Uhm, so I went and did my shopping. I was  
5     gone for like maybe three, three and-a-half hours. I came  
6     home, everyone was in a good mood. We all left -- Darryel  
7     left the house about a half hour after I got home. He said  
8     he wanted to hang out at a friend's. I could see he was  
9     stressed, so I said go ahead and hang out.

10            Q     Was he having depression problems?

11            A     Darryel has always had depression problems. As  
12     long as I remember, he's been on medication for it on and  
13     off.

14            Q     What's he take?

15            A     Clozapine.

16            Q     How does that affect him?

17            A     Uhm, it was for mainly panic attacks, anxiety.  
18     So, Darryel was on it on and off. It would seem to be  
19     helping, and then I think with the other medications he was  
20     on how it affected the Clozapine, because I know he went to  
21     his doctor three or four months ago and asked to be taken  
22     off the Clozapine. A month ago he asked to put him back on  
23     the Clozapine.

24            Q     Was he taking it regularly then for the last  
25     month?

1           A    No. No. I asked him why he asked for the  
2   prescription again. He said in case he needed it. So that  
3   was not uncommon for, you know, for him to get the  
4   medication. And I didn't start seeing him taking it until  
5   Sunday, a little over a week before the incident.

6           Q    Did that give you some concerns?

7           A    It did give me some concerns. I keep a closer eye  
8   on him, asked him how he was doing. You know, made sure he  
9   ate, but that was pretty normal to do. When I would see  
10   that he was, you know, getting really anxious, I would talk  
11   him down, you know, or get him out of the house, you know,  
12   let's go outside and smoke and, you know, talk things out.  
13   Uhm, let's go watch a movie, go get something to eat. So I  
14   have been doing this over the years when anxiety kicked in.

15          Q    Did he act different when he takes medication?

16          A    The Clozapine. And that's one of the reasons he  
17   went to Maria Kosmetatos, nurse practitioner, and asked to  
18   be taken off the medication.

19          Q    Then he went back on it?

20          A    Then he went back on it.

21          Q    Could you tell that he would act different after  
22   he would take it?

23          A    The Clozapine, yeah. He was calmer, but even when  
24   Darryel was not on Clozapine, he could take the littlest  
25   thing or problem and take it from a mole hill to a mountain,

1     you know, normally, even when he was not taking Clozapine.

2             Q     So you said he went to a friend's house that  
3     night, was this Terrie?

4             A     Terrie, yes.

5             Q     Is that something he would frequently do?

6             A     Yeah. He would go over and hang out.

7             Q     There was not a problem with it?

8             A     No.

9             Q     What time did he leave that day, do you know?

10            A     Around 8:00 p.m.

11            Q     When did you see him again?

12            A     Darryel came back in the house, I want to say a  
13     little before 10:00. He was in and out, I can't say the  
14     exact time. And then I spoke with him on the phone numerous  
15     times. And then the last time I saw him, it was ten minutes  
16     after 2:00 in the morning.

17            Q     That's when he just came back in?

18            A     Yes, yeah. I had -- even though I was sleeping, I  
19     knew when he came in the door, even though he was being very  
20     quiet.

21            Q     Did you talk to Ms. Baer during the evening?

22            A     Yes, I did.

23            Q     What was that about?

24            A     Uhm, I was -- I called numerous times to see how  
25     Darryel was doing. She said he was calming down, he was



1     relaxing over there, visiting with her.

2             Q     Was she concerned about the Clozapine he was  
3     taking?

4             A     Actually, we had not talked about it that evening.

5             Q     Did you tell her at one point you were concerned  
6     about it, so you had to hide it from him?

7             A     I had told her that prior -- way prior before the  
8     incident, because there was a time before I had assumed that  
9     Darryel had taken Clozapine because he was acting  
10    differently, when he hadn't. And she was in my home, and I  
11    looked at her or I looked at him jokingly and asked if he  
12    had taken Clozapine, and he said no, he was just upset. And  
13    he brought -- I don't remember how he put it, about -- he  
14    said something to Terrie about Marsha has to hide those, you  
15    know, jokingly, you know. But we didn't keep his -- I  
16    didn't keep his medications in one spot like in the  
17    bathroom, and certain medication, the sleeping pills they  
18    had him on, which he chose not to take.

19            The reason I did that is Darryel went to get his  
20    own medications, some of them I had in the back, like the  
21    sleeping pill that he didn't need to take all of the time,  
22    and Prilosec he didn't need to take all of the time. If he  
23    didn't pay attention to them, he would take them when he was  
24    not supposed to. So I would -- most of the medications  
25    stayed on my night stand, and I would get his medications

1 for him.

2 Q I see. Were you concerned at all about his  
3 drinking?

4 A No, actually I was not. Darryel was really honest  
5 with me that evening. He said he had four beers when I  
6 talked to him on the phone. Uhm, because I asked him, I  
7 said, are you drinking? He says, I have had four beers.

8 Q Is that a concern that he may have been?

9 A No, it wasn't, you know, because talking to him on  
10 the phone, I could tell he was not drunk, not being anxious,  
11 he was not being panicky. You know, he was laughing, and he  
12 was having a good time.

13 Q Interesting. Had it -- had his drinking been an  
14 issue for you in the past?

15 A It had been in the past, up until the last  
16 incident with the drinking was December of 2008.

17 Q And then had he stopped drinking after that?

18 A Darryel would have -- it wasn't a constant thing  
19 with his medications, because he spoke with his doctor and  
20 she said, you know, you can't be taking these certain  
21 medications and drinking at the same time. So it would be  
22 going out having dinner with someone, having a couple of  
23 drinks, that would be it.

24 Q Ms. Baer did not call you that night saying he's  
25 drinking and taking antidepressants, and I'm a little

1 concerned about that?

2 A No, she didn't.

3 Q Okay. So you said that he was in and out of the  
4 house a couple of times throughout the evening?

5 A When he left at 8:00 this evening, he came back in  
6 the house one other time.

7 Q Uh-huh.

8 A Like I said, I don't recall the time. And then  
9 the last time I saw him was when he came home at ten minutes  
10 after 2:00.

11 Q Tell us about that.

12 A Darryel came in the door. I woke up, naturally, I  
13 got up out of bed and went in the kitchen. He says, Honey,  
14 I got you a cup of coffee. He got me a cup of coffee. And  
15 he said, I got a bag of donuts for the baby, meaning Gavin,  
16 my grandson.

17 I said, okay, put my coffee in the fridge. He was  
18 drinking his. I went back in the bedroom to lay back down.  
19 He came in and asked me if I wouldn't mind if he watched  
20 T.V., because we put our 47 inch T.V. in the bedroom before  
21 the kids moved in. And I told him, no, that's fine, I'll go  
22 lay down on the couch while you watch T.V.

23 He said, no, you don't have to, you can -- I'll  
24 watch in the living room. I said, that's okay, it's a  
25 smaller T.V. I went and laid on the couch, me and Oscar,

1     our cat. Darryel shut the door. He came back out ten  
2     minutes later asking if he got Oscar any wet food that day.  
3     I said, no, I had not made it to Bi-Mart before, where I get  
4     it. We walked across the street to get it and bought Oscar  
5     cat food. He gave some to Oscar and some to JJ, my  
6     daughter's cat.

7             And he went back in the bedroom, and then he came  
8     back out, I want to say maybe ten minutes later. I really  
9     couldn't tell you, ten or fifteen minutes later in there.  
10    And I asked him where he was going. He said he was going  
11    outside and smoke a cigarette. And I heard the front door  
12    close, I heard the stairwell door close. And I went into  
13    our bedroom, because our bedroom faces east Burnside, and I  
14    could see Darryel standing outside smoking a cigarette.

15            Now, before this -- I'm sorry, let me go back a  
16    little before this. I knew he had the TV on in the bedroom,  
17    I couldn't hear -- I could hear him talking to someone on  
18    the phone, he was not being loud or cursing or obnoxious, so  
19    I didn't pay attention to who he was talking to on the  
20    phone. He came back in from outside, he went back into the  
21    bedroom. Uhm, maybe five, ten minutes later, uhm, I don't  
22    have the correct time, there was a small knock on the door --  
23    light knock on the door, and then a second knock. I got up,  
24    I looked through the peep hole, and I didn't see anyone at  
25    the door.

1           Darryel came back behind me and said, honey, I'll  
2   answer the door, and I said, okay, whatever. And, uhm, I  
3   turned around to my right, and -- I'm sorry, let me go back.  
4   Let me go back a little. I'm sorry. He says, honey, I'll  
5   get the door. I said okay, whatever. But before I turned  
6   around, you have to -- there's one lock on our door like a  
7   dead bolt, and then there's the handle. I saw Darryel put  
8   his right hand on the handle and left hand on to unlock the  
9   door. And then I turned around, and I heard Darryel open  
10  the door and I heard, "get down," or I heard "whoa, whoa."  
11  And I heard pop, pop, pop, pop, pop, and I thought it was  
12  tear gas. And, uhm, I saw Darryel hit the floor.

13                   GRAND JUROR: The door was still shut?

14                   THE WITNESS: We have our front door --  
15           there's a gap in between the floor and the door, and  
16           we have a carpet right there so you can't, you know --  
17           the cold air doesn't come in. So, when the door  
18           closes, the carpet will catch it, so the door was  
19           still ajar. And I didn't hear the door close all of  
20           the way because of the carpet.

21                   But anyway, I saw Darryel fall back, and I  
22           went running into the kids' room, and I told them not  
23           to come out. And I went and sat on the couch for just  
24           not even two minutes, and I was shaking really bad.  
25           And Jeremy came out of bedroom. I said, you need to

1 sit down before they come in. And --

2 BY MR. LEINEWEBER:

3 Q When you said they, you knew it was the policemen?

4 A I knew at that time. Let me go back. When they  
5 knocked, they did not announce who they were. They did not  
6 say they were the Portland police. Anyway, Jeremy came out,  
7 I told him to sit down. I said, they are going to be coming  
8 in. Jeremy got back up and went into the bedroom, I walked  
9 over towards Darryel. And I just -- I stood there, I was  
10 frozen. And when I got down on my knees, I felt for a pulse  
11 and there wasn't one. There wasn't one.

12 And then I looked at the door, and that's where I  
13 noticed the carpet door had not closed all of the way. And  
14 I yelled, we need paramedics. We need help, he's bleeding.  
15 I don't think they heard me. And I went to the door, I  
16 opened it and I said the same thing. I need paramedics help  
17 in here, he's bleeding.

18 They told me to get back in my home and shut the  
19 door. No sooner had I let go of the door, they told me to  
20 come out with my hands up and I did. And as I went out the  
21 door with my hands up, I looked down and I saw the shells.  
22 I was put in handcuffs, taken downstairs. They asked me who  
23 was in the home. I told them my daughter, son-in-law and my  
24 grandson. They asked me where Darryel was, I told them he  
25 was on the floor and that he was bleeding. And they asked

1 me where the kids were, I told them in a spare bedroom. I  
2 was trying to explain where the front door and kitchen was  
3 and the spare bedroom was. And they put me -- they asked me  
4 what my daughter's cell number was, and I told them I can't  
5 remember it, it's in my cell phone.

6 And they put me in the back of a police car. And  
7 it was awhile, and then I saw the kids come out. I saw my  
8 daughter walk by carrying my grandson and Jeremy walk by.  
9 And I sat in the police car for quite awhile. And, uhm, I  
10 really couldn't tell how much time had passed. And then  
11 they had a detective in a sergeant's car, and I talked to  
12 him. And an officer came over and told me he was gone.

13 GRAND JUROR: Excuse me, ma'am. I'm sorry.  
14 I know this is hard for you, but, okay. Okay. We was  
15 of the understanding Darryel had a play gun that he  
16 has been showing of, stuff like that. Did you see  
17 this gun when you went over to his body to feel his  
18 pulse, stuff like that, did you see the gun?

19 THE WITNESS: I did see the gun. The gun was --  
20 I'm sorry, if I could stand up, uhm, the door is here,  
21 when Darryel came behind me. And said, honey, I'll  
22 answer the door. And I said, okay, whatever, before I  
23 turned around, we have a door handle, and one lock,  
24 and Darryel put his right hand on the handle and his  
25 left hand to unlock the door. So, I didn't see the

1 gun at that time. I don't know where he would have  
2 had the gun on him. When Darryel fell back and  
3 actually when I came back to his body, the BB gun was  
4 there on the floor. Darryel was here and it was like  
5 over here. And it was in the kitchen, you know. And  
6 I didn't -- I don't remember hearing it. I don't  
7 remember hearing anything drop.

8 BY MR. LEINWEBER:

9 Q It was on the floor?

10 A On the floor in the kitchen, Darryel was over  
11 here.

12 GRAND JUROR: When you saw the gun, you knew  
13 that was his gun? The gun that was on the floor, that  
14 was his gun?

15 THE WITNESS: Yeah, his BB gun. And I picked  
16 it up.

17 GRAND JUROR: You were in the apartment all  
18 night, it's a small apartment. Would you have seen it  
19 when it was laying around if it was laying around on  
20 the floor?

21 THE WITNESS: No.

22 GRAND JUROR: Do you remember saying, don't  
23 go to the door with a gun?

24 THE WITNESS: No, I don't remember that.

25 GRAND JUROR: Did you ever try to reassure



1 Sheena that he didn't drink any more?

2 THE WITNESS: When I talked to Sheena and in  
3 an email, my daughter and I had not -- we had just got  
4 back in contact. And Sheena had suggested in an  
5 e-mail when I asked her when I could meet my grandson  
6 for the first time, Sheena asked if it would be in a  
7 neutral area. I asked her in an e-mail why, and she  
8 said because of Darryel. And I said in the e-mail, I  
9 don't understand why, because she never really had a  
10 relationship with Darryel. I couldn't understand the  
11 conflict there between them.

12 And she asked me if Darryel was still  
13 drinking, and I told her that yes, every once in  
14 awhile. I said, yes, every once in awhile we have  
15 drinks. She asked if we drink in our home, I told her  
16 no.

17 BY MR. LEINEWEBER:

18 Q When you saw the gun on the floor, what did you  
19 do?

20 A I picked it up, set it on the counter.

21 Q And that's the gun you had seen. Where did that  
22 come from?

23 A Darryel bought it at Big Buy two weeks prior.

24 Q What was that about?

25 A I don't know honestly. Darryel had gone to Big

1 Buy on November the 27th, November 27th, and, he brought  
2 home a couple of things for me, early Christmas gifts. We  
3 never wrapped Christmas gifts. All month through December  
4 we gave each other gifts. Uhm, anyway, the room that the  
5 kids were staying in before they moved in was Darryel's room  
6 to himself, he called it his man cave.

7 And when he asked me to come in there, he handed  
8 me my couple of gifts. And I said, oh, what did you get for  
9 yourself? He said, oh, I bought some shoes. I said, okay.  
10 And I said, well, I'll see them later, you know, because I  
11 was more into playing Wii with what he had gotten me, which  
12 was like a video game that you hook up to the T.V. And I  
13 heard a popping noise in the bedroom, in the spare room, I  
14 walked in there, and that's when I first saw the BB gun.

15 Q Okay.

16 A I said, where in the hell did you get that? He  
17 said, I bought it. I said, why would you buy that? And he  
18 says, well, I can't play golf any more since the chemo, when  
19 they first did the biopsy, it was underneath his arm. And  
20 so he was not able to swing or golf any more. I said,  
21 still, why did you buy a BB gun? He said, so he could take  
22 it to a shooting range.

23 Q Do you know why he took the orange tip off it?

24 A You know, the last time I saw the BB gun, because  
25 he told me -- when I told him -- I said, this is a mistake,

1     you should not have this, you're an ex-felon. Okay.

2             Q     You he knew it was illegal for him?

3             A     Yes. He promised me he would take it back to the  
4     store. I believed him he would take it back to the store.  
5     Obviously, he didn't take back to the store.

6             Q     And you thought -- well, did he hide it from you  
7     after that; is that what you're saying?

8             A     No. I assumed he took it back to the store. From  
9     the first day he showed it to me until that evening when I  
10    saw it on the ground, I had not see it in that whole time.  
11    So I thought he had taken it back to the store.

12            GRAND JUROR: What was the reason the cops  
13    were called to your -- can I ask that? You said he  
14    came home 2:00 a.m.

15            THE WITNESS: Ten minutes after.

16            GRAND JUROR: Then you went out for cat food  
17    to the store?

18            THE WITNESS: Yes.

19            GRAND JUROR: Then he went out -- then he  
20    went out and smoked a cigarette?

21            THE WITNESS: Outside.

22            GRAND JUROR: Then he came back in and  
23    somebody knocked on the door, right, this is the  
24    sequence?

25            THE WITNESS: Yes.

1                   GRAND JUROR: You don't know what happened  
2 while he was gone, you don't know that?

3                   THE WITNESS: No. I was told there was a  
4 confrontation earlier with the police, and I didn't  
5 know anything about that.

6                   GRAND JUROR: Okay. Did you not have a  
7 discussion with Jeremy a couple days earlier about a  
8 gun that he saw? You didn't have any discussion with  
9 him?

10                  THE WITNESS: No.

11                  GRAND JUROR: On that night you said he was  
12 being honest with you, he had four beers. Did he say  
13 he had anything else that night?

14                  THE WITNESS: Smoking weed. But Darryel had  
15 a medical marijuana license. I knew about the smoking  
16 weed.

17                  GRAND JUROR: Okay.

18                  GRAND JUROR: So he had -- so he had pot in  
19 the home?

20                  THE WITNESS: Yes.

21 BY MR. LEINEWEBER:

22                  Q I was curious, did you look out the hole in the  
23 door, the peep hole?

24                  A Uh-huh.

25                  Q And you didn't see anything -- anybody?

1           A    I didn't.

2           Q    Why was there a plug on the inside?

3           A    That's my thing.  When we had moved into the  
4   building there or first moved into the building, somebody  
5   had told me, like I think it was in July, somebody told me  
6   something about people being able to see through your peep  
7   holes.  And I went, no, they can't, you know.  And the ones  
8   that we have in our apartment building, I remember walking  
9   outside my door and I went like that with my eye, I could  
10  see all the way to my patio door.  I couldn't see clearly,  
11  but I could see in.  And so that to me --

12          Q    You put a plug in?

13          A    Yes, I put a plug in.  It was my thing, putting  
14  carpet where you couldn't feel the cold air and you couldn't  
15  smell anybody's cooking.

16          Q    The plug was in that night as well?

17          A    Yeah.  I pulled it out.  I mean, it covers the --  
18  what I did is took a Q-Tip and I bent them, and I put the  
19  four ones -- I pressed them together and taped them.

20          Q    Put tape --

21          A    Yes.

22          Q    When you saw the gun sitting on the ground, next  
23  to Darryel's body --

24          A    It was not next, it was away from his body.

25          Q    It's something you had not seen, had no idea where

1     it came from or whose it was, because you didn't think there  
2     was a gun in the house?

3             A     Exactly.

4             Q     And it looked real to you?

5             A     Right. When I looked down, and I saw it on the  
6     ground on the kitchen floor and I picked it up, I didn't  
7     think that it was a real gun. I didn't think of it as a  
8     real gun. And actually, I mean, it was not clicking in my  
9     head that it was real or fake. I just picked it up, and I  
10    know it was the wrong thing to do, pick it up and place it  
11    on the kitchen counter, but I did. I don't know why I did,  
12    but I did. I don't know if it was the shock of just  
13    everything.

14            GRAND JUROR: Just things out of place.

15            THE WITNESS: Well, I don't -- like I said, I  
16    just got back in contact with my daughter. But  
17    anybody else that knows me, I'm neurotic when  
18    something is out of place. I have to pick it up.  
19    When pictures are hung on the wall, they have to be in  
20    the middle. That's one thing Darryel used to do, just  
21    go around and move things just to get on my nerves.  
22    Everything has to be closed, everything. And that's --  
23    I have been like that all my life.

24            GRAND JUROR: Had you ever heard stories  
25    Darryel wanted to shoot Jose?

1                   THE WITNESS: As a matter of fact, I did.  
2                   Our manager or landlord came up to our apartment and  
3                   said, would you like to hear the latest rumor? We  
4                   said, what? And he said, that someone doesn't --  
5                   didn't say who had spoken to Darryel and I in the  
6                   elevator the evening before, and that Darryel had made  
7                   a threat to this person, to Jose about -- concerning  
8                   Jose. And I told BA, the manager, I said that's a  
9                   lie, because we had gone shopping the evening before,  
10                  we got in the elevator, there was nobody else in the  
11                  elevator. So that's why I think BA said, would you  
12                  like to hear the latest rumor?

13                 The conflict with Jose, has been Children's  
14                 Protective Services were called because he has a deaf  
15                 son and his girlfriend is deaf, and, CPS, Children's  
16                 Protective Services came to our door and asked if we  
17                 heard him screaming at the child, and I said yes. I  
18                 didn't think it was right that he's screaming at a  
19                 deaf child. I know the child can't hear him, but the  
20                 child can see the expressions, you know. And I think  
21                 that's what, you know, that's pretty much what started  
22                 it neighbor-wise, you know, of us not getting along.  
23                 Jose came up and told us it was none of my -- his  
24                 business, I need to keep my nose out of his business.  
25                 And I said, when it comes to anybody's child, I'm not

1           going to keep my nose out of it.

2           BY MR. LEINEWEBER:

3           Q    Can we go back, do you remember talking to  
4   Detective Paul Weatheroy?

5           A    Sergeant Paul?

6           Q    Yes. Do you remember telling him that you had  
7   told Darryel not to bring -- do you remember telling  
8   Detective Weatheroy you told Darryel not to bring the gun to  
9   the door?

10          Q    I don't, honestly, I don't.

11          Q    Do you remember telling Detective Traynor, Chris  
12   Traynor that you felt that this was Darryel's attempt to  
13   commit suicide by cop?

14          A    He asked me, uhm, did I think Darryel was  
15   suicidal. And what I said was that I could see Darryel  
16   doing something like that with all of the pain and  
17   everything he's going through. But then I also had later on  
18   told him I want to retract what I just said, because now I'm  
19   feeling that, you know, yeah, the thought was there in my  
20   head. But, you know, I don't believe that thought, you  
21   know? I mean, normal people can have a thought in their  
22   head and go, well, that was crazy. Why would I ever even  
23   think that. So that --

24                GRAND JUROR: Anything that makes you think  
25           that he would do something like that, would commit



1 suicide that way? Had he ever joked around or said --

2 THE WITNESS: No. I just, you know, I don't  
3 even know why the thoughts popped up in my head, you  
4 know. And I had mentioned it, and then after I  
5 mentioned it, I went, no, I'm wrong, you know.  
6 Looking back, you know, eleven days later, I don't  
7 believe that is what Darryel would do.

8 The memory is going in my head of the ten  
9 years we spent together, and also his sense of humor  
10 and joking and, you know, uhm, pushing my little  
11 buttons on my neurotic little things I did around the  
12 house. Thinking back, you know, I don't believe so.  
13 I really don't believe so.

14 GRAND JUROR: When we had the interview with  
15 Jose, he seemed to claim that him and Mr. Ferguson are  
16 friends, but you're saying that they had conflict?

17 THE WITNESS: No, they were not friends,  
18 there was a conflict.

19 GRAND JUROR: He was up in his room that very  
20 night having a nice time.

21 THE WITNESS: Darryel had taken a Christmas  
22 card and two candy canes up to Jose's little boy.

23 GRAND JUROR: Correct.

24 THE WITNESS: Darryel had a very big heart  
25 and he was always there to help people. When we first

1 met Jose and his girlfriend, she didn't have dishes.  
2 Darryel said, let's give them dishes, a coffee pot, a  
3 box of food, and that's how Darryel was. But, you  
4 know, we had -- he was the only one neighbor we had  
5 conflict with on the third floor. One of the reasons  
6 we had moved from -- another problem we had was a  
7 neighbor telling people Darryel's status of AIDS. And  
8 I had people asking me about that, coming in our  
9 apartment and saying -- as a matter of fact, Terrie  
10 was one that knocked on the door and said another  
11 neighbor came up to her and said, oh, did you know  
12 Darryel has AIDS?

13 That's not the only neighbor we had a  
14 conflict with. So there was at least three or four  
15 neighbors -- residents who lived there that this  
16 neighbor went around telling of Darryel's status. As  
17 a matter of fact, he talked to his caseworker about it  
18 and spoke with the manager about it, and that was in  
19 one of the letters I gave to you.

20 MR. LEINEWEBER: Okay.

21 THE WITNESS: The concern he had about  
22 everybody in the apartment building that he had AIDS  
23 status, so --


24 MR. LEINEWEBER: Thank you for coming in.

25 (Whereupon, Court adjourned at 5:46 p.m.)

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

3               I, JULIE L. BOURGEOIS, an Official Court Reporter  
4 for the Multnomah County Circuit Court, hereby certify that  
5 I reported in stenotype the foregoing testimony and  
6 proceedings had in the aforementioned case; that thereafter  
7 my notes were reduced to typewriting under my direction, and  
8 that the foregoing transcript, consisting of 79 pages, is a  
9 true and correct transcript of said oral proceedings.

10              Witness my hand in Portland, Oregon, this 3rd day  
11 of January, 2011.

12  
13  
14   
15 JULIE L. BOURGEOIS  
16 Official Court Reporter  
17  
18  
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24  
25

1 IN THE MATTER OF THE INVESTIGATION) MULTNOMAH COUNTY  
2 OF THE DEATH OF ) DA OFFICE NO.  
3 DARRYEL DWAYNE FERGUSON, ) H2208762-1  
4 Deceased. ) PORTLAND POLICE  
5 ) BUREAU NO.10-103413  
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VOLUME 2

GRAND JURY 1 PROCEEDINGS

The Grand Jury 1 hearings conducted on  
Thursday  
December 30, 2010, were transcribed by Official Court  
Reporter.

APPEARANCES:

Conducting the examinations: Deputy District Attorney  
Robert Leineweber.

Estelle T. Keating  
Official Court Reporter  
1021 S.W. Fourth, Room 420

Portland, Oregon 97204

I N D E X

WITNESSES

For the State:

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Grand Jury December 30, 2010.

PAUL WEATHEROY,

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. LEINEWEBER:

Q And could you tell the jurors your name, please?

A First name is Paul. Last name is Weatheroy, W-E-A-T-H-E-R-O-Y.

Q And tell the jurors, if you would, please, what your occupation is, a little about your background, what you are currently doing?

A Sure. I work for the Portland Police Bureau. I have worked for them for about 24 years. I'm currently a sergeant in charge of the Cold Case Homicide Unit.

One of my other responsibilities is I'm on our Hostage Negotiation Team, and I have been on that team for about ten or eleven years.

I know you guys have already spoken to someone off of the team; you are familiar with the team and responsibilities. But if you need more

1 information, I can share.

2 Q Tell us about that. Is that why you were out  
3 at the location of 121st and Burnside?

4 A That's correct.

5 Q Tell us about that.

6 A With the Hostage Negotiation Team, we have  
7 two teams, and we rotate one month at a time. So Team  
8 One will be up for a month, and what that means is we  
9 have our pager with us. If there is an incident that  
10 happens that involves an officer-involved shooting,  
11 barricaded felon, those types of things, we'll respond  
12 along with our tactical team called the SERT Team or  
13 SWAT Team -- you might see on television. So we  
14 respond together, and we try and resolve the situation  
15 peacefully.

16 So it was with that responsibility I was  
17 responding this night. I believe I got paged out about  
18 five o'clock in the morning is when we were activated  
19 to come out.

20 Upon my arrival, I spoke to one of my  
21 supervisors. And first thing he mentioned is that  
22 there was an officer-involved shooting that had  
23 occurred and that the subject that was shot at was  
24 inside an apartment that we believe the individuals  
25 inside the apartment, the other individuals there, had

1     been vacated from there safely.

2             Specifically, my supervisor pointed out two  
3     people that needed to be talked to, because they were  
4     trying to determine these things. When I say "they",  
5     I'm referring to the command that was associated with  
6     the Hostage Negotiation Team. They were trying to find  
7     out if there was anybody else still in the apartment,  
8     whether or not Mr. Ferguson -- whether or not he  
9     appeared to be alive or had passed away and whether or  
10    not he was still armed and still a threat. So they  
11    wanted us to talk to the people that had been inside  
12    that apartment to try to figure out that information.  
13    So that was really my role, my responsibility.

14            Homicide investigators came out. I'm sure  
15    you will be hearing from them soon, but they actually  
16    did the investigation. But my role was to try and see  
17    if there was still a threat inside the apartment and  
18    whether or not we were going to try to negotiate with  
19    that individual, resolve it peacefully.

20            So they assigned me to talk to Ms. Lawson.  
21    She was inside a patrol vehicle when I arrived.

22            Q     Marsha Lawson?

23            A     Yes. She was in a vehicle. So I made  
24    contact with her, introduced myself, noticed that she  
25    had on like pajamas or something like that without a



1 jacket. Maybe -- and I don't think she had shoes on.

2 So, when I got out of the car, she was -- she  
3 appeared to be very cold. So I placed her in my car  
4 and had Liesbeth Gerritsen get in the car with me,  
5 L-I-E-S-B-E-T-H, G-E-R-R-I-T-S-E-N. And she's a member  
6 of our Hostage Negotiation Team also. And so she was  
7 in the car as kind of a witness, and she also has a  
8 mental health background. And we knew that there was  
9 some information that Mr. Ferguson had some mental  
10 health issues.

11 So, we got into the car. I asked her  
12 questions regarding those three things that I was  
13 really trying to find out. And what she told me was  
14 that -- she said specifically that he -- Mr. Ferguson  
15 was on the ground inside the apartment, that his eyes  
16 were open, that she had taken a pulse from him -- or  
17 attempted to take a pulse, and she believed he was  
18 dead.

19 She said that no one else was in the  
20 apartment, and she also talked about the weapon that he  
21 had and gave a lot of specifics about that weapon.

22 Q Tell us, did she give you a little bit more  
23 background about what she saw and observed?

24 A She did. She did. Uhm, she -- when asked  
25 about the BB gun, she said that he had purchased it

1     about two weeks before this incident from a store  
2     called Big 5, I believe is what she said. And she said  
3     that it was black in color.

4             I asked her if she was familiar with weapons.  
5     She said she kind of was.

6             I asked her if she knew the difference  
7     between a revolver and semi-automatic handgun. She  
8     said she did.

9             I asked her if the weapon looked real. She  
10    said it did, except it had a CO2 cartridge attached to  
11    it somewhere.

12            Q     What does that mean? Does that mean in the  
13    grip on the gun?

14            A     I'm not sure where it is attached. I haven't  
15    seen a picture of this particular BB gun, but she said  
16    there was a CO2 cartridge. She said the gun was black  
17    in color. It looked like a revolver gun.

18             I asked if it looked like a revolver or  
19    semi-automatic. She said revolver.

20             I asked her why he got the gun. She didn't  
21    know why he got it, but on that night her  
22    observation -- one other thing she did mention -- I  
23    asked her if she had ever seen him fire that weapon,  
24    and she said that she had; that on about -- that she  
25    had also fired it in the apartment into some telephone

1 books that were in the apartment. She had done that on  
2 two occasions, and he had done it on at least three  
3 occasions in the past in that two-week span.

4 She said she wasn't happy with him having the  
5 weapon, and she tried to encourage him to get rid of  
6 that weapon because she didn't think it would be a good  
7 thing.

8 But on the night that this happened, she said  
9 that he came home around ten minutes after 2:00 in the  
10 morning before this incident happened. And she said he  
11 was real anxious, had a lot of anxiety.

12 There was a medication that he had been  
13 taking she said and he had stopped taking it. I don't  
14 know the spelling of it, but it's like Clonazepam,  
15 something similar to that. She said he wasn't taking  
16 that, hadn't been taking it for several months. So he  
17 was real anxious.

18 She said he had the BB gun with him while he  
19 was there in the house.

20 JUROR: He did?

21 A He did.

22 BY MR. LEINEWEBER:

23 Q And she saw it?

24 JUROR: At 2:00 a.m? I'm sorry, at that  
25 time in the morning?

1           A     After he had come home after two o'clock, she  
2 remembered seeing him with the BB gun in his hand.

3                     JUROR: Okay.

4           A     And then she said that the rest of her family  
5 was in the back bedroom. So that would be her  
6 daughter, her son-in-law and disabled grandson in a  
7 back bedroom.

8                     So she said that when this incident happened,  
9 she heard a knock at the door, uh, and she got up to go  
10 answer the door. And she said she didn't hear anybody  
11 announce who it was. She didn't hear any police  
12 identification or anything like that, but she heard a  
13 knock at the door.

14                    She started to go toward the door, and at the  
15 last moment, right before she got to the door, he kind  
16 of bumps her and said, "No, I'll answer the door."

17                    She said he had the BB gun in his hand at  
18 that time, did not clarify left hand or right hand, but  
19 said he had the BB gun in his hand and that he opened  
20 the door with the BB gun in his hand.

21                    She said she started to turn and kind of head  
22 back towards the back bedroom as that was occurring.  
23 And when the door opened, she heard a male voice say,  
24 "Whoa, whoa, whoa," and then she heard gunshots, pop,  
25 pop, pop, pop.

1 BY MR. LEINEWEBER:

2 Q Did she say that male voice was Mr. Ferguson?

3 A She had the impression it was someone other  
4 than Mr. Ferguson, but it sounded like a male to her.  
5 But she had no idea who it was. And that's all she  
6 heard from the folks outside.

7 Then she heard multiple gunshots. She said  
8 he went down to the ground, Mr. Ferguson. And the gun  
9 was still in his hand and that when he fell, the gun  
10 dislodged out of his hand. She then picked up the gun,  
11 set it on the counter top and then went to the back  
12 bedroom where the rest of her family was and told  
13 everyone there to stay in the room. That was -- that  
14 was the crux.

15 Later she said she eventually was evacuated  
16 out of the apartment, but those were the highlights of  
17 what she said to me about this incident.

18 Q And how long were you with her?

19 A I was with her for a long time. I stayed  
20 with her initially to gather the information that I  
21 described earlier, and then Larry was contacted by  
22 Homicide detectives, who were in the middle of trying  
23 to gather information and make assignments. And they  
24 asked if we would stay with her until they were ready  
25 to conduct an interview of her. So I would estimate an

1 hour-and-a-half, maybe two hours.

2 Q Okay. Any questions for Sergeant Weatheroy?

3 CRAIG DOBSON,

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

7 **EXAMINATION**

8 BY MR. LEINEWEBER:

9 Q Go ahead, have a seat. Thank you. Can you  
10 tell us your name?

11 A Craig Dobson, D-O-B-S-O-N, C-R-A-I-G.

12 Q Can you tell the jurors your occupation,  
13 please?

14 A I am a sergeant with the Portland Police  
15 Bureau. I have been employed for twelve-and-a-half  
16 years -- coming on twelve-and-a-half years.

17 Q And what are your duties as a sergeant with  
18 the Portland Police Bureau?

19 A To supervise the line officers,  
20 administrative-type work.

21 Q You work in a uniform capacity then?

22 A Correct.

23 Q Do you work in one of the districts?

24 A No, I supervise the districts. I'm there to  
25 answer questions and advise them if they have questions

1 about issues or they are not sure about things, to  
2 ensure that GO's are followed.

3 Q General orders?

4 A I'm sorry, general orders, the SOP's, that  
5 type of thing.

6 JUROR: Standard operating procedure?

7 A Yes, sorry.

8 BY MR. LEINEWEBER:

9 Q Which precinct do you work out of?

10 A I work out of East Precinct now.

11 Q Where is that located?

12 A The physical location is 737 S.E. 106th. I  
13 spent ten years in Central, so I'm still learning the  
14 address out there.

15 Q What shift do you work?

16 A I now work night shift.

17 Q And what hours are those?

18 A Those are from 10:00 p.m. until 8:00 a.m.

19 Q And are you familiar with an Officer Jonathan  
20 Kizzar and Kelly Jenson?

21 A I am.

22 Q How do you know them?

23 A With working on the shift with them.

24 Q Okay. So those are two of the officers that  
25 you supervise?

1           A     I help supervise, yes.

2                   JUROR: Can I get those names?

3           A     Jonathan Kizzar and Kelly Jenson.

4     K-I-Z-Z-A-R and Jenson, J-E-N-S-O-N. His first name,  
5     I'm sorry, Kelly.

6                   JUROR: We didn't have that anywhere.

7     BY MR. LEINEWEBER:

8           Q     And were you working on the night of  
9     December 16<sup>th</sup>?

10          A     Yes.

11          Q     And those two officers were on duty that  
12     night?

13          A     They were.

14          Q     And what is your experience with those --  
15     with those officers?

16          A     I'm fairly new to the shift. They work a  
17     partner car together. They are very professional,  
18     relaxed officers.

19                   They had an incident where they drove a car  
20     into a large puddle and got it stuck and we were able  
21     to tease them about it, and they were good humored  
22     about being teased about flooding their car.

23          Q     To your understanding, have they worked  
24     together for --

25          A     They have.



1 Q -- quite awhile?

2 A Quite awhile. Since I have been on the  
3 shift, they worked partner car together.

4 Q On the night of this incident, did you go to  
5 the Ventura Plaza Apartments?

6 A I did.

7 Q Do you recall what time you were there?

8 A It was 3:00-ish something. I don't recall  
9 exactly the time.

10 Q And what was -- what was the information you  
11 got that caused you to go there?

12 A I knew that they were headed back to that  
13 location, that they had been there previously. Another  
14 officer had been dispatched to this second call, and  
15 they had radioed -- answered up on the radio saying  
16 that they had been there once before and that they were  
17 familiar with this location. And so they were going to  
18 go ahead and take this call again because they were  
19 tied up on something else at the time the call came  
20 out. But they cleared from that. It was a perimeter  
21 in another location. And so they -- they said they  
22 were going to come and take this call.

23 And at some point in their being at the call,  
24 one of them had called out that shots were fired.

25 Q Now, in interjecting that they wanted to go

1 back to that location, is that unusual for officers to  
2 do, or is that standard if officers are familiar with  
3 the particular set of circumstances?

4 A It's actually something we like to see when  
5 officers step up, take ownership with their district.  
6 It shows professionalism. It shows they are willing to  
7 take -- they have been assigned an area and they want  
8 to take care of that area. And so, no, with good  
9 officers, you would normally hear that from them.

10 Q Okay. And when you heard that shots had been  
11 fired, what was your -- what was your thought process  
12 about things? Did you know if anybody had been shot or  
13 just shots had been fired?

14 A Typically, that's the thing you don't want to  
15 hear over the radio, because it means that somebody is  
16 using deadly force. The question was who was using  
17 deadly force. Is it the suspect shooting at us or we  
18 shooting at them? That information was only that shots  
19 had been fired at that point in time.

20 Q Okay. And when you arrived at that location,  
21 had other patrol vehicles, other law enforcement  
22 already gotten there?

23 A There were several of us that basically  
24 arrived almost the same time. I know at some point  
25 someone asked, "How do you open the front door,"

1     because it's one of those locked doors where you have  
2     got to have an access code to get in. And I don't  
3     recall exactly who got in or how they got in, but I was  
4     following officers in and realized I was the last guy  
5     there and there were still officers coming, so I was  
6     the door man. So I got stuck holding the door at that  
7     point in time.

8           Q     Okay. And did you have any contact with the  
9     two officers we just mentioned, Officers Jenson and  
10    Kizzar?

11          A     Yeah. Shortly after being the door man,  
12    waiting with the door to make sure other officers could  
13    come in, Officer Kizzar appeared next to me. He was  
14    visibly shaken. You could tell that he was upset.

15          Q     And did it appear to you he needed some time  
16    to compose himself?

17          A     He did.

18          Q     And how about Officer Jenson, did you have  
19    personal contact with him?

20          A     I did. After Officer Kizzar had appeared, I  
21    had assigned an officer to him and sent him to go sit  
22    in a car. And then Officer Jenson appeared, and you  
23    could tell although not as shaken as Officer Kizzar,  
24    you could see that he was stressed, I guess would be  
25    the best way to describe it.

1 Q Did he appear troubled by what had just  
2 occurred?

3 A Yeah. I'm trying to come up with a word that  
4 would best describe his -- he was tense.

5 JUROR: Did he make statements at that  
6 time or is that even --

7 MR. LEINEWEBER: We're going -- actually,  
8 we're going to hear from them.

9 JUROR: But my question is did they say  
10 specific things to you that gave you the impression of  
11 being stressed and shaken?

12 A I guess I don't understand your question.

13 BY MR. LEINEWEBER:

14 Q Were you aware that they were the officers  
15 involved in the shooting?

16 A Yes. I knew that they were the officers.

17 Q And based upon that information, was there --  
18 could you tell by their demeanor that they were  
19 affected by what had just happened?

20 JUROR: No. What was the first thing  
21 Kizzar said to you? Do you remember what that was? If  
22 you don't, I'm good with that. I understand. But if  
23 you do remember, it might be helpful.

24 A I don't know. He didn't speak to me at that  
25 point. I mean, he was shaken.

1 BY MR. LEINEWEBER:

2 Q He needed some time?

3 A He needed some time.

4 JUROR: Yeah, okay.

5 BY MR. LEINEWEBER:

6 Q And did you find that -- you were  
7 understanding of that? Were you concerned about that?  
8 Is that something that you have seen before in other  
9 stressful incidents with officers?

10 A You know, dealing with people in traumatic  
11 incidents, with anybody that we have dealt with,  
12 oftentimes they need a moment to kind of compose  
13 themselves, process all the things that just happened.

14 JUROR: You are in shock?

15 A Yeah, in some form or another. You are  
16 trying to deal with everything you have seen and  
17 process it so you can make sense of it, I think.

18 JUROR: Yeah.

19 BY MR. LEINEWEBER:

20 Q And then after that, after you went to the  
21 car, your duties were then helping supervise other  
22 officers on the scene and waiting for the detectives?

23 A Yes. I was in charge of the perimeter at  
24 that point in time, to secure the outside area.

25 Q Secure the scene so the integrity of the

1 investigation would be preserved?

2 A On the outside, yes.

3 MR. LEINEWEBER: Anything else? Thank  
4 you.

5 **CHRIS TRAYNOR,**

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

9 **EXAMINATION**

10 BY MR. LEINEWEBER:

11 Q Can we have your name, please?

12 A Chris, C-H-R-I-S, Traynor, T-R-A-Y-N-O-R.

13 Q Tell us what your occupation is and a little  
14 bit about your background in that.

15 A I'm a Homicide Detective with the Portland  
16 Police Bureau. I have been with the Bureau for twelve  
17 years, eight years as an officer and four years as a  
18 detective.

19 Q And were you assigned the investigation of  
20 the events occurring at the Ventura Plaza Apartments on  
21 December 16th?

22 A Yes, I was.

23 Q Okay. Can you tell us a little bit about  
24 that, where you were when you got the information about  
25 this and what time it was?

1           A     Okay. Well, I was at home. It was 5:00 a.m.  
2     We got a page from our Sergeant advising us of the  
3     officer-involved shooting.

4                 We carry Nextels, which have the talk-group  
5     capability and join our Nextel Homicide group. And we  
6     get a briefing from the Sergeant about what we're going  
7     to, what's going on.

8                 We were notified there was an  
9     officer-involved shooting at the apartment complex, and  
10    at that point the Washington County TNT team, Tactical  
11    Negotiation Team, were still in route to the -- to the  
12    scene. Washington County was covering the Portland  
13    SERT Team that night. The SERT Team was down. So the  
14    Washington County TNT team, the equivalent to SERT,  
15    was, and they were still in route at that point.

16                I arrived in the area about 45 minute later,  
17    5:45; and by that point, Washington County TNT team had  
18    been released. In fact, they had been cancelled before  
19    they got to the scene.

20                About 6:15 or so, I attended a briefing given  
21    by a sergeant from East Precinct, who was at the scene.

22           Q     Is that Sergeant Dobson?

23           A     Sergeant Bezner is actually who gave the  
24    briefing. He gave a brief explanation of the events  
25    that unfolded in the couple of hours before the --

1 before we were paged. And at that point we had a list  
2 of people we needed to talk to. Numerous detectives  
3 responded, obviously.

4 Q This is a rather large-scale criminal  
5 investigation you are doing?

6 A Right. It's a huge deal. In fact, when we  
7 arrived, the intersection of 122nd and Burnside -- if  
8 you are familiar with that area -- a large area, that  
9 whole area was blocked off. There is a large parking  
10 lot on the east side of the street. We had actually  
11 taken over most of that. There were police vehicles.

12 You met Sergeant Weatheroy just a few minutes  
13 ago. He's part of our Hostage Negotiation Team. His  
14 people were still out; two Tri-Met buses, which had  
15 people which had been evacuated from the apartment on  
16 them, and then all the armored vehicles, responding  
17 vehicles. We have a command vehicle called Mobile  
18 Precinct, which is a giant RV on wheels -- giant  
19 office. It's a converted RV. That's where we did our  
20 briefing, squashed in the back room there, figured out  
21 what we had, came up with a plan about who was going to  
22 talk to who.

23 My partner and I, Detective Kenny Whattam, we  
24 spoke with Marsha Lawson for quite awhile.

25 Q Now, when you arrived or beforehand, when are



1     you told you are going to be the lead investigative  
2     team?

3           A     I knew.

4           Q     You were up?

5           A     Yeah. I was up. I was on call, so I knew as  
6     soon as the pager went off that I was going to be the  
7     lead investigator.

8           Q     Okay. So you went into the command vehicle.  
9     And is there one sergeant or one lieutenant that's kind  
10    of making the assignments for everyone else?

11          A     Well, people's assignments -- the majority of  
12    people's assignments are already decided before they  
13    get there. The Portland Police Bureau has a Homicide  
14    Up Team of six detectives. There are two detectives  
15    that are actually going to be the leads. Then there  
16    are two detectives that are what we call "crime scene".

17                What we do is we document any crime scene  
18    officer-involved or homicide scene with two forms. We  
19    use a diagram, which you will see in a second. We also  
20    do something called a word picture, where a detective  
21    goes through and describes in words what the scene  
22    looks like. The whole idea is in addition to pictures,  
23    videos and the diagram, words, in addition to any  
24    reports we write; we make an effort to capture the  
25    scene in as much detail as we can, because the story

1     that that picture -- total scene picture creates will  
2     at some point -- some of the details will be  
3     unimportant; some of the details will be critically  
4     important. We just don't know when we initially  
5     arrive, initially respond, which details are going to  
6     be really important, which details are unimportant. So  
7     we document in as many ways as possible.

8             For instance, if you are on the Up Team, you  
9     know you are the lead detective or what we call the  
10    support detectives. So the majority of the job  
11    assignments you are already aware of when you get  
12    there. What each scene brings that's a little  
13    different -- is differing number of witnesses, and so  
14    there is a -- what you don't know is who you are going  
15    to be talking to; for example, which witness is really  
16    important or which witness is less important, and  
17    therefore will be spoken to by somebody else.

18            In an officer-involved situation, the only  
19    difference is our command staff essentially asks  
20    everybody who's available to respond, because of the  
21    complexities, the number of issues.

22            JUROR: Who determines the witnesses that  
23    come to you, give you a picture, the word picture? So  
24    there is chaos everywhere, so who through all the chaos  
25    that says these are the people that will be the

1 witnesses?

2 A Our detectives do the word picture. The word  
3 picture is walking around -- walk around. The lights  
4 are on. It's a three-bedroom apartment. The witnesses  
5 are -- we have an idea who is there based on what the  
6 uniform officers tell us. So in this case, for  
7 example, we knew there were three adults inside the  
8 apartment and a small child that were taken out of the  
9 apartment.

10 JUROR: Uh-hum.

11 A Obviously, they are going to be key witnesses  
12 to this because they most likely will have seen or  
13 heard or experienced things. So we will talk to those  
14 witnesses as quickly as possible.

15 JUROR: Yeah.

16 A And the primary detectives will talk to -- to  
17 those witnesses.

18 There may have been other people in  
19 neighboring apartments who saw or heard or experienced  
20 things.

21 JUROR: Right.

22 A So other detectives will go and talk to those  
23 folks.

24 JUROR: Okay.

25 A What we had in this situation --

1 BY MR. LEINEWEBER:

2 Q Let me go back just a second and talk about  
3 that. The building, is it sealed off then so if there  
4 are people coming and going you know who they are, you  
5 have identified them?

6 A Yes. The building, itself -- well, the  
7 building is a closed building anyway. You need a code  
8 to get in and out.

9 When our uniform officers responded, once the  
10 shots were fired, the building was sealed off, and it  
11 created this area we call the crime scene. They string  
12 that familiar tape around the whole thing, and they  
13 prevent people coming and going from the scene. So we  
14 know exactly who -- who was inside.

15 In this case, because there was a significant  
16 number of people who lived in the apartment --

17 JUROR: Right.

18 A And the Tri-Met buses were brought in so  
19 those people could be evacuated to somewhere, we also  
20 knew from conversations with those -- those people had  
21 had with officers moving them to buses or with our HNT  
22 folks, which also had a sense of what these people had  
23 seen or heard. So by the time we got to the end of the  
24 briefing, we had a pretty good idea of who our key  
25 witnesses were.

1 BY MR. LEINEWEBER:

2 Q At that point, though, had an emergency  
3 medical team already arrived and done a confirmation  
4 that --

5 A Yes. All of that happened long before we got  
6 there.

7 Q But Mr. Ferguson's body was still there?

8 A Mr. Ferguson's body remained exactly where it  
9 was.

10 Q You wait until the Medical Examiner's office  
11 comes?

12 A Correct. Oregon law -- have you explained  
13 Oregon law to the grand jurors?

14 Q Not on that.

15 A Do you want me to?

16 Q Go ahead.

17 A Oregon law assigns this sort of  
18 responsibility for the body of -- of the deceased to  
19 the State Medical Examiner's Office and to the District  
20 Attorney's Office. It's assigned them specific roles,  
21 and it assigns them specific powers. It doesn't assign  
22 any of those powers to the Police Bureau. So we, for  
23 example, cannot go in and start searching a body for  
24 identification or searching a body for wounds or  
25 start -- let's say for the sake of argument there was a

1 gun next to the body. We can't go in and pick those  
2 things up and examine them. Only the Medical  
3 Examiner's office can do that. So we essentially have  
4 to wait for the Medical Examiner's office to arrive and  
5 to conduct their initial assessment, and then we go on  
6 from that point.

7 Q You were able to get into the apartment to  
8 evacuate the people that had been there?

9 A Yes. The three -- the three adults and a  
10 child were evacuated by uniform officers after the  
11 shooting.

12 Q That was Marsha Lawson?

13 A Marsha Lawson.

14 Q Sheena --

15 A Sheena Davidson and Jamie Mankins, and then  
16 there is a little boy, Gavin.

17 Q And since Marsha Lawson's -- was she  
18 identified to you as somebody of significance to the  
19 investigation?

20 A Yes, we knew that --

21 Q Was that from talking with Sergeant  
22 Weatheroy?

23 A Yes. We knew from Sergeant Weatheroy that he  
24 had spoken to her for some considerable time, but  
25 uniform officers when -- when they had evacuated the

1 apartment, had also spoken with Marsha about who else  
2 was in there. And there was some confusion about how  
3 to get the other two adults and the child out of the  
4 apartment, because Marsha initially came out by herself  
5 and there didn't appear to be a way to communicate with  
6 the other two adults and the child in the apartment.

7 So they -- the uniform officers have spoken  
8 to Marsha, and Paul Weatheroy had also spoken. So we  
9 had a strong sense of Marsha's importance.

10 Q Being the lead Detective, did you also speak  
11 to Ms. Lawson?

12 A I did. Detective Whattam and I talked to her  
13 for about three hours.

14 Q Okay. And as you know, she was here earlier.  
15 She was here on Tuesday.

16 A Yes.

17 Q During the course of your conversation with  
18 her, did she talk to you about her knowledge of a gun  
19 or an object that actually looked like a gun that  
20 Mr. Ferguson had?

21 A She did. She described Mr. Ferguson  
22 purchasing a gun or BB gun from Big 5 Sports two or  
23 three blocks away about two weeks before. She talked  
24 about -- in addition to the BB gun, he had purchased  
25 some other fitness equipment -- actually, a video game

1 with some fitness component to it.

2 Q Let me interrupt you just for a second.

3 Sorry about that.

4 A Okay.

5 Q And part of the thoroughness of the  
6 investigation is when they tell you something, you try  
7 to verify that, correct?

8 A Correct.

9 Q And you did that in this particular case?  
10 Can you tell us what these are?

11 A These are video images. That disk that Mr.  
12 Leineweber has in his hand there is actually a whole  
13 video of the person we believed to be Mr. Ferguson  
14 purchasing --

15 Q This is surveillance video from Big 5?

16 A From Big 5. These are just stills I happened  
17 to pull off it. Otherwise, you would have to sit there  
18 for quite awhile watching surveillance footage.

19 The video, these stills are from  
20 November 27th, 2010, and I believe they show  
21 Mr. Ferguson entering the Big 5 Store.

22 There is a shot of the front door of the  
23 building. I believe it's him based on his physical  
24 appearance and at the time of his death he was actually  
25 wearing the same belt, I believe, the same shoes as



1 well.

2 We knew from talking to Big 5 and from  
3 talking to Marsha Lawson we had an idea of -- say that  
4 again. We knew from talking to Marsha Lawson that in  
5 addition to the BB gun, Mr. Ferguson had purchased  
6 several other items, which she had given us an idea  
7 what those items were.

8 We went to Big 5, and we asked how many of  
9 the Colt Defenders they had sold. They had only sold  
10 one in, I'd say, the last three months. That was on  
11 November 27th. They had a copy of the receipt. And in  
12 addition to the gun, BB gun, they also had a list of  
13 the other items purchased, which included the things  
14 that Mr. Lawson said he had purchased. So we're  
15 confident that it's him.

16 The images -- let me start passing these  
17 around, if that's okay with you.

18 Q Sure.

19 A The images, they are all pinned together  
20 here. The images are -- first two images are the front  
21 door.

22 Q Here, do you want to take the staples out?

23 A The first two images are the front door of  
24 the Big 5, 122nd and Stark.

25 The next two images are -- I say two; maybe

1       it's more. Give me just a second to confirm that.

2               Try it again. The next images are from the  
3 security camera over the firearms section. The Big 5  
4 has both firearms that fire live ammunition, shotguns,  
5 rifles, that type of thing. They also have, here in  
6 the glass case and on the back wall, a collection of  
7 these BB guns that look just like the real weapon.  
8 They are supposed to be a BB version of the real  
9 weapon.

10               In this section, a Colt Defender is a real  
11 Colt firearm. A Colt Defender BB gun is meant to look  
12 just like the Colt Defender.

13           Q     Ms. Lawson mentioned to us the other day that  
14 he was not permitted to have a real firearm because he  
15 was --

16           A     That's correct.

17           Q     -- a convicted felon; is that correct?

18           A     That is correct and a BB gun is not  
19 classified as a --

20                       MR. LEINEWEBER: -- a firearm.

21                       JUROR: You can't tell us what his prior  
22 conviction is, can you?

23                       MR. LEINEWEBER: No.

24           A     The next two images are of the register, and  
25 they show, I believe, Mr. Ferguson purchasing, in

1 addition to the firearm, the other equipment or the  
2 other items that he purchased.

3 The final thing I'm going to pass around is a  
4 copy of the journal, as they call it, a copy of the  
5 receipt Big 5 gave us indicating the date of the  
6 purchase and the list of items purchased.

7 JUROR: What was the date again?

8 A November 27th.

9 JUROR: Which is consistent with what she  
10 said, basically.

11 A She described it approximately two weeks.

12 JUROR: Yeah.

13 BY MR. LEINEWEBER:

14 Q What is this last?

15 A These last two images that -- Mr. Leineweber  
16 will look at those, make sure it is okay.

17 Q Yes.

18 A The last two images, these are images taken  
19 by our criminalist. The criminalist, in addition to  
20 collecting evidence, what have you, they also take  
21 photographs for us.

22 When we went to Big 5, we asked them to show  
23 us an example of the Colt Defender. This is what -- if  
24 you were to go into Big 5 today, assuming they have  
25 them in stock, this is what the Colt Defender would

1 look like when you purchased it. It's in this sealed  
2 plastic container. For purposes of display, we pulled  
3 one out of the plastic packaging, and they pulled one  
4 out of the plastic packaging, and they keep this in  
5 that glass counter.

6 So in the images -- I'll pass these around in  
7 just a second. In the images, you see him looking at  
8 the glass counter. That's what he is looking at,  
9 actually is the one they pulled out of the packaging.  
10 If you are interested in purchasing one of these  
11 things, they will pull it out of the counter for people  
12 to take a look at it.

13 The reason we took these pictures and the  
14 reason that I brought these in is because I wanted you  
15 to know what this BB gun looked like as it was sold, as  
16 it was manufactured and sold and as it was purchased.

17 The pictures on the back are pictures taken  
18 of the BB gun that was located inside the residence.

19 Q Which would have been Mr. Ferguson's?

20 A Which would have been Mr. Ferguson's BB gun.  
21 I want you to know that the white lettering on the side  
22 appears to have been covered over. I'm not sure with  
23 what, maybe a black marker pen or something similar to  
24 that.

25 BY MR. LEINEWEBER:

1           Q     So the actual one found in the apartment is  
2     one with the placard on it?

3           A     Correct, yeah.

4           Q     And that one is the one from the store, the  
5     way it would have looked after he purchased it?

6           A     Yes. When we asked Big 5 to bring us an  
7     example, that is what Big 5 gave us. The two pictures  
8     are what Big 5 --

9           Q     So what he did was blacken out the words  
10    "Colt Defender --

11          A     Well, that's how the -- yes. Somebody has  
12    blackened out the words "Colt Defender". That is not  
13    something Ms. Lawson said she saw him do, but  
14    Ms. Lawson does describe it as being a black BB gun.

15                JUROR: Wasn't there a tip, orange tip  
16    originally in the front; we just can't see it in these  
17    photos?

18          A     There is no orange tip on these guns.

19    BY MR. LEINEWEBER:

20          Q     I thought there was.

21                JUROR: Okay.

22          A     I'm not sure of the rule. But my experience  
23    is if it's a -- if it's a weapon intended for a child  
24    to play with, it will have an orange tip. So it maybe  
25    will fire a small plastic projectile at a very low

1     velocity, the kind of thing you might see at Toys-R-Us,  
2     something like that.

3             But this thing is designed to fire BB's.

4             JUROR: Well, on this one we see the BB,  
5     you know, orifice, whatever. In this one we don't. Is  
6     it the same?

7             A     It's the same, exactly the same gun, just two  
8     picture taken at different angles.

9             JUROR: Okay.

10            JUROR: What does a BB gun do? I'm so  
11     ignorant.

12            A     It fires something called a BB, which is a  
13     small, projectile, very light-weight, metal-shaped  
14     object. And the -- it comes out at a pretty  
15     significant clip, but not as fast as a bullet.

16            JUROR: What could you shoot with it?  
17     What pleasure could you get out of it?

18            JUROR: Targets.

19            JUROR: Oh, targets. Thank you.

20            JUROR: Just play shooting.

21            A     Exactly.

22            JUROR: I suppose we're getting off the  
23     track here.

24            JUROR: The only non-corroborative thing  
25     from Marsha is she thought it was a revolver probably

1       because she didn't know the distinction.

2           A       I don't know. She certainly didn't describe  
3       it as a revolver to us.

4                   JUROR: She describes it as a revolver to  
5       the other guy; is that right?

6           A       Yes, to Sergeant Weatheroy. She used that  
7       phrase.

8                   JUROR: But definitely not a revolver.  
9       That's not a revolver.

10       BY MR. LEINEWEBER:

11           Q       But you talked to Marsha about her awareness  
12       of the gun --

13           A       Yes.

14           Q       -- in the apartment?

15           A       Yes.

16           Q       And did you talk to her about her awareness  
17       of the gun on the night of the incident?

18           A       We did.

19           Q       Tell us what she told you.

20           A       What she did -- or excuse me, what she told  
21       us was -- now, do you want me just specifically refer  
22       to the gun or to the -- to the details of the incident,  
23       itself?

24           Q       Both.

25           A       What Ms. Lawson told us is that there was a

1     knock at the door -- there was actually two knocks at  
2     the door. She is on a sofa or sectional sofa in the  
3     living room of the apartment. She says Mr. Ferguson is  
4     in their bedroom with the door closed watching TV. And  
5     she says the other two adults and the small child are  
6     in their bedroom, door closed, sleeping.

7             A knock on the door. She's not sure what  
8     time. She goes to the door, pulls the -- she had a  
9     piece of cotton ball or cotton material in the  
10    peephole -- looks out the peephole, doesn't see  
11    anything.

12            At that point, she's aware now Mr. Ferguson  
13    is behind her. He's apparently physically standing  
14    behind her. She can feel him brushing up against her,  
15    and he tells her, "I'll get this." She says she turns  
16    to the right, turns around and walks back to the  
17    sectional sofa, which is about 15 feet away. And when  
18    she gets to the sectional sofa is when she hears a male  
19    voice say, "Whoa, whoa, whoa," and she hears the pop,  
20    pop, pop.

21            We asked her if she saw the BB gun in  
22    Mr. Ferguson's hand, and she said she did not. She  
23    tells us that she recalls seeing both of his hands  
24    occupied opening the door, a dead bolt on top and a  
25    handle on the bottom. So she doesn't see the gun -- BB



1 gun in his hand at all.

2 The first time she sees the BB gun and is  
3 aware it's involved in this incident is after -- after  
4 the popping sound, she turns and looks and sees  
5 Mr. Ferguson staggering back and falling down.

6 She goes over and sees the BB gun lying on  
7 the ground. She picks it up and moves it to the  
8 kitchen.

9 Q And did she draw a diagram for you of that?

10 A She did. We asked her to draw a diagram.

11 The reason we did this is not -- we like to  
12 try and capture things in as much detail as we can.

13 Q Why don't you put it up on the board there.

14 A As you know, the English language is not a  
15 precise thing sometimes. Someone can say one thing and  
16 actually mean something different.

17 So let me try and -- obviously, Ms. Lawson is  
18 not an artist, as you can see. So I'm going to try and  
19 explain as she explained to me the layout here.

20 This is not supposed to be an exact layout of  
21 the apartment. When she initially started drawing  
22 this, we were asking specifically the whereabouts of  
23 the gun when she first saw it and also where she placed  
24 the BB gun after the incident.

25 This is her drawing. This is my notebook,

1 but I handed it to her and said, "Would you mind  
2 drawing this?"

3 JUROR: Oh, I'm sorry. So this area --

4 A It might help if I turn it upside down.

5 JUROR: I was trying to figure out, too.

6 A This area here represents in her mind the  
7 front door.

8 JUROR: I see.

9 A This area here represents in her mind the  
10 kitchen area. Obviously, this is Mr. Ferguson, and  
11 this area here is the sectional sofa she talks about.  
12 Over here is a Christmas tree. Over here is a  
13 television. So this area doesn't represent even the  
14 whole apartment. It just represents approximately one  
15 half of the apartment.

16 So based on her drawing, based on her  
17 description, what she tells me is when she first comes  
18 back after the -- let me back up just one second here.

19 So based on her description, in this drawing,  
20 she would be standing approximately here when the  
21 incident happened. And she specifically says she is  
22 looking this way. So she doesn't see what happened.  
23 She only hears it, pop, pop, pop.

24 She turns. She sees Mr. Ferguson step back  
25 and fall down. She goes over here, and she -- that's

1 her words "gun". She says, "The gun is right here."

2 Q Right next to him?

3 A Right next to him. So approximately -- I  
4 mean, again, we can't say that this is an exact  
5 location, but she puts it approximately waist level  
6 next to him.

7 She picks it up, and she said she moved the  
8 gun into here, into the kitchen.

9 Q Where was the gun located when you got in?

10 A When we got in, the gun is actually over here  
11 on the kitchen counter.

12 Q In fact, the photos that we just looked at  
13 with the placard on it, this is on the counter you are  
14 talking about?

15 A This is on the kitchen counter.

16 Q It had not been moved by anybody other than  
17 Ms. Lawson?

18 A The counter extends around. The counter is  
19 actually over here. But she certainly put the gun  
20 right next to him in her drawing.

21 Q All right. You talked about speaking with  
22 her for a long period of time?

23 A Yes, we did.

24 Q And one thing came up when we were talking to  
25 her was the concept of suicide by cop. Is that an

1 expression that she had talked about with you or a  
2 topic that you had talked about with her?

3 A The phrase "suicide by cop" is -- that term  
4 comes up right at the end of the interview. And the  
5 term is actually mentioned by Detective Whattam. We  
6 talked to her for a long time about why this happened,  
7 and she never used the phrase "suicide by cop". She  
8 uses the phrase "going out with a bang" or the phrase  
9 is quite like that.

10 Q What is that phrase? Did she initiate that,  
11 or did you ask her?

12 A She initiated. What happened, Ms. Lawson is  
13 a smoker. So we began our interview. We talked for a  
14 half an hour. We got to the point where she was  
15 describing the incident, and she became very emotional.  
16 We offered, "Let's take a break here." And we stepped  
17 outside so she could smoke a cigarette.

18 As she's smoking a cigarette is when she  
19 first raises the issue of now beginning to realize that  
20 he had done this deliberately in an effort to get  
21 himself shot.

22 Now, when we go back to the --

23 Q She raises that?

24 A She raises that.

25 Q This is during your break -- this is during

1 the break?

2 A This is during the break. And so when we  
3 begin the second half of the interview, I -- I  
4 immediately wanted to cover that area, and I very  
5 carefully avoid using the term "suicide" or anything  
6 like that. I'm trying to find out exactly what it is  
7 she is thinking, because she talks about thinking it  
8 but not wanting to think it.

9 She talks about that he was tired of  
10 fighting. And we asked her, "What does that mean?" Or  
11 I asked her, "What does she mean about he's tired?"  
12 And she talks about his medical conditions, the  
13 medication he was taking, the current situation with  
14 the family -- with Marsha Lawson's family moving in.  
15 She describes that as -- as just being tired.

16 And I asked her, "So, do you mean he's --  
17 this is a quote here -- "So, when you say 'tired', you  
18 don't mean physically sleepy?" "No." "You mean tired  
19 of life?" Just, "Yeah."

20 So, again I'm quoting here, "I never want to  
21 put words in anybody's mouth, but are you saying  
22 you" -- excuse me. "Are you thinking that perhaps he  
23 wanted to --" and I never get to finish my sentence --  
24 "With the mood swings, end. I'm trying to say he wants  
25 to end his life." And she's talking over me. "With

1 the mood swings, he's been having, it just washed  
2 through -- I mean, the thought came to my head, you  
3 know, you can only fight for so long."

4 Again, I say, "I'm trying to figure exactly  
5 what you are trying to say here, because, again, the  
6 language is not precise and 'tired' can mean so many  
7 things."

8 Q You are reading from something right now.  
9 What is that?

10 A This is a transcript of the our interview.

11 Q So when you were talking to her at this  
12 point, she knew she was being tape recorded?

13 A Absolutely she knew she was.

14 JUROR: But the cigarette smoking  
15 statements were not recorded?

16 A No.

17 BY MR. LEINEWEBER:

18 Q Do you remember exactly what she said?

19 A I tried to write it down. She mentioned he  
20 might have wanted to go out in a blaze of glory, but I  
21 did not want to put that in my notes unless I have a  
22 specific statement. I don't want to -- I don't  
23 recall --

24 JUROR: All right.

25 A The point of the cigarette break was to take

1 a break. It wasn't to keep interviewing her. And we  
2 want our interview recorded. I'm literally standing  
3 there freezing cold, shivering, and she's standing  
4 there smoking a cigarette. That's when she mention  
5 she's beginning to have these thoughts.

6 Give me just one second here, because again I  
7 would like to find the --

8 BY MR. LEINEWEBER:

9 Q Do you guys want to take a break for a  
10 minute?

11 JUROR: Sure.

12 MR. LEINEWEBER: Five minutes, ten  
13 minutes?

14 (Whereupon, a short recess was taken.)

15 BY MR. LEINEWEBER:

16 Q Go ahead. You were telling us what?

17 A So, I'm talking about my conversation with  
18 Marsha Lawson. And now I want to just show you this is  
19 a transcript of our conversation. We talked to  
20 Ms. Lawson for about three hours. It's 125 pages long.  
21 And I have gone through this listening to the recording  
22 and looking for typographical errors in here. I know  
23 we covered the topic of what would have led up -- the  
24 why of this incident happened on more than one  
25 occasion. And my recollection is that she -- she used

1 a phrase at one point during the conversation of going  
2 out with a bang or going out with style, but because I  
3 can't find that in the time that we've got, I apologize  
4 for that.

5 JUROR: I'll just put a little question  
6 mark for that.

7 A Let me read to you exactly what we first  
8 talked about. I'm going to read my -- my piece and  
9 then hers. I'll tell you who's speaking. You have to  
10 understand this is a conversation that's happening.  
11 And when they are transcribed, people often talk over  
12 each other. And so it doesn't flow like it would in a  
13 book or in a police report or some other way that you  
14 would normally see it.

15 And as I said before, she was using words  
16 like "tired" and "struggling". She was talking about  
17 his medical problems and his emotional state and the  
18 new living conditions with her family members living in  
19 the house. And it's a relatively small apartment. She  
20 was using words like "tired" and "struggling". I  
21 wanted to find out what she meant by that.

22 "So you are using words like 'tired' and 'he  
23 was struggling' and things like that, and that can mean  
24 so many different things. I'm trying to get exactly  
25 what is in your mind that you think might have



1     happened." "I think the way --" excuse me this is  
2     Ms. Lawson -- "I think the way I know Darryel and the  
3     way his mood swings have been in the past five days on  
4     the Clonazepam and everything else going on that he  
5     didn't want to live no more."

6             I said: "Okay." She goes off on a little  
7     tangent, "Which really pisses me off." Those are her  
8     words again. And she starts talking about all the good  
9     things he had in his life.

10            I again try and pin her down a little bit  
11    more on what -- what she's trying to say, and I say --  
12    I ask her: "Would it be fair to say that your thought  
13    is maybe that he was trying to end his life?"  
14    Ms. Lawson replies, "Yeah." I add, "That this was some  
15    form of suicide?" And Ms. Lawson replies, "Yeah."

16            I say, "Okay." And she then says, "Honestly,  
17    yeah. And the more I think about it, yeah."

18            Q     That was her statement?

19            A     That was her statement. So the phrase  
20    "suicide by cop" does come up at the end, but it is the  
21    Detective Whattam asking her or telling her, "There is  
22    this phrase you see in the media, 'suicide by cop'. Is  
23    that what you are trying to describe this as?" And her  
24    answer is "Yes."

25            Q     Let's take a moment to go through the diagram

1 and photos that were taken at the scene.

2 What is this a diagram of?

3 A This is a diagram by one of our Detectives,  
4 Brian Steed, S-T-E-E-D. Detective Steed was obviously  
5 part of the crime scene team. This is a drawing to  
6 represent the front door to apartment 201. What that  
7 drawing shows is a number of features. Obviously --  
8 I'm going to lean over you, Mr. Leineweber.

9 Here is the door, itself, and the door  
10 handle. This would be the dead bolt and this the  
11 rotating handle.

12 These here are bullet strikes. So on this  
13 side of the door, on the south side of the door there  
14 is a letter A. That's damage done from a bullet strike  
15 in the metal frame surrounding the door.

16 Ultimately, we peeled off the metal frame, we  
17 found this bullet at the bottom of the frame.

18 Q The majority came from --

19 A Yes. As you can see, the majority of the  
20 shots are into the wall here.

21 Do you have the photograph with all of the  
22 directional on --

23 Q They are in there?

24 JUROR: How many rounds in a police  
25 revolver?

1           A     We don't carry a revolver. We carry  
2 semi-automatic pistols, Glock 17's, and they will have  
3 typically one in the chamber and 17 in the magazine.

4           Q     How many shells did they count on the floor?

5           A     So we had a collection of shell casings over  
6 here and a larger collection over here. So we had five  
7 on this side and 15 on this side.

8           Q     And ballistics -- these shells and the  
9 officers' guns, right, were sent to the Crime Lab for  
10 analysis?

11          A     Right.

12          Q     And the shells on this side came from one  
13 gun?

14          A     One gun.

15          Q     And the shells on the other side --

16          A     Came from a different gun. Oh, just one  
17 second, Mr. Leineweber. One thing you cannot see in  
18 this diagram is that directly behind -- there is two  
19 things you can't see from the diagram. You can see  
20 them in a second.

21                 First of all, this diagram doesn't represent  
22 the angle that these -- these shots are being fired.  
23 And our criminalists slide in these plastic or metal  
24 rods into the holes and try and demonstrate the  
25 trajectory of the rounds, what the trajectory of the

1 rounds are from right to left. Even though in the  
2 diagram it appears that they are going straightforward,  
3 in reality, they are going from right to left,  
4 indicating that the officer was standing somewhere over  
5 here and firing this way.

6 JUROR: What was he firing at?

7 JUROR: We'll hear about that later.

8 A I can't tell you that.

9 JUROR: The gun, itself, so there is one  
10 chambered and 17 in the magazine, is that what you say?  
11 And the one in the chamber is there always as it's  
12 holstered; there is a bullet in the chamber? So then  
13 there is a safety on the gun?

14 A Not on the Glocks.

15 JUROR: Not on the Glocks? So they are  
16 carrying around a live gun in their holster at all  
17 times, ready to go?

18 A Yeah.

19 JUROR: So it is a semi-automatic, so if  
20 there wasn't a bullet in the chamber, you would have to  
21 slide --

22 A Have to slide it.

23 JUROR: This eliminates the need to do  
24 that. If you have one in the chamber already, it will  
25 automatically fire?

1           A     He does have a safety feature. It doesn't  
2     have the safety feature most people would see on an  
3     older pistol, where you have to flick a switch on the  
4     side in order for the trigger to go off.

5           Q     If they are reaching for it and there is no  
6     safety to prevent --

7           A     Training. In all seriousness, our  
8     officers -- the best way to demonstrate this is if you  
9     watch a movie, you will see that actors are not  
10    trained, and they all put their fingers on the trigger.  
11    If you watch the military, if you watch policemen, you  
12    will see the finger never, ever is on the trigger.  
13    That's the ultimate safety, because the trigger won't  
14    be pulled if you don't have your finger on it.

15                    Anyway, clue for Hollywood, you will see when  
16    they are actors and when they are not.

17                    JUROR: Okay.

18           A     But our officers are trained never to put  
19    their finger on the trigger until they are ready to  
20    fire the gun.

21    BY MR. LEINEWEBER:

22           Q     So this is a picture of the hallway?

23           A     This is a picture of the hallway. And the  
24    picture, in fact, doesn't represent the entire hallway,  
25    itself. It represents the closest apartment doors.

1           The problem we had is if we had put the whole  
2 hallway in, it would have been so squashed that it  
3 wouldn't have made any sense.

4           I'll point out a couple of details that I  
5 think are important. Ultimately, whether you think  
6 they are important will depend.

7           All right. So, 201 is the apartment where  
8 the incident occurred. So the drawing you saw first is  
9 just a very narrow view of that area right here.

10           And as I said, based on the evidence at the  
11 scene, we know that one of the officers was on this  
12 side of the door and one officer is on that side of the  
13 door.

14           Q     For those of us that can't see very well, the  
15 width of the aisle we're talking about is how much?

16           A     The hallway, itself, is about five-foot, six  
17 inches wide, and the entire hallway is 167 feet, six  
18 inches, approximately. We're not architects, by any  
19 means.

20           So from here, this is a stairwell and the  
21 north end of the complex and down on this side is a  
22 stairwell at the south side of the complex.

23           Approximately halfway down is this thing we call a  
24 "fire door" here in the event there is a fire.

25           Q     How many apartments are on this floor?

1           A     Three.

2           Q     On the right-hand side or the north end to  
3     201, just to 201 --

4           A     Fifteen feet, approximately.

5           Q     You have got your back to the wall there, and  
6     that collection of shots that we're talking about was  
7     on this right-hand here?

8                     JUROR: Standard procedure, I would  
9     suppose, is to be on each side of the door, right?

10          A     We call it "triangulate", and we do it to  
11     doors and we do it to -- to people as well. The whole  
12     idea is that you distract attention. And if they are  
13     planning on fighting or fleeing, that their attention  
14     is distracted by two people. Most humans have a hard  
15     time dealing with the two. If they stand next to each  
16     other --

17                     JUROR: Causes a --

18          A     -- there is an escape route and there is just  
19     one focus. Even though there are two people standing  
20     close to each other, there is just one focus.

21     BY MR. LEINEWEBER:

22          Q     So the bullet holes on both sides, obviously,  
23     the officers were on each side?

24          A     Both sides of the door. There are a number  
25     of other factors. I'll go into them about our

1 training, what have you.

2 Q 202, Terrie Baer --

3 A -- is Terrie Baer's apartment.

4 Q 302 is Chad Crosby's apartment. So he's one  
5 floor above here.

6 Fire door is at this point. So that's  
7 halfway down the -- the end of the hallway is -- if the  
8 whole hallway is 167-and-a-half feet, approximately,  
9 and this is approximately 15 feet, it means for the  
10 officer who's on this side to get to a position of  
11 safety, he's got to travel approximately 152 feet.

12 We train our officers -- and this piece is  
13 important -- we train our officers after a shooting to  
14 assess their own situation and to look for what we call  
15 "hard cover". Hard cover is a place where if someone  
16 shoots at you, their bullet is not going to reach you.

17 Failing that, we train our officers to look  
18 for concealment. So after a shooting, if someone looks  
19 to shoot you, they can no longer see you.

20 Now, for the officer on this side, I know  
21 from having been there that this area here offers hard  
22 cover. There is walls. There is metal. There is  
23 places to --

24 Q Those doors are closed?

25 A Those doors are closed, but you can kick them



1 open and keep them open. The officer on this side has  
2 nothing. This wall is flat. These doors are closed.  
3 This officer has absolutely nothing until the fire door  
4 here. And the fire door might offer concealment, but  
5 it doesn't offer covering, which is why I think this  
6 number is important, this 167, because based on their  
7 training, the officer here is going to be looking to go  
8 152 feet, to the equivalent of this on the far side.

9 So if -- and if he didn't do that, then a  
10 minimum to go to concealment, he's got to go 74 feet to  
11 reach this point here, to be concealed from this  
12 person.

13 Q Anybody have any questions about this  
14 diagram?

15 JUROR: No.

16 A One of the things -- shut me up if you want  
17 to, Mr. Leineweber. One of the things I know  
18 Ms. Lawson commented on to us is when she looked out  
19 the window, when she looked out the peephole, she  
20 couldn't see. We train our officers never to stand in  
21 the doorway. The reason for that is because you knock  
22 on the door, you have identified yourself as being on  
23 the other side of the door. Someone who wants to shoot  
24 you just shoots through the door. So our officers are  
25 trained to stand away from the door.

1           In fact, this thing here, this frame is the  
2   closest thing I have to some kind of metal -- in this  
3   case, metal or solid wood.

4           Q     Isn't it curious she had the peephole  
5   blocked?

6           A     Yes.

7           Q     There was a big wreath on the door as well?

8                   JUROR: She told us why. She told us  
9   someone -- I'm sorry.

10                  JUROR: You could look -- from the  
11   outside, you could see inside the apartment.

12          A     Oh, really?

13                  JUROR: We asked her that.

14                  JUROR: So she couldn't lookout the  
15   peephole?

16          A     She told us she removed the cotton ball or  
17   cotton, looked out, couldn't see anything, put the  
18   cotton back.

19                  JUROR: I thought she didn't answer the  
20   door though.

21                  JUROR: She didn't.

22                  JUROR: I'm a little confused. She said  
23   she looked out the peephole thing.

24                  JUROR: She looked out the peephole and  
25   then --

1 JUROR: I thought she didn't make it to  
2 the door.

3 JUROR: She did. She pulled it out.

4 JUROR: You are right. She said, "I  
5 didn't see anyone" or something.

6 JUROR: Right. That's what she said,  
7 right.

8 A That's just a -- this is the same hallway.  
9 This time the only thing of any difference is the --  
10 the location of the rounds that were fired.

11 BY MR. LEINEWEBER:

12 Q Tell me about that. What's the exactness of  
13 the shell casings as opposed to where the gun was shot?  
14 Do they move -- do they drop directly to the ground?

15 A They are fired out. The way the gun operates  
16 is the pressure created by firing the bullet is also  
17 used by the gun to fire out the spent casing. So these  
18 locations are --

19 Q So you can't necessarily say, "Well, for  
20 instance, on number 15 or 18 he must have shot a bullet  
21 from right there"?

22 A Right. Most guns --

23 Q They do travel on their own?

24 A They fire them out.

25 Q So these are just general --

1           A     Right. Then, of course, you have got uniform  
2 officers that have come through. You had the officers  
3 involved in the incident, themselves, have gone  
4 through. They had that -- they sent in a team to  
5 assess the situation and to bring in medical personnel.  
6 So all of those officers will have traveled through  
7 with their giant boots, will have traveled through the  
8 area there.

9           Q     They do take care, though, do they not?

10          A     They do the best they can, but in a situation  
11 like that, your mind is not focused on the Homicide  
12 detective. Ultimately, one of the casings was found at  
13 the bottom -- there is an elevator shaft -- was found  
14 at the bottom of the elevator shaft.

15          Q     What's the average time being able to unload,  
16 as quickly as you want to, a 17-round Glock, 17 --

17          A     I have seen it done in two seconds.

18                   JUROR: Really?

19          A     Two seconds is actually quite a long time.  
20 But you can empty the Glock --

21          Q     Semi-automatic, and you can squeeze off that  
22 many rounds?

23          A     Takes some skill, but it's very -- it's very  
24 quickly.

25                   This diagram is Detective Steed's

1 representation of the scene. Now, everything here --  
2 we like to use the phrase "not to scale", we are not  
3 architects. So when you look at the photographs, there  
4 will be actual things on the floor. But this -- this  
5 diagram is intended to represent the layout of the  
6 apartment, the location of the body of Mr. Ferguson and  
7 some of the key pieces of evidence that were seized.

8 Let me just run through a couple of different  
9 things with you. Number 21 here -- I don't know if you  
10 can see it from the back there -- is a gun symbol, and  
11 there is the gun. That's the location on the counter  
12 where the gun was seized, the BB gun.

13 Obviously, you can see an outline of the body  
14 there on the floor. That's the representation of where  
15 Mr. Ferguson was found.

16 Obviously Mr. Ferguson is laying -- maybe you  
17 don't know yet. Mr. Ferguson is essentially on his  
18 side. So we're not saying he was lying like this, but  
19 it's a way of putting the body in the location.

20 This area here is the sectional. And so  
21 based on her statement, Ms. Lawson would have been  
22 standing approximately here when she heard the incident  
23 happen.

24 JUROR: She was facing away from the  
25 door?

1           A     Facing away from the door. That's what her  
2 statement is.

3                     There is a No. 28 here. And this represents  
4 damage to the side of a washing machine that was done  
5 by a bullet.

6                     The officer here, based on the count of his  
7 weapon, and officer here, based on the count of his  
8 weapon, we believe five shots were fired from here, 15  
9 shots fired from here. That's the furthest in any of  
10 those 20 bullets went.

11           Q     None of them penetrating the living area?

12           A     None of them penetrated here.

13                     On the other side of this door frame is the  
14 frame that holds the door up, holds the wall up.  
15 Officers are trained when they are shooting at  
16 something that isn't the target to think about building  
17 structure. Because what we don't want is to fire  
18 rounds that end up coming through here and causing  
19 chaos and mayhem. Because the officers that responded  
20 to this had no idea who's where.

21                     So the officer standing on this side that  
22 fired 15 times, which is a bullet less than six-inches,  
23 because they went straight into two-by-six frames.

24                     JUROR: How many bullets hit the victim?

25           A     Three.

1 Q Where?

2 A He is hit on his left side. I have a gun  
3 here, so don't panic. The first one -- well, we have  
4 no idea which order they hit, but one, two and the  
5 third one is here, indicating that he was turning and  
6 falling; which to my mind means the officer who was  
7 standing here is the one who shot him, because this  
8 officer's bullets went just a few inches into the  
9 frame, the studs behind the drywall.

10 One of this officer's bullets ended up  
11 hitting a door here, and the trajectory is changed by  
12 either the door or some piece of wood, and it bounced  
13 up here, struck the side of the metal washing machine  
14 and put a hole in the frame of the washing machine, the  
15 shell of the washing machine, and fell to the ground.

16 JUROR: Can you explain to me the purpose  
17 of the 15 shots into the doorway?

18 A I can only speculate on that.

19 JUROR: I mean, is that --

20 A The officer will be here this afternoon.

21 JUROR: Is that a trained tactic to do  
22 something --

23 A There is -- there is a tactic. There is  
24 something that we're trained in. The problem I have is  
25 I don't know if that's what the officer was doing. So

1 I could tell you that there was a tactic, that I would  
2 call "suppression fire", but now is taught as something  
3 -- "cover fire" that's used to -- essentially you have  
4 got a target who is an immediate deadly threat to you,  
5 who you are trying to prevent from doing something.  
6 You fire one a second, so that you can escape from your  
7 immediate situation, find cover or concealment. That  
8 is a tactic that is taught. I cannot tell you that's  
9 what the officers were doing. But they will be here  
10 this afternoon, and you can certainly ask them that  
11 yourself.

12 JUROR: Was he laying face down or face  
13 up?

14 A He's on his side.

15 MR. LEINEWEBER: We're going to have  
16 Dr. Gunson come in. We're going to take a break, and  
17 then we'll continue this after she testifies. Okay?

18  
19  
20  
21  
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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. LEINEWEBER:

Q Could you tell us your name, please?

A My name is Dr. Karen Gunson, K-A-R-E-N. And my last name is G-U-N-S-O-N.

Q Can you tell us how you are employed and a little bit about your background, please?

A I'm the State Medical Examiner for Oregon. I went to Whitman College in Walla Walla, Washington and graduated in 1976. And I have a Bachelor of Science Degree in Zoology from Oregon State University, which I got in 1977. And I graduated from Oregon Health Sciences University, which was University of Oregon Medical School at the time. I graduated from it in 1981.

And then I stayed on as a resident and trainee in Anatomic and Clinical Pathology when I graduated.

An anatomic pathologist is somebody who looks at tissues and other organs that are removed at the time of surgery and does autopsies in the hospital.

1           And a clinical pathologist is someone who  
2 looks at blood, urine and other fluids, looks at  
3 disease.

4           When I completed that training, I went to  
5 Oregon State Medical Examiner's Office in 1985, and I  
6 have been there ever since.

7           I am Board Certified by the American Board of  
8 Pathology in Anatomic Pathology, Clinical Pathology and  
9 Forensic Pathology. So currently all I do is autopsy  
10 medicine or forensic pathology. And our office is  
11 governed by ORS 146 the Medical Examiner's law. We  
12 look at all violent, unusual death as well as many  
13 natural diseases.

14           Q     And tell us what your involvement -- what's  
15 your involvement in the examination of the body of  
16 Darryel Ferguson, when that happened and if you were  
17 the one conducting the examination?

18           A     I was the one who conducted that examination.  
19 I did that on December 18th, 2010, at the Medical  
20 Examiner's office.

21           Q     What information did you have about  
22 Mr. Ferguson at the time you began your examination?

23           A     Uhm, well, I was aware at the time I began  
24 the examination that he had been shot by police, that  
25 had occurred at his apartment or girl friend's

1 apartment. I was also aware of the fact that  
2 Mr. Ferguson was HIV positive and had some health  
3 problems.

4 Q Was one of the concerns also he had cancer,  
5 or were you able --

6 A Actually, that had come up. But when I did  
7 the autopsy, I found no evidence of a tumor. But it  
8 could have been that since we don't always do bone  
9 marrows, you know, biopsies and so forth, he could have  
10 lymphoma or leukemia, which I would not be aware of by  
11 doing the autopsy.

12 Q And his age, did you have that?

13 A I did have. His age at the time, 45.

14 Q And his height and weight?

15 A Yes. We did do a height and weight at the  
16 time he was entered into the office protocols, and he's  
17 68 inches in height and weight 138 pounds.

18 Q Five-foot-eight. Okay.

19 And tell us about your examination, not in  
20 detail about what you did, but what your findings were?

21 A Well, I did find three gunshot wounds on  
22 Mr. Ferguson to his chest and abdomen.

23 Do you want me to go into detail?

24 Q If you could do that.

25 A Okay. The three gunshot wounds I labeled

1 one, two and three, but that doesn't mean I know what  
2 order they came in, so it's only for identification.

3 So the first one entered into the left side  
4 of his body, just below the -- what we call the "costal  
5 margin", the edge of the ribs. And that bullet grazed  
6 the back of the spleen, then actually grazed and  
7 perforated the stomach in several different places, so  
8 there was gastric contents or stomach contents present  
9 in the abdominal cavity when we did the autopsy.

10 It then perforated the right lobe of the  
11 liver. Of course, the liver sits here on the  
12 right-hand side, and the right lobe is the big part of  
13 it. And it perforated that right lobe of the liver.

14 And the bullet came to rest just under the  
15 skin on the right side of the body. I could see it as  
16 a bruise under the skin, and I could feel the bullet in  
17 that spot. So we recovered a large caliber bullet from  
18 that area.

19 So, in this case, when we talk about path of  
20 the bullet through the body, it's from left to right,  
21 from front to back and slightly above to below, by  
22 about an inch.

23 Now, gunshot wound number two was a little  
24 bit lower and a little bit closer to the center of the  
25 body or the abdomen, and this bullet perforated several

1 loops of small bowel. It was approximately in this  
2 area, in the lower part of the abdomen, to the left.  
3 It perforated several loops of small bowel, and it also  
4 perforated the sigmoid colon, which is sort of a loop  
5 of large bowel down in the pelvis. And it disrupted  
6 that mesentery or the tissue that holds it in place.

7 Finally, it came to rest in the pelvic bone  
8 called the iliac or the ilium. So we had to recover it  
9 from the bone, itself. And once again we had a large  
10 caliber bullet that we recovered. It was a mushroom  
11 bullet. It's partially jacketed. In this case, the  
12 trajectory path of the bullet through the body is from  
13 left to right, from above to below, and from front to  
14 back.

15 Now, gunshot wound number three was located  
16 higher in the chest and further to the back, so more,  
17 we call it, "posterior lateral", sort of to the side  
18 and to the back of the chest. And this bullet entered  
19 into the left chest cavity by fracturing left rib  
20 number 8. It then perforated the lower lobe of the  
21 left lung, and it grazed right over the top of the  
22 thoracic vertebra number 7 and 8. While it did that,  
23 it also, of course, perforated the aorta, which runs  
24 right along the top of the spinal column. So there  
25 was -- it didn't actually perforate it. It was more

1     like a graze, but it was a long grazing wound that  
2     opened up the aorta. Then it continued to the right,  
3     once again perforating the lower lobe of the right lung  
4     and then finally actually exited completely the chest  
5     cavity through a slit-like defect present on the right  
6     side. Slight defect is often seen with an exit wound.  
7     We actually did recover that bullet in the sleeve of  
8     the sweatshirt that he was wearing. It was loose in  
9     the sleeve of the sweatshirt, which was a fairly large  
10    sweatshirt.

11                So in this case, the bullet, once again, is  
12    going from left to right, but it is going more from a  
13    back to front and a little bit below to above.

14                Because of the passage of that bullet through  
15    the aorta or behind the aorta and its damage to the  
16    aorta, we had 500 cc's of blood in the left chest  
17    cavity and 500 in the right chest cavity. So that adds  
18    up to about a quart or so, a couple of pints of blood.

19                And most people -- most people have about  
20    five liters of blood in their body. And if you lose a  
21    quarter of that acutely, you will die.

22                So he's a little bit smaller than most men.  
23    I would probably say he had a little bit less blood  
24    volume. So we definitely have enough blood for him to  
25    die acutely just from the bleeding.

1                    Obviously, the one to the chest is a deadly  
2                    wound. Theoretically, the one --

3                    Q     That was number three?

4                    A     Number three, excuse me.

5                    Theoretically, the one I call number one  
6                    could also have killed him. However, that's one they  
7                    could have dealt with in the hospital, probably would  
8                    have saved him.

9                    And the one lower in the abdomen would have  
10                    been essentially non-lethal if he hadn't had the  
11                    others.

12                    Q     Can you determine at all the -- which one  
13                    actually hit him first? Would there be anyway to do  
14                    that?

15                    A     I can't do that. When they come in fast  
16                    succession, even if he's bleeding from the one in his  
17                    chest and receives the other one, he is still going to  
18                    have blood because his heart would have continued to  
19                    beat for a few minutes, until he bleeds down enough to  
20                    go unconscious.

21                    Q     But number three, that killed him --

22                    A     Yes.

23                    Q     -- right? And would that have been in a  
24                    fairly short amount of time?

25                    A     Yes.

1 Q And from bleeding to death?

2 A Yes.

3 JUROR: They all came from left to right?

4 Well, we'll talk about that later.

5 BY MR. LEINEWEBER:

6 Q You have a diagram for us?

7 A Yes.

8 Q If you could stand up. Do you need your  
9 report to talk about that?

10 A Oh, no.

11 Q If you could just show them as you explain  
12 the diagram to them?

13 A So we have already explained this in words,  
14 and I have a diagram up front of a man's body and the  
15 back. Obviously, this is my interpretation. So it is  
16 not actually to scale or anything.

17 So we have number one here that's just under  
18 the costal margin or the edge of the ribs going from  
19 left to right, and it's going from slightly above to  
20 below.

21 We have number two that I have labeled down  
22 here that is going -- is lower in the abdomen, down in  
23 the pelvic area, and it's going from above to below.

24 It's hard for me to show the front to back part here.

25 Then, finally, we have number three that's



1 going ever so slightly below to above and also from  
2 back to front. So that's what I was trying to show  
3 here.

4 We recovered, remember, two bullets from the  
5 body, and number three is from his sleeve up at the  
6 top.

7 Q Okay. Anything else remarkable or of note  
8 that you saw during your examination?

9 A He did not have any other significant injury.  
10 He, like most people, had a few scattered contusions or  
11 bruises on his legs.

12 Q That would have been associated?

13 A Old, probably old because some of them were  
14 fading in a green or brown color.

15 Q Was there a toxicology done?

16 A We're doing toxicology right now. I  
17 attempted to get blood alcohol for you yesterday  
18 afternoon. Unfortunately, it being the Holiday  
19 season --

20 Q Don't have it?

21 A -- we don't have it, yeah. So I'm sorry I  
22 don't have that for you.

23 Q There was a reference to some medication that  
24 he was taking. Were you aware of that?

25 A Yes. We're doing full toxicology where we'll

1 be looking for a wide array of both illicit and licit  
2 drugs.

3 Q One of them -- help me with the  
4 pronunciation.

5 A Clonazepam.

6 Q Do you know what that is?

7 A I usually see it for anxiety issues. Of  
8 course, I don't prescribe it myself.

9 Q Are you aware of or can you tell in any  
10 degree of confidence about the mixture of that drug  
11 with alcohol?

12 A Well, Clonazepam bottles always come with  
13 warning not to use it with alcohol, because both of  
14 them are central nervous system depressants, so you  
15 could become somnolent or lethargic from it, be sleepy,  
16 so forth. But given an individual person like  
17 Mr. Ferguson, since I don't know how he reacted to  
18 either one of those and in combination, I can't really  
19 tell you how he is going to behave when he takes the  
20 two together, because I don't have any history on that,  
21 and I haven't heard anything or seen anything in his  
22 records to tell me that he behaves in a certain way  
23 when he takes that. So I would be reluctant to tell  
24 you what --

25 Q Would it be safe to say he would have some

1 sort of adverse reaction?

2 A Well, that's what most -- that's why they  
3 tell you not to take them together. Sometimes you  
4 can't predict what the reaction is going to be. You  
5 know, we say you are going to get really sleepy. Some  
6 people get agitated. Some people have a whole  
7 different kind of reaction to the drug, pretty much  
8 what you wouldn't expect.

9 Q Right.

10 A And so that's why I'm hesitant to tell you  
11 what -- what he would behave like.

12 JUROR: In general, we understand the  
13 affects of alcohol to reaction time. So would this  
14 drug compound that, linearly compound any further  
15 reaction time ability?

16 A Yes, it would do that.

17 JUROR: Okay.

18 A And probably, as you know, alcohol actually  
19 is a disinhibitor; that is you think you are getting  
20 sort of happy, but really you are losing all your  
21 inhibitions. So it might exaggerate that behavior, you  
22 know, so that you -- as you know, when you are drunk,  
23 you sometimes do things that you wouldn't do when you  
24 are sober, and that probably would exacerbate that  
25 behavior.

1 JUROR: Just as more alcohol would?

2 A Just as a more alcohol would. The two are  
3 sort of synergistic. The two of them together are more  
4 than each separate.

5 JUROR: Doctor, did you obtain his  
6 prescription bottles?

7 A No. In a case like this, we get the history,  
8 but we didn't actually get the bottles.

9 Q Do you know the dosage that he was taking?

10 A I'm not sure. Let me see if I have that.

11 BY MR. LEINEWEBER:

12 Q I think we can answer that question with the  
13 Detective. I think he obtained those.

14 A And I don't have his -- we usually get the  
15 Detective's reports, but it takes us a while to get  
16 those, so I don't have those in my file right now.

17 BY MR. LEINEWEBER:

18 Q Would you have a follow-up question based  
19 upon that?

20 JUROR: Well, if we understood the dosage  
21 and we heard it, one testimony, that he might have  
22 taken as many as six of those, so we could times that  
23 by six?

24 MR. LEINEWEBER: Why don't I have her  
25 confer with Detective Traynor, see if he can give you

1 any information about that, and then maybe we can  
2 answer your question. Would that be all right?

3 A That would be great.

4 MR. LEINEWEBER: Why don't we take a  
5 small break.

6 (Whereupon, a short recess was taken.)

7 BY MR. LEINEWEBER:

8 Q So you have had an opportunity to talk with  
9 Detective Traynor about medications that were seized  
10 from this home?

11 A That is correct. And he was prescribed  
12 Clonazepam. And the bottle said that he was supposed  
13 to take one in the morning and one in the evening, so  
14 two a day. And I'm not sure how many he might have  
15 taken on this particular time -- at this particular  
16 time. There is some information that in this case,  
17 when he takes Clonazepam, it makes him lethargic and  
18 slow on the uptake. He felt like he was mentally slow.

19 MR. LEINEWEBER: Anything else?

20 JUROR: Thank you, doctor.

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1 point?

2 A The north stairway is actually ahead of us  
3 here. We're looking from the end of the hallway  
4 where -- remember, I told you about the significant  
5 distance. We're at the south end of the hallway, so if  
6 he were to spin around, we would be looking down the  
7 lengthy hallway.

8 The door off to the left is 201, and  
9 obviously, you can see placards -- those yellow things,  
10 we call them "placards", and they mark locations. In  
11 this case, they are shell casings.

12 And number one is actually a flashlight. I  
13 happen to know that's a policeman's flashlight because  
14 the Bureau issues those.

15 JUROR: So the cops are trained after  
16 shooting, just walk away, don't disrupt the crime  
17 scene, don't pick up your flashlight?

18 A Yes, yes. Well -- yes, you don't mess with  
19 things. If things are on the ground, you don't mess  
20 with them.

21 All right. So this -- this is the north end  
22 of the door or the right side of the door. You can see  
23 the shots into the wall there.

24 BY MR. LEINEWEBER:

25 Q Obviously, that's 201, right?

1           A     That's room 201.

2           Q     Can you show the peephole?

3           A     The hole is this dark spot in the middle  
4     there.

5                     The other thing of significance is this piece  
6     of carpet. Our people would have rolled it up to keep  
7     the door open. The reason that's significant is  
8     without jamming the carpet up, the door closes, itself.

9                     JUROR: There was no bullet holes in the  
10    door, was there?

11          A     No bullet holes in the door.

12          Q     What angle are those holes at?

13          A     You'll see some in just a second.

14    BY MR. LEINEWEBER:

15          Q     You will see the dowels in just a second.

16          A     That's the elevator further off to the right  
17    of that door.

18                     The problem now, these will be somewhat  
19    random.

20          Q     They are all random?

21          A     These are shell casings.

22          Q     That's looking the other direction?

23          A     This is looking the other way.

24          Q     This is the elevator?

25          A     The elevator here. Around here is the



1 stairwell that leads downstairs and upstairs.

2 Here is room 201 right here. And there's a  
3 that firewall that I talked about. And then there's  
4 the hallway down at the other end. So the officer on  
5 this side -- as you can see, there is nothing on here,  
6 there is no place to hide. There is no place to have  
7 hard cover. So there is no way to stop a bullet if  
8 this individual comes out, starts shooting.

9 For this officer to move to a place of  
10 safety, he's got to -- he can hide here, but in order  
11 to look for metal to hide behind, he has likely to go  
12 way beyond that.

13 Q We saw that one.

14 A I think it might show the peephole.

15 If you still have those photos from the Big  
16 5, I think he is still wearing that same belt.

17 JUROR: I see plants in the back of him  
18 where the bullet was found.

19 A You can actually see there is damage to the  
20 door here, and the trajectory of the shot changes and  
21 spins off that way.

22 Here is Mr. Ferguson. You can see he is  
23 down. His legs are crossed. In terms of reference  
24 point, the injuries that were documented in the autopsy  
25 are here, one, two and three.

1 JUROR: Where would have been the  
2 suggested gun, as you said, sort of her way, where  
3 would it have been suggested?

4 A I'll let you decide. Here's her drawing.  
5 And this guy -- these two doors here where the washing  
6 machine and dryer are represented by these two lines  
7 here, that's again her word "gun", that's where she  
8 told us --

9 JUROR: Okay. Gotcha.

10 JUROR: He has been known to waive his  
11 gun around. Did he use his left or right hand? Do we  
12 have any knowledge of that, how he would naturally hold  
13 that gun in his hand?

14 A I can't answer that question without --  
15 without hearsay, so I choose not to.

16 JUROR: Yeah.

17 BY MR. LEINEWEBER:

18 Q That's the other way, casings?

19 A Those are nine-millimeter casings.

20 JUROR: Was there any indication that the  
21 BB gun was fired?

22 A Uhm, I didn't see any BBs.

23 JUROR: That's where the gun was found?

24 A There's the gun. We're still going. The  
25 pictures when they load them on the disk for some

1 reason the pictures end up being randomly put on the  
2 disk. These are the same pictures.

3 BY MR. LEINEWEBER:

4 Q It looks like it was closer?

5 A These white dots, just so you know, those are  
6 put on by the medically-trained folks. I believe they  
7 were Fire Bureau employees. They are looking for a  
8 pulse.

9 Q There is the close -- that's how it looked  
10 when he used it?

11 A Would you mind dropping back just one  
12 picture? The only way you as a police officer or you  
13 as a civilian would know that this gun is not a Colt  
14 Defender is by looking down the barrel at that point  
15 right there. A nine-millimeter or 45 barrel is much  
16 bigger.

17 That's the picture of Big 5. Unfortunately,  
18 these are completely random. I don't understand why.  
19 When they were put on the disk, they are thrown out of  
20 order. These pictures were all taken after the fact.

21 This is the inside of the apartment. It's  
22 documenting No. 22, which is a phone belonging to --

23 JUROR: Darryel?

24 A Marsha. Darryel's phone is in here.

25 Bullet hole in the front hallway. There's

1     that doorway. Bullet hole here, and it deflects this  
2     way and into the washing machine just on the other side  
3     there.

4             Just a close up of that.

5             I'm not sure what that's -- oh, now I know  
6     why. I don't know if Ms. Lawson mentioned this, I  
7     believe when I listened to her interview, what she was  
8     saying is the lighting in the kitchen at the time she  
9     answered the door is they had the red light on. The  
10    cat cannot sleep in the dark. So they leave the red  
11    light on so the cat can sleep.

12            JUROR: So the lights were off in the  
13    apartment except for the red light?

14            A     That's the only light she says was on is that  
15    red light.

16            JUROR: But there are lights in the  
17    hallway probably at all times, right?

18            A     Yeah.

19            That's the peephole.

20            That bullet -- no that's the peephole with  
21    the cotton.

22            Q     You said there were no bullet holes in the  
23    door?

24            A     No, sorry.

25    BY MR. LEINEWEBER:

1           Q     And that's the way it was when the officers  
2 arrived at the scene?

3           A     Ms. Lawson's statement was she pulled out the  
4 cotton, the cotton ball, looked, didn't see anything,  
5 put it back.

6                     JUROR: That had to be on the inside.

7           A     That's as you were looking out.

8                     That's one of our criminalists. I asked our  
9 criminalist to attempt to document or in a picture to  
10 attempt to show both the relative placement of  
11 Ms. Lawson with the door. Ms. Lawson talked about  
12 seeing both of his hands on the door and not seeing the  
13 gun in his hands. What I was attempting to do in this  
14 picture was to show if she turned -- she says she  
15 turned right and walked back here, that he had a number  
16 of seconds to -- he would have had time to pull the  
17 gun.

18                    JUROR: Plus it seems to me by that  
19 picture that if she was by the couch and because the  
20 door opens on the left-hand side, his body would block  
21 any sight of hands from her.

22           A     Yeah. I mean, she was very adamant she  
23 didn't see.

24                    JUROR: She was facing that direction.

25           A     This is the metal cladding on the door frame

1 here, it has been pulled off. That's the cladding that  
2 had the damage to it.

3 One of the bullet strikes fired by the  
4 officer on this side of the door, on the left side of  
5 the door, and this picture is just showing that the  
6 bullet went in, went straight down. The bullet is  
7 recovered down here.

8 JUROR: All these bullets that entered  
9 his body came from the person on the left; is that  
10 right?

11 A We are not able to determine which particular  
12 Glock it came out of.

13 BY MR. LEINEWEBER:

14 Q That's his medications?

15 A Those are some of his medications.

16 This is the -- that's one of the recovered  
17 bullets.

18 This is a shot -- our criminalist tore off  
19 the drywall -- this stuff is off -- to reveal the studs  
20 behind it and to show that the bullets went into the  
21 studs and stayed there, the bullets fired by the  
22 officer on the right side of the door.

23 They ended up taking the chisel -- there we  
24 go. That's a good shot. That shows the -- so  
25 there's -- that's a shot of once they pulled off a

1 square of the drywall, that shows the bullets going  
2 into there.

3 JUROR: This is just to the right of the  
4 door, facing from the hallway in, correct?

5 A Yes. Well, this is a shot from the bedroom.  
6 During our interview with Ms. Lawson, she described  
7 him -- again, I apologize if she didn't tell you this  
8 same stuff, then I believe you have to ignore me.  
9 The -- he had -- the room where the family was now  
10 staying used to be his man cave, and he had to move all  
11 of his belongings into a closet. And she talked about  
12 the left half of the closet being his, and that picture  
13 is a picture of the drawer with BBs, what have you.

14 One of the pictures there was a picture of --  
15 the last one.

16 BY MR. LEINEWEBER:

17 Q Just a second. I'm going the wrong way.

18 A That's 202.

19 Q That's 202. Okay. I'm sorry.

20 A I think that's 202, because 201 has the  
21 wreath.

22 That's the washing machine and bullet strike.  
23 You can see the bullet there.

24 This is 202 again.

25 Q Oh.

1           A     This is the apartment 202, apartment of  
2     Terrie Baer.

3                     This is the picture of the bottles to  
4     document.

5                     This is door 201 with the peephole.

6                     Those hands are the Medical Examiner's hands  
7     -- that is documenting the strikes.

8                     JUROR:  What's the caliber of the bullet?

9           A     Nine-millimeter.  I think there is a  
10    better -- that might be it.  That might be the best  
11    one, but that gives you an indication of the angle at  
12    which the officer, who is standing on the right side,  
13    the north side, that's the angle at which he's firing.

14                    JUROR:  So that's the training for  
15    suppress fire?  That would be what it's called?

16           A     I don't want to testify this is obvious  
17    suppression fire, because I don't know what it is.  It  
18    indicates where he was standing when he fired, which is  
19    about as much as I could --

20                    JUROR:  I'm taking they are crouched,  
21    because it's kind of low to the ground, because they  
22    are going in like this, slight angle up?

23                    JUROR:  Not crouched.  That's up fairly  
24    --

25           A     Yeah.  I think this would be -- yeah,



1 approximately three-and-a-half, four feet.

2 JUROR: Which is higher than the waist  
3 line. It's up, depending on the height of the police  
4 officer.

5 A That's the shot on the other side. If you  
6 remember, the bullet entered here and was recovered  
7 down here. And then there is the bullet strike that  
8 hits the door and changes angle and hits the washing  
9 machine. That again is trying to show you these -- the  
10 angle of these shots indicated that they are fired from  
11 over here.

12 If you could rotate that, I think that gives  
13 as good a view as we can get. You can see there is a  
14 focal point to the shots.

15 JUROR: What's the one on the door?

16 A This isn't in the door. This is the one  
17 that's actually in the door in the hallway, the one  
18 that ultimately deflects and hits the washing machine.

19 JUROR: So there is nothing on the floor  
20 to hold the door open -- an indication that the body  
21 held the door open somehow?

22 A Uh-uh.

23 JUROR: After the shooting, did the door  
24 close? So after the shooting, he fell back and the  
25 door closed? That's what we're getting.

1 JUROR: Which gave her plenty of time to  
2 run over and move things around.

3 BY MR. LEINEWEBER:

4 Q We have seen those?

5 A Uh-hum.

6 Q That shows a good proximity.

7 A That carpet has been -- Ms. Lawson did tell  
8 us -- this piece of carpet, it prevents drafts and it  
9 also prevents the smells of neighbors' cooking coming  
10 into her apartment.

11 JUROR: And that carpet was placed there  
12 by the detectives for purposes of?

13 A I don't know who put that carpet there like  
14 that, but it's being used to prop the door open. I  
15 went back to the apartment, and I opened the door and  
16 let go of it to see what it did on its own, and it  
17 closes by itself.

18 BY MR. LEINEWEBER:

19 Q Are there any other photos that you want to  
20 see?

21 A No, I think that's it.

22 MR. LEINEWEBER: Any questions?

23 We'll take a break. Be back at one  
24 o'clock. Thank you.

25 (Whereupon the noon recess was taken.)

1                                    JONATHAN KIZZAR,

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

5                                    **EXAMINATION**

6                    BY MR. LEINEWEBER:

7                    Q        Please have a seat.    Could you tell us your  
8                    name, please?

9                    A        My name is Jonathan Kizzar, J-O-N-A-T-H-A-N,  
10                   K-I-Z-Z-A-R.

11                   Q        And as you know -- you are a Portland Police  
12                   Officer, correct?

13                   A        Yes.

14                   Q        You know, Officer Kizzar, this is an inquiry  
15                   into the conduct that occurred on December 17th at the  
16                   Ventura Plaza Apartments?

17                   A        Yes.

18                   Q        And you have not been subpoenaed for this.  
19                   You are here voluntarily.    You have agreed to come in,  
20                   talk to the -- talk to the jurors about what happened  
21                   and answer questions.    And there has been nothing --  
22                   you are not being compelled in any way to come in and  
23                   do this; is that right?

24                   A        Correct.

25                   Q        So let's talk a little bit -- a little bit

1 about you. You are a Portland Police officer?

2 A Yes.

3 Q All right. And how long have you worked in  
4 the Portland Police Department?

5 A Just under five years. It will be five years  
6 in March.

7 Q And how old are you?

8 A I'm 29.

9 Q And have you had law enforcement experience  
10 prior to the Portland Police Bureau?

11 A No.

12 Q And how about your educational background,  
13 what's that?

14 A I have a Bachelor's Degree in Administration  
15 of Justice out of Portland State.

16 Q Okay. And prior to coming to the Portland  
17 Police Bureau, did you hold any other employment?

18 A I did, yes.

19 Q What was that?

20 A I worked security guard at Pioneer Place  
21 Mall, and I worked at UPS and went to school.

22 Q Okay. Are you from Portland?

23 A Yes.

24 Q Okay. Grew up here?

25 A I grew up here, yes. I was born in

1 California.

2 Q What part of town did you grow up in?

3 A Milwaukie, across the river.

4 Q Did you go to Milwaukie High School?

5 A Rex Putnam.

6 Q Rex Putnam.

7 Military experience?

8 A No.

9 Q Tell me a little bit about becoming a police  
10 officer. How did that come about in your life? Just  
11 something you wanted to do?

12 A Something I wanted to do. Took tests, passed  
13 and here I am.

14 Q What sort of training do they put you through  
15 before you actually start working?

16 A Well, when you get hired, you go immediately  
17 to the Basic Academy. I went to Monmouth, Western  
18 Oregon University. I was there for twelve weeks,  
19 about. Then I went to the Advanced Academy after that,  
20 Portland's Advanced Academy. I was there for 16 weeks.

21 Q What does that entail?

22 A A lot of training, a lot of situation  
23 training, things like that, shooting, things like that.

24 Q How to deal with people in different  
25 scenarios?

1           A     Exactly, community policing, things like  
2     that.

3           Q     Do you have ongoing training after that,  
4     after those initial Basic Academy and Advanced Academy?

5           A     You go through -- you are on probation with  
6     the Bureau for 18 months from when you start Basic to  
7     the end. You go through these phases. You are with a  
8     coach, a coach that trains you how to do things. You  
9     ride along with him. He teaches you how to do the job  
10    totally, 18 months of this before you get off  
11    probation.

12          Q     Okay. What's your current assignment?

13          A     I work at East Precinct. My district is 958.

14          Q     And what is that area?

15          A     It would be the west side of the district  
16    it's I-205 and the east side of it is 122nd between  
17    Burnside and Division, it's the box there.

18          Q     What shift do you work?

19          A     Night shift.

20          Q     How long have you been doing that?

21          A     About three years.

22          Q     And what hours are those?

23          A     It's going to be 10:00 p.m. to 8:00 a.m.

24          Q     That's a different lifestyle?

25          A     Yeah.

1 Q Do you have a home life?

2 A I'm married.

3 Q Kids?

4 A (Nods head in the negative.)

5 Q When you are on patrol, you wear basic police  
6 uniform?

7 A Yes.

8 Q Do you have a marked car?

9 A Yes.

10 Q Do you have a partner you work with  
11 regularly?

12 A I work with Officer Kelly Jenson.

13 Q How long have you worked with him?

14 A Around two years.

15 Q Every day, same shift?

16 A Yes.

17 Q I looked at your BPST numbers. They are very  
18 similar. Did you go through the Academy together?

19 A Yes, we did.

20 Q So you have known each other a long time?

21 A Yes.

22 Q Do you see that as an advantage as a police  
23 officer?

24 A Absolutely. We know how each other works.  
25 We know how we're going to handle each call. It works

1 very well.

2 Q Have you ever gone through anything like this  
3 before, what we're talking about today?

4 A No.

5 Q This is the first time you have testified in  
6 Grand Jury about something like this?

7 A Yes.

8 Q And how are you doing today? You all right?  
9 Let me know.

10 BY MR. LEINEWEBER:

11 Q Yes. Tell me the night that -- the night  
12 that this happened, the 17th of December, how were you  
13 doing that day?

14 A Fine.

15 Q Was it a day like any other day?

16 A Yeah, yes.

17 Q How would you describe it? What's your  
18 routine when you are working?

19 A Well, this would have been my third day of my  
20 four days. We work four ten-hour shifts. This would  
21 have been my, technically, Thursday. I work -- I  
22 usually go to bed right after work, 8:30, nine o'clock,  
23 get about eight hours. This is, of course, depending  
24 if I have court or not.

25 And then I wake up about 4:00, 5:00, have



1 dinner, watch TV with my wife.

2 Q What part of town do you live in?

3 A West Linn.

4 Q So you are a little away from East Precinct,  
5 get away from work somewhat, huh?

6 A Yeah.

7 Q So, the normal amount of sleep you get is  
8 about how much?

9 A Eight hours.

10 Q That's pretty good.

11 A Yeah.

12 Q What do you do during your shift week?

13 A You mean like hobbies and stuff?

14 Q Yeah.

15 A I play soccer twice a week.

16 Q Is that with a team from the Bureau?

17 A I do play on that team, but they are not  
18 playing right now. But I play twice a week on my  
19 wife's co-ed team, and then I play in an all-men's  
20 league, too, during the weekdays.

21 Q Okay. So do you have any medications you  
22 take or any physical disabilities or anything like  
23 that?

24 A Yeah. I have asthma. So I take my  
25 maintenance medication, such as Advair, which I take

1 once a day. And then I have Singular, which helps my  
2 asthma as well. Then I also have a rescue inhaler that  
3 I only take when I need it. It's Albuterol.

4 Q Does that have any side effects at all, make  
5 you tired?

6 A No, no. I have been taking it my whole life,  
7 and I've never had any side effects.

8 Q Okay. Do you remember how your day went on  
9 this day, in particular prior to coming to work?

10 A The same as always; went to bed when I got  
11 home from work the night before -- or I guess the  
12 morning before -- and slept until about four o'clock,  
13 five o'clock; got up, had dinner, watched TV with my  
14 wife and went back to work.

15 Q What time do you go to work?

16 A I leave for work at about 9:00 p.m.

17 Q Okay. And you get to the Precinct --

18 A 9:15, 9:20.

19 Q Then you are on the road by what time?

20 A After roll call starts at 10:00, I usually  
21 get out about 10:15, 10:30.

22 Q And was Officer Jenson working with you? Do  
23 you guys work the same days on and off?

24 A Yes.

25 Q Okay. So who usually drives? Do you drive

1 or --

2 A We have this thing that we switch off. I'll  
3 drive and then he'll drive. During the shift, during  
4 every other day I'll drive, and then we have this --  
5 this thing we do that if you are not driving, you are  
6 the first person to take the paperwork on the first  
7 call. And I was driving this night.

8 Q And how was the night going preceding your  
9 first trip to the Ventura?

10 A Fine, not any different than any other night.

11 Q Do you recall any other stops that you made  
12 or any calls that you had?

13 A Well, this one -- this night is divided into  
14 these two calls. The only one I remember that night is  
15 between the two calls. I had Officer -- Officer  
16 Strohmeyer had people run from a stop he was doing, and  
17 we did a dog track with him, but we didn't find the  
18 people.

19 Q What is that area you work in, what is it  
20 like?

21 A Busy.

22 Q In what sort of way?

23 A A lot of 911 calls.

24 Q Domestic things you deal with?

25 A Yeah, some things, fights, domestics, drugs.

1 Q Tavern things? Residential things?

2 A The thing about East is it's just a  
3 combination of everything, you know. You never really  
4 know what's going to happen.

5 Q So you are always pretty busy?

6 A Very busy.

7 Q Take a lot of calls? How many calls do you  
8 think you take in a night?

9 A For 911 calls? Probably ten a night.

10 Q Is there a difference between a 911 call and  
11 another call that you will get, another dispatch or  
12 anything?

13 A Yeah. There is also non-emergency calls that  
14 we can take that just hold in a queue on our computer  
15 and we can take them as soon as we get to them. But  
16 those are the non-priority work, no one's life is in  
17 danger at this time.

18 Q So it sounds like you are not able to respond  
19 to too many of those in your district?

20 A We try to take care of our district.

21 Q Have you worked that same district for  
22 awhile?

23 A Ever since I started riding with Kelly, so  
24 two years.

25 Q So you must know it pretty well?

1           A     Yeah, very well.

2           Q     Is it hard to get to know people working that  
3 shift, or is there a different group of people out in  
4 the community at that time?

5           A     Well, I mean, there is a different kind of  
6 people that are out at four o'clock in the morning  
7 walking around the streets.

8           Q     Are there familiar places or familiar places  
9 that you go to as far as seeing people that you respond  
10 to calls at?

11          A     Oh, yeah, run into a lot of the same people.

12          Q     So tell us -- you mentioned that -- I think  
13 we heard that you were actually at the Ventura two  
14 times that night, right?

15          A     Yes.

16          Q     Prior to this day, had you been to that  
17 apartment building before?

18          A     Oh, yeah, on numerous occasions, yes.

19          Q     Lots of times?

20          A     Yeah.

21          Q     So what kind of calls?

22          A     I can't say for sure exactly what kind of  
23 calls, but domestic, unwanteds, drunks, et cetera.

24          Q     And have you had any particular major issues  
25 occur in there, or did you get along fairly well with

1 the tenants and the management there?

2 A It's hard -- I can't remember a specific  
3 incident that I have gone to there.

4 Q Do you remember the last time you were there  
5 prior to this event?

6 A I don't remember.

7 Q How about -- okay. So how about the first  
8 call you went there that night, about what time is  
9 that?

10 A I'd say about three o'clock in the morning.

11 Q That was the first call?

12 A Yes, first call -- well, maybe more like  
13 2:00, in that general.

14 Q What was that about?

15 A It was -- one of the calls that I described  
16 earlier was holding in the queue that we could get to  
17 when we could. It said something along the lines of  
18 that -- a person was calling in saying that they were  
19 handing out candy in the apartment complex and received  
20 threats -- they received threats from somebody on the  
21 third floor. I can't remember the room number they  
22 gave. And the person calling in was a Mr. Ferguson.  
23 His name was Darryel Ferguson. And he said that he  
24 wanted contact in his apartment, which was No. 201 on  
25 the second floor.

1 JUROR: Reported by Mr. Ferguson?

2 A Yes.

3 JUROR: On 911?

4 A Yes.

5 BY MR. LEINEWEBER:

6 Q Go ahead.

7 A As we were responding, Officer Jenson pulled  
8 up Mr. Ferguson's picture on our computer, and so we  
9 had seen a picture of him. And as we were pulling into  
10 the parking lot of the Mini-Mart on the corner of 122<sup>nd</sup>  
11 and Burnside --

12 Q Is that across the street from the apartment?

13 A Yeah, it's got a driveway in between the two.

14 Q Okay.

15 A As we were pulling up, we saw Mr. Ferguson  
16 walk out of the Mini-Mart, and he was walking toward  
17 us.

18 JUROR: Can I stop you? How did you have  
19 his picture? On your --

20 BY MR. LEINEWEBER:

21 Q Was it in your computer system?

22 A Yeah. We can pull up people's mug shots or  
23 DMV pictures on our computer.

24 JUROR: If they are felons?

25 A If they have been in the system at some point

1 or if they have had a DMV photo.

2 JUROR: So when they called in, you knew  
3 exactly who had called in?

4 A Yeah, because he leaves his name.

5 JUROR: Okay. I'm just trying to get a  
6 frame of reference here.

7 A That's okay.

8 Q Okay. Thanks.

9 BY MR. LEINEWEBER:

10 Q So you saw him coming out of the store?

11 A We stopped our car, got out, and Mr. Ferguson  
12 walked up toward us.

13 He said that he -- that he was receiving  
14 threats over the phone by a person on the third floor.  
15 And so we started asking him questions about it. We  
16 started asking him, "Why is this guy threatening you?"  
17 He didn't want to answer. "He's just threatening me."  
18 He wouldn't answer the question.

19 We asked him how he was threatening. "He's  
20 just threatening." That's all he would tell us.

21 I remember telling him at some point, "You  
22 are not telling us how it's happening, why he's  
23 threatening you, why you guys are fighting." He is  
24 starting to get a little more agitated at this point.

25 I asked him, "Why are you handing out candy



1 in the apartment complex this time in the morning?" He  
2 said something along the lines of -- this is not a  
3 quote. He said something along the lines of, Don't  
4 turn this back on me. This isn't me. Quit trying to  
5 turn this back on me.

6 He goes -- all of a sudden he's, you know,  
7 "I'll handle this myself," and he walks into the  
8 apartment complex. We were just standing there. He  
9 didn't want our help anymore, so we just left.

10 Q You said you pulled up his picture and you  
11 pulled up either from DMV or booking. What did you  
12 know about him at this point?

13 A I knew he was a registered sex offender at  
14 this point.

15 Q Is that it?

16 A That is all I knew of.

17 Q So with that information and that contact,  
18 how would you term that contact? Was it -- did you  
19 think it ended with a little bit of hostility, or was  
20 it animosity, or what did you think?

21 A He was just agitated at us. He wasn't -- it  
22 didn't seem like anger, but he was very uncooperative  
23 with us.

24 JUROR: Was this going in or coming out  
25 of the Mini-Mart when you saw him?

1           A     Coming out.

2                   JUROR: Did he have anything with him?

3           A     Not that I remember.

4 BY MR. LEINEWEBER:

5           Q     Okay. And so he walked back into the  
6 building?

7           A     Yes, into the apartment complex.

8           Q     Then what did the two of you do? You cleared  
9 the call?

10          A     Yeah, we cleared the call. I wasn't the  
11 computer guy that night, because I was driving. Kelly  
12 was working the computer. So I don't know how he  
13 cleared, and then we went to the dog track, that I  
14 explained earlier, after that.

15          Q     Okay. How long did that take?

16          A     Under an hour, not very long.

17          Q     And had you had a break then in your -- do  
18 you guys take a break at lunch time or anything like  
19 that or usually you guys are on the go?

20          A     We are always on the go. We don't take  
21 breaks. We don't take breaks.

22          Q     So you didn't stop anywhere in between the  
23 call where you met Darryel Ferguson to help them with  
24 the tracking dog. Then what was the next call after  
25 that?

1           A     I remember it being this call, the second  
2     call.

3           Q     So about an hour later, you think?

4           A     Just about, around an hour.

5           Q     What was the nature of that call?

6           A     Well, this call was the person on the third  
7     floor calling in saying that Mr. Ferguson was calling  
8     him, threatening him. As we were -- we didn't get  
9     dispatched to this call first. Officer Powell, I  
10    believe, was the one who got dispatched to this call,  
11    and we were just clearing the dog track. So Officer  
12    Jenson gets on the radio and says, "This is our  
13    district. It falls in our district line, so this is  
14    our district. We'll take it --

15                So they cleared Officer Powell. So as we  
16    left the dog track, we drove up.

17          Q     How far was that?

18          A     Quite a ways. The apartment complex is 122<sup>nd</sup>  
19    and Burnside, and we were on the dog track Southeast  
20    72<sup>nd</sup> and Rhone.

21          Q     Tell us about that. Why would you  
22    interject -- another officer has got the call. Why  
23    would you interject and say, "That's ours; we'll take  
24    it"?

25          A     Because when you are assigned to a district,

1     it is your district. You have to have district  
2     integrity. It's your area that you work. You know the  
3     people that live in that area. You handle all the  
4     calls that happen in your area.

5           Q     Kind of proprietary, right?

6           A     Exactly.

7           Q     So you went to that call. What was the  
8     nature of the call then? Did you know that  
9     Mr. Ferguson was involved in that one as well?

10          A     I did, because the person on the third floor  
11     was -- gave us the apartment numbers, knew Mr. Ferguson  
12     had been -- that lives there from the call earlier.

13          Q     Do you actually hear the 911 call, or does  
14     that come into Dispatch and they just give you brief  
15     information about the nature of it?

16          A     I didn't read the call on the computer. I  
17     just heard what Dispatch told me over the radio,  
18     because Kelly -- or Officer Jenson -- works the  
19     computer when I'm driving.

20          Q     Okay. And what was it? Again, the idea was  
21     more threats being made -- this time was being made to  
22     the caller on the third floor?

23          A     Yes.

24          Q     Okay.

25          A     It came out as a threat call. He said the

1       guy was calling him on the phone telling him to come  
2       down so he could take care of him.

3           Q       This was about 4:00 in the morning?

4           A       Just about very close to 4:00 in the morning.

5           Q       And how is the weather out?

6           A       Fine.

7           Q       Dry?

8           A       Yes.

9           Q       And when you called off the other car, was it  
10       your intent for just the two of you to go to it, not  
11       any other backup?

12          A       Right.

13          Q       Is that standard as well?

14          A       Yes.

15          Q       Had anything about weapons been mentioned at  
16       all?

17          A       In the call I remember saying something that  
18       Mr. Ferguson was seen with a gun I think a week prior  
19       to, but I had no reason to believe that he was armed  
20       tonight.

21          Q       Okay.

22          A       Or that night.

23          Q       So where did you pull in when you came into  
24       the --

25          A       I pulled into the Mini-Mart parking lot on

1 the driveway on the west side of the parking lot in  
2 between the apartment complex and the Mini-Mart.

3 Q Was there some reason you did that rather  
4 than going into the apartment complex parking lot?

5 A Because the front door to the apartment  
6 complex is on Burnside, on the opposite side of the  
7 parking lot there.

8 Q Okay. So were the two of you then going to  
9 make the inquiry of the man on the third floor?

10 A Officer Jenson had called him as we were  
11 pulling up and talked to the guy on the third floor  
12 over the phone.

13 Q Do you remember what his name was?

14 A It was like Crosby, Mr. Crosby. I don't know  
15 his first name.

16 Q What information did you get, do you recall  
17 having from him?

18 A I didn't -- I didn't hear the phone  
19 conversation because Officer Jenson was talking to him.  
20 But when Officer Jenson got off the phone, I remember  
21 him saying something about how he doesn't know what  
22 they were fighting about. Neither of them would tell  
23 us what they were fighting about.

24 Q Okay. So did the two of you formulate some  
25 sort of plan about what you were going to do or how you

1       were going to approach this issue?

2           A       We decided that we were going to go up and  
3       talk to Mr. Ferguson about it. We had no intention of  
4       arresting anybody when we went up there. We were just  
5       trying to diffuse a situation between two neighbors.

6           These calls come out all the time. We just  
7       wanted to tell Mr. Ferguson he needs to stay in his  
8       apartment; he needs to stop calling Mr. Crosby and it's  
9       done for tonight, no more fighting. I had no intention  
10      of arresting anybody.

11          Q       Is that pretty standard for the approach that  
12      you two have on this kind of call?

13          A       Yes.

14          Q       Okay. Did you bring anything else with you  
15      on the call? I don't know what you would bring, but  
16      you have standard equipment?

17          A       Yeah.

18          Q       What do you have when you go up?

19          A       I have got my Taser. I have got a baton,  
20      pepper spray, handcuffs, extra magazine and my sidearm.

21          Q       What kind of sidearm do you have?

22          A       Glock 17, nine-millimeter.

23          Q       How many rounds do you keep in that?

24          A       I keep a full magazine in my gun along with  
25      one in the chamber.

1 Q So what's the count?

2 A So there should be 17 in my magazine and one  
3 in the chamber, so a total of 18.

4 Q Okay. And have you ever used that on duty  
5 before?

6 A No.

7 Q Never fired your gun before?

8 A No.

9 Q In four, five years?

10 A Yeah, never have.

11 Q How often -- I'm just going back a little  
12 bit. So how often do you check it out to check on  
13 operability of it, to actually use it, feel like what  
14 the trigger pull is or things like that?

15 A Well, we go -- we qualify with our sidearm, I  
16 think it's quarterly, four times a year, and shoot it  
17 and clean it, we reload it.

18 Q And how about when you start your shift, do  
19 you check it to make sure that everything is  
20 functioning correctly?

21 A What I usually do is I just pull it out of  
22 its holster, make sure it's not getting stuck or  
23 anything. I don't take the magazines out or anything  
24 like that.

25 Q So it wouldn't have been fired since your



1 last quarterly -- what do you call it, "qualifying"?

2 A Qualification. No, I have not.

3 Q So how did the two of you get into the  
4 building?

5 A There is a code to get in. It's a locked  
6 facility, and we have the code on a key pad that was  
7 punched in and the door unlocks for us.

8 Q Did the management provide you with that or  
9 just getting in there -- you guys just knew it?

10 A It's also when you pull up -- if a call comes  
11 out there, it comes back with what we call a PI file,  
12 which are priority incidents, which tells you about  
13 what the call is in the past. The PI is a code. I  
14 have it in a booklet I keep it in my pocket we have  
15 been there so much.

16 Q Your own private code?

17 A Uh-hum, your own private intel.

18 Q You went to the second floor?

19 A Yes.

20 Q Anybody else in the building when you went  
21 in?

22 A I did not see anybody.

23 Q Did you hear anything?

24 A No, not that I remember.

25 Q And when you went to the second floor, did

1     you go by elevator or stairs?

2           A     We used the stairwell that's on the Burnside  
3     side of the apartment complex there.

4           Q     So when you get to the second floor, are you  
5     on the long end from 201 or the short end?

6           A     It's the first apartment on the right.

7           Q     So you came up and you were just 15 feet away  
8     from it?

9           A     Yeah, I would say about 15 feet.

10          Q     And tell us what your normal approach -- have  
11     you done things like this before at 3:00, 4:00 in the  
12     morning?

13          A     Yes.

14          Q     How do you two work something on that? What  
15     do you do?

16          A     We both -- what happens is we'll each be on  
17     one side of the doorway, not in front of the door, but  
18     on the side of the door and just knocked.

19          Q     Okay. So -- and how does that come about?  
20     Is that something you learned in training or just  
21     something that the two of you developed?

22          A     They teach us in training obviously standing  
23     in front of the door is not the safest place, so kind  
24     of offset.

25          Q     What side of the door were you on facing the

1 door?

2 A If you are facing the door, I was on the  
3 right side.

4 Q And Officer Kelly was on the right side?

5 A Yes.

6 Q How far apart from each other were you, more  
7 than the width of the door? Less?

8 A I would say probably about the same size as  
9 the door. So what is that? Three to five feet, maybe.

10 Q Did you stand close to the wall, or did you  
11 stand in the middle of the hallway?

12 A My -- my shoulder was probably just maybe  
13 more than a foot from the wall.

14 Q Is that a normal position or --

15 A Yeah, yeah.

16 Q Was your antenna up? Were you anxious or  
17 nervous about the situation at this point, or is this  
18 something you felt comfortable?

19 A Just felt routine. I didn't see anything  
20 that didn't -- it felt routine to me.

21 Q Could you hear anything coming from inside?

22 A Not before we knocked, no.

23 Q Could you see any light or anything coming  
24 from inside?

25 A No.

1           Q     How about the other apartments around there,  
2     was there any activity that you were aware of?

3           A     No, nobody was out.

4           Q     Okay. Any other red flags or anything like  
5     that?

6           A     No, nothing comes to mind.

7           Q     Did you call Mr. Crosby when you were there  
8     and say, "We're here. We're checking on this guy right  
9     now," or anything like that?

10          A     I didn't. I never talked to Mr. Crosby.

11          Q     Okay. So who knocked on the door?

12          A     Officer Jenson.

13          Q     Okay. And I assume, did he do it with his  
14     knuckle, or did he do it with a baton?

15          A     I can't -- I can't remember. I think he did  
16     it with his hand.

17          Q     Were your hands free?

18          A     Mine were, yes.

19          Q     So he knocks. Does he say anything?

20          A     No. I hear somebody walk towards the door  
21     after the knock, and then there was a pause, as if  
22     maybe somebody was looking through the peephole to see  
23     who was there. Then I heard a grumble, like a male's  
24     voice grumbled. It didn't sound like anything. It  
25     just sounded like a male voice grumbled.

1           Q     If you can, how much time elapsed between the  
2 time you knocked on the door and somebody responded?

3           A     Seconds. It was fairly quick. It was quick.

4           Q     So you had just gotten there. So the knock,  
5 you guys are standing there and what happened?

6           A     The door flies open.

7           Q     It pulls in?

8           A     Yes, yes. It pulls in and it opens.

9           Q     All right. And tell us what you see.

10          A     Mr. Ferguson takes one or two steps out.

11          Q     Into the hall?

12          A     Into the hallway.

13          Q     Are your hands free at this time?

14          A     Yes.

15          Q     Do you want to take a break?

16          A     Next thing I know, there is a gun to Kelly's  
17 head.

18          Q     How far away was he?

19          A     No more than a foot.

20          Q     When you say it was at his head, could you  
21 tell which hand Mr. Ferguson was holding the gun in?

22          A     In his right hand.

23          Q     Okay. Let's try to reenact this a little  
24 bit, if you don't mind?

25          A     Yeah.

1           Q     Okay. Why don't you stand right here. You  
2 are Officer Kelly, right?

3           A     Officer Jenson.

4           Q     Officer Jenson.

5           A     Okay.

6           Q     So you are over here?

7           A     Yes.

8           Q     The door opens in?

9           A     Opens in like this, if I remember right.

10          Q     And then where does Ferguson come? Does he  
11 take a full step out?

12          A     He steps out like this.

13          Q     So he is beyond the threshold?

14          A     Yes.

15          Q     Then you see a gun to Kelly's head?

16          A     Kelly's head.

17          Q     Is he this close?

18          A     I would say roughly, not more than a foot  
19 away. It was this close.

20          Q     Pointed directly at him?

21          A     Yeah, at his head.

22          Q     Both of you got your arms down, just wham!

23          A     Yes. Kelly yells, "Oh, fuck."

24          Q     Okay. And what's the next thing you  
25 remember?

1           A     I start to step -- as I'm pulling -- mind  
2     you, everything I am describing happened within  
3     seconds. I started to backstep to pull my gun out. I  
4     make my way back -- because the door next to the  
5     apartment door is the elevator. So I kind of step back  
6     into the frame of the elevator as I draw my gun. I'm  
7     thinking to myself "If you have to shoot this guy,  
8     there is nobody down the hall. You are not going to  
9     hit anybody, just stop him from killing Kelly."

10          Q     So we noticed -- we have pictures from the  
11     scene. Okay. We notice there is a grouping of holes  
12     just to the right of the door?

13          A     Yeah.

14          Q     Were those yours that did that?

15          A     In the wall?

16          Q     Yes.

17          A     Yes.

18          Q     All right. How did that happen?

19          A     It's like when I finally get my gun out, I  
20     looked beyond, behind Mr. Ferguson and realize that  
21     Kelly is now in my line of fire. He's beyond  
22     Mr. Ferguson.

23                 So as I'm stepping out of the doorway to get  
24     a better angle, he takes steps back -- he steps back  
25     into his apartment, behind, where I thought he was

1 going for cover to shoot out of the apartment.

2 So as he steps back in, I fire into the wall  
3 next to the right of the frame of the door there.

4 Q Before you shot, were there any shots?

5 A Not that I remember, no.

6 Q It happened quick?

7 A What's that?

8 Q It happened quick?

9 A It happened fast.

10 Q Could there have been?

11 A Yeah. When I shot, I couldn't hear my own  
12 rounds going off.

13 Q Do you know how many rounds you shot?

14 A If I had to guess, more than ten. I can't  
15 say an exact amount.

16 Q Tell me about that. It's a semi-automatic,  
17 right?

18 A Right, just one right after another.

19 Q So he is stepping back in, and you are on the  
20 side of the door?

21 A Yes.

22 Q Do you have an idea of what Kelly -- Officer  
23 Jenson is doing at this time?

24 A I can't say for sure. I was focused on  
25 Mr. Ferguson.



1           Q     Okay.  What's the next thing you remember?

2           A     I remember -- well, as he backed in, he  
3 never -- he never dropped the gun from Kelly's view.  
4 It was always up at about his eyesight, even as he  
5 backed, until I lost sight of him into the apartment.

6                     I fired.  I fired however many times I fired,  
7 and I at this point was able to back into the frame of  
8 the door of the stairwell that we came up out of.

9           Q     What were you thinking then, he might come  
10 back out?

11          A     Yeah.

12                     JUROR:  How many feet was that between  
13 the edge of that door and the stairwell?

14          A     I'd say about 15 feet, close to.

15          Q     So, as that's happening, do you see  
16 anything -- is the door still open then?

17          A     As I -- when I get back to the stairwell, I  
18 look over.  And from my angle, I could see the front of  
19 the door as if it had either closed partially or all  
20 the way.  But I couldn't tell if it was closed or not.

21          Q     And what about Officer Jenson, what did you  
22 see?

23          A     At that point, I realized Officer Jenson had  
24 backed up to the frame of like -- halfway down the  
25 hallway there is a fire door.  It looks like there is

1 some sort of frame of the door there in the middle of  
2 the hallway.

3 Q How far do you think that was?

4 A Oh, man, I have no idea. Thirty feet maybe.  
5 It was further back than me.

6 Q Okay.

7 A And he had taken cover behind that door  
8 frame.

9 Q So the firing had stopped, the door was  
10 partially closed now?

11 A No.

12 Q Okay. And did you just wait?

13 A Just waited. I got on the radio and said  
14 "Shots were fired," and everybody was coming out.

15 Q Did you hear from Officer Jenson?

16 A I remember Officer Jenson, because  
17 everyone -- a bunch of people in the apartments, I  
18 guess, were coming out and saying, "Hello? Everybody  
19 okay?" And Officer Jenson would yell, say, "Get back  
20 in your apartment, get back in your apartment."

21 At one point I asked Officer Jenson if he had  
22 reloaded. He said, "No." So I told him, "Well, why  
23 don't you do it?"

24 Q So you confirmed that he was okay?

25 A Yes.

1 Q And then what?

2 A We sat back behind our cover and waited for  
3 other officers to come relieve us.

4 Q How long did that take?

5 A I'd say a few minutes. I can't say for sure  
6 how long, but it was a couple minutes.

7 Q Seemed like a long time?

8 A Yeah.

9 Q How were the two of you dressed that night?  
10 Standard uniform?

11 A Yeah, badge. I had a pair of gloves on  
12 because it was cold.

13 Q Do you wear a jacket over your uniform?

14 A No.

15 Q So it was blue shirt, right?

16 A Yes.

17 Q Badge on one side, yellow insignias?

18 A Yes.

19 Q Do you wear a hat?

20 A No.

21 Q How about Officer Jenson?

22 A I don't believe he was wearing a jacket, and  
23 I don't remember him wearing a hat.

24 Q Okay. So there would be no mistake in the  
25 way you were attired that you were anything other than

1 Portland Police officers?

2 A There is absolutely no way he would not know.

3 Q Okay. So after people started arriving, who  
4 was the first person you had contact with?

5 A First Officer?

6 Q Yeah.

7 A Officer Kater and one other officer that I  
8 can't remember. I cannot remember who it was for the  
9 life of me came up and relieved me, and I went down the  
10 stairwell.

11 Q The stairwell near the elevator?

12 A Across from the elevator, yeah.

13 Q Right. Did you ever approach the door?

14 A No.

15 Q And you didn't see whether Mr. Ferguson had  
16 been shot or not?

17 A I had absolutely no idea.

18 Q Okay. And what happened when you got  
19 downstairs?

20 A I went downstairs, and Sergeant Dobson met me  
21 down there.

22 Q Okay. And he made inquiries as about what  
23 was going on?

24 A Yes.

25 Q And where did you go from there?

1           A     I told him -- I was like, "Kelly's on the  
2     south side of the hallway and needs to be relieved."  
3     And I told him that Mr. Ferguson had retreated back  
4     into his apartment and that's all I really knew at that  
5     point.

6           Q     Now, where did you go from there? Did you --

7           A     I sat in the police car and waited.

8           Q     Until everyone else arrived?

9           A     Yes.

10          Q     So you were not involved in the further  
11     investigation of the events that occurred?

12          A     No.

13          Q     When did you find out that he had been hit,  
14     he had been shot?

15          A     I don't -- I don't remember.

16          Q     Was it that night?

17          A     Yes. And I can't remember how I found out,  
18     but I didn't hear it over the radio, because I had  
19     taken my ear piece out, my radio ear piece.

20          Q     Did they take your gun from you at that  
21     point?

22          A     No, no.

23          Q     That came later?

24          A     Yes.

25          Q     That's standard; is that correct?

1           A     Yes.

2           Q     Have you ever been on one of these calls, an  
3 officer-involved shooting? Have you ever been part of  
4 the support team?

5           A     I was a witness on one when I was at North  
6 Precinct. One of my coaches got into a shooting. I  
7 was covering the back side of the apartment complex  
8 when that happened, so I didn't see very much.

9           Q     Okay. So what did this gun look like that  
10 Mr. Ferguson --

11          A     It was a black semi-automatic handgun.

12          Q     How long do you think you had a chance to  
13 look at it?

14          A     Oh, seconds.

15          Q     Okay. What's the environment like up there?  
16 I mean is there lights in the hallway? Was there light  
17 coming from the room?

18          A     The hallway is all lit up. You can see just  
19 fine.

20                 From what I can remember, the apartment  
21 looked dark. I didn't see any light coming out of  
22 there or anything like that.

23          Q     So you found out that night that he had been  
24 shot and killed?

25          A     Yes.

1           Q     Okay. And you were purposefully shooting  
2 into that area of the wall, right?

3           A     Yes.

4           Q     What was your thinking then?

5           A     I didn't want this guy to kill Kelly.

6           Q     Were you trying to keep him from coming out,  
7 or were you trying to hit him?

8           A     I thought he was going to shoot out of his  
9 apartment at Kelly. I just wanted to stop him.

10          Q     Have you ever had any training in scenarios  
11 like this?

12          A     Nothing exactly like this, but sort of the  
13 same thing.

14          Q     That's something you think that your training  
15 helped, or was it something that was just instinctive  
16 for you at this point?

17          A     Yeah, I mean the training -- all the training  
18 helps. Every little bit of it helps.

19          Q     Yeah.

20          A     I didn't -- it becomes instinct after you  
21 practice it for so long. I don't even remember  
22 reloading my gun. I found one of my magazines in my  
23 pocket an hour later. And it's the same pocket I  
24 always put it in when I train on the shooting range.  
25 It just comes habit.

1 JUROR: Officer, can I ask you about one  
2 little aspect of your training? Can you give us some  
3 detail about your training in a scenario like this?

4 A I mean, there is one that kind of reminds me  
5 of it. In one of the training scenarios that I have  
6 done, it's a guy sitting in a car, doesn't have ID,  
7 doesn't have proof of who he is. So when you take him  
8 out of the car -- when I took him out of the car, he  
9 pulled a gun and put it in my face. That was one of  
10 the scenarios during training.

11 This is kind of the same thing, because it's  
12 the same kind of an ambush; are you going to be able to  
13 see it coming?

14 Q I guess that is close quarters, how confined  
15 a space around you. Is there something that you recall  
16 anything like that?

17 A The hallway there?

18 Q Yeah.

19 A It was very narrow. I could probably do this  
20 and touch both sides of the hallway (indicating).

21 MR. LEINEWEBER: Anything else?  
22 Questions?

23 Anything else you want to add that we  
24 haven't asked about?

25 A No, nothing comes to mind.



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**KELLY JENSON,**

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. LEINEWEBER:

Q Can we have your name, please?

A Kelly Jenson, K-E-L-L-Y.

Q Last name?

A J-E-N-S-O-N.

Q And you are a Portland Police officer?

A I am.

Q How long have you been in law enforcement  
work?

A About four years, nine months.

Q All with Portland?

A Yes.

Q So your first job in law enforcement has been  
Portland. You have been there ever since?

A Yes.

Q What about -- let's see, how old are you?

A I'm 30.

Q What's your education background?

A I have a four-year Bachelor's Degree from  
Oregon State University in General Science. That's the

1     only college.

2           Q     Okay. Tell us about your -- how you became a  
3     police officer.

4           A     Okay. Well, I started -- my first career  
5     after college was retail management in the City of  
6     Portland. I had the opportunity there to interact with  
7     many police officers, who came and went from my store  
8     for official business.

9           Q     What stores were you working in?

10          A     I started at 39th and Belmont, Walgreens. I  
11     moved to another store, 82nd and Burnside, then 33rd  
12     and Killingsworth. So working at those stores for  
13     Walgreens I had the opportunity to interact with a  
14     number of police officers coming in and out of there  
15     for official reasons.

16                 And so I kind of made friends with one of the  
17     officers when I was working at 39th and Belmont. He  
18     kind of got me interested in police work as a career.  
19     He took me on a couple ride-alongs. I just kind of  
20     fell in love with it at that point, saw myself doing  
21     something like that for the rest of my career.

22          Q     Tell us about the process, how this happens  
23     you get into law enforcement?

24          A     The hiring-type process?

25          Q     Yeah.

1           A     Oh, my goodness, well, you apply on line.  
2     The Bureau offers an on-line application program. Then  
3     they determine whether or not you qualify to take a  
4     written exam.

5                 So I got, I think it was a letter in the mail  
6     saying I qualified for the written exam. So I showed  
7     up on the day and took the written exam. It's an  
8     all-day thing. It took six to eight hours to do it.  
9     It was up at the Expo Center, a bunch of people there,  
10    hundreds of people there taking the test.

11                So I took that test. I think I went -- I got  
12    a notice back a couple weeks later saying I had passed  
13    the written test and that I had fallen in a ranked  
14    number, fallen in a certain spot in the ranking of how  
15    many people were eligible to move on in the next step  
16    of the process. And that was in June of '05.

17                And I think I didn't get another call or hear  
18    from anybody until October, November of '05. It was  
19    saying they were ready for me to come in, start my  
20    background check; went in there then, met with the  
21    background investigator in the personnel division, got  
22    that background check started, filled out a statement  
23    of personal history listing all my educational  
24    background, professional background, friends, family,  
25    basically anybody who I've had contact with in my

1 entire life essentially is what it felt like. And so I  
2 filled that out.

3 And reference forms went out to all these  
4 people requiring them to give me a positive reference  
5 in order to get hired. And I think they require a  
6 minimum of ten people to choose. They have very  
7 specific rules about the people you can send it to. It  
8 can't be direct family members. It can't be coworkers,  
9 ex-coworkers. It basically has to be your friends or  
10 people that you have known for a certain specified  
11 period of time, people that would know you well enough  
12 to answer these questions about you.

13 So that goes out. It takes several weeks for  
14 all those forms to come in to the background  
15 investigator.

16 Once that's all compiled, they go through all  
17 the information and determine if you are ready to go on  
18 to the next step of the process or if you have passed  
19 that next portion to a level they see fit.

20 So I got the call from my background  
21 investigator to go in there and have a recorded  
22 interview with him about my statement of personal  
23 history, got that recorded, got through with that  
24 recorded interview and was basically told, "Well, now  
25 we just have to get your background check approved and

1       then we'll go to the next step in the process."

2               So I waited a couple weeks before hearing  
3       back saying that I had passed, they had approved my  
4       background check. But, unfortunately, the hire date  
5       that they had was only like two weeks away. So I had  
6       to get through my next two portions of the testing very  
7       quickly, which were the psychological exam and physical  
8       exam. So they scheduled those for me right away; got  
9       those taken right away, got the information back  
10       immediately I had passed those so I was able to show up  
11       on the date they hoped to hire me, which was March 17  
12       of '06. So they hired me that day, and I got sworn in  
13       that day. Such ended the process of being hired.

14           Q       Were you with a group of other people that  
15       were hired at that time?

16           A       Yes. There were, I think, eight of us that  
17       got hired on the same day.

18           Q       Not many from such a large pool?

19           A       Yeah, and seven of us had no prior police  
20       experience.

21           Q       Was Kizzar in that group?

22           A       He was.

23           Q       So you two have known each other a long time?

24           A       Yes.

25           Q       Did you go to the Academy together?

Jenson

1           A     Yes, we did.

2           Q     That's in Monmouth?

3           A     It was in Monmouth.

4           Q     How long is that?

5           A     At the time it was a ten-week long Academy in  
6 Monmouth.

7           Q     What sort of things do you go through down  
8 there?

9           A     Lots of things, lots of different classroom  
10 and practical exercise type training; everything from a  
11 law class, learning like letter of the law, to  
12 defensive tactics, mostly a physical class, firearms,  
13 extensive firearms training down there, how to safely  
14 handle firearms of various types. Down there they  
15 didn't give us a huge background on many different  
16 types of firearms, just a couple primary weapons we  
17 would be using.

18                   Other classes ranging from practical-type  
19 exercises, like knowing how to use a radar and lidar to  
20 track peoples' speed all the way to like  
21 psychological-type classes where they would explain to  
22 us the type of stresses that we would encounter while  
23 on this job and then also how those stresses would  
24 affect us at home as well. So all different types of  
25 training we got in that ten-week time.

1           Q     And then after that is completed, after that  
2     ten weeks, where does it go from there?

3           A     After that ten-week Academy --

4           Q     Let me back up. Do people wash out of that  
5     or generally not?

6           A     They can. Typically, since we have already  
7     been hired by our agency, the Portland Police Bureau  
8     has already hired us, we are already employed, you kind  
9     of -- you have to screw up to a point that you would be  
10    fired from your job. You know, let's say you weren't  
11    passing your classes, you weren't appropriate -- you  
12    weren't satisfactorily completing your courses, then,  
13    yes, that information would get back to your agency and  
14    your agency would come talk to you about it.  
15    Potentially they could fire you, yeah.

16          Q     So then you come back to the Bureau, Portland  
17    Police Bureau?

18          A     Uh-hum.

19          Q     And what happens then?

20          A     Those of us who had just completed the Basic  
21    Academy came back for I think it was about four weeks  
22    and we started working patrol on the street with a  
23    coach, a field training officer. And in that four-week  
24    period of time, we responded to calls, just like we do  
25    now, on an every-day basis, talking with people,

1 interacting with people, writing reports, just kind of  
2 the every-day routine police work that we do every day.

3 That period of time ended for us very  
4 quickly, because Portland Police Bureau also puts on  
5 its own Academy, and that Academy started not long  
6 after we finished the Basic Academy.

7 Q Where do they do that?

8 A Here in town. At the time it was conducted  
9 at Camp Withycombe in Clackamas. So we were all --

10 Q Is that basically the same thing you went  
11 through at the Academy?

12 A Yes and no. A lot of the training was very  
13 similar, but a lot of it -- I think what -- at least  
14 what I got out of the Basic Academy in Monmouth, since  
15 Oregon is kind of mainly a rural state with some  
16 fairly -- several smaller urban areas, a lot of the  
17 training there is geared towards officers who are  
18 primarily working by themselves in situations where  
19 they may not have another officer there to assist them  
20 for quite sometime or some distance. So a lot of that  
21 training down there was geared toward people who would  
22 be working alone most of the time.

23 When we came back up to Portland and started  
24 the Advanced Academy, a lot of that training is based  
25 on how the Portland Police Bureau's policies are



1 written, how they handle their defensive tactics, how  
2 they teach the law classes and the rules that you are  
3 to follow as a Portland police officer, not just as a  
4 Certified police officer in the State of Oregon. So  
5 it's specifically geared more toward being a Portland  
6 police officer.

7 Q All right. And that was how long?

8 A That at the time, I believe, was 16 or 17  
9 weeks.

10 Q Okay. So you are still with Officer Kizzar  
11 during all this time?

12 A Yeah.

13 Q All right. Then what happens?

14 A After the completion of the Advanced Academy,  
15 we go back out on patrol with a field training officer.  
16 We have a year-and-a-half from the date of hire -- we  
17 have an 18-month probationary period we have to  
18 complete at which time we are assigned to a field  
19 training officer. You go through five phases of  
20 training. Actually, it's six phases of training  
21 numbered zero through five. And phase zero through  
22 four you are riding with that field training officer  
23 every day; that training officer or another if that  
24 person happens to be sick or on vacation or something  
25 like that, but you are not sent out by yourself in

1 phases zero through four.

2 At completion of phase four, you are  
3 evaluated by your current coach. And you have had  
4 these evaluations going on daily throughout your entire  
5 probation period. But you are evaluated by your  
6 current coaching and members of the Training Division  
7 about whether or not you are ready to go out on solo  
8 patrol.

9 So at the completion -- after bumping from  
10 precinct to precinct, coach to coach, just as you are  
11 supposed to be. I got to the end of phase four while  
12 working downtown; actually, and was given the blessing  
13 to go out on solo patrol by myself for phase five.

14 Q Downtown?

15 A Yes.

16 Q How long did you do that?

17 A I was downtown on night shift from, gosh, it  
18 was probably about a month by myself before I moved on  
19 to the next precinct.

20 Q Is that East?

21 A No. I went to Southeast after that, still on  
22 probation at the time. I transferred to Southeast  
23 Precinct for solo patrol again there, still assigned to  
24 a coach who oversaw -- supervised me, I guess, I would  
25 say, read my reports, made sure I was doing everything.

1 JUROR: Can I ask a question? Maybe this  
2 is curiosity. How do you guys decide when to send out  
3 one or two officers in patrol? Just generally they are  
4 in bad areas so the supervisors know it's better to  
5 have double? A lot of times you see cops riding around  
6 by themselves. How do they decide all of that?

7 A For just normal patrol, day-to-day patrol,  
8 it's most likely a manpower thing. If they have got  
9 the manpower to staff two people in a car and these  
10 people want to work together, then they will ride  
11 together. It's safer for two people to ride together.  
12 You can get a lot more accomplished in a quicker amount  
13 of time and then move on to the next call. It's mainly  
14 a manpower issue, but there are certain assignments in  
15 the city, special certain details like Gang Detail or  
16 the Street Crimes Detail, a couple precincts have  
17 those, those primarily -- they do not -- they don't  
18 answer radio calls. They go out, they identify certain  
19 problems in the community. They ride partners  
20 together, as partners, to identify and deal with those  
21 particular problems. So they are not tied down to  
22 answering 911 calls.

23 BY MR. LEINEWEBER:

24 Q And you are currently assigned where?

25 A East Precinct.

1           Q     How long have you been there?

2           A     I've been there for over three years, since I  
3     came off probation.

4           Q     Okay. And has it been nights or second  
5     nights?

6           A     Yeah. It's all -- there is morning,  
7     afternoon and night now. I have been on night shift  
8     the whole time, 10:00 p.m. to 8:00 a.m.

9           Q     It's a different lifestyle?

10          A     It is.

11          Q     How is it on your home life?

12          A     It actually works well for my wife and I. I  
13     don't have any kids. We have a couple of dogs, but  
14     being able to be home with them -- I guess them being  
15     home with me in the daytime makes it easy so that we  
16     don't have somebody else come over and let them out.

17          Q     So you see your wife early evening?

18          A     Yeah. We have dinner together every day,  
19     whereas if I worked afternoon shift, we would never  
20     have dinner together because I would be at work. So it  
21     works well for us at home.

22          Q     Good. How long have you worked with Officer  
23     Kizzar?

24          A     I think we've been riding as partners almost  
25     every day since I want to, say, the spring or summer of

1 '08.

2 Q How does that happen?

3 A Well, at the time it started, which was in  
4 the wintertime a couple years ago, must have been  
5 winter -- 7 -- December of '07 through early '08, the  
6 current Commander at East Precinct had the novel idea  
7 that he wanted every -- or as many as possible cars on  
8 the street -- partner cars every day. And some people  
9 didn't like the idea because they ended up being  
10 partnered with people they didn't get along with, they  
11 didn't work well together. There just kinda ended up  
12 being conflicts.

13 That idea of that particular Commander  
14 partially faded away. However, some of us who at the  
15 time were partnered up asked occasionally if we could  
16 partner up again, just because we wanted to  
17 basically -- you could get a lot more done that way.  
18 It's safer. And Officer Kizzar and I were a couple of  
19 those people. And ever since about the summer of '08  
20 we have ridden together almost every day just for that  
21 reason. We get along great. We work well together,  
22 and it kind of makes the job a little more interesting  
23 to have somebody to bounce ideas off of.

24 Q How do you like your district?

25 A I like it a lot. I have been assigned to the

1 same district almost since I came off probation.

2 Q What is it about it? It's kind of an  
3 interesting area?

4 A Yeah. It's fairly large. I don't know. I  
5 just kind of -- I like the people I deal with. It's --  
6 it's kind of a good mix of -- what's the word I'm  
7 looking for? It's a good racial mix. It's a good --

8 JUROR: Diversity?

9 A Yeah, good diversity there. There is people  
10 from very poor living on the street to the very  
11 comfortable living in decent, nice neighborhood houses.  
12 So you get to deal with all types of people in this  
13 district. I think that's probably what drew me to it  
14 the most. You get people from all walks of life in  
15 this particular district.

16 A couple of the main streets traveling  
17 through the metro area run right through the district.  
18 So you get a lot of people.

19 Q What kind of situations do you run into on  
20 that late night shift? There is not a lot of shoplifts  
21 because not a lot of stores open?

22 A Lots of fights involving intoxicated people.  
23 I have a couple of bars in my district, and people get  
24 into fights at bars. Sometimes they erupt into more  
25 violent and dangerous situations like shootings,

1     stabblings, things like that. So that's one of the  
2     problems we get from, you know, on a weekly -- daily,  
3     weekly basis.

4             A large portion of my district is residential  
5     area, particularly east of 122nd. A lot of that area  
6     you get a lot of domestic violence calls, a lot of  
7     family arguments and calls of that nature that you have  
8     to go and try and settle down.

9             Particularly what draws me to night shift and  
10    my district is the self-initiated type activity that  
11    you can do. So you can make stops on people,  
12    suspicious people. You can take drugs off the street.  
13    You can take guns off the street, the type of work that  
14    doesn't necessarily always make the news, but it's the  
15    kind of work that you actually make a little bit of  
16    difference.

17            And having this district without an extremely  
18    heavy call load gives us time to do that kind of work,  
19    the kind of work we actually want to go out there and  
20    do.

21            Q     So not just being in that precinct three  
22    years, you have been in that same district the entire  
23    time?

24            A     Almost the entire time.

25            Q     You and Officer Kizzar obviously share the

1 same sort of mentality about how to approach things?

2 A Yes.

3 Q Tell us about -- tell us about this day the  
4 shooting occurred. What was your day like?

5 A I don't know that I can remember a lot of  
6 details. It was a Thursday night -- Friday morning. I  
7 don't remember it was slightly busier than it had been  
8 the previous couple nights for the time of year it is.  
9 It tends to slow down this time of year.

10 Q Did you have anything going on with your life  
11 at that time?

12 A No.

13 Q You were sleeping well, eating well, felt  
14 healthy?

15 A Sleeping well, eating well, getting along  
16 with my wife, no obvious problems, staying in shape.  
17 So everything was going just fine.

18 Q So you get to work about what time?

19 A I get to work about 9:30 p.m.

20 Q And tell us what happens routinely and what  
21 you did this night?

22 A I show up at work, toss my lunch box in the  
23 fridge of the lunch room of the precinct, and I go in  
24 the locker room and start changing my clothes. I show  
25 up to work in street clothes. I have a locker there,



1 and I change my street clothes into my uniform in the  
2 locker room, chit chat with other officers who are  
3 there doing the exact same thing; changing, getting  
4 ready for work, spend that time kind of getting in the  
5 right mind set to go to work, obviously a unique job  
6 that we have. So you kind of have to think about what  
7 you are going to be doing that day, how you may or may  
8 not be in danger, how you may or may not want to handle  
9 your shift. Every day is something different. You  
10 never know what you are going to encounter.

11 So I get to work, change, put on my uniform,  
12 take my bag -- I have a duty bag -- upstairs. I carry  
13 it downstairs to the garage where all the police cars  
14 are parked, throw the bag downstairs and then head off  
15 into roll call. Roll call starts at ten o'clock.  
16 That's what time we have to be there. And we had just  
17 gone through the -- whatever information is in the --  
18 I'll call it the "call box", information that other  
19 officers or sergeants or other units within the Bureau  
20 or our agency around the area feel it important for us  
21 to know about particular -- any information about  
22 probable causes that exist for somebody to be arrested  
23 or this particular person has a warrant out, there have  
24 been threats made against this group of people for some  
25 reason or another, just general information that it's

1       beneficial for all of us to know.

2               Then they give us our assignments, which  
3       district we're all working. And obviously this night  
4       was the same as any other night for me and Officer  
5       Kizzar. We always work the same district.

6               So once we get those assignments, we are sent  
7       out and start taking calls and start making stops and  
8       just start doing our job.

9               Q     Were you familiar with the Ventura  
10       Apartments?

11              A     Yes.

12              Q     You have been there before?

13              A     Yes, several times.

14              Q     Is that a problem -- that place more  
15       problematic than others or just something you are aware  
16       of?

17              A     It has been in the past, so much so to the  
18       point where our Neighborhood Response Team has deemed  
19       it a property that requires an extra mask to be filled  
20       out on our computer screen after we visit there called  
21       enhanced safety property, something like that. I can't  
22       remember the term they have given it.

23               What this does is when you fill this mask out  
24       after every call on this property, that information  
25       goes back to the Neighborhood Response Team, which is a

1 precinct group of people. They are able to see what  
2 the call was about, what the result was, who you spoke  
3 with, if a report was written; then they can take that  
4 information, give it to the manager of the apartment  
5 and then the manager of the property can then deal with  
6 the problem themselves. We'll give this person a  
7 warning, we'll need to stop having police activity  
8 here, this type of activity needs to stop; you risk  
9 being evicted. The property manager can solve the  
10 problem before the police have to solve the problem for  
11 them.

12 So we have been there on previous occasions  
13 for various reasons.

14 Q Were you familiar with any of the tenants  
15 there or management?

16 A I had spoken with several people, but not on  
17 so many occasions that I knew them by name, no.

18 Q Okay. So how many times did you go there  
19 that night?

20 A That night we went there twice.

21 Q Tell us about the first one and when that was  
22 and what was the nature of that?

23 A Okay. The first call was a Priority 3, which  
24 means that this call can hold for an officer to pick it  
25 up. It can hold for up to 30 minutes. So there is no

1     imminent risk going on. It's not a crime-in-progress  
2     kind of deal.

3             This particular call came out as a priority  
4     threats call. The text on our computer screen told us  
5     that the caller, complainant, wanted to call and make a  
6     report that his neighbor upstairs was threatening him  
7     with physical violence and that this -- these threats  
8     started earlier in the evening when he was out walking  
9     door to door passing out candy. That's what the text  
10    of the call told us.

11            Q     Do you recall what time that was?

12            A     Sometime early -- I think we went there  
13     sometime early in the three o'clock hour, but I think  
14     the call came out approximately 30 minutes before that.

15            Q     So did you respond to that right away?

16            A     Yes. Well, Priority 3 call. It had been a  
17     somewhat steady night in terms of call load, so it held  
18     for almost 30 minutes before we went to pick it up. So  
19     that is within the allowable amount of time.

20            Q     Tell us about that.

21            A     Okay. We pulled up on the street knowing  
22     only the information that was given to us in the text  
23     of the call on our computer.

24            Q     As we pulled into the parking lot of the gas  
25     station that's right next to the apartment complex, we

1     were going to park there and walk over. A gentleman  
2     was coming out of the gas station and was waving at us,  
3     flagging us down. I assumed that this had been the  
4     gentleman who had called us there to report the  
5     threats.

6             I got out of my car. He said, "Hold on just  
7     a minute." He was buying some food or drink inside the  
8     store. He had to go grab it, come back out.

9             So he came back outside and told us very  
10    little information upon contacting him. We asked, you  
11    know, "What can we do for you?" He said he wanted to  
12    report threats by his neighbor -- threats of physical  
13    violence by his neighbor. He told us which apartment  
14    this gentleman lived in and wanted us to go up there  
15    and talk to this guy, which at the time we were more  
16    than happy to do. However, we wanted to get a little  
17    more background information on what this dispute was  
18    about between these two guys so we could adequately  
19    solve the problem. Just going up there and only  
20    getting one side of the story without first getting the  
21    complainant's side of the story wouldn't do us any  
22    good.

23            So we tried to delve a little deeper, ask  
24    more questions of this gentleman about what their  
25    dispute was about. He was very vague, would not give

1 us details about what the dispute was about.

2 I tried explaining to him, "We're not able to  
3 really solve your problem without more details, more  
4 information." My partner, Officer Kizzar, began to  
5 have a conversation with him and brought up the  
6 question of, "So this started while you were out  
7 handing out candy earlier tonight. Tell us about  
8 that." And immediately upon Officer Kizzar bringing  
9 that topic up to this gentleman, he got very defensive,  
10 claimed that he had just recorded Officer Kizzar saying  
11 that and asked him to please say it again. And Officer  
12 Kizzar and I just kind of looked at each other, looked  
13 back at this gentleman. "We can show you this is what  
14 we were told coming to this call that this is how these  
15 threats started." He got very defensive, started  
16 backing away from us and started walking away from us,  
17 basically ending our contact with him.

18 He walked away back toward the front door of  
19 the apartment complex, like he was going to go home.

20 Q How was he identified as?

21 A Mr. Ferguson. Ranting and raving the whole  
22 way back. I don't recall even what he said.

23 Q Did you know him prior to this time?

24 A No, I do not believe I have ever met him.

25 Q Okay.

1           A     Walking away back to the complex, and then I  
2     remember us calling to him that, you know, "We want to  
3     solve your problems, but we need more details before we  
4     can solve your problems." He was yelling at us as he  
5     was walking away saying he would just go take care of  
6     it himself, and he walked into the apartment complex.

7           At that point, another officer on the other  
8     side of the precinct had run into a deal where somebody  
9     had run away from him, and he needed assistance setting  
10    up a perimeter and containment and needed somebody with  
11    a K9 to help him track this gentleman who had run away  
12    from him. At the time Officer Kizzar and I didn't see  
13    the need to immediately go up and recontact  
14    Mr. Ferguson or contact the other half of this at the  
15    time. It was something that was set up as a Priority  
16    3. We didn't see any immediate risk to either party.  
17    Both were going to be in their own respective  
18    apartments, from the information we had and were given.  
19    So we thought if we needed to we could come back later,  
20    deal with it later, call them later.

21           So we went off -- Mr. Ferguson obviously  
22    didn't want to talk to us anymore. We went off to  
23    assist the other officer on this call. That ended our  
24    first stop at this address.

25           Q     And there was stop two?

1           A     There was.

2           Q     How much later was that?

3           A     It was under an hour. I don't remember the  
4 exact time.

5           Q     Tell us about that, how you got that call and  
6 what did you do?

7           A     Okay. As we were finishing assisting the  
8 other officer on the K9 track, we heard another call  
9 come out at the same address we had already been at up  
10 there on Burnside. And at the time the call came out,  
11 I just heard the address and heard there were threats  
12 going on, but I didn't hear the exact details of what  
13 was being said on the radio. But I knew it had to do  
14 with what we were there for to begin with.

15                   We were attached to a different call, and  
16 they were going to send another officer. When we heard  
17 that, I got on the radio and told the dispatcher, "Keep  
18 that other officer clear. We are done here, and we'll  
19 go up and try to solve the problem since we were there  
20 once already." That officer got cleared. He didn't  
21 go.

22                   So Officer Kizzar and I headed back up there  
23 again. We went back up there again. This time on the  
24 way there -- oh, when I got in the car, this time it  
25 turns out it was the other half of the threat,



1 Mr. Crosby, who was calling it in, saying he was now  
2 being threatened by Mr. Ferguson; unwanted phone calls,  
3 threats of physical violence, unwanted knocking at the  
4 door.

5 So I called Mr. Crosby on the phone while we  
6 were on our way back to 122nd and Burnside and asked  
7 him to please explain the situation to us, the nature  
8 of the threats and what was going on.

9 Mr. Crosby was on the phone very courteous,  
10 very calm, didn't seem like he was in any type of  
11 immediate fear, hadn't been -- really he hadn't been  
12 menaced, other than verbally threatened, threatened in  
13 no other way on this particular night.

14 Q Did he mention a gun?

15 A On the phone to me, no. In the text of the  
16 call that I read while we were on our way there,  
17 apparently Mr. Crosby had told our dispatcher or our  
18 call taker on the phone that about a week earlier  
19 Mr. Ferguson -- apparently this beef between them was  
20 going on the week before also. We didn't know about it  
21 at the time. Apparently Mr. Ferguson had displayed  
22 what Mr. Crosby believed was a handgun to him in the  
23 elevator of that address about a week before and said  
24 something to him -- said something to him to the effect  
25 of, "You better leave my friends alone," something like

1     that. The gun was never pointed. It was just  
2     displayed almost like to show Mr. Crosby, "Look what  
3     I've got. You better leave me alone."

4             But Mr. Crosby, just like Mr. Ferguson,  
5     talking with him on the phone, wouldn't give me  
6     detailed information about what their dispute was  
7     about.

8             I told Mr. Crosby on the phone, I said, "I'm  
9     happy to help solve your problem. I'm going to need  
10    some more detailed information from you. Mr. Ferguson,  
11    we already spoke with him." I told Mr. Crosby we had  
12    already spoken with him; he wouldn't divulge what this  
13    dispute was about. "Are you able to help me out?" The  
14    only thing he would tell me is that he was upset  
15    because Mr. Ferguson was accusing Mr. Crosby of being a  
16    child molester. Those are the words he used. But he  
17    wouldn't -- when I asked him why is he accusing you of  
18    being a child molester, how did this all start? He  
19    wouldn't tell me.

20            So I told Mr. Crosby on the phone, I said  
21    "Okay. Do me a favor. Don't call him. He claims that  
22    you are calling him. Don't knock on the door. Just  
23    avoid all contact with Mr. Ferguson altogether. Maybe  
24    that will help to solve the problem." Mr. Crosby told  
25    me on the phone, "Okay. I'll try that. Maybe that

1 will help."

2 Before hanging up, we told him, we're going  
3 to go up, knock on Mr. Ferguson's door and we're going  
4 to courteously ask him the same things we asked him;  
5 don't talk, don't knock on the door, and maybe this  
6 whole thing will pass over. We had no probable cause  
7 to arrest anybody for a crime. So that was our plan.

8 Officer Kizzar and I discussed briefly after  
9 I hung up the phone that we're just going to go up and  
10 talk to Mr. Ferguson; go up and knock on Mr. Ferguson's  
11 door and ask him to please leave his neighbor alone.

12 "I don't know why you are not divulging more  
13 information about this, about these disputes" -- and  
14 they don't have to -- "but at this point, the only  
15 thing we can do is ask each party to go their separate  
16 ways." No crimes had been committed yet.

17 So I parked the car. Officer Kizzar was  
18 driving. We parked the car in the same spot we had  
19 parked it before, right between the complex and the  
20 Mini-Mart and in the driveway there. We went up and  
21 entered the apartment complex.

22 It's a locked door to the apartment complex  
23 for security reasons, but we have the code. As I say,  
24 we had been there on other occasions, and we had the  
25 code just to get in for speed sake without having to

1 call anybody. So we punched in the code, walked up to  
2 the second floor where Mr. Ferguson lives, 201.

3 We walked up the stairs, go stand at the  
4 door. There was a Christmas wreath hanging on the door  
5 and a peephole right under the Christmas wreath,  
6 partially but definitely not totally obscuring the  
7 peephole.

8 Officer Kizzar stood off to the right side of  
9 the door. I stood to the left side of the door, and I  
10 knocked on the door.

11 Q With your knuckle?

12 A With my knuckle, left hand -- yeah, with my  
13 left hand; knocked on the door three or four times,  
14 just enough to catch Mr. Ferguson's attention.

15 Q So you are knocking with your left?

16 A The doorknob is on the other side from where  
17 I'm standing, so it opened the door that way. I'm  
18 standing off to the side of the door like this in a  
19 spot where somebody looking out the peephole could see  
20 me standing here. So I reached up, knocked on the door  
21 a couple times. And I hear -- I hear what sounds like  
22 a person approaching and like rubbing up against the  
23 door, like they are looking through the peephole. I  
24 hear a male voice, who I assumed at the time was  
25 Mr. Ferguson, I hear the male voice with a short

1 chuckle on the other side of the door, very audible  
2 from our side of the door. Then I hear the same sound  
3 of somebody like brushing up against the door like they  
4 are now moving away from the peephole.

5 About two seconds, three seconds later the  
6 door starts to slowly open. I had my flashlight in my  
7 left hand, as I always do. I like to -- it's  
8 nighttime. A lot of people have their lights off. If  
9 such is the case, I like to see who I am looking at.  
10 So I went to illuminate whoever is opening the door.

11 I'm looking down at the ground where the  
12 person may be standing as the door would open. Just as  
13 I'm reaching to turn my light on, I glance up, seeing  
14 the waist of the person standing there wearing the same  
15 clothes Mr. Ferguson had been wearing. So I assumed in  
16 that instant it's Mr. Ferguson again.

17 As I continued to look up, the door opens a  
18 third of the way open, just wide enough to fit a full  
19 human body in the full open space of the door. Just as  
20 I look up to his eye level, I see in his right hand a  
21 black handgun come out, come down like this, pointed  
22 right at my forehead, no greater than ten inches away  
23 from my face, finger on the trigger.

24 JUROR: Left hand or right hand?

25 A Right hand.

1 JUROR: So he is still inside the  
2 apartment?

3 A He is.

4 Q So the arm comes out where you see the gun?

5 A His body is still inside the threshold of the  
6 apartment. His hand breaks the plane with the gun  
7 sticking out in the hallway.

8 BY MR. LEINEWEBER:

9 Q You are closer to the wall the door is on?

10 A I'm probably standing about a 90-degree  
11 angle. My head -- my chest would be facing that way.  
12 My shoulder's facing out this way as the door opens in  
13 like that.

14 Q Where is he pointing it at that time?

15 A Where was he pointing it at? He was pointing  
16 it right at my forehead.

17 Q What did it look like?

18 A It looked like a black semi-auto handgun,  
19 medium-size handgun.

20 Q How far was the gun from your forehead?

21 A I think about ten inches. I remember  
22 thinking it was so close I couldn't focus on the end of  
23 the barrel.

24 Q What did you do?

25 A I did the first thing -- said the first thing

1     that came to my mind; only took an instant for my brain  
2     to recognize what it was, so I immediately kind of  
3     ducked my head to the left and spun my body away closer  
4     to the wall.

5             As I spin to the left, I said the first thing  
6     that came to my mind, which was "Oh, shit." As I said  
7     that, as I turned around with my back turned to the  
8     door, I yelled out loud, "Drop the gun," loud enough  
9     that anybody in the hallway could hear it. I yelled,  
10    "Drop the gun," and continued spinning around, my mind  
11    racing at that point. You know, things were happening  
12    so incredibly fast, trying to decide what to do in this  
13    instant. For the briefest of seconds thought, "I've  
14    got an open hallway this way. I can run, find cover  
15    down the hallway." As I'm thinking that, I'm also  
16    thinking my partner is standing out in the hallway.  
17    What if this guy turns the gun on my partner? What if  
18    I need to defend him from this risk, this danger also?

19            So I turn my head around, whip my head  
20    around. By the time my head whips around -- I make a  
21    full 360-degree turn. By the time my head whips  
22    around, my partner comes into view. He has his gun out  
23    pointed at Mr. Ferguson.

24           Q     Is he in the apartment or out in the hall?

25           A     My partner?

1           Q     Ferguson.

2           A     He's still inside the threshold, but the gun  
3     is out. So I see my partner with his gun out, pointed.  
4     As I complete my turn around, I hear him start firing  
5     at Mr. Ferguson through the open door.

6                 As I finish my turn, I also draw my gun in  
7     that one movement. I draw my gun, and I see  
8     Mr. Ferguson still standing there with no obvious  
9     evidence that he has dropped the gun. At this point,  
10    his body has turned so that I am now looking at his  
11    left shoulder, the left side of his body. His right  
12    hand, where the gun had been, is now concealed inside  
13    the apartment. It was dark inside his apartment.  
14    There was no light in there whatsoever the entire time.

15                So now I'm seeing the left side of his body  
16    with no evidence that he has dropped the gun on the  
17    ground. So the last place I knew he had it was in his  
18    right hand. So I'm going on the knowledge that he has  
19    still got it in his right hand and he could still turn  
20    this gun on us and fire any time he wants to.

21                So I complete drawing my gun, and I fire a  
22    couple rounds with a clear view of him through the open  
23    door, fire a couple rounds at him through the open  
24    door.

25           Q     Do you think you hit him?



1           A     At the time I didn't know. Now, knowing the  
2 outcome, yes, I did hit him. But at the time I didn't  
3 know.

4           Q     Okay. How much time are we talking about  
5 here, seconds?

6           A     From the time the door opened to the time I  
7 fired? Yeah, seconds, two, three seconds at the most.  
8 It was very fast.

9                     JUROR: You never received any training  
10 that says if somebody pulls a gun at your head you are  
11 not to defend yourself, right?

12          A     I'm sorry. Say that again?

13                    JUROR: You never received any training  
14 telling you if somebody points a gun at your head, you  
15 are not to defend yourself?

16          A     No, that's the reason that -- I know I can't  
17 speak for my partner. I know that's the reason I acted  
18 like I did. We were presented with a deadly force  
19 situation, a person pointing a gun at me, you know.  
20 Our training dictates that the appropriate response is  
21 deadly force. So we jumped right to that appropriate  
22 response, at least I did. I can't speak for him, but I  
23 jumped right to that appropriate response in a matter  
24 of a couple seconds. It was very fast, very short  
25 amount of time.

1 BY MR. LEINEWEBER:

2 Q Did you see him go to the ground?

3 A I didn't, no. I didn't.

4 Q So you fired several times?

5 A Uh-hum.

6 Q And you heard multiple shots from your  
7 partner, Officer Kizzar?

8 A Yes.

9 Q And then it was quiet?

10 A Yes. The door that I had been shooting into,  
11 it was one of those doors that will swing shut if you  
12 let go of it. It's spring loaded. However, it had  
13 been held open by Mr. Ferguson; we never touched his  
14 door. He was either holding it open with an elbow, a  
15 foot, an arm or something. It was being held open.  
16 After I fired three or four rounds in, the door somehow  
17 was released and closed, and he was inside the  
18 apartment. We were out in the hallway. So our  
19 immediate access to him was cut off.

20 Q What happened after that?

21 A The instant the door closed, we both stopped  
22 firing because we no longer had a clear view of him.  
23 Thinking back, it was a long time, but it was probably  
24 only an instant. I realized we were standing out in  
25 this long hallway out in the middle in front of this

1 door where it could pop open any minute and he could  
2 start taking shots at us.

3           So I called to Officer Kizzar, who was only  
4 three, four feet away from me. I said, "Get cover."  
5 So he went down the hallway to the north to the  
6 stairwell we had walked up, which was right there. He  
7 got cover in the stairwell and I rather than cross in  
8 front of this door, which was a threat, I went back  
9 down the hall the other direction. I was forced to go  
10 about halfway down this hallway to the south until  
11 there was a fire door in the middle of the hall, an  
12 open fire door with a door frame, and I hid behind part  
13 of the door frame in this hallway.

14           It was at that point -- well, Officer Kizzar  
15 from where he was had a very clear view of the door  
16 that had just shut in our face. So he watched -- while  
17 I was still backing up down the hallway getting cover,  
18 he called out on the radio that we needed more cars  
19 there and we had just fired shots.

20           Since he was in a better position to see the  
21 door, see the threat, he watched the door and covered  
22 the threat while I took over the responsibility of  
23 guiding people in on the radio, telling them safe route  
24 in, how to get there, how to get into the building, all  
25 that vital information they would need to know to come

1       help us.

2           Q       Was this a first --

3           A       No.

4           Q       -- you ever fire shots on duty before?

5           A       No. This was the first time.

6           Q       So after cover came, you guys went back down  
7       to the parking lot?

8           A       Yes.

9           Q       Met your sergeant?

10          A       Officer Kizzar was relieved before I was,  
11       because they had easiest access up the stairwell to  
12       him. So he was taken away immediately upon our first  
13       cover cars getting there.

14                 I was kind of stuck in that bad spot in the  
15       middle of the hall. The whole time we were both there,  
16       opposite ends of the hall where either of us needed to  
17       fire again. God forbid, we would have been in a  
18       position where we were pointing our guns at each other,  
19       which was a bad spot to be. I was anxious to get  
20       somebody down the end of the hall to get me out of  
21       there.

22                 He was pulled away first and cover stood in  
23       his spot; watched the door while they set up a tactical  
24       plan. Everybody else was taking part in this tactical  
25       plan with our assistance at first, because we were the

1 first ones there. Then a couple seconds later, the  
2 officer came up the hallway behind me and pulled me  
3 back down the hallway. They did not take up my  
4 position due to the cross-fire issues. They stayed in  
5 the stairwell end of the hall to prevent escape.

6 I was pulled downstairs the south end of the  
7 building, met briefly with the sergeant at the bottom  
8 of the stairs. This particular sergeant checked  
9 briefly, made sure I was okay. I didn't fill him in on  
10 a lot of details. He sent me outside to the sergeant I  
11 think was in charge of the scene at that time. At the  
12 time I met this particular sergeant at the front door.

13 Q Dobson?

14 A Dobson, yes. I filled him in on the details  
15 of our encounter with Mr. Ferguson, what we knew at  
16 that time, that he was still on the other side of the  
17 closed door, still had the gun in there with him, to  
18 the best of our knowledge; didn't know his condition at  
19 all. So I filled him in on that information, and they  
20 made up their plan and dealt with the situation as they  
21 saw fit after that. We were pulled away and had no  
22 more direct involvement in the incident.

23 Q Now, this is a rather unusual situation for  
24 you coming in and talking about an incident where --  
25 you have testified at Grand Jury before?

1           A     Yes.

2           Q     Arrests, things like that?

3           A     Yes.

4           Q     You understand you are here voluntarily?

5           A     Yes.

6           Q     You didn't have to come in and make a  
7 statement if you didn't want to, but this is what you  
8 chose to do?

9           A     Yes.

10                   MR. LEINEWEBER: Any questions?

11                   JUROR: Do you feel in your own mind, as  
12 you look back over this, from start to finish, that  
13 with your training and as you guys call SOP, that  
14 everything was followed pretty accurately.

15           A     Thinking back on it, yes. There are any  
16 number of different ways to handle any particular call,  
17 depending on the circumstances of that call. Not  
18 knowing the outcome, I'd have done the same thing, done  
19 the call the exact same way over again. That's one of  
20 the things I asked myself since it happened. Not  
21 knowing the outcome, I would have handled it the exact  
22 same way.

23                   JUROR: That is what I'm after.

24                   MR. LEINEWEBER: All right. I think  
25 we're all done. Anything else you want to tell us

1       about that we didn't talk about?

2           A     I don't think so.

3                       (Proceedings concluded.)

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

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4

5                     I, Estelle T. Keating, Official Court  
6     Reporter of the Circuit Court of the State of  
7     Oregon, Eleventh Judicial District, certify that I  
8     reported in stenotype the foregoing proceedings in  
9     the above-entitled case.

10                    I further certify that my stenotype  
11     notes were reduced to transcript form by  
12     Computer-Aided Transcription under my direction.

13                    And I further certify that transcript  
14     date 12/3/10 contains record of my stenotype notes.

15                    Dated this 3rd day of January, 2011,  
16     at Portland, Oregon.

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Estelle T. Keating



