IN THE MATTER OF THE INVESTIGATION OF THE DEATH OF KEATON OTIS, Deceased.	MULTNOMAH COUNTY DISTRICT ATTORNEY'S OFFICE NO. 2194042-1 COURT ADMINISTRATIVE

VOLUME 1

GRAND JURY NO. 2 PROCEEDINGS

The Grand Jury No. 2 hearings conducted on Friday, May 21st, 2010, were transcribed by Official Court Reporter.

APPEARANCES:

Conducting the examination: Deputy District Attorney Mr. Don Rees and Mr. Glen Banfield.

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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MAY 21, 2010; 8:10 A.M.

CHRISTOPHER BURLEY,

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

EXAMINATION

BY MR. REES:

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

A My name is Christopher Burley. C-H-R-I-S-T-O-P-H-E-R, B-U-R-L-E-Y.

Q What's your current employer?

A I am employed by the Portland Police Bureau as a Portland Police officer.

Q All right. By way of background, where did you grow up?

A I grew up in Boise, Idaho, and -- I was born there in 1979.

Q Did you attend high school there?

A Attended elementary, high school, graduated from a high school in Boise.

Q Then what brought you to the Portland area?

A I attended the University of Portland and started off as an Engineering major at the University of Portland.

And then, one of the major components of the University of Portland is service. It's one of the facets to Portland student life there. I had the opportunity to participate in several volunteer activities while I was there and came to find that I enjoyed working with the community, working with youth and switched my major from Engineering to Education and then switched from planning on being at the University of Portland for four years to five years upon switching that; graduated with a degree in Education with an emphasis on mathematics.

Upon graduating from the University of Portland, was asked if I would be interested in teaching in a suburb Northern suburb of Chicago, Niles, Illinois. So I taught high school for three years in Niles, Illinois, high school Physics. And while teaching Physics, I started a lacrosse program out there and curated the Irish Club and then took some kids to Ireland. That was one of the last things I did when I was there. We took a group of about 12 students to Ireland.

Q That was Notre Dame High School?

A Notre Dame High School for Boys, run by the same congregation of priests that runs the University of Portland and runs the University of Notre Dame in Southbend, Indiana.

Q Three years teaching Physics there and coaching lacrosse. How -- how then did you go from career path to becoming a police officer?

A When I was in middle school and high school I thought about being a police officer and I got on several ride alongs, thought it was a fun career. And I knew that I wanted to move back to the northwest. I like a lot about the northwest. I like the surf. I like to hike. I like to camp, and I wanted also to be closer to my family. And I mean, I had grown up here my whole life. I was used to the pace of life in the northwest in comparison to the midwest. And so I made the decision probably, oh, early on in my third year of teaching that I wanted to move back here.

So I made the decision that I would take the GRE and apply to -- for graduate school to go into counseling and then at the same time I would also apply to the Portland Police Bureau and the GRE and started applying to graduate schools most -- and then I -- everything with the Portland Police Bureau, the process is kind of a long process, but everything seemed to keep on flowing along really well, and everything seemed to just line up just perfectly so that I -- my contract with the school that I was teaching at, it ended right as my -- I got sworn in pretty much here at the Portland Police Bureau.

Q You mentioned the GRE?

A Yeah.

Q That's the --

A Graduate -- it's an exam for -- to go into Graduate school, yeah. I can't remember what the acronym.

JUROR: Graduate Record Exam.

Q Graduate Record Exam?

A Yeah.

Q So you had actually gone through that process, but nonetheless decided to choose the Portland Police Bureau?

A Yeah.

Q All right. And once you came to Portland and began your police training, what kinds of things did you do with the Police Bureau?

A So I went through the Oregon's Basic Academy, which any law enforcement officer that doesn't have prior law enforcement experience goes through. And then after the Basic Academy went through the Portland Police Bureau's Advanced Academy, which is an additional training that Portland Police officers receive after the Basic Academy.

And then for a year-and-a-half after being sworn in, you are on probation. And when you are not in

Academy, you are not in training, you are riding around for the majority of that time with a training officer. And after I -- my last rotation for -- while I was riding around with a field training officer was at East Precinct, which is over on the east side of Portland, goes all the way out to the Gresham border, and worked night shift. And during that time had the opportunity -- after I was done riding with my field training officer -- to work with gang members, gangs and had the fortune with one of the sergeants on the shift Sergeant Golliday, who had been on the Gang Enforcement Team some years back, and he was able to kind of tell me what -- what they had done and given me some coaching and some advice on how to work with gang members at that time.

And so while I was working Patrol, I had the opportunity to work with some gang members in the southern part of East Precinct and found a real interest in that, as my perspective was that a lot of these gang members that I was contacting were youth that for whatever reason had kind of taken a side track that wasn't to the benefit of their future, and just --

Actually, I was -- uhm, a couple nights ago I was able to get my Nextel back, my work cell phone. I had left it in my locker after all this had happened -- got it back and there were tons of messages on it from

people offering support. And --

JUROR: It's all right. Okay.

A There was a message from a -- one of the kids that I worked with out at -- out at East -- thanks. Probably, I don't know, I haven't talked to him in about a year-and-a-half, but he called and wanted to make sure I was all right. This was a kid that when I first met him, he was doing car prowls and vandalizing stuff. His family was having a lot of problems with him. I tried to help him out, get him back into school. I think that I even ended up early on having to charge him with several crimes possibly just because of what he had been doing.

And so anyways, I just -- I -- I got an interest in working with gang members and realizing that while gang members are -- they will get involved in criminal activity, there is a bigger picture besides criminal activity. And there is -- there is a personality -- there is a person that goes along with that -- that gang member, and there is a reason a lot of times why that person is acting out, acting the way they are. That's all it took with this kid was to one day ask him why do we keep on coming into contact with one another? What is going on? That opened it up.

Q You were pleasantly surprised then to get a message --

A Yeah.

Q -- from this young man who had been on the wrong side of the law, and he called you --

A Yeah.

Q -- to see how you were doing?

A Yeah, and wanted to make sure I was all right. I'm going to try to meet up with him next week and stuff. So that was -- that was really powerful for me to know that. And that experience with this young man, when HEAT was announced --

Q I'm sorry. HEAT is what?

A Acronym for Hot Spot Enforcement Action Team. And the idea behind HEAT is that it's a group of officers that would go out and create high presence, high volume person contacts in areas of high crime.

And there is Sergeant Stewart, who works for the Police Bureau, has compiled criminal statistics for different portions of the city -- well, actually for the whole city, but it shows on this map where there is high levels of crime. And the shades of colors tells how much crime there are in a specific area. And the more red that covers an area, the more crime there is, or the darker the color red, the more crime there is in that area.

So oftentimes what we'll end up doing as HEAT is

we're assigned to work in those areas, whether it be the area around Holladay Park, 122nd and Burnside or 162nd and Burnside, any area that's got a -- more crime going on in that area or parts of the City, the Chief's office tasks us with working in that area.

And as HEAT has kind of evolved from its creation about two years ago, our major focus has been on working with criminal acts that involve gangs and gang members. And during that time, we've been able to effectively take close to 130 guns off the streets, and we've been able to connect -- one of the -- that's a really important aspect of what we do is getting guns off the street because we know if a gun is off the street, then it's not going to be able to hurt somebody else out there. These young people that are carrying the guns aren't going to be able to get themselves in trouble with that gun, not be able to hurt somebody with that gun. So that's a real -- I mean, that's a quick way that -- tangible way that we're able to make change in the community and make it safer for some of these young people.

One of the other things though that we do, too, is we do referrals for some of these young people that we come in contact with, in which we'll try to partner them up with gang outreach workers so that they can talk to

people that have been -- have walked in their footsteps, that have been through the gang lifestyle, that have been successful in leaving the gang lifestyle and giving these youth the tools that they need to get away from the dangerous activities that they are involved with.

And it's given me the opportunity, too, to -- I mean, it's a -- as an educator and somebody that is still involved with the schools today, I mean, I'm a firm believer that in order to get out of a situation like these gang members are in, you have -- you have to have education as a component. You have to get your High School Diploma and you -- and if you are able to, go on to some further education. That's, I think, talking to some of these guys, just, you know, offering them the opportunity to do that, giving them -- there are some great programs out there that I will give -- you know, give some of the guys some information about a great program that PCC has, the Gateway Program, where they can get their GED and their college credits at the same time.

And that's one of the things that I like about this HEAT detail a lot, is that it allows me to be able to do that.

Q You told me when we met briefly this morning that because of the work you do and because of the way you encourage some of these gang members to go on to high

school, that they have a nickname for you on the street?

A Yeah. Sometimes they will call me The Preacher. They will go, "Oh, here he goes, going to start preaching again." Yeah, but -- I mean, I don't know, it's -- I think that police officers a lot of times dealing -- we deal sometimes with people that it's easy to feel as though you are disliked as a person because the people that you contact on the street are -- have had bad experiences with the police or maybe -- you know, maybe they were raised in an environment where you were told not to trust the police. But my experience has been that talking with some of the same people week after week and when they can see that you care about them and there is a personality behind that badge, that it -- it -- I don't know, it seems to take those barriers down and they are more open with you, they are more willing to talk with you and there is a level of respect that starts to come about, both avenues.

Q So you have been a police officer for five years, I believe?

A Yeah. It will be five years in August.

Q And how long have you been assigned to this special group you have been talking about, HEAT?

A I think that we're getting close to the two-year mark. Yeah, so -- I think that pretty much, and then

some of the additional training, I don't know if I need to --

Q I just have one question really out of curiosity before I move onto what happened on May 12th. But I'm just curious hearing your personal story. Three years as a Physics teacher at a private Catholic boy's school in a Chicago suburb, five years as a street officer in Portland, which has been more rewarding for you?

A I think that -- when I was teaching, uhm, my deal as a teacher was that I would always -- I don't know, seemed to always want to help the kid that would act out the most in class, the kid that had difficulty paying attention or was struggling. And I think that trying to encourage -- I know there was several students that I taught that were in -- had regular level Physics classes and then Advanced Placement Physics classes. And there were several kids that were in the regular Physics classes that just really caused a lot of commotion in the class. I finally took them aside a couple weeks in, "You don't have any business being in here. The reason you are acting out, the reason you are behaving the way you are is because this is too easy for you," you know, and called them to task and said, "I'm putting you in the Advanced Placement class." And some of them fought tooth and nail to do it. And I finally got them to go into the

Advanced Placement class with the coaxing of their parents, the counselor, and, you know, they thrived in that class. It was challenging for them.

And kind of the same thing out working as a police officer to, I think, a more -- except out here on the streets it's more real because it's more of a necessity that these young people realize that they have potential, they have the ability to make something of themselves. But I think that some of them don't necessarily see that. And to try and let them know and encourage them, you know, "You can do better than this," I think that's extremely rewarding.

You know that, you know, in discussion with people that are maybe not -- that aren't -- my friends that I have got that aren't police officer; yeah, but the reality is that you are not going to be able to change all those people you talk to. I go, "That's not the point. The point is if I can just change one person." I mean, that, you know, to encourage one person to make a better decision, that's for me, what it's all about.

Q Let me direct your attention now to May 12th, 2010, which was a Wednesday. What time did you begin your shift on that date?

A On that date, I ended up -- for me, I -- it was a little different shift at the beginning because I

started off at three o'clock to assist -- I taught an In-Service class for our uniform personnel, so I notified our sergeant that I was going to be a little late for Roll Call. And our Roll Call is at four o'clock every Wednesday, Thursday, Friday and Saturday, which are our days of work.

Q Four o'clock in the afternoon?

A Yeah, four o'clock in the afternoon at the Traffic Division, which is located at 47th and Burnside.

So I arrived at Roll Call, I think, five after 4:00, 10 after 4:00.

Q And in this assignment, do you wear plain clothes, or do you wear a patrol officer's uniform?

A Wearing what they call a Class B uniform, which is the uniform that you see officers wearing with the dark blue stripe down the side, the light blue shirt with the dark blue pockets and the badge, so regular.

Q And do you drive marked patrol cars or unmarked cars?

A They are unmarked Crown Victoria cars with the cage -- I guess police personnel call it the "cage" in the back. It's got bars in the back windows. It has emergency lights that are on the inside glass of the car, so in the passenger compartment of the car, whatever you would say. Then it has lights on the grill and then the

side mirrors, too. So we're an unmarked patrol vehicle.

Q All right. And after Roll Call, what did you do?

A Our plan was to travel over to Holladay Park. So after Roll Call -- I hadn't changed yet, so I went up to the locker room. Usually you change for Roll Call, but because I had participated in teaching the In-Service class, I wasn't changed yet. So I went up, changed, then came out, Officer Polas was finishing up his paperwork. And Officer Polas is my partner. We have been working together, I think, for probably about a month now, maybe a little longer.

And after he finished up the paperwork, I -- we went downstairs, loaded up our patrol car and headed towards Holladay Park.

Holladay Park is one of the areas on the map that Sergeant Stewart puts out that there is a -- at the present time, there is a high volume of crime that's been occurring in the park. We have been asked to try and get to that park as one of the first things that we do during the day, because that's -- it's quite busy during that time of the day.

And when we drove by, we didn't see a lot of people out. So we --

Q And Holladay Park is just south of Lloyd Center?

A Yeah, south of Lloyd Center. It's the park that's south of Lloyd Center and just to the east of Doubletree's -- I think it's Doubletree's still. There is a hotel right there and the MAX train stops there.

So there -- there is a lot of -- a lot of -- it's a -- the dynamics of that area are that there is a lot of different gangsets that can interact -- can come in contact with one another there. The Lloyd Center is attractive to youth just because it's a mall, there is movie theaters, and these young people try to go to the mall, sometimes, you know, to go and shop, do whatever, you know, what young people do at the mall, but at the same time it can also be a meeting location when somebody has, you know, some type of what I guess is referred to as "a beef", you know, there is some type of argument going on between two people.

It's a common meeting ground because of being able to use the MAX to arrive at that location, public transportation. So it's a location -- you know, that's one of the locations that we use a lot.

Q So on May 12th you --

A We drove through there. There wasn't a lot of people out. We decide that we're going to go to get

coffee. And we go to the coffee shop at MLK and Hoyt. And this is -- our coffee stop has become almost -- it's like another roll call for us, because GET officers -- which is the Gang Enforcement Team -- and HEAT used to be housed out of North Precinct. Both of them used to be housed out of North Precinct.

About a month-and-a-half -- month ago -- month-and-a-half ago, we were transferred over to the Traffic Division. Normally GET and HEAT would have meetings after the uniform patrol. GET and HEAT would have just the major shift Roll Call, then GET and HEAT would get together after that and have our own Roll Call and talk about what we were going to do for the day, see if the Detectives from GET needed any assistance with anything. But we haven't been able to do that since we have been at different precincts.

So oftentimes we'll meet at MLK and Hoyt and either all of HEAT and GET will get together or maybe Sergeant Passadore, who is the GET, Gang Enforcement Team, supervisor will come over and fill us in on what was discussed at that Roll Call. Then we would go about our business patrolling from that point on.

So that day we get to MLK and Hoyt. And I believe it ends up just being that HEAT officers are there and talked about what we're -- that we're going to

leave from MLK and Hoyt and go up towards North Precinct or the old Northeast Precinct, which is at MLK and Killingsworth and work that area.

We oftentimes call it "The Core," just because it's kind of centrally located next to North Precinct. Usually what we'll do is patrol an area from, oh, Fremont to Lombard, then maybe 15th would be our eastern boundary to, I don't know, Interstate is pretty far west, but Interstate might be our Western boundary. We try and stay in those boundaries, because we want to -- if somebody from our team requests cover, we like to be able to get there in a short amount of time, be able to help them out.

Like I said, a lot of the -- you know, it just -- around two years, we have got close to 130 guns off the street, so what our major factor in diffusing situations a lot of times is just the mere presence of officers being there. And a lot of times that de-escalates a situation to the point where, you know, there is no necessity for force and everybody is, you know -- leaves the situation safely and we go on about our day.

Q And so after coffee, were you -- you mentioned Officer Polas has been your partner for the last month. Are you riding in a two-man car then, you and Officer

Polas together?

A Yeah.

Q And do you leave coffee together in that car?

A Yes. And on that day, I was driving the car.

Q And what happens after you leave coffee?

A We're heading north on Grand from MLK and Hoyt or Grand and Hoyt, and I hear -- there -- GET and HEAT use two primary modes of communication. We use our -- the radios that we have in our patrol cars and pack-set, which I guess some people would call it the walkie-talkie that's on our hip. And that goes over a main -- would go over the north net, what we call the "north radio channel". And that's used for emergency communications. If a car is going to be dispatched to, you know, a 911 call or maybe an officer is going to make a traffic stop, we would get on that radio channel, or if somebody needs help, they would go out over that radio channel. So the idea is to keep that radio channel clear so that if somebody needs assistance or somebody needs to be dispatched to assist a citizen because they just called 911 that that information can be disseminated.

In order so that we don't tie up that radio net, we use Nextels to communicate. Nextels are just these phones. There is what they call a "direct connect function" on it, where you can punch a button and it's

kind of like a walkie-talkie and we can communicate with one another.

And on this day I remember there was some -- I don't remember exactly what type of conversation was going on, but I remember there was conversation over the Nextel about a car that was traveling in the area close to where we'd had coffee, and that Officer Foote and DeFrain were going to stop the car and Officer Berne was close by them, so he was going to cover them, which is something that we normally do. We're two-person cars, but really firm believers in the idea of mere presence, which is the idea that if you have got, you know, multiple police officers there, that it -- people will -- you know, if it's a person that may think about wanting to fight with the police, if there is more police officers there, studies have shown they are less likely to want to fight with the police or assault the police.

JUROR: So it's like a show of force?

A Well, I guess, yeah, if you want to say a show of force. It's not that -- you know, the officer may not necessarily make contact with the car, but just that the officer is there and that the person is able to see them. Obviously, the idea is to have that presence there so that no actual -- literal, you know, force would be necessary.

And so Officer Polas and I continued to drive north, because we figured that Officer DeFrain and Officer Foote and Officer Berne are going to be at their traffic stop, and that will be a sufficient number of people there.

JUROR: Is that Cody Berne?

A Yes, yeah.

And when we get to just, I don't know, maybe two blocks south of Fremont, I hear, I believe it was Officer DeFrain, come out over the air. And I hear him say that he is going to be doing -- he is going to be making a traffic stop. And I hear their siren on in the background. And I hear it on the whole -- for the entire time that he is telling Dispatch that he is going to be making a traffic stop, which in my experience working with Officer DeFrain and Foote, they are very -- they have -- they are very radio disciplined. They don't have the siren going on in the background when they are getting on the radio because if you have got the siren going on in the background sometimes the Dispatch can't hear what you have to say. Then you have got to repeat what you just told the dispatcher. So I knew right away that they -- you know, if they have got the siren going the whole time, then the car is not paying attention to what they are doing.

And, I mean, sometimes, you know, people don't see you behind them and so -- you know, when you are trying to pull them over, and so you might honk at them or, you know, just turn the siren on for a second until you see, okay, yeah, they figured out what's going on.

But in this case, the siren kept going and going and going through the whole radio transmission, and I knew that Officer Foote and DeFrain wouldn't -- that was out -- that was something they didn't do. If they needed to, they would whoop the sirens once or honk the horn, and then once the person showed that they were pulling over, they were off the siren, you know, the lights would be sufficient.

So Officer Polas and I -- at this time, we're heading north on MLK, just south of Fremont. And Sergeant Livingston, the Sergeant for HEAT, and Officer Murphy who were driving in the same car were in front of us. Officer Polas and I decide that we're going to turn around at this point, just -- my reason for turning around is because of what I had heard on the radio. I knew that was out of character.

And so we -- Officer Murphy ends up turning around in front of us, and then we turn around behind him. And while in route, I believe it was Officer Foote requested that -- I believe he said that the person they

had stopped was not being compliant and that he needed some more cars.

And so we are still in route there. Sergeant Livingston got on the air and informed Dispatch and Officer Foote -- Officer DeFrain that we were in route, and we proceeded to the location with our lights and sirens on.

And then I can't remember the cross street. I think right when we got to about -- there is a Nike outlet store on Martin Luther King Boulevard.

JUROR: Russell.

A Yeah, Russell. Officer Foote asked that the first car that came to the stop, that they needed to box the car -- the driver's car in.

And a box-in is a technique that's used by the Police Bureau to ensure that if you have somebody that's being noncompliant, they won't leave the scene of the stop -- well, in addition to that, that they won't be able to maneuver their car around or move it around while officers are up at the car. So it's a multifaceted tool that ensures that the person won't be able to flee and that if, you do a box-in correctly, that the car -- the driver wouldn't be able to move his car in and out and, you know -- as the car is moving, the car can swing around, if they are turning the car, and possibly, you

know, run over an officer or the person, you know, as they are dedicated to fleeing the scene, you know, possibly run over a civilian.

So we get to Halsey. I take a left, and then I go over to get to 6th, and I -- once I get to the corner, I come in. And as I'm parking the car, I turn the emergency lights off to the vehicle and put the car in park and put the emergency brake on so that the front nose of my car is almost touching the front nose of the driver's car.

Q I'm sorry to interrupt. Meaning the nose of your car is up against the nose of the car that's been stopped by the other police officers?

A Yes, yeah.

Q And do you remember where this stopped car was? In other words, is it in the middle of the street or is it parked along the curb?

A It was close to the curb line on the east side of Sixth Avenue, just south of Halsey.

Q All right.

A So, yeah, the nose of my car is going to be at the nose of the stopped vehicle.

Q Okay.

A And I -- when I came in, I had my lights on, but then I turned them off as I got out of the car, because

Officers Foote and DeFrain were up contacting the driver. And the lights can -- having the light shine right into everybody's eyes can be kind of distracting and can be difficult to watch what's going on. And I knew that the situation required that, you know, we keep close observation of this person, so I --

Q Do you remember about what time this was?

A Uhm, I believe that it was around 5:30, quarter to 6:00.

Q So it's full daylight?

A Yeah, it's full daylight.

Q Okay.

A So I get out of the patrol car, and I go over to the passenger's side of the driver's car that's been stopped. And I arrive at that door, because my thought is everybody is over on the driver's side. I think to myself, you know, we want to be able to keep an eye on this person. You know, if you have got an officer on both sides of the person, then you can see what their hands are doing. And if they reach for anything, then we can see that they are reaching for something.

And I had just arrived at the door, and Officer Berne said, "Burley, you need to get over to this side of the car." And I knew that when he said that that the situation was different than other situations that we've

been involved with, that this individual, this driver, this man was -- was being noncompliant. He was showing signs he didn't want to comply, that Officer Berne felt that he was -- was capable of and desired to become violent with the police and that if the driver were to become violent with the police, Officer Berne didn't want there to be a situation in which if the driver, you know -- if and when the driver started to become violent, that we'd have a situation in which there could be a cross-fire situation.

And so I went over to the driver's side portion of the stopped vehicle after Officer Berne told me that I needed to come over there. And this way all the officers were on one side of the car, on the driver's side, and the driver was in the car.

As we're standing there, I come around to the driver's side of the car, and I see the individual -- I don't recognize him. I don't remember ever talking to him before. And he looks at me, and he stares at me for a second. And he looks at me with these eyes like he is looking right through me. He is looking into my eyes, but it's like he's looking right through me.

And the only times that I have experienced that look are from people that are either -- are getting ready to fight with me or people that have fought with me or

people that want -- that do not want to cooperate with what I'm asking them to do.

And so I realize, you know, from what I heard on the radio, from what Officer Berne told me, from what Officer Foote had said about the young man not being compliant, that there was concern that this man did not want to comply with what we were asking him to do. He didn't want to cooperate and that he was -- that officers that had been at the scene from the time of the traffic stop believed that he was capable of assaulting us and hurting us.

And then I heard -- I believe it was Officer Foote say -- our Sergeant's first name is Don -- said, "Don, you need to get over here, hurry up."

Right after he says that, I asked, "Do we need to get this guy out of the car?" And as I come around the car initially, I guess, I notice that -- just backing up a second -- that Officer Foote has his Taser out of its holster and in his hand, which in my experience working with Officer Foote, I think I could count the number of times that he has used his Taser on a person on one hand. He doesn't use the Taser that often. And that was another indicator for me that something is not right, because I -- my preference and the preference of the other officers I work with is that we're able to use our

words, and the mere presence and the -- you know, showing that we have a Taser here, so if you decide that you want to flee, that you want to fight the -- fight with us, then we're going to -- we're going to take you into custody. You know, we don't want you to do that. And by showing -- and at this time there is, uhm, I think seven officers that are at the scene. And it goes back to the mere presence. That if you have, you know, a number of officers that out-number the person that's being stopped, then hopefully it won't result in a physical altercation. Hopefully the person that's stopped won't want to fight with the police.

So that was another indicator, that Officer Foote had his Taser out in his hand. I knew this guy really doesn't want to cooperate with what's going on.

So I get over to the driver's side of the car. He stares at me. I can see that he is very unhappy. I ask, "Do we need to get this individual out of the car?" And I'm told, "Yeah, we need to get him out."

And I see the opportunity to grasp hold of his hand in a control hold. And a control hold is designed to have the person comply with what we're asking him to do without injuring him. And it's a control hold that I have used dozens and dozens of times before.

And I take hold of his hand and apply a slight

amount of pressure, because like the dozens and dozens of times before, all I have done is gone up, taken hold of the person's hand, asked them, "Go ahead and put your right hand on the back of your head, and I'm going to step you out of the car. You know, it's nothing against you, but I don't know if you have any weapons on you. I just want to make sure you don't have any weapons on you."

And this man is not being compliant. He is showing that he is very upset with us. He won't provide us with his identification. He won't tell us who he is. He won't provide us with the keys to the car.

And so I know that we -- he's at the time, not -- he's committed the crime of failing to present identification. So we can detain him while we figure out who he is.

And my thought for getting him out of the car is that I know that he is -- these officers have been making observations that are telling us that he is a threat to our safety, the driver is a threat to our safety. So as long as he's in that car, there is a lot of, you know, compartments and, you know, in between the seats where we can't see where stuff can be hidden that can be used against us, that could be used to hurt us.

So for our safety and for his safety, the best

option in a situation like this is to get the person out of the car, verify they don't have any weapons on them, and then oftentimes it will de-escalate the situation to the point where, you know, maybe -- maybe some further explanation can occur about why you are being stopped, try and figure out, you know, why don't you want to give us your identification and go forward from that, that point.

And I grabbed -- took hold of his arm, his left arm, and put it in the control hold and didn't get an opportunity to ask him to put his hand -- his right hand on the back of his head.

Officer DeFrain had the door open. And I felt as though I had a stable platform when I grabbed hold of his arm. And as soon as I grabbed onto his arm, and I -- he looked at me and he said, "What the fuck are you doing grabbing onto my arm?" And as he did that, he pulled away from me.

And I thought that I had a stable platform. And he pulled me into the car. And it shut the door. And I heard Officer DeFrain -- I don't know if his hand got caught in the door or not, but I heard him go, "Whoa," and he backed up. And as the guy looked at me and said, you know -- asked, said, "What the fuck are you doing holding onto my arm?" Again, that look of just looking

right through me, again, like he was looking at me but -- I don't know, it was like, I don't know, I wasn't there.

I'm holding onto his arm, and so at that point I'm trying to utilize the control hold. I'm supplying more pressure on his arm to try to get him to comply with what I want him to do. And he continues to pull away. And I'm getting -- I'm trying to supply more force, I'm going down to the ground. He is --

JUROR: Can you describe this control hold? You have got two hands, I assume, on his left hand?

A Yeah, so the way that it works is you twist the hand, and it -- it creates some discomfort.

BY MR. REES:

Q Do you want to demonstrate on me?

A Sure. So he would obviously be sitting in the car. But you just go up and take the arm, and you twist it like this, and it creates kind of a discomfort that goes up the arm. And, you know, you ask the person to put their right hand on top of their head. You can kind of assist them out of the car as they are getting out.

And he ends up pulling away from me as I'm doing kind of a modified hold because he's sitting in the car.

MR. REES: Does that answer your question or not?

JUROR: Yeah, yeah. I can't imagine somebody

pulling away when you had them like that.

A Well, so that's --

Q When we discussed this briefly this morning, you were telling me that this is a hold that's taught at the Police Academy. You have practiced on your roommate?

A Yeah.

Q And that you were surprised that the driver of this car was able to get out of that position?

A Yeah. It's as though it had no effect on him. And I just kept on thinking back to, okay, this is not like the dozens and dozens of times that we have done before. This is not working. This guy -- I thought that I had a stable, solid platform, something where I could go ahead and pull back with him. He is -- you know, he is moving me around like I'm just a little doll or something.

JUROR: Could it have been his adrenaline that, you know, caused him to get away from you -- you know, or out of that hold?

A I mean, yeah.

JUROR: You know, because you just demonstrated, I would think that the hold that you are taught would like numb or --

A Yeah, it shoots -- it sends just shooting --

JUROR: Shocks?

A -- shooting pain up your arm. I don't know exactly why he, you know, had the strength, but he ends up pulling away from me. I try and supply more force to get him to comply with what I'm doing, which is the, you know, way that -- you know, I don't -- like I said, we like to try and use talking much more than using force. And so, you know, starting off with -- you know, my intention was to just kind of use it if I needed it. And hopefully, you know, I was in the position to use it, and if I needed to supply more force, I could. He started to pull away.

BY MR. REES:

Q I'm sorry, if I could follow up on this grand juror's question, would you say that the driver of the car was exhibiting unusual strength?

A Yeah -- I mean, the last -- I guess the last -- I don't -- I guess I don't know whether it's from adrenaline.

The last situation in which I had an individual with this type of strength and this type of desire to get away was an individual that later was found out this man had a -- that I attempted to take into custody, that my partner and I ended up having to deal with for about three minutes where he ended up assaulting both of us, uhm, he was on a high from methamphetamine.

And so I think that -- you know, there is a lot of different -- you know, it could be adrenaline. It could be -- what's going through my head, it -- drugs is what I'm thinking or, you know, there is some type of -- you know, something else that's going on here. But this person has more strength than I am able --

JUROR: How much did he weigh?

A I don't know.

JUROR: Was he a big man, slim?

A He was sitting in the car when I went up there. He appeared to me to be fit, you know. He didn't appear to be heavy.

JUROR: Okay.

JUROR: You had both your feet, you say, a firm platform, what does that mean?

A So, as I recall, I mean, I went in and I was standing like this, so that, you know, if I needed to, I could lower my platform, and he just pulled me right in towards the car once I got a hold of his -- once I took hold of his arm.

BY MR. REES:

Q And so by "platform", I take it you mean your balance point or your center of gravity, so that you are bracing yourself firmly; is that what you are saying?

A Yes.

Q All right. Whatever the cause, the driver was able to pull you against your force?

A Yeah, against my force and pull me into the door and cause the door to shut.

Q And so, just to move you ahead, did he break free from your grasp?

A Well, then I hear I believe it was Sergeant Livingston say, "Tase him, tase him, tase him." And then I hear the Taser cycling. And as the Taser is cycling, the individual's hand seemed to have become sweaty at this point, and he slipped free of my hold.

And as he's slipped free of my hold, I realize I'm in a really bad position here. I'm down by the corner of the door. My head's at the window level. I need to get out of this position. This guy is fighting with us. He's decided that he isn't going to cooperate with what we're asking him to do.

And I start to back up. And as I back up, I can see in the car. And it looks to me like he's either tumbling around in the car or he's thrashing about vigorously in the car. And it reminded me of a year or two years ago we either had a Roll Call video or during our in-service they talked about how information was being disseminated through people that were in prisons about how to overcome the Taser, in which people had

figured out that if you either roll or if you are able to sweep against the Taser prongs, the Taser prongs will fall out or you might break the wires.

And the way that he was moving about initially made me think of that, that this guy is trying to defeat the effect of the Taser.

And as I'm seeing him move about, I start to see him reach over into the glove box. And I don't know if it was a rag or a -- a rag, as in a cloth, or a Crown Royal bag. For whatever reason, when I saw him reach into the glove box and I saw this, I don't know that's what it was or not. I thought I saw a Crown Royal bag. I see his hand underneath it, it looks like. And while this is going on, I hear somebody yell, "He is going for something, he is going for something, he is going for something."

And I'm backing up, I'm backing up, and then it looks -- I'm still kind of got this vision just straight into the car of this guy. And I believe I hear -- I believe I hear "Gun". And then it looks like he's looking over at me. And I couldn't tell if he was arched back in the seat like this or if he -- by this time he's over mostly in the passenger's side of the car or if he was -- kind of bent over in the car so he's hunched over. I couldn't -- couldn't tell which way he was situated,

because everything's happening so quickly.

And then I hear two gunshots from inside the car. And then I automatically -- as soon as I hear the gunshots, I feel burning in my legs and I realized that I have been hit, and I go to the ground. And in the process of going to the ground, I fall down on this fresh asphalt, skin my arm up. I don't even notice that I skin my arm up until I get to the ER. And up in my hospital room, the nurse asks me about it.

But I go to the ground. I think to myself "Okay, can you move your legs? Yeah, I can move my legs, so that's -- he didn't -- you know, he didn't get me in the spine, so that's good."

And so I push myself -- I can still hear -- I know that there is still a situation unfolding, and I need to get myself away from there, because I can't return fire because of my location. I'm on the ground. The last time I looked over at the car, there were officers in between me and the driver's car.

And so I back up. And as I'm backing away, I'm thinking -- I'm hearing gunshots. It was really strange, because the gunshots aren't loud, like they are -- like when we go to the range, practice. I'm hearing all these gunshots. It's like a cap gun going off.

Talking to people -- they set up a person that

stays with you at the hospital. It's a traumatic incident person that kind of talks with you as this is all going through. And I guess it's a response in the body, but that it's fairly common for people that are involved in incidents like this for the gunshots to not sound as loud as they actually are, because I'm hearing all these gunshots, but they sound like a cap gun. And I just remember when we go out to the range, you don't even need to be in the lanes, the firing lanes, but can be, you know, 30, 40 feet away from the people that are firing, and the sound of the guns are deafening. I'm hearing the guns going off, and it's not, you know, super loud.

I push myself away. I know that there is gunfire going. I know that I have been hit. And I think to myself, "All right. You need to get some help over here. You need to get help for the guys that are dealing with the driver and you need to get an ambulance for yourself."

So I crawl over and place myself in a location I think that I am out of line of fire. And I tell myself, "All right, Chris, you need to get on the air. You need to get on the radio, and you need to tell them we need help and that you have been hit. But when you do that, you can't scream. Do not scream when you get on the

air."

And so I depress the button, announce that shots have been fired, that I have been hit. I don't know if the dispatcher ever heard me say that or not. But the next thing I know is I'm getting pulled back behind the car. And I look up and Officer Foote's asking if I have been hit. I'm like, "Yeah, I've been hit."

But as he is pulling me back to the car, I'm looking, I'm thinking to myself, "Okay, there is no blood trail, so that's good. I didn't get hit in the femoral artery, so, you know, I'm still doing -- I'm still doing good."

And they -- Sergeant Livingston comes over and asks the same question, "Burley, have you been hit? Have you been hit?" I go, "Yeah, I think I have been hit in the legs." So they make the decision there to load me up in the back of the patrol car and drive me to Emanuel.

And I -- and I guess I just assumed at that time that everybody was -- everybody else -- I wasn't sure what had happened with the driver, with the other officers, but since Sergeant Livingston had come over to me, I don't know, there was a sense of me that thought all the other officers were okay.

And they get me in the back of the car, and I'm just extremely angry. I'm extremely angry that this

happened. And I'm thinking to myself, "How am I going to get a hold of my mom?" "How long is it going to take for my name to get out on the news and for her to find out that I have been, you know, shot over the news?"

And so while we're in route to the hospital, I'm giving Officer Foote, who is driving the patrol car, and Officer Murphy, directions on how to get ahold of my mom. I ask them to contact the Boise Police Department, get a hold of a friend of mine, from high school, and have go out to my house and tell my mom that I have been involved in a shooting, and I have been shot; I'm going to be all right.

And I just -- the whole time I'm really angry. And I don't remember everything that I said, but I just remember being so upset that I had been shot, but at no time do I remember being angry at the driver, the man that shot me. I remember being extremely angry at the decision that he made to make that. I don't know if it makes sense to have the differentiation between the two. But I knew inside in all likelihood there was something that had happened to him that caused this behavior and that I didn't -- I didn't ever feel anger towards him for what he did.

And so we keep on driving to the hospital. And

as we were arriving at the round-about for Emanuel, I'm thinking to myself, "Okay, everything is going pretty well. There is some blood that's starting to pool up in the backseat, but I'm still conscious, so that's good. I'm not starting to pass out." I'm thinking back to a case, I don't know, probably about seven or eight months ago where a man was shot at The Orient, and he ends up getting multiple gunshot wounds to his legs. And I end up arriving on scene; I'm one of the first officers on scene to that, and I go in, I'm talking to him. And as he's talking to me -- as I'm talking to him, there is a large amount of blood that's coming out of his legs, and I'm trying to figure out who he is, who may have done this. I'm telling him that the medical personnel are on their way. As I'm doing this, he is trying to talk, but he can barely talk. His voice is very faint. His eyes keep on rolling back in his head. And his -- as I'm talking to him, he's got his friend that's got two belts, one belt around each leg, trying to use them as tourniquets to stop the bleeding. And I ended up following the guy to the hospital.

That's the only thing at the time, the information I got from him, was his nickname.

As I'm pulling up, I'm thinking about this. And I remember then probably about two months ago we ended up

having trial on the people that had shot him.

and he had -- was using a cane and he was telling us about how he can't sleep at night without wearing braces because if he doesn't sleep with braces, his legs just will jump around all night long.

And I started thinking to myself, I'm like -- everything seems to be okay down there, but, you know, is this going to be the end of my ability to walk normally, you know? Is there nerve damage I don't know about? Is this the end of my police career?

Q Where were you shot?

A Uhm, I was shot right here, and then the other bullet went in back here, too.

Q For the record, you are indicating upper --

A Left.

Q -- upper left thigh?

A Yeah.

Q And upper right thigh, really almost in your groin area?

A Yeah. And I just remembered being able -- talking to this guy, and remembering that he was a barber and that he wouldn't be able to do that anymore. It got me to thinking about not being able to do this job anymore and the possibility of, you know, having to do other stuff because of nerve damage to my legs.

And so we get the car stopped, and I get out of the car. I'm like I'm going to walk in. And there are other officers at the scene, "No, you are not." They are putting me on the gurney. And they wheel me in.

They take me into surgery -- or take me -- I'm sorry, into the trauma area and they end up cutting my pants off and everything and end up telling me that there is not going to be any surgery. And so at that time I realize, "Okay, if there is not going to be any surgery, then I can probably contact my mom myself." I asked my roommate, John, for Mike Stradley, to come to the hospital. And Mike Stradley gets there. I just remember I kept on asking him why the guy didn't do what we asked him to do; because, I mean, I have talked to him much, as we do this as a collective group, we have done it hundreds and hundreds of times, and for some reason this day this guy decides he doesn't want to do what we ask him to do and he wants to get violent with us. I just -- in this assignment, I have literally -- I was telling them about, uhm, there was a kid that I met while I was at Jefferson talking to one of the Health classes, and he -- that day, the kid was pretty distant. We were doing kind of a decision making-type day, talking about the consequences of making certain decisions in your life and how they can affect your future and encouragement to

have a career path, career goals. And this kid really wasn't involved in the class that much, which in my mind, the way that I worked, made me all the more determined to get to know this kid, see what he was all about.

And so I -- after that day, I would see him, I would always try to make it a point to go up and talk to him. And he a lot of times didn't want to talk to me. But eventually after, you know, joking with him a little bit and stuff, he kind of, I think, started to break down a barrier that existed there.

There was a day when we were out at Interstate and Lombard -- or no, Williams and Lombard, and we go out with a car. And this kid is in the backseat and he keeps on trying to get out and leave. And we end up getting everybody out of the car, and this young man keeps on -- I get him out, pat him down, he keeps on reaching down towards his waistband. And I've got his hands in a control hold on the back of his head, he keeps on putting his hands down. And I have to -- trying to reach down, he is like, "My pants are falling down, my pants are falling down." I'm looking. I have got a hold of him when his hands are up, and his pants are not falling down. So it's giving me the feeling that he has got -- he kept on wanting to leave the car before. There is something not right here.

So I get his hands back up on top of his head, and I take my hand and I just put it on his chest. I feel his heart beating really hard. I go -- I say his name. "Man, I don't have a beef with you. I do not have any problem with you. I really think you have got something on you. I just want you to keep your hands up on your head and we'll take care of whatever is going on."

At that point, he just deflated, just kind of -- his body just kind of relaxed. Officer Berne came over, and we -- we placed him in handcuffs and then started to move him away. And as we did that, a gun falls out from his pant leg.

I just was thinking to myself, I mean, like I told that kid that day, I mean, it's horrible to have a gun. Because if you have got a gun, it's going to get you hurt or it's going to get you injured, but you can move on from that, make a decision later on not to have -- you know, not to be around guns. And I told him that he made the right decision by not -- you know, after I talked to him about not cooperating, that he decided to cooperate, that's the best decision you made right there, because now we can move on from there. If you had made another decision, then we wouldn't have. That's just kind of what I was like, you know -- you know, just

thinking back, we tried to get the guy to cooperate with what we were doing. He just didn't want to.

Q Let me ask you a few follow-up questions about the shooting, itself. About how far away were you from the driver when you were shot, if you remember?

A I remember being -- it seemed to me -- I mean, I kind of -- I started to get tunnel vision, where I just remember seeing what was inside the car. But it seemed to me that I was probably about ten feet away from the car, maybe a little more, when I ended up getting shot.

Q All right. Were any police officers facing you at that time?

A Not that I recall. I remember Officer Foote and Officer DeFrain were -- Officer DeFrain was located at the back driver and passenger's side, the post, where the two doors meet. Officer Foote was up by the front driver's side tire, off that a little bit. Then Officer Berne, I think, was up somewhere close to Officer Foote. But I don't -- don't recall anybody -- after I was over on the passenger's side, anybody else going over there, after I had been asked to come over to the driver's side.

Q When you were shot, did you have your gun out?

A No.

Q Did you have anything in your hands at all?

A No, just -- no, not when I was --

Q What I mean, for example, your Taser, your asp baton, your pepper spray? This entire contact you have described, you're bare-handed --

A Yeah.

Q -- is that right?

A Yes.

Q At the moment you were shot, did you notice whether any other police officers had their guns drawn?

A Uhm, when I was driving away -- when I was being driven away?

Q The question is when you were shot, when you heard the two gunshots, had you seen any other police officers with their guns out?

A No, not that I remember.

Q When you heard the two gunshots, what did you think was happening?

A I thought that the -- because I had heard, "He's reaching for something." I saw him reaching into the glove box. I'm thinking to myself, "I can't believe that this has happened, this guy's just shot me."

When you are going through training, they have people that have been involved in shootings, that have been shot, come in and talk to you in the Basic and Advanced Academy. And I'm thinking to myself, "So this is the way it is, I guess. You know, this guy has

decided to shoot me," and then right after that, I'm like -- "I guess they are right, it is a burning pain that you experience."

Q Because of the investigative protocol in place, there is a Gag Order on all the police officers who were involved in the shooting. Are you aware of that?

A Yes.

Q Because of that Gag Order, have you discussed these events with the other officers who were at the scene?

A No.

Q You have been unable to do that essentially?

A Yeah.

Q And you haven't been afforded then the opportunity to read what other statements these officers have made; is that correct?

A That's correct.

Q My last question -- and we will be calling your attending surgeon later this morning. But what's your understanding of what your physical condition is and whether you will make a full recovery?

A It sounds like I'll be able to make a full recovery. I was really fortunate. There is -- Mark Zylawy passed away maybe two years ago now, and he was a really active officer over in North. He was an officer

that mothers had him programmed in their phone. If they needed anything, he was the officer to call to come help them out. And he -- I had -- they made little bands that say "Z Man" on them. That's what everybody called him. I just remember looking at the bracelet when I was up in the hospital and thinking to myself you are really fortunate that Z Man was looking out for me that day and Mende. Sergeant Mendenhall passed away recently. It was like they were watching out for me, because it could have done -- the bullets could have done a lot more damage.

MR. REES: Members of the Grand Jury, are there any follow-up questions?

JUROR: How's your mother doing, doing all right?

A Yeah, she is.

JUROR: Okay, good. I just wanted to say that, because I didn't hear the outcome of it.

A Yeah. Yeah, she was able to come out here and visit. My dad was able to come down to visit, my sisters.

JUROR: And you are doing all right?

A Yeah. It can be a little tough to think back on it.

JUROR: Good.

JUROR: I'm a little confused. I'm just trying

to picture it in my head. You are outside the car at one point. You are actually all the way inside of the vehicle or you are just next to it?

A Yeah, I'm just next to it. Are you talking about when I have a hold of his arm?

JUROR: Yeah.

A So he had started to move away from me, push away from me, and pulls me towards the car. And I ended up being -- like my shoulder up against the driver's side door.

JUROR: Okay.

A And then he ends up being tased. I continue trying to keep control of his left arm, and then he breaks free of me and I stay on the exterior of the car and he moves over onto the passenger's side, was reaching for the glove box.

JUROR: Thanks. That makes it a clearer picture for me. I was having a slightly different image, and it just wasn't fitting together. I wasn't sure exactly where you were in relationship to the car.

A No, I never got into the car.

MR. REES: Does that answer your question?

JUROR: Yes.

JUROR: Did he have a seatbelt on?

A I don't know if he did.

JUROR: That's fine. And were the windows darkened?

A Not that I recall. The driver's side window was down. And when I went over to the passenger's side window, I was able to see into it.

JUROR: What kind of car?

A I don't remember. Sorry. It's a four-door sedan of some kind.

MR. REES: Anything else, folks? If not, that concludes your testimony. Thank you.

THE WITNESS: All right.

DON LIVINGSTON,

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. BANFIELD:

Q Can you please state and spell your full name?

A My name is Don, Livingston, D-O-N, L-I-V-I-N-G-S-T-O-N.

Q What is your current rank with the Portland Police?

A I'm a Sergeant with the Portland Police Bureau.

Q And before we get into testifying about the

events that occurred on the 12th, can you just give us a little bit about your background, how long you have been with Portland Police, a little bit of your training, different positions that you have up to your current position?

A I have been a police officer for 14 years. I actually started with the Medford Police Department. I got hired there in 1996. I worked there for almost two years before getting hired with the Portland Police Bureau in 1998.

As an officer, I spent most of my time working out of the Northeast Precinct, now called North Precinct. I became a Defensive Tactics instructor in 1999. In about 2001 I transferred to the Training Division as lead Defensive Tactics person for the Police Bureau. During my time in the Training Division, I also got certified as a Firearms instructor, two firearms schools: FBI Firearms School and also the Portland Police Firearms School.

Defensive Tactics is hands-on part of the job, handcuffing, searching part of police work. That involves some of the tools we carry on our belt; for instance, pepper spray, asp baton and even the Taser is something that I have instructed.

My role in the Training Division was I was assigned to the Academy detail, which means I taught all

the new students that came through. In Advanced Academy I taught at Oregon Police Academy. Oregon Police Corp Academy used to be a program set up through the federal government where they got money subsidized for college once they completed this program. I taught Reserve Academy. I also taught at various Citizen Academies here in the city. I also had responsibility for instructing at the in-service level, so tenured officers would come through annual updates in training.

It's my responsibility to provide defensive tactics or many of the other areas that I was certified in, instruction.

I got promoted to Sergeant in 2008. When I got promoted, I was initially assigned to the Southeast Precinct. And I started out on day shift and the role of a Sergeant is you are assigned a detail and you are responsible for that detail in addition to the daily activities out on the street. There are certain calls they would expect a supervisor to respond to.

I also had administrative duties, you know, part of being a new Sergeant, learning how to do schedules and some of the plans for major events that were coming up, for instance, the Rose Festival. I was assigned the detail of planning, organizing the officer's response to the Rose Parade in 2008.

I then moved to night shift, and I worked night shift at Southeast for about eight months before I transferred to what is called the HEAT team. HEAT team is the Hot Spot Enforcement Action Team, and I was transferred there in March of 2009 as the Sergeant of the team. The team consists of seven officers and one Sergeant, which is me. It's a city-wide street crimes unit that has been asked to focus on youth gang violence. We have weekly meetings with a designee from the Chief's office, and we look at maps provided by strategic services as far as areas in the city they want us to focus on. So they look at crimes, certain crimes, certain people that have been contacted, and we pick out areas throughout the city that as a team we're going to focus on. So it's my responsibility to attend these meetings and get direction from somebody from the Chief's office.

Q Tell us a little more about the HEAT team.

A I think you guys might have heard some testimony from Officer Burley regarding HEAT.

Q How long have you been a Sergeant of the HEAT?

A I have been since March of 2009, so about a year-and-three-months. The HEAT team started in June, 2008. So it's almost two years as a unit.

Like I said before, we were asked to focus on

youth gang violence and specifically what they really want us to go after is gettings guns off the street from street contacts. We don't take radio calls. We will respond and assist to radio calls if needed or especially if it's a major event or a tactical situation where they need assistance, but our job is strictly self-initiated activity. We're going out making vehicle stops or contact with citizens on the street and focusing on trying to get guns off the street.

We do keep statistics on a lot of this stuff, and prior to May 12th, 2010, we had 137 guns seized from street contacts as a unit, approximately 25,000 citizen contacts and about 3500 arrests as a unit.

Q And how many officers do you have on your team?

A Seven officers and one Sergeant.

Q And how do they work? Is everybody partnered up?

A Yeah, because of the nature of what we do, we contact a lot of large groups of people, and we work in partner cars.

Another thing as a supervisor that I do is I set geographical boundaries to keep the whole unit tight together. That does a couple things for us. It provides cover fast in case you need it and oftentimes people run from us, so it provides officers close to set up a

perimeter of containment after somebody runs.

Q Now, when you were talking about your training, you mentioned that you are trained -- you are a Taser instructor and firearms instructor as well. Are you certified to use any other type of weapon platforms?

A Yeah. There is also a tool called the "less-lethal shotgun" that shoots a beanbag round out of the Remington 870 shotgun. I'm certified. I'm not -- I'm not an instructor. I'm an operator. So I'm certified to carry it. I'm not certified to teach officers how to use it.

I'm also certified to carry the regular shotgun as all officers are once they attend an Advanced Academy. It's a twelve gauge shotgun we load with buckshot or slugs, given the situation.

Q I know in the legal profession we have continuing legal education we have to keep up on. Do you guys have something like that with respect to the weapons that you carry, any type of in-service training?

A The Taser, for instance, we get updates in In-Service. If there is anything major that comes down that we can't wait until In-Service, we get updates through either our video or a bulletin that comes out. Annually at In-Service we have had Taser updates since it has been introduced into the Police Bureau.

With a less-lethal shotgun, I have to qualify with it every quarter. So we have quarterly qualifications with our handguns. If you are a less-lethal operator, you have to qualify quarterly with a less-lethal. If you decide to carry the shotgun on the street, same thing; you have to qualify quarterly to show proficiency with the tool, that you able to shoot accurately and you know how it operates in general.

Q What are the hours of the shifts that the HEAT team operates?

A We work afternoon shift, and we work -- we all have the same shifts, same days off. We work from four o'clock in the afternoon until 2:00 in the morning. And we all have Sunday, Monday and Tuesday off.

Q Now, turning our attention to May 12th, were you working a normal shift that day?

A Yeah. May 12th is a Wednesday. That was our Monday, first day of the week. And we started at -- as a unit met at four o'clock at our office, which is the Traffic Division. Used to be Southeast Precinct. It's at 47th and Burnside.

Q Tell us what your day was like leading up to the traffic stop and this incident.

A My personal day was relatively normal. On this day I usually get up, get my daughter ready for school,

which I did. The only unusual thing that happened to me that day was I got my carpets cleaned. So I guy showed up at 7:30 at my house, cleaned the carpets. When he left, I took a nap. If I don't, I'm up 24 hours by the end of my shift and I'm pretty tired. I took a nap.

I enjoy exercise. When I got up, I went to the gym, worked out, came back home, got something to eat. Then I actually went into work two hours early that day.

My responsibilities as a Sergeant of this unit is that my -- the expectation is I'm out on the street with the officers. I'm not in the office doing paperwork. So I went in early to get some of the administrative stuff done.

Additionally, I have the weekly meetings, like I talked about earlier, with the representatives of the Chief's office. Those meetings occur on Wednesday at 3:30, and they are at the Chief's office. So it's pretty regular for me to go in early on Wednesday.

I did about an hour's worth of paperwork. On this particular day, it was kind of an unusual day in the Police Bureau by the fact Chief Sizer had been replaced by now Chief Reese. Our boss was Lieutenant Walsh, who reported directly to A. C. Martinek. There was a little concern with a new chief on the unit itself; what would happen to the HEAT team? Was Chief Reese going to keep

the HEAT team? Was he going to move us? Was there going to be a change in the unit?

I sent a text message to Lieutenant Walsh asking him if the meeting was still going to happen. And Lieutenant Walsh says, "Yes, it's still going to happen." I was going about planning. I was going to drive downtown and meet with him. I was going out the door. I got a text message from Lieutenant Walsh, saying, "The meeting isn't happening." So I went back to the office, continued doing some of my administrative paperwork.

Q And when did you start your day with your team?

A At four o'clock. Typically, we start our day with what we call Roll Call; a meeting, just to make sure everybody is there, first of all. And we usually hand out some of the updates of crime bulletins, things that have happened maybe on our day off, subjects that people are looking for. Maybe there is a warrant for their arrest or probable cause to arrest them. So we started out in the Roll Call room, and I handed out the fliers for people to look at.

After we were done with that, the team really wanted to discuss HEAT and our future with the new chief. And I really didn't have any answers for them. You know, I wasn't sure exactly what was going to happen. The only thing I did know was our Lieutenant, who had worked for

A.C, Bryan Martinek, was now working for Chief Reese. So I kinda speculated that A.C. Martinek would no longer be with the Police Bureau, but I could not give the team an answer on what would happen with HEAT. I just told them we had done a great job. "You guys work hard and we have got to just let the chips lie where they fall and we'll pick up and move on from there."

I was pretty confident that our team would continue to function as a unit. I thought there would be a change though.

Q So how do you start your day out on the street with your team?

A I decided that we were going to drive to Holladay Park. Holladay Park has been an area that we have been asked to focus on lately, especially, and that's the area just south of the Lloyd Center. It's actually a city park. There is a MAX platform right there.

Are you guys familiar with the theater for the Lloyd Center? Doubletree Hotel? There is a grassy area, it's called Holladay Park. There has been a lot of activity there lately with some of the stuff we focused on, gang activity. So we have been spending a great deal of our time working in that area.

I asked the officers to drive through Holladay

Park and work in that area right after we left Roll Call. I arrived there myself, and we probably -- me and my partner, who that day was Officer Patrick Murphy, I made two or three laps through the park and the area around it and I really didn't see any activity that day. It was quiet.

So I actually got on our Nextel talk group -- we all carry Nextel phones. We have a talk group set up so when I use the direct connect feature everybody hears it. I said, "The parks looks quiet. If anybody sees anything, let me know, but if -- if it's okay with everybody, let's go ahead and get a coffee at Starbuck's, MLK and Hoyt."

Q That talk group that you mentioned, that's specific to just the HEAT team members?

A Yeah, any person with a phone can -- you know and friends whatever can set up a talk group. We have a talk group that's set up specifically for us. We can talk together. And, you know, we could talk over the radio, but we have a lot of chit-chat back and forth just regular communication, where we're going to work, what we're going to do. So it would take up a lot of time on the radio where it should be reserved for emergency traffic for officers to say things that are important. So we use this Nextel talk group just to have regular

conversations with each other because we're not all in the same vehicle.

Q Where do you meet up for coffee and who all is there?

A We met up at MLK and Hoyt. It's actually a Starbuck's. It's between Martin Luther King, Jr. Boulevard and Grand. And it's right next to the Convention Center.

We went in and had a cup of coffee. And it was everybody on the team that was working that day, myself -- it was Officer Jim Defrain, Ryan Foote, Chris Burley, Andy Polas, Cody Berne, Patrick Murphy and myself. There was one officer that was not present that day. He was coaching T-ball. That was John Billard. He was going to come on later in the shift.

Q So what happens when you guys are having coffee?

A When we're having coffee, I actually get a phone call from Lieutenant Walsh. So I step outside, have a conversation with him. He says, "I can't tell you exactly what's going to happen. There is going to be a change with the HEAT team. It's not bad. You guys aren't going anywhere. I'll let you know hopefully tomorrow, as soon as I have a chance to talk to the other assistant chiefs and the commanders." So we talked for a little while about a few things, and I walk back into the

Starbuck's and I'm able to update the officers about what the Lieutenant told me. There is going to be a change, we're not going away, kind of ease their minds about what's going to happen.

So we were done with coffee. We had probably been there 20 minutes to a half hour. I decided since Holladay Park was relatively quiet we were going to move up a little further north into an area we call the "core area". And like I said before, I set up boundaries. So we were going to work between Killingsworth, Fremont, Interstate to 15th. Those were the boundaries that he had set. And we all left the Starbuck's at about the same time. Patrick Murphy and myself pulled out first. We went northbound on Grand leaving.

Q You said you left about the same time. Do you recall about what time of day that was?

A I'm going to say about 5:30, 5:40, in that range.

Q Okay. Continue.

A Officer Murphy and myself left first, and behind us I knew was Chris Burley and Andy Polas. We were driving northbound on Grand up towards the area that we were going to work.

When I got to about Broadway, I recall a conversation on the Nextel between Officer Jim DeFrain

and Officer Cody Berne. They were talking about a specific vehicle that they had seen, a silver Toyota. I remember Officer DeFrain saying something to the effect, "Have you got a look at the guy in the silver Toyota?" Cody saying, "I ran the plate. He does not match that car. It comes back to a female." And Jim saying, "Well, we're going to stop him" or "You can stop him if you want." Cody is saying, "Go ahead and stop them. You guys can make the stop."

So at about MLK and Knott I hear Officer DeFrain get on the radio to call out what I think is a traffic stop. I can hear sirens in the background, which is unusual for a regular traffic stop. Sirens don't come on until the person is failing to stop. So right away I think it's not normal. It leads me to believe that potentially it's going to end up being a pursuit.

And another thing, Officer DeFrain, he always rides in the passenger's seat. He always operates the radios and the computer. He's very solid as far as the radio goes. He sounds a little bit frustrated. He's not getting through complete transmissions on the radio. I kind of don't understand what he is saying, which is very unusual. All I got out of him was Sixth and Clackamas, and I could hear sirens on in the background.

Q Do you have any specifics about the traffic

stop?

A I did not. I did not know why they were stopping.

Q So you hear sirens. You are thinking something is a little unusual at this time?

A Yeah.

Q So?

A So we start heading towards the stop. We do a U-turn on MLK and about Knott, and we start driving southbound on MLK toward where they are at.

A few seconds later I hear some more clicks on the radio, but nothing coming through. So, in other words, somebody is pushing the mic down, but they are not saying anything, no voice is coming through. I believe that it's Jim, and it also leads me to believe that the stop is not going normal like it should. The only thing that has changed is I do not hear a siren in the background at this point.

Seconds later, Officer Cody Berne gets on the radio and says, "We're out on a traffic stop and we're at Sixth and Halsey." So they went from Sixth and Clackamas to Sixth and Halsey, which I know now is relatively close. It's roughly a one-block distance from each other.

I got on the Nextel talk group at that point and

I asked Officer Cody Berne, "Do we need to continue Code 3?" In other words, lights and sirens driving faster to get there, getting cars out of our way. He says, "Not Code 3, but get here."

So we continued to the stop Code 2, with our lights on, moving vehicle traffic out of our way. When I asked him that question, we were just about to Broadway. We were just north of Broadway.

As we crossed Broadway -- and I don't remember who gave this transmission, one of the officers on scene said, "The next vehicle in, box the car in from the front."

Q What does that mean?

A Well, on a normal traffic stop, you would pull in behind the vehicle that you stopped. You would kind of be off-centered slightly about a car length back. Boxing in would be another vehicle coming in from the front and basically almost making contact or maybe even making contact nose to nose preventing that vehicle from driving away.

Q If this was a routine traffic stop, would that be normal?

A No, absolutely not.

Q Now where are you? And you can use this map to show us exactly where you come in and where do you go to

meet up with where the traffic stop is occurring?

A Well, this is -- this is MLK right here. When -- when I hear the transmission about boxing them in from the front, I'm a little north here. I'm not on the map right now. But I know they are at Sixth and Halsey. My assumption is that they -- they initially called out Sixth and Clackamas, which I know is south of Halsey. And they said they stopped at Halsey. So my assumption is the vehicle is on Sixth; it's facing northbound. If we're going to box them in, we need to come in on Halsey to get that accomplished.

I'm right in the passenger seat. I actually got on the radio said, "We're close. We'll box them in when we get there." My partner, who was driving, Patrick Murphy, believed they were on Clackamas. As we got to Halsey, I'm screaming, "Left, left, left." He continues to go straight. We pass Halsey, and I see Officers' Burley and Polas. They were behind us. I kind of looked back over my shoulder. I see their vehicle turn and go eastbound on Halsey.

So in order to get that box-in accomplished, we want to come in off Halsey. We drove to Clackamas to Grand, went northbound on Grand then turned eastbound on Halsey.

When we arrived at the scene, Officers Polas and

Burley had already boxed in the vehicle, so we kind of took a position driving in at an angle towards the driver's side door.

Q Okay. And on the next board that we have there, it's a photo. Perhaps you can use that to show us where your vehicle is and where Officer Berne and Polas' vehicle is?

A Officer Burley pulls his vehicle right here. They accomplish the box-in from the front. Then this is my vehicle and Officer Patrick Murphy's. Again, I was riding in the passenger's seat.

Q Just to be clear, the police vehicle that we see in the background there, the marked vehicle, that wasn't there, correct?

A Yeah, that was not there. That vehicle comes in later. I'll explain how that got there as we move along.

Q We're going to use this photo for purposes of showing where everybody was, correct?

A Uh-hum.

Q So you arrive on scene. Tell us what do you observe when you arrive on scene?

A First of all, everything leading up to my arrival there leads me to believe this is not a normal traffic stop, the sirens in the background, Jim not being able to use the radio and give updates like he normally

would, them asking for a box-in. To me everything leading up to this is not normal.

I get out of my car and I make eye contact with the driver of the vehicle. Right away I see one person is in the car, and I make eye contact with him.

What I see in his eyes, it's desperation, it's panic. His eyes look really big to me. I can tell right away by looking at him this stop is not going good. He is probably going to fight with us. He is also looking back over his shoulder. I'm thinking one of two things: He's targeting where the officers are, like he has intention of doing something, figuring out where people are standing, or he is planning to escape out of the vehicle.

What I see from the officers is tension. I can see looks in their face like it's not relaxed, it's not normal. I work with these guys every day. The look on Jim Defrain's face especially told me this was not going to go good. He looked upset. He looked worried.

Officer Foote was standing right up here near the front driver's side wheel facing the vehicle. I noticed he had his Taser out.

Standing next to him in front of the doorway was Officer DeFrain. Then I know for sure that the rest of the officers were standing along the side of the car

here, but I can't tell you what order that they were standing in.

Q Who are the rest of the officers that are there on the scene?

A You have Officer Polas, Officer Berne and Officer Burley standing on that side of the car when I got out.

Officer Murphy, who was with me, I believe -- I don't know what route he took -- took a position right on the rear passenger's side of the vehicle, which was tactically a good position to be in in case the subject tried to get out of the car on the passenger's side.

Q And did you -- and so -- and Officer Murphy, he was driving. Did you see him get out and go into that position?

A I never saw him. When I finally reached up to the car at some point out of my peripheral vision, I saw an officer standing there. It's my assumption it was Murphy based where I saw everybody else when I got out of the car.

Q Out of the officers that were there when you arrived, did any of them have their weapons drawn?

A I don't recall anybody having a handgun drawn. I recall a Taser being in Officer Foote's hand.

Q And that's the only weapon you recall?

A That's it.

Q Tell us what happened after -- where did you take a position?

A I took a position standing right next to Officer Foote up at the front of the car. Things seemed to be happening fast. It was -- it was in my opinion they were at the point where we need to get this guy out of the car.

Tactically, I thought we had a good position. We had the vehicle boxed in so it couldn't drive away. We had seven officers on scene, so the only thing I didn't have control of was what was inside of the vehicle and what was on the subject's person, himself.

So I felt, you know, for safety-wise this guy's behavior, his reactions, we need to remove him from that unsafe area. We need to take him out of the vehicle.

I took a position next to Foote. He had his Taser out already, but I drew mine, too.

Q When you say, "next to Foote," was he on your left?

A He was on my left; then Jim Defrain was on my right. I took my Taser out. Like I said before, I'm a Defensive Tactic instructor, and part of my duties as an instructor is I have reviewed countless reports on the Taser. A couple things I know about, especially in this

position right here, you are not going to get a big spread if you use the Taser. The larger the spread, the more likelihood the tool will work. Up close like that, especially from a front shot, you are going to use -- you are going to hit smaller muscle groups like the abs, the chest. So chances of it not working are higher in that situation.

Plus loose fit clothing -- I don't recall exactly what the subject was wearing, but clothing on the front sometimes is baggy, and oftentimes when you use the Taser in that position it doesn't make the connection. So I felt -- I knew he had a Taser already. I felt having two there would be a good option just in case it didn't work.

Q Now, describe the suspect vehicle. Are the doors open? The windows open or closed?

A The doors are closed. The driver's side window is rolled all the way down. That's the only window I recall. I don't know about the other ones. But I was focused on the driver's side. That door was closed. All the other doors were closed. The only window I know for sure that was down was the driver's side.

Q And as you arrived on the scene, do you recall any verbal exchange that was going on between the officers that were already there and Mr. Otis?

A I don't. It seemed it reached a standstill. They were ready to take him out. I don't know if they were waiting for my arrival. When I got out of the car, it was pretty evident they were ready to remove him from the car.

Basically, after I took my position up there, I felt the same way, we needed to get him out of the vehicle. Right after I took my spot there, two officers reached in to try to grab the subject's arm.

Q Okay. So you arrived. Was that a plan that you were able to formulate or things were just happening --

A Things were just happening.

Q -- when you get there?

A I don't have time to pull them all aside, huddle up and make a plan. But the positions the officers had taken, tools that were available, I felt tactically we were in a good spot to accomplish what we needed to do. Like I said before, the only thing I don't have control of is what's inside of the car, what he has access to inside of the vehicle.

Q So what's going through your head as a thought process, what's going to happen next?

A My thought process is they are going to grab his arm, pull it out of the car, just like they are trained to do, and attempt to use control to take him into

custody or remove him from the vehicle.

They attempt that, exactly what I think is going to happen. He pulls his arm away. It's very difficult to control somebody when they are in a car like that. They are seated. They have a low center of gravity. They have condensed muscle spring. When you pull your arms into the body, you are a lot stronger than you are when somebody is extended. Reaching into car and grabbing somebody with condensed muscle strength is very difficult to accomplish and he was able to pull his arms out of officer's grasp.

Q Who?

A I believe Officer DeFrain, somebody standing next to him I don't know. But two were able to reach into the vehicle.

Q Tell us what happened after they reached into the vehicle to pull him?

A He pulls his arm away and immediately dives down toward the floorboard or the center console area. Again, I'm standing up in the front. I have the dashboard kind of blocking my view. I can't see exactly what he's reaching for, but I know it's down on the ground, center console glove box area.

Both of his hands went down. They went down pretty fast, kind of popped back up. At that point I

announced, "Taser, Taser, Taser." That was an announcement so the officers knew I was going to deploy the Taser, nobody would try to reach in, grab him, get in the way.

I deployed the Taser. I was aiming for the chest area, upper chest. That's the target I had available to me at the time. I deployed the Taser, and it looked like it was working. His body went tense, rigid like I would expect, a normal reaction that somebody was being affected by the Taser.

Officer Foote had also deployed his Taser. I believe mine went off right before his. And then the subject after he went rigid, he kind of fell over into the passenger's seat and again still looks rigid, still looks like it's working to me. My thought process is I don't know what he's reaching for. I believe that it's a weapon. That's my thought that he is reaching for a weapon.

I'm starting to formulate a plan about how I'm going to take this guy out of the vehicle. The Taser looks like it's working. My plan is I'm going to hold down the trigger on the Taser. Normally, when you activate the Taser, it lasts for a five-second cycle. If you hold down the trigger, it will continue to cycle until you release the trigger.

My thought is the safest way to get this guy out of the car, both for him and us, is to do it while he's being affected by the Taser. So I hold down the trigger. I'm about ready to tell the officers, "I want one of you to have lethal cover." I could see Jim standing to my right, and I could see his gun pointed into the car. "And then I want two of you to open the door and grab this guy's legs and pull him out of the car."

Q Now, even when he's still being tasered, that's still safe for the officers to make contact with him?

A Correct. Unless you touch the wires, themselves, or in between the wires on the body, you are not going to get shocked. They are still pliable. You can move their arms. You can even handcuff them the whole time that he is being tasered. So my plan was to use the tool which looked like it was working to remove him from the vehicle safely and take him into custody.

Q That was the plan. Did that actually happen?

A No. I was actually just about ready to start telling them, articulating my plan to them, and the subject popped back up into the seat. And I don't know what happened with the Taser. You know I guess I could make assumptions, but all of a sudden it was not working.

Q Is that unusual, in your experience?

A No. If there is like a clothing issue, for

instance -- the Taser, itself, has 50,000 volts and sometimes people get caught up on that. Seems like a big number. 50,000 volts allow the Taser to arc. In other words, it doesn't have to make contact with the skin. It can be a combined two-inches away. You could have one probe in the body and one probe two-inches away from the body and the cycle would still actually complete because of the 50,000 thousand volts or you could have two in the clothing one-inch away and the cycle would still be able to complete because of the 50,000 thousand volts.

So my thought originally, when he sat back up, was it's in the clothes. It's kind of dangling away from the body. I still held the trigger down thinking the clothes might settle back down and it would affect him again.

Q So what happens when he sits back up?

A The next thing I know is I see -- I don't see how it happened or where he got it, if he had it in his hands before, I see a gun come up over the top of the window above the door. It looks like it's still inside of the vehicle, itself. And it's pointing -- I'm standing next to Jim. It looks like it's pointing right at Jim. I'm standing close to the car, but Jim is standing to my right. I look at the angle of the gun, and I think it's pointed at Jim.

Q Do you -- before you see the gun, do you see his body movements? What is he doing? What is Mr. Otis's actions before you see the weapon?

A He sat -- like I said, he sat back up and it looked like the Taser was no longer affecting him. I was hoping the clothes wo -- I was thinking it was a clothing issue. I was hoping the clothes would settle down on his body and he would start to get shocked again. But he was just sitting there. And I didn't see his hands. I didn't see his hands at all, but he was kind of sitting facing the steering wheel, and then his body kind of twisted and I saw a gun come up over the top of the door.

Q Okay. And about how long has it been, how much time has elapsed since the time you arrived and made contact until you see the weapon?

A Maybe 30 seconds.

Q And what happens next?

A I hear a loud bang, a gunshot. I don't see a muzzle flash, but I see the gun recoil, rock back consistent with recoil. I throw the Taser down on the ground, and I'm moving back towards my vehicle, drawing my gun. And as I'm moving back, I -- my ears go down, I loose auditory. I can't hear anything. I see the gun recoil again. It just rocks back. I don't see a muzzle flash. Out of the corner of my eye I see an officer

laying on his back in the street.

I had reached this point on my car right here. I was trying to get something in between me and the suspect, a position of cover. When I saw the officer laying on the ground, I holstered up and I started to move back towards the rear of my car, making a movement to get to him.

Q So what's going through your mind at this time? You had this confrontation. He has been tased. This is not working. He sits up. He starts firing. What are you thinking?

A My thoughts is he's trying to kill us. I see one officer that looks like he has been shot. And he's not moving -- actually, in my mind, I thought at that point he was dead. And I knew officers were returning fire. I couldn't hear it. I just knew it.

Q Could you tell who was returning fire?

A I knew Jim DeFrain for sure, but I couldn't tell you -- at this point I didn't even know who was laying on the ground, so I couldn't tell you who the other officers were.

So I moved to the rear of my car. The officer on the ground is now my focus. I have got to get him out of there.

When I got to the rear of the trunk, I look, I

realize it's Burley. He's still not moving. I think he's dead. I start to move towards him. As I cross the car, I look back at the vehicle and the suspect is now like leaning over into the passenger's seat -- towards the passenger's side door, excuse me. His body is -- I see his back, and it looks like he's leaning over the top of the center console toward the passenger door, and I start running to Officer Burley.

At that point, everything slowed down for me. It was like slow motion. Even though, you know when I look at the picture and I stood later on looking at the scene from outside of the crime scene tape, it looks like a short distance, it felt like I ran the length of a football field to get to him and it felt like I was running with concrete in my boots. I couldn't get to him, you know.

When I got to him, he was now sitting up, and it was -- everything went from slow motion right back to realtime and I could hear. I asked him, "Are you hit?" He says, "Yes, I think I am." I asked him, "Where?" He says, "My legs." And then I don't know where Ryan was before. I don't even know if he got there before me, but he's standing right next to me.

Q That's Officer Foote?

A Officer Foote. I -- I don't even know if he was

moved already. But I got -- I yelled at everybody because I tried to get on the radio to give an update and the -- the mic just honked at me, which tells me somebody else was talking when I tried to use the radio. So I yelled at everybody on scene that I was going to be in charge of the radio, don't anybody touch the radio. I gave an update that we had shots fired, one officer down and I needed medical at this stage.

Q Do you recall where the officers who discharged their weapons were located?

A Everybody -- I can't tell you exact positions, but everybody I saw were standing along this side of the car. And you know I can't even tell you how many of them there were. I just knew there were officers there the only one I knew for sure was DeFrain.

Q Now, did you hear them firing their weapons?

A No, I did not.

Q How many shots did you hear come from the suspect?

A I heard one shot, and then I saw the gun recoil a second time.

Q What did that mean to you?

A That would mean that he fired another shot. The gun rocked back. I didn't see a muzzle flash, but it was consistent with recoil. After you fire a gun, it pushes

energy out the end of the gun and there is a recoil action where the gun rocks back, and that's what I saw.

Q You didn't hear that?

A I did not hear.

Q You said you went blank?

A My auditory shuts down. I know that happens to me. I've had it happen to me before in stressful situations. Not always a good thing, but in the this particular incident not hearing all those gunshots up close maybe helped me later on being able to hear.

But I knew it happened to me. I was prepared to deal with it once it happened. In my mind, I knew that there were shots going off and I couldn't hear them.

Q Tell us how do you tend to Burley and what happens?

A Ryan and I have a quick discussion. I stage medical.

Q What does that mean when you say you "staged medical"?

A Medical is not going to come right into the scene. If there is a dangerous situation like this where shots are being fired, the ambulance isn't going to drive right up and load you in. You are going to have to either take the person that needs medical attention to them or they are going to wait until the scene is

entirely safe before they come in. So I knew at least I had to get Officer Burley to medical. I had to get him to a place where an ambulance could drive up safely and take him in the ambulance to the hospital or another option was we could take him to the hospital ourselves.

Ryan and I had a discussion, Bryan Foote, about it. I picked up Burley and put him in the back of the police vehicle.

Q Whose police vehicle did you put him in?

A I put him in the back of Officer Cody Berne's vehicle, which was actually parked right here at the time, where this marked vehicle is right here.

Q Okay.

A I put him in the backseat of that car. You know, my decision was that we're going to take him to the hospital. We're close to Emanuel, which is the number one trauma center in the State of Oregon. It's -- it could take up to five minutes for an ambulance to get to the scene. I believed that we could get him to the hospital quicker than that. So I made the decision that we were going to take him to the hospital.

Officer Ryan Foote was going to drive, but I wanted one more officer to go with him. A number of years ago I recall an officer getting shot in the neck out in St. Johns, and officers on scene took him to the

hospital and he later said the most terrifying part of that whole event was not getting shot; it was the drive to the hospital because the officer driving was so amped up, so excited they were just driving out of control. So I wanted two officers to go in the vehicle with Chris to the hospital.

You know, I looked back, and I could see DeFrain, Polas and Berne standing by the car here still, and I saw Officer Patrick Murphy on the trunk of our vehicle right here. So I yelled to Murphy to come to me. I probably yelled two or three times for him to come to me, got his attention. He ran over to me, and I told him he was going to the hospital. He jumped in the passenger's seat and the vehicle took off.

Q And so Foote was driving?

A Foote was driving.

Q And Murphy was in the passenger's seat with Burley?

A And I had thrown Burley in the backseat.

Q This was your call to make?

A My call, my judgment. I'm supervisor of the team, and I felt it was the quickest way to get him medical attention. So that's the decision I made.

Q So after Burley is in the vehicle and he's out of the scene, you returned back to Mr. Otis and his

vehicle?

A Yes.

Q What's his actions and movements at this point?

A I turn around. I had pretty much focused on Burley, getting him to the hospital. I was relying on the officers on scene to handle the situation in the vehicle with Mr. Otis.

I turn around, and the scene had changed. The vehicle door on the passenger's side was open. Mr. Otis was now laying out of the vehicle. His upper body was on the ground, the street and the sidewalk area. His lower body or lower legs were inside of the vehicle still, and his hands were up underneath him. The officers were now standing on the trunk of the suspect vehicle here with their guns pointed at the suspect. I walked up behind them. We were very close. And one thing that did happen with taking Chris to the hospital was the only vehicle that I had available right there that we could use for cover just left.

I asked the officers to back up. I got behind them, said we needed to back up. So we started making distance between us and Mr. Otis. I look back over my shoulder and I see a vehicle driving northbound on Sixth toward us. I got on the radio, said "Next vehicle driving in northbound on 6, drive in and cant it."

Q What does that mean, "cant it"?

A "Cant it" means to angle it right here, which was Officer Aaron Dauchy. He drives it up, he cants it not far enough up initially. We yelled at him to get the vehicle up on the curb. That way we could use the engine, something to stop bullets undercover while we moved in on the next phase of this incident. That was the tactical custody approach potentially and getting medical attention.

Q Officer Dauchy arrives on the scene. When do other officers start arriving on the scene and who are those other officers?

A Officer Dauchy arrives first. Once the officers take a position of safety on the engine block, I'm thinking to myself, "The guy is still moving. His hands are underneath him. His body is rigid. He is rocking side to side, like he is trying to crawl out of the car." I was thinking, "This could potentially be a SERT call out.

Q Can you explain to the grand jurors what is a SERT and why were you thinking you needed to call them out to the scene?

A SERT is our -- commonly referred to other places as SWAT. We call it SERT here in Portland, Special Emergency Reaction Team. They have different tools

available to them. They have different training that would allow them to approach in this situation and take him into custody, given the fact that he was still moving.

So I thought potentially I -- I know there is a gun there. I know he has intent to use it. He already shot a police officer. I know he is still moving. So definitely this guy -- his threat level is through the roof. With the tools we have available at the scene, I didn't feel confident that we could safely move forward and take him into custody at that time.

So I actually -- one thing when you activate the team, you have to give them a staging location and you have to give them a safe route in. So I -- from this position, once the vehicle was in place, I sprinted back to the intersection of Sixth and Clackamas, and I look left and I look right to pick a staging location. I picked my staging location, and then I sprint back up to the car.

In that brief moment, couple other officers arrive there to assist, specifically three. I had Officer Bill Shaw from Central Precinct and his partner Officer Matt Delenikos. They were up here on the engine block with us. Then I had Officer Brian Dale of the afternoon Gang Enforcement Team. He was on the engine

block also. He had his AR-15 rifle pointed at the suspect. Aaron Dauchy, who had got out of his car, was in position with a less-lethal or beanbag shotgun we talked about earlier. He was also -- he was right up next to Brian Dale at the front of the car.

I get back there. I look at him. He is still moving around. I don't know where the gun is at this point. His arms are under him. His body is still rigid. I decide to activate SERT and give out the staging location and the direct route into the scene. My thought process is we can't approach him. He is still moving. There is a gun there, like I said. He already has shot at an officer, so he has the intent to use. And wheels are in motion to take him into custody. I have got the SERT team responding, which could take awhile, but wheels are in motion for us to get him into custody and then get him the medical attention that he obviously needs.

Then I see a change. I see his body go from rigid to just very soft. He sinks down into the pavement and he's no longer moving. He is not shaking side to side at all. His hands are still kind of up underneath him and his body is still half inside the car and half out. His upper torso was on the ground. But definitely I saw a big change in his behavior.

We had a discussion, myself and Officer Shaw,

about potentially moving forward and taking him into custody. I had something on scene with me that was very valuable is I had officers that weren't involved in the initial incident. All the HEAT officers that were there were still standing on the vehicle right here, but one of the recommendations out of our post-shooting protocol is that if you move forward and take somebody into custody, you use fresh officers that weren't involved in the initial incident, that maybe aren't so high on adrenaline and could potentially make a better decision than somebody that is high on adrenaline.

So I had highly skilled, well-qualified officers that weren't involved in the incident on scene with me. I also had the addition of the less-lethal tool, the beanbag shotgun. I saw the change in his behavior and I felt before we actually did move forward and take him into custody, I wanted to make sure that he wasn't playing possum, just waiting for us to move up before he took an action against us.

So at my direction, I had Officer Dauchy fire a beanbag round at the subject.

Q Where was Officer Dauchy?

A He was up on the engine block right next to Officer Brian Dale, who had an AR-15 rifle pointed at the suspect. So I ordered him to fire a beanbag round. He

gave commands to the subject, got no response. I actually got on the radio and notified other officers we were going to deploy beanbag rounds so there wouldn't be any confusion on the scene there were more actual gunshots going on.

Q Just to be clear, why did you have him fire beanbag rounds?

A Because my plan at this point with the change in his body language, what I was seeing, the lack of movement, I thought potentially we could move forward and take him into custody and, in turn, get him medical care. But before I did this, I wanted to make sure he was not faking, he was not lying in wait for us to make a movement and then again would shoot at us when we walked forward.

So I had Officer Dauchy fire a beanbag round. From my experience on the street, I have seen people get hit with beanbag rounds and have absolutely no effect, so I want multiple shots, more than one, just to make sure.

The first beanbag round hits him in the small of the back where the spine meets the beltline. Second one approximately in the same spot and then again, ordered the third one, fired the shot again, third shot hit him in the small of the back. Absolutely no reaction out of the suspect, did not move, continued to be very relaxed,

soft, absolutely no movement out of his body.

So at that point, I made the decision -- again this is my call -- we're going to move forward and take him into custody. I talked with the officers that were there, and we made a plan.

Q And who are you speaking with in making a plan? Who is the hands-on team?

A Officer Bill Shaw and Officer Matt Delenikos are going to be the hands-on team. They are going to actually grab the suspect's arms, pull him out of the vehicle up on to the sidewalk and then take him into custody.

Officer Brian Dale is going to be lethal cover. He is going to take the AR-15 rifle up there with us just in case we have to deploy lethal force again. He would be the designated person to do that.

I had thrown my Taser on the ground in the initial incident, and I wanted to go up with the group as the supervisor making the call, they move forward, and I also wanted to bring a less-lethal option with me.

I grabbed the Taser out of another officer's holster and put it in my holster. I know the Taser did not work initially, but something changed for me. I now had access to a different target, being his lower back, legs, larger muscle groups, a lot more effective. The

jeans were tight fitting in the back, so I felt if he started to fight, I could deploy the Taser and potentially control him without having to use deadly force.

Q And if you need -- if you want to have a seat, go ahead, get comfortable.

Tell us, walk us through what happens when you decide to put this plan into action?

A I give everybody their roles. We had already deployed the beanbag, and we started to move forward as a team: Lethal cover in the middle, two contact officers that are going to be the hands-on guys on each side, and I'm right behind them as a less-lethal option.

We move forward. They grab the suspect's arms. They pull him out of the vehicle, up onto the sidewalk and place him into custody without incident.

Q What do you mean when you say, "They placed him into custody"?

A They put handcuffs on him.

Q Around his back or in front?

A Behind his back, put handcuffs behind his back.

We're still going to have to make sure he doesn't have a weapon on him before medical can come in and check him. In order to do that safely, put him in handcuffs to make sure he has got no weapons on him.

As they handcuffed him, I got on the radio, said the subject was in custody and I cancelled the SERT team. And immediately somebody else got on the radio and said, "Send in the medical." This happened so fast that it's my belief that medical was not there yet because it seemed to take awhile for them to actually get to the scene, to walk in to him.

Q But you had already called -- you already staged medical?

A I staged medical for him. After Burley went down, I staged an ambulance. When Burley left for the hospital, I got on the radio and said that he was in route to the hospital being driven by officers, but we still needed an ambulance for the suspect. So there was an ambulance in route to the scene for Mr. Otis.

Q And describe the scene after Mr. Otis was removed from the vehicle.

A After he was removed from the vehicle and placed in custody, my mind went from tactical to crime-scene preservation. I walked up to the intersection of Sixth and Halsey and I looked back at the scene. I could see shell casings in the street, lots of them. It looked like there was just evidence all over the place. Officers were still kind of standing there at the back of the car. I'm looking at where I needed to set up crime

scene tape to prevent people from walking into the scene and disturbing anything. Then I look and I see a fellow Sergeant walking up towards me, Sergeant Bob Gorgone, who works afternoon shift at North Precinct. He said, "Don, what can I do for you?" I said, "Set up the crime scene."

I then walked back towards where the HEAT officers were, and I wanted to remove them from the scene, including myself. There was a gravel area in the -- in actually the north -- northwest corner of Sixth and Clackamas, a big gravel lot. And I asked them all to move back to the gravel lot. Actually, I believe I got on the radio and said it.

After a shooting, number one, got to make sure everybody is okay, safe. But we want to step away, disengage ourselves, let somebody else take care of the investigation and also we get assigned somebody that stays with us to make sure that we don't talk about the incident, itself. We don't contaminate our minds about what happened.

So I move back to the gravel area. Everybody else followed as officers started showing up. We were all getting assigned a buddy to stand with us.

Q Who were you assigned?

A Officer Jeff Elias.

Q Now, did you have any communication or any contact with the other officers that were involved right after the incident?

A Obviously, once -- once I was done and back on the sidewalk, my mind went from dealing with Burley, dealing with the custody, to the crime scene. Then once it's all done, my worry is Burley, is he okay? I got on our Nextel talk group a couple times asking for an update on him from the officers that were at the hospital, and I -- they really didn't have any information for me. And also the human side of this whole thing I could see visibly Jim Defrain is shaken. He's upset. He's concerned. I walk over to him and I give him a hug, tell him I'm proud of him, he did a good job. And I went and did the same thing to Officers Polas and Burley(sic), but we didn't discuss any particulars of the incident. It's just I'm their supervisor. These guys, we work together closely, they are my friends, I just wanted to comfort them.

Q What do you do next? How do you finally end your charge on the scene?

A Uhm, a Lieutenant showed up, Lieutenant Rodriguez, and he got on the radio and said he was on the scene. Effectively, that means he has control of the scene now. I was already removed, and I just waited for

Detectives and everybody to start showing up and start their investigation. I was on scene until approximately eleven o'clock. I ended up getting assigned to somebody else. We have a unit called the Traumatic Incident Team. They are officers who have been through incidents before. They can come out, maybe provide you with some information about what may be going through your mind or what went through their mind. It's a pretty stressful deal and some things that don't normally happen, for instance the tunnel vision, the slow motion stuff, you know, maybe help you understand that's all normal. So I had Officer Jeff Bell show up. He was assigned to me, and Officer Jeff Elias was relieved.

Q Okay. I think we're going to stop here and we're going to give you folks the opportunity to ask the Sergeant some questions. But I think we have to take another witness we have a short time schedule. So we'll bring the Sergeant back and give you folks an opportunity to ask him some questions. Okay?

AMEEN RAMZY,

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

EXAMINATION

BY MR. REES:

Q Thank you, Doctor. You may be seated. If you would please state your name, first and last, and spell your name?

A First name is Ameen, A-M-E-E-N, Ramzy, R-A-M-Z-Y.

Q Dr. Ramzy, what's your occupation?

A I'm a surgeon.

Q And where are you employed?

A I work at the Trauma Center at Emanuel Hospital.

Q And can you tell the Grand Jury about your educational background?

A I went to college at Northwestern. Then I did Medical School at the University of Nebraska and did Surgical Residency also at the University of Nebraska and then I did specialty training in Trauma Surgery at the University of Maryland, Shock Trauma Center.

Q And how long have you been practicing at Emanuel Hospital?

A Ten years this year.

Q And did you treat Officer Chris Burley for gunshot wounds?

A Yes.

Q And I believe he came into Emanuel on the evening of May 12th?

A Yes.

Q And you have consulted with the physician who first saw him; is that correct?

A Yes.

Q Who is that?

A Rick Cole, C-O-L-E.

Q And have you discussed the patient with Dr. Cole?

A Yes.

Q What did you learn from him?

A Uhm, that the patient came in as a direct to the operating room, meaning for patients who are either critically injured or have the potential for a critical injury, we sometimes admit those patients directly to an operating room in case they need immediate surgery, just to save some time. And Mr. Burley had gunshots to both thighs, and he was assessed and treatment was started. He was admitted to the hospital.

Q And do you know what, if any, procedures took place at that time as far as treatment of the patient?

A Procedures included standard X-rays to see if there was any retained bullet, and he had blood pressure checks done both in his arms and his legs to see if there was anything that would suggest that a major blood vessel had been injured in the legs, and those tests were okay.

Q So did the X-rays indicate whether there were any bullets or bullet fragments in his legs?

A There were none.

Q Let me give you a pen. There is a line diagram behind you. If you would, maybe you can mark this exhibit and explain to the Grand Jury the injuries that you observed on Chris Burley?

A Okay. These are very high wounds on the thighs, very tight pattern. And on this side, about here and then exiting -- well, I am presuming front to back. I can't say that for certain. And this was right close here.

On this side, it was a little less close to here, little more towards the front of the thigh, then also a wound on the back close to here.

Q All right. So did that appear to you to be two separate and distinct through and through gunshot wounds?

A Yes, yes. These were -- these are in my mind from two different bullets, yes.

Q You can be seated.

You said that the major concern would be with a gunshot wound like this I assume either the bullet is striking a bone or a major artery; is that correct?

A Bone, major artery and the other concern for a wound like this is whether there could be a lower intestinal injury, because that's very close to the rectum, the anus.

Q Okay. Could those -- those types of injuries then be potentially life-threatening?

A Yes, the blood vessel injury being the most immediate.

Q All right. Ultimately, in this case, what were your observations regarding these gunshot wounds?

A That -- in seeing him both in the hospital and follow-up in the office, that the major blood vessels were not involved. There was a collection of blood on the left side, the front, where vessels had been injured, but not major arterial vessels. And there was not a bone injury or an intestinal injury.

Q What's the prognosis for Officer Burley?

A I think the prognosis for healing and recovery is good.

Q Did the gunshot wounds appear to be similar front and back as far as the kind of injury that you saw?

A Yes.

Q Is it possible to tell us in terms of inches what difference that would have made had the bullet path been, for example, two or three inches in another direction or side of the thigh? Would that have made a difference in this case?

A Can I go back there?

Q Oh, sure.

A The femoral vessels come down here and here. So, yeah, a distance of several inches would have been a big difference in the injury.

Q And the femoral artery is bringing blood away from the heart down to the leg; is that right?

A Yes, the blood comes from the aorta, which comes out of the heart, comes down to here and splits into the iliacs, and then the iliacs become the femoralis. So that's a major -- it's the major -- it's the blood supply to the leg.

Q It's a big artery? What would happen then if a bullet severed that artery in the leg?

A It can be massive bleeding.

Q Thank you, Doctor.

Are there any questions from the Grand Jury about that?

JUROR: Doctor, you said the bullets -- if the bullets would have severed that artery, would it have

been instantaneous death or slow?

A If the bullet -- it's a very hard thing to predict, because sometimes if the bullet or a knife completely severs an artery, the artery can retract and spasm down and somebody can survive a little longer. Sometimes a worse situation is to have a partial injury so there is a hole in the side of the vessels and it's spewing out and it can't clamp down as much as it would as if it was completely severed and pulled back. So I can't predict.

JUROR: Thank you. Thank you very much.

THE COURT: Anything else, folks? All right. Thank you, Doctor.

MR. BANFIELD: Okay. We're going to go ahead and continue now with Sergeant Livingston.

DON LIVINGSTON,

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

EXAMINATION

BY MR. REES:

Q Really, the only question I have left for you is: What were your observations of when medical started arriving on the scene and what happened?

A It seemed like it took them awhile to get there. I can't recall exactly the time line. I, myself, and all the HEAT officers were already removed from the scene, crime scene tape was up and I was standing in the gravel lot. I saw them walk in, but I did not see what kind of treatment they provided Mr. Otis with. But like I said, it seemed like it did take a while because we were all removed, crime scene tape had been established before they walked in.

MR. BANFIELD: All right. Any questions you folks have?

JUROR: Did you see the gun that he fired, the suspect?

A I did. I saw it come above the car door.

JUROR: No. I mean did you see it afterwards?

A No, I didn't. I don't know where it was.

JUROR: You don't know where it went in the --

A No. I didn't want -- after he's in custody, the vehicle, itself, you know, you probably want to get a search warrant before you go into the car, do all that stuff. So I left it up to the investigative process of the Detectives.

JUROR: So the gun wasn't underneath him?

A Not that I recall.

JUROR: Do you think you made the right decision

of transporting Officer Burley to the hospital?

A I do. We were so close, and I don't know exactly the time line. I'm interested to see exactly how long it took to get there. But I believe it would have taken longer had we met an ambulance somewhere to get him to medical attention. So I'm confident of that decision, I made that decision. I guess I'll have to talk to Chris about it some day to see how he feels about that decision, too.

JUROR: One more question: The whole time this is going on, is there a line to Dispatch or the call center? Is it open?

A Yeah, that's when I was talking on the radio, that's -- I'm talking on a dispatch net that all the officers in North Precinct can hear. There was a dispatcher that's kind of -- she monitors the whole net. So the first time I tried to get on the radio, it honked at me, like somebody was already using it. So if two of us tried to press the mic, only one of us gets radio time. It made a honking noise. That's when I yelled at everybody to stay off the radio. I didn't know if it was one of the officers on scene or somebody responding that had pressed the mic. But after that I had control of the radio, and it was going over the main North Precinct Dispatch Net so all the officers in the area could hear

it.

Q That was before the shots?

A It was after the shots.

Q After the shots?

A We were having communication on the main radio before the shots.

JUROR: Right.

JUROR: One last question: Did you ever find out what happened to I believe it was Officer DeFrain's phone or radio when you said it was --

A No, I haven't yet. I don't know -- I haven't had a chance to talk -- one of the things is we all get issued communication restriction orders. We haven't had a chance to sit down talk about it. As soon as all the investigative part is done, they will release that and that's one of the things I want to talk to him about.

JUROR: Were you able to tell what type of gun the suspect was using, or did you not get a good enough look at it?

A It looked to me like a semi-automatic handgun similar to the size of gun that I carry.

JUROR: What size is that, sir?

A Nine-millimeter.

BY MR. BANFIELD:

Q Is that standard issue?

A Standard issue. We all carry a Glock 17 or 19, which is a nine-millimeter handgun.

MR. BANFIELD: Okay. Well, thank you very much Sergeant Livingston.

THE WITNESS: Thank you.

FARHAN RASHTABADI,

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. BANFIELD:

Q And can you please just state and spell your full name?

A Farhan Rashtabadi, is the full name.

Q Do you mind spelling your name?

A F-A-R-H-A-N, R-A-S-H-T-A-B-A-D-I.

Q Where do you reside?

A I'm sorry.

Q Where do you live?

A I live in North Portland.

Q How long have you lived there?

A I would say 15 years.

Q And how are you currently employed?

A Yes, I am.

Q How are you? What do you do?

A I have two jobs actually. I work for Elephant Deli as a contract deliver for deliveries and I have my own business in the mall.

Q What kind of business?

A Body jewelry, it's a kiosk.

Q How long have you done that?

A I would say eight years or more.

Q I want to ask you some questions regarding Mr. Keaton Otis. We're here conducting an investigation surrounding the death of Mr. Keaton Otis. And did you have prior contact -- did you have contact with Mr. Otis on February 9th of this year?

A Yes, I did.

Q And can you tell the Grand Jurors what you recall from your contact with him?

A Just explain what happened?

Q Yeah.

A Yeah, I was walking my dog down the street. I live on Colfax Street.

Q Excuse me what street is that?

A Colfax Street, sir.

Q Colfax?

A Colfax, yeah. So I was walking my dog going up -- I usually go around Interstate where New Seasons

is, come down the street towards the bowling place. Right before I get back to my street, there is a Toyota Corolla kind of looks at me like this, kind of -- I'm okay. I shake my hand like "Hi". I turn around, I go on the side of the street. He follows me basically. He stops right there. There is a parking lot across the street, there is the bowling police and then there are apartments. It was like 4:30 p.m. He stops and he rolls the window down from the other side. He goes, "Do you work in the mall?" I'm like, "Yeah, I do." Maybe it's one of my customers, somebody I know, met before. He goes, "You know Lorraina?" Lorraina is my employee. I go, "Yeah, she's my employee." "Are you guys relatives?" I always call my own employees relatives. "Yeah, we're relatives."

Right after I say that, he comes out of his car, opens the trunk of his Toyota Corolla, whatever, grabs a big club, silver color, I believe. Comes next to me, this far. I have my dog. He is sitting. He is a really friendly dog. He usually likes to play, but this time he didn't do nothing.

So he grabs -- he threatens me. He starts cussing, cussing, cussing, "Leave her alone. She's mine. She's mine." I am like, "What are you talking about?" I stay calm. "She's mine. You understand. Drop your

phone, drop your phone," because I had my phone in my hand. He grabs the phone. He throws it across the street. It goes across, goes underneath some car. It's still okay, still working -- couple damages here.

Then he starts cussing again. He keeps saying, "Leave her alone" and just loud, very aggressive like if I did something he is going to hit me with the club. So I'm like didn't say nothing. Maybe he is scared of the dog. I don't know.

So -- and then he comes next to me again closer to my face. He looks at me. He's like, pugh, spits, like "Shame on you." I'm like, "What are you talking about?" I still stayed calm, nothing. So he gets in the car, he leaves. I look at the license plate number, ZET-208, Toyota Corolla. The Toyota Corolla goes down this street then he turns -- he didn't really go that fast. I got the number. I go call the police. They call non -- the nonemergency, of course. Then Officer Harris responded, come to my work later on. We write the report.

Later on they ask me that's between me and the police -- I mean, it's my decision if I want to press charges. The police contacts Lorraina, my employee, and they ask her "If you know anybody by the name Keaton?"

Q That's fine. You can't go into what Lorraina

said to the police or what Lorraina said to you.

I just want to ask you to be clear. You said when he went into the back of his car, was he the only one in the vehicle at the time?

A He was the only one, yes.

Q Okay. And when he got out of the vehicle, he went into the trunk of his vehicle, correct?

A Yes, he did.

Q And he pulled out, you said, a silver club; what do you mean?

A Baseball bat. I am saying club, baseball bat.

Q So it was a baseball bat he pulled out?

A Yes.

Q You said he came up. How close did he get to you with the bat?

A I'd say this close, two feet, next to my head pretty much.

Q What did you think was going to happen?

A I thought he was going to hit me. At the same time I think maybe he's on drugs. Maybe he's got some issues. Maybe he misunderstood me with somebody else, you know. It's like --

Q Did you do anything at all towards him?

A No, no, I -- I'm not a violent person. So I can't really -- I stay calm.

Q Had you ever seen this person before?

A Hard to tell, because I have so many customers in Lloyd Center, and it's really hard because, you know --

Q So if you had seen him, it would probably be in the context of your work?

A Exactly.

Q You don't know this person outside of that?

A No.

BY MR. REES

Q When you later determined that this person was Keaton Otis, did you determine in talking with your female employee that she had had some contact with him?

A Yes.

Q And what was the nature of that contact? In other words, was he a customer of hers or a friend of hers?

A No. She told me, I guess, the officer calls Lorraina, my employee, and they said, "If you know anybody by the name Keaton?" This is what officer told me. And -- because they try to to contact the person -- I guess he hanged up on the police. He doesn't want to share any information, the person who actually attacked me.

And then Lorraina actually met him -- she said

she met him at the bar called Marathon about two years ago. They exchanged phone numbers.

MR. REES: That was the extent of their contact?

A Now and then he was texting her, "How are you doing," kind of weird text every once in a while.

MR. REES: Any questions about that incident?

JUROR: Is Mr. Keaton, was he a big man or --

A Oh, he was taller than me, definitely. Definitely taller, like 6'2", 6'3" maybe.

Q But he never came down to the Lloyd Center and tried the --

A If I saw him again? I didn't see him, as far as I know.

JUROR: Juror but he never went after you again?

A No.

JUROR: Just that one issue?

A I thought maybe he is just being a psycho or something, he is obsessed with my employee. He thought maybe I'm going out with her. I thought that's what he thought, so -- too many things behind it. So I don't know.

MR. REES: Okay.

MR. BANFIELD: Thank you very much.

THE WITNESS: Thank you.

(Proceedings concluded May 21, 2010.)

IN THE MATTER OF THE INVESTIGATION)	MULTNOMAH COUNTY
OF THE DEATH OF)	DISTRICT ATTORNEY'S
)	OFFICE NO. 2194042-1
KEATON OTIS,)	PPB NO. 10-038353
)	
Deceased.)	

VOLUME 2-A

GRAND JURY NO. 2 PROCEEDINGS

The Grand Jury No. 2 hearings conducted on Friday, May 25th, 2010, were transcribed by Official Court Reporter.

APPEARANCES:

Conducting the examination: Deputy District Attorney Mr. Don Rees and Mr. Glen Banfield.

Estelle T. Keating
Official Court Reporter
1021 S.W. Fourth, Room 420
Portland, Oregon 97204

I N D E X

Christina Lais	3
Eric Kammerer	14
Andrew Polas	30

Grand Jury May 25, 2010. 8:20 a.m.

CHRISTINA LAIS,

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

THE WITNESS: Christina. C-H-R-I-S-T-I-N-A, L-A-I-S.

EXAMINATION

BY MR. BANFIELD:

Q Ms. Lais, you live at 603 N.E. Halsey Street?

A Yes.

Q How long have you lived there?

A About two years.

Q And who do you live with?

A I live with my boyfriend, and I have another roommate.

Q And what's their name?

A My boyfriend's name is Denver Warner and my other roommate is Desmond Moore.

Q On May 12th of this year you were home and recorded an officer-involved incident right outside your home?

A Yes.

Q How did you record that?

A I recorded it on my I-Phone.

Q What did you do with that recording?
A I gave it to the police.
Q When did you give it to the police?
A About an hour after the incident.
Q And about what time of day was it; do you recall?
A Probably 7:30.
Q Okay. Now, who was at home with you on the day of the incident?
A Just my boyfriend, Warner.
Q What were you doing just prior to the incident?
A I was talking to my dad on the phone.
Q Where were you in the house?
A I wasn't in the house. I was on the porch, on the front porch.
Q When did you first become aware that the police were conducting a traffic stop outside your home?
A When I heard the sirens from far away was when it caught my attention.
Q When did you first visually see something going on?
A Visually? Well, I mean, I saw the -- I saw the first car pull up slowly, and then I saw the cop car come with the sirens.
Q Okay. Approximately how far away is your front

porch from -- from where this happened?

A I would say it's across the street. I don't know in footage. I'm sorry.

Q But you had a good view?

A Yeah.

Q You could clearly see everything that was going on?

A I couldn't see everything, but I could see a lot.

Q And what did you see and what did you hear before you started recording this?

A Uhm, I heard -- I saw the officers get out of their car and -- and they had tasers. And they said to, you know, "Put your hands up and get out of the car." And the individual didn't. So that's when I decided to record.

Q Do you recall how many officers you saw there at that time?

A Two -- two or three.

Q And the individual, can you describe the vehicle that this person was in?

A It was like a pale green small car.

Q Now, walk us through your observations as you are looking at the incident and then you decide to record it.

A Uhm, sorry.

Q That's okay. Take your time?

A Uhm, -- so I saw the car -- I heard the sirens, I saw the -- the green car pull up slowly and just stop right there. And then the sirens came. It seemed like they were coming from really far or fast, really fast. They said immediately, "Get out of the car. Put your hands up and get out of the car." And the person in the car, as far as I could tell, was just sitting there. Then it struck me as odd, didn't they tell him to get out of the car? This is wrong.

Q You could clearly hear that from your vantage point?

A Yes, but I couldn't hear the conversation that was being engaged and the person in the vehicle.

Q Continue.

A Uhm, up until the point I shot the video?

Q Until you started shooting the video and then through that.

A And beyond that?

ISD PERSONNEL: You were having problems with the video?

MR. BANFIELD: Let's take a break for a second.

(Recess taken.)

BY MR. BANFIELD:

Q Okay. So you were telling us, just walking us through the whole incident as you observed it and as you started to record it.

A Where was I? So they -- the police officers got out of the car, and they had their guns drawn. I don't know if they were tasers or guns. I couldn't tell. But they were approaching the door, driver's side door, of the vehicle. And then I couldn't see what was going on within the car, but I heard some shouting. And at that point I took the video. So that's where the video starts.

And then -- so there is two or three officers at the door of the car, and it seems like there was some arguing. And they tased him twice. And then there was more shouting. And I couldn't tell who was shouting, but there was shouting. Uhm, and then -- then there was a shot. I couldn't tell if it was one shot or two, because I don't know if one shot has an echo. But there was like pop pop, like two sounds, about like that. And then -- and then there is a tiny pause and then just a whole mess of gunfire.

And at that point I was worried that I might get shot, so I ducked down -- I ran into my house and ducked down below the window sill, which is about this high right here (indicating). It took me about one second to,

"Whew," and then I put the camera on the window sill to continue videotaping or video recording the incident.

And then when I -- when I looked up, the passenger door was open, and I could see -- I could see below the passenger door, I could see a -- the person below the passenger door sort of in the gutter. It looked like maybe they were halfway in the car, halfway out, laying in the gutter. And he wasn't moving.

And then -- so the officers went around the other side of the car and had bigger guns drawn, which I think were the bean bag guns. And they were asking him to show his hands. I think -- they were shouting -- the officers were yelling at him to do something, and there was no movement. He wasn't doing anything. And they shot him a few times with the bean bags and still wasn't moving.

And then they -- after some time approached him -- approached Mr. Otis as a group, and then I guess they did something. I don't know. I couldn't see because the door was blocking the view. But then they picked him up, put him on the sidewalk, picked him up by his clothes and put him right there. And they all just kind of, I don't know, talking amongst themselves and shrugging and kind of turned away.

Q And when did you stop recording?

A Uhm, I stopped recording after -- I had actually gone to look for my boyfriend to tell him to get his digital camera, which is better quality. And I stopped recording after I had been confident that he was recording it.

I went upstairs to the upstairs bedroom and started to get it from a different angle after everything had sort of calmed down a little bit. And I knew he was recording the rest. And I didn't -- I was afraid my phone wasn't even going to be able to save the video. I was worried about that, so I stopped it then and let him record the rest.

Q You said it first caught your attention when you heard sirens, right?

A Yes.

Q Then shortly after the sirens, then you saw the vehicle pull up the street, correct?

A Uh-hum.

Q Now, you said that you could hear the officers yelling commands at him; is that correct?

A Yes.

Q And exactly what did you hear?

A I don't know exactly the words that they used, but it was something like, "Put your hands up and get out of the car." I remember the "get out of your car" part

because that's the thing I noticed, his hands weren't up -- because I could see the silhouette of the guy in the car.

Q I mean, were they just talking to him, or were they yelling pretty loud?

A They were yelling as they were getting out of the car.

Q The officers were yelling as they were getting out?

A Yelling, as they were getting out of the car.

Q The driver of the car, was he complying with the order in any way that you could tell?

A No.

Q Could you see where he was, where he was sitting, where he was in the vehicle?

A I could see, yeah, his silhouette and he was sitting in the driver's seat of the vehicle.

Q And when do you recall seeing the officers draw any weapon?

A I feel like it was immediately that they at least had their hands on it, because it was so fast and they had their weapons drawn.

Q Okay. And could you tell what kind of weapon it was?

A Not at first. Uhm, as they were standing by the

pass -- I mean, the driver's side of the car, sort of in a line with their guns drawn. I could see the yellow caps of the tasers. That's why I knew; they were kind of square-ish.

Q So, you saw they had their tasers drawn at that point?

A I didn't realize they had even real guns at that point.

Q And do you recall how many officers you saw draw their Tasers?

A Three? Maybe, four.

Q And how many officers did you see deploy their tasers?

A I didn't see any tasers deployed. I only heard it. I heard the sound, the crackle, sort of electricity.

Q Could you see the driver's reaction to being tasered?

A No.

Q And at what point now did you hear gunshots?

A It was after the tasing was over.

Q Like how soon after the tasing was over?

A A few seconds, maybe.

Q And did you hear anything else in between that after the tasing was over?

A Yeah, when the tasing happened -- it ended, and

there was arguing. I don't know if it was back and forth. I think there was arguing back and forth. I heard a lot of yelling.

Q Could you make out anything of the yelling?

A Uh-uh.

Q And then you hear shots?

A Uh-hum.

Q And how many shots do you hear first?

A Just those two sounds right away, and then so many that I can't count.

Q So you heard two distinct sounds?

A And then a pause, a very short pause, and then, you know, a reaction -- it seemed like a reaction, several, several bullets, shots fired.

Q Did you see any of the officers go down?

A Not -- not as I was watching it.

Q Now, after the gunfire ended, could you see where the driver of the vehicle was?

A Yeah. He was below the passenger door in the gutter.

Q Okay. So he was -- a portion of his body was already outside of the vehicle?

A Yeah, from what point I could see, part of his clothing, which after they pulled him out, I realized that was his sweatshirt he was wearing, his jacket.

Q Could you see was he doing anything?

A No.

Q What were the officers doing at this point? Were they yelling commands towards him?

A Uh-hum. They were telling him, I think, to show his hands, "Show us your hands, show us your hands."

Q What do you recall after the gunfire stopped? Just walk us through what you remember seeing.

A Well, he was slumped out of the car, I am assuming, seeing that they pulled him out of the gutter. And they just -- they were about -- I don't know. They were pretty far away behind another -- kind of another cop car they were using for protection, and they all had their guns drawn, bigger ones, at him and telling him to show his hands, and there was no movement on his behalf.

Q Okay. All right. I have here a couple diagrams of the scene. We can start with this one. I will just put it over here. Can everyone see that?

And can you just indicate where on this diagram your house was located?

A Right here is my front porch.

Q So you are recording from that angle?

A Yeah.

MR. BANFIELD: Any questions?

JUROR: You said you recorded it on --

THE WITNESS: My I-Phone.

JUROR: Video, not still?

THE WITNESS: Yeah, video.

JUROR: Do we have that video?

MR. REES: We do.

JUROR: And you didn't know how many shots was returned fire? Just several, a mess, like you say?

A There were so many and so close together. And I have watched the video several times. There is no way for me to count. It's just no way.

MR. BANFIELD: Okay. Thank you very much.

ERIK KAMMERER,

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

EXAMINATION

BY MR. REES:

Q Good morning, Detective.

A Good morning.

Q Could you please state your name and spell your full name for the Grand Jury?

A Eric, E-R-I-K, Kammerer, K-A-M-M-E-R-E-R.

JUROR: One more time.

THE WITNESS: E-R-I-K, K-A-M-M-E-R-E-R.

BY MR. REES:

Q And Detective Kammerer, can you explain what you do for a living?

A I'm a detective with the Portland Police Bureau currently assigned to the Homicide Detail.

Q How long have you had that assignment?

A Since 2007, so coming up on two-and-a-half years.

Q How long have you been with the Portland Police Bureau?

A Sixteen years.

Q And you began as a patrol officer prior to your promotion as Detective?

A Correct. I was hired in 1994. And in 2003 I was promoted to Detective.

Q Among your assignments as a Homicide Detective, are you called upon to investigate the use of deadly force by the police officers?

A That's correct, yes.

Q And are you one of the lead detectives assigned to investigate the deadly use of force on May 12th, 2010?

A Yes, the use of force against Keaton Otis.

Q In terms of the protocol that you follow, is it similar to the protocol that would be used in any homicide investigation?

A For the most part, yes. The crime scene processing is very much identical. It's just dealing with the officers in this case that's slightly different.

Q In terms of how it is similar, can you explain what steps are taken immediately after in this case the use of deadly force and the determination that somebody had been killed?

A In this case, immediately after medical had pronounced Mr. Otis deceased, the crime scene was set up. Sergeant Livingston started that, and then Sergeant Gorgone took over and maintained control of the scene.

Items of evidence were marked while Mr. Otis was being assessed by paramedics by Officers Dauchy and Eugenio. After the scene had been set up, it was then frozen. Nobody goes in or out.

We were notified at 1839 hours and responded to the scene.

BY MR. REES:

Q 1839 being?

A 6:39 at night. Sorry.

And then the other thing that occurred was criminalists from our Forensic Evidence Division responded to the scene to document the scene in photographs and video. Several detectives responded to the scene. In all officer-involved shootings and

homicides, what we have in the Police Bureau is known as the Up Team. Two Homicide Detectives, two Crime Scene Detectives and then two assisting detectives all respond in any homicide or officer-involved shooting.

We also had detectives, an on-duty, assigned to the afternoon detail that came out to conduct witness interviews.

Q All right. And additionally, because this involved the use of deadly force by police officers, additional personnel are called to the scene, correct?

A That's correct, yes.

Q And among those would be detectives from outside agencies?

A Right, two detectives from Multnomah County in this case, which are members of the East County Major Crimes Team, come out to assist us with the investigation.

Q When you say Multnomah County, do you mean the Multnomah County --

A The Multnomah County Sheriff's Office.

Q And are those detectives from the Sheriff's Office then assigned to assist in the investigation?

A Yes. They will interview civilian witnesses and officer witnesses in this case.

Q Additionally, was the Medical Examiner called to

the scene?

A The Deputy Medical Examiner came to the scene, yes, collected Mr. Otis and took him back to the medical examiner's office pending a postmortem examination, which occurred the next morning.

Q Was a representative of the Multnomah County District Attorney's office called to the scene?

A Yes, a senior Deputy District Attorney responded to the scene.

Q And were personnel from FED, which I guess is the Forensic Examination Division?

A Forensic Evidence Division, yes. A criminalist came. In this case, there were six criminalists on the scene.

Q And through the course of that investigation, just by way of summary, can you tell the Grand Jury ultimately how many officers in this case were determined to have used deadly force against Keaton Otis?

A In this case, it was three officers: Officer Defrain, Officer Polas and Officer Berne. And I can give you the spellings if you need them.

JUROR: We have got them here.

THE WITNESS: You do.

BY MR. REES:

Q Were you able to determine by examining their --

pardon me, their service weapons, the firearms they carry, issued by the Police Bureau, how many shots each officer fired in this case?

A I was. Officer Defrain fired 15 times; Officer Berne fired 11 times. And Officer Polas fired six times.

Q And in your examination of the scene, were you able to gather or -- the criminalist who gathered, but were you able to determine how many bullet casings were found at the scene?

A Yes. We located 32 shell casings, which corresponded with the ammunition issued by the Police Bureau, along with one shell casing, which did not.

Q And were those articles all submitted to the State Police Crime Lab for forensic testing?

A Yes, they were submitted to the Oregon State Police Forensics Lab to Leland Samuelson.

MR. REES: Who will be called as a witness later in this proceeding, folks, to talk about his findings.

BY MR. REES:

Q In addition to the casings that were found, were bullets or parts of bullets, bullet fragments, found at the scene?

A Yeah, several bullets, bullet parts were found at the scene. Several more were located during the autopsy, and additional bullets were located when we

searched the vehicle that Mr. Otis had been in.

Q You mentioned one casing that did not match those issued to the Police Bureau. Where was that casing found?

A That was found in the front passenger floorboard of the vehicle driven by Mr. Otis.

Q You have been handed a number of photos -- two photos. Okay. And the first, if you could show that to the members of the Grand Jury, what does that show?

A That shows a handgun that was inside the vehicle driven by Mr. Otis, which is a Taurus PT111. It's a nine-millimeter, semi-automatic handgun.

Q And was that seized as evidence and submitted to Leland Samuelson at the Crime Lab for examination?

A Yes, it was.

Q All right. And then what does the second photo show?

A This is a Crown Royal bag that was located directly next to Mr. Otis on the ground just outside the passenger door of the vehicle.

Q In that photograph, there appears to be a ball of --

A It's Taser wire.

Q Okay. It's Taser wire entangled around the bag?

A Correct.

Q Now, are you familiar with -- with those cloth Crown Royal bags? Are you aware that those -- those bags, when new, are like a decorative item that comes along with a bottle of Crown Royal liquor?

A Correct.

Q Are you familiar, based on your training and experience, with the use of those bags to carry contraband, such as drugs and guns?

A During the course of this investigation, I did become aware of the fact that Crown Royal bags are used by people to carry guns and other weapons and drugs.

JUROR: That was found outside the vehicle?

THE WITNESS: Yes, ma'am.

JUROR: If I may? You said that there was 32 shells found?

THE WITNESS: 32 shell casings.

JUROR: Shell casings. And you said Defrain fired 15?

THE WITNESS: Correct.

JUROR: Polas six and Berne 11?

THE WITNESS: Yes, sir. I believe that's correct.

JUROR: Okay. And then one shell casing was found in the car?

THE WITNESS: Yes, sir.

JUROR: Okay. Thank you.

JUROR: That didn't match, am I correct?

THE WITNESS: That's correct, sir.

BY MR. REES:

Q Didn't match the police service weapons?

JUROR: Yes. Anyway, that -- you know --

THE WITNESS: Correct.

BY MR. REES:

Q Just to follow up on your question about this bag and where it was found -- and this was photographed in place as it was found after the shooting, correct?

A Yes, sir.

Q Can you maybe explain where this would have been in relationship to Keaton Otis's Toyota?

A Okay. Do you guys have a scene diagram?

MR. REES: Did that help answer your question about where this was found?

MR. BANFIELD: Do you want a scene diagram or --

A That's fine. May I stand up?

So this is a rough -- if you guys can all see that, overall the intersection of N.E. 6th and Halsey. North is at the top. This is Mr. Otis's vehicle here, and these are police vehicles. Mr. Otis was right outside the passenger door of this vehicle here, and the Crown Royal bag was right next to him. Does that help?

Okay.

BY MR. REES:

Q Earlier this morning, Detective, a witness testified that she lives in a house on the northeast -- I believe it's the northeast corner of N.E. Halsey Street and N.E. Sixth Avenue, and that she used her I-Phone to capture images of the final moments of this encounter between the police and Keaton Otis. Did members of the investigative team in this case obtain a copy of that video clip from that witness?

A Yeah. Detective Sponhauer spoke with Lais, I believe is her name, obtained consent from her to look at her phone to get that video. Detective Sponhauer gave the --

JUROR: Could you spell the Detective's name?

THE WITNESS: Detective Sponhauer, S-P-O-N-H-A-U-E-R.

JUROR: Okay. Thank you.

A Yes, sir. I took the phone back to my office and downloaded the video file from the phone, and then the phone was returned to Ms. Lais.

BY MR. REES:

Q All right. Are you aware that in addition to that original image, that that image has been slowed down in an effort to enhance the viewer's ability to see what

was recorded?

A Yes, sir; I am.

Q And have you viewed that version?

A Yes, I have.

MR. REES: Okay. We're going to play the video clips now.

MR. BANFIELD: Do you want to play all three of them?

MR. REES: Let's just do them in sequence.

MR. BANFIELD: Okay.

BY MR. REES:

Q Detective, before we start -- of course you can watch as many times as you want, but maybe you can just explain what we're seeing here and then we'll play it?

A Yeah. I'll show you this diagram real quick. So she would be standing on the porch right up here looking to the south. That's what you are seeing right here. She's on her porch, looking to the south. That's Mr. Otis's vehicle there, and then you have the police vehicles here and here, which correspond to these two vehicles here.

MR. REES: And members of the Grand Jury, if you need to get closer or you want to move, feel free to leave your seat and get a better look.

JUROR: That's great.

MR. BANFIELD: That good?

JUROR: Yeah.

BY MR. REES:

Q I'm sorry, one more thing before, just to put this in perspective in terms of the timing we're about to see. Can you tell us when the contact first began between the first patrol officer that observed Keaton Otis? What time was that?

A It was at 6:21 in the evening.

Q At 6:21, and then do you know what time the officers indicated Keaton Otis actually pulled his car over to the curb and stopped?

A It was -- 1821 -- 6:21 is when the officers exited their vehicle and announced on the radio they had the vehicle stopped.

Q Okay. I'm sorry. Actually, back up before that. The officers called up that they were beginning pursuit of a vehicle?

A They never called out they were in pursuit of a vehicle. They called out they were stopping a vehicle. And in the radio transmission, you can hear the siren on the police car, which may have led someone to believe they were in a pursuit. They were following a vehicle that was not pulling over for them. "Pursuit" is a technical term we use in the Police Bureau that

differentiates between someone who is just not stopping.

Q So the first information that an officer had seen this car, was going to initiate a stop, was that transmitted over the Nextel talk group?

A Initial information was broadcast over the Nextel talk group amongst the members of the Hot Spot Enforcement Action Team or the HEAT Team, that we're going to stop the car; in this case, Officers Defrain and Foote and Officer Berne. They talked about the vehicle, and then a series of traffic infractions occurred.

Officer Foote and Officer Defrain activated their lights. The vehicle didn't stop. Officer Foote activated an air horn. The vehicle still did not stop. Officer Foote then activated his siren, and a short drive occurred from somewhere between the area of Grand and Wasco until the vehicle actually stopped at the intersection of 6th and Halsey.

Q So because that was not broadcast over the net, we don't know what -- what time that actually was, the visual contact?

A Yeah, it would have been somewhere around, you know, 1820 hours. So 6:20, probably a minute before the vehicle was actually stopped and the broadcast came out.

JUROR: 6:20, that's just an approximation based on the distance?

THE WITNESS: Yes.

BY MR. REES:

Q But you know with certainty that at 6:21 Keaton Otis came to a stop at the curb side?

A Correct.

Q And then how much time passes until we get to this point we're about to see on the video clip?

A This would have occurred, uhm, somewhere between a minute-and-a-half to two minutes after the vehicle stopped and pulled over.

Q Okay. So by the time the events we're about to see on this clip --

A Well, between two-and-a-half, three minutes after the vehicle was actually stopped is when this video starts.

Q That's what I'm asking. Two-and-a-half minutes to three minutes pass before these events which we're about to see occur; is that right?

A Correct.

Q Okay. Any questions about that before we watch the video? Okay.

A Is this the regular speed one first?

MR. BANFIELD: This is the regular speed one.

(Tape played.)

A Could we rerun that, start over again?

MR. BANFIELD: Yes, absolutely.

THE WITNESS: Were you guys able to hear everything that was going on in the background?

MR. BANFIELD: Just a second.

A The reason the sound decreases at the end there is because Lais has gone inside the house now and closed the door.

BY MR. REES:

Q All right. And this next view will be at half speed. When watching this, was it quite apparent to you that there were two distinct gunshots initially, a pause and then the rapid succession of return gunfire?

A Yes. You will hear a pop then a tick, tick, tick. That's the Tasers being deployed. So you will hear that twice.

MR. BANFIELD: Ready?

THE WITNESS: Yes, sir.

(Tape played.)

MR. BANFIELD: Do you want to see that one again?

BY MR. REES:

Q And then I believe the final version stops the action after certain events. Go ahead and play that.

MR. BANFIELD: And, Mr. Rees, we have both that one and a little bit zoomed-in version.

MR. REES: Sure.

(Tape played.)

BY MR. REES:

Q So, Detective, as we watch this one, if you want to pause it, you might point out what we're seeing. There may be a question. We see one officer on the passenger's side who appears to be running?

A Yeah, that's Officer Murphy: Officer Burley right here, then you see him, falls to the ground.

MR. REES: Would you mind playing that again?

MR. BANFIELD: Yeah.

BY MR. REES:

Q I'm sorry. We'll give you a chance to do that again because you were kind of talking over the --

(Tape played.)

A This is Officer Murphy here on the passenger side of the vehicle. Officer Burley, you will see him backing up, tall guy, right there, backing up. That's him right there. And then he falls down after being shot.

(Tape continued).

Q This version is zoomed in.

A Which unfortunately doesn't enhance the pixilation.

(Tape played.)

BY MR. REES:

Q All right. Thank you, Detective. Ladies and gentlemen, we're going to return to Detective Kammerer's testimony later in these proceedings. But right now we're going to excuse him. We're going to call the next witness, who is Officer Polas.

ANDREW POLAS,

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

EXAMINATION

BY MR. REES:

Q Officer, if you would state your name, please, and spell your name?

A A-N-D-Y, P-O-L-A-S.

JUROR: Do you go by Andrew or Andy?

A Andy. Really it's Andrew, A-N-D-R-E-W.

Q Officer Polas, how long have you been a member of the Portland Police Bureau?

A Almost six-and-a-half years?

Q Did you grow up here in Portland?

A Born and raised in southeast Portland, went to Franklin High School, graduated from Franklin High School; then I went off to college and went to Oregon

State my freshman year. And then I transferred from Oregon State to Western Oregon for my -- where I finished my last three years of school.

While I was at Western my senior year, my best friend and I studied abroad in Vienna, Austria for four months, had a chance to travel all around Europe. Then I graduated a term early from college, so I had four months -- three months before I actually graduated and walked in the ceremony, so I used that three months -- I went on a road trip myself around the whole United States for three months. Then after that I worked for the summer and then went right into the Police Corp Academy.

Q At what point between Franklin High School and graduation from Western Oregon State University did you decide you wanted to be a police officer?

A I decided that when I was a senior in high school. I joined the -- it was at the time of the Explorer Program, then it became Cadets. I did that all through high school and college. As soon as I joined my senior high school, I knew I wanted to become a police officer.

Q So were you -- here's some water.

A Oh, thanks.

Q Were you in a special program then that helped pay for your -- your college, as part of your effort to

get into law enforcement?

A Yeah, the Oregon Police Corp, it was a Police Corp scholarship. What it was was a program that is pretty extensive as far as getting into the program, lots of physical tests, written tests. It was a pretty difficult program to get into, but it came with a four-year college scholarship. And I ended up getting that scholarship my junior year, at the end of my junior year in college. What they did was they reimbursed me for the previous two years.

So it came with a scholarship and a guaranteed job with the police department you selected, and I chose Portland. So as soon as I graduated college, I entered into the Academy for Portland.

Q Once you became a police officer, what -- what assignments did you have in the City of Portland prior to joining your assignment with HEAT?

A Uhm, I primarily worked Patrol. For the first year-and-a-half I did my probationary period where I would rotate through all the different precincts for three or four months at a time. And during that time -- when I first started I was assigned to Northeast Precinct for my first three months. Then once I completed the three months there, then every Portland Police officer has to go to the Advanced Academy, which at the time I

think was twelve weeks.

So I was off the street for about twelve weeks in Portland's Advanced Academy. Once I completed that, I went back out on the street and completed my rotations, where I finished up at old North Precinct in St. Johns is where I got off probation and was permanently assigned to North Precinct there.

While I was at North Precinct, I requested to work a certain area of North Precinct. The district was 565. It was kind of right in the center of the precinct, from Interstate to MLK and Ainsworth to Shaver. So I was the District Officer there for a few years. And then we all moved over to the new North Precinct on MLK and Killingsworth where I worked the last couple years. And then I put in just recently for the Hot Spot Enforcement Action Team, HEAT.

Q I'm sorry. Why did you request to work that district you mentioned, 565?

A I had worked there quite a bit. The area -- they just -- as a result would put me there quite a bit, so I got to know the area pretty well. So I figured I would just write a memo to get assigned that so I could work there all the time. It was kind of the part of town I like to work the most. It's nice when you get to know people in your district, the businesses, who is hanging

out there, rather than be put somewhere different every day. It's tough to do community policing type stuff when you don't know anybody, what's going on. So I got to know just a lot of motel owners, business people, all sorts of stuff. We helped people solve problems.

Q And then you requested to be a part of the Hot Spot Enforcement Action Team or HEAT?

A Correct.

Q And why did you request that?

A I have always had an interest in working gangs and I always knew I wanted to do it at some point. I knew that HEAT's primary mission for the last couple years has been to work gangs. I knew all the team members very well. My best friend was on the team, whom I grew up with, and we always wanted to work together. And HEAT was out of my same precinct. So I always saw the guys. I did a lot of work with them.

Before I was on the team, if the staffing allowed it for our shift, they would let me work with HEAT occasionally. I knew the Sergeant really well and just a really great group of guys. I had actually been -- I had wanted to put in for the team when it was created, but it was -- old North Precinct was such a small unit that they made the team out of all the precincts. My precinct wasn't allowing anybody to put in

for it because we couldn't give up any bodies because our precinct was so small. Once we moved over to Northeast, I was just waiting for some openings to happen, and then they opened up and I put in for it, got it.

Q All right. So as of May -- May 12th, the time of the shooting, how long had you been a member of HEAT?

A That was my fourth week.

Q And what were your days on and off?

A My days off are Sunday, Monday, Tuesday. I work Wednesday through Saturday.

Q Were you working a ten-hour shift then?

A Yes.

Q And so May 12th being a Wednesday, that was your first day back after a three-day weekend; is that right?

A Correct.

Q And what time did your work day begin then?

A We started at 4:00 p.m.

Q All right. And did you start off with Roll-Call with the other members of HEAT that afternoon?

A Yes, we did. We had a little bit longer Roll-Call that day because it was the same day we found out that the new Chief was being sworn in. So we had a lot to talk about in Roll-Call as far as what we thought was going to happen with our unit, just what kind of changes were going to be coming to the Police Bureau. So

we had a little bit longer Roll-Call that day.

Q What time did you leave to actually go out on the road?

A Uhm, I would say we probably left a little after 5:00, because that day my partner, Chris Burley, he had taught an in-service class that day and he had come to roll-call in his civilian clothes that he had taught the class in. So he hadn't had time to change into his uniform for Roll-Call. So it was going to take him a little while after Roll-Call to get dressed, and I had to write a memo to request some time off during the Fun Center time. So it gave me opportunity to take care of that while Chris changed.

So all the other guys got onto the street a little bit earlier than we did. It took us a little longer to get out of the Precinct. So we probably got out of there 5:00, or a little after 5:00 or so.

Q Were you and Officer Chris Burley paired up in a car together?

A Yes.

Q And so where did you go after you left the precinct that afternoon?

A Uhm, we immediately went to the Holladay Park Lloyd Center area, which is typically what we'll do right out of Roll-Call. We usually take a spin through that

area just with the gang violence that's been going on there lately, the MAX line being right there, Lloyd Center, school getting out. A lot of the kids tend to gravitate toward that area, Holladay Park. So we usually go there right out of Roll-Call every day. That's what we did that day.

So we went down there. Everybody else had been out and about, already checked it out. We get down there, it was pretty quiet, wasn't really much going on. So we got a hold of the other units on our Nextel phones, and they had said the same thing; quiet, nothing really was going on. We had said we weren't seeing anything. So Sergeant Livingston said, "Let's go grab a coffee at MLK and Hoyt, Starbucks." So we cruised on there, grabbed a cup of coffee.

Q And after coffee, what happened?

A Uhm, A coffee -- we were at the coffee shop for awhile discussing more on the new Chief stuff. We probably left the coffee shop around probably 6:10 in the evening, 6:15.

So once we all leave, we pull out. Sergeant Livingston and Pat Murphy were riding together. They were the first car out onto Grand. We were right behind them. So we start heading northbound on Grand, cross over Broadway where it becomes -- Grand becomes MLK two

ways north and south.

As we are heading northbound MLK now, the way our team communicates, we use Nextel phones. And we have a talk group set up where we push the "push to talk" button and whoever is talking will come out over the speakerphone, since only our unit can hear it. It's a real effective way of communicating without using the radio to tie up radio time for everybody else.

So I heard Officer Foote get on the radio and say that, "We're going to stop this car over here at 6th and Clackamas. It's driving kind of weird. Can you guys start this way?"

And so we were immediately thinking we would start that way. And so we're waiting to make a U-turn on MLK there. There are some of the planter medians. So as soon as we were able to get around one of those, we were going to flip a U-turn. Just a split second later, second later Officer Foote got back on, said, "This guy is being noncompliant. Can you guys hurry up and get here?" And so --

Q All right. And first, if I didn't ask you, who is driving the car, you or Officer Burley?

A Officer Burley is driving that day.

Q So he is driving. You are in the front passenger's seat?

A Correct.

Q And at this point, I believe you testified that you have heard something along the lines of, "This guy, this guy is being weird. Can you guys start this way?" And now you hear, "This guy is being noncompliant. You guys need to get here"; is that right?

A Yeah.

Q And the second was Officer Foote. Do you know who said that first?

A Both of them were from Officer Foote.

Q Okay. Would you -- when you hear that, what are you thinking, based on your experience as a police officer and your training and working with HEAT? Did that have any particular meaning to you?

A Yeah. I was thinking that -- typically with the people that we deal with -- we deal with a lot of pretty hard-core gang members and some pretty bad guys. And I remember thinking as soon as he said that this guy -- or when he said, "He is being weird," I was thinking, "Okay, we need to get here."

We typically do everything together anyways. We always stick together in a tight group just for safety numbers. And then as soon as he said that, "This guy is being noncompliant," both Burley and I were thinking that this -- we got to get there. Something is not right with

this. I could just tell and the sound of his voice, something just sounded like it wasn't right and that we needed to get there right away.

So -- and I am assuming that Sergeant Livingston and Pat Murphy were thinking the same thing because as soon as that second commission came over the cell phone, they immediate did a U-turn and we were immediately right behind them.

Q When you said Sergeant Livingston activated the lights, is this something you could hear?

A Our cars are Ford Crown Victoria's, they are cage and computer. They are all one color. Me and Chris Burley's car is like a dark gray, all dark gray. There is no overhead lights, but it has lights in the rear view mirror and on the side mirrors and one on each side window by the cage. There is no overhead lights. But when you activate the lights, they are pretty bright strobe lights. So when they activate -- and Sergeant Livingston's car is a light gray car. They were ahead of us.

Once they activated their lights and siren, we could clearly see it. We were thinking the same thing. We were just waiting for them to make a U-turn first because they were ahead of us. We were right behind them.

And so we are now going Code 3 with our lights and siren south on MLK. And again Foote gets on -- Officer Foote gets on the Nextel and says that, "I want the next car arriving in the area -- I want the next car to box this car in from the north at 6th and Halsey."

So now that he is saying this, I'm thinking, "Okay, box this car in; this guy has got to be a flight risk. Something real different is going on with this stop."

And so we're -- we're really moving now. I mean, we're going real fast down MLK, Code 3, following Sergeant Livingston and Pat Murphy.

Then I hear Officer Foote get on the radio and say that they are making a traffic stop on this car and to start some more units because this guy is being noncompliant. And so now I'm thinking that this is really going bad because he already knows that he has us, his fellow HEAT units, in route and we're usually pretty close, but now he is wanting other District cars to start, knowing that he already has a bunch of us coming. So he wanted additional.

So I'm thinking, "Okay. This is getting bad." Then he also said on the radio, "I want the next car in to box this car from the north." So I'm continuing to think this is getting worse and worse because he knew one

of us was going to take the box-in position. Now he is saying he wants the next closest patrol car, anybody to take the box-in position.

So, now we're getting pretty close. I'm thinking as we're coming south on MLK, I'm thinking that Sergeant Livingston and Pat Murphy are ahead of us, so they are probably going to take the box-in position just based on their position; they are going to be the first car because they are ahead of us.

So as we're coming up there, I realize that they pass 6th and Halsey -- I'm sorry, MLK and Halsey. And when you are traveling that fast, sometimes you miss streets or it's just hard to focus on what street is what. So I was kind of assuming that they may have just happened to have missed MLK and Halsey.

I was a passenger. I was helping Burley look at street signs and figure out what's going on. Burley and I are talking, "I guess we'll take 6th and Halsey." So we come to MLK and Halsey, and we cut east on Halsey to 6th.

We're coming in real hot, real fast. And we pull right up to 6th and Halsey, and I can see the suspect vehicle and Officer Foote's car kind of stopped. So we pull in real quick and box the car in. So we ended up being the first car there to take the box-in position.

And Sergeant Livingston and Pat Murphy ended up coming up Clackamas and approached from the south on 6th.

Q All right. Behind you there is an aerial overview of at least part of the neighborhood you are describing. If you want to stand up, maybe you can show us where you came into 6th and Halsey?

A So we -- so we're coming south on MLK here, and we come to Halsey, MLK and Halsey, and we cut east past Grand and come right into 6th and Halsey, pull in and box the car in right here. It's just right at the enter -- the car was basically stopped right here at the intersection.

Q All right. Did I understand right when you were saying that Sergeant Livingston's car didn't make that eastbound turn onto Halsey, they kept going south?

A They kept going south here. That's when we're thinking, "Okay. We should come east, because he said 6th and Halsey." So we came in here, and Sergeant Livingston comes to Clackamas to 6th and approached, came from the south.

Q And so when you and your partner box in this car that's stopped by the curb, how many other police vehicles are at the scene at that moment?

A I think there was -- I think Cody Berne was there also. So I believe there was three there total,

and then Sergeant Livingston and Pat Murphy's car pulling up I believe was the fourth.

Q This diagram shows this scene frozen essentially at the time of the shooting. So there may be additional cars there than when you first arrived. But can you show us where your car was parked?

A Yeah. This is my patrol car right here. We come in off Halsey to the east and just pulled up immediately right here and boxed the car in.

Q All right. Thank you. You can return to your seat. And if you would, give us a picture of what's happening when you arrive after you box in that car?

A Okay. As soon as we pull up, we pull up right in front, box it in. Officer Burley pushed the On-Scene button so Dispatch and everybody else knew we were on-scene there with them.

As soon as -- because we came in really fast, as soon as we just anchored that car, stopped; I immediately was jumping out of the driver's or passenger's seat. When I got out, I remember I looked right at the suspect. I made direct eye contact with him. He looked right at me. I looked right at him. And I remember him just looking -- I remember him just looking really angry. And as I was walking up -- he saw us come in with our lights and siren. He was sitting in the driver's seat. He kind

of looked at me. He put his hands up like this (indicating), like "What's this about? What the hell is going on," throwing his hands up.

So I walked over and joined -- I could hear -- see Officer Foote and Officer Defrain, his partner, and Officer Berne standing at the driver side of the car. So I walked over and joined up with them.

And so Officer Foote begins giving commands to the guy, "Put your hands on your head, interlace your fingers." He kept giving this guy commands multiple times, and the guy just started cussing at us, just like, "Fuck you. I'm not doing shit, fuck this, fuck that," just profanities all over the place that he wasn't -- he wasn't going to do anything.

Foote -- Officer Foote continued to give him more direct commands, more sternly: "Put your hands on your head, interlace your fingers," and the guy still was just cussing at us. He had his hands like this when he is sitting there in the seat (indicating). He had his hands -- he was sitting just like this and he starts just kind of rocking back and forth like in his seat, sitting there like this.

I'm thinking to myself, "Okay, this guy -- this guy may comply; he may put his hands on his head. He may do what he's told." But he also had this look on his

face, like he was contemplating something, like he was thinking about making a big decision or doing something, just rocking back and forth.

And then by that time Officer Burley had joined up at the car as well. And Officer Livingston and Pat Murphy had pulled up, too. So we were all kind of on the driver's side of the car now. And Foote continued to give the guy commands, and he clearly wasn't going to do what he was told.

And somebody said -- I think it was Officer Defrain said, "Let's get him out of the car." The way we were all lined up on the car, the driver's side of the car, there was -- I think there was six or seven of us on that side of the car, so there was only so much space for people to grab this guy or get him out of the car.

So Burley had somehow made his way to -- closest to the window, because the guy's window was down and open. And when someone had said, "Let's get him out of the car," Burley reached in and grabbed the guy's arms, and the guy immediately started resisting, started pulling away. I heard him say, "Get your fucking hand off me, fucking hands off me" multiple times, screaming at us.

So the struggle was on now in the car. And the guy was ripping away, trying to pull over into the center

console area. I think it was Officer Defrain had tried to open the driver door so he could reach in and grab because Burley was kind of in the window. There wasn't really much room for someone else to go in and grab him through the window. So Officer Defrain had tried to open the driver's side door so he could grab him. I remember seeing when that driver door opened, I think it was Burley's body, because it hit into Burley's body and the door immediately slammed right shut.

So they are struggling with him in the car. And he's over here in the center console ripping away. And someone ran around to the -- I think it was either Pat Murphy or Sergeant Livingston had run around to the passenger's side of the vehicle, and that's when I start hearing Officer Foote yelling. And at that time, I'm trying to make my way into his -- like get as close as I can to the car. And that's when I hear Officer Foote yelling -- I start hearing Officer Foote yelling, "He is going for something. He's going for something." I hear him yell that multiple times. Then I hear Officer Foote yell -- that's when one Tasers fired from the driver's side, it had no effect on him. He was kind of leaned over into the center console area. And almost simultaneously -- it was either Livingston or Pat Murphy had opened the back door, back right passenger door and

fired a Tasers in through that side. I remember -- I remember seeing those probes hit his hoodie. He had a big gray hoodie on. He was leaned over, leaned so far over and the darts hit the back of his hoodie. I could see the darts actually hit his hoodie. They had no effect on him. He was still resisting, struggling.

Then Officer Foote yelled, "He's going for something" again. Then all of a sudden I hear "Gun", and that's when I kind of started to take a step back and -- to clear space out for the other officers to back up or do whatever because we were all kind of jammed up in there. And then that's when I heard the first pop, and I knew it was a gunshot and I knew that he was shooting at us, because I could see all of the other officers and nobody had their guns unholstered or drawn.

And I don't know if I dove for cover behind one of the cars or if I tripped and fell, because I was backpedaling, but I ended up on the ground. I hit the ground pretty hard. And I remember -- this all happened so quick. I was popping up to my knee, and I was on one knee. As I was getting up, I was like in the couched -- crouched position propping myself back up. That's when I heard two more shots.

As I was getting up hearing those two more shots, I was looking to the left because I needed to make

my way to the back of the car to get to a position where I could do something because everybody else was jammed up over here.

As I was getting up, I hear those two more shots, I look over and I see Officer Burley fall to the ground. I immediately hear Officer Foote yell, "Officer down." So I knew -- I knew that Burley had been shot. And so I run around to the back of -- it was Officer Foote's car, which is where I had fallen down behind the engine block area. And when I popped up, I was behind his car. And I ran around to the back of his car. And as soon as -- I was kind of crouched, running. I had gone as fast as I could. I got back there real quick.

As I'm coming up behind there, that's when I start hearing more gunshots and glass breaking. I was already pretty much pulling out my gun as I'm popping up from behind there. And I knew that he had already tried to shoot us and did shoot us, tried to kill us and my partners. And I thought he was still shooting in that car. And I could see him in the car. I could see his silhouette, and he was like aggressively trying to get from the driver's seat into the passenger's seat. And I thought he was still trying to shoot us. I remember thinking that if this guy is able to get out of this car to the passenger's seat -- I was the only one on the

right side -- or behind the car. And if he had popped out of the passenger's seat, it would be me and him face-to-face about 15 feet and nothing in between us, face-to-face gun fight. And I was scared to death that he was going to get out of that car and kill me. And I thought he was still trying to kill my partners, too; that were on the left side of his car. And that's when I opened fire on him.

Q Just to back you up a little bit. When you heard the first pop and, you said, "another pop" and you saw Officer Burley go to the ground, at that moment, what do you think is happening?

A I knew we were being shot at. I remember -- it just happened so fast, time had slowed down so that I remember thinking I knew we were being shot at. I can't believe this is actually happening. I can't believe that we're being shot at right now. And I can't believe that Officer Burley has been shot. And I remember just scared beyond belief that -- I didn't know how bad he was wounded, how badly he was hit, if anybody else had been hit, too.

As I was popping up -- that first shot I didn't know if anybody had been hit because I went down. I don't know how I went down, but I went down. When I was popping up to my knee, I hear those two more shots and I

see Burley go down. I hear Officer Foote yell. He yelled, "Officer down." I knew that we were being shot at. I knew that he had been hit. I didn't know how bad it was, and I knew that I needed to get to a position where I could defend my partners and defend myself and stop this guy from killing us.

Q And I want to move you ahead in time a little bit for this next question. But when was it that you learned the condition of Officer Burley? In other words, that he was still alive?

A I knew he was still alive when -- when I was firing my shots or just before I was firing my shots. I just remember hearing -- it just sounded like screaming, chaos, coming from where he had gone down and where Officer Foote was trying to rescue him to pull him to safety. I remember it was just absolute -- I don't remember any words that were being said. It just sounded like chaotic screaming to me.

And after I had fired my shots, I was the -- now the primary one addressing the threat, addressing the suspect, because he was still trying to crawl out of that car. His movements were very slow. I had a second to look back, and I see Officer Foote like pulling Officer Burley down the street. I saw Burley's face. It looked like he was in pain, but he was -- it looked like he --

he didn't look like he was dying. Like it looked like he was -- he was hurt and that he was hit, but I didn't know where, like he wasn't like bleeding from the mouth or anything. He didn't look like he had been somebody who was hit who was dying.

Q Okay. Now, let me return to the moment. You had just said where you pulled your gun from its holster. And you can show us -- I'll put this other photo up here, too. I don't know if this is more helpful or not, but here is a scene photograph. So you can use the diagram or not, or both. Maybe you can show us where you were standing when you made the decision to pull your gun from its holster?

A So I had gone down -- because I was right up here at the door when the first shot was fired. And I had gone down right about here (indicating). As I'm popping up to my knees -- this is when I popped up to my knees right here -- and I hear those two other shots. That's when I see Officer Burley go down.

Q Officer hang on one second?

JUROR: I'm going to move over here.

MR. REES: If anyone is blocked, why don't you move around. If you want to shift that a little bit. Can everybody see?

JUROR: That's good.

BY MR. REES:

Q Okay. Go ahead, Officer.

A So I see Officer Burley go down right here after I heard those second two shots. I was already coming to my feet. And I made it around here. I just ran as fast as I could around here, and this is when I was pretty much unholstering my gun right here. That's when I start hearing more shots going off and glass breaking. And that's when I see him right here in the driver's seat. And I thought he was still firing at us with all the shots going off and glass breaking. Right about here I had taken a few steps past here and had a clear line of fire at him. That's when I started shooting at him.

Q All right. You can return to your seat.

While you are shooting, are you aware of any other officers shooting as well?

A I saw out of the corner of my eye Officer Defrain. I could see he was returning fire. He was the only other one I could see returning fire.

Q And while you are shooting, can you see what's in the background, what is sometimes called the backstop, meaning the area beyond where you are firing? Can you tell there is people in the area?

A That day I remember kind of thinking it's weird at 6th and Halsey that there wasn't many people out and

about. There wasn't really anybody walking around at the location. There was no one, no pedestrians walking behind the stop.

(Recess taken to change court reporters.)

MULTNOMAH COUNTY GRAND JURY

DEATH INVESTIGATION

Deceased: KEATON OTIS	
Date of Incident: May 12, 2010	DA Case No. 2194042-1
Location: NE 6th/NE Clackamas St. Portland, OR	PPB Case No. 10-038353
	Grand Jury 2

VOLUME 2-B

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled Grand Jury proceedings were heard, commencing at the hour of 9:50 a.m. on May 25, 2010 at the Multnomah County Courthouse, Portland, Oregon.

APPEARANCES

Mr. Donald Rees & Mr. Glen Banfield
Deputy District Attorneys,
Appearing on behalf of the State.

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

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TRANSCRIPT OF PROCEEDINGS 5/25/10 9:50

ANDREW POLAS,

called as a witness, having been previously duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. REES:

Q Let me go back to where we just took a brief break. My question was about the back stop, what were you seeing while you were firing? And go ahead and answer that question.

A That day it -- there was nobody in my back stop, no people walking around, no vehicles stopped watching, anything like that. I remember thinking just before I shot when I had my gun out and was taking aim, I remember thinking that I'm a little bit taller, the car -- the angle of -- the downward angle, I remember my barrel pointing down and thinking to myself that these shots are going to be stopped by something in the car, either the engine block or something in the car. Uhm, and if they happen to go like through the front windshield, the downward angle, it was going to hit the concrete in front of his vehicle. So I remember thinking to myself I have a clear back stop, there's no people back there.

Q So you're shooting through the back window of the

Toyota; is that right?

A Correct.

Q Could you tell whether that was having any effect at all?

A I remember seeing my first shot, I just saw the hole in the glass from my first shot. Then my second shot blew out a good portion of the back window. As I continued to fire, I was thinking to myself that I need to keep firing until this threat is -- until it's safe, until I feel he's no longer going to try to kill us any more. I remember thinking I stopped firing because his movements -- he went from real aggressive type, like aggressively trying to get out of the car so he could come after us more, to his movements were very slow, and from him being able to actively get out of that car to no longer able to aggressively and quickly get out of that car.

He almost had kind of slouched down in the passenger seat, almost laid across the console area. I remember seeing his arm come up, he got the front passenger door open, he was able to open it, it was real slow movements. And I remember thinking to myself that he may be hit, that he may not be a threat any more, that he's wounded.

I approached the back of his car. He kind -- I could see through the back window, he kind of put his hands

on the seat and pulled himself out of the car. And the way he kind of snaked out of the car, he pulled himself and his arms stayed underneath him, his upper body came out of the car.

I moved to the back right corner of his car and began yelling at him, giving him commands, let me see your hands, get your hands up, commands like that. And the way he come out of the car, I couldn't see his face. His arms are underneath him, I couldn't see his hands. I didn't know -- I didn't know if he still had the gun on him or not, if it was underneath his body.

I was using the back of his car as kind of cover from him in case he did have that gun. I couldn't see his face. His head when he came out, his face headed -- turned to the north, and I was to the south.

And then at that point Sergeant Livingston had joined up with me. I remember thinking to myself as I'm yelling, I was -- there was only about 7 feet of distance between me and him, if that, from the back of his car to him. And I remember thinking to myself, I remember being really scared, we need to get back. We need to get out of here. We need to get to hard cover, because if this guy had the gun underneath him, he could easily pull it out and fire it. And I would have no time for me to get a shot off, even with my gun out. Action, reaction, he could shoot me from

point blank distance.

I was yelling at Sergeant Livingston, "We need to get out of here." And Sergeant Livingston, "Everybody, get back, everybody get back." When I looked over to my left, that's when I saw the big backhoe sitting there. And so Sergeant Livingston started backing off.

I saw another gang enforcement officer, two person car arrive. And I had run over to the left to get behind that backhoe, and those two officers had joined me. And I was thinking because of the way the cars were set up, where his position was and the car directly behind, the only real good hard cover there was to either use the passenger door, which bullets can travel through the door, no problem, or the back right corner of the car, which still wasn't a very good angle to see him from.

So, I ran over, joined up with the other two officers behind the backhoe, and proned myself down on the ground, laid down on the ground, still had my gun out, was pointing it at him. Had good hard cover in case he was firing, the backhoe would stop the bullets, the solid steel it's made of. I could see about, you know, six to eight inches from the ground to the bottom of his car. I had a perfect line of fire underneath that vehicle where if he did pull the gun out and engage us again shooting at us, I along with the other two officers, we had a perfect shot, clear

line of fire from that backhoe underneath his vehicle to shoot him if we needed to again.

At that point Sergeant Livingston and the rest of the officers had taken up a position. They decided to take position at the back of the next patrol car back to challenge him, give him commands. I could hear them yelling at him. I heard on the radio, Sergeant Livingston, activate SERT, our SWAT team to come, because we had a suspect -- armed suspect downed. We didn't know if he still had the gun or not at that point. That's when the SERT team handles that.

I then heard Sergeant Livingston say they were going to bean bag him to see if that got any response from him. He was not listening to any of the commands, putting the arms out or anything. While I'm laying on the ground, I hear the first bean bag round go off. I can see the bean bag round hit his body and bounce off him, and there was no movement. And then I see the second bean bag round hit the body and see no movement. So then that's when Sergeant Livingston advised on the radio they bean bagged him and there was no response, and that we were going to approach him.

So with no response, that he was unconscious most likely, that he needed medical attention. So they begin to approach. Now we were looking at a cross fire situation as

they are coming up. The way they approached would be having a crossfire. As soon as I see him start to approach me and Officer Foxworth and Officer Eugenio, who I was with, we immediately loop around, come back around, patrol cars over here, and join up with Sergeant Livingston and his group as they approached.

I saw two of them grab each of his arms and pull them out, place him in handcuffs, put him up onto the curb and put him in the post-shooting position we're trained to do, which is lay them on their side and tuck their knees to the chest so they don't suffer from positional asphyxiation, suffocate and die.

And I remember I saw them roll him over, when they rolled him over I saw his head kind of roll back. I looked at his face, I could see blood, I didn't know where it was coming from. I could just see blood. And I looked at his face, I saw his eyes rolled back in his head, and I remember thinking that guy is dead.

Q You said that when you drew your weapon and began firing through the rear window of the Toyota, were you shooting to stop the threat? Is that what you have been trained to do?

A Yes.

Q And how many shots did you fire?

A I fired six shots.

Q Did you know that at the time?

A I figured I fired five or six. I was not exactly sure.

Q All right. How did you determine you had fired six shots?

A One point I reloaded my gun, and it was -- I think it was after the fact I reloaded my gun. I did not reload when I was behind the backhoe. I didn't want to do a tactical reload. I didn't want to have a split second where I only had one round in my gun. I knew I had eleven or twelve left and that was going to be plenty. And so then I reloaded my gun I think when we were walking down the street afterwards, I looked at my magazine and saw how many I had fired.

Q All right. Just so we're all clear, at what point in your mind did you believe that the threat from the subject who shot Officer Burley had ended?

A I never thought the threat had really fully ended until he was in handcuffs. When I stopped firing my gun, I stopped firing my gun because his movements had changed. I didn't want -- I felt in my mind when he was in that seat and laid down slowly trying to get out of the car, I didn't want to just keep unloading on him. I felt I could have, but I didn't want to. I still felt he was a threat, even when he came out of the car. When I was at the back of his

car I was scared to death. I'm like, what am I doing here? I need to get back. I need out of here, this guy could pull out his gun and shoot me in the face. I wouldn't have a chance to do anything. I really didn't feel the threat was gone until he was in handcuffs out of the car.

Q I believe at some point during this incident you called for emergency assistance on the radio; do you remember that?

A Yes. When I was at the back of the vehicle challenging him, I had the quick second to just take a look and see Officer Burley being dragged down the street by Officer Foote. I said we needed Code 0 cover. Code 3 cover is, like I said this on the -- is a universal term we use for you need immediate assistance. Code 0 is a situation like this, where an officer has been shot, you need anybody and everybody there.

I said, I need Code 0 medical, needed them to come right to 6th and Clackamas, which is -- I didn't know when those officers were rescuing Officer Burley, I was challenging the threat still. I didn't know if they would load him in the car, take him to the hospital. I wanted an ambulance to come to 6th and Clackamas, which is close to the suspect. I knew Officer Burley was being dragged out of there. I was thinking we can address the threat, we can deal with this guy and cover them. I needed medical to get

there to get Officer Burley in back of the ambulance as quick as possible. I didn't know how badly he was wounded.

Q Did you call for Code 0 cover before or after you fired the shots into the back of the Toyota?

A It was after.

Q And immediately after do you think or --

A It was -- I think it was as he was pulling himself out of vehicle, as he pulled himself out.

Q All right.

MR. REES: Members of the grand jury, do you have any questions?

GRAND JUROR: So when you fired your first shot, you were at the left rear window, or were you firing through the left rear window, window was up?

THE WITNESS: I was firing through the back window -- back window.

GRAND JUROR: Okay. You said your best friend was on the HEAT Team?

THE WITNESS: Yes.

GRAND JUROR: Who is that?

THE WITNESS: Officer Foote.

BY MR. REES:

Q Let me follow up on this grand juror's question to be sure that everyone is clear about where you were positioned at the time of the shooting. Were you standing,

in other words, directly behind the back bumper of the Toyota looking through the rear window?

A Correct. I was off centered a little bit to the left of the back shield -- of the shield. I was directly behind the car, behind his back bumper looking through the back windshield. If you take the center of the back bumper, I was off center to the left shooting through the back windshield.

GRAND JUROR: Through the back windshield, through the seat?

THE WITNESS: Yeah, as I was in between the seats. Yeah.

GRAND JUROR: You had full view of the him at all times in that position, you could see him at all times?

THE WITNESS: Yeah.

BY MR. REES:

Q Just to follow up on this gentleman's question then, I believe you stated that part of your decision to stop shooting came to the point you no longer could see the subject clearly through the rear window?

A He had kind of gone down. I could still see him. I had to get closer to the car to fully see him. And he had -- his movements had gone so slow, I felt he had been wounded and he wasn't actively in the car trying to shoot us any

more like he had been before.

Q About how far back from the Burley car were you standing?

A Maybe ten or fifteen feet.

MR. REES: Any other questions?

GRAND JUROR: One other question. You said, I believe, when you came up you looked right in his eyes?

THE WITNESS: Yeah.

GRAND JUROR: You said he looked angry?

THE WITNESS: He looked extremely angry.

GRAND JUROR: Tell me what that looks like.

THE WITNESS: He had a look in his eye, his brow -- was his brow was curled. He had real -- like real mean, like threw his hands up just (indicating). He just looked real angry, eyebrows were curled and eyes were squinting, just looked real angry.

MR. REES: Anything else? I see there are no other questions. Thank you, Officer Polas.

SCOTT ELLIOT,

called as a witness in behalf of the State, being first duly sworn, was examined and testified as follows:

MR. BANFIELD: Have a seat. State your full name and spell your full name.

THE WITNESS: First name Scott, middle, Edward, last name Elliot, E-L-L-I-O-T.

EXAMINATION

BY MR. BANFIELD:

Q Mr. Elliot, how long have you been with Portland Police?

A Twenty years.

Q And what is your current title?

A Current job is working in the training division teaching firearms.

Q And how long have you been teaching firearms?

A Uhm, this is my second rotation through. First time it was from 1998 to 2004 I was the firearms instructor then, and from 2008 to present, right now.

Q And what are your qualifications to be a firearm instructor for the bureau?

A For the bureau, to do that you have to go through the bureau's -- we have different classifications of firearm instructor. We have the full time instructors and then we

have satellite instructors. To be a satellite instructor, you go through a firearms course which consists of 80 hours. And basically it teaches you to be able to help instruct and teach with students, correcting problems that they have when they are shooting. Some of basic manipulation fundamentals.

As a lead, I have gone through other certification courses through the NRA, and which other ones? I have gone through the FBI instructor school also up at Camp Bonneville, and so basically that you get more additional training and stuff like that from other outside agencies.

Q You said two different types of instructors, satellite instructor and full time instructor?

A Yes, or lead.

Q And you're a --

A A lead instructor.

Q Where do you currently instruct incoming cadets?

A We'll end up using the Tri-County Gun Club for right now, that's the only firearm training site we have for teaching.

Q And how many cadets do you typically instruct at a time?

A It depends. We -- since I have been in the training division back in 1998, stuff like that, we had Operation 80 which turned out to be 72. We ended up with 72 people, we would go through 72 people and instruct. Right

now we have an academy starting up, we had 13. It varies based on the number the bureau hires.

Q And what is the bureau's goal when they train incoming cadets regarding the use of firearms?

A For the use of firearms basically is that what we look at is we want them to get to a level that we call unconscious competency. And basically what that means is, we want you to be able to, when a threat presents itself and you're actually going to draw your weapon or use deadly force, you kind of are doing it without thinking. You recognize the threat, there it is, your brain processes the information and you just react. Having to go through the thought process, we want you to go through and react to what you see in front of you.

Q What type of training do the cadets go through before they are deemed qualified to use a firearm?

A With firearms primarily our goal is just to be able to get them to shoot and to be able to manipulate, handle the gun with some consistency. We run through malfunctions. Kind of the goal is to get them to go through their qualifications and still be able to perform the other functions of a gun. A malfunction is something that happens to the gun. When you pull the trigger and it doesn't work, there's sequences you have to go through to clear that malfunction to get the gun working again.

Based on various reasons, guns malfunction. It can be the environment you're in, could be the position you're in that can cause a gun to malfunction. And that is when the gun is firing you want to be sure you can get the gun up and running. Reloads, empty reloads, tactical reloads, all these things we do.

Once we get to that level in firearms, they are passed off to patrol tactics. And that's when they start using some of their decision-making skills, and this would be use of force. Because they have law classes they would attend to, and then what we're doing once they start getting the law of, you know, of understanding constitutional and civil laws, stuff like this, patrol tactics, we bring them into a scenario where they have to use their skills that they are learning.

Q How many hours of firearms training does a typical cadet go through, basic and then through academy?

A Down at DPSST State Academy, they roughly go through 44 hours of firearms training. After they have that, they go back out to the street, get a little bit of time with their coach, we call FTO, and then from there we bring them back.

GRAND JUROR: FTO?

A Field training officer. What we do is end up bringing them back to advanced academy for firearms, we have

them for approximately 64 hours.

Q What do you do at advanced academy?

A Advanced academy is additional firearms, defensive tactics, patrol tactics, law, some other classes dealing with mentally ill, CIT training, crisis intervention training, and there's a whole bunch of gamut of stuff there.

Q Specifically with firearms, what do you teach at advanced academy?

A At firearms and stuff, what we do since they only get about 44 hours and you have various degrees of people coming in with skill levels, we want to make sure that everybody is at a certain level. So what we end up doing, we go through and reinforce just a lot more repetition of shooting the gun, focusing on front seated trigger pull, reloads, malfunctioning. Then we get more into partner movement, moving with a partner, shotgun stuff where we ended up going with shotgun function check, shooting a shotgun. Positional shooting from the knee or seated position, shooting from a prone position. We put them in different positions that they may encounter while out on the street working.

Q And you said you teach them a little about partner movement, exactly what is instructed in that?

A Basically most of the incidents -- and even though we may be working in a single car as an officer, most of the

calls you will be dispatched to you will be working with a partner, somebody else, a district partner will show up and you usually have two officers per call. What we do is get them used to if all of a sudden a situation ends up happening, is that they kind of understand the dynamics, there's going to be somebody else there with you. You have to be aware there is another partner with you there. Certain calls maybe that we're sitting up on the perimeter of a house, I have to take a partner with me, we move with a partner. So we're a coordinated movement not independent, and make them work as a team.

Q What do you teach at the academy with regards to use of firearm in the field, specifically when to draw, when to shoot your firearm, and when to stop shooting your firearm.

A For the firearms portion of that, basically when they are shooting it is at the direction of the range officer who is running that. There's a little bit of discussion, and most of the discussion about firearms and when to use deadly force is during the law portion of the class given by one of our DA's.

And then from there, that discussion continues and goes into patrol tactics. For firearms we kind of are just getting them out of the holster, getting them to react to either from a signal from a buzzer, to a verbal cue, sit

there and say, okay, ready, command, fire. And then sometimes I have a little timer, I put them on timer to get them out of the holster faster.

Q What the cadets -- what information are they given with respect to when to stop shooting once they fire?

A During the firearms portion of it when we talk a little about it, basically the ending of a shooting portion of it, is that what we tell them and it's reinforced later on through the patrol tactic and through law, is when the threat is done.

As we put it, when the threat changes its behavior because each person is going to be different. So what ends up happening, you could end up firing one shot and the person could give up. You could fire several shots, they could still continue to keep fighting. There's no predetermined time that you have to fire X amount of shot. We tell them once the threat in front of you when you're engaged in deadly force situation changes and stops.

Q When the threat changes its behavior?

A And stops.

Q And stops. Is there any training on the psychological aspects of what an officer should expect during a shooting?

A Yeah. During the patrol tactic portion of it, stuff like that, they do touch a little bit upon the

physical part of what happens under stress. And there's a chart that they can sit there and look at. When the hormones get introduced into your body, basically what it does is causes your pulse to get a little bit higher, breathing becomes more rapid, blood starts pulling to the center of the body. So basically it's the fight or flight syndrome, and that's the same thing, they'll touch upon that.

Q Okay. And what type of handguns are issued to PPB officers?

A Glock, and we have a choice between a Glock 17 or a Glock 19. They are all chambered for a 9 millimeter. We don't shoot anything bigger than 9 millimeter.

Q What's the difference between a 17 and 19 Glock?

A Basically, just the size. A Glock 19 is a smaller cut-down size, and holds less rounds.

Q Specifically with the Glock 17 and 19, they are basically about the same gun?

A Internally, and, yeah, they are exactly the same gun. Only thing is the barrel may be a little shorter and the butt of the gun is shorter in the 19.

Q They are both 9 millimeter?

A Yes.

Q How much power does a 9 millimeter have?

A How much power?

Q Yeah.

A Uhm, I guess based upon power, I guess from the -- I'm not an engineering expert in going through this. But the way it's explained to me, was that the kinetic energy being used on a 9 millimeter would be basically like a fast ball going 200 miles per hour.

Q In terms of -- we hear a lot of times on T.V. this gun has stopping power. In relation to that term, does a 9 millimeter have a lot of stopping power?

A No. That's a kind of a thing I encouraged people who I teach in the academies, and that's where -- we have students come in who've educated themselves, and more what we teach them -- what we do, we get the question about stopping power, about the magic bullet stopping power. There really is not one, there is not. And it's like Newton's law where the same amount of force that is expended from the barrel of the gun hitting the person is going to be the same force being expended to the person shooting the gun.

So every time we see T.V., the guy goes flying through the window and the guy standing there kind of recoils, that's not true. That's just Hollywood. In reality the same forces that knocks him back, should have equal force of knocking the shooter back also. So, we kind of get predetermined and set in our head as to what we see

on T.V. What happens in reality, it ends up it doesn't happen that way.

Q How effective is the 9 millimeter issued to PPB in stopping a suspect?

A Basically, the premise is, what we look at is shot placement. And shot placement is basically hitting into center mass of the body. That's where most of your blood is and that's what we're looking at, is changing that to the point that you get a blood loss so you know it ends up going through and causing the oxygen loss to the brain, to start causing the person to finally start giving up doing what they are doing.

Q It depends on where --

A Yeah. There's enough documentation out there and from reading stuff like this -- one of the videos we use in defensive tactics and I do bring it up is a video of a trooper back in South Carolina, I believe, or Georgia, back in the southern parts of the states. Trooper Coates who stopped a person on a traffic stop by the name of Blackburn. Blackburn ends up getting out of the car and they are having a conversation. Unknown to Trooper Coates, Blackburn has a .22 Derringer in his pocket. As Trooper Coates starts to search him, they get into a fight. Blackburn is five foot plus, and 300 pounds, and Trooper Coates is about six foot plus, and about 250 pounds, so they are pretty equal in

size. On the video you see the fight going, and at one point in time Blackburn ends up firing a round knocking Trooper Coates back. It doesn't hit him, just the blow back off the gun causes him to move off.

On the video what you see is Trooper Coates gets up, Blackburn's on the ground. Trooper Coates gets up, he pulls a .357 magnum shooting a 145-grain bullet Winchester round, and shoots back five times. With it going back to the stopping power, that's looking at being a very powerful round and should be one stopping, but it did not, it caused Blackburn to continue to keep fighting. Trooper Coates goes to the front of the bad guy's car. Blackburn takes out the .22, shoots Trooper Coates once. Goes through the arm, through the vest, lodges into Trooper Coates' heart and he dies. When you start looking at the comparison of stopping power, you have one .22 round which is very small, versus a .357 Magnum, very powerful. And the .22 actually did more damage than the .357 magnum.

Q What do you train regarding what to look for once you have wounded a suspect that's been shot?

A Uhm, basically, what you're looking at, just looking at the behavioral change of whatever the threat is. It's the same as when somebody has a gun or a knife. If they are charging you, did they stop, you know, you're telling them and there are always commands given. We're

trying to get them to do the commands and stuff also. So you sit there and maybe shoot and assess, shoot and assess, shoot and assess.

So what is happening is that because of each reaction is differently from each individual, they are all constantly assessing the situation to make sure that all of a sudden, a person drops the gun or the gun moves out of the way, is there any more movement in the person, you know, versus somebody with a knife, if they are charging you with a knife, did they stop? Are they down on the ground? Are they still, you know, conscious enough they can sit there, push the knife away, push the gun away. There are so many tactical situations to put into it, there's no real clear-cut answer. It's just waiting for that person to make sure he's no longer that threat.

Q Now, what type of ammo is issued to PPB officers?

A We carry a Federal 147-grain hollow point called the HST.

Q I'm not familiar with the different types of grains, what's the difference?

A A little more powder into the bullet.

Q Are you familiar with ball ammo?

A Yes.

Q What's the difference between a type of ammo issued to PPB or ball ammo?

A Ball ammo, there is no cavity in the bullet. What happens when it enters into whatever medium you're shooting into, it keeps continuing to move through. If you're shooting into ballistic gelatin, it goes a certain distance and can over penetrate and continue to move past the medium that you're shooting it into. The hollow point is designed so that when it hits whatever it hits, it mushrooms out, which basically stops it from over penetrating, but it also gives a little more expansion for crushing the tissue as it moves through.

Q What kind of damage can you expect to see from the hollow point versus ball point -- damage to the human body?

A With the hollow point, basically, whatever it touches, it is going to crush. That's what it looks like. So the diameter with the bullet expanding creates a little bigger of a permanent cavity in the body as it goes through the body.

The ball ammo, it touches whatever it touches, it hits and goes right on through. And it's just like taking a -- I guess for lack of better word, Jello, taking a rod, pushing it through, that's all it touches, there's no other crushing part. The hollow points expand a little more, you get a little more of the tearing and crushing of the path that it's taking.

MR. BANFIELD: Okay. That's all of the

questions I have.

BY MR. REES:

Q One question about concept of shooting to stop the threat that's currently taught. During your I believe 25 years with the police bureau, is that a concept that has evolved from previous training?

A No. You know, I started out as reserve 1984, worked in the jail, I'vs got 25 years in law enforcement I've gone through. The evolution I can see of firearms training and stuff like that is pretty much my experience has been that when the threat presents itself and you made that conscious decision you're going to use deadly force, is that you shoot until that threat in front of you is stopped. Done. And the by-product is if they die, they die; if they survive, they survive. There's no question of looking, I'm shooting to kill somebody, I'm just shooting until he stops.

We have had several shootings where we've shot people throughout the United States where one shot took exactly what it took, and that was it. And I know there are other shootings that people that should have been dead never died, and that's just based upon the psyche of the person and that's kind of what it is. So based upon those things.

Q You mean because they were shot so many times?

A Yeah. In a case -- it's all on the internet, look at it. One of the biggest was in 1986, FBI shoot-out with

Platt and Matix. I believe Matix was shot in the head, he was knocked unconscious for a few minutes. And after a few seconds or few minutes he got back up walked out of the car and shot two FBI agents. And in the autopsy they said this should have been a wound that should have killed him. But because he was goal oriented, he wanted to continue to keep fighting, he did continue to keep fighting but eventually died.

Again, I'm not a doctor, most of the information I read, stuff like this, comes from doctors and stuff like that. When the human body is hit, unless you sever an artery, you have 4.6 seconds it takes for you to bleed out. If I shot somebody directly into the heart or artery, cut it completely in two, you lose twenty percent blood loss of your blood volume of your body -- it takes 4.6 seconds. But there's still enough oxygen in the body for the person to continue to keep fighting.

And generally like Platt and Matix, what they looked at, there was enough oxygen within their bodies even though they had taken life threatening wounds, to still continue to keep fight. That's kind of one of those things that because of that, we learned that you don't just shoot once and then stop shooting. But when -- it was pretty typically on range training when I started, you fire one round and then you holster.

Q That's what I was asking you when I asked the question about the evolution. It was my understanding at one time officers shot or were taught to shoot once or do a double tap, and then stop, assess the threat. And you're telling us now the training is to just keep shooting until the threat stops, that's what I was asking.

A Yeah. The same stuff was -- there was talk about it, but during the evolution of it when I started, that's what it was. You were taught to shoot once and then holster. There was no almost automatic -- you see people shot and holster up, and the threat was still there.

Same thing with California back in the '70's Newhall incident. They were California highway patrolmen, found with brass in their hands. They got involved in a shooting, they got shot at the crime scene, they were found with brass in their hands. On the firing range they shoot and pick up the empty brass and put it in their hands, they didn't want to pick it up off the ground.

So the training has really started to evolve a little to the point now that what we have been saying is now being applied to what we do in firearms, don't sit there and think you have to shoot a predetermined amount, you shoot until the threat basically stops what they are doing. That's kind of in -- the talk was there, but the mechanics of firearms training was not there for the longest time, if

that kind of makes sense.

Q Thank you.

GRAND JUROR: I have a question. Will a 9 millimeter round usually penetrate a car window glass?

THE WITNESS: It will -- when we did ballistics testing on the 147 grain, when you do a ballistic test you shoot into different medium, the gelatin, you put sheet metal, clothe and shoot through glass. Generally, with most of your 9 millimeter, you get some penetration. A lot of times what it does is cause much -- the bullet deforms so much it kind of fragments out, so you may get several pieces of the fragment being split. So the bullet does not stay intact, it hits and splits.

GRAND JUROR: Your first round may shatter the glass?

THE WITNESS: Yes. And the next one coming through could penetrate through. That was one of the things I think looking back on the test we did, this ballistic test, that was one of the things, the Federal 9 millimeter did better than the other rounds that we did fire, was that through the glass penetration it held together a lot more. You're going to get some deviation of the bullet's path, the natural curve of the windshield and the glass doing

it. But as a whole, the bullet pretty much stayed intact with a few frags not penetrating into the gelatin.

GRAND JUROR: Thanks.

MR. BANFIELD: Thank you.

PATRICK MURPHY,
called as a witness,
being first duly sworn,
was examined and testified as follows:

MR. BANFIELD: Can you state your full name and spell you full name?

THE WITNESS: Patrick Murphy, P-A-T-R-I-C-K M-U-R-P-H-Y.

EXAMINATION

BY MR. BANFIELD:

Q Officer Murphy, how long have you been with Portland police?

A Just over six years.

Q And give us a little about your background before you started with Portland police?

A In terms of?

Q Education, where did you grew up?

A Grew up in Bay area, Marin County, a little north of San Francisco. Went to Marin Catholic High School, applied and got into the University of Oregon in Eugene. Attended the University of Oregon four years, political science degree with a minor in business. Absolutely loved it in Oregon, decided I wanted to stay now. I wanted to do law enforcement as a profession. I applied with Portland, got hired, went through testing and whatnot, I ended up here

today.

Q When were you down in Eugene at U of O?

A Graduated high school in '99, and graduated 2003 University of Oregon.

Q Political science major?

A Yes, sir. Decided to stay in Oregon. I liked it here, made a lot of friends, lots cheaper to live than California. So really, really enjoyed it up here. And, yeah, definitely wanted to stay based on the friends and just the living in general, I like it.

Q What drew you Portland particularly?

A We had family friends who moved up to Lake Oswego, Tualatin, in that area. And regarding the city and just law enforcement, I knew when I applied, I wanted to work for a larger agency similar to Portland. I thought about applying back home in San Francisco, and just opted not to based on the fact I was eager to get back up here. Like I said, I really enjoyed my time during my four years in Eugene.

And so I applied with Portland and kind of researched the department a little bit. And when I got the call saying I passed the test and was going through the process, just kind of went full steam ahead and went with it. I'm very happy I did.

Q What year was it when you actually applied to Portland?

A I applied via on-line before I took the test in August of 2003, the summer after graduation, and took the test in August, got hired April 15th, 2004. So, just recently I celebrated six years -- just over six years with the bureau, tax day, easy to remember when I got hired.

Q Okay. And what different assignments have you been on through the six years?

A Through my six years, I went through initial training at basic academy, it was ten weeks at that time, it was in Monmouth, Oregon. Then I received an additional 14 to 16 weeks of advanced academy training through Portland. I went through and attended various precincts, we have three, at the time I was going through my rotation we had five, downtown, northeast, southeast, working different shifts but primarily street patrol. Like I said, I was working everything from nights to days to afternoons, different areas, getting the feel of different types of calls and whatnot in the city.

And from there, I have also been a part of the rapid response team which deals with a lot of crowd control situations, primarily working in downtown. And recently I became a member of the HEAT Team, Hotspot Enforcement Action team is the acronym. I have been with that team a little over a month right now. I attended additional training in gang enforcement through the Northwest Gang Investigative

Association in Spokane, and gang training put on through Portland Police Bureau, that's about it.

Q Okay. You said you have been with the HEAT Team for about a month?

A Yes, sir.

Q And what drew your attention to the HEAT Team?

A Well, a lot of what the HEAT Team does as a unit, they work a lot of -- sometimes with the Gang Enforcement Team referred to as GET. I really enjoy being active. When I say that, I mean more along the lines of doing self-initiated activities. When you work patrol like I did prior to joining the HEAT Team, you take everything from, you know, calls of people calling in regarding maybe a burglary or a car got broken into, things of that nature, to dealing with emergency situations. They are not always maybe police involved, maybe we're doing -- you know, assisting a blocking traffic for fire or something of that matter.

But I really like getting out, being active, you know, looking for bad guys, people doing bad things. And trying to make it safer for people who are trying to get to work and raise families and things. So the HEAT Team, they -- it's based on self-initiated activity traffic stops, subject stops, contacts, things of that nature.

Specifically, like I said before, talking to or

contacting gang members, associates, knowing who they talked to, where they hang out. And also, in having that information, that knowledge, being able to try and prevent it through gang resistance education training, especially junior high and high school kids can see that might not be the path they want to walk.

Q Do you see a lot of younger kids since being on the HEAT Team?

A I do.

Q And what are your normal work hours with the HEAT Team?

A I work from 4:00 in the afternoon until 2:00 in the morning. And my first shift starts on Wednesday at 4:00 and ends technically Sunday morning at 2:00.

Q Now, there are eight members of your team?

A Currently there are seven including Sergeant Livingston.

Q Seven members of the team. You're partnered with a specific team member?

A We kind of move around. But usually, you'll be partnered up with somebody in the patrol car. We work two person cars usually.

Q You change partners from time to time?

A Happens from time to time, yea.

Q How many partners have you had since you have been

there?

A I have had two, Officer Cody Berne and myself worked for a couple of weeks, and because we have an odd number of people, we rotate a little bit. Then I worked a couple of days with Sergeant Livingston.

Q Now, turning your attention to May 12th, what was your day like before starting work?

A Before starting work, I woke up, went for a walk with our new puppy, just kind of relaxed a little before work. Watched some T.V. had lunch, typical relaxing day, really nice actually, now that I think about it.

Q And were you just coming off a three-day weekend; is that correct?

A Yes, sir, I was. Wednesday the 12th being my Monday.

Q What time do you usually start?

A We start at 4:00 in the afternoon. So, I usually leave my house around 3:00 or something, just around that time, make sure -- traffic can be be a little crazy as I'm sure everybody knows. I want to make sure I get to work.

Q Walk us through how you got started on your day when you arrived at the station?

A When I get to work specifically on that day, we were stationed over at traffic or southeast precinct, off 47th and Burnside. I walked in, probably waved to a couple

of people because we were sharing with the traffic officers, they usually are coming in and out. Went into the locker room and started getting ready, meaning changing my clothes into my uniform. Putting on my ballistic vest, pants, shirt, boots, gun belt, everything I normally wear with my uniform.

Q Do you go through a debriefing before you hit the streets?

A Yes. We have roll call about possible events in the day. Any people with possible warrants or problem areas in the city, things we need to focus on. We have that and that usually takes anywhere from five, ten, fifteen minutes roughly, depending on the type of criteria or how much information they need to get out to us.

Q Who usually leads that discussion?

A Sergeant Livingston.

Q He's the one in command of that unit?

A Yes, he is.

Q And was -- he was your partner on May 12th?

A Yes, he was.

Q So you go through roll call, what do you do after roll call?

A After roll call, we go to the garage where we keep all of our patrol cars, get all loaded up, make sure we have all of our duty bags and gear, things we will need for the

shift. Got into the car, and I was driving that day. Sergeant Livingston, my partner, was sitting in the front seat. We exited southeast precinct, headed over towards northeast Portland in the area of Lloyd Center.

We drove around Holladay park area, so just south of the mall, just looking around. Holladay Park had issues over the summer and past spring, again, focusing on the juvenile element with kids on spring break and the mall and problems with businesses. And also with the gang element, we have seen a lot of gang member associates hanging out in the park. We were going to see if anybody was there. Also, the Max line, there are a lot of people catching the Max to come to Holladay Park area and Lloyd Center or going home from work.

At that particular time I believe the park was fairly clear, so we drove over to Grand and Hoyt Starbucks and had coffee.

Q When you say we, who?

A Sergeant Livingston and myself. And we all kind of caravaned and met there. So that particular day I was driving the car, Sergeant Livingston was my passenger. Officer DeFrain and Foote were paired up in their car riding together. Officer Polas and Officer Berne -- Officer Burley and Polas were riding together, and Officer Berne was riding by himself. His partner was going to be coming a little

later that day, he was by himself that day.

Q You guys go have coffee, then what do you do? What do you guys talk about?

A Everything from work to at this particular time we were discussing the chief situation and how things were going to be different or how they could affect us. We were all scheduled to go to -- like I mentioned before, I received training -- this gang conference actually took place this last week up in Spokane, Northwest Gang Investigator's Association. We were all supposed to attend that together also with additional members of the Gang Enforcement Team. So we were excited to get out of town, a chance to meet other law enforcement officials, discuss just gang enforcement and different tactics in general. I had a good time last time I was there, and we were all excited. And just talking about the day, what people did over the weekend, and the usual chatter at coffee.

Q Pretty typical day so far?

A Yeah.

Q Starting out your day?

A Yes.

Q And so tell us what happened when you all decide to leave the Starbucks?

A We all decide to leave Starbucks together. We decided at that point we were going to be working

centralized -- the core we call it, northeast Portland primarily around MLK to Stark. So we all left, exited the parking lot, turning -- heading northbound on Grand and continued turning or continued northbound on Grand.

Grand essentially turns into MLK the more you go northbound. So, as we continued northbound on Grand, one of the things we also have are Nextel cell phones which have a walkie talkie feature, and at this time, Officer Foote and Officer DeFrain were having a conversation and everyone can hear when people are using the walkie talkie feature.

Q You guys are on the same network?

A Yes. Officer Berne regarding a vehicle that they were going to initiate a traffic stop on and discussing who was in a better position to initiate a traffic stop. At the time they were having this discussion, Officer Livingston and I were still going northbound on MLK probably around where the Nike store is, Russell, not that area -- I'm not sure if you're familiar with that.

But -- and then we heard Officer Foote put the traffic stop on the main radio, north precinct is the area we're working, so they are on the main net -- north net. So everyone in the entire precinct, the north precinct, everyone all around on that particular radio net can hear them initiating the traffic stop.

Q So it goes from Nextel to chatter switching over

to main net?

A Yes. They use cell phones initially to talk about it, and when they initiated a traffic stop, they used the radio so everyone can know what we're doing just for a safety thing.

Q Do you recall where they were when they switched over to main net?

A They were south of us, I can recall, where the traffic stop was initiated.

Q Where was that?

A 6th and Halsey.

Q 6th and Halsey. What do you recall hearing over the radio?

A There was a siren at one point that went on when the traffic stop -- you could hear over the radio when they were calling out saying that location, and the plate on the vehicle when they initiated the traffic stop, which caused myself when I was driving the car to start to slow, still continuing northbound, a little more cautiously. Most of the time when a traffic stop is initiated, the officer will turn on his overhead lights and most people pull over. I don't know if anybody has been pulled over before, I have -- what they do when you see the light bar, you pull over to the side of the road. If it's not you, the officer, may need to go by you if it's an emergency situation.

Hearing the siren I was more cautious. We don't always need to nor do they activate sirens to pull over, usually a light bar is adequate. Then shortly thereafter hearing the initial siren, we heard that the subject driving was not being compliant.

Q Who broadcast that?

A I believe it was Officer Foote.

Q Go ahead.

A At this time, like I said, Sergeant Livingston and I were continuing northbound. Just about directly behind us were Officers Polas and Burley working the car together, they were driving right behind us. We all heard it at the same time. I began then turning 180 degrees to start going southbound on MLK from, like I said, over by the Nike employee store on Knott, to head in the direction of the traffic stop.

Officer Polas and Burley who at this time were behind us, once we made the U-turn, then came in front of us. So we were following them, heading southbound on MLK towards the traffic stop at 6th and Halsey.

As we made our way southbound, we again heard an update that subject was not being compliant. I then heard another officer get on the air at the traffic stop and say the next car in to the stop, they would like to have assistance with a box-in.

Q And who was that, do you recall?

A I don't recall who made that statement. I believe it was Officer Berne.

Q So, what's going through your head at this point, hearing sirens, hearing not compliant, now hearing an officer say we need the next car to box in?

A I'm thinking there's going to be a safety issue, not only for the officers who are at the stop, but potentially the person driving the car and anyone around that vehicle at this time. When I heard somebody, pretty sure Officer Berne requested for a box-in, that's to prevent a vehicle from taking off from the stop location.

We continued southbound on MLK, I then turned eastbound on Halsey, and then arrived on scene at 6th and Halsey where the traffic stop was made on the east curb line, so southeast corner of the intersection right there. When I arrived there, I observed that there was a patrol car pointed southbound directly in front of the subject's vehicle, a patrol car behind that, he had initiated the traffic stop behind the vehicle.

When I pulled in to complete the box-in, I pulled in and pointed at a southeasterly direction almost directly at the driver, my car was canted. We had car in front, behind, and my car facing at an angle. That way I knew the car was not going to be able to pull out into traffic at

all, was going to be safe and secure at that point -- moment when we got there.

Q Let me stop you, back you up a little bit.

A Sure.

Q Drawing your attention to the diagram back here, and can you just using this diagram perhaps show us the route that you drove into the scene?

A Sure. Okay. So, we came -- once we heard the siren and traffic stop being initiated, we were a little north of here. We headed southbound on MLK and then kind of continued eastbound on Halsey, continuing until we got to this point, and then turning southbound on 6th.

Q So now you were in the car with Livingston, you said, who was behind you?

A Well, when we were going northbound, it was Officer Polas and Officer Burley behind us going northbound on Grand, which would be about here. When we made the U-turn heading southbound on MLK, the car behind us driven by Officers Burley and Polas, then became in front of us.

Q They made it to 6th and Halsey before you did?

A Yes, they did.

Q When you pulled into 6th and Halsey, take that board down, use either the photograph or the diagram and show us where you pulled in, which one is your vehicle?

A This is our vehicle right here (indicating).

Q And who was already there on scene?

A Officer DeFrain, Officer Foote and Officer Berne, and then because they had got there moments before, Officer Polas and Officer Burley.

Q Describe the scene to us, what do you see when you arrived?

A When I arrived, I noticed there are multiple officers standing on the driver's side attempting to contact the driver. Uhm, I noticed that at this time there was no one on his passenger side of the subject's car. So, when we exited the vehicle, Sergeant Livingston joined the other officers currently at the driver's side. I made my way from the door, I walked around just because I don't think there was a space factor, it is a safety issue, I didn't want the guy to potentially start the car and me to be smack-dab in the middle. I made my way around the vehicle until I got to the passenger side.

As I made my way from my patrol car here circling around, I could observe the driver, who appeared to be early 20's, a black man wearing a gray-hooded sweatshirt. I knew it was hooded, he had the hood pulled up over his head. I could see his face, but no other features on him at the time.

I heard as I made my movement, officers at the driver's side giving him verbal commands, asking him to show

his hands, trying to gain compliance, but also just making sure -- it was a safety factor as well, that they could see his hands, that no one would be getting hurt. When I made my way around the car in addition to observing a gray hooded sweatshirt pulled over the subject at the time, I observed at no way did the driver appear to be acknowledging the officers in any way, shape or form. I refer to it as a thousand-yard stare that could be --

Q Go ahead, have a seat.

A Sorry. They were contacting him, giving verbal commands, trying to get his attention. He was sitting in the car facing northbound, not acknowledging, not turning his head, not looking with his eyes in any way, shape or form. I noticed even though I made my way around the car towards the passenger's door of his vehicle, he didn't seem to track me, didn't turn his head, didn't acknowledge I was there.

Ultimately, I finally got to my position, I was placed at the passenger door -- front passenger door, maybe a little bit behind it. And I continued listening to officers on the other side giving him verbal commands, still with no compliance

Q Which officers were giving the commands at this time?

A At this time I believe it was Officer Berne, but

there were multiple officers over there at this time. I'm not particularly sure.

Q Why did you decide to go to the other side of the vehicle?

A I went over to the other side of the vehicle because it was going to be a vantage point for myself, safety factor, so I can attempt to get another angle and see if there's anything in the car, attempting to see the driver's hands, see if there's anyone else in the vehicle. As I made my way, it appeared there was just the driver in the car and ultimately there was.

When we're working a two-person car, like we do in the field or even a patrol and traffic stops, is initiate -- the person driving the patrol car goes and contacts the driver and the passenger seat guy will go up on the passenger seat side just for the open look, and see a safety factor -- just to see another viewpoint, to assist in our safety and potentially anyone else who is in the car.

At this point, the passenger window was up, so I could hear over the top, but not through because the passenger window was up. But the rear passenger window on the vehicle was down at this time. So, I took a step back so I could hear a little more clearly, the driver's side window was down. So, kind of had the through and over the top, I would hear additional commands being given to show

his hands, but the subject continued to not be compliant.

Q Could you hear him was he speaking at all?

A He was not speaking at all.

Q Did you hear him at any point even from the time you arrived?

A No, I did not.

Q He's not giving -- responding to verbal commands? What happened next?

A At that point after more additional commands to show his hands are given, I observe that -- due to noncompliance, I take my TASER out of my holster located on my right thigh, and I point it at the ground in case I needed to use it. I noticed, like I said, commands are being given, subject is not complying. And then I noticed the subject was beginning to move his body leaning towards the passenger seat as he's almost like lying downward like this (indicating).

At this time, I point my TASER, and I can see from my vantage point the top of the subject's back, so shoulder blades and up, as well as his head. I point my TASER at the center of subject's back, and I can see my probes have struck his back and right shoulder blade area, and I fired my TASER. The probes are about a quarter inch or so metal, looks like a fish hook attached to this twine, almost like fishing line when they come out of the cartridge, and fire

my TASER.

At this time almost simultaneously, another officer on the driver's side, I'm not sure who, fired his TASER as well. I could tell that the TASER took effect, because I noticed that the subject turned his head towards me and winced his eyes, tensed up like this, and I could tell that one of our TASERs had taken effect. I know that to be, I, myself, have been tased and I know that's the reaction. The TASER attacks the musculatory system, and you tense up, there's an inability to move.

It went through the five second cycle, that's a standard cycle for the TASER basically. I pull the trigger and it goes to five seconds, it's not like I'm continuing pulling it, it's just pull and it goes for five. During that cycle, like I said, I could see the subject was being affected. He tensed up, so I knew if not my TASER, the other one had been effective and was working in stopping the subject from moving.

Once the cycle ended, the five second cycle, the subject continued to move his body in that same direction laying across the seat. I attempted to fire my TASER a second time, because the probes were still in his upper back, so the cycle should have gone and the current would still be connected. I attempted a second time, this time the TASER seemed to have no affect, his movements did not

cease. He continues all the way until his body was all the way across the seat, completely out of my sight.

A moment later I hear an officer on driver's side yell "Gun," and almost what seemed to me instantly after that, I hear a gun shot come from within the car. And I heard glass break, uhm, at that point, after I hear the gun shot. I drop my TASER, and immediately head for hard cover, hard cover being the patrol car in front of me here. I do this because of the number of officers located here, pulling my gun at the time would create potentially a cross-fire situation, and I don't want to hit anybody else who is going to be on the other side of the car.

I then make my way around the car, so I'm staying low. Once I get to about the rear of this patrol car, I draw my gun pointing at the ground, staying low. And as I make my motion, I'm continuously hearing more gunshots. I make my way from this patrol car to my patrol car, ending up at the rear passenger side. So now I can see when I look up, I have hard cover, I can see into the vehicle, and I can also see my officers who were all in the driver's side, basically the first two I saw were Officer Berne and Sergeant Livingston.

At that moment, once I reached hard cover, kept at low ready, I directed my attention to the subject's vehicle. I could no longer see the subject, which my belief was he

had laid across the seat completely out of my view. I then began looking at surrounding areas to see if anyone is walking up to the vehicle, people coming into the scene, making sure we did not have anybody get in the way of any additional potential fire, or the subject coming up and shooting again, so more of a citizen safety thing as well.

Sergeant Livingston called to me bringing my attention back to the direction the officers were in. Once he did that, I noticed Officer Burley was sitting on the ground and looked like he had been shot.

Q Let me stop you there and take you back to before you started using your TASER. Do you recall a time the officers tried to actually remove him from the vehicle?

A I did not see that.

Q And when you drew your TASER, did you observe any other officers had weapons drawn?

A At that point, I believe that one of the officers on the other side had a gun drawn. That was why I drew my TASER as a less lethal option, so I would have an opportunity to use that. I was not sure if that -- who that officer was, but I believe I saw a gun from my peripheral vision.

Q You said when the TASER probes hit, you saw him tense up?

A I did. His body tensed up, shoulders went up and

head turned facing the center -- side, eyes squinted indicating to me his body was feeling the effects of the TASER.

Q About how long was the TASER effective?

A I would say the five second cycle.

Q And after that, then you said -- what was he doing after this?

A After the first five second cycle?

Q Uh-huh.

A After the first five second cycle, he began to continue his movements as he had previously done prior to the first five second cycle, as he laid his body across the front seat.

Q Could you see his hands?

A I could not.

Q Oh, so he's lying down torwards his passenger side?

A Yes, with his head lying across, so his head would be towards the passenger door.

Q Did you hear an officer yell "gun"?

A I did.

Q Who yelled "gun"?

A That, I do not know.

Q And do you ever see a gun?

A I did not.

Q When do you first hear shots after you hear an officer yelling "gun"?

A It must have been -- to me it seemed instantaneously, but a second or two to a couple seconds at most.

Q How many shots did you hear?

A Initially, I heard the first shot, I drop TASER, started moving towards hard cover. I kept the gun at low ready pointing towards the ground, being low ready. As I made my move around the car, I then heard additional shots. I am not sure how many.

Q And the first shot you heard, could you tell where the shot was coming from?

A Sounded like inside of the car.

Q You didn't see inside of the vehicle?

A I could not see inside.

Q And it sounded like it came from inside of the car? Why did it sound like it came from inside of the car?

A The way it echoed from the vehicle, and because I had the back window down where I was positioned, it seemed to come from that part of the vehicle just outward.

Q And so you hear the first shot, you have your gun drawn at this point?

A No, I do not. After the first shot I still have TASER in hand and immediately drop my TASER. Then after the

first shot, start making my way towards hard cover. Once I get to probably the rear of that patrol car, I start drawing my gun, pointing down towards the ground. Continued on my motion until I'm at the back right of the patrol car that I drove that day.

Q When do you hear a second round of shots being fired?

A As I'm moving north bound on the driver's side of the patrol car, directly in front of subject's car, I'm hearing shots being fired again, because I was moving towards cover not being seen by him.

Q You did not see who was doing the shooting?

A No, sir.

Q How many shots do you hear -- how many shots?

A Multiple. As for the exact number, I couldn't say.

Q What happens next? You hear all of the shots fired, you're moving around, you're at this point going west?

A Yes. My movement is west. I get to the back right of my patrol car. I look to see if I can see the subject and his vehicle, I cannot. As I said, I believed he had laid across the front seat. Like I said, I then saw Officer Burley appeared to be shot sitting up, and Sergeant Livingston and Officer Berne as well.

Q Was that the first time you noticed Officer Burley was down?

A That was the first time.

Q Okay.

A Sergeant Livingston then called to me, kind of directed my attention back towards that area. Like I had said, I had been looking around to see if there were other people coming up on the stop, making sure no one else was going to be in the vicinity if we can help it.

Sergeant Livingston yelled for me to come to their location. I waited probably one second, again, to look and see if the subject would pop up again, and then made my way over to where Sergeant Livingston, Officer Berne, Officer Burley were. I believe Officer Foote was assisting Officer Burley into the back of the patrol car because he had been shot at this time, putting him in the back seat of the patrol car.

Sergeant Livingston told me I could go with Officer Foote to the hospital. This is all happening real quickly. So I got in the front seat of the patrol car, Officer Burley is in the back with his leg propped up. And Officer Foote then drives and we head out on Clackamas, I believe westbound going around until we start making our way towards Emanuel Hospital.

Q Tell us what is going through your head at the

moment you realized that one of your team members is shot and he's down, you hear all of the gun fire, what is going through your head?

A Fearful that he -- because I can't see when the wound is or where he's been shot, that he might be seriously injured and potentially could die.

Q So your attention was then on Burley?

A Yes.

Q Did you -- were you aware of what was going on with the driver and the other officers at the car?

A Not once I made my way to the car with Burley and Foote. I knew that the rest of my team being Sergeant Livingston and Officer Berne, Officer Polas, and Officer DeFrain would be covering the vehicle, as well as I knew additional units would come on scene. We needed to get Chris -- Officer Burley to the hospital right away.

Q Officer Burley is in the back seat?

A He is.

Q And Foote is driving?

A He is.

Q And you're in front?

A Front passenger seat just talking to Officer Burley, making sure he's staying conscious and alert and awake. We arrive at Emanuel Hospital, Officer Foote and I assist Officer Burley getting out of the back of the car

onto the gurney, and I followed Officer Burley to the OR. They started working on him.

Q Did you get a sense of his injuries?

A I knew that he had been hit in the leg. I followed him to the OR. He was holding his leg, and where the blood was coming from when it started to collect on the back seat. I didn't know the severity, but, you know, Officer Burley is a tough guy, but I've never been shot before. I don't know how it will affect different people. But, you know, you could tell he was in pain.

Q You arrive at the hospital and he's taken into the ER?

A Yeah.

Q What did you do after that?

A I follow Officer Burley in as emergency staff begins to work on him. Officer Foote I believe is contacting Sergeant Livingston and additional officers to relay information, what's going on at the hospital, what we knew about Officer Burley's condition at the time, and Officer Burley trying to give me information on who he would like contacted, family members and whatnot at this time.

GRAND JUROR: I have a question. You said you released the TASER from the passenger side of the car?

THE WITNESS: (Nods head.)

GRAND JUROR: What made you -- was it because he was being noncompliant or you saw him leaning towards the glove box or?

THE WITNESS: Initially it was when he started making his movements. Like I said, when I arrived on scene, he was being non-noncompliant with verbal commands. They were -- given his noncompliance continued even when I got to my position on the passenger's side of the car. But it was when he started moving and not knowing what potentially could be in the vehicle, that's when I acted and used my TASER.

GRAND JUROR: Okay. Thank you. Can you describe his movements a little before the TASER, and then also afterwards when he started moving again?

THE WITNESS: Sure. Before the TASER, I think it would be essentially like looking -- if you were sitting behind me, back right, and his body starts moving this way in a leaning motion, kind of like this (indicating). And once he starts moving this way, that's when I used the TASER the first time. The five second cycle goes and he goes like this facial expression (indicating). He's tensing up, I can tell the TASER affected him.

In my past experiences when the TASER is used

on someone and the five second cycle goes, most of the time that's at all takes to stop somebody. This time that was not the case. The five second cycle ends and his motions went from tensing up during the five second cycle, not tensed up, and now continuing to move across the seat.

BY MR. REES:

Q For the record, were you leaning as if you had been in the vehicle leaning from the driver's side?

A Yes. The driver's side -- the passenger side, yes, I was.

GRAND JUROR: He was continuing to move, continuing the movement he was trying take before he got tasered?

THE WITNESS: Yes

GRAND JUROR: You said you saw his eyes?

THE WITNESS: Yes.

GRAND JUROR: Were you standing behind him?

THE WITNESS: When I got out of my patrol car, this car being mine, I'm sorry, can you say -- when I come around here, drivers looking northbound, hood up. I mentioned the one thousand yard stare, totally fixated northbound, not focused on me or the other officers. I make my way around totally focused on him to see if he will move out this way, try and

run or make a movement so I can see his face absolutely fine.

His eyes are completely looking northbound, even as I make my movement all the way to the passenger side, he didn't track me, doesn't look at me at all, completely fixated northbound.

GRAND JUROR: When you deployed your TASER, that was through the --

THE WITNESS: Through the rear passenger window.

GRAND JUROR: On the right side?

THE WITNESS: Only the right side. He looks back, he's tensed up, hood up, but face is totally exposed, so --

BY MR. REES:

Q So he turned around 180 degrees?

A Not 180, about like this (indicating). When I fired the TASER, I could see through the glass. It's almost like he's looking kind of parallel with the street.

Q Eyes 90 degrees from you?

A If he looked completely northbound, head won't be spinning completely southbound, it is not possible. He starts looking in an eastbound direction, that's how I could see his eyes knowing the TASER had taken effect.

Q And then he went down in the seat then after the

five second cycle?

A Yes.

Q So he's down, was he lying completely flat?

A I couldn't see.

Q You couldn't see him because he was down low enough you could not see him?

A Yes, sir, that's correct.

Q How long from that time until you heard --

A I heard "gun"?

Q Yeah?

A Once he laid across the seat, probably a matter of a second or -- call it two seconds, before someone says or when I hear "gun," and then again "gun" again. Like I said, once I hear "gun," it is a second or two from the first shot from within the car.

Q So he -- when you heard the shot, he was still down?

A That's what I saw, I could not see him.

Q You couldn't see him?

A So, yes, he was down on the seat.

Q Okay.

GRAND JUROR: You said when you heard "gun," you dropped your TASER?

THE WITNESS: I dropped my TASER after I heard the first shot, if I didn't explain.

GRAND JUROR: That's all right.

THE WITNESS: Dropped my TASER after the first shot.

BY MR. REES:

Q Then you went --

A I went moving towards hard cover being the car northbound. Once I got to almost the back left rear position, that's when I drew my gun.

Q Okay.

A Continued movement until I got to the back right portion, keeping it down, pointed to the ground the whole time, so I could get a vantage point seeing inside of the car as well as the rest of the team.

Q Thank you.

BY MR. BANFIELD:

Q Did you hear anything else besides "gun" before or after that?

A Not that I remember.

MR. BANFIELD: Thank you, very much.

GRAND JUROR: Thank you.

KAREN GUNSON,
called as a witness,
being first duly
sworn, was examined and testified as follows:

MR. REES: Thank you. Please for the record state your full name and spell your name.

THE WITNESS: Dr. Karen Gunson, first name K-A-R-E-N, last name -- J, G-U-N-S-O-N.

EXAMINATION

BY MR. REES:

Q Dr. Gunson, could you please explain to the members of the grand jury what your occupation is?

A Yes. I'm a physician. I specialize in forensic pathology, and I work for the state of Oregon. I'm the Oregon State Medical Examiner.

Q And as the Oregon State Medical Examiner, in addition to your specific duties as they relate to conducting examinations, do you also supervise other physicians?

A I do. I oversee the whole state program of death investigations, so all of the counties report to my office. And we do -- from my office we do autopsies and examinations for the all of the northwest corner of the state, down the Columbia gorge and the whole eastern and central Oregon. So we oversee all of that. I have -- let me see now, six

forensic -- five forensic pathologists who work in my program. And we cover the entire state.

Q All right. Can you provide us with a summary of your training and experience in the field of medicine?

A Yes. I graduated Whitman College and Oregon State University, have degrees in bachelor of science and bachelor of arts from both those schools. In 1977 I started at OHSU Medical School, and that's long enough ago that it used to be called University of Oregon Medical School. I started at the University, and I graduated from OHSU. That training takes four years, I graduated in 1981 with my MD degree.

I was asked to stay on as a resident or trainee in pathology. And at Oregon Health Sciences University, we train in anatomic pathology looking at tissues removed at the time of surgery. And we also do autopsies on people who die in the hospital. And clinical pathology is looking at blood, urine and other body fluids to help diagnose disease of people in the hospital.

That training requires four years, and I completed that in 1985. And 1985 I went to the Oregon State Medical Examiner's Office, and began my career there as deputy state medical examiner. I am board certified in anatomic and clinical pathology and forensic pathology. That means I completed the required training at OHSU and the state Medical Examiner's Office, and completed four days of

examinations and passed them in order to be board certified.

Q In addition to your duties as Chief Medical Examiner, have you held any teaching positions or taught any courses?

A Yes. I am a clinical assistant professor and instructor in pathology at OHSU. And so I routinely teach both pathology residents and medical students and district attorneys and defense attorneys and police officers around the state in the area of forensic pathology.

Q Have you presented lectures specifically on gun shot wounds?

A Yes. I have probably given a gun shot wound lecture at least once a year if not more often, and pretty much been doing that for the past 25 years.

Q Did you perform an autopsy on Keaton Otis on May 13th of 2010?

A I did. I performed that autopsy at the medical examiner's office which is located at 13309 Southeast 84th Avenue, in Clackamas, Oregon.

Q And, generally, what is an autopsy?

A Well, an autopsy is the complete examination of a deceased person. So we start with any clothing that they might have on, and describe that we're looking for trace evidence while we're doing that. And then we remove clothing, look at the surface of the body, describe any kind

of injury present on the surface of the body. Once again, we're describing it at the time we're doing it. I actually dictate at the table while doing the autopsy.

Then we look at internal structures, various body cavities including chest and abdomen, neck area and the head and brain, and once again looking for injury -- evidence of injury or natural disease. And all of this gets compiled into a report.

Q Who besides yourself is present during the autopsy?

A I have to consult my notes. We had a number of people there. Randy Yoshimura, and Alison Schleich were criminalists who were present, and they retained clothing, photographs, bullets, fingerprints and blood spot card.

GRAND JUROR: What's a criminalist?

A People who take photographs, collect evidence and will be at the scene of the crime to photograph and collect evidence and do fingerprints.

BY MR. REES:

Q In the course of a criminal investigation, it is standard procedure, is it not, to have criminalists present at the time of the autopsy to assist in collecting evidence?

A That's correct. And also they do all of the photographs at the time of autopsy, working with me. I direct them where to take photographs during autopsy.

Uhm, also present was District Attorney Don Rees who is here in the room, and from Portland Police Bureau Detective Erik Kammerer, Detective Mark Slater, Officer Paul Meyer and later on Detective Sergeant Kraig McGlathery.

Q What is the purpose of conducting an autopsy after incidents like this?

A Well, first of all, know that I am not employed by the police bureau or the District Attorney. And so it is a second or third or fourth set of eyes that look at the case, who is independent from them. And it's my job to document the injuries that are present in a case such as this.

My report is used as sort of a check and balance what the witnesses are saying. And sometimes I add a considerable amount of information, sometimes it is more of a document that is a catalogue of injuries.

Q And ultimately you reduce your examination and findings into a report; is that correct?

A I do.

Q Regarding the physical appearance of Keaton Otis, did you measure and weigh his body?

A Yes, sir, I did. Mr. Otis measured 76 inches, so he was six foot four, and he weighed 155 pounds. And he was extremely slim, very slender in build, with long, thin fingers, long thin feet and toes.

Q And was there anything remarkable about the

physical appearance to you?

A As a physician, one of my comments when I saw him because of the height and thinness and presentation of his hands and feet, there is a syndrome called Marfan Syndrome, which is where people have connective tissue disease. And many times this is what they look like. I did not find any stigmata or changes internally that suggested he had this, but I did exclaim, my goodness, he looks like he has Marfan Syndrome.

Q Would that weight, 155 pounds on a young man six-foot-four, would that be consistent with malnourishment or undernourishment?

A I would say so. Somebody of his height and age and so forth would weigh at least 200 pounds and not even look fat, not look heavy at all because of his height.

GRAND JUROR: What was his age?

A He was 25 years old.

Q Did you determine a manner of death in this case?

A Yes. Manner of death is homicide.

Q And what does that mean to you? It may have a specific legal meaning, but in the medical legal context which I think is what you're dealing with, what does that mean?

A Well, I look at a death and manner of death from a medical standpoint, and homicide to me means death at the

hands of another.

Q As opposed to natural causes or accident?

A Yeah, or accident, natural causes or suicide.

Q All right. And what was the cause of death?

A Cause of death was gun shot wounds of chest.

Q All right. How many gunshots wounds did you note during your examination of Keaton Otis?

A 23 gun shot wounds.

Q How many of those 23 gun shot wounds would have been fatal, do you believe?

A Uhm, there was one that is surely fatal, and one other that was potentially fatal if he had not received medical care. But there's one that is fatal that occurred in the right side of the chest, the gun shot wound of -- the gun shot wound of entrance is present in the left side of the chest, enters into the chest cavity and perforates through the left lung, upper lobe of the left lung. And then it continues in a rightward direction and strikes first the pulmonary artery, large arteries in the heart and supplies blood to the lungs, and partially cut or transected that actual pulmonary artery before striking the aorta, the largest blood vessel in the body. It supplies blood to the whole body. It strikes the aorta above the aortic valve, as it comes out of the heart, and partially transects the aorta. And it goes through the right lung and is present

just on the right side of the chest, we recovered the bullet from that area.

So it's going from left to right. It's going very, very slightly front to back, and it is also not varying very much vertically as it travels through the body. Because of that wound, he has 1000 cc's of blood in his left chest cavity, and 500 cc's of blood in his right chest cavity.

Now, an adult male usually has 5000 cc's of blood in them, and so we're looking at somewhere around a quarter or so of blood volume which escaped the circulatory system and he's bled internally from that. Once you lose a quarter of your blood volume acutely, you will die from that.

He has another potentially lethal gun shot wound that goes through his right arm, re-enters into his right chest and goes down through his liver and through some bowel, and comes to rest next to the spinal column, but does not enter the spinal column. There's potential he could die from that because it hit the liver, but there's very little blood present in his abdominal cavity, so probably somewhere around 20, 30 cc's which is a teaspoon or so full.

So, there's two potential deadly wounds or fatal wounds. The rest of them are in his arms, mostly left arm, left leg, a couple in the right leg and a couple in his right arm, as well as three grazing gun shot wounds that did

not enter into the body.

Q That would be in reference to you say the ones left over, 21 gun shot wounds that in your estimation or professional opinion would not be lethal?

A That's correct.

Q Of the one gun shot wound that you identified that would be lethal, through the aorta, how long would you expect someone to live after receiving such an injury?

A Well, actually people don't die immediately from gun shot wounds, despite what we see on T.V. And so, when we have gun shot wounds to the heart or aorta, the reason they do is they bleed down enough to become unconscious and finally die. So it takes them several seconds, probably 30 or 40 seconds beyond, maybe up to a minute to bleed enough to become unconscious and finally die. So in my opinion, he has a potential for activity for several seconds maybe 30, 40 seconds, maybe up to a minute.

Q Even after receiving that particular gun shot wound through the aorta; is that correct?

A That's correct.

Q Would a person when you say able to move, would they still be consciously aware or able to fire a gun, for example, or to flee?

A Oh, yes. I have had cases where somebody was shot on the second floor of a home, ran down the stairs and down

the street, and they were shot in similar spot. So they are capable of conscious activity up until probably -- well, finally they bleed enough so they are unconscious, but through that time they are capable of activity.

Q So in this case, the officers on scene described Keaton Otis as walking and moving. One officer said after being shot, one officer said that he snaked his way out of the car through the passenger side door. In your opinion, would that be possible or consistent with having sustained these gun shot wounds?

A Yes, that would be possible.

Q Now, you're able to see those injuries and view those injuries because of your internal examination during the autopsy when you performed that dissection on the body. Would an observer be able to tell that someone had sustained an injury like that just by looking at the body?

A No, probably not. Most of the bleeding is internal, so you would not see a huge amount of blood. Obviously, there's blood soaking in the clothes, but there's not pints of blood that are issuing from the body. And there's no way for anybody to see where those gun shot wounds might have gone. In fact, I don't know until I actually open the body up and take a look.

Q You mentioned where the gun shot wounds-- where they were that you observed. One area of the body you

didn't mention I think was the head. Other than a grazing wound, was there any indication he had been shot in the head?

A No, there was a grazing gun shot wound at the back of the neck approximately at this point (indicating), but there was no other injury. There were some blunt force injuries that probably were from other activities, either being taken from the car or even some shrapnel from glass or something like that, located on his face. But they were nonpenetrating, and there was no injury to his brain or the calvarium, or the skull.

Q All right. Is it correct to say that the majority of gun shot wounds suffered were to his left arm?

A Yes, that is correct.

Q I'm sure grand jurors may be wondering this -- in this case about toxicology, that is evidence of drugs or other substances in his blood or urine. Do we have those results?

A No, we don't have those results. Our toxicology lab takes anywhere from two to six weeks to complete toxicology, so I don't have the results yet.

Q All right. Did you see anything during the examination either externally on his body or internally that made you believe that there were drugs or alcohol present in this case?

A I found nothing in his pockets that would suggest he was using drugs, any kind of paraphernalia. There was no evidence of needle puncture marks on the body. And furthermore, I could not smell alcohol when I was doing the autopsy.

Q I take it sometimes if a person is intoxicated, you can actually smell the alcohol during the examination?

A Oh, yes, that's correct.

Q All right. Thank you, doctor. Are there any questions from the grand jury?

GRAND JUROR: I have one. You said something about the one that lacerated his liver, I believe. How did that bullet enter the body, do you have any idea?

THE WITNESS: Well, it went through his -- went all the way through his arm, did not strike the bone on the right, and entered into the right chest cavity, what we call the mid-axillary line over on the side here. It went downward through the diaphragm, in through the liver, through a couple of loops of the small bowel, and came to rest just right of the spinal column. So the trajectory is from right to left and above to below.

GRAND JUROR: Okay.

MR. REES: Did that answer your question?

GRAND JUROR: It did. I'm trying to imagine how something like that could occur.

THE WITNESS: When I think about how these are very dynamic events, so there's a lot of movement both from the shooter's side and from the person who died or the victim's side. And remember that there's a lot of bending that can go on. So I can't tell you exactly where the shooter or the victim is at the time of the shot, but I would have to say obviously, he has to be presenting his right side. He may well have been bent slightly to have that downward trajectory.

GRAND JUROR: Thank you.

GRAND JUROR: Okay. Would it be possible to say that Mr. Otis was under medical medication?

THE WITNESS: It will be when I get toxicology back.

GRAND JUROR: So you have to wait the six weeks?

THE WITNESS: I didn't find any medication in his pockets or anything. And there was nothing in his stomach. But if there is any type of -- not only are we looking for drugs of abuse, our screens cover all of the medication -- many medications, all of the common ones. So if there were other medications --

GRAND JUROR: It would indicate?

THE WITNESS: -- would be able to see that, yes.

GRAND JUROR: Thank you.

GRAND JUROR: One other question. Any evidence that he had any chronic illnesses?

THE WITNESS: No. There was no evidence of heart disease or stroke, lungs were fine, and he didn't have evidence of liver disease that might come from a long term alcohol consumption. No cirrhosis or fat in the liver.

GRAND JUROR: Can you measure blood sugar?

THE WITNESS: We can't measure for low blood sugar, but we can measure the vitreous blood sugar. What happens after death, blood sugars go all over the map because of break down of organs. But the eyeball fluid is sequestered from the rest of the body, not affected by that. We routinely take eyeball fluid at the autopsy and we test for glucose from there. We can't tell if somebody is hypoglycemic, but we find people who died from diabetes. So we see high blood sugars there and test for ketones that goes along with diabetic ketoacidosis. So that will be what we're looking at right now.

GRAND JUROR: How many times was he struck on right side of his body?

THE WITNESS: I believe it's three. Give me one minute. Just looking so I don't steer you wrong here.

GRAND JUROR: Take your time, please.

THE WITNESS: Three times.

GRAND JUROR: Three times? All entries were --

THE WITNESS: One grazing, one wound in the right arm, the one through and through wound in the right arm, and one in his thigh.

GRAND JUROR: Okay. Thank you, Doctor.

THE COURT: Okay. Anything else? No?

ERIK KAMMERER,

called as a witness, having been previously first duly sworn, was examined and testified as follows:

MR. REES: He's still under oath from the morning.

THE WITNESS: I recognize I'm still under oath.

MR. REES: For the record, this witness is still under oath. This is Detective Erik Kammerer returning before the grand jury having begun his testimony earlier this morning.

EXAMINATION

BY MR. REES:

Q Detective Kammerer, in the course of this investigation, were you able to determine how many of the officers on scene discharged their TASERs?

A Yes, sir. Three.

Q Who were the officers?

A Officer Murphy, Officer Foote and Sergeant Livingston.

Q All right. I asked you earlier this morning about the search for bullets and for the spent bullet casings, and you mentioned the numbers located. Did you recover any bullets that appeared consistent with having been fired from the gun retrieved in the car of Keaton Otis?

A Uhm, we recovered a bullet that was not consistent with the rest of the bureau issued ammunition. It was obviously a completely different bullet, full metal jacket versus hollow points the police bureau issues. So that's a roundabout way to answer yes, I think that's the bullet fired from Mr. Keaton's gun. It was not consistent with -- it was the only bullet recovered different in appearance -- was the only one not a hollow point.

Q Was that found in the street?

A Yes, sir, it was.

Q I understand one bullet was found some distance

away from the shooting scene?

A Yes. There is a Radio Shack about a block and-a-half to the north, and one of the bullets was recovered inside there by a civilian who put it in his pocket and then left, and we recovered that several days later.

Q Can you just explain a little about that, how that came to your attention and how you then recovered the bullet?

A The detective doing the canvas contacted somebody down at the Radio Shack, assistant manager, I forget his name, who described the bullet coming in through the front door of the Radio Shack, and striking the base plate of the display stand, making a pinging noise. And the assistant manager saw the bullet there, recognized it as a bullet. And then a customer inside actually picked up the bullet, made a comment, it's still warm, I'm going to keep it. Put it in his pocket and left. When Detective Slater and I went in there a day or so later, we obtained the information from the customer who had been in there for two hours complaining about a cell phone bill, so they remembered him.

I contacted that person, Adrian -- I don't recall his last name right now, talked to him on the phone. He told me he had the bullet. I asked him to -- he was in The Dalles -- he lived in The Dalles. I asked him to give it to

a Dalles police officer, which he eventually did the next day. And that was then mailed to me by certified mail by The Dalles police officer, and is now back in our possession.

Q Is that one of the items among the items submitted to the crime lab for them to take a look at?

A That was not, no. I did not receive the bullet until yesterday, and everything I submitted to the crime lab was taken last Wednesday.

Q Okay. In terms of the protocol that's in place for the investigation of officer use of deadly force, I understand there's what's called a communication restriction order or gag order?

A Correct.

Q What is that?

A It's a communication restriction order. It was one of the ideas implemented during the PARC review, and it's an order from our superior officer in the police bureau, in this case Commander Krebs, commander of the detective division. And he signed the form and the form basically orders the officer not to discuss the details of this case with anyone other than their attorney or their spouse. To keep the involved officers -- it's to get rid of the appearance the involved officers all get together and concoct a story about what happened. That way it guarantees

that each other is telling their own story and nobody else's story.

Q Is that -- is that different in the way that this type of investigation is handled compared with a typical homicide investigation?

A Yes. We can't take civilians and force them to not talk about it with whoever they choose to.

Q And so in this case, what time was that communication restriction order given out to the involved officers?

A It was -- all of the orders were issued that night prior to being off shift.

Q Is that still in place?

A It is, yes, it's in place until rescinded.

Q So the officers in this case, the involved officers are under orders not to discuss this with the other individuals who were there that night; is that correct?

A In addition to any other bureau member, they can't talk about it with anybody, the press, they can talk with their attorney, their clergy and their spouse, and that's it.

Q Okay. Let me ask you now about something we're going to play for the grand jury which is the recording of the on-air radio transmission from the time of the contact between the police and Keaton Otis, you have reviewed this;

correct?

A Yes, I have.

Q This does not include any conversations amongst the Nextel talk group that the HEAT officers have described using this conversation amongst themselves; correct?

A Correct. Nextel talk groups are not monitored or recorded by the Bureau of Emergency Communication. This is the north dispatch net that is recorded and monitored by the Bureau of Emergency Communications.

Q We're playing this -- it says non-compressed. I take it it means it's playing in real time as it happened?

A Right, per minute.

Q What's the first thing we're going to hear when we play this?

A The first thing you should hear is Officer DeFrain depressing the radio mike to make a transmission about his intent to stop Mr. Otis, and then you hear the siren of the police vehicle.

Q Okay. Before we play this, any questions about what we're about to hear or anything?

A No. If I may, normal procedure when you conduct a traffic stop, you give your unit number, the license plate and location. The dispatcher acknowledges that and repeats it back, so any other officers monitoring the network hear that and know what you're doing. It's not normal for the

dispatcher to have to ask for officers to repeat information and then this massive lag where nobody talks.

(Radio transmission was played.)

MR. REES: Any questions? Anyone want to hear it again?

JUROR: No.

MR. REES: Well, this is a good place to stop.

(Whereupon, Court adjourned at 12:10 p.m.)

STATE OF OREGON)
) ss.
County of Multnomah)

I, JULIE L. BOURGEOIS, an Official Court Reporter for the Multnomah County Circuit Court, hereby certify that I reported in stenotype the foregoing testimony and proceedings had in the aforementioned case; that thereafter my notes were reduced to typewriting under my direction, and that the foregoing transcript, consisting of 85 pages, is a true and correct transcript of said oral proceedings.

Witness my hand in Portland, Oregon, this 30th day of May, 2010.

JULIE L. BOURGEOIS
Official Court Reporter

MULTNOMAH COUNTY GRAND JURY

DEATH INVESTIGATION

Deceased: Keaton Otis	
Date of Incident: May 12, 2010	DA Case No. 2194042-1
Location: NE 6th/NE Clackamas St. Portland, OR	PPB Case No. 10-038353
	Grand Jury 2

VOLUME 3

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled Grand Jury proceedings were heard, commencing at the hour 8:10 a.m. on May 26, 2010, at the Multnomah County Courthouse, Portland, OR.

APPEARANCES

Mr. Donald Rees & Mr. Glen Banfield,
Deputy District Attorneys,
Appearing on behalf of the State.

JULIE L. BOURGEOIS
Court Reporter
Multnomah County Courthouse
1021 SW 4th Avenue Rm. 544
Portland, Oregon 97204

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TRANSCRIPT OF PROCEEDINGS 5/26/10 8:10

RYAN HARRY,
called as a witness,
being first duly sworn,
was examined and testified as follows:

MR. REES: Please be seated. Once you get settled in, if you can tell us your name and spell your name. I think his name is on the back of your sheet.

THE WITNESS: Ryan Harry R-Y-A-N H-A-R-R-Y.

EXAMINATION

BY MR. REES:

Q How old are you?
A 31.
Q And what do you do for a living?
A Active duty officer in the US Coast Guard.
Q What's your rank?
A Lieutenant Junior Grade.
Q How long have you been in the Coast Guard?
A Five years.
Q In Portland?
A Swan Island.
Q All five years?
A Two years in Washington, DC Coast Guard

headquarters, in 2007 I came to Portland.

Q Where did you go to boot camp?

A US Merchant Marine Academy for my bachelor, then got my commission out there.

Q Where do you live?

A At 1425 Northeast 7th here in Portland in apartment -- Cornerstone Apartments, apartment number 318.

Q Is that the third floor of the apartments?

A Yes. 318.

Q If you look behind you there's a photograph in the area of 6th and Halsey. Is that the apartment building you live in pictured there?

A Yes, it is.

Q We're looking at it here on 6th I believe.

A Yes.

Q But the address itself is Northeast 7th?

A Main entrance to the building is on 7th.

Q Okay. And in general in this photograph behind you, can you point out where your apartment would be?

A I know, can I get up?

Q Yes.

A It would be right here, so looking directly from my balcony down.

Q Okay.

A On the third floor.

Q Okay. This is taken from apartment 218 showing a view to the street?

A Yes, one floor up.

Q Otherwise, the perspective is the same?

A Yes.

Q This is Paul McLain's apartment, do you know him?

A I don't know.

Q 218 is directly below you?

A Yes.

Q Were you in your apartment on May 12th at the time of the shooting?

A Yes, I was.

Q Go ahead and tell the grand jury what you heard.

A Okay. I was in my apartment in the kitchen, which is back from my balcony. And the first thing that I heard, uhm, was a tire screech, like a car coming to a sudden stop, and two small whoop, whoops on a police siren. Whoop, whoop. I went outside, and at this point, there were three unmarked police cars, uhm, and one marked Portland police car surrounding a silver car on the corner of 6th and Halsey. There were approximately six to seven Portland police officers, uhm, around the vehicle. Two of the officers were tasing the person inside of the car, actively had their TASERs out, I could hear the clicking of the TASERs and of the going TASER off.

The person inside of the car was still struggling, he was crawling over to the passenger side seat. He was basically laid across, crawling over from the driver's side to the passenger side. The passenger side door was open. At this point, I heard one shot go off, one of the Portland police officers fell down, grabbed his leg just around his hip area. At this point, all of the officers drew their weapons and began to fire into the car.

Q Let me stop you before you move ahead here. First, when you said you heard these things, you said you went outside?

A Uh-huh.

Q Now --

A I went -- when I first heard the screech and the siren on the police car, I went outside, because I was curious.

Q Let me ask my question.

A I'm sorry.

Q Do you mean onto a balcony?

A Yes. Yes.

Q You're looking down from the third floor to the street below?

A Yes, I am.

Q Okay. When you heard that shot, did you think that the police had fired a shot or the person in the car?

A I didn't know who had fired the shot.

Q Did you see at that -- when you heard the first shot, did you see any police officers with their guns drawn?

A No, I did not.

Q After you saw the police officer, I believe you said he was grabbing his leg by his hip area?

A Uh-huh.

Q Did you see what happened to him?

A He fell on to his back. He kind of crawled away, he was kind of moving away from the vehicle on his back, kind of with his arms and his one leg. He continued to crawl back, and then I believe another officer, I don't really remember, I was not paying too much attention to that one officer, I continued to watch it unfold.

Q What did you see then?

A All of the officers drew their weapons and fired approximately -- they continued to fire between 10 to 30 shots into the vehicle, I didn't count, of course. After those initials shots were fired, that's when I went back inside the apartment from the balcony and made the 911 call.

Q All right. We'll go ahead and play that call right now, and I'll ask you after we play it to confirm that is you making the call.

(Whereupon, 911 call was played at 8:15.)

BY MR. REES:

Q Was that you in the 911 call?

A Yes.

Q Sounds like you went into your Coast Guard Lieutenant command mode?

A I spent two years in the command center running incidents throughout Oregon and Washington. I know what it is like to talk on a recorded line, and what information is necessary.

Q How did that feel being in a position really where -- three stories up where you were helpless to do anything other than report what you were seeing?

A It was -- everybody says everything happened so fast, I never experienced anything like that before, and it does -- it happened so fast. I did feel helpless. I wanted to go help down there, but there were enough police officers that I knew that they were doing the right thing, they were taking care of what needed to be done down there.

Q Oh, all right. Thank you, sir. Any questions from the grand jury?

GRAND JUROR: Were you able to hear anything that was being yelled or said?

THE WITNESS: Only thing I heard was just, "Get out of the car. Get out of the car. Stop struggling." That was all that I heard from my

position.

GRAND JUROR: It was -- it sounded apparent that you had a good view of the license plate?

THE WITNESS: Yeah.

GRAND JUROR: Was that what I heard what you were reading?

THE WITNESS: Yes.

MR. REES: Anything else? All right. Thanks again for coming in.

THE WITNESS: Thank you.

SAMUEL FROST,
called as a witness,
being first duly sworn,
was examined and testified as follows:

MR. BANFIELD: Can you please state your full name for the record?

THE WITNESS: Samuel Frost.

MR. BANFIELD: Spell that, please?

THE WITNESS: Samuel, S-A-M-U-E-L, Frost, F-R-O-S-T.

EXAMINATION

BY MR. BANFIELD:

Q Thank you, Mr. Frost. Mr. Frost, we're here today to discuss the incident involving an officer shooting on May 12th around 6th and Halsey. And you were in the McDonald's parking lot at the time of the shooting; correct?

A Yes.

Q What were you doing at McDonald's parking lot that day?

A Coffee.

Q And what do you recall hearing?

A Well, I -- when the policemen pulled up and gets out of the car and hollers at somebody in the car to come on out. Real loud, come on out, really meant it.

Q Did you also see this happen?

A I couldn't see anything.
Q You couldn't see anything?
A No.
Q Were you inside your vehicle or outside of your vehicle?
A Inside. Window up.
Q Had you just pulled up to the McDonald's?
A Yeah, pretty well. I pulled up there, there was two cars unmarked in front of the other vehicle, you know, the problem vehicle. And they had it kind of blocked in and their lights were on, everything, red lights. And that's when I arrived.
Q Okay.
A And just seen all of the lights, heard a lot of sirens coming from all around. And, well, he got out and told him to come out, and then maybe four or five -- two or three minutes, I don't know, then the shots rang out, three of them, about ten or fifteen seconds apart, shots spread, you know.
Q Okay. Okay. And what did the shots sound like?
A Not real loud, just bang, you know, and bang and bang.
Q Okay. Just trying to get perspective on where you were in relation to the shooting. About how far away from the vehicles were you?

A 150 feet, maybe 200.
Q What was your angle, were you looking straight onto it?
A I had a good view, but I couldn't see beyond the two cop cars that were there, the unmarked ones that were in front of it.
Q There's a picture behind you, if you can go ahead and get up and take a look -- turn around and look at that picture. Are those the two vehicles that you're talking about?
A Sure looks like them.
Q Yes?
A Yes.
Q Okay. And so you saw those two vehicles, how many other vehicles were you able to observe from your vantage point?
A You mean the white vehicles?
Q Yeah, just tell us what you recall.
A Well, we were -- they were just starting to pull up, the white vehicles were responding to their probably call, and the next thing, you know, there was about 30 of them all around.
Q A lot of police officers?
A Yeah.
Q And so did you hear any gunshots other than those

three?

A No, just the three, that's all.

Q That's all you heard?

A Yeah.

Q Could you see what the officers were doing?

A I couldn't really. They were kind of running around. Some of them got some rifles out of their trunks or shotguns, whatever they were, and running around, you know, being cautious. Apparently the guy was the kind of guy that might shoot you, so they were acting like that, see, ducking behind things.

Q But you didn't see that person in the car?

A No, I did not.

Q Okay. And did you witness the officers attempting to -- excuse me, tasing that person in the car, using their TASERs at all?

Q No, I didn't see that. I couldn't see beyond those cars. The red lights were flashing and everything made it hard to see beyond that. I couldn't see, I knew the car was about right where that is, you know.

Q Uh-huh. So, if I get this straight, when you pulled into the McDonald's, all of the cars were already there?

A These two were.

Q Those two were?

A The white ones were coming in.
Q All right.
GRAND JUROR: When you say white?
A Regular police cars.
GRAND JUROR: Thank you.
BY MR. BANFIELD:
Q And what were -- where were you in your vehicle at this point?
A Where was I in the vehicle?
Q Uh-huh.
A Driver's seat.
Q What kind of vehicle do you have?
A A van.
Q Did you hear any of the officers giving any commands before you heard those three shots?
A The command to get out of the car, get out of the car. They said it pretty loud, he should have heard it. I wondered why he didn't get out.
Q You're 150 feet away, you could hear them clearly?
A Yeah, I could hear them.
Q Okay. How long did you observe the scene before you left the McDonald's parking lot?
A I was there all night. I was blocked in by the tape. I just -- I stayed in my car. I live in my van, so I was there all night.

MR. BANFIELD: Any other questions from the grand jurors?

GRAND JUROR: Can we have him indicate on the map where the McDonald's is?

MR. BANFIELD: Yeah.

BY MR. BANFIELD:

Q Why don't we do that. Looking at this map, I believe this is the McDonald's over here. Can you indicate where in the parking lot you were?

A I don't see the van.

Q It's not in this picture. Indicate approximately where in the parking lot were you parked.

A About right here (indicating).

GRAND JUROR: Could you step to the side and point and show us again, please.

A Right here (indicating).

BY MR. BANFIELD:

Q This is not an actual depiction of the scene that day.

A I was right here looking cross -- I could see very well, except I couldn't see the -- I couldn't see beyond the cars. I couldn't see really what was going on.

BY MR. REES:

Q Mr. Frost, if I can ask you to sit down for one more moment, I have a follow up question. So we're clear on

this, you did not hear the some 30 gunshots that were fired in this?

A No, I didn't hear that.

Q And you drove in your van into McDonald's parking lot at a time when these police officers and their cars were already in place?

A Yes.

Q Is that correct?

A Yes. There was unmarked -- yes, they were already there.

Q And then after you arrived in the parking lot, you heard what sounded like three gunshots?

A Yes.

Q All right. Thank you.

MR. BANFIELD: Thank you.

THE WITNESS: Is that it?

MR. REES: Any other questions?

THE WITNESS: You mean I can go home?

MR. BANFIELD: Yes.

THE WITNESS: Great. Thank you.

TIPHANY HOFSTETTER,
called as a witness,
being first duly sworn, was
examined and testified as follows:

MR. BANFIELD: Go ahead, have a seat, and please state and spell your full name for the record.

THE WITNESS: Tiphany Hofstetter, T-I-P-H-A-N-Y H-O-F-S-T-E-T-T-E-R.

EXAMINATION

BY MR. BANFIELD:

Q Ms. Hofstetter, are you a licensed paramedic in the state of Oregon?

A I am.

Q Give the grand jurors a summary of your educational background and training to be a paramedic.

A It's a two-year degree. First year is general education, second year is specialized towards actual paramedic things, in classroom, book stuff for a particular portion, and an internship as well as some hospital stuff.

Q Briefly describe what you learn through the two years?

A The emergency medicine, kind of -- you have your basic stuff, CPR, cardiac management as far as running a code or cardiac dysrhythmias, all your hands-on, intubating somebody, starting IV's, drug administration, drug doses,

that's pretty much it.

Q Then I heard you say you do an internship as well; correct?

A Yes.

Q Where did you do yours?

A Clackamas Fire starting off, and moved over to a company called Medics on the coast.

Q Since your internship, where have you worked?

A I worked for six months at Medics right out of the internship, then switched over to AMR.

Q I'm sorry, how long have you been a paramedic?

A Just short of -- well, certified paramedic three years.

Q And just give us an idea of the nature of your job when you respond to a scene as a paramedic?

A Call comes in normally through the computer system, it tells us all of the information, what it is classified as, where it's located, if it's a Code 1 or Code 3 response. My partner and I are both paramedics, we flip every other call who drives, who takes the patient. When we get to the call, generally it's based off the triage information we get from a computer dispatched stuff, and kind of take it from there, show up on scene and grab our stuff.

Q You mentioned Code 1 or Code 3 response. Can you

tell us a little about what is a Code 1 response, what's a Code 3?

A Code 1 is just regular, every day driving. So you stop at the stop signs and wait at the stop lights. Code 3, it's lights and sirens, for a red light or stop sign, we pull to a stop, clear the intersection and then continue.

Q And, uhm, on May 12th of this year, did you respond to call in the area of 6th and Halsey, 6th and Clackamas?

A I did.

Q And what was the code on that response?

A I believe it was an AS-1.

GRAND JUROR: What's that, please?

A Different code, sorry. AS-1, assault, but it was a Code 3 call.

Q So assault Code 3?

A Yes.

Q You're heading to the scene, sirens blaring, lights and sirens?

A Yes.

Q Where were you coming from?

A We were coming from downtown Portland. I'm not quite sure exactly where we were.

Q All right. Were you mobile at the time?

A We were driving.

Q Okay.
A I believe we were driving north down here.
Q Now, is that typical, you're not at a particular station, just constantly moving around?
A Yeah, that's really typical.
Q You said we were driving, who were you with?
A I was with my partner, Rian Heckathorn. I don't know how to spell that, he was driving.
Q And do you recall approximately when you received the call?
A Uhm, probably around 6:00.
Q 6:00?
A 6:00.
Q What information did you receive over the triage info?
A Not much. It was AS-1 which is assault, and the - it's a Code 3, the address came across as officer shot I believe. And that was pretty much all we got. There was a bunch of radio traffic going, there was some staging information about the scene had not been cleared yet for us to go in, and that we were going to need to stage before we got cleared to go in.
Q What do you mean when you say you need to stage?
A Staging is just when a scene is not cleared, not safe for us to go in yet. We're in the general vicinity of

the call, park somewhere so that we have access to the call, but we're still out of the hot zone kind of deal.

Q Is this at the direction of the police where you stage, or you decide where you stage on your own?

A We generally decide where to stage on our own. I believe there was information given as to like a direction. I'm not entirely clear any more if it was a specific intersection they wanted us at this time around.

Q And were there other ambulances that were arriving on scene or called to the scene?

A There -- yeah, one other unit that was called.

Q Do you know who was in the other unit?

A Yes. It was Eric Smith and Stewart Chung.

Q And did you arrive before or after Mr. Smith and Mr. Chung's unit?

A Our unit arrived first.

Q What's the protocol when two ambulances arrive at a scene?

A The first in abmulance is the one basically running the call, and then the last in ambulance takes the first patient out.

Q And by running the call, what do you mean?

A It's a paramedic in charge is what it is, so they are overseeing the entire call. If there's -- we were under the impression there was the possibility of multiple

patients on this, so it would have been my job to triage the patients appropriately and get them package and ready to go. And the other units would put them on the gurney, gotten quick reports off as to what was going on vital signs-wise for the patient and taking off to the hospital.

Q So you're first in, so you're paramedic in charge?

A Right.

Q Is that role defined between you as the passenger versus your partner, the driver?

A Yeah. Whoever is passenger, is the person taking the patient for that call.

Q Okay. As you see it when you arrive out of the four, you're the person taking the lead?

A Yes.

Q Now, can you describe the scene as you arrived to the location?

A When we arrived there was a fire truck already there, the fire fighters were getting out their equipment and heading to our left, which we took for the direction of the patient. There were a lot of cop cars. I got out of our rig, went over to follow the fire fighters to where the patient was.

My partner stayed back to get the gurney out so we can just -- what we call load and go, which is packaging patient up real quick, and we would just have gotten him on

the road. As we approached, rounded the corner of the building, the patient was right there, feet were in the street, head was on the sidewalk, he was on his left side.

Q Okay. Now, you said that fire had arrived first?

A Yes.

Q And they were heading towards patient. Now, what's the protocol there with fire, they have emergency responders as well?

A Right. That means the fire medic is actually in charge of the patient until we go.

Q Okay. So then what does your role become at that point?

A Uhm, it's kind of a big team, group effort anyway. But at that point generally, as long as things are running smooth, we all kind of talk, communicate, agree on patient care, what we're looking at doing. Ultimately, when we are on scene, whoever got there first this time, it would have been the fire medic's patient, and as soon as we loaded up, it would turn into my patient.

Q So describe the patient. You said his body was partially on the cement, partially in the vehicle?

A He was out of the vehicle, his torso was on the sidewalk, and feet were towards the street, so --

Q Did you see any movement?

A No, there was no movement. Kind of unnatural

stillness, no chest rise, no signs of breathing, no movement on any level.

Q Okay. Since the fire were taking the lead in front of you, what observation did you make of their actions?

A They were -- they had arrived shortly before us, so they were just getting to the patient, had observed the same thing I just described, no signs of life going on. So we were -- they were in the process of getting the cardiac monitor set up so they can attach the four limb leads. And it was with the idea to just confirm death, so that would have shown there was not any cardiac rhythm going on.

Q Where do you attach them and what do they tell you?

A You attach one on each shoulder, and one -- really doesn't matter if it's on the legs or just on the lower abdomen. They were getting ready to attach those, and those reveal any electrical impulses going on through the heart. So any rhythm.

Q Were you observing them attach limb leads and reading the machine?

A Yeah.

Q And what, if anything, did you observe?

A There was a idioventricular rhythm on the monitor which is basically kind of the -- it's an electrical impulse

to the heart, not really anything going on. I lost what I was saying --

Q You were talking about the idioventricular --

A Yes. It's basically the ventricular beat of the heart that occurs every once of the heart, it's agonal rhythm, not conducive to life

BY MR. REES:

Q When you say not conducive, it's not indicative?

A Well, it is something we see when -- pretty much it's right before what happens with asystole, and it's pretty common in traumatic events, the heart is still trying to pump.

BY MR. BANFIELD:

Q Okay. It's giving you some response?

A Yeah. It's some response, kind of a last ditch effort response.

Q By the heart?

A Yeah.

Q So you're reading the -- is it agonal --

A Agonal rhythm, yes.

Q Is it at that point that one of the medics on the scene pronounces death? What happens before that?

A Due to the nature of the event, we were going to call MRh On-line Medical Control to talk to a doctor about not initiating CPR or resuscitation efforts because of the

trauma that occurred to bring this on, we were talking about that, and Eric Smith was already on the phone talking to our On-line Medical Control.

Q Who was Eric Smith talk -- speaking with?

A Dr. Horowitz who was a doctor up at OHSU.

Q Any reason -- sounds like you were the lead for the medic -- why you didn't call the doctor?

A Nothing, other than he grabbed the phone first.

Q Eric Smith grabbed the phone first?

A Yeah. I would have to go back to our rig, he had the phone on him.

Q What information did Mr. Smith relay to the doctor?

A You know, I didn't overhear that, so --

Q Okay. What information would you have relayed in this situation?

A I would have given a brief description of the facts, there were -- it was a shooting, there were five penetrating wounds we had seen to the chest, no signs of life, and there was a idioventricular rhythm on the monitor.

Q What did the doctor determine?

A The doctor actually requested us to auscultate the heart --

Q What's auscultating?

A Listening with a stethoscope for any sound we may

hear. The fire medic did that, reported he did not hear anything. That was related to the doctor and at that time, time of death was called.

Q After time of death was called, what did you do at that point?

A At that point we just gather our stuff up. I believe I gave a biohazard bag to an officer that he requested to place I believe handcuffs in, and I think we also gave -- it's a yellow emergency blanket we cover bodies with so it's out of view of the public. We did not cover, we gave it over to someone so they could use it if they wanted to. And we went back and put our stuff in our ambulances, and we wound up hanging out on scene for close to four hours outside of the red zone.

Q I have no further questions.

GRAND JUROR: You said you only saw five wounds?

THE WITNESS: Yes, I believe so.

GRAND JUROR: That was in the chest only or were you looking anywhere else?

THE WITNESS: That was the chest area that I saw. I believe there were also a couple of lacerations to the wrists and an abrasion was observed to the back of the neck.

GRAND JUROR: When you first arrived on

scene, sounds like you immediately exited the vehicle and went straight to the patient; is that correct?

THE WITNESS: Yes.

MR. BANFIELD: Any other questions. No?

BY MR. BANFIELD:

Q Finally, how long did it take for you after you received the call to actually arrive on scene?

A Uhm, I don't actually know. That would be in my chart, though.

Q Okay. Could you give us an estimate how long it took you to get there?

A Probably about five minutes.

GRAND JUROR: Doesn't somebody with your organization keep a running log of -- down to not only minutes, but seconds?

THE WITNESS: Yes, it would be in any of the paperwork.

GRAND JUROR: Thank you.

MR. BANFIELD: Thank you.

RUSSELL RAINER,
called as a witness,
being first duly sworn,
was examined and testified as follows:

MR. BANFIELD: Go ahead, have a seat. Please state and spell your full name.

THE WITNESS: Name is Russell Rainer, it's R-A-I-N-E-R, R-U-S-S-E-L-L.

MR. BANFIELD: Have a seat.

EXAMINATION

BY MR. BANFIELD:

Q Mr. Rainer, where do you currently reside?

A Apartment 139 at the Cornerstone Apartments.

Q Is that the apartment --

A 139 Cornerstone Apartments. It's on Clackamas Street.

Q Facing Clackamas at 1425 Northeast 7th?

A That's correct.

Q And if you look behind you, is that the apartment building you live in, the Cornerstone, can you tell from that view?

A It is.

Q And in relation to this photograph, can you kind of give us a reference on this diagram, can you give us a reference to where your apartment is located? This would be

the building here.

A Well, I'm on Clackamas.

Q Would you be down here?

A I'm on Clackamas, first floor, it looks across to a Baptist church, which is the view that I have from my apartment.

Q Here's a better angle here, so you're on this side and about approximately where in this building?

A This is Clackamas here?

Q Correct.

A And that is 7th. I'm right in here, third apartment in I think. And this is the Baptist church. That's the view I have looking out my window.

Q Were you at home May 12th at the time of this shooting?

A Yes, I was.

Q And can you just tell the grand jurors what do you recall first hearing that drew your attention?

A I was just sitting there watching T.V., had the window open. And then all of a sudden, about 6:20, I heard what sounded like somebody hammering on metal. Our maintenance guy does a lot of work painting at the apartments, so I just assumed he was outside hammering something, doing repairs on the actual apartment itself. It sounded like ten really quick hammering. And I'm thinking

that's kind of weird, and so I kind of look out of the window, it was open. I looked out, didn't see nothing, then within one minute I heard sirens coming from every direction.

First it sounded like two or three cars, I thought this is strange. And eventually it was like ten or fifteen cop cars all surrounding the area. I could see see them out the window, coming every direction. I waited a couple of minutes thinking maybe it was gun fire. I went out to the courtyard, there were people out there. Everybody is, what's going on? Did you hear anything? And I said, all I heard was very quick, what sounded like somebody hammering on metal.

And by then, they started taping off the whole perimeter with the yellow tape. And a police officer came over and said, did anybody see anything, hear anything? He talked to a couple of people before he got to me. I told him exactly what I just told you guys, so I never saw anything, but I heard this quick sound, it lasted only ten seconds, maybe fifteen seconds.

Q And when you came up into the courtyard, were there a lot of people from your apartment?

A Around 6 or 7, there was more people that came after that. But when I first got out there, there was a few people there.

Q They were starting to tape off the scene?

A Yes. And that's on 7th Avenue, the courtyard where everybody was.

Q 7th Avenue courtyard?

A Yes.

Q Could you see anything from the 7th Avenue courtyard?

Q No. You could see a bunch of cop cars and they started taping everything, but I didn't know where the sound had come from or even what was going on.

Q Okay. Thank you.

GRAND JUROR: You didn't hear no gun fire or anything like that or saying that the hammering sounded like?

THE WITNESS: To me it sounded like hammering, but I assume it was gun fire. But originally I thought it was our maintenance guy hammering on metal like ten times.

GRAND JUROR: Thank you.

MR. BANFIELD: Okay. Thank you, very much. That's all we need.

RYAN ADAIR,
called as a witness,
being first duly sworn.
was examined and testified as follows:

MR. BANFIELD: Go ahead have a seat, please,

THE WITNESS: Thank you.

MR. BANFIELD: And please state and spell your full name.

THE WITNESS: Ryan Adair, R-Y-A-N, last name A-D-A-I-R.

EXAMINATION

BY MR. BANFIELD:

Q Mr. Adair, we're here to today to discuss an officer involved shooting that happened at the apartment buildings I believe you live at, 1425 Northeast 7th; correct?

A Yes.

Q And you live in apartment number 219?

A Yes.

Q And how long have you lived in that location?

A I guess we moved in middle of November, November 15th.

Q You say we?

A My wife and I.

Q And you were home on May 12th at the time of this

shooting; correct?

A Yes.

Q Was your wife present at the time?

A She was not.

Q And what do you do?

A Well, I work part time at coffee shop in the morning and I'm a freelance writer and editor in the times after that, I work out of my house.

Q What stuff do you write?

A Mostly Christian work with different Christian authors, things like that.

Q So this is, I assume, one of the times you were home working?

A Yes.

Q Apartment 219, where in relation to Halsey and 6th Avenue is that located --

A Uhm --

Q Here is the -- here's your apartment building here?

A Can I stand up?

Q Yes, please. This is Clackamas, Halsey.

A My apartment is right here (indicating).

GRAND JUROR: Can you stand on the other side and show us please?

A My apartment is right here (indicating).

BY MR. BANFIELD:

Q I have a photograph there. Now, in relation to this photograph, can you show us where your apartment might be?

A This is my apartment right here (indicating).

Q Stand over here.

A Right here (indicating).

Q Right above this incident is where your apartment was?

A Yes.

Q You had a good view of everything going on?

A Unfortunately, yes.

Q Why don't you tell the grand jurors what you remember from this incident.

A Okay. Uhm, well I was home working at my desk, and heard the sirens going, heard them going for a little while. Any time sirens go off, I'm always curious try to see what happened. But this time they pulled on to the back street there, and I heard the cars come to a screeching halt. And one of the -- I heard the officers begin to yell to get his hands up or to show his hands.

Uhm, so immediately that's when I left my desk in the living room area, and ran to that bedroom window right there, where by the time I got there, there was two cop cars that were behind, one kind of angled in. The car was pulled

over to the side, one angled in here, the other one behind angled in. And, there was three officers who were out, one of them had kind of on a darker uniform, he had out the yellow TASER gun at this point. There was another one that was standing on the side of the guy's car, kind of, you know, tucked up against it a little bit trying to look in.

Q For clarification, standing on the side of the guy's car, you mean which car in the photograph? Describe the car, stand to the side.

A It's this one here, one officer was right up in this area facing directly at the driver's window. He was the one with the TASER gun. Another officer was kind of butted up against the back door, trying to pry it open -- the front door, if that makes sense.

Q And I'm going to stop you. For the record you said this one, you're talking about the silver Toyota Corolla in the picture there?

A Yes.

Q At this time you said you ran to the window in your bedroom, was this an open window?

A Yes.

Q So --

A It was a pretty warm day that day. I had my sliding glass door open, which is where my desk is at on the balcony area, which you can see, right here is my balcony.

I don't know -- my sliding glass door was open right here, or it's up here. You can't see it. And my bedroom window was open too. My apartment gets super hot. Both, opened -- the blinds were open, curtains were open, everything.

Q Could you hear clearly what was going on down on the street?

A Yes.

Q Did you hear the officers speaking?

A I heard the officers speaking. I could hear a little bit of mumbling, but couldn't quite make it out when the officers were talking. But mostly I heard the officers speaking.

Q What were they saying?

A The officer with the TASER gun was giving most of the orders. He was telling him to get his hands up, hands up to where he could see them. He did that probably three or four times minimum at the beginning. And then the one -- the other officer was trying to open the door, was trying to get him to unlock the door, kept telling him to open the door, open the door. They were having trouble getting --

Q They kept telling the driver of the vehicle to do that?

A Yes. And the other officer with the TASER kept telling him to get his hands up to where they could see them.

Q Could you see how many people were inside of the car?

A I could only tell there was one person. I could not see the driver because of the angle of the window at this time. But I could see clearly into the passenger seat, and there was no one there that I could see.

Q You just saw one person in the car and three officers there?

A At the beginning, yes.

Q And they are giving him commands. Could you hear whether or not the driver of the vehicle was responding to those commands?

A I could hear like a little bit of muffle or mumbling, but I couldn't hear if that was him or maybe the officers talking to one another. But any time the officers did give a command, I could hear them plainly. So unless they were whispering to one another, I assumed it was the person in the car talking back.

Q Could you see any physical response from the person in the car to the commands?

A No, I couldn't at this time -- at this point.

Q Continue, tell us what happened.

A As one of the officers tries to get into the car, then I remember the third officer was on the passenger side up on the sidewalk there, and I remember him distinctly

moving up to the back driver corner of the car, so all three officers were on the driver's side of the car.

It was about that time where they kept giving him commands, and I remember distinctly first off with the officer with the TASER gun, back up a little bit and start talking on his CB or walkie talkie on his shoulder. He backed up, did that a little bit. And at that time there was a couple of more cop cars that came in from I guess it was 6th and Halsey area towards the front, they came in, so two more came in. Then they had four cars around the guy's car that was pulled over.

Q The two that came in, where did they position themselves when they came into the scene?

A As far as the cars or when they got out?

Q The cars?

A Okay. So the car obviously was pulled over there, but one of them pulled in directly in front on the other one, pulled in in front to the side.

Q Okay. And did you see how many officers got out of these vehicles?

A I remember two getting out of the first car that pulled directly in front, and I remember only seeing one that came out of one car, that came in at an angle at the front.

Q When those officers arrived, can you still hear

commands given to the person in the vehicle?

A Yeah. They were still trying to get him to open the door, kept telling him to put his hands up, unlock the door so they could get in.

Q At any time did you see him open the car?

A No.

Q Or him putting hands up?

A No. Again, I could not see him at that point.

Q After these other two vehicles and the other officers arrived, then what happened?

A I remember all three of them getting out, they ran up in the front of their car, it would have been between -- if I can stand up?

Q Please.

A So I remember there's two officers that got out of this one, he came around and ran in between, and they all kind of congregated over where the guy was standing with the TASER gun. And so they were all kind of to that side.

Q Okay. And then what do you remember happening?

A I don't know if the guy rolled down the window or something, but I remember cops are standing there, it looked like one of the cops reached inside of the car, was trying to pull the guy in the car out. So I don't know if the window broke or if it was rolled down at this point, what the deal was.

So -- but I remember somehow he was reaching, trying to get him out, the door could have been open as well. I'm not clear about that. I remember his -- he pulled on him and it looked like the guy got away from him, so he backed off again. And at this time I could hear the officers -- I heard one of them say, you -- we need to tase him -- tase him, and he repeated that a couple of times.

At this time I could see the guy in the car kind of start to move over to the passenger side, so he came in my view on the passenger's side of the car.

Q Was this before they tased him, you saw him moving?

A Yeah. I don't know if he was like -- because he was pulling away from the officer or what the deal was. He started to, it didn't look like he was going for anything at that point, but he started to just back away from the officers.

At that point, I remember them tasing him, and I remember distinctly two different TASERs going off, and kind of the rattle sounds that takes place as someone is getting tased.

Q Which officers do you see tase?

A The officer was -- the first officer that was there, the officer on the side of the car, the darker uniform with kind of a baseball cap, police hat on, he was

the one that tased him. And I was not sure where the other one came from.

Q To be clear by your count from what you remember, you're observing at least six officers on the scene at this time?

A Yeah.

Q The first three and at least three more that you saw came?

A Yeah. And there was probably more at that time, but I was kind of focused down here where all of the action was happening, were you -- I heard lots more sirens and cars pull up, so I know there was lots more officers. I kind of stuck my eyes on these guys.

Q Okay. So they are facing him, tasing him. What happened as they tased, can you see see him at this point?

A Yeah. He at this point was kind of backing away, looked like he was squirming. He had pressed his back all the way up against the passenger side window, looked like he was squirming, moving around, I guess, if someone gets tased. And then it was at that point where I heard an officer, maybe two officers say that he was going for something, and they repeated that a couple of times, he's going for something, he's going for something.

At that point I saw the windshield of the guy's car -- glass started spraying out of it. And probably three

to four shots where glass sprayed out of it. And by that time, I kind of had the realization this probably was gunshots or something.

Q Take your time.

A (Witness crying).

Q So you heard the officers saying he's going for something, he's going for something?

A Uh-huh.

Q And the next thing you remember is you see gunshots?

A Yeah.

Q Could you tell where the gun shots were coming from?

A Let me say this, I remember I didn't see any of the officers have their gun out except for when someone said, he's going for something, an officer ran to the side and looked like he had his pistol drawn pointed at the ground.

Q Was that the first time you saw an officer draw a weapon?

A Yes, besides the TASER guns.

Q And now you hear he's going for something, he's going for something, and then you hear gunshots again. Could you tell where the gun shots were coming from?

A I mean, they were coming in the windshield area.

It looked like they were coming out at --

Q Go ahead.

A Looked like they were coming out at an angle this way (indicating).

Q For the record, you're pointing, coming out of the Silver gray Toyota Corolla, the car that was stopped?

A Yes. And I remember there was an officer here at the front of this car at this time, and when the gun shots started coming out, or when the gun shots started happening, he kind of did a funny little skip that I distinctly remember, and took off running. So that was one thing I remember.

Q And after you heard those two -- I mean heard the gun shot, how many gunshots did you hear?

A I would say probably three, maybe four.

Q Okay. Off initially?

A Yes.

Q That followed by the window of the car, the glass shattering?

A Yes.

Q Then what happened after that?

A At this time I realized they were gunshots, and decided to get away from the window. And so by the time I ran out of my bedroom, I just heard a barrage of gun fire take place. And so I didn't stay there as the police

returned fire, but I heard the barrage of gun fire take place and trying to figure out what happened?

Q You said you saw an officer kind of skip out of the way. Did it look like he was just trying to run out of the way, or look like he was hit?

A It looked like he might have been trying to run out of the way. It almost looked like a shock, that he recognized what was taking place and kind of like a flinch that happens before you take off running. So I don't know. I heard the police yelling someone was hit, or someone was down a little bit later. But I was not by the window at that time to see who it was.

Q And you said that this one officer kind of got out of the way. Did you see what the other officers were doing?

A They all started kind of running back, there was like a backhoe, you can't see it in the picture, aross the street there.

Q There's a diagram here.

A Okay. Perfect. So, like I saw them all kind of scatter back this way. But one officer again skipped off this way, and the rest of them scattered back when the gun fire started taking place.

Q At this time you went down, got out of window?

A Moved away from the window until the barrage of gunshots were finished. Then I ran back to my window, saw a

couple of officers kneeled with weapons drawn, still behind the backhoe. And I went over into my living room, and when I was at my window I could hear officers saying, get away from the window. I was not sure if they were talking to me or someone else, so I assumed it was me and I moved away. And so I went back and saw -- went back over to my porch area, saw some more officers ducked in behind the cars back there.

Q So after you heard first a series of shots, maybe three or more shots?

A Uh-huh.

Q And then a second wave of a barrage, you said, of gun fire?

A Uh-huh.

Q How soon after the first set of shots you heard, did you then hear a barrage of gun shuts?

A It's definitely hard to tell in a situation like that, but I would say just four or five seconds maybe maximum. But, again, in a situation I think that time is hard to tell. But it wasn't -- I remember distinctly a few shots, and then a break and then a lot more shots. So it was quick enough for me to recognize the break, you know.

Q At this point you're pretty much right above the scene; right?

A Uh-huh.
Q You're clearly hearing commands from the officers?
A Uh-huh.
Q You don't hear anything from the defendant or -- excuse me, from the driver of the vehicle?
A No, I didn't hear anything. Again, I heard a little bit of mumbling sound at the initial start when they had the TASER gun out.
Q Did you hear him yelling out or calling out to anybody in particular?
A No. But, if I can say, the officers were very loud as well, because there was quite a few of them. And once the gun fire started and different things, they are all yelling different things, so it was pretty loud.
Q After the barrage of shots, then what, do you go down and get out of the way? Tell us what happened next?
A I went out into my living room, just was kind of waiting. I went back, overheard the officer said, get away from the window. And so I assumed he was talking to me. I went back out into my living room where I can see the back of the cars again, so if I can stand up, my porch -- my living room porch area is right here. So I could see cars and more back here.
So I saw an officer duck down behind these cars, and if I remember right there was a couple other cars back

here, and I had a clear view of them. Then it was at this point where I heard what I would say was a shot -- was a shotgun. I did not see a shotgun. I have shot enough clay pigeons to know what the sound of a shotgun is like, it is more of a hollow sound. And there was a shot, and I could hear almost like a pump action type shotgun, and there was two to three of these shots as well. But, again, I did not see that, I only heard that.

Q Why didn't you see, what were you doing?

A I was back in my living room area, I was not by the window. The officers still had their weapons drawn.

Q And did you ever see an officer that was down?

A No.

Q At no time?

A At no time did I see that. I heard officers outside yelling someone had been hit, someone was down, but I did not know where they were at or see them at any time.

Q What did you do -- I mean, after you hear the three shots that you believe were shotgun shots?

A I just kind of was in shock at that point. I ended up calling my wife, she works downtown here, and was supposed to be coming home at this time. I was making sure she was not anywhere around. So I remember calling her and kind of watching everything. And then after the shotgun shots, within a few minutes I went back over to the bedroom

window and just kind of looked out over the scene. And I remember by this time the passenger door was opened, and the guy in the car was laying out on the sidewalk. Some officers were patting him down and going through his pockets and things.

Q Okay.

A And he was pretty bloody.

Q So the next time you came to the window, he was already out of the car?

A Yes.

Q They were already -- the officers were already at his body?

A Yes.

Q Okay. Thank you.

GRAND JUROR: I have one question. When you first looked out of window and the officers were out there still with the TASERs, were you able to see the windows on the passenger side of the vehicle, if they were up or down?

THE WITNESS: They were up.

GRAND JUROR: Both of them as far as you could tell?

THE WITNESS: As far as I could tell, yes, I remember. You kind of take snapshots with your mind. But I remember distinctly looking at the passenger

side, in the front -- sorry, the passenger front seat. So I remember distinctly looking at that, I didn't focus a lot on the back seat, so --

BY MR. BANFIELD:

Q You seemed to get a little emotional talking about this. How has this affected you?

A It's been pretty rough. I mean, I'm actually going to go see someone later that the police department recommended to go see to talk through about it. But, yeah, I mean, I have been pretty skittish, if that's a correct word. Kind of jumpy, you know, car doors closing and I kind of freak out a little bit. And, uhm, waking up at night a lot panicked, and kind of with different -- not nightmares, I guess, but just different killing scenes going on. So, yeah, it's been a little bit rough.

Q We appreciate you taking the time to come in here today and share what happened.

A Okay.

Q Thank you.

MR. REES: Ten minute break.

(Recessed at 9:20, reconvened at 9:35.)

LUKE REILLY,
called as a witness,
being first duly sworn,
was examined and testified as follows:

MR. BANFIELD: Can you go ahead and have a seat, sir. Please state and spell full name.

THE WITNESS: Luke Reilly, L-U-K-E R-E-I-L-L-Y.

EXAMINATION

BY MR. BANFIELD:

Q Mr. Reilly, where do you currently work?

A Radio Shack on 6th and Weidler Northeast.

Q How long have you worked there?

A I have been there like a month. I transferred up here.

Q What do you do?

A Sales associate there.

Q And I showed you this map earlier. Can you kind of indicate -- you can stand up and stand to either side when you're pointing, where you are, indicate where is your store?

A Weidler is here, we're on 6th and Weidler.

Q The next street up from Halsey?

A Yeah.

Q Would you point again?

A Like right here (indicating).
Q A little off from 6th?
A That's a parking lot right here.
Q And are there other stores there?
A Like a -- it's like a little shopping strip, three stores on it. We're the first on the corner, we're on 6th and Weidler.
Q We're here today, of course, discussing an officer involved shooting with Keaton Otis that occurred May 12th of this year. Were you working at that store May 12th?
A I was.
Q Were you working at the time of the incident?
A I was.
Q And you recovered a bullet inside the store; is that correct?
A That is.
Q And can you tell us just before you recovered that bullet, what do you remember seeing or hearing of this incident?
A At the time I was being yelled at by a customer, and I just remember a ping going off, a ping sound, metal hitting metal in my store. I walked around the corner, I saw a little -- I don't know what it was, a metal ball, found out it was a bullet, warm to the touch. The customer yelling at me asked to see it too. I handed it to him.

Another lady walked in then, I went to help her. After I finished helping her out, he told me he was going to keep it. I didn't argue with him, he had been yelling at me for an hour, so I was like, okay.

He left ten or fifteen minutes after that, and I took out the trash, I walked out to a police officer and told him a bullet landed in my store. And the officer took off and left, and a police officer came over and looked into it.

Q And did they tape off your store?

A They ended up taping off my store after asking me questions. It took 30 minutes, and they ended up taping off the store.

Q Did you hear or see anything before the ping in the store?

A I heard what sounded like fire crackers. I don't know how many it was, it was really faint popping sounds.

Q You were not aware there were police involved in an incident down the street from your store?

A Not at all.

Q Thank you.

BY MR. REES:

Q Are you the person who later assisted the police in identifying the customer --

A I --

Q -- who took the bullet?

A Yes.

Q You were? And were you able by looking in the store records, able to determine who that customer was?

A I wasn't able to determine his exact name, the telephone number I found out the account and account holder's name. That's what I gave to the police to I guess get a hold of him.

Q All right. Were you able to tell where the bullet came from, meaning did it come through the glass window?

A The front doors were open. It flew in through the front doors what it flew off, I don't have a clue.

Q Came through the open front doors and essentially landed?

A Hit a base board in there, and they are metal, that's what made the pinging sound.

Q Okay.

GRAND JUROR: Describe what the bullet looked like.

THE WITNESS: Very short, one side very slanted. Like when I think of a bullet, it's cone-shaped. But one side was smashed in on it -- other than that.

BY MR. REES:

Q Was it still in a cylindrical shape?

A No. The back end was tiny, basically, I don't know how to describe it. Like a bullet is like that (indicating), if I draw it out it would be better.

MR. REES: We have the bullet if you want to see it.

GRAND JUROR: It was one end was smashed?

THE WITNESS: Yeah.

GRAND JUROR: What made you give the customer the bullet?

THE WITNESS: He asked to see it. He didn't know what it was, I handed it to him. And that's when the lady was in the store and I went to help her, I was not thinking at the time.

GRAND JUROR: He stopped yelling at you at that point?

THE WITNESS: Yeah, he did. Why argue about it; right?

MR. BANFIELD: Thank you, very much Mr. Reilly.

(Recessed at 9:40, reconvened at 10:00.)

ELIZABETH QUINTANA,
called as a witness,
being first duly sworn,
was examined and testified as follows:

MR. BANFIELD: Go ahead, have a seat. And can you please state and spell your full name?

THE WITNESS: (Through interpreter) Elizabeth Quintana-Reyes.

MR. BANFIELD: Spell your name, please?

THE WITNESS: E-L-I-S-A-B-E-T-H Q-U-I-N-T-A-N-A-R-E-Y-E-S.

DIRECT-EXAMINATION

BY MR. BANFIELD:

Q And we are assisted today by an interpreter, Spanish speaking interpreter. Can you please put your name on the record?

INTERPRETER: Adriana Arias, A-D-R-I-A-N A-R-I-A-S. Oregon certified court enterpreter.

BY MR. BANFIELD:

Q Is it Ms. Quitana-Reyes, or Quitana?

A Quitana.

Q Ms. Quitana, we're here today to discuss an officer involved shooting that occurred May 12th in the area of Northeast Halsey and 6th Street.

A 6th street.

Q And I understand that you work at McDonald's?
A Yes.
Q And which McDonald's do you work at?
A It's the McDonald's under Waco Corporation, I don't know what the exact address is, but it's on Weidler and Grand Avenue.
Q And I have a photograph of an aerial photograph on the board behind you, and can you just show us where the McDonald's that you work at is on that?
A It's this one (indicating).
Q And were you working at the McDonald's on May 12th when this incident occurred?
A Yes.
Q And where were you working at? What were you doing?
A I was making transactions in the drive-through and taking orders.
Q And again on the map on the photograph there, can you kind of show us where the drive through area is that were you working?
Q Okay. This is the drive-through, here's the first line, here's the second line. They make the order. I was around here, around here more or less. There's three windows, I was in the middle window.
Q Okay. And why don't you tell the grand jurors

what you remember from this incident?

A Okay. I'll start from the beginning and tell you what I recall. At that moment I had nothing to do, there were no cars. And I was looking out towards the street, I heard sirens. I thought they were ambulances. I thought, oh, I guess something is happening.

Since I had nothing to do, I looked out the window and I saw this gold colored car and some police officers, it was about four police officers that were stopped or standing to the side of a car. From where I was standing I was able to see the gold colored car, the four police officers, one patrol car and another one behind it. I could only see the lights. And in the gold colored car you could see two people.

I saw the officers outside that they were talking and you could hear the sirens. When I saw that the sirens arrived down Halsey -- can I show you?

Q Yes, please.

A Here was the gold colored car, here was the patrol car, the one that I saw. Here were the officers to the side of the driver's door about a meter and a half.

Q Let me stop you there. And I have a photograph of the cars -- the police cars and the car that was stopped. Now, from this photograph can you indicate what you observed, what you saw?

A This car with two people inside --
Q For the record, excuse me.
A The patrol car.
Q When you say this car, you're pointing to the Silver colored Toyota Corolla on that picture?
A Yes. To me it was kind of a gold colored.
Q Okay. Just to be clear, when you said you saw two people in this car, you said you saw two people in the silver car we're talking about?
A Yes. One here and the other one here (indicating).
Q One in the driver's seat and one in the passenger's seat?
A Yes.
Q Okay. And approximately how far away were you when you were making this observation?
A Can I show you on the other one?
Q Uh-huh.
A So at that time these cars were not there. There's a distance -- there was a distance between us. I was there, looking towards this direction. The only thing that blocked my view was this post that was here (indicating).
Q Okay. And for the record you're indicating that your viewing -- you're making your observations from the

McDonald's on this aerial photograph across the parking lot towards 6th and Halsey?

A Yes.

Q And further, you're also indicating that the vehicles that's on the picture there, were not present at the time you were making your observations?

A Uh-huh. Uh-huh, yes. There were no cars in the parking lot -- no cars in the drive through, no cars in the street except for the white Escalade that was there. It was moving when all this happened, it turned and moved.

Q You had a clear direct view of the incident?

A Yes.

Q Okay. So, you were -- before we went over this diagram, you were saying you saw two people inside of the car that was stopped by the police. And continue from there.

A Okay. Okay. I saw there were two people, I saw there were officers outside talking, and I saw or I heard the sirens. I saw two patrol cars approaching, not white, but they were gray, without the lights overhead, coming down this street from here to here. And they got in front of that car.

Q When you say coming down this street, you mean coming down Halsey; correct?

A Yes.

Q From here to here?

A One got in front on the left side and the other one on the right side. I saw the officers get out. One of the officers that I was paying attention to went to the left side of the car, and the others went to the other side. This one -- the one driving this car went over here. His passenger went to the officers that were standing here as well as the ones that were in this patrol car, also walked towards the officers that were standing here.

Q Okay. And just to be clear, you're indicating that the two patrol cars that you saw came down Halsey, they came and they stopped in front of the car that you saw the men inside of; correct? And then you saw the occupants of those vehicles get out and join with the other officers that were already present on the scene?

A Yes. Not all of them. One went to this side.

Q Okay. Continue.

A Okay. It was a matter of seconds when I heard one gun shot. Okay. Okay. One gun shot -- one was not so loud, it was not very strong. I heard another one after that, it was louder, and then another one after that one which was even louder. Then several gunshots that made the same sound as the first one.

When I heard the gun shot, then I saw the officers, because I didn't look any other way. I saw the

officers with their guns out pointing at the car.

Q Okay. Let me back you up a little bit. You said you heard one shot that was not very loud.

A Yes.

Q Could you tell where that first shot that you heard was coming from?

A No, I did not see who fired the first shot, because by then the other cars were blocking my view.

Q Okay. Now, you said that sound was not -- shot was not very loud, the first shot; correct?

A Uh-huh, yes. Yes, that's true.

Q And then you heard several shots after that?

A Yes.

Q Okay. And was there a difference in the first shot compaired to the other shots that you heard?

A Yes. It was great -- I have heard gun shots say on T.V., also in Mexico, on New Year's Eve I have heard gunshots. And I could tell the first gun shot I heard was of one caliber, the second one sounded louder, the third one even louder. And the ones that came after that were of the same sound as the first.

INTERPRETER: Interpreter would like to clarify. Interpreter would like to make correction. The sound of the gun shots that came after the third, were the same sound as the second gun shot.

BY MR. BANFIELD:

Q Okay. So, just to be clear, they were louder than the first gun shot?

A Yes.

Q Okay. And how many gunshots did you hear after the first gun shot?

A Let me see, give me a moment to remember. I'm not sure, but it was between five and -- between five and seven. I'm not one hundred percent sure.

Q What did you see after you heard the second wave of gunshots?

A The officers -- I saw the officers walk back. As soon as the first shot -- as soon as I heard the first shot, I saw this officer over here walk back and officers over here like went -- took a step backwards.

Q For the record, when you said over here, you pointed to the photograph and said you saw the officers over here and on the passenger side of the gray police vehicle in front of the suspect vehicle come back, and you saw the officers on the driver's side of the vehicle that was stopped also move back; correct?

A Yes. Something important I had forgotten about. Before the first gun shot, the officers had not drawn their weapons. Yes, they did have their hand on their weapon on their side, but it was only after the first gun shot that

they drew their weapons.

Q Okay. Okay. And did you see how many officers drew their weapons?

A I couldn't tell you how many of them.

Q So you couldn't see how many officers were shooting?

A No. I did see this one over here with a weapon. I saw some of these that were on this side that were with weapons, but I cannot tell you the exact number of those who had weapons.

Q After you heard the shots and you saw the officers move back, what do you remember seeing?

A After this all happened, I yelled out loudly and my co-workers came to the window and looked outside.

And when the gun fire was going on, that's when that other car that I mentioned, the white Escalade, that's when it made the stop and then turned.

Okay. Then when the gun fire stopped, we thought okay, they must have killed somebody. That's when the Escalade turned, went into the drive-through, ordered an iced coffee, came up to the window. I said, are you okay? And the person said, oh, yes, we're okay.

Okay. That happened, I walked away from the window. I thought, okay, somebody must have died or somebody must have been killed. And I walked away from the

window, I walked out of the McDonald's to see what happened, the doors right here, I walked over here underneath this tree. All of this was blocked off.

Q When you say all this, you're pointing at the streets on Halsey and on 6th were blocked off?

A Yes. That happened quickly. I came here.

Q Here is out -- you came out of the store into the --

A Yes.

Q You came into the lot?

A Yes.

Q Continue.

A I stood next to where we dump the garbage. And we saw how other officers were arriving and again gun shot was heard, about four or five gunshots that were heard. After the first gun fire, you could still see the officers pointing, and then you could hear screaming, yelling. I did not understand what was said. So then the four shots were heard and I ran. The officer that was over here directed us to go back inside.

Q And how much time passed since -- from the time you heard the shooting at the car until you came out and heard the four shots?

A I'm not sure. It was some five minutes or less.

Q And the shots that you heard after you came outside, were they different sounding than the previous

shots?

A They sounded the same as the second gun shot and the ones that followed it.

Q Go ahead. Continue.

A We went back into the restaurant after that, we know nothing else because after that I had to contact my store manager.

Q Now, when you heard the gun shots while you were outside, did you see what was going on?

A You could see the patrol cars, you could see the officers here, you could see officers around the car, you know, in front, and pointing to the car.

Q Okay. Could you -- did you ever see what happened to the people in the car that was stopped after the gun shots -- after you heard the first set of gunshots?

A No, no, my view was obstructed.

Q Okay. Thank you. Questions?

GRAND JUROR: Could you ask the -- where did she run to?

INTERPRETER: I'll interpret as if you're asking it.

THE WITNESS: To the McDonald's restaurant, the main entrance.

GRAND JUROR: Can you explain the gunshots, the quiet one, loud one, quiet one, loud one, then

multiple gunshots?

THE WITNESS: There was one gun shot, and then a louder gun shot, then a gun shout louder than that, and the ones that followed sounded like the second gun shot.

MR. BANFIELD: Thank you, very much.

GRAND JUROR: Thank you.

QUIANA GREEN,

called as a witness, being first duly, sworn, was examined and testified as follows:

MR. BANFIELD: And go ahead and have a seat. Can you state and spell your full name?

THE WITNESS: Quiana La'Shae Green, Q-U-I-A-N-A L-A-'-S-H-A-E G-R-E-E-N.

EXAMINATION

BY MR. BANFIELD:

Q Ms. Green, where do you live?

A I live on 109th and Wygant.

Q We're here to discuss the 1425 Northeast 7th Avenue, May 12th, the officer involved shooting. Are you familiar with that incident to discuss what happened at the address?

A Yes.

Q Were you visiting friends at the apartment at that address?

A Yes, visiting my friend. We were picking up my girlfriend's daughter.

Q And who were you visiting?

A Uhm, Andrea Smith.

Q And what is the -- which apartment were you in?

A I don't know the apartment, it was the end apartment on the corner.

GRAND JUROR: First, second or third floor?

THE WITNESS: First floor.

BY MR. BANFIELD:

Q It's on the corner of the first floor, is that on the corner of 6th and Halsey?

A Yeah, exact same corner where the incident happened.

Q I have a couple of photos back here. If you don't mind, kind of indicate on this photo, could you tell where the apartment you were visiting was?

A Right where the screens were covered is the apartment.

GRAND JUROR: Stand up.

THE WITNESS: This is her exact apartment, these two (indicating).

BY MR. BANFIELD:

Q You're indicating on the diagram apartments directly behind the police car and the silver Toyota that is stopped there?

A Yeah.

Q Go ahead, have a seat. So who were you there to pick up?

A My friend's daughter.

Q Can you tell us what do you remember hearing or seeing from this incident?

A Well, we had all of the blinds closed that day actually, and we were sitting in the living room and we heard the gun shots go off.

Q When you say we, who all was with you?

A Of course Andrea Smith, her apartment, Candius, and I forgot the other young lady's name, I met here that day --

Q Iashia Harden?

A Yes.

Q Candius, is that Candius Dean?

A Yes.

Q Yourself, Andrea Smith, Candius Dean and Iashia Harden?

A Yes.

Q How long were you at the apartment before you heard the shots?

A We were there a good fifteen, twenty minutes.

Q Did you hear any sirens?

A No sirens at all.

Q Did you have the windows to the apartment opened or closed?

A They were closed.

Q Tell me exactly what do you hear when you hear gunshots?

A We just heard a lot of popping sound, and was like

pop, pop, pop, pop, pop. That's all we heard. We were like, what's that? And one of the other ladies said that was gunshots. We were like, no, not over here. And we just disregarded it. And the next thing we know, Andrea's son looked out the window and saw the cars, and then --

Q And you said you heard consecutive pops. How many gunshots do you recall hearing?

A We heard pop, pop and then just heard pop, pop, pop, pop, pop, pop, pop. I don't know, it sounded like more from ten to twelve pops. I'm not sure because it was just consecutive.

Q You said you heard a pop, pop, and then was there a distinct pause?

A It was not like distinct, went pop, pop, pop, pop, pop, pop, pop, like that.

Q You heard two and then a series after that?

A Uh-huh.

Q And then you said -- I'm sorry, Ms. Smith's son looked out the window?

A He saw the lights flashing through the windows. He opened up the windows, looked out. That's like when we were like, those really were gunshots. We were like, okay, and we had the kids sit on the couch.

Q Did you look out the window at any time?

A Yes.

Q Tell us what you saw when you looked out the window?

A I saw them taping off the things and the police officers walking down. And then I saw a young man in handcuffs. I didn't want to see any more. I came back in and I -- then I went back out on the patio, looked over and I saw him on the ground, and so --

Q How soon after you heard the pop, pop, pop, pop, pop sound did you actually go look outside?

A Man, probably was a good another ten or fifteen minutes before we looked outside.

Q You stayed inside of the house, didn't look out for awhile sounds like?

A Yeah.

Q Ten or fifteen minutes later, did you hear anything happening between the time you heard the shots and the time you looked -- walked outside?

A No.

Q Couldn't hear anything from where you were?

A We hear everything right there, like cars driving by, anything. But it was funny, we didn't hear no sirens, nothing, we heard nothing.

Q And so when you looked out of the window some ten minutes or more later, you saw there was somebody down on the ground?

A Uh-huh.

Q And that person was already in handcuffs?

A He was in handcuffs. First we saw -- I walked back in, I was like, oh, my gosh, I just saw -- I'm not good with blood or whatever. I walked back in, and then Candius said, oh, there he is, on the ground now. They took him out and then put him on the ground.

Q Okay. And between the time that you heard the popping sound and the time you walked outside, did you hear any other gun fire sounds?

A No.

Q Thank you.

BY MR. REES:

Q One question. Pardon me if you already were asked this question and I missed it. Before you heard the popping sounds, did you hear any voices, any yelling?

A We heard a little murmuring. We figured people were just talking. We didn't hear like a big commotion. We heard a little murmuring. We don't pay attention to it, people walk by there and drive by there all of the time.

Q So nothing unusual?

A No.

Q How many people did go outside with you?

A I went outside on the patio after Candius did, and then Andrea Smith also walked out on the --

Q So somebody was out before you?
A It was kind of like a second apart.
Q Okay.
A Kind of thing, yeah.
GRAND JUROR: And you heard pop, pop?
THE WITNESS: Pop, pop, pop, pop, pop, pop, pop, pop, pop. It was not like distinctive, it was maybe very little pauses, a few seconds pause in between.
GRAND JUROR: Okay.
MR. BANFIELD: Thank you for your time.

DERRICK FOXWORTH,
called as a witness,
being first duly sworn,
was examined and testified as follows:

MR. REES: Thank you, officer. Once you're seated, if you can state your name for the record and spell your name.

THE WITNESS: First name Derrick, D-E-R-R-I-C-K, last name F-O-X-W-O-R-T-H.

EXAMINATION

BY MR. REES:

Q Are you a police officer with the city of Portland?

A Yes, I am.

Q How long have you been a police officer?

A It will be seven years this September.

Q And prior to becoming a police officer, can you describe your educational background?

A Attended University of Portland. I graduated with a BA. Studied political science and minored in business administration.

Q And then immediately upon graduation from the University of Portland, did you begin your law enforcement career?

A Yeah. There was about six to seven months after

graduation before I was hired with the Portland Police Bureau.

Q All right. What's your current assignment with the police bureau?

A Assigned to the afternoon shift of Gang Enforcement Team division of tactical operations division.

Q Does the Gang Enforcement Team work closely with the group of officers that we heard about in this case assigned to the -- called HEAT?

A Yes, we do. Generally we work as one unit. We'll pick a geographical area, we work -- both teams are focused on reducing gang violence. We have been very effective using our numbers to basically work as one unit.

Q Were you working on duty on the afternoon of May 12th, 2010?

A Yes, I was.

Q And what time did your shift start on that date?

A That particular day our shifts started at 4:00 p.m. We work 4:00 p.m. to 2:00 A.M., our afternoon or swing shift.

Q At approximately 6:00 that evening, what were you doing?

A I was at north precinct about that time having a conversation with my Lieutenant Modica. My partner, Officer Scott Broughten and I had returned to the precinct,

and were having a conversation with the Lieutenant.

Q All right. And when you say north precinct, was that just until recently referred to as northeast precinct?

A Yes. Intersection of Northeast Killingsworth and Northeast MLK.

A 449 Northeast Emerson Street.

Q Okay. You were at the precinct talking to Lieutenant Modica. And at some point during the conversation, did you become aware that one of the HEAT officers was involved in some kind of action or activity?

A Correct. I wear an earpiece, I'm able to continually hear the radio even if I have conversation with someone. Officer Foote said he would be initiating a traffic stop. Initially, I don't recall exact locations of the traffic stop. But again, working with Officer Foote on a pretty much daily basis last year, you're able to recognize officer voices.

Q And at that moment when you heard Officer Foote stating that he was initiating a traffic stop, did that have any particular significance to you?

A No, it didn't, kind of regular business. As we do a lot of traffic stops, there was not anything at that point that stood out in my mind that this would kind of turn into the incident that it did.

Q All right. What was the next thing you became

aware off?

A There was a minute or so that went by. I heard Officer Foote ask for a second car in to box this vehicle in. That's not a tactic we use normally -- generally, so something we use if the car has not stopped right away once we turn on lights and sirens, or there's something to indicate that the individual may once they are stopped, try and flee. So that kind of was an indicator that something was different with this particular traffic stop.

Q All right. What did you do at that point?

A At this point, I started to walk back towards my desk area. My lieutenant's area is to the back of the precinct, my partner was headed upstairs to use the restroom briefly. And then a few seconds later I heard Officer Foote yell, "Shots fired, shots fired," over the radio. At that point I ran out of precinct towards our patrol car.

Q What are you thinking at this moment when you're running to your car?

A At that point I'm thinking I needed to be there about 90 seconds ago, that's obviously something that's very unusual. There's a short pause, then I heard, "Officer down," which indicates that an officer has been shot or injured during this exchange of gun fire.

I could tell Officer Foote's voice was, you know, he was amped up as far as the emotions are elevated. I

grabbed our patrol car. We carry Nextel phones, I called Scott, "Get another car when you're done, I'm headed to the scene."

Q You left without your partner?

A Correct.

Q We have Nextels, I told him to go grab another car.

Q I assume that means you're going as fast as you possibly can?

A As fast as you can safely get there. I drove Code 3, lights and sirens. You stop for traffic lights, but once you clear the intersection, you head to the scene. I took Northeast MLK southbound on MLK.

Q This is our map, unfortunately shows MLK starting north of Halsey. You're coming quite a bit of a distance from the north?

A Correct.

Q Can you indicate -- well, before we get to that point, what do you see while you're driving en route southbound?

A As I drive, there's actually a fair number of officers starting to head that way, so traffic is starting to already pull to the right. It was a little surreal at this point. Usually that's a pretty heavy time of day for traffic. But the number one lane was pretty much clear. I

think there was a lieutenant's car in front of me as he cleared, I'm able to fall in behind him. Again, it seemed like it took forever to get down there. I think it was only a minute, minute, 30 seconds for me to be able to get down there.

Q And do you see any fellow officers going in the opposite direction while you're driving southbound?

A I do. When I got to Northeast MLK and Russell, I saw an unmarked police car. I looked over, it was Officer Foote, he was driving northbound on MLK. At this point I was thinking he's probably headed up to the hospital. In our training we talk about if we think we can get to the hospital faster than the ambulance, which a lot of times is true, we're not sure where they were coming from, that was my assumption at this point. I didn't see anybody else in the car, I saw Officer Foote in the driver's seat, and I continued southbound towards the scene.

Q Where do you go to?

A I go to the intersection of 6th and Halsey, which -- do have it up there?

Q We do. Let me show you this enlarged view of the intersection, if that would be assistance.

A Yeah.

Q Feel free to stand to one side so everyone can see.

A I come in from MLK. I drive east on Halsey here, I park roughly about here (indicating). I heard that everybody was at 6th and Halsey. Generally there's a safe route in that will be broadcast. I don't recall the safe route in. I also heard there I believe Sergeant Livingston asked for medical to be started and special emergency reaction team to be started as well. My thinking at that point, I know the HEAT officers -- I don't think any of them are AR-15 operators. I carry an AR that's a civilian model of an M-16, that allows us greater distance.

I knew gunfire was exchanged here. I didn't know if the suspect at that point was still going to continue to be violent against us. So, I exited my car and, again, since I didn't know exactly where they were at, I approach from the south curb line here, and got to about right here (indicating). There was a large piece of machinery, one of those big caterpillars right here.

Officer Eugenio, a member of the Gang Enforcement Team was on one end of the caterpillar, and Officer Polas was on the other end of that caterpillar. I went to basically where they were at, took a position of cover at this point.

Q This indicates the piece of construction equipment you're talking about?

A Correct. Again, Officer Eugenio was roughly right

about here, and Officer Polas was at this point (indicating). I basically went in between them and said, "Hey, I have an AR, where is the suspect? Can you see the gun? Can you see his hands?" Officer Polas indicated to me the suspect was partially inside of the car, partially outside of the car. He was unable to see his hands. We believed the suspect has underneath him the gun at that point.

Q If I may ask then at this time, what are you thinking as far as threat, as far as danger to officers on scene including yourself?

A The immediate dangers, I knew gun fire had been exchanged. I knew an officer had been struck and the suspect was inside of the car and was not responsive to us. I didn't know if he was nonresponsive because he was deceased, unwilling to, not able to respond, or unwilling to respond.

So my thinking is we still need to cover the car with lethal force if necessary. That's why I took the position I did there. There was a custody team I believe somewhere in this area, and that's a group of officers that will eventually approach the car. They did have a bean bag, less lethal gun available to them. And they were basically formulating a plan.

Actually, it happened fairly quickly. I could

hear someone giving the individual in the car commands, "Show us your hands, show us your hands," and there was no movement. From my vantage point I could see no movement. The command was repeated again, "Show us your hands or you'll be shot with a bean bag." I believe at least one bean bag round was fired, it could have been a second, and I heard the shot and I didn't see any movement.

At that point the custody team started to approach from the south here, and approach north. Then once they got within my line of fire, obviously removed my rifle so we did not have a cross fire situation.

Once they got to the car, they then began to pull the suspect out of the car to determine if he was deceased or in need of medical treatment at this point. Once they pulled him out, I left my position over on the sidewalk, came around to them. At this point, it looked to me the individual was deceased. Fire and medical was staged, and they called fire right in to give first aid if needed, but it was not at that point.

Q All right. Thank you. You can be seated if you like. What are you able to do with the AR-15 that the officers who are on scene with their 9 millimeter handguns are not able to do?

A The AR-15 is a precision weapon, incredibly accurate, more accurate than our handguns. And

velocity, the round travels at -- can stop a suspect a lot quicker than a 9 millimeter round can. And, again, it gives us the distance, so at this distance your handgun will be accurate, but a rifle is much more accurate. So usually there's -- if you fire a rifle, you're not going to have to fire as many times as opposed to a handgun. The stopping power is greater.

Q The distance is one side of the street to the other?

A Correct.

Q So, again, your purpose in utilizing the AR-15 and being on scene is to do what?

A At this point, just to continue to provide cover, because, again, when I first arrived, we didn't know if the suspect was going to continue to engage us in gun fire or not. The position I took was from our standpoint a good tactical position, because the building behind us is a brick building. Granted, there's windows through there, but my point of aim, we're always thinking about if we fire, if we miss our target, what is it going to hit? So, if you have a brick building that will stop any mis-rounds, at this point it is just to provide additional cover and it gives us another tool.

If we decided it was unsafe to approach, we can back out, but we can still cover that vehicle as well. So

it's just another option.

Q One of the civilian witnesses living in the apartment complex at 6th and Halsey said that they heard a shot or two that sounded to them like a shotgun, complete with sound of a shotgun cycling the shell. Would that be the sound of a bean bag gun?

A Yeah. If you're not familiar with the bean bag and in the shotgun you hear the racking, it is essentially the same weapon. It fires a different round, so the shotgun racking is probably what the individual here heard. The firing of a bean bag versus shotgun, there's a substantial difference in how that sounds. A shotgun is obviously more powerful, it's louder once you fire it. But the charging of the round into the chamber is pretty much the same.

Q And the sound of the bean bag, less lethal round is different, is it not, than the sound of the 9 millimeter handgun?

A Yes, it is.

Q Thank you, officer. Any questions from the grand jury?

GRAND JUROR: Yes, one question I would like, you say you are in the gang --

THE WITNESS: Gang Enforcement Team.

GRAND JUROR: Was Mr. Otis affiliated or known to socialize --

THE WITNESS: That was my first contact with him.

GRAND JUROR: Okay. But as far as you're team, I'm correct, had no knowledge of him being --

THE WITNESS: You're talking about 20 guys on our team. So, I don't want to speak for everybody, but from my knowledge I don't -- I have been with them two years, he's not somebody I ever interacted with or ever stopped in a traffic stop.

GRAND JUROR: That's, you know, what I wanted to reach out. I figured maybe like you guys have a chart or something, you know.

THE WITNESS: Uh-huh.

GRAND JUROR: A log of something, whatever, you know.

THE WITNESS: Yeah. He wasn't -- he wasn't someone that we were focusing or to my knowledge had any open cases on, so --

GRAND JUROR: Okay. Thank you.

MR. REES: Anything else? All right. Thank you.

PAUL MCCLAIN,
called as a witness,
being first duly sworn,
was examined and testified as follows:

MR. REES: Please be seated. And then for the record, if you would slowly state your name and spell your first and last name.

THE WITNESS: Paul, P-A-U-L, McClain, M-C capital C-L-A-I-N.

EXAMINATION

BY MR. REES:

Q Sir, tell the grand jury where you live?

A I live at 1425 Northeast 7th Avenue, apartment 218.

Q Mr. McClain, does this photograph show the view of the street as seen from your apartment?

A Yes, it is exactly.

Q All right. And were you -- this is the photo we showed you earlier?

A There's another view which I had -- which was in our bag.

Q And were you home at the time of the shooting on May 12th?

A Yes, I was.

Q Okay. Were your window coverings open so you had

a clear view out the window?

A Yes.

Q All right. And why don't you go ahead and tell the grand jury when you first become aware something unusual was happening outside of your apartment?

A I had just gotten home from jury duty on a case here in this building, so I was kind of tired because it took a long time to do it. I got home, uhm, my wife and I had sat down to look at -- to watch some news. We were drinking a glass of wine, and then all of a sudden I heard like pop, pop, two distinct shots, you know, came right and they were fairly close together.

Then there was silence, we had our television on, I didn't really, you know, think about it. And then there was a rapid fire -- burst of say twenty shots, it was like somebody had just taken a string of heavy duty fire crackers and lit them off all simultaneously, it was that fast. I heard a woman scream at this point. I thought, well, it was kids in the area shooting off fireworks. They usually do that during the summer. And I got up to see what was going on.

When I looked out, I saw police cars, uhm, facing down 6th Avenue. And then I turned and looked and I saw Mr. Otis' car, and it had bullet holes and there was at least three shots in the front window. There were bullet holes in

the passenger side. And, uhm, I saw police officers across the street, and they were -- they had their guns pulled and aimed at the car. And they were hiding, they were basically taking cover behind a front-end loader there, because there was a lot of street construction in the area.

I looked then down and I saw Mr. Otis' body. He was in essence facing me, but I couldn't see his face. And it was -- his body looked like it was slumped. It looked like he had just fallen out of the passenger's side.

I then saw police officers as if they were coming out of the air. I mean, they were coming in one after another. There were police cars showing up, and they all had guns out. Some of them had what what looked like AK-47's or that type of weapon.

Then I heard a shout from the police, "Show me your hands. Show me your hands." I thought there was another person, because we have that little indent on the 6th Avenue side of the apartment. I thought maybe there was something -- somebody else there, but I later learned they were talking to Mr. Otis. When I looked down it appeared he was dead. He was not moving. I saw blood, his body was -- it was -- there was no movement at all.

The police then told us to get back in the house, because I don't know if they were thinking there was going to be another round of fire. We got back in the house. We

went to the guest bedroom, it has the window that looks straight onto 6th Avenue. And it -- and Mr. Otis' body was right below us, right below us.

We heard again, "Show us your hands, not your arms." I could see Mr. Otis was facing north again. I could see his body, his arm was like this, so his hands were pretty much -- were not seen. I did not see any guns at that point. There were no guns in or around the car, so I didn't see any of that.

We did hear police yell several times, "Show us your hands." And they were followed by, uhm, high velocity bean bags that hit his body, almost lifted it up. There were like four shots of high velocity bean bags that hit his body.

After that there was at least two or three police officers that came around his -- came to where he was lying, uhm, and they were checking for any weapons. They kicked the TASER gun that they used out of the way, and you could see the wire, it came off Mr. Otis. They rolled him over, I could see the two bullets -- there were two bullet holes on each side of his chest. When I was -- before they rolled him over, I saw blood and possible bullet holes towards the back, the lumbar area.

They brought him out, they flipped him over, uhm, and searched, and then dragged him out of the car. His --

well, his pants caught on whatever there was, so the pants were basically being pulled down. They frisked him. Then once they did that, they tried to roll him over and handcuff him. But that was not working, he was really dead.

One of the officers then straddled him, tried to see if there was any pulse on his neck. At that time, paramedics came walking down the street, and they basically put a heart monitor, EKG monitor on him, and I saw the flat line. At no point did either the police or the paramedics do anything to emergency resuscitation or anything of that nature, they just went to see if he was dead.

Q Okay. Now, several times you have referred to the deceased by name, Mr. Otis?

A I found that out in the newspaper.

Q All right. So you --

A Didn't know who he was.

Q Didn't know this person, you didn't know his name?

A No.

Q All right. Were your windows open or closed?

A Open.

Q And you said the T.V. was on?

A Yeah. The reason the windows are open, my wife and I have MS, so we like cool. So we have the windows opened, it helps us.

Q It was a rather pleasant afternoon as well.

A Yes, it was.

Q Before you heard the shots, did you hear anything unusual in terms of traffic or yelling or anything else?

A I didn't hear it, because I usually block it out because there's a lot of noise around that area. Unless it is something that will catch my attention, I usually don't listen to anything.

Q All right. So you did not hear anything unusual?

A No. We were watching the television, so --

Q Well, thank you, very much. Let me see if the grand jurors have any follow up questions.

GRAND JUROR: Yes. You said you heard pop, pop?

THE WITNESS: Yes.

GRAND JUROR: And then how long after did you hear --

THE WITNESS: About fifteen, twenty seconds at the very most.

GRAND JUROR: And it sounded like?

THE WITNESS: Sounded like, uhm, a fireworks display was going off right outside our window.

THE WITNESS: Did you hear any more after that?

GRAND JUROR: No. The only thing I heard after that were the the pops that came from the gun

that shot the bean bags out. Now, one thing, they did leave the body spread out on the sidewalk for about six hours, which there are children in the building, and it was a rather gruesome situation, because they didn't cover the body. They just left it out, they processed the scene, they processed everything on the scene before they processed the body, which I thought was a little degrading to him and his family and the people in the apartment.

GRAND JUROR: Thank you.

MR. REES: Thank you.

RAYMOND HOOK,
called as a witness,
being first duly sworn,
was examined and testified as follows:

MR. REES: Go ahead have a seat. If you would slowly state your first and last name and spell it.

THE WITNESS: Raymond, middle initial L, Hook, H-O-O-K.

EXAMINATION

BY MR. REES:

Q All right. Mr. Hook, you understand this grand jury is investigating the circumstances surrounding the use of deadly force by the police on May 12th, 2010?

A Yes, I do

Q Did you witness at least some of the events?

A Part of it, yes. Not the whole thing, but part of it, yes.

Q All right. First, if you can tell the grand jury where you were physically when these events occurred?

A I have a fourth floor apartment in the Cornerstone Apartments, which has a sliding glass door that opens to a very narrow balcony that overlooks 6th Avenue.

Q All right. What unit number is that?

A 422.

Q And so do you recognize this overview of the intersection of Northeast 6th and Northeast Halsey?

A I'm trying to get oriented. Is that 6th Avenue? Is it --

Q This is 6th.

A And Halsey. All right. Yeah.

Q This is the electrical substation and McDonald's parking lot, this is the Cornerstone.

A Right. Okay. I have it now.

Q All right. And so would you be able to indicate -- feel free to stand up. Can you indicate where your apartment unit is located?

A It's like right in this area --

GRAND JUROR: Could you turn this way, sir?

A It's right in this area here. I think there's like three apartments along here. And I'm -- no, there's probably four. My apartment is about right here under this roof here, and -- yeah.

Q So you're indicating about half way in the --

A Well, it would be this side of half way, just slightly.

Q For the record, you're indicating slightly closer to Northeast Halsey as opposed to the southern end of the apartment complex?

A Yes.

Q Near the middle of the complex?

A Uh-huh.

Q You can be seated, please. When did you first become aware of -- or should I say what was the first thing you noticed unusual that happened?

A I was in my living room and I had the balcony door opened. It happened to be a warm day. I had the screen shut. I was in there, but I heard -- I don't know, at least a dozen -- maybe dozen and a half gunshots. At first I thought it was fire crackers. I thought it was a bit too early for fire crackers, and didn't really sound -- so I went to the balcony and looked out.

At that point the officer had already fallen and there was a patrol car with a number, I don't know, three, maybe four officers it appeared, if I remember, that were firing at a vehicle that was parked actually in a parking position, which I assumed was the defendant, whatever. And they were firing at that vehicle.

There was no one from the vehicle out and about, he was still inside. And then they said several times -- I think several different officers shouted, "Exit your vehicle with your arms over your head now." And I was watching, and there was no action from the -- or activity from -- I expected a door to open, someone to get out, but they didn't. And that command was issued several times.

Q Before you heard the sound of gun fire, had you heard anything else unusual?

A No. There was -- I was not even aware there was anything going on. Just all of a sudden there was gunshots.

Q Then when you looked out, you said that the officer had already been shot. I think that's what you said.

A Uh-huh.

Q Tell us what exactly you saw, what made you think that an officer had been shot?

A He was lying on his back in middle of 6th Avenue, sort of like -- I guess you call it spread eagle, basically. His legs were apart, his arms were out like this (indicating), and he was on his back and motionless. So I assumed he had been shot.

Q All right. When you saw that, were any other officers around that officer lying on his back in the street?

A Not right at the moment, because there were several officers firing at the car. But then while they were firing, I think you call it like drawing fire, because two other officers rushed out into the street and grabbed the fallen officer, and drug him back behind the vehicles to safety.

Q All right.

MR. REES: Any follow up questions from the grand jury? Hearing no questions, we will excuse you.

THE WITNESS: No questions? That's it? I guess I told it clearly.

GRAND JUROR: Thank you.

JENNIFER GILBERT,

called as a witness,

being first duly sworn,

was examined and testified as follows:

MR. BANFIELD: Have a seat. Please state and spell your name.

THE WITNESS: Jennifer Gilbert, J-E-N-N-I-F-E-R G-I-L-B-E-R-T.

EXAMINATION

BY MR. BANFIELD:

Q What is your occupation?

A A dentist.

Q Where do you work?

A At Kaiser Grand Dental Office

Q Where is that located?

A Corner of Grand and Clackamas, I think.

Q Mr. Rees is going to flip down the map, if you can indicate where -- on the map where your office is? Stand to the side so the grand jurors can see.

A I work in this building right here, it's on Grand Avenue between Clackamas and Wasco Street (indicating).

Q Okay. And go ahead have a seat. Were you working on May 12th of this year?

A I was.

Q And were you working at the time of the officer

involved shooting?

A Yes, I was.

Q And how long have -- you how long had you been working that day?

A I was probably in the office at 7:15 that morning. 7:15 that morning. I work ten hour days, I usually get off around 6:00 or so. I finished up patient care, I was writing on charts in the office.

Q Were you just about to get off work?

A Right. I usually get off about that time. Actually, I scheduled an additional patient that day until 6:00. I was there a little beyond my regular time.

Q Can you tell us when did you first realize there was an incident that was occurring outside of your office?

A When I heard the shots.

Q Tell us exactly what did you hear, what do you remember hearing?

A I was sitting at my desk, I heard several shots. And then what it sounded like was about three from one type of gun, and then many from another, other guns. So I left my seat, I went to the window that was the closest to my office, and I looked out the window.

Q And, again, using that diagram, can you show us where you looked out from?

A So it was a window right here. There's a door and

entrance right there -- actually, I'm sorry. It's right here (indicating).

Q When you looked out your window, what did you see?

A I saw -- I mean, mainly police officers and police cars. And, I mean, there was one police officer that was down, and couple of police officers moving him to the side of the street -- from the middle to the side. But it was mainly a lot of officers holding their weapons.

Q And where did you see the police officer down, where with they?

A On the diagram?

Q Uh-huh.

A It was right in this area right here (indicating).

Q Okay. And go ahead, have a seat. Before you heard gunshots, did you hear anything else? Did you hear sirens or --

A No, not before the shots. I didn't hear anything that drew my attention.

Q Okay. So you just heard gunshots. Describe the gun shots you heard first, you heard two or three?

A Right, from one type. I mean, it was like different sounds, it sounded different like pop, pop, pop, one from one type, and then many from another type. So it just made me -- at first I thought of fireworks, and then it didn't sound like that any more, because it was going on a

little bit. That's when I went to the window.

MR. BANFIELD: Any other questions from the grand jury?

GRAND JUROR: When you heard the first type of gunshots, how long was it before or after, I should say, after, you heard the others?

THE WITNESS: It sounded like it was immediately following.

GRAND JUROR: Like five or ten seconds?

THE WITNESS: Yeah, just a few seconds.

GRAND JUROR: And you also indicated you saw the officer lying down?

THE WITNESS: Uh-huh.

GRAND JUROR: Did you see any other officers assisting him?

THE WITNESS: Uh-huh, yeah. There was two officers who were moving him.

GRAND JUROR: Was it to the front of the car or the back of the car?

THE WITNESS: Honestly -- it was more from the street, I saw it from the middle of the street to the side of the street. He was pulling him behind a car. I don't remember if it was a police car or another car.

THE WITNESS: Thank you.

MR. BANFIELD: Okay. I think that's it. Thank you, very much.

GRAND JUROR: Thank you.

THE WITNESS: You're welcome.

MICHAELA PICHELLI,

called as a witness,

being first duly sworn,

was examined and testified as follows:

MR. BANFIELD: Have a seat. Please have a seat and state and spell full name.

THE WITNESS: Michaela Pichelli, M-I-C-H-A-E-L-A P-A-C-H-E-L-L-I.

EXAMINATION

BY MR. BANFIELD:

Q Ms. Pichelli, how are you employed?

A I'm a dental assistant at the Kaiser Permanente, Grand clinic.

Q Is that the Grand clinic located on Clackamas and Grand, this location here on the map?

A Let's see. Where is Multnomah?

Q Here's Clackamas, here's Grand, here's 6th Avenue.

A This is our building right here (indicating).

Q Right there. The building on corner of 6th and Clackamas?

A Correct.

Q And also 6th and Grand?

A Yes.

Q Wasco and Grand?

A Yes.

Q And were you working on May 12th of this year?
A I believe so, yes.
Q What shift were you working?
A 7:00 to 6:00.
Q Do you recall when -- do you recall an incident that occurred involving the police outside of your office?
A Yes, I do.
Q And when did you first realize that the police were involved in an incident out of your office?
A I came out of the bathroom and Dr. White and Cindy Richardson were standing at the back door, and they said some shots had been fired. And when I came up to the door, I think maybe there were -- some shots were being fired then also.
Q Tell us what do you remember hearing?
A I heard I think -- I believe approximately five shots.
Q Just five shots?
A Yes.
Q Somebody told you shots were being fired?
A Yes.
Q You went to the door and you heard --
A Couple more.
Q A few more shots. Did you see anything?
A There were a number of police vehicles kind of

converged in that corner of 6th and Clackamas.

Q Did you see --

A Uh-huh. And you could see police officers there. And I saw there was a taller, bald-headed police officer, and there was an officer on either side kind of holding him up and dusting him off or something like that, supporting him in some fashion

Q Were they on the ground or were they standing, can you recall.

A They were standing up. They were holding him up and kind of -- I don't know, kind of (indicating).

Q Okay. Did you hear or see anything else?

A Just a lot of the police officers coming and cars coming and an ambulance -- no, not ambulance, fire truck. I saw a fire truck come. And they were walking around and they started taping off the area.

Q Now, did you hear or see anything before someone told you that shots were fired?

A No. I was in the bathroom, there's no outer walls. It's in the kind of center of the building.

Q Thank you. I have no further questions. Thank you, very much.

A Thank you, very much.

EARLINE BARNES,

called as a witness,

being first duly sworn,

was examined and testified as follows:

MR. BANFIELD: Go ahead, have a seat. And can you please state and spell your full name?

THE WITNESS: My name is Earline Denise Barnes, E-A-R-L-I-N-E D B-A-R-N-E-S.

EXAMINATION

BY MR. BANFIELD:

Q We're here to discuss the case the officer involved shooting that occurred May 12th of this year in the area of Northeast 6th and Halsey, Northeast Clackamas, 6th and Clackamas, in that area. Are you familiar with this incident?

A Yeah.

Q Were you at that location and witnessed this incident?

A Yes, I did.

Q What were you doing in that area?

A I was coming from Buckman Elementary, picking up my granddaughter. She's in the Sun Program after school activity. She had a good day, I said, let's go have an ice cream cone at McDonald's.

Q Heading to McDonald's nearby there?

EARLINE BARNES,
called as a witness,
being first duly sworn,
was examined and testified as follows:

MR. BANFIELD: Go ahead, have a seat. And can you please state and spell your full name?

THE WITNESS: My name is Earline Denise Barnes, E-A-R-L-I-N-E D B-A-R-N-E-S.

EXAMINATION

BY MR. BANFIELD:

Q We're here to discuss the case the officer involved shooting that occurred May 12th of this year in the area of Northeast 6th and Halsey, Northeast Clackamas, 6th and Clackamas, in that area. Are you familiar with this incident?

A Yeah.

Q Were you at that location and witnessed this incident?

A Yes, I did.

Q What were you doing in that area?

A I was coming from Buckmank Elementary, picking up my granddaughter. She's in the Sun Program after school activity. She had a good day, I said, let's go have an ice cream cone at McDonald's.

Q Heading to McDonald's nearby there?

A Yeah, we go there all of the time.
Q What do you drive?
A '93 Intrepid, a reddish burgundy.
Q You and your granddaughter, what's her name?
A Desire, she's 9.
Q When you and your granddaughter headed to McDonald's for ice cream, tell us what it is when you noticed police were nearby.
A When I got to 7th and Halsey to take the left, I heard the police cars. So, I went over to the stop sign, the police was coming from MLK. It was a gray, unmarked car with the police lights on the inside. And I stopped and I looked to my left, there was the gray car with the young man in it. And the police came at an angle. And before he could get to the window, the young man -- I was going to go ahead and turn anyway, but then when the young man asked me, "Ma'am, don't leave, they going to kill me," I backed up a little and went back behind the stop sign. And I went back behind the line, so they won't say I was not behind the line at the stop sign.
Q I'm going to show you a photograph. Can you indicate here on the photograph where your vehicle is?
A My vehicle was right here when all the things were going on. It was right there. The stop sign is right here, my car was here. This is my car, but when I first got there

and I stayed here, my car was here.

Q You said here, you're pointing at the stop line?

A The line there.

Q And when did you pull your car back?

A After the shooting had stopped, I was hysterical. I was at the stop sign when all that came about after the other confrontation I told you about. I was stuck at the stop sign, I couldn't -- I was scared. And they was doing all of the shooting.

Q Ma'am, earlier you said that you were on 7th and Halsey, do you mean 6th and Halsey?

A No. When I came up from my granddaughter's school, that's 7th, I turned to the left on Halsey.

Q Turned from 7th onto Halsey and going towards McDonald's?

A Yes.

Q So then you pull up to the stop sign, and tell us, what do you recall when you pulled up to stop sign?

A When I got there, I heard the police. And when I got there, the police officer was coming from Martin Luther King, we call it MLK, the gray car with the lights on inside. But to my left was the young man sitting in his car. And the police car came at an angle. When he was getting out, I looked over, the young man sitting there said, said -- my granddaughter said to me he was talking to

me. I said, what you talking about? And he said, "Ma'am, don't leave, they going to kill me."

Q And who said that?

A The young man in the car.

Q Okay. I'm going to show you a photo here behind you so I can be clear on which car you're talking about the person was talking to you from. And if you don't mind turning around and standing up here, if you want to come up here. Do you mind coming up here? Stand over here.

Do you see the car that you're talking about where the young man was talking to you?

A This one right here (indicating).

Q And you said first he -- you said you saw the gray police vehicle pull up in front of the car?

A It wasn't this one, it was this one. This one didn't come until later.

Q You're indicating on the map there, for the record the car -- that is the lighter color silver car was there first, and the darker colored gray came car came later?

A It wasn't nothing -- if it was, I wouldn't be able to see what I saw.

Q Okay. And that's when you heard him say "Ma'am" --

A "Don't leave, they going to kill me." This officer got out this car, went to this window right here and stayed right here. He never left. He never let the young

man out of the car. He never did. And the young man was scared when he walked there. And then when he heard him talking to me, he hit him and told him to shut up. And that's when I said, "Why you hitting him?" But he asked him before that to put his hands to where he could see them.

Q Did he comply?

A Yes, he complied. He was scared. I'm telling you he was afraid. This other officer hit him and kept hitting him. Okay? The young man was not saying nothing.

Q Can you describe the officer you saw hitting him?

A He was tall and bald. I was not really looking at him. I was keeping my eye focused on the car and the young man.

Q And he kept hitting him?

A Yeah.

Q What else did you hear? What else did you see?

A Well, me and the officer had a confrontation. He told me I needed to move on out, I was obstructing justice. I said being myself, "I ain't going nowhere. I'm going to stay right here." He said, "Ma'am, you're obstructing justice." I said, and then I asked, "Why are you hitting him?"

Q You can go ahead and have a seat, continue telling us what you remember.

A Then I looked and then another -- when I looked,

another police officer came around with a yellow TASER gun, and he tased him. I said, "What are you doing?" And he tased him. And the young man said, "Why you tasing me?" And you could hear him say that. I could hear him say that.

Then I had my remarks, policeman once again says, "You need to move on. You're obstructing justice," and so, we confrontated. I looked around, looked up, they tased him again with a black TASER. It was not a yellow gun, it was the one with the little electricity, you could see it. That's how close I was, because my Intrepid, I'm kind of tall, my Intrepid sits up high. I could look right at what was going on. And when they did that, I said, "What are you doing? Why you doing that?" And the young man's eyes was real big at that point.

Q Now, could you tell whether the officers heard you? I mean, did they respond to what you were saying?

A He heard me. He looked up at me. But he didn't care what I saw and/or anything.

GRAND JUROR: Which officer looked at you?

A The tall, bald one, the one that we kept confrontating about it. He told me I needed to move on, all of that. And when they tased him that time, it was a lot, you know. I looked, it hit it back here. And it was a lot, with the heavy electricity. The young man was like this, eyes real big and his speech was a little impaired. But

once again he said, "Ma'am, don't leave me. They going to kill me." But it was not -- like I said, it was a little impaired, but I could understand what he was saying.

After that I raised my glasses up, tears was rolling like they are now (witness crying).

GRAND JUROR: Give her a napkin.

A Like they are now. He asked me to help him, I can't help him. And I turned around like a chain reaction, turned around and they started shooting. And I was at the stop sign. I was stuck there hollering, saying, "What you doing? What you doing? You're going to kill him." And they kept shooting.

Q Let me back you up a little bit. You said you saw the officer before they tased him, they were hitting or hit him?

A The bald headed one, he stood at that window, I did not understand why he stood at this window as long as he did. I thought he was going to get -- to ask him to get out slowly with hands -- to wait to see him, he'll handcuff him, do what he needed to do. He never let the young man out of the car. He said, "Get out the car." Young man said, "I can't, you're on my door."

Q You could hear that?

A I heard that all.

Q When you said he stood there for such a long time,

how long was this confrontation between this bald officer and the person in the vehicle?

A Like I said, and like I have been saying, for fifteen to twenty minutes he confrontated with that young man in that car. Before he was tased, he slapped him, hit him. And the young man was not doing anything but what he told him to do, and that was keep your hands where I can see them.

Q From where you were indicating here in the picture up on 6th and Halsey, you could clearly see the young man's hands?

A I could clearly see the young man's hands. I could clearly see what was going on and what was being said.

Q And he was putting hands up?

A He had his hand like this on the steering wheel (indicating).

Q For about fifteen to twenty minutes this happened? Were there other officers during the fifteen minute period?

A There was the bald one and the one beside him.

Q What was that officer doing at this time?

A He was just standing there. The bald one is the one that indicated the hitting and slapping. And I looked around I think a couple of minutes later after this kept going on, getting close to the end of it, the other officer came around from here, not the one that was standing by the

bald guy, he was still there, it was another one that came around.

Q Meaning the back?

A From the back of the car.

Q What did that officer do?

A He had the yellow TASER gun.

Q That was from the back of the vehicle?

A And they never said -- never read rights, never said anything as far as, you know --

Q Now, you indicated that he was saying, "Ma'am, they are going to kill me." How did you know he was communicating to you?

A He was looking right at me. He had -- his eyes was big. This is what caught my attention when he had asked me to help him. I looked around and I was like, hum. That's what made me stay there. I'm like this, why would he feel this way, and the police is right here. I don't know what the situation was, why they stopped him, I don't know that. I don't know why he was there when I got there, but I know what I saw, and I know what was said.

Q Okay. So after this, you know, this confrontation between the bald-headed officer and the gentleman in the car went on for about fifteen or twenty minutes, that's when you start seeing the TASER -- that's when they started tasing him?

A No. The bald-headed guy was still, you know, pulling on his clothes like that, and slapping him like that (indicating). And then like I said, when I looked around after that was going on, I looked around and this other officer had like a crew cut, like a military cut on his hair, he had a yellow TASER gun, he tased him.

Q Did you hear any of the others indicate they were going to TASER him? Did they yell "TASER, TASER"?

A No. No. That's why I still did not understand, they said nothing like that. Nothing. That should have been said, nothing was done that should have been done. What was done was senseless.

Q After they tased him you said twice, first in the back then again from the front, and I know you said then you started tearing up a little bit?

A Tears started rolling, not a lot, and I had my glasses on. I had my glasses on. And I just wiped them like that. And I turned and put them back down. But after they tased him the second time, the young man was not saying anything, he was tased so much. He was despondent. Okay. When I looked around, I just seen all of the guns pull out, and they started shooting.

Q Was that the first time you saw guns, first time the officers drew their guns?

A Yeah. They just drawed them and started shooting.

Q Let me ask you, did you hear any of the officers saying, "Watch out, watch out, he's going for something"?

A No.

Q You didn't hear any of the officers say anything like that?

A No.

Q Did you hear them communicating to each other, the officers?

A No.

Q They just started shooting without saying anything?

A Without saying anything. And the young man was -- I didn't see him sitting up no more because right after they tased him in the front and I did this and I looked back around, that's when the guns -- that's when I seen all of the guns.

And I said -- and I started crying and hollering saying, "You going to kill him. You're killing him. Why?" And I was at the stop sign, I couldn't move my car because I was stuck. I was stuck. I'm a mother of five, a grandmother of two. That's somebody's child you shooting. I don't care, that boy don't have a gun. I don't care what nobody said, I seen his hands, do you hear me? He didn't have no gun.

Q Ms. Barnes --

A He had no gun. (Witness crying).

GRAND JUROR: Can we give her a few minutes, please?

(A 3-minute recess was taken).

BY MR. BANFIELD:

Q Okay. We are back on the record. And now this is very important, I just want to ask you, how many shots do you recall hearing?

A I didn't count. I wasn't counting. It was a lot, it was smokey. It was a lot of shots.

Q Uhm --

A I can't count. I'm not going to sit here and say I was counting, I wasn't. It was a lot.

Q Were the shots all in succession with each other?

A What do you mean? Was they all shooting at the same time?

Q Correct. Were they all at the same time? Did you hear any pauses in between the shots?

A No pauses between the shots, huh-uh. I didn't hear any. I just heard boom, boom, boom, boom, boom, boom, boom. They just lit the car up. And I was just looking, screaming. They did tell me, "Ma'am, move out of the line of fire." But by this point -- at this time I'm stuck at the stop sign, because I'm like, you know, scared.

Q Who told you to move out of line of fire?

A The police did. "Move out of the line of fire," but I could never get there.

Q And you said before they shot, you could see his hands were straight forward, up in view?

A Before they shot, they tased him back here (indicating), tased him here (indicating). Now they -- his speech was a little kind of like slurred, like I say, impaired. But I could understand him asking me not to leave, and then I didn't -- he kind of slumped over -- slumped over. And I didn't see him or hear nothing from him any more.

Q Now, as the shots were being fired or after, did you ever see an officer go down?

A No, they was all still standing.

Q All of them were still standing?

A I didn't see nobody fall down. No.

Q And, again, you had a pretty good view of this incident?

A Yeah. See, my car got back here because by the time I gathered myself, they was -- they was done shooting. And I -- but I had pushed my granddaughter down, and I just -- I tried to leave the stop sign. I kind of moved a little, but then I went back there and was stuck. And then --

Q So how many officers did you see shooting?

A The one with the yellow TASER gun, the two by the

door, there was another officer back at the car in the back.

Q Behind the vehicle that was stopped?

A Yeah. How many total do you recall that were shooting their guns?

A I know these three were, I'm not quite sure if he was, but I know these three right here, two over here and this one here (indicating).

Q I'm sorry, this is for the record, what locations around the vehicle are you talking about?

A Okay. The tall, bald officer and the guy -- the other officer -- every officer there -- they had their guns out and this officer had the yellow TASER gun, he -- his gun was out.

Q Okay. And, again, can you describe where next to the vehicle they were in words, just describe?

A The one -- the tall, bald one and the other one was right there.

Q In front of the vehicle?

A No, right at the window. He never left that window when he got out his car, that's where he stay. And the other, I don't know whether it was his partner or the officer that was there, later just kind of figured out there was an officer at the end, at Clackamas. I never did, you know -- I guess they are the ones that probably stopped him, I don't know. I just know what I seen right there in my

view.

Q After you heard all of the shots, what did you see?

A The officers just standing there. I was crying and I was hollering. The police came to my car and told me, "Ma'am, you need to" -- that's when I was there and I just told them to get away from my car.

Q Could you hear the police saying anything at this point?

A I didn't hear them saying anything.

Q You couldn't hear them giving commands to the person in the car after the shooting?

A No.

Q They weren't saying anything?

A No. I didn't hear anything like that. What I heard was after the police left me alone, I asked them to get away from my car. The young man sitting out there, Andre, him and his sister --

Q Andre Pierce?

A Yes. They came to my window. I was really upset and they got me out of my car. But when I got out of my car, I heard two more shots.

Q And did these shots sound the same as the previous shots that you heard?

A I -- to be -- I can't say that, because I just

heard two more shots.

Q How much time had elapsed between hearing the first set of shots and the two shots you're talking about?

A A few minutes there, because I didn't see the young man no more. I said they had killed him, I didn't hear nothing. And when I got out of my car, I heard two more shots and I -- and I hollered and said, "They shooting him again." And then I went and sat on the curb.

Q Okay.

A They took me to the curb. I mean --

Q What do you see from the curb?

A I was -- I really wasn't trying to look over there. I felt in my heart that he was dead. The police was standing there. Then this other car right here, he came --

Q You're talking about the darker gray car directly in front of the silver Toyota?

A Yeah. Then there was another white car, he came, that was parked over this way by McDonald's. He was in a slant where the meters are, right there, he had jumped out with the pump shotgun, but the shooting was over at this point. It was over at that point.

An ambulance came, they went around there, but they didn't bring nobody back. And they made a joke, "I don't know what they call us for." Yeah, they said, "I don't know what they call us, for he's dead." And I was

like, wow, and I started really crying. I already knew that he was dead. I already knew that when they tased him.

Q I don't have any further questions.

MR. BANFIELD: Members of the grand jury, do you have a question?

GRAND JUROR: I do. Can you show me on the picture where the officers were standing, please? When you do that, stand to the side so you won't be blocking the view.

THE WITNESS: The ones here?

GRAND JUROR: The bald-headed one?

MR. BANFIELD: Right here.

GRAND JUROR: The ones that you saw.

THE WITNESS: He went to that door and never left, the bald one.

GRAND JUROR: Where was the other one?

THE WITNESS: Right here, right here (indicating).

GRAND JUROR: Where was the other one?

THE WITNESS: The other one came from the side. The tasing was over here.

GRAND JUROR: Okay.

THE WITNESS: All this car and this car, they wasn't there, all this didn't come until after they did all of the shooting. That's when all of these

cars back here came. But at first no one was here but him. This car wasn't here (indicating).

GRAND JUROR: Can you tell me where your -- where was your car positioned?

THE WITNESS: This is -- he's in the way. This is the corner right here and directly over this way is a stop sign. My car was right there before any of this came.

GRAND JUROR: Okay. How is your granddaughter?

THE WITNESS: She's okay, because I pushed her down, you know, because bullets were flying and she was concerned about me. I said, I'm okay, just get down. You know, she just know that it's -- just heard me saying --

GRAND JUROR: Thank you.

GRAND JUROR: I have a question. I don't quite understand how he communicated with you. Was your vehicle side-by-side with him when he said that to you?

THE WITNESS: My vehicle was directly at the stop sign. And where the -- where his vehicle was parked at, and I was right at the corner. I could look directly in his face. He said it loud, he didn't mutter it. He said it loud. Wasn't no -- when I

pulled up, there wasn't nobody there, just us. Wasn't nobody there.

GRAND JUROR: Your car was in front of him, in back?

THE WITNESS: My car was right there at the corner. If you go down there, you look and see what I'm saying. You can see what I'm talking about. The picture may give you some justice, but the corner is -- here his car was here. It's like you really can see exactly what is going on right here.

BY MR. REES:

Q So, this is the video taken at the time of the shooting, is this your red car?

A That's my red car. You know what, I was at the stop sign right there when they first started shooting.

Q At the line right here a few feet in front?

A Right.

Q This lady is asking, did your car at any time leave this location, or this is where you were sitting in the car when you say you heard these things?

A No. I was at the stop sign when I heard.

Q This white line (indicating)?

A Right. I was right there.

Q That's what I'm asking you -- she's asking you. For example, your red car was down here or something next to

these cars?

A No.

GRAND JUROR: I was not sure, the suspect's car is over there, how could you hear him say, "Ma'am, don't leave me"?

THE WITNESS: He hollered out to me, that's what got my attention, why I didn't leave. He asked me not to leave, they was going to kill him. So, no, no, when I first pulled up there, when I first pulled up there I was going to turn, I didn't.

BY MR. REES:

Q So we're all clear, you're saying you saw and heard these things when your red car was at the white line in the picture?

A Yes, yes. That's where I was.

GRAND JUROR: I didn't understand. I thought maybe you were side-by-side with him.

THE WITNESS: No, on the street. I understand that's a video. If you go right there, you see the closeness, exactly how close it was, how close he was. My car sits up, so, you know, any time somebody hollers and says, "Ma'am, don't leave or don't leave, they are going to kill me," wasn't nobody there at the time. It was really kind of quiet. It was -- construction people was gone, everybody -- was

nobody there working or nothing. That's what got -- that's what kept me there. And then to be honest, I was nosey. I want to know what is going on.

BY MR. REES:

Q I have a question. You said that you saw this hitting of the young man, the yelling at the young man, all these terrible things, you said you saw this occurring for you said under oath fifteen to twenty minutes?

A Yeah.

Q Do you really mean fifteen to twenty minutes?

A Yes, I do.

Q All right.

A And this is why I'm telling you, like I told the detective, I did not understand that. Why was he there that long with this young man?

A Okay. So we're all clear, when you say fifteen or twenty minutes, that's not just an expression?

A No, sir.

Q You're saying it --

A No, literally.

Q Literally, fifteen to twenty minutes you sat there and watched these things?

A Yes. He never said, "You're under arrest." Never said -- he never read no rights, no. I know what I saw, and I know what I heard.

MR. BANFIELD: Any further questions?

GRAND JUROR: One. So from where your car was at, were you able to see if the windows on the silver Corolla were up or down on the passenger side?

THE WITNESS: I was at the line at this time that you're asking me, the passenger back window was down. That's how he tased the young man on the passenger side. That's how he tased the young man from the back, and his window was down because he was talking to the police. You know, his window was down. I don't know about the other window. I know them two windows were -- this side on the passenger side, you sit up on front with the driver, that window was not down. The back one was. That's how the officer tased him the back -- to the back of the neck.

GRAND JUROR: Did he lean his head out the window to tell you that, or could you tell what he was saying through the window?

THE WITNESS: His window was down. He hollered and said, "Ma'am, don't leave. They are going to kill me." And it was no one there at that time but me and the young man and the first gray car that came. I didn't see nobody else or nothing unless they was up on the porch behind the tree here. But I didn't see nobody, it was just us.

GRAND JUROR: You never left your vehicle at any time?

THE WITNESS: No.

GRAND JUROR: Okay.

THE WITNESS: Because when the police came from MLK, I started to just go and turn. But the reason I didn't, he hollered -- said, "Ma'am, don't leave, they are going to kill me." And the bald officer got to him and told him to shut up and hit him.

And that's when I said, "Why are you hitting him?" He asked him to put your hands where I can see them, so he did. He told him to shut up, told me to move on, I'm obstructing justice.

GRAND JUROR: Which officer told you that?

THE WITNESS: The big, bald one with the bald head is the one that told me that, and we had words. They was not nice ones, that's why I won't repeat them.

BY MR. BANFIELD:

Q Ms. Barnes, you spoke with Detective Hurley that might; is that correct?

A Uh-huh.

Q You understood all of your statements were being recorded that night?

A Yes.
Q He took down all of your information; is that correct?
A Uh-huh.
Q And the information that you gave him and he wrote a report on this indicates that you are Ms. Earline Denise Barnes; correct?
A Uh-huh.
Q Date of birth, August 12, 1955; is that correct?
A Yes.
Q Reside at 5025 North Vancouver Avenue, Portland, Oregon.
A Yes.
Q Have you been convicted of a felony theft in the first degree and forgery in first degree?
A Yeah. Yeah. I have a criminal record, yes, I do, an old one.
Q From 2003, correct, Theft in First Degree?
A No, way back before that, but they brought it up to that date.
Q You were convicted in 2003, you're saying the charges were earlier?
A Yeah. I went to prison, I did a year and a day, I was 48 years old.
Q It is a conviction for Forgery in the First Degree

from 2001 in Washington county?

A No. I didn't have -- no, huh-uh. They brought everything up to date. I stopped doing all that.

Q So the forgery conviction it was in 2001, it was from something -- this happened before that?

A Before that they brought it up again.

Q A Forgery in the First Degree conviction, Washington County in 2000, is that the same scenario, you committed it -- the crimes in the past, but then convicted later on?

A Yeah.

Q And then another Theft in the First Degree conviction in Washington County in 1997, you recall that one?

A Uh-huh. I did -- I went to the restitution center before they built the new jail. It was stuff they -- I had done, they caught up with me. I did the time. When they got to the 2001, I was not doing anything before the end of the 1990's. I was done with the lifestyle. My parents starting getting sick, my mother and dad started getting sick. My daughter was going to have a baby, my granddaughter born in 2001. I knew that with all of the things I had done in the 1990's I would have to pay for it. I stopped before the identity theft law came into effect when I got -- identity theft law came in effect when I was

sentenced by a Washington County, the judge -- I forget his name

Q We don't need to go any further. You explained yourself sufficiently there. That's all of the questions we have. Thank you for your time today.

ANDRE PIERCE,
called as a witness,
being first duly sworn,
was examined and testified as follows:

MR. REES: Have a seat, please. Please state and spell your name slowly for all of us.

THE WITNESS: My name is Andre Pierce, A-N-D-R-E P-I-E-R-C-E.

EXAMINATION

BY MR. REES:

Q Were you telling me a minute ago you grew up here in Portland?

A Yes.

Q Where did you go to high school?

A Roosevelt High School, north Portland. Grew up by Jefferson High School, went to Roosevelt High School.

Q Are you currently in school?

A Grambling State, currently their mascot.

Q What is the mascot?

A The tiger.

Q The Tigers?

A I'm on full scholarship.

Q Outside of the grand jury, are people aware of that, that you are the tiger?

A Some people know, but most people don't.
Q How far in your schooling are you right now?
A I'm about going to be a junior this year. I'm a four semester -- been in school four semesters. I'm about to be a junior.
Q Okay. And on May 12th which was a Wednesday at about around 6:00 30 in the evening --
A Okay.
Q Did you witness a police action at about 6th and Halsey, northeast Portland?
A Yes, sir.
Q Okay. And there's a little video clip, maybe you have seen this. I think it is posted on line.
A I have not.
Q Have you seen that?
A No, sir.
Q Do you recognize the scene in those photos?
A Yes, sir.
Q Is that the scene essentially that you saw that evening?
A Yes, sir, except for this, the white car.
Q Go ahead, hold it up and let the grand jurors see.
A This car right here was in the back of this car when I came up, and they went around -- they went around because this car, the red car was just sitting there kind of

by -- if you guys are familiar with the area, it's a house and then there's a -- it's like where you go into Burger King. And the car was sitting right there.

GRAND JUROR: Red car?

A Yes, red car right there. And the white car sat kind of behind the red car -- this car, and then it went in front of it. And then I thought they were just sitting there. Do you want me to go further?

Q To clarify, did you pull in behind the red car?

A No. First I was coming up, and then I pulled in front of the red car after this.

Q Okay. So is your car in that picture?

A No, my car is not in the picture.

Q Was your car ever behind the red car?

A Yes. I was coming from Lloyd Center.

Q All right. Did you sit behind the red car for a little bit or --

A Not really, not -- I mean, I didn't really sit there. It was more a -- you can say I maybe was there five or ten seconds, not that long. It was right when the white car was sitting behind there to -- you can say I sat there for a second until the white car went around.

Q Then what did you do when the white car went around the red car?

A And then I was going around the red car too. And

then, uhm, right when I was passing by, I seen this woman screaming in the red car.

Q As you were pulling along side the red car?

A Yeah. I went into the next lane, this other on the other side, and on the other car.

Q You know what? I'm going to ask you to turn the picture around so everybody can see, show them that.

A Beyond the white car was right here, I was right here. And then the white car went around, then I went around. And right when I was coming -- right when I hit the -- like my car -- up with her car, she was screaming.

Q Could --

GRAND JUROR: What was she saying?

A They killed somebody. She was screaming like hysterically. My normal reaction is that like in driver's education taught us, if anybody is like in a car accident or anything, you pull safely to the road, go help them. I pulled up to the stop sign, and that's when I seen the police officers, uhm, behind. It was behind like right here, there was a whole bunch of them right here. And they were -- they had this car at gun point. It was like, "You're in the line of fire. You're in the line of fire. You're in the line of fire. Get out of the car." I jumped out, ran back to her car to make sure she was okay. No disrespect to whoever was in that car. I was making sure.

She was scared, she was freaking out and so, that was --

BY MR. REES:

Q When you pulled into that position, you were actually closer to the police activity than the lady in the red car?

A Yes, sir. I was at the stop sign.

Q You were at the stop sign? She was behind?

A Yes, sir.

Q Do you have any first aid training at all or were you just going on instinct?

A I have first aid training. I'm an elementary education major, minor in coaching. I have been coaching 5th, 6th, 7th, 8th grade, Roosevelt for years. I get certified every two years. So, yeah, I have first aid.

Q All right. Where you able to communicate with her as far as her condition at this point?

A Uhm, not really. She was like when I was like -- when I was going up to the car, "Are you okay? Are you okay? No, they killed somebody. They killed somebody," screaming out. That's when a polic officer came, I went to the other side of the car making sure she was okay. She didn't seem like she had any blood on her or anything like that. It seemed like she was more in shock, you know.

Q When the police officer came up, did he say anything?

A No. He pulled up to my car and then pulled backwards. And then it was this officer, I don't know his name, he was like, "Ma'am, come out of the car." She said, "No, you're not going to kill me." So he stepped back and he was like, "Ma'am, you know, just get out of the car. I need you to get out of the car." He went around got her, went inside on the curb, on the --

GRAND JUROR: Curb?

THE WITNESS: Curb, yeah.

BY MR. REES:

Q To you did it seem as if she needed medical assistance at any point or --

A No. The police officer asked her, "Are you okay? Do you have -- you need medical assistance?" She said she had diabetes, but she said she was okay. And they gave her some water and she said she was okay. She was just freaking, kept on crying and crying and crying.

Q At any time did you hear any gunshots?

A Yeah. When we were sitting on the curb, I heard two gunshots. Like after we were sitting down and I was comforting her, we heard two gunshots.

Q Other than those two shots, did you hear any other gunshots?

A No.

Q Did you ever hear any police commands?

A No, sir.
Q By commands, yelling, "Get out of the car"?
A No, sir, I didn't hear anything like that.
MR. BANFIELD: Do you have anything?
GRAND JUROR: Did she have her granddaughter in the car? Did you get her out of the car too?
THE WITNESS: Yeah. Her granddaughter was in the car. When I first got up to car I couldn't see the granddaughter, but when I went to the other side, her granddaughter was in the back seat.
GRAND JUROR: You said that you helped her out of the car and took her to the curb?
THE WITNESS: Yeah. We took her to the curb. She was very scared, and like, you know, I grabbed her on the side and helped her to the curb.
GRAND JUROR: The two shots that you heard, was it approximately pow pow, pow, pow, pow?
THE WITNESS: I mean, it was pow --
GRAND JUROR: Loud or some --
THE WITNESS: It didn't didn't sound like no shotgun, it sounded more like a small -- small, but it was a gun shot. It sounded small.
GRAND JUROR: That's what I was going for.
THE WITNESS: I apologize.
BY MR. BANFIELD:

Q I do have a question. How long were you at that location before you heard those shots?

A Uhm, we were there -- I was there for enough time to run to the back, get her out of the car, sit on the curb. I would say maybe -- I don't -- it wasn't more than ten minutes, maybe between ten to five minutes. It was like a little while. It was not a long while like 30 minutes. It was a long enough time to help her. She walked slowly to the curb, get her on the curb and sit down.

Q During that entire time, did you hear anything at all coming from the police officers?

A No, sir.

Q Could you even hear mumbling or anything -- any verbal communication coming from either of the officers or anybody else in that area from you, to you?

A No, sir. And maybe the reason she kept on screaming, she was crying, so really my focus was on her. But when she sat down, I comforted her, it was silence except for the police officer asking if she was okay, you know.

GRAND JUROR: Were you by myself?

THE WITNESS: No, I was with my sister, she's in the passenger side.

GRAND JUROR: Your sister's name?

THE WITNESS: Tasha Pierce.

MR. REES: That's our next witness.

MR. BANFIELD: Thank you, Mr. Pierce.

GRAND JUROR: I have a question. You said somebody said something to you about line of fire.

THE WITNESS: The police officer went up -- when I pulled to the -- when I pulled to the thing, I looked to the left hand side and seen -- and you see like maybe about -- it was a lot of police officers and guns and they were pointing like basically straight at me diagonal, and said that, "You're in the line of fire, you're in the line of fire."

GRAND JUROR: You could hear it clearly?

THE WITNESS: Yeah, I heard it.

GRAND JUROR: Tell me where the police officer was standing?

THE WITNESS: I don't know what police officer it was back here, I seen a bunch of police officers back here. Back behind the Toyota or one of the cars.

GRAND JUROR: By the police cars back here?

THE WITNESS: Police car. Yeah. I don't know which one, it was a group of them back here.

GRAND JUROR: Okay. You could hear them back there?

THE WITNESS: Yes.

GRAND JUROR: Could you tell what the police officer looked like?

THE WITNESS: No, sir. I seen a whole bunch of police officers. I couldn't say. I don't know which officer said it, I know it was, "You're in the line of fire, you're in the line of fire." My normal reaction is put it in park and jump to the back to see if she was okay.

GRAND JUROR: You didn't know if the police officer was talking to you, you heard it clearly and assumed it was you?

THE WITNESS: Yes, I assumed it was me, I'm stopped here diagonally.

MR. BANFIELD: Thank you, Mr. Pierce

THE WITNESS: Thank you.

TASHA PIERCE,

called as a witness,

being first duly sworn,

was examined and testified as follows:

MR. BANFIELD: There's something in the seat, you can hand that -- hold on to that, actually. And please state and spell your full name.

THE WITNESS: Tasha Lorenza, T-A-S-H-A L-O-R-E-N-Z-A Pierce, P-I-E-R-C-E.

EXAMINATION

BY MR. BANFIELD:

Q We're here today to discuss events that occurred on May 12th of this year at Northeast Halsey and 6th, which involved an officer related shooting. Were you familiar with that incident?

A Yes.

Q And were you, in fact, at that location on May 12th?

A Yes.

Q May 12th, who were you with at this time?

A I was with my younger brother you guys talked to previously, Andre Pierce.

Q Who was driving the vehicle?

A Andre Pierce.

Q Where were you in the vehicle?

A Passenger seat.

Q And looking at that photograph there, does that intersection look familiar to you?

A Yes.

Q Where you, in fact, in that intersection?

A Yes.

Q Tell the grand jurors what you remember when you pulled up to the intersection?

A We pulled up behind the red car. We had pulled behind this red car, and this car was not here when we pulled up. We pulled up behind this red car and it was like there -- it was like the space between the car and stop sign. So we went around the car. As we went around the car, we seen an African American elderly lady in there crying and flipping out. We are -- we stopped at the stop sign, and there was police officers standing outside of a car yelling, and they told us to get out of the car, because we were in the line of fire. Get out of the car.

So, my brother had put the car in park. He went over to the red car to see what was going on with the lady and everything. When I got out of the car, I realized -- I had to look to see what was going on, being nosey. And I seen the police standing out of a car, they were yelling, saying, "Get out of the line of fire." I had seen something, I didn't quite make out what it was, lying on the

ground. It could have been the subject. He either had -- I think it was like a white shirt or gray shirt. And I went back to see what was going on with the lady, she was just yelling, "He killed him. They killed him. He didn't do nothing."

That was like two or three minutes being out of the car seeing what was going on with the lady. I heard it like five or six, like blinking noises, which I assume was like a Tazer gun. And she was like, "I don't know why they doing that, he's already dead. They already killed him." I was like, this is crazy. Then I was just trying to calm her down, she was hyperventilating. The police approach, they told us we needed to stay back, go back further from where we were at.

We helped the lady out of the car, went and sat on the steps of the house, waited for the police to come talk to us about what we had seen, what was going on.

Q So when you first pull up to the area there, you came up behind the red car?

A Yes.

Q Did you immediately go around in front of the red car?

A Yeah.

Q You said you kind of were being a little nosey, looked down to the side, seen the police officers. Could

you see how many police officers were there?

A No, but it was a lot of them -- a lot of police. I can't tell you exactly how many, though.

Q You heard them yelling in your direction to get out of the line of fire; right?

A Uh-huh.

Q Did you hear them yelling or say anything else?

A No, I don't recall them saying anything else.

Q Then you and your brother got out of the car?

A He was out of the car before me, and he was going back to see what was going on with the lady that we had seen in the car, like, crying and flipping out. And I would say it was probably like ten to fifteen seconds between me and him getting out of the car, I would say.

Q That's when you were looking?

A Yeah. I was out of the car looking, saying, what is going on? Like, what the heck, somebody hit something? At first I was thinking somebody hit her, and the person got out and ran. I didn't know exactly what had happened.

Q And you saw something laying on ground?

A Uh-huh.

Q You thought it might have been a subject?

A Uh-huh.

Q Why did you think it might have been the subject?

A Because it wasn't like something small. It looked

like it could have been a body. If it was not, it had to be a long or big piece of cloth. I was assuming it was a person, because it was not a small object, it was something big.

Q Did you see any movement in the object?

A Huh-uh.

Q After that, you went to assist your brother?

A To see what was going on with the lady. Because at this time, I didn't know what had happened, what was going on. I thought it could have been something had to do with her, as far as her getting in an accident or something, or her chasing the person down. I didn't know exactly what happened.

Q Were you guys able to eventually calm her down?

A Yeah. She calmed down eventually, not all the way down. She kept crying, saying the police killed somebody and she seen it all. And that she -- when given the chance, she was going to tell what she seen.

Q Any questions?

GRAND JUROR: When you said you saw the -- what you assumed was the body laying in the street, was that before or after you heard the TASER?

THE WITNESS: I heard the TASER after I seen that. I was not in the view of anything, I was back at the red car seeing what was going on with the lady

when I heard a TASER go off.

GRAND JUROR: The TASER was after you saw that?

THE WITNESS: Yeah, after that.

GRAND JUROR: Did you talk to the old lady or the lady that your brother helped, did she say anything to you?

THE WITNESS: She was just -- she was talking -- she was not talking directly to me, but talking to me and my brother. We were like, what's going on, ma'am? She was like, "Police killed him, I seen everything. I'm going to tell. I'm not going to keep it quiet. I going to tell it all." We were like, okay, calm down.

There was a police officer that approached us after the ambulance and everybody came or whatever, and he approached us. And he was like, "Everything will be okay. We appreciate it if you guys stay around and talk to the investigator to tell us what you seen or heard. I advise you not to talk amongst each other about what you seen, because later in the case you can be subpoenaed to talk to a lawyer or something, they are going to cross-examine. And trust me, it's not something you want to go there, so I would not talk amongst you about what you seen or heard."

GRAND JUROR: At this time did you hear -- within that time did you hear any shooting or any gun fire?

THE WITNESS: No. After I left the car and was talking with my brother with the lady, when she was still sitting in the car, that's when I heard the TASER. I was not in view to see who was -- what was going on, who was tasered or if anybody was. I heard it go -- I heard it go off.

GRAND JUROR: How many times?

THE WITNESS: Five or six times. And she made a statement, "I don't know why they doing that to him, he already dead. They killed him." I was like, "Calm down, calm down, everything will be okay. I don't know what you're talking about."

MR. BANFIELD: Thank you, very much.

GRAND JUROR: Thank you.

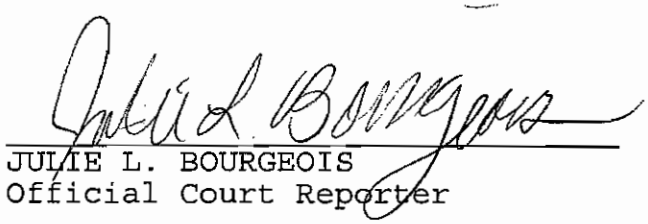
MR. REES: That was our last witness for the afternoon.

(Whereupon, Court adjourned at 2:40 p.m.)

STATE OF OREGON)
) ss.
County of Multnomah)

I, JULIE L. BOURGEOIS, an Official Court Reporter for the Multnomah County Circuit Court, hereby certify that I reported in stenotype the foregoing testimony and proceedings had in the aforementioned case; that thereafter my notes were reduced to typewriting under my direction, and that the foregoing transcript, consisting of 152 pages, is a true and correct transcript of said oral proceedings.

Witness my hand in Portland, Oregon, this 1st day of June, 2010.



JULIE L. BOURGEOIS
Official Court Reporter

IN THE MATTER OF THE INVESTIGATION OF THE DEATH OF KEATON OTIS, Deceased.	MULTNOMAH COUNTY DISTRICT ATTORNEY'S OFFICE NO. 2194042-1 PPB No. 10-038353 GRAND JURY TWO

VOLUME 4

GRAND JURY NO. 21 PROCEEDINGS

The Grand Jury No. 2 hearings conducted on Friday, May 21st, 2010, were transcribed by Official Court Reporter.

APPEARANCES:

Conducting the examination: Deputy District Attorney Mr. Don Rees and Mr. Glen Banfield.

Estelle T. Keating
Official Court Reporter
1021 S.W. Fourth, Room 420
Portland, Oregon 97204

I N D E X

WITNESSES

For the State:

James DeFrain	3
Felesia Otis	66
Jeff Gray	96
Eric Ensley	105
Brent Maxson	115
Tracy Martello	122
Jagan Kanaparthi	132
Candace Hunter	140
Karen Moreschi	152
Thomas Forsyth	158
Leland Samuelson	172
Brenda MacKinnon	199
Aaron Dauchy	204
Frank Gorgone	615
Erik Kammerer	623
Ryan Foote	626
Cody Berne	670

JAMES DEFRAIN

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. BANFIELD:

Q Please have a seat and state and spell your full name, please?

A It's James, J-A-M-E-S, DeFrain. D-E cap F-R-A-I-N.

Q Okay. And Officer DeFrain, we are here today to talk about the use of deadly force by yourself and some other Portland Police officers, members of the HEAT Team on May 12th, a couple weeks ago, on a Wednesday, in the area of N.E. 6th, Clackamas, and Halsey, N.E. Halsey. Do you remember that incident?

A I do.

Q Before we get into that, why don't you tell us a little bit about your educational background. How did you come to become a police officer? Where did you go to school, stuff like that?

A I graduated from Portland State University with a Bachelor's Degree in Information Technology. After that I worked for several years in the private sector as a Systems Engineer for a stockbroker.

Following that I got hired by the Police Bureau in 2004. Immediately upon hiring, I go to ten weeks of Basic Academy in Monmouth, come back for about three months of on-the-job training and then another, I believe, 18 to 20 weeks of Advanced Academy, followed by some additional on-the-job training before you are released.

Q Okay. Now, before you went to school at PSU, did you do some work as a police officer or reserve officer?

A I was a reserve officer in Frankenmuth, Michigan.

Q Why were you in Michigan?

A That's where I lived until 1997.

Q That where you grew up?

A Yes.

Q Where your family is?

A Yes.

Q And you were a reserve officer for how long?

A About two years.

Q What were your duties as a reserve officer. What training did you go through before you became a reserve officer?

A The training is less for a reserve officer because you are always working with a full-time officer.

I had standard use of force, firearms, patrol tactics, the standard things to get you through day-to-day, some law.

Q Okay. What brought you out to Portland to go to PSU?

A I had family out here, so decided to move out. It just -- Portland is a great spot. So I wanted to come out.

Q I'm sorry, but what year did you start at PSU?

A 1997, I believe.

Q So you did a four-year degree?

A I had some community college prior to that, so I finished up my degree at Portland State.

Q I'm sorry. Again, what was your degree?

A Came from the School of Business. The major at the time was Information Systems and Quantitative Analysis. I had always been interested in computers. At the time the computer industry was really busy. I knew there was a lot of jobs available. So I just -- I picked that major.

Q Okay. And then you worked for a stockbroker after you graduated?

A I did.

Q And what did you do for the stockbroker?

A I was a Systems Engineer for the stockbroker. I

managed the on-line trading website.

Q And you did that for five years you said. And why the switch from working for the stockbroker to becoming a police officer?

A My company was in the process of being purchased. I didn't want to move to the east coast. I liked it here and wanted to stay here. I was looking for a job that would be -- give me some opportunity to be outside and kind of be self-sufficient. I had some experience as a reserve police officer, and I knew that I enjoyed that, so I applied for Portland, the only place that I applied for. I was hired.

Q And then you wanted to stay in Portland after graduating from college?

A Oh, yes.

Q So you -- you are accepted to Portland. And you go to basic training at the Academy?

A Yes.

Q And tell us a little bit about that. What are some of the things that you learned at the Academy?

A Uhm, the Basic Academy is just what it's called, it's very basic. You learn basics of law, the basics of use of force, the basics of patrol tactics, driving, firearms, defensive tactics, things along that line.

Q And how old were you when you started at the

Academy?

A I believe I was about 32 years old.

Q And then you also went to the Advanced Academy?

A The Portland Advanced Academy, yes.

Q And what are some of the things you learned at the Advanced Academy?

A It's a much more in-depth system that kind of works on top of what you learned in the basic Academy. Instead of a few days of law, you have a weeks of law. Instead of a few days of patrol tactics, you have weeks of patrol tactics. Portland has its own way of doing some things. A lot of the other departments in the State are small. They don't have resources that we have. They don't have access to cover that we have. So some of the things that we do differently we learned in the Advanced Academy.

Q And after the Advanced Academy, what was your first position?

A I was a trainee, so I had a coach. I started in the old North Precinct in St. Johns, worked with my coach there for several months before I went to the Advanced.

When I got out of the Advanced, I went to Central Precinct and worked days. After that I went to Northeast Precinct as a trainee. And finally, when I got off probation, I was stationed at Southeast Precinct.

Q And so you have been an officer since 2004, you said?

A That's correct.

Q So for about six years or so?

A Yes.

Q What different types of positions have you held?

A My first job was in Patrol, so just taking 911 calls, working a district. I worked in the Montavilla neighborhood for a couple of years. After that I was chosen for the Southeast Precinct Street Crimes Unit, which was a plain clothes detail, mostly search warrants, working with informants, making drug purchases, those type of things, quality-of-life issues.

Following that, I was chosen for the HEAT Team in 2008.

Q So that's just about when they started. So were you one of the first members of the HEAT Team?

A Yes, I was one of the first.

Q And your partner on the HEAT Team, who was that?

A Ryan Foote.

Q And has he been your partner since the beginning?

A Since the beginning of HEAT and even prior to that he was my partner.

Q Prior to that, when was he your partner?

A The Southeast Precinct Crimes Unit.
Q So you have known Ryan Foote for sometime?
A Most of my career.
Q Let's turn our attention to May 12th. What was your daily routine before you started work?
A It was nice out that day. I got up around, I think, eleven o'clock, had breakfast and then I was working in my yard until it was time to come to work. That day was a little bit unusual because we had a new Chief. I think I watched the news on that a little bit.
Q And you are just now coming off of a three-day weekend essentially, right?
A Yes.
Q Did you get enough sleep that night?
A Yes, I got -- it was good that night, like eight hours of sleep.
Q So just your routine duties around the house, taking care of business there?
A Yes.
Q And what time do you start to prepare to go to work?
A About 2:30.
Q And what time do you arrive at work?
A That day I arrived early. Traffic wasn't heavy I think I got to work about ten after 3:00, quarter after

3:00.

Q And what do you do when you get there?

A Uhm, that day, because, like I said, because it was nice and I was early, I hung around outside. I went in and got dressed. Sergeant Livingston showed up. He had been -- I think he was supposed to be at a meeting, but he showed up and we had Roll Call.

Q What do you do at Roll Call?

A Mostly you go over things that have happened over the course of the last week while you were away, any sort of people that there is probable cause to arrest or people with warrants, general administrative stuff. You know, that day I'm sure we talked about the new Chief.

Q How long does that usually take when you start Roll Call?

A Wednesday sometimes it's a little longer because there has been a back up of several days. I'm going to guess that day we were in there for 30 minutes.

Q And when you say, "We were in there," who is "we"?

A The entire HEAT Team.

Q Which consisted of?

A The names? Sergeant Livingston, myself and Ryan Foote, Andy Polas, Patrick Murphy, Cody Berne and Chris Burley. And John Billard wasn't there. He was the only

member of the team that wasn't there.

Q So after you go through Roll Call and Sergeant Livingston, is he the one kind of managing or running the Roll Call, disseminating the information?

A Yes.

Q What does the team decide to do after Roll Call?

A It's pretty standard. We usually try to get to Holladay Park right out of the gate. And so we had decided that we were going to go check Holladay Park.

Q You are in the car with Foote. And who is usually driving when the two of you are together?

A Most of the time Foote drives.

Q So the entire team goes and checks out Holladay Park?

A Yes.

Q And anything unusual?

A No. It was actually really slow. Usually we get out and walk the platform or walk the park, talk to people. There really wasn't anybody in the park at the time, so after a pretty short period of time we decided to get coffee.

Q Okay. Where did you guys go to get coffee?

A We went to MLK and Hoyt.

Q Tell us what happens when you are there at coffee?

A Uhm, all of us are there. There continues -- I know Sergeant Livingston was talking to, I think, our Lieutenant about the events of the day, and I'm sure he was getting a little bit of direction on what we were supposed to be doing that week. We were there. I think Erin Dauchy from Tri-Met had been there. He just happened to be there. We just had coffee, nothing -- nothing of note really happened.

Q Just kind of hanging around talking?

A Yeah, just getting ready for the week.

Q You said Dauchy was there. Was he there to meet you guys or just happened to be there?

A No, he just happened to be there.

Q Have you worked with Erin Dauchy before?

JUROR: Excuse me, what is Erin Dauchy's position?

A He's a police officer, but he's a Transit Police officer.

JUROR: Okay. Thank you.

THE WITNESS: Sure.

BY MR. BANFIELD:

Q So how long have you at coffee before you decide to leave?

A Uhm, I would just be estimating a half-an-hour or so.

Q And does everyone leave at the same time?

A Yes.

Q And what's the game plan when you leave the coffee shop?

A Sergeant Livingston had told us that we were going to work the North Precinct core. So that means basically I-5 to 15th or so, and then, you know, Lombard to Fremont-type area.

Q And tell us what happens as you leave the parking lot there at the coffee shop?

A Ryan and I pull out. I had a message on my Nextel. So I started checking my messages. I'm in the passenger's seat with the computer facing me.

We head northbound on Grand. And I'm a little bit focused on listening to my messages, but I notice Ryan moving the computer, turning it so it's facing him. And he never does that. So I started kind of watching what he was doing.

I saw him type in a plate into the computer so he could run the plate. And again I found that strange. He just doesn't do that very often.

Q Why do you find that strange?

A Uhm, usually, at most, he will tell me, "Hey, would you run this plate," if he sees something. Almost always we see the same thing so I'm constantly running

plates. He's not a guy to pull the computer over there and actually type something in himself. He will usually ask me to do it or, if it's not a big deal, he just won't do it. So it caught my attention to have him doing that, to actually pull it over.

Q Did he say anything to you before he started doing that at all?

A No, because I was on the phone.

Q How soon after you left the parking lot from the coffee shop did you see him start typing in a plate?

A It was quick, within a few blocks. Because I was -- I was dialing my phone, I think, when we were still in the parking lot, and I still hadn't heard the message that I was supposed to hear. So it was soon.

Q And you didn't see anything at that point that might have caught his attention, because you are -- you are getting ready to get on the phone?

A Yeah. I was not paying attention at all to what was going on.

Q So this is unusual that you see him start typing in. You see him typing in a license plate. It catches your attention. What happens after it catches your attention?

A You know, I can still remember the first three letters. I don't know why.

Q What were those letters?

A I think it was ZDT. That's what I believe it was. For some reason that's in my mind.

Because it was unusual, I hung up the phone. I thought, "Well, if he's running a car he is going to want to do a traffic stop and I want to not be on the phone when we do a traffic stop."

So we were at -- by this point, I think I pulled the computer over. He had hit the enter button after he plugged in a plate. It begins to send back messages of like the registered owner of the car and what cases the car has been involved in.

As we're doing that, we're pulling up to a red light. And I see that there is a silver Corolla in front of us. And then I noticed that Cody, Cody Berne, is in another car, and he came out right after us.

Q From the coffee parking lot?

A From the coffee parking lot. And he pulled up on the right-hand side of that car.

Q So he's right next to the car?

A He's next to the car.

Q And where are you guys at this point?

A We're right behind the car at the red light.

Q And you are on Grand going north?

A Yes.

Q Can you see or do you know where the other HEAT Team members are at this point?

A I think that they left before us.

Q So they are further north?

A So they are probably up north somewhere.

Q So you get on -- how do you contact Cody Berne?

A Well, I asked Ryan what -- what he was trying to do. He told me that he was interested in the car in front of me. And then he asked me to Nextel Cody and ask him if he could see inside the car.

Q And did Ryan say anything -- Officer Foote, did he say anything to you at that point about why he was interested or what caught his attention?

A He didn't say very much. He -- I don't remember what his exact words were. It just implied to me that he liked the car for some reason or another.

Q So then he asked you to contact Cody?

A Yeah. He said, "Call Cody and see what he thinks about the driver of that car."

Q And you called Cody Berne on your Nextel?

A Yes.

Q And tell us what do you say and what is his response?

A I said something -- and I don't remember the exact words, something along the line, "Hey, Cody, what

do you think of the guy in the car up there?" I couldn't really see. I could tell it was a guy and he was kind of broad, but he had a hood up so I couldn't really see him at all. But I figured Ryan must have.

Cody took a second, and then he said, "Yeah, that might be a good stop." I don't know what his exact words were. So that would just be the impression that I got from him.

Q Now, you said you had received some information on your computer. Tell us again what type of information did you receive, if you haven't told us already?

A It gives you the year of the car, the VIN number of the car, the name of the registered owner of the car, where they live. And then if the car has been involved in any cases, that will also come up. We like to run the cars so we can see if we know any of the names from either the cases or from the RO.

When it came up, I told Ryan something along the lines of, "It's registered to a middle age female." And then I told him that there was nothing in PPDS -- that's where the case -- the cases come in. And I believe in PPDS the car had been --

JUROR: Paul, David, Sam?

A It stands for Portland Police Data Service, something like that. It's just a data base that we have

that has all our cases in it.

JUROR: Okay. Thank you.

A And in PPDS, there were no names associated with the car, but I think there was a Larceny or a Vandalism where that car had been mentioned in a report.

Q And do you remember any other details about that?

A About the case?

Q Yeah, the report that it was mentioned in?

A No. It only shows -- it's usually -- it says something like "Larceny, unspecified" or "Vandalism, unspecified" and that's really common if you have got your car broken into or anything like that.

Q So nothing too peculiar or interesting about that?

A No. If I had more time, I might have investigated it further. I can go back and look at the report, but that is a several-minute deal and I knew we didn't have several minutes.

Q Now, you say you contacted Cody Berne on the Nextel. And we have heard prior testimony that there is a talk group that you have with all the HEAT members. Is that what you are talking about?

A Yes.

Q So tell us what happens as you are communicating

with Officer Berne and your partner.

A So Ryan had told me that there was something about the car that was interesting to him. Cody had validated that. The light turned green at some point.

Q Let me stop you there. When you ran the plate, is that standard procedure usually before initiating a traffic stop or if you see a vehicle that -- that you like?

A If there is time. I probably run, I don't know, 50 plates in a shift. You know, I'm always looking for stolen cars or cars of interest in some sort of other crime. And all that information is only given to you if you plug the plate into the computer.

Q Okay.

A The light turns green at some point, and there really isn't any other cars for some reason on that stretch of Grand.

So Cody's, like I said, at the red or green light next to this Corolla. We're behind the Corolla. The Corolla accelerates at the stop or when the light turns green, and it turns on its signal and then almost exactly the same time cuts over quickly in front of Cody. So he didn't signal within a hundred feet of a lane change, which is a violation. And it was strange to me at the time because I don't drive like that in front of

the police. You don't just cut in front of another police officer. I mean, I would rather miss a turn than cut in front of a cop. I don't need that kind of attention. Nobody does.

So then Cody's behind him. I think we start to move up a little bit because we're going to get in front of Cody and get behind this car. But then he immediately does the same thing where he hits the signal just for a short time, and then he cuts over, but this time he cuts over two lanes pretty fast.

Q Are we still going north on Grand at this time?

A We're still going north on Grand at this time. Very -- it's -- it would be the kind of thing that I would notice. Like even if Ryan and I were having a conversation about something else, I would be like, "Why is that person cutting across two lanes of traffic in front of me without. . ." -- just -- it was quick. It was strange.

You know, we look for odd things. The car then almost immediately after making these three lane changes makes this sweeping eastbound turn, like a last second type of turn. You know Ryan and I refer to it as a "turn off", because it happens quite a bit. People don't want to be in front of the cops or people don't want to be where the cops see them, and they want to get off the

road as quick as they can.

Q Now, let me ask you something. You are driving a marked or unmarked car?

A It's a Crown Victoria, but it doesn't have the lights on top and it doesn't have -- it's not white with the Portland Police written on the side. It's clearly a police car, but it's not -- it's just an unmarked police car.

Q Go ahead.

A Uhm, he makes this sweeping right turn. Again, it's a strange turn to make in front of police. So now my attention is really on this car, because in my experience people are getting ready to take off on you or, you know, do something. There is a reason why people do that.

We get our lights on, I think, as we are going around the corner.

Q After he makes the sweeping turn?

A It's either while he is making the turn -- we had gotten behind him, so it's either while he is making the turn or right after he makes the turn and while we're making the turn. I don't know exactly.

But Ryan hits the lights. And I notice that this guy, instead of slowing down -- and there is no traffic on this side road. I don't know what it was. It

was somewhere south of Clackamas, maybe one block south of Clackamas. I'm not sure. There is all kinds of places to pull over, and we're giving the air horn. And the driver's side window I think is open. So there is no doubt that we're the police behind you.

Q So when you say you "hit the lights," you don't have overhead lights on your unmarked car, do you?

A No, but we have very obvious lights. They just don't have the over-heads. There is bright flashing bulbs on the front of the car, and then in the windshield, the front windshield there is bright lights.

Q When you say you "give the air horn", exactly what do you mean?

A Have you ever heard a fire engine when it comes up to a stop sign, it will make that big air horn noise? That's what we have. Instead of using the siren right away, Ryan gives the air horn four or five times.

JUROR: Like a semi?

A Not quite as loud as a fire truck would be, because it's smaller. But it would be noticeable, much louder than your car horn.

Q And you said that you were able to observe that the silver Toyota Corolla's front passenger window is down. Which window is down?

A My recollection is that I notice that his -- the

driver's side front window was open or at least cracked. And because I thought, "He hears us. He has to hear us." And by the way he had acted with the turn-off, I was sure that he knew the police were behind him.

So unusually, he pulls away from us as we come around that corner and are behind him. Instead of slowing down and pulling over, he accelerates away and gains more distance between us and him. I'm sure I said something to Ryan at that time like, "Oh, he's going to go" or "He's not going to stop." I'm not sure what my exact words were.

Q Do you remember what street this was he turned onto?

A It was an east-west street that was south of Clackamas, either one or two blocks. I don't know what that street is.

Uhm, so he pulls away from us a little bit. We accelerate to catch up, and now I see he's -- he's kind of going from side to side. And he is moving around inside the car. And I've -- I've done thousands of traffic stops. And a lot of times guys will attempt to hide something. They want to delay the stop a little bit so they can put something away. And that's what it appeared to me he was doing, he was hiding something, because he was moving around in the seat and he was not

focused on the road well enough to maintain his lane.

We continue eastbound, and Ryan turns on the siren. Even a block is a long way to not stop when you are going 20, 25 miles an hour with the police behind you. A block is longer than you think. But he continues on past that.

So Ryan's got the siren on, and I start to get on the radio because I think we might -- I have a feeling that he is either going to run in the car or he is going to pull the car over and run; just, again, because I have done this so many times. There is kind of a way that this all goes.

Q And can you see where he's reaching around in the car at this point?

A I can't, because he's way tucked down in the seat. The only reason I could even necessarily tell he's a man is because he's broad in the shoulders. But I can just see that he is moving around. I don't have a good sense of where.

Q And just to be clear, do you see only a driver in the vehicle?

A Yes. It's only occupied by one.

Ryan turns on the sirens. I get on the radio, and the way that the radio works with Dispatch is you broadcast your unit number -- and our unit number is

1950 -- so I was "1950 traffic". The Dispatcher would come back and say, "Go ahead with your traffic." I would give out the plate and the location.

Because this was not going that way, I stayed on the radio, and I held the radio down, I know. I think I stumbled a couple times because I was getting ready to say, "We've got a guy not stopping for us."

Instead, because he wasn't -- he wasn't going real fast and I didn't want to cause -- it's rush hour. I didn't want a whole bunch of cars to come flying to us and maybe get in a crash themselves. I held the radio down. At this point he had turned northbound onto Sixth Avenue. And he had come to a rest at the curb, like he was going to stop. And I was still on the radio. And I think at that point I think I said, "Sixth and Clackamas" and I gave out the plate. But I didn't wait for the Dispatcher or anything, because once you are focused on this -- I was really pretty heavily focused on the car. I just wanted the people to know.

I also knew -- it's really unusual to have sirens on on the radio and when people, especially the guys on my team hear us behind a car with a siren on, they are going to come to that stop. I -- so I wanted to get some more resources coming our way.

Q This is when you first get on the radio to

announce the traffic stop, right?

A Yeah, and I was on the radio for awhile.

Q Now, were you on the Nextel talk group with your team before you got on the radio, or is that the first time you started communicating with other officers?

A I had talked to just Cody, asked him that question on the Nextel when we were on Grand, and that was the end of the Nextel conversation.

Q Okay. Go ahead.

JUROR: Question, please? The whole time you are doing this, where is Berne?

A I don't -- I don't know.

JUROR: So it's not two cars following?

A Well, I don't know. He was there really quick. So my guess is either he got -- again, this is a guess -- either didn't catch that corner that we caught and came to the next turn or he was behind us and I was just so focused on the front of me I didn't see him.

BY MR. BANFIELD:

Q So you see him starting to -- you are calling out Six and Clackamas and you see him pull into the side?

A He pulls over to the curb like he's going to stop. And then I was watch -- guys that roll like that, sometimes they want to take off again when you get out of the car.

So he pulled over, and I watched to see if his reverse lights came on, to see if he was going to put it into park. He didn't. And then he pulls away from the curb again and starts rolling again down Sixth.

Q So let me get this straight just to be clear. So does he come to a full stop?

A It was very close to a stop. I wouldn't be able to tell you if he was at a complete stop, but the sense was that was where the stop was going to be.

Q Is that because he was pulling to the side and slowing down a considerable amount?

A He pulled to an open section of the curb.

Q Okay.

A Then he pulls away again and slowly rolls down almost to Halsey. And at that point I had decided that if he blows -- I think there is a stop sign at Halsey, stop signs or red flashing light at Sixth and Halsey. And I know there is traffic on Halsey. And if he shoots that light, then we're going to be in a traffic pursuit or -- I'm going to get on the radio and say, "I have somebody that's eluding us."

But he ends up again pulling to the curb right before Halsey, right before the stop sign, pulls to the east curb.

Q So he comes to a complete stop?

A At that point, he comes to a complete stop. I don't remember if I saw the reverse lights or not, but something made me sense that he was stopped.

Q So now what are you and your partner -- do you have a discussion on what's your game plan, how you are going to approach this vehicle? What are you thinking at this point?

A Well, we have worked together so long, that we kind of know what each other is doing. He pulled in a unusual way up to the car. Usually, when you do a traffic stop, you will pull kind of directly behind the car but just a little bit to the left and you will cant the nose of your car out a little bit because you don't want traffic that's coming by you to be able to hit you, so they focus on that.

Again, there is no traffic on this road. So what Ryan did is pulled up so the nose of our car -- this is our car -- is kind of at the back door and a few feet set back from him, so kind of -- I don't know, is there a picture?

Q There is a diagram back there. Maybe you can tell us which one on that diagram is your car?

A Right here. So, yeah, this is our car.

Q Okay.

A I -- I know just from experience what he's

doing. He thinks that this car is going to take off again on him, and he wants to be in a position that he can do a PIT on the car before it gets to Halsey. We're not going to get into a car chase at six o'clock in the afternoon on Halsey and MLK.

Q I'm sorry, Officer, what is a PIT?

A A PIT is a Pursuit Intervention Technique. You have all seen it on TV. It's where you hit the rear-end of the car and it makes them spin around. We wouldn't have been able to do it very well at that point as he took off, but I think Ryan wanted to get him before he got out into big traffic.

So Ryan gets out of the car and either I was on the radio or something had happened that kept me in the car for, you know, maybe two more seconds than Ryan was. And I'm going to point at the diagram here again.

Q Uh-hum.

A Ryan comes out of the car and stands, I believe, right here.

Q When you say, "right here," you are indicating --

A The front driver's side tire of the car.

Q Of your car?

A Of our car, yes.

I get out of the passenger's side, and I walk up

basically to the pillar that is between the front and back doors of the Corolla. So what that does is it gets me in a safe spot. I'm standing behind the chair here. And so if somebody wants to do something, they have to make a very obvious move to get back and look at me. So I stand right here, and basically this would be the driver's seat of the car.

Ryan gets out and tells this guy, "Put your hands up" or something like that. He gave the guy a command to put his hands where we could see them. And I'm -- I'm getting out of the car and I hear Ryan give the command. And the man immediately says, "Fuck you. Fuck the police." And that's less unusual than you might think, but the way that he said it was different. He was outraged, just unbelievably angry in the way that he said it. It put me on my guard.

So now I have this situation where this guy, at least in my perception, from doing this a lot, he had cut across three lanes of traffic so he could get away from us, refused to stop, moved around inside of the car in what I know is a move where you are hiding something, came to a stop once and then left the stop and finally came to another stop. So certainly something is going on inside that car.

Q You said that your partner, Officer Foote, asked

him to, "Put your hands up" or "Show me your hands," something to that effect. Now, is that typical in a routine traffic stop?

A No. If it would have been a normal stop, no, it wouldn't have gone that way. But there were all these other things that happened that raised -- I can't speak for Ryan, but it raised my level of concern really high. It was an unusual traffic stop already. His angry outburst and immediately refuses to do what Ryan told him to do, "Get your hands up." "Fuck you. Fuck the police," hands are down, never shows his hands. Sometimes people are angry but compliant, and we can work with angry, but compliant. Angry and noncompliant is tremendously dangerous.

Q Uh-hum.

A It's dangerous to us. It's dangerous to the person we're trying to stop. And this was so -- so over the top that I drew my gun. I drew my gun, and I kept it in the low-ready position, which is basically down at the ground and slightly in front of me as I walked up to the pillar behind the car or behind the driver's seat.

Q Let me just back up a little bit, Officer DeFrain. Now, other than the traffic violations that he has made in front of you, is there anything else that's going on in your mind that there is a reason to stop this

car?

A Sure. He's attempted to elude us. I had probable cause to arrest him for that at the time. I have discretion to do whatever I need to do, but if I need to get him out of the car -- and by this time, the level of -- of strange things that he had done made me think that I needed to get him out of the car. But, yes, that was -- all these things are going through my mind, but that's not necessarily what's going to happen if everything else goes okay.

So I walk up behind him. I have my gun at low-ready. Ryan's not a big screamer guy. We don't really get really loud or really -- we don't escalate situations necessarily. We've both been doing this for quite awhile. And Ryan's giving these precise commands to the guy: "Get your hands up, get your hands behind your head," and this guy is just completely over and over, "Fuck you, fuck you, fuck you," and keeping his hands down.

And then he notices that I am there, and I have my gun out, but I'm behind him so he has to turn around and look at me. And he starts saying over and over again, "Put your gun away. Put your mother fucking gun away, put your gun away," just in this loop. And I'm not really talking to him because Ryan's talking to him. And

Ryan continues to give these commands. They are not complicated, "We just want you to do this."

At some point he put his hands up on the steering wheel, which is -- that's a huge improvement from what he had been doing, which was reaching all over the place. It was almost like he was doing these exaggerated things. He was doing the opposite of what we told him to.

So he continues to reach around. He put his hand on the gear shift. He put his hand down between the seats. You know, these are all -- you don't have to be a world class police officer to know these are indicators that something's going to happen or that he is not going to go with what we need to do.

But anyway, he put his hands up on the steering wheel, and he had a -- I think a gray, like a hoodie on. And he had -- I think he pulled the sleeves up and put his hands on the steering wheel, and his hands were shaking, and his forearms were shaking. And it was like he was holding onto the steering wheel. He was really mad like he wanted to rip the steering wheel off. But he had his hands on the steering wheel. And he was still -- he had kind of gotten off the gun thing. I had put it down by my side and he was back having some sort of interaction with Ryan. And sometimes people will get

focused on a certain cop and they just hate that cop for some reason.

So a lot of times what we'll do in that situation is you switch out so you can try to de-escalate it with the guy. I at -- at some point I just took over. I know the guy had put his hands on the steering wheel, and so I put my gun away.

Q Why did you put your gun away?

A Because he had seemed focused on my gun and now he started to comply with our commands. So now, all right, if he's going to become compliant, I don't need to have my gun out. If I can see his hands, I don't need my gun out. So I put my gun away when he put his hands up.

But I stand there, and I have my gun -- I'm left-handed. So I'm turned away where you can't really see my gun, but I have my hand on it.

Q Is it holstered?

A It's holstered at the time.

Q But your hand is still on it?

A But my hand is back in that area, because, again, it was a strange stop, but at least for now he was doing what he was told, at least I thought.

Q And let me ask you: When does Officer Cody Berne arrive?

A Right around this time. He had to be close, but

I noticed him walking up to the passenger's side of the car probably even before I put my gun away.

Q Okay.

A He walked up to the passenger's side of the car.

Q When -- when Mr. Otis had his hands on the steering wheel?

A I couldn't tell you exactly in either interaction, but there was still some yelling. There is yelling going on.

Cody walks up to the passenger's side and it -- it's normal for a cover officer to go to the passenger's side so they can see in, but for some reason I told Cody, "You need to come to this side of the car." I just had a feeling that in case I needed to shoot, I wanted to be able to shoot across the car and not have Cody in the way. Because there is a fairly high brick wall on the other side and there is a big, wide sidewalk and a high curb. If I have to shoot, I know that I am going to be able to shoot that way.

Usually that's not necessarily -- we're always thinking about that, but it's not really a primary thought. It was enough of that thought at that point that I told Cody that he needed to move over to the driver's side.

So at some point I -- I have now holstered my

gun and maybe Cody is there. I wish I could remember for sure, but I can't.

And I start talking to him in a low voice. Sometimes guys -- you know, my partner is younger. Sometimes guys, they feel it's a manhood thing and they don't feel that way with me necessarily because I'm a little bit older and I try to talk to them like an older brother, a father. But I start talking to this guy in a low voice saying, "Hey, listen. You got to do what we say. You have got to go with this program. We don't want to get hurt. We don't want you to get hurt. All you need to do is put your hands behind your head, let us do our thing and then maybe you get out of here."

And he seems to listen for a second, but then he looks down at my waist again and sees my gun. And my hand's on my gun. And he starts this loop again with, "Get your hand off your gun. Get your hand off your gun. Get your hand off your gun."

And the thought that goes through my mind at that time is he just killed somebody and he's trying to get me off my game. He's trying to take over the stop. And guys will do that sometimes. They try to intimidate you so they can get control. And that's kind of what I felt like he was doing. He was trying to sucker me into doing something so he could get either control or give

him an opportunity to do something.

This went back and forthwith, he and I, for a little while in a low voice. Even when he was saying that, he wasn't screaming. But it was like he was -- couldn't -- couldn't stop.

Q And could you see his face? Can you describe what his demeanor was? He is not screaming?

A Oh, he was tremendously angry though, shaking in his voice. And it's not a fear shaking in his voice. It's an anger shaking. And again he was -- with the steering wheel, it was like he wanted to pull the steering wheel off. He is so angry that I know that this is going to be a fight. There is no -- usually some of this stuff works. At least you can break somebody out of their loop and talk to them like a human being, and they will at least get some sense where they will comply. You don't have to be happy, but you still have to comply.

So this goes on with he and I for a little while. And I could hear Ryan on the radio. At first I think Ryan says, "He's not compliant. Send us some more cars." And then a little while later Ryan says, "The next car here, I need you to box this car in." I think that Ryan's thought process, because he was moving all over the place, maybe he was preparing to take off, so he wanted to get a car in front of him.

Do you want me to just continue?

Q Yeah.

A Okay. So after this goes on a little while --

Q When you say, "a little while," how much time?

A Maybe two minutes, a pretty long time for an original interaction.

Q Is that two minutes from the time that you pulled him over?

A Yeah, that would be my guess, is that we were talking for two minutes or so.

Q Uh-hum.

A So another HEAT car comes in. I think it was Officer Burley and Polas and pulls up in front of the car to box it in.

Q Why don't you show us on the diagram there where Officer Polas and Burley come in?

A They come in from the west and turn southbound and block the car in right here. I wasn't aware of this at the time, but clearly this is Cody's car behind the car. So now the guy can't -- he can't get out. You know, the concern in this situation is that he's going to try to take off and not stop at the stop sign and cause an accident.

Q And he is just -- he's talking to you, right, Mr. Otis in the car, or he's communicating with you?

A There is some communication.

Q Is he communicating with -- strike that. Let me ask you: Are there pedestrians around the area, other vehicles or traffic?

A No, I didn't see anybody. There was certainly nobody on the sidewalk, and I don't ever remember a car coming by or anything. So there might have been people on Halsey, but not that I saw.

Q Was there any time that he was communicating with anybody else, any other pedestrians or any other vehicles?

A No. The only two people he ever spoke to were Ryan and I.

Q Okay. So Officer Polas and Burley, they pull in and they block him in?

A Yes.

Q Okay. Then what happens after?

A One of the officers gets out, goes to the passenger's side. Again, it seems normal at the time. And then one of them comes up to the driver's side where we were. And I'm so focused on the man in the car that I don't really know what's going on behind me. I'm sure other people will be able to clarify that for you.

But, again, somebody goes to the passenger's side and again I say, "Come over to the driver's side."

At that point I knew that there was going to be a use of force. The guy continuously -- and a long time before this now he had taken his hands back down and started, you know, messing around in the car again, just keeping his hands all over the place. I mean, you watch videos of these type of things in Academy, and these are all -- in the video, this is right before the guy tries to kill a cop, you know. This reaching around, this -- and he doesn't care. He's not affected by the guns. I'm sure -- I think somebody has got a Taser out by now. He's not affected by the number of cops. He is not -- of the thousands of contacts that I have had, I've never had one like this. This was far and away a different animal.

And by this point, you know, I'm really concerned. And I make -- I don't know if I say it, I make a decision that we're going to wait for the Sergeant to get there.

Q Why do you do that? Why do you think that, at least?

A Well, I want (a) as many guys that can be there relatively quickly as possible; (b) Sergeant Livingston is very tactically sound. He's been one of the lead trainers for a very long time. And I know there is going to be a use of force, so I want him there to at least be able to make some decisions and kind of lead us.

And we're able to -- although he's doing these weird things, there is at least a small enough window of communication that I feel like I've got another -- you know, if I need to delay this for 15 seconds, I can delay it for 15 seconds. Really, it doesn't take much longer than that for a cover car to get there.

At some point, Sergeant Livingston pulls in, and I think he's got Murphy with him. And they pull in -- I'll point to the spot. But they pull in just to the west of Burley and Polas' car.

You know, I see Don get out.

Q Don Livingston?

A Don Livingston, I'm sorry. And he starts to walk up toward us. And I'm still having some sort of interaction or I'm so focused on the person in the car, because I need to watch this man because something's going on. I need to keep an eye on him. So something -- I think Don comes and talks to the guys that are behind me.

And at some point Chris Burley comes up and says, "Do you want to get him out of the car?" And while this is going on, the guy is screaming, "Open the door. Open the fucking door." He just keeps screaming that over and over again.

Q Telling you to open his door?

A Yeah, he is telling me, "Open the fucking door." And he's screaming by now. He's really, really screaming.

So Burley comes up to me and says, "Do you want to get him out of the car?" I say, "Yes." And Burley's a big, strong guy, probably the strongest guy that I know. So between him and I, I think, "Well, we should be able to get this guy out of the car."

I think he hears Burley say this to me, and he starts tensing himself up. Burley reaches into the car, you know, through the window, I think, and grabs the guy's right hand. And at the same time I'm trying to open up the door. My thought was that Burley could get some control of him and then maybe I can scoop him, get him out onto the ground. He immediately, when Burley reaches in, pulls back really hard, and he's a -- I don't know how big he really is, but he seemed like he was probably my size and really he was a strong guy. But he immediately starts pulling back against Burley and pulls so hard that it actually closes the door on my arm for a second.

Q So you were trying to open the door?

A I was in the process of opening the door.

Q While Burley was trying to pull him out?

A Burley is trying to put this guy in a control

hold so we can guide him out of the car.

Q So the plan was Burley's going to hold onto him while you open the door?

A Yeah, and then we can just -- once -- if he's close, then I can just easily, without having to work my way in the car at all -- Burley's kind of got him halfway out of the car, so all I have got to do is kind of scoop him out.

He immediately starts fighting. And my sense now is that he put his feet up on the driver's door. I had gotten my arm out and the door got shut again, because they were slamming back and forth. But I think what he does is he pushes his feet up on the driver's side so he can pull away, and I've got my hand on him now, too, through the window. I have got a hold of his left arm.

Q Now you are out of the door?

A Now I am out of the door and I have got my hands on him.

Q Are you and Burley in the window?

A We're next to each other in the window. He's on the front part of it and I'm on the back, you know, the back part of the window, both with the same intent, to get him in some sort of control hold so we can get him out. But he really fights. And there is this, you know

back and forth slamming into the car, and I realize that we're not going to get him. He's not coming out of the car. He's fighting us, and he's got a position where he's not going to come out. I was just convinced.

Q When you say "fighting", no one is throwing punches or anything?

A No. He's twisting and pushing and pulling back, moving his hips while we're trying to pull him. He's aggressively, you know, pulling away from us to get his hands free.

And either we -- I certainly lose my grip or I just decide that it's not going to work. And I can see a Taser like out of the corner of my eye. I know at least one person has got a Taser. And I think Burley also loses his grip or knows that this is not going to be a successful removal.

And he's now kind of pushed himself. And when I try to think of how he did this, I don't know. But his butt was kind of in the middle of the car now, it seems like. And I heard Don say, "Tase him." But almost at the same time he says, "Tase him," I hear the guy say, "Fuck this." And the guy starts going toward the glove box.

And then I hear the Tasers. I can see the one, still see it out of the corner of my eye. I know two

Tasers go off. I hear the clear sound of these Tasers. Then I can hear the arcing. And I see inside the car, and his back is arched a little bit and he's grimacing, but he's not stopping. He is still on his way to the car -- or to the glove box.

I know that Tasers -- I think people have the misunderstanding that they work all the time. In my experience, they don't. Clothes block them. If the probes are not spread in the right spot, they just don't work. I mean, it's a fantastic tool and that was a good time to use it, but it didn't surprise me necessarily that he was able to fight through that.

Q And where did the Taser fire come from?

A I knew that there was one in the driver's side window, and I sensed that there was another one. I felt like both of them came in through the driver's side window.

Q To your left or right, or could you tell?

A To my left. I was now back in the position that I was in kind of behind the post, and I think Burley had moved maybe forward. That's a guess. But I was now toward the back of the car more because I knew they were going to tase.

But I can clearly see him and hear him. He's got the grimace on his face. I can see the probes. I

can hear the arcing. And he's just not -- he doesn't care. It looks like it hurts him, but he doesn't really care. He continues to reach.

I'm sure it wasn't slow motion, but of course in my recollection it's slow motion. He reaches over to the glove box. I can still see his hand. It's up like this (indicating).

Q Up like this, for the record, your palm is facing up?

A Palm's up with an open hand.

And I started yelling at the guys, "He's getting something" or "He's going for something." I think I said, "He's going for something."

And so I'm kind of bent over, I think, so I can look inside the car, and I can sense that the guys are starting to move away -- or maybe just my -- I get this tunnel vision where I can't see anything but him and I.

He reaches over and opens up the glove box, and there is nothing in the glove box except a Crown Royal bag, purple Crown Royal bag.

Q Can you clearly see that it's a purple Crown Royal bag?

A Yeah. A lot of guys use them to carry stuff. Mostly they carry dope. So it's a thing that I see all the time.

Q And here's an exhibit that I am handing you. Is that the item that you saw?

A Yeah. It was exactly like this. It's got to be the same thing.

So he reaches over, and again there is nothing there except this Crown Royal bag. And it's got something in it. It's not flat, got something chunky in it. And he pulls the Crown Royal bag out, and now I'm screaming, "Lookout, lookout" or "Watch out." I don't know, I'm just -- I'm trying to tell the guys, you know, something. I haven't seen a gun, but at that point I start to think he's got to be getting a gun. But I can't see it because he just pulls this bag out. I mean, it's a lot simpler if he opens the glove box and there is a gun. But he pulls out this bag.

And he had kind of got himself over so his butt was in the passenger's side. At least, that's what it seems like to me. And he takes that Crown Royal bag, and he's kind of bent forward at the waist. And he has it on his chest kinda.

And then I see that he is shooting. And I still -- I don't see the gun. I just see the Crown Royal bag, but it's obvious that he is shooting. You can see the explosion. And it's right at Burley and I, you know. The gun is -- well, at least the powder and everything is

coming out right at us.

And the best way that I can explain it is if you ever had somebody come up and smack his hands together right in front of your face and you feel that shock go through your face and it disorient you for a second? I feel that.

Q After the gun fired?

A After the gunfire, while he's shooting.

So I -- I see this at least two or three times, this go off. And I think that I must have started to back-pedal away from the car, but at the same time Burley makes some sort of noise. And again I think you get so focused, but I could tell that something happened to Burley. Like he grunts or does something, and then he falls. So now I know he's shot. I mean, we were close.

Q And let me ask you, you know, when you start yelling, "He's going for something, he's going for something," is your gun still holstered at this point?

A I think once I saw him start going for something, I drew my gun and I had it pointed at him, toward the car. I'm sure I did, because I'm worried he's going for a gun. And I think that I am moving around so I can watch. I'm kind of tall and the car is not very high. So I have to kind of get bent over to see as he moves across to the other side. But I clearly see him

pull the bag out of the glove box.

Q So your gun is unholstered, pointing at him. You are saying, "Look out, look out, he's going for something." And he's able to get off two shots before you can do anything?

A Yes, at least two. I know for sure two. You know, everything kind of starts -- it's a little bit difficult to recall.

Q Even with your gun drawn?

A Yes. It's amazing. When you are dedicated and motivated to do something, it's amazing how quickly you can do that before I have an opportunity to react to it.

Q Again, you never saw a gun?

A No, I didn't know -- I didn't know one hundred percent that he had a gun until I saw the first shot. I was pretty sure that he had to be going for a gun. But I never saw it. Still -- to this day I see a picture sitting over here, and that's the first time I have ever seen it.

Q So you hear Burley grimacing, making some noise?

A I don't know exactly what it was, but I sensed that he had been shot. And he fell. And then the windows start to blow up. And I think that I am already shooting by this point. And so I'm -- I'm shooting in through the back window, the back driver's side window.

And the other windows, I can see like explode. You know, you can see the glass spinning.

Sometime right there then I get this pain above my groin. And it doesn't hurt bad, but it hurts. And I'm like, "I just got shot." But there isn't a whole lot I can do. Like I said, it didn't hurt so bad that I felt disabled. So I'm still -- I am engaging this guy through the back window. And as far as I know, he is still shooting at me. I mean, this is -- I think I'm shot. I know Burley's shot. I don't know if Burley's dead.

Q Let me ask you, you know, when you first hear shots coming out of the car, you see him shoot and you see Burley go down, I mean up to this point, what's going on in your mind? What are you thinking is happening?

A My friend's dead and this guy is trying to kill all of us. There is a million thoughts that go through your head. I mean, it's clearly the worst thing that's ever happened to any of us. Nobody wants this.

Q And what's your immediate thought you have to do or can you even think or are you reacting?

A I know that I have to put rounds on this guy. If he gets out of the car, he's going to kill somebody. He is going to get out of the car and shoot at us or -- once he gets out onto Halsey, if he runs, there is a million targets out there and our opportunity is lost

to -- to stop him while we have him contained.

So I'm shooting through the back window. I don't know that anybody else is shooting, but I sense that somebody else probably is. It gets to a moment where I don't see return fire coming. And so I move myself up into the driver's side front window that was rolled down all the way so I could see inside the car.

I look inside the car, and I see him. And he's got his stomach down on the seat, but he's crawling across the seat toward the passenger door. And I don't see a single mark on him.

Q And this is after you have already been shooting?

A Oh, yeah, yeah. This is during.

Q The other officers are shooting?

A This probably all happens in half a second. I don't think there is ever a big delay in the shooting. But I believe I am moving while I'm shooting toward the front window. And like I said, I don't see a single wound on the guy. And his hand is underneath him, but he's going for the door. And I don't know if he was opening the door at the time or -- his other hand was up like he was trying to get out of the car. So I knew he was getting out of the car.

And, of course, the first thought that comes to

my mind is he's not hit. He's ducked down onto the floor, so he avoided these shots and now he's going to get out of the car or, worse, I'm looking into this car and he's going to turn around and shoot me while I'm looking in at him.

So he's moving like in a low crawl across the seats. And I shoot him. I shoot him again from the front window, and I shoot him until he stops moving.

And somehow or another he comes out of the car, like his shoulders fall out of the car, but his feet are still in the car. And I know that he's stopped. Like I don't -- I stop when I feel like this guy is no longer a threat to me. And I begin yelling, "Stop, stop, stop, stop."

Q To who, him?

A To the other guys, because I didn't want anybody else to shoot. And I know that they don't have this view that I have. So I just -- I want them to know like if he's coming out of the car, I don't want somebody to think, "Oh, my God, he's coming out of the car" and start shooting again, because I knew he was just falling out.

So he ends up on his right shoulder with his -- like his hips and everything are still on the passenger's seat, but his right shoulder is down and his head's down facing the front of the car. So I still can't see his

hands. But something happened in that last bit of shooting that made me feel like he was done fighting.

I go around the back side of the car, and I do a tactical reload, which just means while I'm moving there is a lull in the action, so I put another magazine into my gun and come around to the passenger's side. He -- I can see now that he's been shot. And I'm thinking that those are the shots that I shot when I moved to the front. I can see, I think, two bloody spots on his back. He's groaning or making some sort of noise. He is moving around a little bit and making some noise.

So I stand there, and a couple of guys come up at some point. And I can hear Don behind me, Sergeant Livingston. And my groin, right above, you know, between my -- basically between my belly button and my groin really hurts, and I start yelling to Don, "Hey, I think I'm shot, I think I might be shot. I need you to look at me." And a couple of guys come up and get next to me so I know this guy is covered. And Don pulls me off and looks, and he doesn't see anything.

And about at that time Dauchy comes in his car and pulls up the Corolla. And I'm telling him, "Come all the way in," because I wanted him to get the car up on the curb so we could be behind it.

After that, I got pulled back and I stood with

somebody and I think four or five times I had them check, you know, to see, because I swore that I was shot.

Q Let me back you up a little bit to your perception of when Officer Burley was hit. You are engaged with the driver of the vehicle, but could you tell at all what was going on with Officer Burley?

A You know, the first thought that went through my mind is that he had been killed, just because of the way the gun was faced and the way that it felt it was canted up and I felt that concussion in my face.

And you are thinking probably a million things at once, but the thought that I was having was that he had been shot in the face and he was probably -- you know, he was dead or badly hurt and he was laying there next to where this person was shooting. He needed to be tended to.

Q Did you see anybody tend to him?

A No. I was -- I was very focused on what I was doing.

Q So, essentially, after he goes down, you have this thought, but you are unable to go and assist?

A I need to take care of this thing first. I need to take care of the threat, because nobody can help him if this guy is shooting at us.

Q So you are not aware that other officers held

him and they have got him in a car and they have transported him?

A No, I wasn't aware of any of that.

Q So you are pulled back off the scene, and you are given somebody to pair up with; is that correct?

A Yes.

Q Do you recall who that was?

A It was Craig Anderson.

Q And you had him check you out because you felt -- you felt something?

A I kept grabbing at the front of my belt. I probably had him check like five times.

Q But you were okay, right?

A I actually have a small -- it must have been a ricochet or piece of glass or something got in there and I have a circular wound, but -- I didn't need to go to the hospital or anything. I -- that is obviously what it was. I just got hit with something.

Q But you are otherwise fine?

Mr. Rees was bringing up a good point. Is it possible that perhaps it was the casing of a bullet that was fired, because those can be hot and leave a mark?

A I'm not sure. If it sat maybe against me, because it is fairly round. So --

Q Right. Could have tucked down inside your belt?

A As opposed to a piece of bullet or something, it probably was. It just -- at the time you have no idea what's going on. And now the wound is kind of so -- it's like a burn almost, so certainly it could be that.

MR. REES: Well, I mean, you are aware that your uniform has been examined, right, and there is no damage at all to the pants?

A I know that people looked and tried to see.

MR. REES: And there is no -- other than what appears to be a small burn mark about the size of a pencil eraser on your skin, there is -- there is no apparent abrasions or cutting or wound. So really, because you said maybe it was a ricochet or piece of glass, it does appear consistent, doesn't it, with a bullet casing, hot, falling into your pants and then being held in place?

A Yeah, that's absolutely, because it's more like a burn than an abrasion. So absolutely, it probably --

MR. REES: And I assume when you have been like at the range firing, you have had casings come down on your head or down upon you, right?

A Yeah. They get stuck in your safety glasses or whatever, yes.

MR. REES: And they are hot when they come out of the gun?

A Yes.

MR. REES: I just wanted to make it clear on the record that it does not appear, at least as Mr. Banfield's understanding and my understanding, based on this investigation, it does not actually appear that you were hit with gunfire?

A I agree with that. I don't know how I would have been hit with gunfire.

MR. REES: But at the time this is all happening, you were fearful that you had been?

A Yes. Because I had never been shot before and this was going on. I wasn't sure what was going on.

BY MR. BANFIELD:

Q Now, when you shot and fired at the driver of the vehicle, was that an intentional act of shooting?

A Yes.

Q And why do you believe at that time, at that moment, that you had to use deadly force in the situation?

A He was trying to kill me and my other officers. He was actively trying to kill us. There is no doubt in my mind. He was shooting right at us.

MR. BANFIELD: Thank you.

JUROR: I do have one question. You said that you never saw the gun, but you saw him hunched over with

something in the Crown Royal bag?

A It looked to me like it was still the Crown Royal bag. And I'm sure maybe, as time goes on, that part of my memory will come back. But when -- when a gun fires, there is a very obvious sound and explosion that happens, so that's how I knew that he was shooting.

JUROR: Okay. Thank you.

JUROR: You said that you was on the back passenger's side of the car when you got up to the car initially?

A Driver's side.

JUROR: Driver's side, excuse me. At any time did you go to the front of the car, the front driver's side?

A I don't think I ever got any farther than like the side-view mirror. I never got farther than that to the front.

JUROR: Did you -- another question, please -- ever strike or hit Mr. Otis?

A No. There was a wrestling match, but I never -- never hit him.

JUROR: You say "wrestling", that's grabbing?

A Like we had his forearms and going back and forth, but no, I never hit him.

JUROR: Tussling?

When you and your partner, Officer Foote --

A Yes.

JUROR: When you -- when you gentlemen pulled up, was the driver's side window down as you could see, or was it cracked?

A No. When we came up, it was open.

JUROR: It was open?

A Yeah.

JUROR: Did you hear Mr. -- at any time hear Mr. Otis say that "They going to kill me. They going to kill me"?

A No, no. It was not -- he was in a fighting-type attitude, not a fearful-type attitude. No, I never heard him say anything.

JUROR: You also stated that you had your -- at one point had your gun out of its holster pointing down?

A Yes.

JUROR: Was that before the tasing or after the tasing?

A It was before the tasing. Almost immediately when he became noncompliant, I had my gun out and at low-ready. At some point I put it away. And then while they were tasing him and he started moving away toward the glove box, then I got my gun out again. But at that point, I was pointing the gun at him as opposed to at the

ground.

JUROR: I'm wrestling with something. I would like to know it was you -- this is the driver's side, okay?

A Okay.

JUROR: You are in the back, right?

A Where I was standing most of the time.

JUROR: Could you?

A Sure.

JUROR: How about if you take the bigger picture so --

A Yeah, sure. So my original spot was right here, because I want to be behind this post.

BY MR. BANFIELD:

Q I'm sorry to interrupt, but can you describe for the record when you say, "my original spot"?

A My original spot is basically where my body is at the back door with the intention is this post right here, it is difficult for him to see around, so I want to be behind that post, against -- kind of pressed up against the car.

JUROR: And could you indicate where the -- how many other officers were at that time lined up with you?

A At the very beginning or what part of the time?

JUROR: At the time when you guys began to

wrestle.

A I can only speak for myself and Burley, and then I could see a Taser pointed, but I don't know whose hand it was on. So at the time Burley was at probably right behind the side-view mirror, I think. And I was kind of in that same spot that I had been in by the back side of the front door.

JUROR: Do we see your car, you and Officer Foote's car in there?

A Our car is on the other side of this car, I think. When I said that Dauchy had come in and got up on the curb --

JUROR: That's Dauchy right there?

A This is Dauchy's car. This is after the shooting. My car is back there someplace. You just can't see it.

JUROR: Okay. Thank you.

BY MR. BANFIELD:

Q And I did just have one more question. Go ahead and have a seat, Officer.

How many times did you fire your gun?

A How many times that I know I fired?

Q Yeah.

A Fifteen times.

Q At the time did you know how many times you

discharged your firearm?

A I thought I fired between ten and twelve times at that time.

JUROR: One question: In order to fire your gun, do you pull the trigger and it keeps firing, or do you have to move your finger back and forth?

A No, you have to move your finger. You have to make a physical pulling of the trigger for individual shot.

JUROR: How far do you have to pull it back?

A The way that we're taught is when you are firing a string, you pull the trigger all the way the first time, and then if you let the trigger out about halfway, it resets so it can fire again. So you -- it's a shorter motion for the second shot as long as you keep your finger on the trigger.

Does that answer your question?

JUROR: It does. Have you ever fired your -- your gun that quickly before, like in target practice?

A Yes, yes.

JUROR: So how long does it take from the time that you fire the first shot before your, what -- what is it, magazine or whatever, completely empties?

A How quick could I shoot all of my rounds? I didn't shoot all my rounds.

JUROR: You didn't?

A I did a tactical reload, because that's what we're taught so I could have a fresh load.

JUROR: So you didn't empty your gun?

A No, I didn't.

JUROR: So do you have any idea about how long it would take for ten or twelve rounds to --

A I could probably get twelve rounds off in under three seconds. It's very fast. It's as fast as you can pull the trigger.

JUROR: Okay.

JUROR: One more question: You said you shot 15 times?

A That's what I have been told.

JUROR: Okay. Is that -- was you shooting out of impulse -- what I'm trying to get at is out of so many shots fired, do you think maybe the first four or five times that you could have hit him, or was you in a different frame of mind?

A Do I think that I could have hit him?

JUROR: Yeah.

A I hope that I would have hit him. I don't know that I did. I think you are asking -- I guess I won't try to put a question in your mouth.

BY MR. REES:

Q I think he's asking whether you were pulling the trigger intentionally or knowingly or whether -- when he says, "a different frame of mind," I assume what you are asking is were you just in the heat of the moment pulling the trigger rapidly without a thought of what you were doing?

A No. I was in a gun fight with a man who was trying to kill me and was actively shooting at me from a distance of about five feet away. I shot intentionally each time that I shot.

Q And is that consistent with your training for that situation?

A Absolutely.

Q And can you explain why?

A I need to stop that threat. He's actively trying to kill me. He's actively trying to kill other people. I need to shoot him until it is clear that he is no longer a threat. And although the string of shots is all kind of together, for me there was two separate -- I -- I put out a string of shots at first at the back window, and then I made a conscious stop while I moved to the front window and then I shot again.

So although this all took place probably over three seconds, there was -- for me there was two individual interactions that I had.

Q And could you see whether your shots were having any effect?

A I never had a sense that I hit him. I didn't -- I didn't have a sense that I didn't. That's why it surprised me so much when I moved to the front and I didn't seen any obvious wounds on him. And that's again when he was crawling across the seat, I made another conscious decision that I was going to shoot him until he stopped. And that's what I did.

MR. REES: Does that answer your question?

JUROR: Yes, perfectly. I got it. I got it.

JUROR: One more question: When you shot through the window, were you shooting through the back of the seat or between the seats or --

A My feeling was he was in the passenger's seat area. My intent was -- and I was kind of canted down a little bit because I'm very concerned about where my bullets are going.

JUROR: Right.

A My intent was to get rounds in that, you know, two-foot by two-foot box that I knew he was. I wasn't looking down my sights. Like if you are at a range, you might be looking down your sights and firing every couple of seconds. I had a box where I knew this man was, and I was putting rounds into that box.

JUROR: Okay, thank you.

JUROR: One more question: Was that back driver's side window up or down?

A The back driver's side window was up, and it got shot out. I don't think it was by me, but it got shot out.

MR. BANFIELD: Okay. Thank you very much.

JUROR: Thank you.

THE WITNESS: Thanks, guys.

FELESIA OTIS,

was thereupon called as a witness on behalf of the State and was examined and testified as follows:

EXAMINATION

BY MR. REES:

Q Why don't you go ahead and tell everyone your name and spell your name for the record?

A Sure. My name is Felesia Otis. F-E-L-E-S, as in Sam, I-A. Last name is O-T-I-S.

Q Thank you. And Ms. Otis, you are not under oath and you are not obviously a witness to these events, but Mr. Banfield and I asked whether you would be willing to come up and talk to the Multnomah County Grand Jury about your son. So you have agreed. So thank you very much --

A Yeah.

Q -- for doing that. Again, we talked to you -- as I talked to you last week, we extend our condolences to you and your husband.

A Thank you.

Q But I'm glad you came, because I think you have an important message.

A I do.

Q Let's start by telling these folks about raising Keaton Otis.

A Uh-hum.

Q Did he spend all of his growing-up years here in Portland?

A He did. He did. We lived over southeast Portland close in. He went to -- well, actually, he went to Sabin for his first couple years, and then he spent the rest of his elementary time at Buckman. And it was a -- I think they called it "target", arts school, which he really loved because he was very artistic. And he loved kind of entertaining and drawing. He actually had developed his own language, and he was just a really smart kid, really articulate. Even as a baby, he never babbled. He spoke clearly. He spoke with full words. So of course, you know, me being his mother and no bias at all, but I just thought he was the greatest kid. And

he just seemed to have a good understanding of the world. I mean, he was -- he didn't get in trouble a lot. Because you could really sit down and talk with Keaton and he could understand what you were telling him when he did something wrong, why it was wrong. It doesn't mean that he didn't get consequences, but, you know, he wasn't a type of kid that you had to do a lot of consequences with.

He also was a kid that loved other kids. And he had friends that were from Laos, from Cambodia, from Mexico, from Africa, from -- he really had a propensity for different cultures. He had Russian friends. He had -- he just had people around him even at a really young age. He took Japanese -- they had a language class, and he took Japanese and was learning that. And so he just growing up, you know, in elementary and then he went into middle school at Hosford Middle School, and that's where he became a part of what they call the Prospective Gents Club. And it is an organization that supports African-American men, young men, from eighth grade all the way through high school with the intention of building character and eventually getting them through to college to have them come back to the community to be a positive impact in the community. And Keaton was involved in that all through high school, from middle

school all through high school.

And I believe that was one of the things that -- that was such a good fit for Keaton because he was a young man that really had a lot of integrity and character. And while he didn't believe in cursing or using bad language, he was -- he believed that people should be able to articulate theirselves in a way that all people could understand, and using foul language wasn't involved in that.

He also felt like how -- it was important to him how people saw him. So he always wanted to present himself -- he was always dressed -- you couldn't get him out of the house unless he was fully dressed, fully bathed, with his little cologne. Even at a young age he had to have his cologne. So he really was a young man that had a lot of his own personality, aside from -- he just wasn't a type of guy that would go with the crowd, it just wasn't who he was. He was actually in a lot of ways a positive influence for a lot of folks.

It was so amazing to hear at his memorial a lot of the kids that he went to school with came and talked about how Keaton had been such a good friend to them. And actually one young man talked about what a positive -- even though Keaton doesn't have any children, that he really helped him identify why it was important

that he be a good father and that being a man was about taking care of your responsibilities despite how you felt about the mom. And that, he said, had a big influence on how involved he was with his child.

And so -- and, you know, people talked about how when he would play basketball with them or things, he never made them feel less than. He always wanted everybody to feel important because in his eyes all people were important. So there were a lot of wonderful things, qualities Keaton had.

One of the challenges with Keaton was that he was real stubborn. When he got his mind set on something, that's just how it was. And so with all human beings, we have got our strength and weakness, and certainly Keaton had his. And one of those was when he got something set in his mind, you weren't changing it for nothing.

And so -- but overall, he was a joy to raise.

Q Okay. Who raised him?

A It was me and his father. He has a biological father, but he's not been ever involved in his life.

Q And who is that?

A Fred Bryant is the biological father.

Q Fred Bryant?

A But Joseph Otis is his father.

Q When did Mr. Bryant kind of leave the picture?
A Oh, before -- when I was three-months pregnant.
Q All right. And so in terms of day-to-day raising of the child --
A Yeah.
Q -- through elementary school, middle school, high school, it was really Mr. Otis, your husband, who took care of this child; is that right?
A Yeah, absolutely. And Keaton always referred to him as "My dad". He never called him dad. He just said, "My dad". He had known him since he was a baby. His whole family, they actually took care of Keaton while I work -- while we worked. They were his childcare. So he was very much a part of the Otis family. He took their name. Initially started off with my name, and then he took -- we changed his name to Otis when I think he was like nine years old or something like that.
Q All right.
A But he had my last name as his -- for those couple of years. But that was his family.
Q And you and Mr. Otis are still together?
A Uh-hum, yes.
Q And up until this happened, was your son still living in the home with you?
A Yes, he was.

Q And Mr. Otis?

A Yes.

Q All right.

A And one of the things that was important, especially as he had gotten ill, was that we wanted him to know that, no matter what, that we were going to take care of him, that he didn't have to worry about where he was going to live or how he was going to eat. That was something he would never have to worry about. And I think for us we're glad about that, that he knew that, as best as we think he knew that, yeah.

Q By way of background, what's your occupation?

A I'm actually a Clinical Director for Volunteers of America. And I oversee two programs. One is called the Community Partners Reinvestment Project. And it's a transition program that helps young men, 18 to 25 years old, transition from prison back into the community. We provide substance abuse, mental health services, employment services, just overall support for helping young men that ideally many of these young men went in on Measure 11, so they have spent a pretty significant portion of their youth inside the Department of Corrections, helping them make that transition back into the community.

The other program that I am the clinical advisor

of is the -- it's actually the Services Coordination Team. And they identify through the Portland Police actually -- and you may have heard -- but of downtown, Old Town where folks are identified being repeats. In other words, they are coming in and out of jail all the time, they have substance abuse issues, mental health issues, and that the police were thinking we need to get these folks in treatment, just arresting them and putting them back out on the street wasn't going to do anything. So I have been involved in that program for about a year now helping them develop services and programs that will help, you know, reduce the risk of them going back to homelessness and substance abuse and being back engaged in criminal activity.

Q And what's your husband's occupation, Mr. Otis?

A He's a Surgical Coordinator up at the Oregon Health Science University. So he has been there for about 15 years. And he ensures that all the things that the surgeons need are available and there for all the variety of surgeries that they do up on the hill.

Q And you have been with Volunteers of America for, I think, 18 years?

A Uh-hum, yeah.

Q All right. Well, your son -- you brought a photo of Keaton Otis?

A I did.

Q Why don't you show everyone the picture. Tell us when was that taken.

A This is taken when Keaton was 19 and this is my -- his aunt. My sister-in-law had gotten married. And so he was -- and she -- they had a really special relationship, because even when Keaton was little she would come and pick him up. And even before she had her own son, she spent a lot of time with Keaton. So that was really -- that was a picture of him before he started getting really, really ill.

Q In this picture he looks like just a happy, healthy young man.

A Yes.

Q And you have described his -- his growing up. And it sounds like the last thing you ever imagined is that this young man would end up being someone who didn't go on to school, wasn't able to work --

A Absolutely.

Q -- and went down this really -- an abyss of mental illness?

A Right.

Q When did you first realize there was something wrong?

A I think probably about -- you know, you always

look back in hindsight and you think could that have been -- mental illness, could that have been something? But I tell you that in my mind the first time I thought, "Okay, clearly there is something wrong" was when he was telling me about things like, "Mom, I think somebody is like crawling up under -- up under the house." I was like, "Keaton, why would people be digging up under our house?" "Because they are wanting to plant things here so they can hear what I'm saying." And same thing he would make reference to the neighbors. He would say, "Why is he standing out there? Why is that guy across the street standing?" "Well, he's probably, Honey, just getting into his car." So he would start saying things that just didn't make sense.

So for awhile there I'm thinking, "Okay, so I'm not sure what's going on here." Then he wouldn't say anything more about it. But you could start -- it started to escalate to where now he's telling me and my husband to whisper in the house because people -- somebody was taking his ideas and using them to make money and that he didn't want these people, whoever they were, to make money off of him.

So in order for him to talk to me sometimes, because he wouldn't say anything, we would have to go in the car. We would have to drive so that he could talk to

me, because otherwise he wouldn't.

Q Because he thought people were spying on him?

A And listening in and were taking his ideas and making money off of them.

And so at that point he had fallen into a pretty bad depression. And I said, "Keaton, we need to go talk to somebody. You need some help." And although at that time I think it scared him, the depression did -- not the delusions, but the depression to where he went and talked to the -- we had found a psychiatric nurse practitioner that specialized in -- I had a sense working in the field, being familiar with mental illness, that we were looking at possibly schizophrenia, bipolar -- more likely bipolar was my thinking, because you can be psychotic and delusional and be bipolar because of the mood -- you know, not sleeping, and he had that for awhile. And then he was sleeping all the time.

So I found somebody that specialized in that, and he went and had his first appointment with her in 2008, January. And so she treated him with medication. She put him on an antipsychotic, antidepressant. And for about four or five months there he was taking the medication, but he kept complaining about the side effects.

So we had him go back. And at that time he

didn't have insurance because he wasn't going to school or college. The only way he could -- you know, to have insurance on my husband's benefits or mine is if they are in college. He wasn't in school. So we were paying out of pocket, which was fine because we could afford to do that. But she was trying to adjust meds or trying to change meds. And it was fogging his mind. And because for Keaton being really artistic that wasn't -- that wasn't an acceptable side effect to him, and he stopped taking the medications.

And what happened as a result of that, a month or two later, then things really got bad in terms of now he's not talking; he's not saying anything. I'm having to take him out of the house to even try to get him to talk to me.

And then in a couple months he would -- he would start talking in the house. So I'm thinking this is associated -- she had diagnosed him with a Mood Disorder is what she had initially diagnosed him with. So things were getting a little better because he wasn't as delusional and he could hold conversations. And so things were going okay for awhile.

And then about November he hit this depression again.

Q I'm sorry, would that be November this last

fall?

A Of 2000 -- yeah, yeah, 2009, yeah.

So he -- and so now he's not leaving the bedroom at all. His lights are off. He can't tolerate light. He can't tolerate sound. He's not eating.

So I've called the nurse practitioner. I say, "He's not eating. He won't come out of his room. I can't get him to talk really" -- and it wasn't because I think he was paranoid; he literally just didn't have the energy -- and talked to her, what do we have to do to get him committed? Because clearly, in my mind, this is harm to self. And she said, "Well," she says, "He wouldn't make the -- he wouldn't qualify because it has to be an imminent threat." And she actually is a specialist in commitment, so I knew that she knew what she was talking about, that just that in and of itself was not enough to be able to get him committed, to get in somewhere to be seen, get treated. Because every time we talked about him getting treatment, medication -- and even when I said "We could try an alternative, you know, whatever, let's try whatever." And it's like, "No, I don't want to see anybody. They are all in . . ." -- at this point, in his mind, everybody is all in on this kind of conspiracy thing. He doesn't trust anybody. And there were times I could pick up the sense that -- whether or not he trusted

my motives in terms of trying to help him get better.

So she said, basically, you are just going to have to wait until a crisis comes up before you are going to be able to get him in, to force him to be seen.

Q If I could interrupt and just so we can see the picture here --

A Yeah.

Q -- what has happened then to this bright young man? I take it at some point he stopped with his schooling?

A Yeah, right. He had -- he had a job. He wasn't -- couldn't -- he wasn't working. He wasn't -- you know, he was doing extra work. He was doing lots of odds and ends things. He worked at a winery for awhile during the fall, but all that had stopped.

Q So no school, no work. What about relationships?

A None.

Q Girl friend?

A Because he was such a social guy and his friends would call, he wouldn't pick up the phone. He wouldn't pick up the phone. His aunt, he wouldn't talk to her. He wouldn't talk to his grandmother. He wouldn't talk to his cousin, who he was very close to. He basically stopped answering and avoided everybody. And that was

including me and his dad. Like he wouldn't come out and sit -- you know, we used to all love to watch movies together, sit and talk, have meals together. He wouldn't do any of that. If he ate anything, I would have to bring it to him.

Q So in these last few months, this winter and early spring, how would he spend his time?

A In his room with the lights off and most of the time with the TV off. And you could tell just looking, when I would come in and say, "Keaton, how are you doing, Honey, this morning?" He would say, "I'm -- I'm chilling. I'm chilling." That is the only thing he would say. And then, you know, "Keaton, we probably need to go see somebody, you know. I'm really worried about you." "Mom, I'm not going to see anybody. I'm okay. Just leave me be."

So it was just really, really hard to see somebody that was so communicative, that was -- we were really close. He and I were so close, could talk about anything to the point where he couldn't talk to me, he couldn't talk to his dad, he couldn't talk to anybody.

Q I'm sorry. And at one time I believe he weighed maybe 210 pounds, 220 pounds?

A Right. And he was still slender, but he was like a little over -- I think it was like 202 or

something like that was his biggest weight.

Q Did you see the weight drop away?

A Absolutely. First place I noticed was in his face where I could see his cheek bones protruding. And I had a scale, and I was telling Keaton, "You need to get on this scale, because your weight is really dropping." And so he got up there once, and I saw it was like 185. After that he wouldn't get on the scale anymore. But I could tell that he was significantly underweight.

So then that's when I called the nurse practitioner again, because now he's not eating for days on end. He's barely drinking anything. And it's like what -- you know, "Does this now qualify to get him in somewhere to get seen?" And she said no.

Q And you a few months ago had contact with a police officer there looking into a report that your son had waved a baseball bat --

A Right.

Q -- at another young man?

A Right.

Q Linked to your Toyota?

A Right.

Q What did you think when you heard about that?

A We were thinking, one, is that when he did take the car, it was oftentimes to the store and come back

because he didn't want to be around people. And he -- Keaton was never a violent person. That was not anything that he ever, ever -- if you talk to any of his friends, any of the experience we ever had with Keaton is that was something that he never -- it just never -- he didn't get into fights with people. He didn't argue with folks. It just wasn't a part of who he was, never have been. So when he said that, we're thinking, "They have got to be talking about something else."

I wasn't there when the officer came. He had talked to my husband. And the officer said something about being a maroon car, so we're thinking about, "Well, clearly they are talking about somebody else, because this is not a maroon car. It's a silver car, and so they have got to be talking about somebody else."

But you always think about, "Well, could it be?" So we talked to Keaton. I asked Keaton. He said like, "No, Dad, that's not even -- that's not even me. That's not something I would do." Then he would just go back to his room, which was normal. You would ask him a question. He would give you the minimum information and then he would go back to his room.

Q And would he borrow your car, I guess, the Toyota and drive around?

A Yeah. He would sometimes -- it would come and

go, because there were times when he wouldn't do that at all. I actually went to a training where they had talked about, especially folks that have delusions and psychotic things going on, they say it's actually helpful for them to get out and be around normal people because they then get a sense that, you know, it's not as bad as what they think it is in their head.

So when he was actually -- for a time when he would take the car, we were actually relieved that he was actually coming out of his room. And he would normally just go to the store, get -- he like these Doritos. He would sometimes eat those. He would get those and go to the -- what they call Pier Park. It's way over in North Portland there, and it's a pretty quiet park. So he may go over there for an hour, and then he would come home.

And so we're thinking, "All right, that's -- that's probably what he's doing," because I asked him to take me where he goes when he does leave the house because I wanted to know. Also, too, I was checking the car. When I checked that car, there was no bat, because I was worried about suicide. I was worried about the depression, about the suicide. So I was, you know, checking, you know, his room. I was checking his -- because you don't know what's going through somebody's mind when they are not thinking right.

So, yeah, I'm thinking, "Okay. They must have made a mistake, because there is no way this would be Keaton."

Q Did you ever worry that your son's mental illness might bring him into some kind of conflict with the police?

A Well, you know, he had -- he had been pulled over a couple of times. This was awhile ago, and there was never any problems. The last time I think it was about a year ago, I think, was a ticket he got for parking in the wrong place. And the officer stopped him and asked him to move the car and all that, and there had not been any difficulties.

So in my mind I'm thinking, you know, "He obviously must not be running into any problems because he's going to the store, he's getting what he wants from the store when he goes, not any -- we hadn't heard anything about him doing anything." So we weren't thinking that any of that would happen.

Q Okay. Now, this happened on May 12th, a Wednesday?

A Yeah.

Q This Sunday right before that was Mother's Day?

A Yeah.

Q And I believe I have been told that in those

couple of days right before this incident that you and your husband had decided that your son needed to be civilly committed; is that correct?

A We had decided, even before that, that he needed to be committed. I mean, we have been knowing. It was trying to -- you know, and it's a sad thing because you are thinking about how ill does somebody have to be before you can get them committed?

So that was when I was -- you know, I actually -- a friend of mine, who also I work with, had a mother that was bipolar. And she was -- she had to have her mother committed several times. So, you know, she was kind of, you know, talking with me about, you know, "Don't let it go, see what else you can do, what else can happen in order to get him the help that he needs. Don't let it go."

So we were at that point thinking, "All right. So maybe now he's really sick enough that he can get committed." And so I made an appointment that Monday with this nurse practitioner to meet with her.

Q Monday, May 10th?

A Uh-hum, 10th, to meet with her on Thursday morning --

Q Okay.

A -- to say, "Please help me figure out what to do

here, because he's going to starve to death. He is literally going to starve to death."

Q And was there any one thing that had happened that made you decide that was the time to do this, or was it just all these things you have been talking about?

A It was just all of these things.

And the other thing, too, was learning that if the brain -- with mental illness, if you allow it to go too long, even with medications, it's not going to ever be made right again. So once the damage is done, it's done.

And we were urgent to try to get him in as soon as we could to somebody because once -- once you get past a certain point, there is no coming back. Like you can get them stable, but there is no like having quality of life. So that was a big concern for us that he had some quality of life still. He was still young. But it seemed to be progressing so fast, you know, him being sick and not talking and not eating. This was a whole other thing that had been this long that he wasn't eating. And so that to us was the urgent thing. You know our concern of organ damage to his kidneys, to his heart. So that's how that kind of precipitated.

Q And in your view, having lived through this experience --

A Uh-hum.

Q -- is it too difficult to help a family member with mental illness?

A Is it so unimaginably hard to help, get help for a family member? It is unbelievable. And even with all that I had at my disposal and knowing what I know, still couldn't get him the help that he needed, still couldn't intervene in a way that could help my son. And I think that's horribly sad. It's horribly sad for us, but it's also horribly sad for those families that, number one, don't even know what they are looking at in terms of -- many people don't even get diagnosed for ten years. We at least got Keaton diagnosed in the first couple years.

So to not have access, to not have the ability to get help for somebody that clearly is not able or capable to make decisions for themselves to get help, it's probably the most painful thing. Because you are watching somebody suffer. They are aware that something's wrong. So you see it in everything that they -- every day you see suffering for them. And as a family you are suffering because you have lost somebody. The body is there, but they are not. There is a part of them that's gone a little bit every day.

And when I watched my son leave and him not be who he was every day and it's like there has got to be

something, and I don't understand -- I don't understand why (crying).

JUROR: Would you like a glass of water? Drink some water.

A Thank you. So I think that in all this, it's not even just the end result, which is horrific, but the process of watching the family member get sicker and sicker and there is nothing you can do. That was -- that was hard.

BY MR. REES:

Q Take a moment and my last question, as we discussed, is if you want to share what your idea is about -- what changes need to occur. Because we have seen the pendulum. You have seen the pendulum swing from the days when people would be committed against their will to the point of perhaps being abusive, now to the point --

A Yes.

Q -- where it's very, very difficult to hold someone.

A Absolutely. And even to this day there are folks -- I am aware of -- as a matter of fact, it was a woman who is bipolar that I talk with who has been in treatment for a long time and is stable and all of that, but still some of the challenges she has with how doctors

and professionals work with her that don't honor what she wants. So that's still an issue.

And at the same time not having the ability to have a voice for your loved ones when they don't have a voice for themselves is so, to me is unimaginable that you as a family member have to sit by and watch a son, a daughter, a mother, a sister, a brother, go without the care that they need.

And so my thinking and our thinking was -- is that if there was some room in that criteria for harm to self or others that it would be enough when you are watching a family member not eat, not be able to take care of themselves, be delusional, that you are able to at least get them somewhere where they can be treated, and not just for 72 hours.

I can tell you I have also seen that 72-hour treatment thing, and that's not effective either, because meds take awhile to get in place and to work, and you don't always know whether or not those are the right meds. And so if you medicate somebody, 72 hours you release them --

Q And just to make sure everybody knows what you are talking about is if somebody is truly in a full suicidal mode, they could be held for 72 hours?

A Correct.

Q Then they are entitled to a hearing and very frequently at that time they are released?

A Exactly, that's correct. They are released. They may make a recommendation this is what they need to do. They may even say, "Do the outpatient, require the outpatient." The challenge is that how do you enforce people taking the meds so that they are well enough, long enough to make an informed decision?

And that's all I wanted for Keaton. You know, I'm his mother and, of course, I would want the very best. But he was 25 years old, and he has a right to make -- he had a right to make a decision about whether or not he wanted to continue treatment. But if they don't get stable first to be able to make an informed decision, then my concern was with this whole process was that he barely trusted anybody, but I was going to be put in a position, both me and my husband, to commit him and he would have known that. He would have known that. And that would have forever changed. If he decided not to do treatment anymore after that, that would have changed the way we were able to take care of him because he would have never seen us in the same way again.

So there is a lot to deal with, but our goal is to have enough room in the law so that family members can get the help that they need for their family members at

least long enough so that that person can make an informed consent about their own care. That's all we want. Because, again, we don't want to go back to the way it was where people were being treated and forced to do treatments against their will, but neither do we want to have it so narrow that nobody can get what -- the care that they need.

So that's our goal, is to do that. Never in our wildest dreams would we have anticipated that, number one, that Keaton would have gotten ill; number two, that the outcome would have turned out the way that it did. But neither do we want this to go and have this be in vain for the next family members that are still fighting. I can't tell you how many people are still fighting trying to get the people that they care about care.

And I was telling -- we were talking, too, when we met we have got some vets, some young men and women that are coming home that are going to need care. And do we have what we need right now to help them? And we don't.

And I think, you know, our goal is to take a look at the whole system, the mental health system, how we approach the way that we do what we do, whether it's the DA, the police, mental health, family, community. I think it has to be everybody at the table talking about

what can we do different? What can we do better?

For Keaton, so that what's happened to him is not in vain, but for those people that are coming. Because mental illness affects -- either you will have somebody in your family or know somebody that is impacted by mental illness. So we have got to do a better job, I think, as a community to say that we are going to do whatever we can to make sure safety for them and safety for the community, too, is in place.

But that's our goal, not to have this just be another one and then have another one on top of them, because it's just -- it's not necessary. So that's what I'm hoping with this whole process will come out of it is for all of us to take a look at the part that we can play and how can we make it better. I think that's our main goal with this.

And it's at least in that one area of addressing that law to open it up so that -- and I think it's important that we have consumers there, both the ones that are for it and ones that are against it, to make sure their perspective has been heard because there has been some people that have been very poorly treated by commitment as well. But at the same time there has got to be a way to get people help that need it.

Q Thank you. You and your husband have shown a

tremendous amount of grace and compassion. We appreciate you sharing your story.

A Thank you.

MR. REES: Any Grand Jurors have any questions.

JUROR: Yes, first I want to applaud you, you and your husband, for doing a wonderful job. Have no doubt about it at all.

A Thank you.

JUROR: I want to echo what Mr. Rees has just said. You did all you could.

A Yes.

JUROR: You touched all your resources. We have to build on the system.

A Yes.

JUROR: Don't stop as a wife and as a mother.

A Yeah.

JUROR: And most of all as a woman.

A Yeah.

JUROR: Stay as strong as you are. The support will come if you stay strong. Please, for us stay strong.

A And I will. And I thank you for that. Both my husband and I are Christians, and we believe that Keaton's in a better place. But I also believe that in God's infinite wisdom, he uses these opportunities for

change.

JUROR: Yes.

A And that's where we're focused is not what's been taken away, but what is it we're going to do with what we have and how are we going to make it better for somebody else. Because somewhere along the way somebody before us has made something better for me and for you.

JUROR: Yes.

A So if we leave nothing else on this earth behind is that what part are we going to play in making out of our worst tragedy to make something better for somebody else. That is what gives us strength to move forward.

And I can tell you that there will be nothing -- because Keaton wouldn't expect anything else, because that was the type of person he was. If he had something in mind about what he was going to go for, then he's going for it. That's how me and my husband feel. That's how we're going to honor Keaton's memory. And we just feel in our heart that somehow something is going to change so that we have -- we don't have this anymore. That's our hope and our prayers. So thank you for that.

JUROR: Did any clergy try to intervene while you was, you know, going through this, you know?

A Yeah, my brother-in-law is a Reverend, very passionate. And he actually baptized Keaton when he was

18. One of our fondest memories is when Keaton was 18 we went to Lincoln City. We went there as a family, all of us, and he was baptized in the ocean. So it was -- you know, that's always -- and Keaton was a believer, you know. And even at his sickest time he said grace. He was -- you know, I was -- even in the harshest times there were, you know, some tender mercies there as well. So absolutely God's been holding us up through it all.

JUROR: Thank you for answering. You know, thank you, thank you for being strong and please stay strong.

A I will. I will count on the community to help support moving an agenda forward and I know you all will. And God bless you for being here and going through this process, because I know it couldn't have been easy for you to be on the side of the table that you are on either. And I pray for the officers and their families and the community, because it could very well be a community member that this would have impacted.

But most importantly, you know, I know our son is in a good place. And so we're going to get change happening somewhere, somehow.

JUROR: Thank you.

JEFF GRAY,

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

EXAMINATION

BY MR. REES:

Q Go ahead and be seated. For the record, if you would step and spell your first and last names?

A Jeff Gray. G-R-A-Y, J-E-F-F.

Q Mr. Gray, what is your occupation?

A I'm an Operations Manager for a company called Chrome Systems.

Q All right. And it's my understanding that you witnessed at least some of the events that occurred during a shooting on Wednesday, May 12th, 2010?

A That's correct.

Q Where were you situated when you first noticed something unusual happening?

A Uhm --

Q And I can give you a different map if you like. But go ahead and tell us first.

A I work in the 700 Northeast Multnomah Building, which is about two-and-a-half blocks away from the incident. Can I stand up?

Q Uh-hum.

A Okay. Great.

Q Go ahead. I think this will show the location. If you would, though, stand off to one side here so these people can see you?

A Okay. So my building is right here, which is -- and I was walking -- after work walking down N.E. Seventh Avenue to my parking garage, which is right here.

Q How about this?

A Oh, great, perfect. Now I have got to figure it out. So this is my building right here.

Q Which is down by Seventh and Holladay?

A Seventh and Multnomah. Seventh and Multnomah.

Q All right.

A So I'm walking, uhm -- I assume this is north?

MR. BANFIELD: Correct.

BY MR. REES:

Q Yes.

A North on Seventh to my parking garage. And probably between Multnomah and Wasco Street here, I hear sirens and I see a -- a white or silver car. I couldn't quite tell -- pull off of Grand onto Wasco and then turn onto Sixth Avenue, followed by what I believe was an unmarked police car. I did see lights, but it looked like to me -- again, I was a couple blocks away, and there was a little parking lot there -- that it was

unmarked. It was dark in color. I did see lights, but it looked like they were coming from inside the vehicle following it. They were traveling, I would say, fast. It didn't seem quite fast enough to be a high-speed pursuit, but it was definitely faster than I would have been if I was being pulled over.

Q Did you hear any sirens?

A I did hear sirens. They stopped -- once they -- once both cars turned onto Sixth going north, uhm, this building here is on Sixth and Wasco. I couldn't see the cars anymore. But shortly after the sirens stopped.

Q When you made this observation, did it appear to you that this car was immediately stopping and pulling over for the police?

A That was my assumption, because the sirens stopped. And they were -- the cars were traveling fast, so I assumed -- with sirens, so my assumption was they had stopped. I couldn't tell where at the point. I just knew it was past Wasco and Sixth, at that point.

Q But to be clear, you are making this observation just within that one-block area?

A I am making that assumption --

Q Not assumption, observation?

A Observation.

Q From where to where?

A From between -- in the middle between Seventh and Wasco -- between Multnomah and Wasco from -- I would say it's about a block away.

Q But how -- how far --

A How many --

Q How far did that car drive that you saw with the police following before it pulled over?

A Okay. I did not see it pull over. It -- it -- the -- it was driving from Grand to Wasco, then to Sixth and then I lost track -- I lost sight after -- shortly after it turned on Sixth because of a building.

Q So it didn't immediately pull over because you saw it drive through the block?

A It didn't immediately pull over. It went at least a block-and-a-half.

Q That's what I was asking.

A Yes.

Q So you saw this car driving, police car after it and you say, driving at a speed faster than you would drive through that neighborhood?

A Yes. They were -- and that was the main reason I noted.

Q So for a block-and-a-half?

A That is the reason I noted, because it did look unusual. It didn't look like a normal traffic stop

because of the speed.

Q All right. You can return to your seat.

What did you notice after that?

A Uhm, I got into my car in the parking structure, and then headed down Clackamas from Seventh Avenue. And about midway between Seventh and Sixth on Clackamas, I heard what I thought was at the time firecrackers, just due to the loudness of the noise and the irregularity between the sounds.

When I looked ahead, I believe I was grabbing my sunglasses in the middle of that -- between that intersection -- before the intersection, because it was a little sunny.

I looked up, and I noticed -- I could see two police cars at the corner of Sixth and Wasco on the south side of Sixth. They weren't in the intersection. They were right before the intersection. And when I looked up, I saw two, maybe three -- I know I saw two for sure -- it all happened quite fast -- police officers, who looked like they had come from the south and were retreating to their cars. They were in defensive positions around their vehicles with guns pointed south on -- on Sixth.

I had my radio turned onto a sports talk radio. So I couldn't -- at that point I heard gunfire, and I saw

them with guns pointed that way. I can't tell for sure if I actually saw them shooting at the time or I heard the shots before. Like I said, it all happened fast. I could not see what they were shooting at.

Q All right. And just so we're all clear -- feel free to refer to the map -- what was the closest that you got to the area where you saw the stopped police cars? And feel free if you want to step up.

A No. I would say -- there was one car ahead of me stopped right before Sixth, and I was behind that. So --

Q Let me perhaps show you a different map that has a closer-in view. That's the intersection of Sixth and N.E. Halsey?

A Okay. And this is still north?

Q This is going north, and this is going west?

A Okay. So I was probably -- my guess was -- right about here with one car in front of me, not at this -- the white stop line, but ahead. And those two cars were about, I don't know, I'd say here and here. So I kind of had a partial view.

Q So you are looking from north to south?

A Wait, am I --

Q South is at the bottom of the picture.

A This is Sixth?

Q Yes.
A And this is Halsey. Yeah, I was right here. Yeah, so --
Q Okay. What color is your car?
A My car is a gray or dark silver.
Q What color was the car you pulled behind?
A I believe it was red.
Q What was the red car doing?
A It had stopped as well, like I said, ahead of the intersection. Shortly after the -- the gunfire stopped, I looked -- I looked behind me. There was one car behind me that had backed up. I followed suit, and then the car in front of me followed suit with that to leave the area. At that point I wasn't sure what was going on. I was a little -- kind of shocked and was trying to look for an exit at that point.
BY MR. REES:
Q Okay. You can return to your seat. So where did you go from there?
A I went up to Seventh, out to -- out to Broadway. And right when I hit Broadway, which was two more blocks, I started hearing sirens coming from all over the place.
Q All right. Do you know how the police were able to contact you?
A Uhm, I contacted them. I saw a -- I was -- I

believe it was the Oregonian On-line. I read an article about it because I was interested since I actually witnessed the event. And at the bottom of it, it said, "If anyone had any information to contact the police." And it gave two numbers of the Detectives.

MR. BANFIELD: Is your car pictured in that photo? Is that your car that's at the stop sign there?

A No.

MR. BANFIELD: That's not your car?

A That car was not there when I -- I was behind this car here.

MR. BANFIELD: But you recognize that red car?

A Not exactly, since I was -- it was a brief view. It was a red car. I was right behind a red car and there was not a car in front of it. So that would be it, yes.

MR. REES: I'm not sure everyone could see this, but the witness was indicating this light-colored car in this top photograph is not his car.

A Is not mine.

MR. REES: Are there any follow-up questions folks?

JUROR: Yes. You said you was going to your garage?

A The parking garage.

Q Once reaching the garage and going inside, how

long was it before you heard shots?

A Uhm, I've got to think it took about -- from the time I saw the sirens or heard the sirens stop while I was walking to my garage and the time I got to my parking garage and came out, saw what I saw, was maybe three minutes.

JUROR: Within those three minutes, do you recall how many sounds you heard?

A I did not hear anything of note. I had almost forgotten the whole incident until I -- until I arrived upon it again.

JUROR: Upon arriving, do you recall how many shots you heard.

A I'm going to make an educated guess that it was between 15 and 20, but I don't know exactly.

JUROR: You don't know the sequence of it?

A No, I don't.

JUROR: You just heard multiple?

A Yes, that's correct.

JUROR: At any time while you was at that -- behind that red car, did you hear anybody yelling out?

A I did not. I eventually turned down my stereo, but at that point, the gunfire had -- had ceased and -- and honestly, I was trying to find a way out of the situation. I wasn't paying much attention to what was

going on in front of me.

JUROR: Thank you.

A No problem.

MR. BANFIELD: Okay. Thank you very much.

ERIC ENSLEY,

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. BANFIELD:

Q Please have a seat, and state and spell your full name clearly, please?

A Okay. Eric, E-R-I-C, Ensley, E-N-S-L-E-Y.

Q And Mr. Ensley --

A Yes.

Q -- we are here today to take testimony regarding an incident, police officer-involved shooting, that occurred on May 12th in front of N.E. 6th and Halsey, in between Halsey and Clackamas. Are you familiar with that incident?

A Yes, I am.

Q And where do you live?

A I live at 1425 N.E. Seventh, unit No. 122. That unit is actually -- the patio is facing Sixth and Halsey.

Q So your patio faces directly on Sixth and Halsey?

A Yes, it does.

Q And unit 122, you said?

A Yes, it is.

Q And were you home at the time of the incident that occurred?

A Yes, I was.

Q And where were you? What were you doing?

A Uhm, I just arrived from a trip from Europe. I was unpacking actually in my living room at the same time of the incident.

Q And when you said, "just arrived", I mean, how soon did you get in?

A I had been back in the country for about an hour.

Q A European trip, that's a long trip?

A Yes.

Q So you are back in the country for an hour. And when do you first notice or become aware that there is police action going on outside your home?

A Uhm, I was pack -- I was unpacking in my living room with my back facing my patio blinds, which were open just slightly enough to where sunlight and I can view the street.

I became aware of the incident after two or three -- hearing two or three gunshots, and then several other shots thereafter, shortly thereafter.

Q Okay. So after you hear, you said, two or three gunshots, then what do you immediately -- what are the thoughts going through your mind and what's your reaction? What do you do?

A Well, my reaction immediately was turning to face my blinds to see what was going on, and I could actually see the street and a couple of patrol cars and some officers on the street.

I then opened up my blinds and slid them completely open towards to where my windows can -- I can view my windows without any obstruction.

Q I'm going to put up a photo behind you. And if you can, indicate on this photo approximately where your apartment would be. And you can stand up to do that.

A Can I stand up?

Q Stand to the side here so the Grand Jurors can see.

A This is my unit.

Q Okay.

JUROR: Is that the first window, sir?

A Let's figure it out.

JUROR: Maybe you need to get on this side.

A Yes. This is -- this is my unit. This is my -- this is my patio door, double doors, and that's my -- the other part of my living room window.

Q Okay. Go ahead, have a seat. So it was right in front of your home?

A Yes, right in front.

Q Go ahead, have a seat there.

So you go to your patio door, and tell us what observations do you make?

A Uhm, I actually opened my patio door and stepped out and observed -- I forget the count of the officers, but observed one patrol car with another officer rushing out saying, "Go, go, go," taking off, and I would assume that's a southern direction away from Halsey. And then several other officers, maybe two or three, staged across the street. There was a construction vehicle that they were sort of staged behind.

Then there was a couple other patrol cars on the street shouting commands towards another vehicle that was maybe ten to 15, maybe 20 feet away from the corner of Sixth and Halsey.

Q Okay. Let me just back you up a little bit to exactly what you heard. You said initially you heard about two or three shots?

A Two or three shots initially.

Q Okay. Then what did you hear? How many shots total?

A Uhm, I would say repeatedly maybe 20 to 30 shots thereafter.

Q Was there any break or pause after the first two or three shots, that you can remember?

A Uhm, no, no. And it's really -- because that corner has a little bit of an echo, it was really hard to determine how many shots there actually were, hearing rapid fire, and I would say between 20 and 30.

Q Did you hear all the shots before you were actually to the patio door and going outside?

A Yes.

Q So you heard all the shots. Then you go out onto your patio. Tell us exactly what do you see? How many officers do you see there?

A Uhm, the three that were barricaded behind the construction vehicle, maybe two other -- two or three other officers behind two vehicles all had their weapons drawn pointing at the -- the person's vehicle. And there were some orders shouting. I mean, as I stepped out on the balcony, I could see -- pretty much see everything that was transpiring and had a nice little view of the entire scene.

Q And you said you heard -- you saw -- you heard

some officers saying, "Go, go, go," and you saw a patrol vehicle taking off; is that correct?

A Yes.

Q On this diagram, can you indicate which patrol vehicle -- if you remember, which patrol vehicle you saw leave the scene?

A Well, it's not on there. Can I stand?

Q Go ahead.

A So my balcony is somewhat here. That vehicle, that other vehicle, was here when I saw it take off. So it went in this southern direction.

Q Okay. All right. Go ahead and have a seat.

And then you heard the officers yelling commands. And could you see where they were directing the commands?

A They were directing it towards the vehicle that was sort of corralled in by the two patrol vehicles, and they were shouting, "Show your hands. Show your hands."

Q And what did you see? Did you see any reaction coming from the vehicle?

A No, actually can see the person actually slumped over in the gutter. Part of his torso, his lower torso was inside the passenger's side vehicle with the upper torso and head I couldn't see because I think there was a gray hoodie. And the hoodie was over his head, but his

head was completely in the gutter.

Q And tell us what do you remember happening after they are shouting commands?

A After that, actually I ran back in my house and grabbed my camera and started actually taking photos. I took about 16 photos of that entire scene, including the vehicle with the person.

Q And what happening as you were taking these photos?

A The officers were still shouting commands. I can see a couple of other officers coming up in patrol vehicles, getting out of their vehicles. It looked like to me the three officers that were behind the construction vehicle, there was one that had, it looked like, an M16 assault rifle to me. There was -- there was a couple of others that had their weapons drawn, one that had another assault weapon that was behind the two vehicles, patrol vehicles that were behind the person's vehicle.

Q Did you hear or see any more types of rounds being fired?

A No. There weren't any other rounds fired up until there was an officer that I found out later on that looked like a shotgun to me that had some orange -- orange coloring on it, fired two rounds at the person,

and I found out later that it was actually a beanbag.

Q And did you actually see that?

A Yes, I did.

Q So you saw the officer shooting beanbag rounds?

A Yes.

Q And what happened after that?

A Uhm, thereafter the officers tactfully made motions towards the individual to the point where they actually grabbed the victim from the gutter and proceeded to handcuff him.

JUROR: You didn't hear any sirens before you heard the shots?

A I probably did, but didn't pay any attention to it because that area you typically hear sirens all the time going in that direction.

JUROR: Thank you. You stated the first multiple shots that were fired, how long was it after you heard the beanbags being shot.

A I was actually on my patio when the beanbags -- the officer with the rifle shot the beanbags. I was on my balcony or patio at the time that happened.

JUROR: Within the time frame how long?

A Uhm, maybe five minutes, maybe less.

JUROR: Did you come outside while they were shooting?

A No, no.

JUROR: You came after?

A I came after that.

BY MR. REES:

Q I had a question.

A Yes.

Q Were your windows open or closed?

A The windows or the blinds?

Q Let's start with the blinds.

A The blinds were -- they were vertical blinds, and they were at an angle this way to where I can actually have a view of the street level as well as have sunshine come into my apartment.

Q What about the windows?

A The windows were closed.

Q All right. Before hearing the shots, did you hear any talking or yelling or shouting?

A Uhm, no. I don't recall it. I mean, I'm sure there had to be, but I don't recall noticing it. I was too busy trying to unpack and relax. It was a 16-hour flight.

Q Okay. But bottom line --

A Yes.

Q -- you don't recall --

A No.

Q -- hearing any yelling, shouting?

A No.

MR. REES: Okay. Thanks.

JUROR: Your windows -- are your windows those sound-resistant windows, or is it double?

A They are double. My bedroom window was open and ajar. So there wasn't -- you can actually hear street noise. But I was in the other room, so it wasn't as loud. But the windows are, I think -- the patio windows are solid enough, they are not double. But my bedroom windows are double though.

JUROR: Have you had any kind of military training or weapons training of any kind?

A I am former military. I was in the Persian Gulf.

JUROR: I heard you use certain words, and I was curious.

A I actually worked with law enforcement for awhile.

MR. BANFIELD: Thank you very much for your time.

MR. REES: Thank you, sir.

BRENT MAXSON,

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

EXAMINATION

BY MR. REES:

Q Thank you, sir. If you could please take a seat. Do you want to take your coat off?

A I think I will.

Q Go ahead, take a seat. When you are settled in, if you will state your full name and spell your first and last name?

A Brent Maxson, B-R-E-N-T, M-A-X-S-O-N.

Q Thank you for your patience this morning, Mr. Maxson.

I understand that you witnessed at least part of the events related to this police shooting on May 12th, 2010; is that right?

A That's correct.

Q And that you first noticed something happening when you drove to the intersection of N.E. Halsey and N.E. 6th; is that right?

A That's correct.

Q Okay. Now that I have you settled in your chair, I'm actually going to ask you to stand back up and

show you a picture of the intersection and ask you: Do you recognize that aerial view of the intersection of Sixth and Halsey?

A Yes.

Q And for your reference, this is the McDonald's. Do you recognize that?

A Yes.

Q Before you say anything, why don't you stand over here so all the Grand Jurors can see you. There you go. Why don't you show us where you were when you first noticed something happening?

A Well, I was heading west on Halsey and came to the stop sign and stopped. And I noticed to my left were two, I think --

JUROR: Could you speak up a little, please, sir?

A I saw what I believed two police cars with their lights on and with them out of the car with guns drawn, telling the individual that was parked to keep -- "Please place your hands where we can see them."

And then to my right was an individual on a bicycle, gentlemen that had a beard. And I kind of looked at him. And I glanced at what was happening. I noticed it was a young black man that had -- I think it was an Rastafarian hat on type garb. And -- but the

angle where the police officers were kind of -- was right in the direct line of fire where I was parked. So I didn't hang around there. I just drove into the parking lot of the McDonald's thing. And I just thought, well -- I thought it was something that -- I didn't know what it was, but, you know, why they stopped him, but I decided to get out of there, didn't want to hang around, and ordered a McDonald cheese burger. There was nobody in the line, and ordered the cheese burger and paid.

And as they were handing me the burger through the window, then I heard the gunfire and it sounded like, you know, a string of firecrackers.

I was thinking, "My goodness, they shot this kid."

So I then parked my car here, walked around here and then saw that there was an officer in the street down here.

Q Okay. If you could pause for just a second. Correct me if I don't get this right. But for the record, you have motioned that initially you were westbound on N.E. Halsey. At the intersection of N.E. 6th, you took a right turn on Sixth northbound and then quickly made a dog leg or a left turn into McDonald's drive-thru lane, through the lane north to the very top of this picture, and then after getting your burger,

turned right or eastbound back to Sixth?

A The parking area here.

Q Parking area just to the west of Sixth, and then you walked on foot back to Sixth?

A Right here.

Q And looked due south back through the intersection of Halsey and Sixth. And then you observed a police officer down in the street; is that right?

A Yeah. Okay. His legs were out like this, sitting up.

Q He was sitting up with his legs straight out?

A Yes.

Q What happened?

A Well, I -- I -- he was just there.

Q No. I mean did you see anyone approach that officer? Did you see him stand back up?

A No. I -- I just kind of glanced, but then I also noticed that there were still officers with their guns drawn in this direction. Then I saw across the street the gentleman with the beard. And I approached him. I said, "Did you see the officer down?" And he said, "No, but I saw them tase the young man or whatever," and, uhm, I said, "Let's go across the street -- I motioned to go across the street, and then we spoke briefly to the woman that was here.

And then I still noticed there was people mingling around here, but saw the officers still had the guns drawn. And so I walked back in the parking lot here, because there was this concrete barrier. I didn't know if there was still going to be shooting or not. I noticed the window was shot out of the car.

So shortly thereafter the police, other police -- or police came and cordoned off the area, and then I walked up to the officer that was laying out the tape and I said to that officer that the gentleman with the beard had pretty much witnessed the whole event. So they went and interviewed him. And then I went home, basically.

And then, you know, so I got home, you know. I live in northeast Portland. Around close to seven o'clock, turned on the news and realized that it was pretty -- you know, maybe -- maybe I should go back and testimony -- give my testimony.

Q You were interviewed by a detective then?

A I went and talked to the Detective and gave my account of what happened.

Q In a tape-recorded statement?

A Yes.

Q You can return to your seat if you like.

In terms of time frame, can you give an estimate

from the time that you stopped at the intersection at N.E. Halsey and Sixth to the time that you made your order, drove through the drive-thru line and picked up your hamburger, how much time do you think went by, about?

A You know, that's a good -- good question. I -- you know, I would like to recreate that. There wasn't anybody in the line before me. I would say that, you know, two minutes, approximately.

Q Okay. That's what you told the Detective when you were interviewed?

A I think I told them three, but maybe --

Q You said it was 30 seconds to go from the stop sign to order, another minute to hand the dollar off and another minute to get your hamburger, so something like two minutes. That sound about right?

A Yeah.

Q So that would be from the time that you first saw the officers contacting this person to the time you heard shots being fired?

A Yes.

Q Is that right?

A That's correct.

Q Okay. Thank you. Any questions?

JUROR: Yes. What color car do you drive?

A It's a beige, beige color.

JUROR: When you was on Halsey, was there any other cars there or did you see any other cars?

MR. REES: Do you mean at the stop sign at Sixth and Halsey?

JUROR: Yeah at the stop sign at Sixth.

A No. I was the only car at that intersection that I recall. I mean, other than the car to my left, the silver car that the young man was driving and the police to my 1eft.

BY MR. REES:

Q I think he's asking when you got to the intersection N.E. 6th and Halsey, there is a stop sign there, right?

A Yes.

Q I think the juror is asking if there was another car in front of you that you had to drive around or something like that.

Is that what you are asking? No?

A No, I was --

JUROR: The sole car?

A -- the only car in the intersection.

JUROR: Did you hear -- did you see how many people were in the car?

A I only saw one person in the car.

JUROR: Did you hear that person say anything?

A I couldn't ascertain any communication from him. Obviously, I heard the police give this command. I looked in the -- you know, window, when I saw him, but, you know, it was like -- I wasn't hanging around very long. So that's all I recall.

JUROR: Thank you.

MR. REES: All right. Thank you, Mr. Maxson.

TRACY MARTELLO,

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. BANFIELD:

Q Go ahead, have a seat. Can you please state and spell your full name?

A Tracy, T-R-A-C-Y, Martello, M-A-R-T-E-L-L-O.

Q Ms. Martello, where do you live?

A Cornerstone Apartments.

Q What's the address there?

A 1425 N.E. Seventh Avenue, apartment 328.

Q And that's the apartments that -- alongside Sixth and Halsey, between Halsey and Clackamas?

A Yes.

Q Which apartment number did you say you are?

A 328.

Q 328. And what street is your apartment facing?

A It's facing Sixth towards Halsey -- Sixth and Halsey.

Q Now, there is a diagram behind you there. Can you indicate on that diagram what view of Sixth and Halsey you have from your apartment?

A Do you want me to stand up?

Q Please stand up. When you approach there, can you stand from the side? Perfect.

A My apartment is right here on the third floor. It faces that way.

Q Okay. You can go ahead and have a seat.

And were you home on May 12th?

A Yes.

Q Wednesday?

A Yes.

Q And were you home at the time that there was a police action occurring outside your home?

A Yes.

Q And can you just describe for the Grand Jurors when you first became aware that there was something happening outside?

A Uhm, it was probably right around 6:18 or so, I

had just gotten home from work. There was a car pulled over by a squad car and another car coming forward.

Q You observed that from where inside your home?

A My window facing north, towards Halsey.

Q What drew your attention towards the window?

A All the noise. There was a lot of shouting, and also I take my coat off right there. So I was standing right there. I saw blinking lights.

Q Was your window open?

A Yes.

Q And you said a lot of shouting drew your attention. Could you also hear sirens or anything?

A You know, I did. A lot was going on, but I know I heard sirens for the majority of that whole half an hour.

Q When you said you heard a lot of shouting, could you make out any of the words that they were saying?

A Yes. Uhm, I only could hear what was going on on the passenger's side and other shouting was just shouting. There was a police officer shouting, "Get out of the car," multiple times, nonstop, as he was trying to get into the vehicle.

Q And you said, "from the passenger's side." What do you mean?

A Uhm, from the car that was pulled over, the

police officer was on the passenger's front door trying to get it open, and then he would go back and forth between the doors saying, "Get out of the car."

Q And how many times did you hear him yelling "Get out of the car"?

A I couldn't even count. It was well over five, ten times. I was nonstop, "Get out of the car, get out of the car, get out of the car."

Q Could you hear this clearly?

A Yes. That was the only person I could hear completely clear.

Q Just so we can be clear exactly where you heard the shouting coming from, on this photograph, can you indicate and show us where did you hear the shouting coming from and what did you see? And you can get up and approach. Same thing, stand to the side, please.

A It was right on the side of this car. Someone came from around here and was yanking on the car doors right here saying, "Get out of the car."

Q And did you -- were you able to see whether there was somebody inside that silver car there?

A No.

Q Could you tell whether there was any response or was there any voices or words coming out of that car?

A I couldn't hear anything. The only person I

heard was the police officer. That was the only one I could understand what he was saying.

Q And from your vantage point, could you see other officers present?

A I know I saw a couple. They were -- I swear there was another cop car behind the regular squad car, but there were a couple behind. But I didn't see what they were doing or hear what they said. There was a lot, but I didn't see anyone to this side at all.

Q You didn't see anyone to the driver's side of the vehicle?

A Yeah, nothing from there over.

Q Is that because there was no one there or could you not see that from your window?

A Couldn't see it. There was trees that block. So I only had a fairly specific area I could see.

Q So, basically, your view was just of the passenger's side of that silver Toyota that we see there in the picture?

A I could see a little bit behind that squad car.

Q Which squad car. The marked one or unmarked one?

A The marked one.

Q The one with the siren?

A I saw that one pull up.

Q After you heard this Officer yelling, "Get out of the car, get out of the car," attempting to open the door, then walk us through what do you remember happening?

A Uhm, after he kept repeating that, I want to say it was that officer, I heard Taser -- a Taser. It sounded like two zapping noises. And then it just went really quiet for maybe 30, 60 seconds, and that's when the gunfire started. And it was loud, about ten shots. I saw the officer kind of run backwards towards Halsey.

And at that point, once I heard all those shots, I went to the back part of my apartment, as far away from the window. I heard someone shout, "Get out of the windows." I don't know if that was to the police officers or to the people all staring out their windows.

I was probably back by my door for maybe a minute or two. Then I heard a couple more shots, not as rapid, just boom, boom, boom, and then no more gunshots.

So I walked back towards my window, and that's where I saw the officers pulling the gentleman out of his car, the one in the tee shirt. They laid him down on the sidewalk and to the -- behind that squad car there they were checking out a police officer.

Q Behind the squad car, the marked one?

A The marked one. They were checking out an

officer, making sure that he wasn't shot. They were patting him down. I saw a paramedic run towards the car that's not a police vehicle, where the gentleman was lying down on the sidewalk. From there that was pretty much it.

Q When you -- when you heard Tasering, did you actually see somebody tasing?

A I don't know if I imagined it, but I swear I saw like a spark. But I could be crazy.

Q The officer that you heard yelling from the passenger's side, did you get a view of that officer?

A Yeah. I couldn't describe him, but I saw him completely. It looked like there was a Taser on the ground once all was said and done.

Q Did you see whether he was one of the officers that was tasing?

A No. It looked like it was him, but I have no idea.

Q You said now after the tasing happened, there was about a 30-second break?

A It just got kind of really quiet. All the shouting died down a little. There were still people talking, but I couldn't hear at that point.

Q Then you hear gunshots?

A Yes.

Q Could you tell where the gunshots came from?
A I couldn't. I was assuming it came out of the car, because the officer went running the opposite direction.
Q Which officer went running in the opposite direction?
A The only one I could see who was at the car, the one I thought was Tasering him, the one on the passenger's side. Because as soon as those shots started, he probably back-stepped about 15 steps, kind of ran.
Q Just took off running?
A I think he stopped at the corner, by --
Q And then at that point, you heard, "Get out of the window, get out of the window," so you backed away?
A Yeah.
Q Then you said a couple minutes elapsed before you heard something else?
A Seemed like a minute or so. I was actually on the phone at that point, so I'm not keeping track of the time as much. Then I heard a couple more shots.
Q Okay. Did these shots sound the same or were they different than the first set?
A They sounded very different. They sounded like they weren't in the same area either, but they were

quieter and they weren't as rapid. It was -- there was a delay between them as opposed to nonstop.

Q Could you hear anything that was going on at this point?

A No, because -- I mean, all I could hear was the shots once I backed away from my window. I went 20 feet back in my apartment.

Q Then after that, you said you waited for a little while?

A Yes. Once the gunfire stopped and I thought it was done is when I walked back over to my window.

Q Then you looked out and you saw someone lying on the ground?

A They were pulling him at that point. They were kind of checking him out. They were holding him upright for a very little portion of time.

Q When you say, "they", who was holding him upright?

A It looked like police officers at that point. There was a lot down there.

Q Then you saw some paramedics or some medics come in. How long after you saw them pull him out of the car did you see paramedics come and tend to the body?

A I'm not really sure. I saw someone running from the south to the north. It didn't seem like very long,

maybe a minute, a little longer.

MR. BANFIELD: Thank you. I don't have any further questions.

JUROR: When they pulled the gentleman out of the car, were you inside your apartment or were you back out --

A I was at the window.

JUROR: You was at the window?

A Yeah.

JUROR: What happened after they pulled -- right after they pulled him out of the car? Do you remember what happened?

A They pulled him out, and I remember seeing his shirt was bloody. And they lifted it up like they were looking at what was going on with his chest. At that point, they laid him down. That's where -- in another minute, I saw a medic running from the south to north.

JUROR: Did you -- when they pulled him out, did you see anybody shoot him again?

A No, no more shots after I came back to my window. When they were pulling him out, I didn't hear anything else from there.

JUROR: Okay. Thank you.

MR. BANFIELD: Thank you for your time, Ms. Martello.

JAGAN KANAPARTHI,

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

EXAMINATION

BY MR. REES:

Q All right. Go ahead and be seated. Did you understand that this is -- places you under oath to tell the truth?

A Right, true.

Q And could you please tell us your name and spell your first and last name?

A My name, but I like to shorten the first name as Jagan, J-A-G-A-N.

Q I have your last name spelled as K-A-N-A-P-A-R-T-H-I?

A Yes.

Q Is that right?

A Yes.

Q Okay. What do you do for a living?

A I'm civil engineering, I'm a Civil Engineer, so I design foundations and steel structures.

Q Where did you study the field of Civil Engineering?

A I did my Masters in Civil Engineering back in

South Dakota School of Mines and Technology.

Q South Dakota School of Mines and Technology. What city is that in?

A Four faces, famous Rushmore.

Q Rapid City, South Dakota?

A Yes, that is the place.

Q How did you enjoy living in South Dakota?

A Summer is good, but winter is a little bit hard sometimes.

Q I bet. It's pretty cold. Where do you live here in Portland?

A Uhm, on N.E. Seventh Avenue on Cornerstone Apartments.

Q All right. And what unit number do you live in?

A Apartment No. 314.

JUROR: Excuse me. What was it?

MR. REES: 314.

A 314.

BY MR. REES:

Q Okay. So we have heard from quite a few people that live in those apartments, and we're asking them about whether they saw or heard anything during the shooting that happened there on Wednesday, May 12th. Were you in your apartment on that date?

A Yes. I'm at home. I moved new to the city. I

moved from Kansas to here because I got a job here. So I stayed at home on that day because my starting day not start then.

Q So you had a day off?

A No.

Q Is that what you are --

A No. I moved on like April 31st, so had to get into the apartment. My job is May 17th. So I think it happened before 17th, like 14th, I guess.

Q May 12th was the date?

A Right.

Q Sounds like you are saying --

A I start my job there.

Q That was your start date?

A Start date.

Q With your new employment on the 17th?

A True.

Q Okay.

A So I'm at home.

Q Yeah.

A I am browsing my internet on the laptop. So we are kind of like getting all my stuff at home, placing all the things in their places, because we came there recently. So we are unpacking the things.

Q All right.

A It's a little bit nice yet in my home. I heard something, I heard some noise, but I don't know what it is. But later on I came to know like from news and talking around, when I go to check my mailbox, they are saying like they heard some noise, like -- they said like it's a shooting.

Q What did you hear?

A I heard some noise, but I'm not able to recognize it. So I came to recognize those are shootings after I came to know from the news.

Q Okay. Did you see anything happen as far as the police on the street or anything else?

A Yes. I will explain. I didn't see anything actually because they are saying it happened on N.E. Clackamas Street. So this is the street, so I'm staying here on Sixth Avenue. So it happened here. So I'm able to view only this side.

So after the sound like one lady in the car is screaming. I think she stop on the road and just before the stop sign and she's screaming like -- she is stopped and screaming and hitting the steering thing.

So after within few minutes cops came and ask her to step down. And then they do her witness, I guess. That's what I saw. Even then I thought it might be some accident, car accident, like that, because I'm not able

to recognize those shootings because I am seeing what happened but I am not able to see it, I am not able to get any understanding of what happened. So until I saw it in the news.

MR. REES: All right. Do you have any questions?

MR. BANFIELD: I do not.

BY MR. REES:

Q Can we have him indicate on the map where his apartment is?

A I think I have an idea.

Q Are we able to see your apartment on this aerial photo? This is Sixth and Halsey, and this is the apartment complex. And if you are able to show us, why don't you stand to one side so everyone can see?

A Okay, I'm looking at Clackamas. I don't know. I'm not familiar with the map, to be honest. I know Clackamas and N.E. Seventh Avenue and N.E. Sixth Avenue. So I don't know what this street is.

JUROR: Seventh would be to your east.

Q Here's another map, sir, that shows more of this area.

A Okay. I can tell on this map.

Q Here's Clackamas, Sixth, Seventh?

A So can I have this?

Q Sure.

A Okay. This is Clackamas, right? And this Clackamas and this is Seventh. So this is here the apartment, right?

Q Right.

A So my apartment is here.

JUROR: On Seventh?

A N.E. Seventh.

JUROR: That's Sixth you are pointing at. Are you saying Seventh or Sixth?

A This is Sixth Avenue, right. So it's here. This is the apartment, on it?

MR. REES: Yes.

A So I'm on this side. So I don't have chance to see this. So this is where it happened, right?

JUROR: No.

MR. REES: No.

BY MR. REES:

Q And this -- this side faces out towards an electrical substation or transformer station. Are you familiar with that? Do you look at that to the west?

A Yeah, I saw that, but I'm not able to visualize it on the map.

BY MR. REES:

Q I think what this Grand Juror is asking is what

you would be able to see from your apartment? This -- this photo shows the Sixth Avenue side of the apartment complex.

A Okay.

Q Were you on this side or this other side?

A I'm on this side. So all the cops came, yes.

Q Did you ever look out your window and see all these police cars below?

A Yes.

Q Okay. And when did you peek out the window and see those things?

A Uhm, when the lady started screaming, I came outside, like saw that within two minutes cops came. I don't know exact time. Within a very short space of time cops came.

Q Before you heard the lady screaming, you were not looking out the window?

A No.

Q Okay.

MR. REES: Does that answer the question?

JUROR: Could you show?

BY MR. BANFIELD:

Q Okay. You say you saw a lady in a red car?

A Right.

Q Can you use this photograph and identify it

that's the red car you are talking about?

A Yeah, true. Yes, she's the lady. I don't know whether she is inside or not. Yeah, so I'm on this side.

Q So you are facing Halsey?

A Halsey. Facing Halsey.

Q So you could see her car this way from that way?

A Right, right.

JUROR: Did you ever see that lady pull up and then pull back?

A I think when I saw, it's stationary, car is stationary, is screaming like hitting the steering, I guess. She is doing like this, and I think because she saw something and because she screaming -- she screaming. I don't understand what it is because I am on the third floor.

MR. BANFIELD: Thank you very much.

MR. REES: All right. Thank you for coming in.

CANDACE **HUNTER,**

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. BANFIELD:

Q Pleas go ahead, have a seat and please state and spell your full name?

A Candace Hunter, C-A-N-D-A-C-E, Hunter, H-U-N-T-E-R.

Q And, Ms. Hunter, where do you live?

A 1425 N.E. Seventh Avenue, apartment 126.

Q How long have you lived there?

A Four years.

Q And, ma'am, what do you do?

A I'm a registered nurse at Legacy Emanuel Hospital in the operating room.

Q And we are taking testimony of witnesses that observed the officer-involved shooting on May 12th in the area of N.E. 6th and Halsey, between Halsey and Clackamas area. Is that where your apartment is located?

A Yes.

Q I'm sorry. Which apartment number is that?

A 126 -- no 124.

Q Take your time?

A I'm lying. I promised I wouldn't.

Q And which -- do you have a view of Halsey, Clackamas or Sixth Street -- or Seventh, even, from your apartment?

A I don't know the streets. I look at the power station.

Q So that would be facing Sixth?

A Uh-hum.

Q And were you home on May 12th when this occurred?

A Yes, I was.

Q And when did you first become aware that there was police outside your apartment?

A When, as in time?

Q Yeah, when as in time or what caught your attention?

A Okay. I -- I know it was around 6:30, because the news said it. I went to bed -- I laid down to take a nap around six o'clock. And I love my apartment because it has all the sirens and everything and you hear them going back and forth and cars and it's just kind of nice being in the big city.

And I heard the sirens stop. They were really loud, and I heard them stop. And I thought, "Whoa, this is close." And then I heard an officer say, "Get out of

the car and put your hands on top of the car" -- or to that effect.

So I get up -- do not go to the window yet because I don't have any clothes on. So I get dressed, go around, go out onto my patio and just kind of stand up on this little ledge there and look at what was obvious off to my right, this policeman -- well, I look over there. That's where the activity is at, is kind of off to the right. I'm towards Burger King -- McDonald's.

As I get up there and I look over, there is a big -- what else did you ask me for? Am I going too far.

Q No, you are not. That's fine?

A Okay. Because it said only answer the questions you are asked.

Anyway, a police car comes back this way toward me, backing up, and then he takes off really fast. I mean, screeching fast.

Q Okay. You know what? I'm going to stop you there. There is a photograph behind you. And can you indicate on that photograph where your apartment might be and what view you have?

A Sure. I am -- okay. I don't know if you can see this, but this is a flower bed and then there is a higher thing here. And I am back here. This is my neighbor's apartment. This is my apartment patio doors.

I'm behind this cement embankment looking down at the car. And I could see the back of the car and the side of the car.

Q Okay. You initially hear a lot of sirens; then it stops. That's what catches your attention. And then you hear an officer yelling something to the effect of, "Put your hands up, put your hands on top of the car"?

A Uh-hum.

Q You get dressed?

A Uh-hum.

Q And then you come outside?

A Uh-hum. I come outside, and I look. This wasn't his car. It was a different car.

Q How much time had passed by the time you heard the yelling, "Put your hands up," you got dressed and then you came out to the patio?

A Before or after the incident? I can tell you my time estimate afterwards. It seemed like it took hours, but it was only seconds.

Q It didn't take you very long?

A No. I would say maximum a minute or so.

Q And at this point you only hear yelling, correct?

A Yeah. I did not hear anything else. I did not --

Q Did you hear gunshots at any point?

A At that point, no.

Q Why don't you walk us through what happened as you come outside and you said you see a car leaving?

A Okay. I get up on the side. I'm looking at the car. I see several officers on the driver's side of the car. And I see -- I don't know the adjective or give the right word -- the noun for this guy -- whoever got shot was sitting on the passenger's side of the car, was kind of moving up. That's when the car went like this and around really fast. It was all to save time. That's what I saw in my collective thing.

Q Anything else? Continue, tell us what you recall from the entire --

A From then on it went very noisy. I heard -- I heard yelling. After the car left, then the yelling -- you know, there was kind of a, "Show us your hands, show us your hands" uhm, lots of people, more than one person saying that, it seemed like.

And then I heard, "Tase him, tase him." And I could see -- only because this nice guy showed me a Taser once so I know what it looks like, but I could see two Tasers, and they tased him a couple of times, and he kind of (indicating) and then it was, "Shoot him, shoot him. It was, "Tase him, tase him." Then, "Shoot him, shoot

him" and then there was lots of gunfire, lots of --

Q So you heard them say, "Tase him, tase him"? Did you see which officers were tasing?

A I thought I saw that the two that were toward the -- the front of the car.

Q The car that stopped, which would be the silver Toyota car pictured there?

A Yes.

Q So two officers toward the front?

A Because they were standing on this side -- on the passenger's side -- I mean, on the driver's side. The guy was in the passenger's side. And I heard, "Tase him, tase him," and it went down -- it went down so fast I wouldn't be able to tell you. I just know that he kind of went this way, then they said, "Shoot him, shoot him" and gunfire happened, and it was many rounds of fire. And I won't be able to tell you if there was 40 or not. It just sounded like a machine gun, which I actually heard being fired once, so I figured there was three people shooting.

Q How many officers did you see that were on the scene?

A I saw three people at the car, because the back car left and then a total -- there were -- then they were just coming.

Q They just kept coming?
A Uh-hum.
Q Did you see any officers on the passenger's side of the car?
A There weren't any -- no, there were no officers on the passenger's side of the car.
Q Okay.
A I saw somebody slink around -- no, not slink -- cautiously come around the corner and check for a pulse after he was dead from this end.
Q That was after the firing?
A Yeah.
Q I just want to get a little bit more information from you before the firing. Now, could you see the person that was the -- inside the silver vehicle, could you see any movements from them?
A No.
Q Could you hear them saying anything?
A No. All I could hear were officers saying, "Show me your hands."
Q And did you see any response to that?
A No. After he was -- after the -- after he fired, or after all the guns went -- or all the shots were fired, the victim, whoever, anyway, his head was in the gutter. His back was towards me. His hips were

still in the car. I noticed that his jeans were down around his thighs and he had underwear on. I always wondered how they keep the pants on.

But, anyway, he was down. And when he fell over, I did notice that he took two normal respirations and then a large abdominal respiration, and that was it. And the only reason why I could say I saw that is because that's what I saw when he was down there. But I think I did see that because I'm a nurse.

Q Right.

A And then the big -- the white policeman that's behind the car then came up, and there were three men -- I believe three, but it was like they were making a barrier. And they kept saying, "Closer, closer, get up on there." And they went up on to the sidewalk, the car went on up to the side on the sidewalk. They were standing there. Then an officer with a beanbag gun came and shot him three times.

Q Now, let me take you back to when the shooting occurred. Could you see how many -- where the shots were coming from?

A Could I see where they were coming from?

Q Yes.

A I think so. It was those guys that were standing by the car.

Q Those guys, meaning the officers that were standing?

A Uh-hum.

Q And could you see how many officers were shooting?

A I thought there were three.

Q And again how many shots did you hear?

A I don't know, lots of them.

Q Did you see any officers go down?

A No. I was not there for that part. The officer was gone.

Q Now, after they shot him with -- you saw beanbags, how many beanbag shots?

A Three.

Q Then what happened after that?

A Uhm, somebody grabbed him, and I don't know who it was, which one it was, but somebody grabbed him. And after they determined when they shot him and stuff, they kind of pulled him up on the sidewalk out of the gutter.

Q Okay.

A So that he was out of the car, is when he was -- he was hanging out of the car, then they just pulled him up on the sidewalk. Somebody came and checked for a pulse?

MR. BANFIELD: Thank you.

JUROR: Yes I'm going to ask you --

A Okay.

JUROR: Good afternoon. You say they pulled him out the car?

A No, he was laying.

JUROR: Laying out of the car?

A His hips were on the passenger's seat.

JUROR: Okay.

A His head was in the gutter. He was like this. Then after the beanbag shot, I can even tell you where they shot him with the beanbag, and then they pulled him -- one person pulled him up on the sidewalk.

JUROR: Did you see anybody open that passenger door?

A No.

JUROR: And they shot him while he was halfway in and out?

A No. The door was closed.

JUROR: Okay.

A The --

JUROR: I'm talking about the beanbags.

A Oh, beanbags, yeah. No. He was on the ground then. His head was in the gutter. Then he got shot with the beanbags.

JUROR: He got shot, you said, three times?

A With the beanbag.

JUROR: With the beanbag. Did you hear the officers say anything to him before they shot him with the beanbag?

A The whole time they were saying, "Show me your hands, show me your hands." And I know -- I remember saying to myself when he fell out and he had his last respiration, because I have seen people die a lot -- not like that, but in a hospital and stuff, and so -- and then when they shot him the first time with the beanbag, in my head I'm saying, "He's dead." Then the second time, "He's really dead," you know, he hasn't moved at all, nothing. Then they shot him a third time.

MR. BANFIELD: I just have -- go ahead.

JUROR: Oh, I have a different related question.

MR. BANFIELD: Go ahead.

JUROR: In the beginning you said a car pulled away. What car were you referring to?

A I think it was -- it was -- I think it was the -- an unmarked police car that was behind the silver car, and it went like (indicating) and then out that way very fast. And so I didn't -- I know that there was somebody in the backseat, and I didn't -- I didn't know if that was an officer or, you know -- but my first impression was it must have been the driver of the car,

because there was a person in the passenger's seat of the car -- the car, because that's where the guy was, was on the passenger's side that I saw.

BY MR. BANFIELD:

Q Just two things. That was before you heard the gunshot, you said?

A Yes, before the gunshots.

Q Is when you saw that car leave?

A I did not see the original gunshot. I just saw after that car left, from then on is what I saw.

Q Okay. And you said you saw the driver of the silver car fall out of the car. Could you see whether -- how -- how he got out of the car? Did someone open the door?

A No, no one opened the door, no. I saw -- what I saw was the gunfire happening and the door open and this guy fall out.

MR. BANFIELD: Okay. Thank you very much.

KAREN MORESCHI,

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

EXAMINATION

BY MR. REES:

Q Thank you very much. Please be seated.

If you would state your first and last name, spell your name for us?

A My name is Karen Moreschi, M-O-R-E-S-C-H-I.

Q All right. Thank you for your patience this afternoon.

JUROR: Spell your first name?

A Karen, K-A-R-E-N.

BY MR. REES:

Q Could you tell the members of the Grand Jury what you do for a living?

A I am the Director of a child care center near the Lloyd Center.

Q All right. What's the name?

A Sunbeam Daycare Center.

Q Is that associated with a particular church?

A It is. It is housed within Temple Baptist Church.

Q If you could, go ahead and stand up and there is

an aerial photograph behind you. And if you could indicate, standing to one side so we can all see, where the church is and where the daycare is?

A This is Clackamas Street. My front door is right here on Clackamas. This is Sixth. And the church front door is over here. So this whole building right here on the main floor is my Sunbeam Daycare.

Q You are indicating the building that is just on the south side of Clackamas, which is one block south of Halsey Street. And it looks like your office is in the corner of Clackamas and Sixth; is that right?

A Correct.

Q Okay. Go ahead and be seated, please.

And let me ask you about the evening of May 12th, 2010. I understand you were actually driving back to the Temple Baptist Church at about 6:30 in the evening?

A I had not worked that day, so I was coming as a member of the church to have dinner at six o'clock.

Q All right.

A So I was exiting the freeway at about 6:15, 6:18. I came on 84.

Q All right. And as you were driving northbound on Wasco -- is that right?

A Wasco is east and west. I was going northbound

on Seventh.

Q Northbound on Seventh?

A Turned west on Wasco and went through the parking lot looking for a spot on the corner of the church, and there was none. So I went onto Sixth, turning north, whereby I saw all the commotion.

Q All right. What did you see, exactly?

A I saw a lot of lights of police car lights. I saw several police cars, and I saw policemen surrounding the cars.

Q And what else did you see?

A Uhm, I saw that there were -- there was a resident from the apartment complex who was running out from the balcony and checking to see what was happening and then running back. But I did see -- I heard a lot of yelling and shouting, and then I saw gunfire begin.

Q All right. And could you -- could you hear the gunshots?

A Yes.

Q And when you heard the gunshots, what did you see happen in the street?

A Uhm, I saw a lot of, you know, the police officer seemed to sort of stop. I saw one from the front. Remember, I'm looking at the rear-ends of the cars. In other words, I'm sitting in the middle of the

two-lane traffic, no other cars there. So I don't mean to say that there was other cars. But as I looked forward, I was looking at the back end of a car, a police car angled that way, another one angled this way.

And from the front of that second car that I spoke of, I saw a policeman go down, saw him come around with a very stiff leg, come around the car and be on the other side. And then I saw him sort of what I would describe as a crab walk back with one leg stiff back to the side -- curb side and stay there and then another police officer come over and assisted him, coming behind the car.

Q When you saw that happen, what did you think you were seeing?

A Well, I thought I had seen that a police officer got hit. I was concerned -- you have to understand that's my daycare there. And I looked behind me in my rear view mirror. I was holding up traffic. I was sitting -- I didn't park. I was sitting in the middle of the street.

And I looked behind me, and I saw a car coming behind me and I saw two bicyclists down a block, like they had come off of Multnomah. So my thought was what do I do? I looked at my daycare. The lights were out. I was glad about that, which meant we were closed. Then

I opened my car door so that nobody could proceed any closer.

I was amazed at how many gunshots there were. It seemed to last forever. But, you know, that's one of those things, flashes, you don't know how long it is. It seemed like a long time.

Q And my last question is: When you saw this police officer go down in the street in terms of a time line, was that immediately when you heard the first shots or was it in the middle of it or was it after you heard all of the shots?

A I wish I could be exact. I can't. It was fairly -- fairly close to the beginning, but it was just in rapid succession except that it seemed to take so long, you know. My first impression was, uhm -- well, you don't need my first impression.

Q All right. When you talked to the Detective about this, you stated the officer falling down was one of the first things you saw happen. Does that sound correct?

A It was accurate.

MR. REES: Any questions from the Grand Jury?

JUROR: Yes. You said you heard yelling?

A I did.

JUROR: Could you distinguish what they were

saying?

A No, there was just a lot of it. It was just a lot of yelling.

JUROR: Can you show us on the map exactly where you were located when you were watching it?

Do we have a larger map that we could use?

A It's not that map. I came off -- yes, Grand. It wasn't Grand. Where was I? Oh, this is the block. Okay. I came off the freeway here at Ninth, off the Banfield, came down here, across Seventh and down Wasco, went around the parking lot here, came out here, stopped, turned right and I was about this far. As soon as my car began to be straight, then I saw all of -- I was right here, and the activity was happening here.

JUROR: Okay. Thank you very much.

A So I was a distance of one block away. Does that make sense?

JUROR: Yes.

MR. REES: Anything else?

Okay. Great. Thank you very much.

THE WITNESS: You are welcome.

THOMAS FORSYTH,

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

EXAMINATION

BY MR. REES:

Q Thank you, Officer. If you could state your name, please, and spell your name?

A Officer Thomas Forsyth, F-O-R-S-Y-T-H.

Q All right. Officer Forsyth, we called you before this Grand Jury to testify a little bit about Tasers, as we heard testimony over the last couple days about Tasers. And I understand that you have some expertise in the use of and the performance of Tasers?

A I do.

Q And can you tell us about how you got that expertise?

A I came to the Training Division eight years ago as a research and development officer, and my first project actually was to develop a Taser program. So I did the research, put the program together and then designed and implemented the training for the entire Police Bureau over the span of the last several years and continue to be the lead Taser instructor for the Police Bureau.

Q And I believe just for demonstrative purposes you brought a Taser with you; is that right?

A I did.

Q Can you just show us what that looks like physically?

A Sure. If I can use this desk here?

Q So go ahead, if you want to just show what you have here?

A The Police Bureau uses a Taser, X26 Taser. It operate at 50,000 volts and about the 2.1 milliamps. Voltage is an indication of how far energy can arc through the air, and the amperage is how much energy is actually in that arc. So it's a high voltage, so it can arc a relatively long distance, but then there is not much power actually in it or energy in it.

Q To complete the circuit, in other words, you need that kind of voltage, but you are not actually putting 50,000 volts into the person?

A Voltage isn't how much. It's how far it can arc, not how much energy is actually in it. It can arc a ways, but it's got low amperage so the broadcast power actually in it is much lower.

Q Physically, how does it work?

A There is a couple different methods that this works. The probe cartridge is attached. Can I stand? --

is attached to the front of the Taser, and it has two probes that are inside of it.

Now, I busted the glass doors off of this for the purposes of this demonstration, and there are two probes that are oriented vertically, okay, one on top of the other. And they are attached by 21 feet of wire.

So this probe cartridge fits on the front of the Taser, like this fashion right here. And when the trigger is pulled, the energy goes to these contact points and it's delivered to this probe cartridge and then the probes are delivered by an internal inert nitrogen capsule and that provides propellent for the probes.

Q You said the wires are 21 feet long?

A Twenty-one feet long.

Q What is the effective range of the Taser?

A Any one point to 21 feet, just inside 21 feet.

Q And I believe you brought a probe that's attached to a wire with you; is that right?

A This is a probe that's been removed from the wire, but you can see inside this probe cartridge where it sits. And that's a probe that's outside the probe cartridge.

Q Do you want to pass that around?

A Sure.

Q I guess it's sharp, so don't hurt yourself with it.

A Be careful with it.

Q So are you able to give us kind of a layman's explanation how, if effectively deployed, the Taser works and what its effect would be on a subject?

A It is designed to deliver enough energy to cause the involuntary rapid contraction and release of the muscles that are affected or where the energy is applied. To be most effective, the wider the spread -- so if I were to deploy that probe cartridge, it has a maximum spread of 36 inches or three feet at 21 feet of distance, between the two probes. So the wire between -- wider between the two probes, the more effective it will be because more energy is being applied to muscle tissue.

The purpose is to apply the energy to muscle tissues, cause it to rapidly contract and release and that results in a lock-up, if you will, where the person is actually physiologically debilitated and unable to resist or fight.

Q And how long does that last for?

A When you pull the trigger, the automatic timing cycle is five seconds. So you can pull the trigger, release it and it will automatically go for five seconds.

Q And after five seconds?

A After five seconds, it stops, so at that time there is no energy that's being applied and, therefore, the fight potentially can be back on. And it can be reapplied either by holding the trigger down or by reapplying the trigger for another five-second cycle.

Q What are some of the factors that can render the Taser ineffective or less effective than it might otherwise be?

A We call them "failure issues". Now, in order for the Taser to be successful, these probes either have to be in the skin or have to be a minimum or a maximum of two inches combined, so an inch per probe or combined for two inches between the two probes away from the skin for that energy to arc into the subject and render them incapacitated.

So if there is -- because of clothing or some other issue that keeps those probes away from the subject's skin, then that's what usually causes a failure.

Q And can you have a situation where a person receives some effect but not the full effect?

A Yes. And that can be either because of a -- what we call a clothing disconnect -- that by far is our most -- most usual failure issue -- or missing with one probe or for some reason those probes being away from the

skin more than a combined two inches.

Q In practice, over the years that you have been involved with the Taser, is it the case that with some subjects, after the Taser is deployed, they give up the fight and they become compliant?

A Yes.

Q And is that really the goal?

A That really is the goal, yes.

Q Are there other instances you are aware of in which, despite being tased, the subject continues to fight?

A Yes, either during the cycle because of some sort of disconnect or in between cycles when the energy is off, yes.

Q Okay. I don't know if you mentioned -- maybe I just missed it -- but instances where the person is just maybe, you know, kind of a natural reaction, just like you would if you were stung by a bee or something, that you just start swiping the probes off; does that happen? Does that have an effect on it?

A That does happen, right. It is a natural reaction where if you are not completely physiologically locked up, that could be due to a narrower spread so the energy is being applied into a localized area instead of several muscle groups, it has been known to happen where

the subject will actually swat at it or try to wrap the wire around it or pull it out. That happens frequently, if there is some sort of diminished response.

Q As part of this investigation, you viewed the video clip that a witness with an I-Phone took and you listened to it, correct?

A That's correct.

Q And could you hear the Tasers being deployed?

A I could.

Q Were you able to form any kind of opinion about what you were hearing on the video clip?

A It sounded to me like there was some sort of intermittent connection or some sort of connectivity issue that could be due to clothing or several other issues, but most likely clothing.

And the way I could diagnose that was the Taser when it's -- when the trigger is pulled and it's just arcing in the open air, there will be a loud crackling noise. When it's being successful and that energy is actually being delivered to a target, that noise is much softer. So it's a softer snapping noise. So I could tell the difference in listening to this video that there was intermittent contact with the subject because of the sound the Taser device was actually emitting.

Q You were asked to examine the Tasers used in

this case, right?

A I was.

Q How many Tasers were deployed?

A There were three.

Q And are you able to tell us when they were deployed or used? In other words, what time?

A Yes, at 1823.

JUROR: 1823 is?

A I'm sorry, 6:23.

Q 6:23, is that close, can you tell us to the second, or is that the extent of the timing?

A We're able to go down to the second.

Q So could you go ahead and tell the Grand Jury, if you are able to, the exact time of deployment for each of the three Tasers in this case?

A Okay. For Officer Murphy's Taser, it was 6:23:02 and 07, there were two different deployments.

Q I'm sorry. Just before you go on, so we're clear on that, does that indicate to you then two five-second periods for Officer Murphy?

A Yes, it was. And that is off of a download that's able -- the last 1500 trigger pulls on this device are recorded, so we're able to download the date and time and some other diagnostic issues as far as the battery and the internal temperature, and we're able to gain the

time off of that.

Q And so from 6:23:02 to 6:23:07, that's five seconds, so does that indicate that it was deployed just immediately following the first cycle?

A Yes.

Q Is that right?

A Yes.

Q Okay.

A And it would have cycled through -- that doesn't tell us that there was a connection or that it was successful, but rather that the trigger was pulled at those times and it cycled for that period of time.

Q What about for the next officer?

A For Sergeant Livingston it was 6:23:08 and 6:23:13.

Q All right.

A And for Officer Foote, it was 6:23:20 and 6:23:25.

Q And I take it then that after 6:23:25 with Officer Foote, none of those three Tasers were deployed again; is that right?

A They were not deployed again until I -- when I did my downloads.

Q Thank you. Any follow-up questions?

JUROR: Yes. How long have you been on the

force?

A I have been a police officer 22 years.

JUROR: With the Taser?

A No with the Tasers, I have only been around the Portland Police Bureau and in Oregon for about eight years.

JUROR: Is there -- we heard that it was a black Taser and the yellow Taser. Is there two types?

A There are black and yellow Tasers.

Q Is there any difference of currency in them?

A No. When we first started with the X26 program -- I'll back up. We started with the M26, which was the predecessor to this device, and then cycled those out and went to the newer device in '04 about. That's when we trained the entire Police Bureau. We had some black Tasers we used in a pilot project, put them out on the street when this device first came out to gather our research for the new device. There are still some specialized units that have the black Taser, but the bulk of the material, vast majority of the inventory are yellow Tasers, just like this one.

BY MR. REES:

Q If I could follow up on the Grand Juror's questions. Did any of the three officers in this case that you just mentioned have a black Taser?

A No. They were all yellow Tasers.

MR. REES: I think that's what you were asking; is that right?

JUROR: Yes, to a degree, because we heard a yellow Taser was seen and a black Taser.

MR. REES: Right.

JUROR: But they didn't indicate if the black Taser was shot or fired. So that's why I asked to see if maybe one was more potent or stronger than the other.

A No they are exactly the same. It's just the different colored plastic.

BY MR. BANFIELD:

Q Another follow-up question to that: The Taser can be used in more than one way?

A That's correct.

Q You showed us how it was deployed. What is the other manner of use?

A The other manner of use is what we call a "drive stun". That would be with either an extended probe cartridge. Like if this one were to be deployed and the probes were away, we could do a dry stun and that's using the contact points on the front of the Taser cartridge to make contact with the clothing, the skin of the subject. So that would be delivering that energy in the localized area where the probes are generally -- generally more

effective, bearing in mind a variety of failure issues, because of the wider spread of the probes.

Q And this Taser is capable of doing both of those.

A They are capable of doing both, yes.

JUROR: As well as the black?

A As well as the black. The black one is exactly like this only it's a different color.

JUROR: So if you were going to get the two probes in the passenger or the driver's side window of a car, how far away would you have to be? Because they continue to open, I guess.

A For a maximum of 36 inches, yes.

JUROR: Right. At 36 inches you are not going to get it in the window, because it's maybe 18 to 20 inches. So how far away would you have to be to deploy to get it inside a window?

A Well, that would -- that would depend on your target, where the target is sitting because we don't want to hit them in the face.

JUROR: Right.

A And so we have to -- the spread is -- the rule of thumb is one foot of spread for every seven feet of distance.

JUROR: Okay.

A So inside that seven feet of distance you are going to get less than a foot of spread, so it's potentially going to be less effective because of that minimized spread. So we have to have a maximum of inches in between the probes in order to get what we call "neuro muscular incapacitation". What that is is that involuntary lockup. So as those probes -- the closer the probes are, the less likelihood that we're going to achieve that neuro muscular incapacitation.

JUROR: Have you ever been tased?

A Yes.

JUROR: And can you describe what it feels like?

A It is -- in a perfect clinical sense when you are able to achieve that, the perfect probe strike, it's incapacitating.

JUROR: But how does it feel? Does it hurt?

A Oh, it hurts and you feel completely helpless because it's something that you can't overcome because it's a physiological response.

JUROR: Thank you.

JUROR: And that actual physiological incapacitating only lasts for the five-second cycle and you could theoretically move?

A Yes.

JUROR: You are able to overcome pain?

A In between the cycles, all bets are off.

JUROR: And then the times, is that an actual trigger pull? Can you tell the difference on the log between the trigger pull and them holding it down, or does it look the same?

A It shows how many seconds, how many seconds that cycle was. So if it was just a five-second cycle, it would show -- that could be either holding it down for five seconds or touching the trigger, releasing, allowing that five second automatic timing cycle to run through.

JUROR: Has -- has any of them would you say, misfired or not worked, you know, when they were deployed?

A Oh, absolutely, yeah. Yes.

JUROR: Does that happen frequently?

A You know, I would have to take a look at what our numbers are, but I would venture a guess that we're right around 90% effectiveness, give or take -- probably take from 85 to 90% effectiveness. And without exception our failure issues are most often clothing disconnections, because of clothing it takes those probes away from the skin.

And then we have an intermittent contact where if the person is moving, could roll up against the probe and then cause that probe to collapse closer to the body

and then get some sort of intermittent response.

JUROR: Thank you.

MR. REES: All right. Thank you very much.

LELAND SAMUELSON,

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

EXAMINATION

BY MR. REES::

Q Please be seated. Then state your first and last name, spell your name.

A It's Leland Samuelson, L-E-L-A-N-D, S-A-M-U-E-L-S-O-N.

Q Mr. Samuelson, what is your occupation?

A I'm a Forensic Scientist with the Oregon State Police Forensic Services Division.

Q What is your educational background?

A I have a Bachelor of Science Degree in Chemistry from the University of Portland. Upon being hired into the Forensic Services Division, I have had to partake in many, many hours of training that's -- that's specific to the type of discipline I work in. So within the Crime Laboratory, I work in the Firearms section of the laboratory. So with that comes training modules that I

am required to take to maintain a proficiency in that area of work.

Q How long have you worked as a Forensic Scientist?

A For a little over twelve years.

Q And in addition to your work in the laboratory, I believe you have testified as an expert witness in Courts across the State of Oregon, correct?

A That is correct.

Q You testified primarily in State Court or also in Federal Court?

A Actually, I -- all my testimony has been in State Courts.

Q Were you asked to examine some of the physical evidence in this case, which was gathered following the police shooting on May 12th, 2010?

A Yes, I was.

Q And among those items you were asked to examine, did you look at a Taurus brand semi-automatic handgun?

A Yes, I did.

Q All right, which was identified as having come from -- well, maybe you don't know -- but coming from the Toyota vehicle. Did you bring that gun with you?

A Yes, I did. I actually have it.

So this firearm is in sealed packaging. It has

the evidence collection items on it. It was Portland receipt 120-9417. And so once that's received in our laboratory --

JUROR: 42?

A 120-9417, and that was their item number one.

Q All right. And can you show us that weapon?

A Yeah. It's a -- and then as a package, the firearm was in a box and then an ammunition and magazine was sealed separately in a separate package.

Q So could you go ahead and show us the gun?

A Sure. Let me put some gloves on.

Q Sure.

A It's marked as a Biohazard. And it's our practice in the laboratory, when an examiner receives evidence, it comes in sealed to us. So the red labels is Portland Police sealed packaging. As it's in my possession, I'll have the evidence open. But I had it packaged actually for return back or transport here, so the blue tape gives it is still sealed.

Okay. So this firearm, it's sealed with a zip tie through the chamber on it, and that's just to render it safe. There is no ammunition. I don't have any live magazines or anything with me that it could fire. This is a safe firearm, Taurus Millennium pistol. Millennium is a designated model designation known as PT111. The

serial number is TV, as in victory, K, as in kilo, 95611.

Q What caliber is that handgun?

A This is a nine-millimeter Luger caliber. When I say, "nine-millimeter Luger", that refers to the -- gives us some information about the dimensions of the barrel, the diameter. And then the Luger also gives a description of the type of cartridge that the bullets are loaded into. So it's a double-action, semi-automatic pistol.

At this point I don't think I'll open the magazine, but I'll just demonstrate. The ammunition is loaded into a magazine. It holds ten cartridges. The cartridge magazine -- the magazine with the cartridge is inserted into the grip of the firearm. At that point the firearm is not cocked. It's not ready to fire until I manually -- you can see the serrations on the slide area. This is the frame, the black part, and this is the slide. The pistol is designed to operate automatically. So each time I pull the trigger, the slide is going to retract to the rear and then it's going to come forward, loading the next cartridge to be fired.

But to get it to fire the first time, I have to actually pull it back by hand initially, pull it back and release it. That's going to allow it to fire.

A couple safeties: One is key-lock safety that

renders the firearm permanently so you can't lock the pistol. It did not have the key with it. It was in an unlocked state. On the other side of the firearm you can't see, but there is a thumb safety on it. The thumb safety is an off-on to block it.

The pistol being a semi-automatic, each time you want to pull the trigger -- you pull the trigger, you going to fire the cartridges in it, the slide will automatically move to the back, load the next cartridge forward into it and then it will reset the trigger so that you will have to pull the trigger again. I'll have to actually manually pull the trigger each and every time I fire the gun. If I load ten in it, as long as the magazine is loaded, I keep pulling the trigger, it will fire all ten cartridges.

Q What happens when the weapon's discharged, obviously, the bullet exits the barrel, but what else happens?

A Right. The part of the -- the loading and the firing process, the bullet comes out the barrel, the slide retracts to the rear and it's going to pull the cartridge case out.

Maybe I should stop and talk a little bit about the parts of it. This is a blow-up of a piece of ammunition, just a demonstration. This is what we refer

to as a "cartridge". The cartridge is made up of multiple components, one being the bullet that's loaded into -- seated into it. This is the cartridge case. Inside is gunpowder, and on the base of it is the primer.

So the way the firearm operates is this is a chemical that's shock sensitive, an explosive mixture. So the firing pin is a little pin in the firearm that comes forward under spring tension and it hits the primer and it causes the burning process to start. As that gunpowder burns, using pressure, it pushes the bullet out of the barrel.

Now, because this is designed to operate automatically, when this slide retracts to the rear, it's going to pull the cartridge case out of the firearm and it's going to eject it away so that way it's ejected out of the way and it's loading the next cartridge in as it comes forward.

Q When those casings are ejected, do they come out in a uniform fashion?

A Typically, they eject to the right and usually to the rear. That's just typical, but that depends how the firearm is held. In a normal shooting position, it's going to eject to the right, to the rear. But sometimes guns are held in different orientation when they are fired.

Q In a dynamic situation where the gun is moving, being moved at the time it's being fired, could that effect how the casing would be ejected?

A Yes, yes, all that could.

Q Okay. Is the operation of this particular weapon the same as the operation of the handguns that are used by the Portland Police?

A Yes. Minor differences, but the Portland Police duty weapon is manufactured by Glock. So it's just a different manufacturer.

Their firearms are also nine-millimeter Luger caliber. They are semi-automatic in operation. Probably the main difference between the two of them, whereas this firearm has a thumb safety that's on the side of it, that's again -- it's operated with the thumb up or down. The Glock instead uses a safety on the trigger that actually, when you push on the trigger, it's going to deactivate the safety and allow the trigger to come forward or come to the rear where it will allow it to fire. In addition, the Glock has several internal safeties that prohibit it from firing if it's dropped or, if you maybe pull the trigger partway, it's going to block all that from happening. It's designed so that the trigger has to be fully pulled to the rear to get the firearm to go off. I would say it's probably a safer

design.

JUROR: Who makes that gun?

A This is made by Taurus.

JUROR: And in which country?

A This one is made in Brazil.

JUROR: And what does a gun like that cost?

A Brand new, new condition, probably maybe four to $500, I would guess.

Q Is that one relatively new or can you tell?

A I can't tell, but it's probably -- this firearm and this design and this model has been made for probably the last five or six years. It's within that. It would vary a couple years.

Q You said it had a serial number?

A Yes.

Q Can it be traced to the original owner?

A Uhm, I'm not sure about the original owner tracing, because the -- there is -- when a person individually buys a firearm, that licensed dealer has records when they got it from the manufacturer. So that sometimes can be the first stop.

The next stop would be if a person buys that gun at a gun shop or, say, a sportsman warehouse or a Bi-Mart or anywhere else that might sell firearms, they are going to have to fill out the paperwork that's going to record

that transaction. But every transaction subsequent to that, you know, it could be passed on and on.

JUROR: Do you know?

A No, actually, we don't. The tracing is done by a different agency.

MR. REES: We'll have some information on that for you.

JUROR: Thank you.

BY MR. REES::

Q I believe you said that particular firearm holds ten rounds in the magazines?

A In the magazines, that is correct.

Q And it can hold an additional one in the chamber?

A Yeah, sometimes -- it depends on the shooter, but if you load up 10 in the morning and you insert this into the firearm and you pull the slide back to load the first one in it, now you have nine in the magazine. Some people will retract the magazine out, stick one more in it and stick the magazine in there. So now the gun is actually holding 11 cartridges.

Q In this case, how many rounds did you receive with the firearm and magazine?

A There was -- I can double-check my notes, but I believe there was five in the magazine -- well, it was

separated before I got here, but this packaging had the magazine plus five cartridges, and it says, "Removed from magazine." This has one cartridge removed from the chamber. So the gun was loaded when it was recovered and they unloaded one out of the chamber ready to fire. So I have six cartridges here.

Q All right. And then you were also, I believe, given a spent cartridge casing in this case, correct?

A That's correct.

Q And you were also given a bullet -- yeah, you were given a bullet to examine as well?

A That's correct.

Q Right. Can you explain the process that you went through in order to determine whether a particular casing, particular bullet, was fired from that weapon that was seized from the Toyota.

A Yeah. What we do is we -- when we're looking at firearms, bullets and cartridge cases, there are a couple things we're looking at. First, we want to narrow down the type of evidence by the class. So, in other words, we're going to determine if -- if bullet A to bullet B is, say, the same diameter. That being one class characteristic. That's going to give us some information on the size.

The bullets -- I'm just speaking of bullets

right now, but when they -- when they pass through the barrel of the firearm, the firearm has raised portions in the barrel called "the lans". And the lans are designed to grip ahold of the bullet as it's going down the barrel. And they actually are designed to spin the bullet, so when it comes out it's, spinning in a spiral, like a football. That allows the bullet to travel with more stability and more accuracy as it goes towards its target.

Well, the lands that are in the barrel of the firearm are -- may have varying widths. That depends on different manufacturers. Glock might have a certain style. Taurus might have another and Remington or something might have another. In other words, the key point is that -- given two unknown bullets, we can narrow down the similarities by counting the number of rifling marks there are on the lands, number of grooves, the diameter of the bullet, the twist of the rifling, whether it twists to the right or the left.

Once we kind of look at those class characteristics, we say we can't eliminate these as being from different guns, but we don't know if they are from the exact same gun. So what we will do is then we look at it under a microscope. We have a -- we have a microscope that magnifies the bullets about anywhere from

10 to 50 magnification power. And we look at them side by side under the microscope and we look at each individual groove on the bullet. We look at the microscopic accidental marks that were just left from the barrel when it was manufactured. Those markings are unique to each barrel. So in other words, if, you know, they make five Taurus pistols all in a row, each barrel of the firearm is going to be slightly different when you look under the microscope.

So we look at the two bullets side by side on the microscope, and we will bring them around to the point where we can find there is the striation patterns on each bullet is going to match the next bullet. You can pass that around and see how they line up. That gives us a unique matching between bullet to bullet.

Say we have the firearm, itself, if we have a gun and we want to match to an unknown bullet, we'll take the gun in our laboratory, we'll test fire it using ammunition into a water tank to collect the bullets, then we will look at those bullets that we know came from the firearm against our unknown bullet.

Q In this case there was testimony that a bullet described as a ball-type bullet, unlike the hollow point bullets issued to the Portland Police, was recovered at the scene, that was submitted. Did you examine that and

did it match the Taurus nine-millimeter handgun in this case?

A Yes. I identified one bullet that was submitted to us to that Taurus pistol.

Q That was fired from that pistol?

A That was fired from that pistol.

Q Also described was a bullet casing recovered from the Toyota vehicle in this case where the gun was found, that was submitted. Were you able to determine whether that cartridge casing was fired from the Taurus handgun?

A Yeah. We identified a cartridge case back to the Taurus pistol, and we look at a cartridge case -- it's a similar process where you are looking on a microscope. Now we're looking at the markings left behind from the firing pin. And just the machine marks inside this -- the breech of the firearm, the part that holds all this pressure as it's discharged. We can look at those individual markings and compare to those from our test of the bullet -- or the firearm, too.

Q I believe you -- just for demonstrative purposes you did some test firing, brought the casings. Did you want to pass those around?

A This is an example -- there was some discussion on types of bullets. And for example -- this is an

example we referred to as a "full metal jacketed bullet".

It's designed to -- it's an economical style of bullet design. It's just a simple copper cup -- you can pass those around -- that's filled with lead. They are kind of -- they are inexpensive to produce. They are inexpensive, cheap to buy for target practice or shooting, and they are -- the point of the round nose on them is they allow for the bullets to easily be fed in a wide variety of firearms. So they are going to be suitable to shoot in a number of different guns.

Q Now, these bullets you are passing around are not like the ones that the police are issued, correct?

A Exactly. This is a full metal jacket style bullet.

Q Is this also known as a ball type?

A Yeah, "ball" is a military term that was used to describe military ammunition.

Q So in terms of the behavior of this kind of bullet, unlike police bullets, are these more likely to pass through and through objects?

A Yes. They do not expand. Again, that design went back to the military. A military designed bullet by convention is not -- they are not allowed to expand just because it's -- they cause less harm to a human target. So the nine-millimeter actually was designed as a

military round in Europe. So that's where it came from.

Now, hollow-point bullets are designed to expand violently and quickly. When I mean violently, I mean just a really quick opening as soon as it contacts fluid, tissue. And the point of that is to keep the bullet from over penetrating through a target. Law enforcement will use that so if they are shooting at a target or a subject, they don't want the bullet to pass on through and then hit innocent bystanders. So they are designed to actually penetrate and stay in a body.

Q So, in examining the bullets that were submitted to the lab in this case, was it readily apparent to you which ones appeared to be consistent with police rounds versus the one that ultimately you confirmed was fired from the Taurus weapon?

A Yeah. There was two things we were able to quickly determine. One was the style of the bullet, full metal jacket versus the Portland Police duty ammunition, which we're familiar with from their experience, the ammunition they use and purchase.

Then we're able to also determine the rifling pattern. So quickly, those class characteristics, the Glock has a different rifling pattern than Taurus would, so we were able to eliminate quickly this was not from any of the officer's Glock weapons.

Where did this bullet come from? We have a Taurus recovered. That gives us the match to that.

Q In terms of the type of energy available or expanded in the bullets fired in the Taurus, is that readily capable of passing through and through a person's leg, for example?

A Yes.

Q Just to divert for one moment, I want to present a piece of evidence through a report. The witness by report is Dr. Janelle Scott, Ph.D -- J-A-N-E-L-L-E, S-C-O-T-T, Ph.D. And this is a report dated May 21st, 2010?

JUROR: May -- what was --

MR. REES: May the 1st, 2010. I'll pass this around also.

Q But for the record, under "Results and Conclusions", it says that the STR profile, which I believe is Short Tandem Repeat --

A That's correct.

Q -- profile from the DNA on the bullet, which was submitted -- this is the ball bullet -- matches the DNA profile from Chris Burley. It says in a random population of unrelated individuals, the estimated frequency of occurrence of this evidentiary DNA profile is less than one in 10 billion for the Caucasian,

African-American and Hispanic populations.

And then State's Exhibit No. 2, which is the fired bullet with brown discoloration, was forwarded to the firearm section of the laboratory. I'll pass that around.

But that is referring to the bullet then that you examined and matched to the Taurus; is that correct?

A That's correct.

Q Let me ask you a question about that report, because it also states that although the DNA of Chris Burley was detected, that no blood was detected. So how is that possible?

A Well, DNA is found in all cells within the body -- not just blood cells, but skin cells, tissue cells. Any cells that is made of the proteins that make up the body, you are going to have DNA in that. So in a case of a bullet that has passed through a body, it's -- first of all, blood is not always going to be trans -- I guess deposited on a bullet -- depends where it hits. It has to hit a bloody object or bloody portion of the body. Depending how it passes directs how much blood gets left behind.

In this case, just the passage through the tissues of the body is going to leave enough cellular material to get a DNA profile.

Now, the process to develop DNA on an object, say a bullet, is very sensitive, so small amounts of DNA are able to be copied to develop that DNA profile.

Q Is there a complete genetic profile in even one cell from the human body?

A Uhm, I --

Q Or are you qualified to answer that question?

A I probably should -- I probably should not answer that one. I'm not a DNA Ph.D.

Q Like Dr. Scott?

A Dr. Scott, right.

Q Going back to the firearms examination, what was the total count on casings and bullets that you received for examination?

A Let me -- I received -- let me break this up into two. I received 32 cartridge cases and 27 bullets that had the same class characteristics as the Glock weapons.

Q Did you compare those against the Glock weapons?

A No, I did not.

Q You have not done that. Those are the ones that have the class characteristics of the Glock. That would be in addition to the one bullet and one cartridge casing previously described that matched the Taurus?

A That's correct, yes.

Q Okay. Let me ask you now about your examination of Officer Burley's clothing.

A Yes.

Q What did you look at and what did you conclude or observe about that?

A Sure. I received a pair of duty uniform pants and shirt, pants and shirt, then a pair of Calvin Klein just white cotton briefs, underwear. My examination of that is two-fold. We try to look to see if there is any residue left on the clothing that could kind of help us determine a proximity distance involved in the muzzle of the shooter to the victim.

And then we also try and document the position of any possible bullet holes and see if we can actually determine conclusively, precisely, that is, in fact, the hole caused by a bullet. So I looked at his clothing for those three purposes.

Q All right. I have put up on the board the anatomy view marked by the surgeon in this case that treated Officer Burley. He's marked black dots, the bullet entry and exit wounds, that he noted, as you can see, close in to the groin region. Do you have -- I don't know if you could pass around for us the photo of the examined clothing, maybe talk about what you noted in terms of damage to the clothing?

A Sure. Yeah. I'll start with the shirt. So this is a photograph of the shirt. You can see the large area -- it looks to me like apparent dried blood at the bottom of the shirt.

And then on that shirt I noted two round defects in it. I marked them F1 and F2.

The next thing we do is we try and see if those can be associated with the same location of the wounds that Officer Burley had. So this is just a close-up of the shirt. This would be as you are looking at the tail -- this would be the -- I guess the seam of the shirt, the button line here.

So this is right at the very base of the hem line was a hole here, and slightly above it was this other one that I mark as F1.

So given that that's an area of the shirt that would be tucked in, it's possible those are in alignment with his gunshot wounds. However, is it two shots or one that could cause that? I really couldn't say from looking at it, because actually there is a small crease that you did see through this shirt here, a crease along this line, that actually allows this layer of the shirt to pull back up over top of this. We can't rule out maybe how the shirt was tucked up and possibly both bullets passed through, that maybe both bullets passed

through the hole.

I'm going to skip to the duty pants. Now, these are just reference pictures we use for our own documentation. They aren't meant to be full-scale presentation size. They are little darker images. This is a picture of the pants here, front of the pants. This is the zipper lying here. And then this -- these three pictures are a series of just magnifications of the zipper area.

So starting at the circled area, a little bit closer in and then zoomed in on the -- on a hole in the front of the shirt, which would have been right above -- well, right to the left of the zipper line. So that's the single hole that we noted in the front of the pants.

And then flipping the pants over to the back; again same series of pictures -- far out, closer, little bit closer -- was a single hole noted in what would be the left, I guess, buttocks area, right basically the seat of the pants.

So, from our standpoint, it looks like what we would call a "perforating hole. "Perforating" means something that's caused by something actually went in and then it exited out the target. From my standpoint, looking in the laboratory environment, I can't tell if it was a bullet that went front to back or back to front.

Next thing we do, we do a general exam of that. Then we actually have some chemical tests where we try to determine if we can look for the residues left by the passage of copper bullets. So we will look for copper residue on these pants. In doing that process, I was not able to detect any residues that kind of helps clarify the passage directions.

Q In examining the pants, you told me that you noted a number of different defects, because these particular trousers appear to be somewhat worn?

A Yeah, especially on the front side of it, there was a couple other areas where it looked like there was some tears, some burn marks. This is another picture of the front. This is all on the cuff of it. There was a hole here. There was a small tear in the left -- the right thigh area, right in here. There were several markings, other ones that we looked at. In my experience, in looking at bullet holes from a full metal jacket bullet that passes through, they are generally going to be tight, round, small holes. The fabric is just going to open up and allow the bullet to pass through. Then it tends to contract back; then it retracts back down. We are looking for pretty small holes.

Q All right. And then was there a final item?

Yeah, the -- the under garments, the underwear here. And so this is a pair of -- this is just the front and back pair of Calvin Klein cotton briefs.

What did you note about Chris Burley's underwear there?

A What's interesting is looking now, focusing back on this front panel a little bit closer up, this is in the lower crotch area. There is a set of three, I'd say, defect-type holes. I can't conclusively say that's from a bullet hole -- three pretty close area, right in the lower front crotch area.

So, again, I did some testing on the holes to try and see if I could determine if there was any chemical residues that could kind of indicate the sequence of how a bullet passed through, and again in the testing that I did I was not able to detect any.

Q All right. Does that mean anything one way or the other?

A Well, from looking at all the layers pulling together, really what we can say we know at least one shot was fired. We can't eliminate the fact there could have been two shots fired in the clothing. I can only speak to one with certainty.

Q Okay. Just based on the examination of the clothing?

A Yeah, that's just based on the clothing we had.

Q I believe you said you did examine the clothing for gunpowder?

A That's correct.

Q And what was the result of that?

A I didn't find any gunpowder particles on the clothing. It's hard to make an estimation on what you don't find, but when you do find gunpowder particles, we can do some testing to determine if it can be reproduced. If we don't find it, that means a couple things. One, is that it was beyond the distance in which the gunpowder can travel, which typically is going to be three to four feet is the maximum I would expect to find it. Or maybe there could have been some intervening object that blocked it.

Q So in this case, Officer Burley has stated he believes he was something like ten feet back from the shooter when he was shot. Would that be consistent then with not finding gunpowder?

A Yes.

Q All right.

A Yes.

Q But you are saying at very close range, a gunpowder discharge from the firing weapon could be transferred on the clothing?

A That's correct.

MR. REES: Thank you, Mr. Samuelson. Let me see if there are any follow-up questions from the Grand Jury.

JUROR: So, if I could ask you one more time? You don't know if these holes are caused by one or two?

A Not -- not just from the clothing exam. It became difficult without having the ability to put the clothing back on. And even that is -- you know, a shooting scene is a dynamic, moving environment. Clothes can be pulled up, scrunched up, come untucked. Underwear can creep up. All these things can happen that's not -- prohibits you from just laying them right back down on the garments and showing everything is in alignment.

JUROR: You mentioned how many of the cartridge cases and bullets you found consistent with the Glock. How many were found that were consistent with the Taurus?

A Only the one.

JUROR: One bullet and one cartridge case?

A One bullet and one cartridge case.

JUROR: So with the Taurus, if you don't pull it back after you load it and you just pull the trigger, will it fire or not?

A No. It will not fire until you manually load that first cartridge into the chamber. Once you load that cartridge, you can leave it in that state for days,

like with the safety on, then just pull the trigger.

JUROR: Take the safety off and pull the trigger, yeah.

I have one other question. Can those bullets be -- are they easy to buy, those full metal jackets?

A Yes, Wal-Mart -- if you went to the Wal-Mart on 82nd Avenue, you could buy thousands of them.

JUROR: How many bullets does the Glock hold?

A The magazines are 17 as designed. Sometimes as the springs get a little weaker, you can insert 18. Plus the one extra into the chamber as well, too. Eighteen is what I would say. Nineteen would be an exception to the rule.

MR. REES: All right. Anything else?

JUROR: Was the bullet that was found at Radio Shack tested?

MR. REES: I don't know if he knows the answer to that question. You know that? Yeah, he doesn't know the answer to the question.

JUROR: Unless --

A I'll just say the total that I gave you, we -- Officer Kammerer gave us a set of evidence initially, and then we had an extra bullet that came like a day or two later. As I know -- we could look it up by receipt number if he had some information on it. But we did get

a second full metal jacket bullet that came in a couple days later -- I am sorry, a second hollow point duty-type ammunition bullet that came in a couple days later.

JUROR: I have one other question. You say the bullet's ejected either to the right or to the left after it's fired? -- the casing, sorry the casing.

A To the right.

Q To the right. How far do they usually go, to the right or how high?

A I can't speak to that because it's a physics-type of issue. If I hold the gun in a shooting position, in general, if I -- if I was, say, in that corner of the room shooting, so that way, we would have them distributed to the right and to the rear. I would expect most of them to approximately fall in this general area from where I'm at with my arms, so that corner of the wall. Typically -- what can effect that, though, if the gun is slightly turned clockwise around, now they are going to be traveling more up in a higher arc and dropping lower. If the firearm is held lower, like pointed this way, then the cartridge cases are going to be dropping more straight -- gravity directly to the ground, so you are going to get a tighter pattern. All we can usually do is with some testing we can say under ideal circumstances this is the farthest that we will

expect cartridge cases to go.

JUROR: Thank you.

MR. REES: All right. Thank you very much.

THE WITNESS: Thank you.

BRENDA MacKINNON

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

EXAMINATION

BY MR. REES::

Q Please be seated. And if you would please state your full name and spell your name?

A Brenda MacKinnon, B-R-E-N-D-A, M-A-C-K-I-N-N-O-N.

Q Thank you. And thank you for your patience this afternoon. You are here to testify about what you saw and heard on the afternoon of May 12th, 2010. And first, where do you -- where do you live?

A At the Cornerstone Apartments, No. 319.

Q All right. We have been hearing about these apartments. So they are located on Halsey, between Sixth and Seventh; is that correct?

A Yes.

Q And do you recognize the apartment complex here,

this overhead view? This is the Temple Baptist Church, and this is Sixth and this is Seventh here?

A Where is the power substation? This is me right here.

Q I'm going to ask you just to turn, if you would, please, maybe stand to one side and point it out to the Grand Jurors?

A Okay.

Q Actually, here, let me put this one up. Is that better. Power substation, Sixth and Halsey. Go ahead and point that out.

A This is mine, right here.

Q All right. Thank you. Go ahead, be seated. Let he me show you two photographs and ask you if you recognize these viewpoints or perspectives?

A Yeah. That's taken from my bedroom window. This is taken from my living room.

Q So the first one, which shows a street, tree and the sidewalk, street below, this is from your --

A Bedroom.

Q The bedroom. And then the second photo?

A Is from the living room.

Q Is from your living room. And there is a little patio right off that, too. Okay. And obviously, you are on the third floor of the apartment building?

A Yes.

Q Were you at home at about 6:30 in the evening on May 12th?

A Yes, I was.

Q And do you recall whether your window coverings were open or closed?

A Open.

Q And were your windows opened or closed?

A One window was open.

Q What's the first thing that you noticed, in other words, that you either heard or you saw that struck you as unusual that afternoon?

A Well, I never lived in an area, a urban setting like that. I hear a lot of sirens, but I heard a siren. It was really loud. I was sitting there watching TV. I thought, "Gee, that is really loud. It must be really close." Then it stopped kind of abruptly, but I didn't get up or anything. That was the first thing.

Q All right. What was the next thing you noticed?

A More sirens and, uhm, then kind of some sounds of some commotion and then gunshots.

Q In terms of the commotion, what -- what did you hear? Was it sounds or voices?

A Voices, yeah.

Q Were you able to make out any words?

A No, not really. It all happened really fast. I didn't catch any words.

Q How many --

A No specific words.

Q How many gunshots did you hear; do you think?

A Well, I -- I think it was like 15 or 20. It was pop pop pop pop pop pop pop pop pop pop, pop pop, like that.

Q At some point did you look out the window to see what was happening?

A Yes. So when I heard the gunshots, I got down on the floor and crawled as far away from the windows as I could get. And then when they stopped, I got up and went over to -- looked out that window in that picture in the living room and looked down, and I could see two officers dragging a wounded officer back and setting him behind the police car.

Q You say they were dragging him?

A Yeah. He was -- had his legs out and one guy on each arm pulling him backwards.

Q All right. Did you see that immediately after the shooting stopped?

A Uh-hum.

Q Did you notice anything else?

A Well, I could tell that he wasn't mortally wounded, because he was sitting up and he was using his

arms and he was talking.

Q So you could tell he wasn't dead?

A Yeah.

Q Did you see what the police officers did with him or what happened to him?

A No, they kind of just -- I saw them set him there, and then I walked into the bedroom and looked down, and there was the guy on the ground and police officers -- and I'm not sure if they were all police officers, maybe some firemen -- standing around him. And there were little white things on his hands with wires going up. But he was obviously dead.

Q Did that look to you to be some sort of medical device?

A Yeah. Yeah, that's what I thought.

Q All right. Any further questions?

MR. BANFIELD: I don't have any questions.

MR. REES: Any questions from the Grand Jury?

All right thank you very much. And thanks again for your patience this afternoon. Sorry for the delay.

AARON DAUCHY,

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. BANFIELD::

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

A Aaron Dauchy. Aaron, A-A-R-O-N, Dauchy, D-A-U-C-H-Y.

Q Officer Dauchy, how long have you been with the Portland Police?

A Just over eleven-and-a-half years as a paid officer, three-and-a-half years as reserve prior to that.

Q Can you just give the Grand Jurors a summary of your training and experience -- your training to become an officer and some of your experience since you have been an officer?

A Started as a reserve, went through the Basic Reserve Academy, which was six months, twice a week and then all day Saturday and then the Basic Academy and -- Basic Academy and the Advanced Academy for me were run together, and that was 19 weeks, I believe, straight through.

Q That's a little unusual, isn't it?

A Yeah. I got hired when Portland did what they

called Operation 80, where they ran their own Academy with AD officers because they couldn't get officers through the Salem Academy fast enough. When we did ours, we did the State Academy and Advanced Academy all together. Typically, when an officer gets hired, you go down to Salem, do that, come back, work the street for a few months and then go to the Advanced Academy.

Q What is your current position with Portland Police?

A I'm currently assigned to the Transit Division.

Q What other positions have you held during your eleven years?

A Prior to transferring to Transit Division, I worked North Precinct on afternoons -- or afternoon shift for five-and-a-half years, then the time before that was my training rotation.

Q And you are currently with the Transit Division, you said. And what are your duties with the Transit Division?

A Responsible for Tri-Met related calls throughout the tri-county area. Transit Unit currently is made up of, I believe, 16 agencies now, officers from the tri-county agencies through the tri-county area. I'm currently assigned to the downtown office, so we have primarily Downtown Portland, North Portland, down to the

county, Clackamas County, line and then we primarily go out to Gateway, 122nd area.

Q And in your duties as a Transit Police officer, do you oftentimes work with the team from HEAT?

A We do.

Q And in what capacity?

A Uhm, even though I'm assigned to the Transit and our primary responsibility is Tri-Met, we are also free to cover on other calls. On top of that, especially working with the HEAT and the gang units, gang members that are young don't drive, they ride the trains, the buses. So that's usually where I come into contact with the HEAT and the Gang Enforcement.

Q Back to a little bit about your training. Are you trained on any other weapons platform -- what type of weapon platforms are you trained to use?

A Qualified on the Glock nine-millimeter, Taser, pepper spray, asp baton, and I'm also certified in the less-lethal or more commonly known as the "beanbag shotgun".

Q What about the Taser?

A Also on the Taser.

Q What type of certification do you have or what type of training do you have to go through to be qualified on the beanbag?

A Beanbag is, I believe, a 30-hour class. Roughly about five hours of that is classroom, the other -- the rest of that is all range time. Primarily, shooting -- since the beanbag rounds are expensive, even the training rounds -- you shoot a lot of birdshot, but you still practice shooting for the same area, which is basically from the waist down.

Q Now, we're here today taking testimony, as you know, regarding the officer-involved shooting that occurred on May 12th of this year around N.E. Halsey and Sixth, in between Halsey and Clackamas area. And you are familiar with that incident, correct?

A Yes, I am.

Q In fact, you responded to that and you took up a position of less lethal with the beanbag?

A Yes, I did.

Q Now, before you responded to that call, where were you?

A At the time when the traffic stop was called out, I was at the Transit Office, which is Downtown Portland at First and Jeff -- I'm sorry not, First and Jeff -- First and Davis. It's a parking garage there on the west end of the Steel Bridge.

Q And when the call came out, what did you hear exactly?

A The first thing I remember hearing when the radio keyed up, I remember hearing sirens in the background and then I heard "two triple 6". I immediately knew that was probably Officers Foote and DeFrain.

Q How did you know that?

A Having worked around the HEAT Team for about the last year-and-a-half quite a bit, I knew their numbers. I knew who was usually assigned to it. However, even though they said, "two triple 6", I knew they had a new number because they recently had been transferred to the Traffic Division -- or assigned under the Traffic Division. So I knew they had a new number.

I could hear the sirens. They called out the stop. When I heard the sirens, I kind of thought, "Well, maybe they are going to pursue", so I was kind of listening to it. But I was still doing other stuff at the office.

Q So you heard the sirens, thought it might be a pursuit, continued your regular work. What were you doing at that time?

A I was actually doing follow-up on another case from Tri-Met.

Q Okay. So you continued listening. Was it information about the call coming over the radio?

A Yeah. I started listening. I remember hearing the stop. I knew it was over near Lloyd Center. But at that point, since they weren't a chase, I wasn't paying attention to where the stop was. I just knew they got a car stopped.

Q Let me stop you there. I'll let you continue this. Where are you listening to this on the radio?

A I wear a pack set and I wear an ear piece.

Q You have an ear piece on your personal radio?

A Yeah.

Q Go ahead.

A So at that point I continue what I'm doing, but then I hear them. Once they say they got the car stopped, they are like, "Start us another car." At that point I thought -- well, I could still tell by their voices, having worked around those guys, they are a little amped up; maybe this is not going to go good.

So at this point, I started going to my car. As I got in my car, put my cell phone in the pole, pulled out of the garage, I heard them say, "Next car in, box this car." At that point, I turn on my lights, sirens used to clear traffic, started up the Steel Bridge.

Next transmission I heard was, "He's not being compliant." At that point, I started going a little faster. And as I'm coming up the ramp of the Steel

Bridge, I heard, "Shots fired." That was broadcast probably two times, maybe a third time.

And after the last time it was broadcast, I heard, "Officer down, code zero."

Q Now, at this point -- and we have some maps behind you. Where are you when -- and I don't know which one is better. I don't think we have the bridge on here, but probably using this one best, kind of give us the path that you come in. But tell us what are you thinking at this time when you hear "Shots fired, officer down." What's going through your mind as you are heading to the scene?

A At that point, I know an officer has been shot. Like I said, I'm still coming across the Steel Bridge, which --

MR. REES: Excuse me, can you stand on the other side.

A The Steel Bridge is kind of over here. Basically, I hear "Shots fired". So I come across the bridge, come through the Rose Quarter Transit Station, which is right over in this area, under I-5, come up first to Holladay. At this point, they are broadcasting they are taking the officer to the hospital by police car. They are still calling for more cars.

I come up Holladay, cross MLK. I get to Grand

and Holladay. At Grand and Holladay, I take a 1eft. And as I'm coming up, I clear -- start clearing traffic at Multnomah. As I cross Multnomah, at this point, about here, I ask, "What's a safe route in?" I know they are Sixth and Halsey, because I looked on the CAD where the stop was at, but I'm not sure where exactly they are or which way they are facing. I heard somebody say, "Northbound".

At that point, since they hadn't really said -- they said, "Come in from the south," but I wasn't sure how far up I could go. I turned onto Wasco. As I'm turning onto Wasco from Grand, I see a silver slick top take off, headed out northbound with who I learned later was Officer Burley.

At that point at Sixth, then came in from the south.

Q Okay. You see the slick top. What type of car are you in?

A I'm in a marked car.

Q So you are coming north -- you are going north on Sixth?

A Yes.

Q And on that photograph, can you tell us where -- where is your vehicle?

A This is a marked police car behind this vehicle

that's been shot up and surrounded by other police cars. This is my car.

Q Go ahead. Have a seat. So as -- describe the scene, what's going on, what's going through your mind, what do you see as you are approaching the cars on Sixth and Halsey?

A As I'm coming in from the south, I come up, I see officers standing on the curb line. I see police cars over to the side of the car. I see police cars in front of the car. I can see that they are challenging somebody. I don't know the person is in the car. I can't see. I can see the passenger door is open.

I pull up behind it, because there is not a car there, get out, run around. As I run around my car, they tell me to pull my car to the curb.

Q Who tells you to do this?

A One of the officers who was out. I'm not sure who it was. I believe it was Officer Dale. I'm not positive. Run back around, jump in my car and then I anchor it hard right and pull it right up to the curb. Since I haven't seen the person, I don't know if the person is in the car. It's obviously shot up. You can see where glass is broken out, there is glass on the street.

I run back around. They are like, "No, pull it

up on the curb." I have to run back around, get in the car, pull it in. I pull the car on top of the curb where it's final rest is in the picture there. At that point, go around -- as I come around, I ask who is shot, so I can get them, remove them, because there is officers dealing with the gentleman that's been shot. This is the first time I've seen him.

Q Who the shooters were in the incident?

A Yes, who the shooters were in the incident.

Q Okay. Continue.

A I remember somebody saying they have been removed. So at that point I go up. I know he's down. I can't see his hands. He's basically laying out of the car, his head is up against the curb. Once again, I can't see his hands. There is already like four officers with guns pointed at him. At that point, I tell him to move, reach in my car and grab my less lethal shotgun.

Q When you arrive, do you hear commands being given?

A Uhm, I don't remember, because like I said, I was in and out of the car twice to move it.

Q Okay. Do you remember at any time after you arrived hearing commands?

A I remember somebody saying, you know -- I remember officers talking to each other, trying to figure

out custody, who is going to go up, contact him, getting people in position. Occasionally I would hear command "Show us your hands." After I grabbed my less lethal, they are making a plan to go up and at that point they decided I would be the one to give the commands. And as soon as they told me that, I dropped down to a knee, because Officer Dale was on my left and he had an AR 15 rifle. Having shot those, when those go off, they are really loud. I didn't want to be standing next to him if he had to fire.

I dropped to the knee at that point. I started giving him commands. I was telling him, "Show us your hands. You shot a Portland Police officer. You do exactly as you are told or you will be shot again."

Q Any response to your commands?

A No response.

Q How many times did you give these commands?

A I'm guessing four, five times. I remember hearing Sergeant Livingston activate the SERT Team.

Q What does that mean to you?

A Well, at that point I know they are going to activate SERT to go up and contact him if he's moving, showing any movements.

Still not seeing any movement from him. They are talking about going up, and I said, "Well, before we

go up, do you want me to bag him?" meaning shoot him with the less lethal. I remember somebody saying, "Yes." And before I did it, I said, "Where is Livingston? Make sure before I shoot."

Q Let me stop you there. So you are the one that says, "Do you want, me to bag him"? You initiated that thought?

A Yeah.

Q And who told you "Yes, bag him"?

A Uhm, I don't remember who the officer was. I just remember somebody -- and there were several officers behind me and to my left.

Q Do you remember who those officers were around you?

A I remember Officer Dale was immediately to my left. I believe Officer Eugenio was up there. I know officers -- or Sergeant Livingston was behind us. It was Officer Delenikos and Officer Shaw were also there.

Q So somebody tells you, "Yes, bag him"?

A Yes.

Q But you want confirmation from Livingston?

A Yeah. He's the Sergeant on scene. I want to make sure before we go up and before I bag him to make -- see if there is a response from him. The Sergeant was fine with it, approves it.

At that point, I heard officer -- I'm sorry Sergeant Livingston say, "Bag him three times."

Q What's the purpose behind bagging him at this point?

A Basically, to shoot him with the beanbag before we go up to see if he's basically laying in wait for us. We can't see his hands. He's down. We -- I don't know where the gun is. I know shots have been fired. I know an officer is down. So I don't know if he's waiting for us or not, just waiting for us to come up so he can wait and turn, shoot one of us. Basically, we're going to beanbag him to see if we can get a reaction, see if he moves. If he moves, we'll start giving more commands, get him to crawl away from the gun, crawl away from the car, but he can at least show us his hands before we can go up safely and render aid to him.

Q So Livingston says, "Bag him"?

A Says, "Bag him three times." The way he's laying, I can basically see from the bottom of his butt cheeks out of the car. His legs are inside the car So I have this whole right butt check and hip area; that's where I fire. First round fired, and I even announced it before I fired. I yelled, "Beanbag"; fired, hits him. Chamber another round, and I remember thinking that we should have broadcast on the air. So I said, "Somebody

broadcast we're bean-bagging him," so somebody doesn't crank off a round thinking he's shooting at us.

At that point, I heard Sergeant Livingston broadcast that we were bean-bagging him. At that point I was still giving him commands, show us his hands, crawl away from the car. Still no response.

I fire the second round, same reaction, no movement. Still give commands; doesn't move. Fire the third round.

After the third round, he hasn't moved, all of them hitting the same spot, no reaction from him, at that point we decided we're going to go up, take him into custody and pull him away from the car.

Q When you say, "all of them hitting the same spot", where did your rounds hit?

A They were hitting him on the right side of his right butt cheek, which is hanging out of the car.

Q Who were the officers that were designated to go hands on?

A Uhm, I didn't hear who was going to do that, but I knew when we went up that I went with them. I went first. I believe it was Officer Shaw was next to me, then Officer Dale, who was going to be lethal cover, then Officer Delenikos on his left. We all went up.

As we get up, I move forward of them and off to

the side so I can see into the car. At that time, that is the first time I was able to see his hands. They were facing the front of the car. They were both out. I could see a bullet strike on one of them, but I didn't see a gun in his hand.

At that point, Officers Shaw and Delenikos started pulling him, got his hands, pulled him out of the car. To me, I thought he was dead. It was obvious he was dead.

Went up, they were calling for medical to come in. I turned and looked at the officer and said, "Is he dead?" They looked at me. They are like, "We think so."

At that point I told Fire, I said, "I need just one of you guys to come in." We had shell casings all over the ground, bullets on the ground. There was a Taser on the ground.

Q You were concerned with preserving the scene?

A Preserving evidence, because I have been on cases where shell casings and stuff gets kicked around. We tried to get one Fire guy in there. They ended up bringing several of them to work on him, see if he was alive.

Basically, at that point, we stayed around to make sure shell casings didn't get kicked. Once they moved out of the area, I put my less-lethal shotgun in

the rack and myself and Officer Eugenio started putting cards on shell casings and bullets on the ground so people wouldn't kick them.

MR. BANFIELD: Okay. Thank you.

BY MR. REES:

Q Just one follow-up. You were talking about the casings getting kicked around by personnel moving from the scene, whether they be police, fire, medical. Have you seen casings get picked up in a firemen's boot, that kind of thing?

A Not on this one, but in the past I have.

MR. BANFIELD: Okay. Thank you very much.

JUROR: I'm sorry. Can you tell us what a less-lethal shotgun sounds like when it's being fired?

A Oh, yeah, real quick, the less lethal shotguns we have it's a basic Remington 870. What they do is put an orange stock and fore-end. The fore-end is the pump of the gun. They are orange, says, "less lethal" across them. That designates them from regular shotguns, the less lethal and the lethal.

Basically, what the less-lethal shotgun is, the round, itself, it's a regular shotgun shell. There is no powder in it. There is just a primer, and then it has what they call a sock round in it. Basically a lead Kevlar bag that's tied in a knot and the bag, itself, is

actually filled with small lead shot, then the tail kind of stabilizes it. Going off, it's a pop. It sounds like -- it's a lot quieter than an actual gunshot.

JUROR: Thank you.

FRANK R. GORGONE,

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. BANFIELD::

Q Can you please state and spell your full name?

A Frank R. Gorgone, G-O-R-G-O-N-E.

Q And how long have you been with the Portland Police?

A Eighteen years.

Q And what is your current rank?

A Sergeant.

Q And how long have you been a Sergeant?

A Ten years, little over ten years.

Q And can you just give the Grand Jurors a summary of your training and experience as an officer?

A I have been a police officer for a total of 23

years now, 18 with Portland. I have worked many capacities in my career, from investigative, mostly street stuff. I've been a field training officer. I was a Patrol Tactics instructor. I have done Defensive Tactics instructor. For about five years I ran all our Youth Prevention programs, both in the city and on a national level with the G.R.E.A.T. Program, Gang Resistance Education and Training, the G.R.E.A.T. Program, which is our school-based prevention program. And, you know, out of the 23 years, other than that five, it was all spent on the street, for the most part. The last 14 months I have been back on the road at North Precinct as a Supervisory Sergeant.

Q That's where you are right now?

A Right now I supervise afternoon shift at North Precinct.

Q How many officers do you supervise at the afternoon shift?

A It depends on the day. A minimum of 31 we'll have. It depends on how many sergeants are there. My detail has about eight people in it and it fluctuates. Depends on the night.

Q Were you working at North Precinct on May 12th, the day of the officer-involved shooting, at around 6:20?

A Yes.

Q And when did you first learn of the shooting?
A As it was going on. You could hear it over the air.
Q And what information did you hear coming over the air?
A Uhm, it started -- there was a traffic stop. They were trying to -- they were trying to accomplish. And you could hear that they were having a hard time stopping the car. As they got the car stopped, there was different radios keying. You can hear yelling and screaming, which now I believe it was the driver of the car. And then you heard multiple shots being fired over the air. They said an officer was shot and down. They called -- we call it "Code Zero", which means, "We need help now."
Q Where were you when you heard the radio communication?
A I was probably about Vancouver and Shaver.
Q Who were you with?
A I was with Sergeant Blanchard.
Q And you guys were just doing routine patrol at the time or --
A Right. It's actually unusual to have two Sergeants together. Sergeant Blanchard works in a nonoperational unit. He knew he was going to be going

back to the street soon. We got hired about the same time, and he asked if he could come ride that night and go back out on the street. He picked a heck of a night.

Q I'm sorry. You said you were at what location?

A About North Vancouver and Shaver. I was on North Vancouver at the time.

Q You heard the call. I take it you immediately responded to the scene?

A Yes.

Q And tell us what happened. What are your observations as you arrive?

A I came in from the south where the actual stop was. I came off of MLK onto Clackamas. I got up to Sixth. As I was pulling up, there was an empty lot. You can see where the stop was. I could still see officers taking cover behind cars. And there was a front-end loader that was equipment for working on the street that was to the west of where the actual stop was.

And as I was getting out of my car, they were giving commands to what I learned to be Otis. And that was when Officer Dauchy fired the beanbag. And it all happened pretty quick when I got there and they took him into custody and then medical was called in.

Q You arrived as Dauchy was bean-bagging?

A Yes.

Q When you arrived, Sergeant Livingston, he's the Sergeant that's in command on the scene; is that correct?

A Right. He was the Sergeant of the HEAT Unit.

Q What role do you take on as Supervising Sergeant on a scene of this nature?

A On an officer-involved shooting, the first supervisors on scene, our role is pretty specific. It's actually in our policy. First thing I have to do is make sure everybody is safe and secure at the scene; make sure that medical is coming, which all that was done before I got there as far as the medical part. They were actually, I think, at that point -- by the time I got there, they were also arriving from other directions.

I started to identify who was involved in the actual incident. At that point, once the scene was secure, we started -- Sergeant Blanchard ended up being in charge of the outer perimeter.

We set up a crime scene like that. There is an inner perimeter, where the actual incident takes place. Then we go out a bit, depending on the geography, time of the day, people that are around, to give us an area to work in. I assumed responsibility for the inner perimeter. Sergeant Blanchard took the outer perimeter.

And once the officers that were directly involved in the incident were identified, officers that

weren't involved were assigned to them and they were separated. They were directed by me not to talk about the incident.

I got a brief overview of what happened from Livingston. And, you know, I knew Officer Burley had been shot by that point and that he was on the way -- probably passed each other at some point -- but he was on the way to the hospital as I was getting to the scene.

Q Okay. So as you arrive on the scene -- and you said your primary goal is to make sure everyone is okay?

A Right. The first thing is safety and security of the scene, make sure everybody, whether it's the police, not police, whoever, that, you know, medical is there and that the scene is secure and safe for everybody to operate in.

Q Then you identified the officers involved and you separate them?

A Correct.

Q And assign them another officer?

A Uh-hum, not involved.

Q And then you also -- you order them not to talk to one another; is that correct?

A Correct.

Q What's the purpose of that?

A Uhm, that is so once the Detectives start

talking to them it doesn't contaminate any of their perspectives of what's going on. And then once -- because eventually they are going to get interviewed by the Detectives on what happened at the scene.

Q What are your other roles as lead on the inner perimeter?

A The biggest thing is to preserve the inner perimeter. We assign somebody to do the crime scene log, and that's a log that records every person that gets into the actual inner perimeter. We use red tape to designate inner perimeter. At that point, once that's set up, anybody that goes into the potential crime scene gets logged in and then security for the crime scene, identify as much as we can -- evidence of the incident and then lock everything down, secure it.

Depending on the situation, like this one, it was early enough in the day and the majority of our upper command staff, because of what was going on with the new Chief earlier, were around. So we actually had for this incident a very rapid response of senior command people, too, who came in. Then it's just a question of coordinating resources, you know, making sure Detectives have been called, which they had. And the Detective team gets there, the FED, which is the identification people, crime scene, the criminalists, show up. And then, you

know, make sure the officers are all taken care of. And it could be anything from making sure water got there for the officers. So it was --

Q And in your assessment of how everything went once you arrived, how did it go?

A You know, I've had over a week to think about this one, and I have been involved in a few other big incidents over the years here. This is probably one of the smoother ones considering the amount of people that were involved -- one of the things I forget, they identify civilian witnesses and then assign them officers and encourage them to stay for the Detectives to interview them. But, you know, all in all, this went about as smooth as anyone could possibly go under the circumstances, the situation that it was.

MR. BANFIELD: Thank you.

JUROR: Sergeant, it's good to have you here.

A Thank you.

JUROR: You said that you arrived just as Officer Dauchy had fired the beanbags or --

A It was just before I heard them giving commands, and then I also am a less-lethal operator. I know the sound of it. And I could see him with the beanbag gun. Less lethal is painted orange, so it's significantly different than a regular shotgun. I knew what they were

doing at that point. They were giving him commands They hadn't -- the way I heard it later and realized there they didn't know where the gun was at that point. They knew he had fired a gun, and they were making sure that he wasn't going to be threatening any longer.

JUROR: Do you know who gave that command, sir?

A For him actually to fire?

JUROR: Yes.

A No one has talked about any of that.

JUROR: Thanks.

MR. BANFIELD: Okay. Thank you very much for your time, Sergeant.

MR. REES: We're calling Detective Kammerer back to address the question that you raised and we wanted to cover it anyway, about where the gun came from. So if you could swear Detective Kammerer in again?

ERIK KAMMERER,

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

EXAMINATION

BY MR. REES::

Q Thank you for returning, Detective.

A Yes, sir.

Q Did you investigate how Keaton Otis obtained a nine-millimeter Taurus gun that he used in this case?

A We attempted to, yes. I sent a request to the Bureau of Alcohol, Tobacco, Firearms and Explosives to their tracing unit to trace the origin of the handgun that was recovered. And I learned that was purchased by a man named Richard Heiney back in 2004 from Keith's Sporting Goods.

JUROR: Okay. Was that Heiney?

A Heiney, yes, sir. Or Heinz, I'm sorry. It's Heinz. It was purchased from Keith's Sporting Goods back in 2004, and it shows no transfer of ownership since that time.

When we spoke to Mr. Heinz, we noticed that he had reported a Burglary in 2006 where other firearms were stolen from him along with his car, but this Taurus PT111 was not one of the firearms reported stolen.

We spoke to him, and he said that it was a very intense night for him when this Burglary happened, his vehicle was stolen. He believed his firearm was inside the vehicle when it was stolen, and that's why he neglected to report it stolen not realizing it had been taken along with his vehicle. He's an elderly gentleman and didn't really recall what had happened to his gun. But he did say he was no longer in possession of it.

Q So in speaking to Mr. Heinz, who is the registered owner of this nine-millimeter Taurus which he purchased in 2004, and you talked to him about this, he then confirmed that gun is missing from his possession?

A Yes, he hasn't seen it since that night in 2006 when he was burglarized and his car was stolen.

Q You mentioned Mr. Heinz purchased it at Keith's Sporting Goods in 2004. That's a gun shop, I believe, in the City of Gresham, correct?

A That's correct, yes.

Q All right. So it sounds that you are certain that Keaton Otis did not purchase that gun through the means of a gun store, which requires a permit.

A If he purchased it from a gun store or pawn shop or any business, there would be a traceable record of the transfer of that firearm.

Q Based on your training and experience, is it common practice, however, for individuals to buy, sell, trade firearms on the street without using paperwork?

A Absolutely, yes.

Q Can handguns like that nine-millimeter Taurus be bought, sold and traded for far less than their retail value?

A Absolutely, yeah. I don't recall the retail purchase. Probably would have been somewhere around the

area of $500. You would get 20% of that street value.

MR. REES: Any questions about that?

JUROR: When you say Mr. Heinz was elderly, 60's 70's, 80's?

A He was born in 1949. I believe.

JUROR: 61?

A Yeah. He didn't seem to track real well with what we're talking about.

MR. REES: Anything else from Detective Kammerer?

RYAN FOOTE,

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

EXAMINATION

BY MR. REES::

Q Officer if you would please state your name and spell your fame for the record?

A Ryan Foote, R-Y-A-N, F-O-O-T-E.

Q Officer Foote, are you a Portland Police officer?

A I am.

Q How long have you been a Portland Police officer?

A About six-and-a-half years.

Q What's your educational background?
A I have a Bachelor's Degree in Psychology and Minor in Spanish.
Q Where did you go to school?
A I graduated from Western Oregon University
Q And upon graduation, did you go directly into law enforcement?
A I did. I was a member of the Police Corp., which was a federal scholarship program that paid for our college. I went straight after college right into police work.
Q Are you currently assigned to HEAT, the Hot Spot Enforcement Action Team?
A I am.
Q Were you on duty May 12th, 2010?
A I was.
Q We have heard from other members of the team that the shift started at four o'clock and that after a drive through the Holladay Park area, everyone met at a Starbucks for coffee. Did you participate in all those activities?
A I did.
Q And after you left the Starbucks, were you working with a partner that day?
A I was.

Q Who was that?
A Jim DeFrain.
Q Do you two always work together?
A We do.
Q There is a map behind you, and I'm going to ask you, if you will, to approach the map and stand to one side so we can see. And do you see where the Starbucks coffee shop is where you met with your fellow officers?
A Yes. It's right here, MLK and Hoyt. It's actually this street not marked as Hoyt.
Q Running east-west between MLK and Grand?
A Right, directly -- exactly, and the Starbucks is on this corner right here, which is the southwest corner of the intersection.
Q All right. And when you left, what was your -- at that moment when you left the Starbucks, did you have a particular plan in mind of what you were going to do next?
A Yeah. As I'm sure other people have told you, our team works together in the same geographic area, and it was determined that we were going to go work what we call the core of northeast Portland, basically centered around MLK and Killingsworth area. We were leaving MLK and Hoyt in transit to that area.
Q All right. And using the map, if you wish, to

assist in our understanding, why don't you show us where you drove?

A Uhm, as I came out of MLK and Hoyt, there is an entrance and exit onto Grand Avenue. I pulled out onto Grand with Jim, and we went north on Grand Avenue this direction.

Q Fine. What happened?

A As we were driving down Grand Avenue, I'm not sure exactly at which point going down Grand, but I noticed there was a silver Toyota Corolla in front of us, really didn't grab my attention at all until I noticed that the driver of the Toyota Corolla was driving down the road northbound and was actually watching me in the side-view mirror of his car as he was driving. And the look is -- the look was so different than any look that I had seen before from somebody at work that it really caught my attention.

And this -- like the look was very focused It was very determined. It looked like someone to me who -- the best way I can describe it is somebody who maybe was involved in something and was wondering if we knew that they were involved. I had seen this look before prior when a hot call comes out and you find a suspect vehicle, the look from the suspect in that vehicle when they are kind of wondering, "Well, do they know that I just did

this?" It was a very intense look. Like it was watching what my reaction was going to be, how we were going to react to him.

So this look is -- it really, really drew me in. And --

Q And let me ask -- maybe you said -- but what's your perspective when you see the driver of this Toyota. Is he coming towards you? You are along side of him?

A I'm sorry. He is going north also down Grand, and he is in the -- so he is going north on Grand Avenue, and we are in the far left lane or western-most lane of Grand Avenue.

Q And are you -- maybe again -- maybe you said this, but are you driving the police car or are you the passenger?

A I am. Jim and I have been partners for over three years, two of which he and I have driven almost every day we have been partners in HEAT. It's a system we have developed and we know each other well enough and it has been a great partnership. The thing we have always done is I drive. He works the computers. He works the radios and does everything else.

Q You are driving northbound. The driver in the Toyota is driving northbound, so you are looking over to the west at him?

A I'm looking north at him. He's going north. I'm going north. I'm looking at him from behind him basically and I'm seeing him in the side-view mirror just completely focused on me as he is continuing to drive north.

JUROR: Grand is how many lanes going north?

A I believe that it's four lanes, I believe.

JUROR: Can you tell me which lane the car you are following is in?

A Yeah. We're in the western-most lane or the left-most lane as you are going northbound on Grand Initially, at this point, when I'm seeing all this, that's what lane we're in.

JUROR: What lane is the car you are following in?

A In the same lane, right in front of us.

JUROR: Okay. Thank you.

BY MR. REES::

Q Now, you get a lot of people looking over at you when you are working?

A Sure.

Q And they are perhaps wondering "Am I going to get a speeding ticket?" Right all the way up to "I have got a warrant, I don't want to be caught", right?

A I got to tell you there is no -- when you are a

police officer and you are working in a uniform, everybody on the street looks at you. It's just a draw. I think it's a common thing for people, they just look at a police officer. Some people's reaction is a smile or wave. Some people look away because they are nervous, but everybody generally takes a glance when they see a police officer.

Q What was different, if you can explain?

A Sure.

Q What was different about this because you said it was like something you really hadn't seen before?

A Like I was saying, first of all, he was driving -- while he was driving, he was looking at me in the side-view mirror. So I'm thinking, "How, is he concentrating on the road if he is focused and worried about me that it's drawing his attention away from actually operating his vehicle?" That really concerned me.

And also it was -- like I said, it was a look of he was -- I felt like this look was trying to determine if I knew what he knew. It was kind of one of those looks like, "Does he know?" I don't know how to explain that look better than it was very direct. It was very -- it never broke away from me. It was always just in the side-view mirror just very focused, almost like is he

going to -- he being me, "Is that officer paying attention to me? Is he noticing me?"

And I can tell you from experience I've driven down a road past somebody in another car and just by the look they have given said we should, "That was a scared look" or "That was a look like, 'Oh crap it's the police'."

This was a different look. This was a look very focused. He was very -- very direct in the look and he was really, I thought, watching what my reaction was to him.

Q So how do you proceed?

A Well, I would have -- I would have never probably thought twice about this car. It was a very well-kept kind of an older model Toyota Corolla, had nothing special on it, no bumper stickers, no hats in the back windows, it didn't look like a car necessarily that -- I thought this guy was probably my age, and it had nothing flashy about it, nothing that somebody in their late 20's or early mid-20's would be driving.

So from this look I started to kind of look into further maybe what's going on. And he didn't really -- the car, this guy didn't match.

Then it was a warm day that day. And I noticed that his hood was up over his head. And so all these

little things along with this look in particular really started to draw my attention, started to raise my curiosity about what was going on, what was I missing?

And maybe the car -- people borrow cars all the time, so the mismatch of age and car, whatever, we -- it could be nothing, but I would say that the look was what really drew me in, and then I started paying attention to other things that may be out of place; his hood being up on a warm day and maybe the -- I kind of thought this car would be more like a grandparents' car, it was just so clean, so neat. It was -- just things -- things didn't seem to be right. All I could think of is something is not right here, like this is -- this is not -- this is something I need to pay attention to.

Q So what did you do?

A This is a weird thing, too. Jim, like I said, always runs the computer. I always drive the car. I looked over and I actually grabbed the computer and turned it toward me, and I typed in the license plate of the car because I was so curious as to what was going on. And Jim goes, "Are you -- are you running the plate of that Corolla in front of us?" Like why are we wasting time with this? And I looked at him and said, "If you saw the look I just got, you would know why I'm plugging in this plate."

So I -- I actually decided I wanted to stop even focusing on the computer, and I pushed it back at Jim and then just kept watching his movements as he was driving down the road.

Q All right. And go ahead, if you would, and tell us what you observed as you are following the car?

A Sure. It was just more of the same, more of very direct looking at us, watching to see what our reaction was going to be.

And we got to a stoplight. And we stayed in -- I -- you know, I have to admit, too, I was so focused on him now, I was almost expecting that there was going to be a radio call that said that this vehicle was involved or this subject was involved in something that just happened, and I was kind of trying to watch to see what his movements were going to be now.

As we're driving north, we get to a stoplight. And I would say it was probably around -- let's see, it was Clackamas -- I would say it was somewhere probably either Multnomah or Holladay. It was -- because those are both intersections that have lights at them.

We're stopped there at the light -- actually, no, excuse me. It was Multnomah. We're stopped at this light. And then I saw Cody drive past us, Cody Berne, Officer Berne, drive past us. And I don't know if I can

draw it for you. It might be easier for you on the board.

Q Sure. Can everyone see this board?

A So if this is Grand -- this is going to be Grand Avenue right here. And I believe this is Multnomah. It's the intersection. The Toyota Corolla stops here, and we're behind it. And as -- I'm just totally paying attention to this guy. Just something is really just -- to me is not right.

Cody drives -- because he left the same spot where we were. He comes up, and he stops about right here. He's not 100% lined up with this car, but he's pretty close.

And I looked at Jim, and I said, "Hey, call Cody real quick on the Nextel and ask him what's going on in that car next to him." I wanted to see if I was -- if he was feeling what I was feeling.

And Jim says, "Hey, Cody. Look to your left and tell me what's going on in that car." And Cody's reaction was exactly almost word for word what my reaction was to Jim when he asked me why I ran the plate. He said, "Something is not right in that car, something is not matching up." And it really kind of validated for me what I was seeing and feeling.

I don't know driving -- during this time, when

we were driving, I don't know if there was a lane change back or what exactly happened, but I remember thinking -- I saw a violation. It was failure to signal a hundred feet, but I don't like it because I can't articulate it very well right now. So although I think there is something going on and we need to figure out what's going with this car, I don't have a great violation at this point.

So as I'm --

Q I'm sorry, what you would be referring to as a legal basis as a police officer to stop a motor vehicle?

A Exactly. There is a lot of suspicion raising in my head right now the way this whole stop -- not stop, the way this whole interaction has gone so far.

So Cody asked us if we were going to stop it, stop the vehicle. And Jim told him that we probably were. And right in the middle of this conversation that they are having, the light turns green and the vehicle goes pretty much across one lane, stays for a second and then goes all the way across, like in one motion, across all the lanes of traffic. So we're going northbound still on -- on Grand. And from Multnomah to -- I'm not sure if we turned on Wasco or Clackamas. I didn't pay attention to the streets. But from here there was one lane change and then it was a sweeping lane change all

the way over to whatever the eastbound street was that we turned on. So it's either Clackamas or Wasco. So in one -- like I said, in one sliding motion this car violated the fail to signal a hundred feet and into multiple lanes of traffic and then the fail to signal a hundred feet before he turned eastbound on whichever street that was.

But let me tell you that movement and him watching us in his -- he was doing the same thing still, watching his side mirror as he did that. It was like an evasive movement to get to that street and go east. To me, I was thinking, "This guy doesn't want us to be behind him. He is nervous and he is getting away from us."

Q Did you also at this point have the information back on the plate of the car?

A You know at some point after I had run the plate I remember Jim saying the name of the owner of the vehicle that it was registered to in DMV, and the owner I remember it being a female name.

I think at some point on the Nextel, either Jim or Cody told the other that they saw the -- that there was no information in our Portland Police Data System on the vehicle. So there was nothing out of the ordinary.

Q But it was a -- it was registered to a woman?

A Yeah.

Q Not apparently the driver of the car. Was that a factor at all for you or not?

A Not really. I really thought this was probably a borrowed car. There was something more to it. It didn't really bring anything up in my head.

Q Okay. And so after you observed this -- this sweeping, unsignaled lane change, what happens next

A Well, I got to tell you also one thing I remembered, at some point during -- and I don't remember if it was exactly as the car was sweeping across or if it was on the approach to this light, but I know it was during this time period in here that I saw the driver of the vehicle lean forward in his seat. And the movement was a right shoulder forward and then down towards the floorboard of his vehicle. And it really, really caught my attention.

In HEAT, as I'm sure you have heard, we deal with a lot of people who are possessing firearms. A movement under the seat -- below the seat really caught my attention. I'm thinking that maybe some -- maybe he is reaching for something under that seat. What's he hiding? All these things are running through my head, drugs? Is it a gun? Or what possibly could be going on? That made me think this look I was getting was what he

was so nervous about or he wanted to know if I was going to follow him through this sweeping motion or down Grand Avenue. So that happened at that point. It was before the eastbound turn definitely when we were on Grand Avenue.

Q Okay. And just go ahead and take us through then, following the car. What happens next?

A Okay. So we turn eastbound, and like I said, it was either on Clackamas or Wasco. And as we turned eastbound, I turn on, activate the lights in our car. And Jim and I drive an unmarked car, so there is lights in the side mirrors and upper dash area just above the windshield. And as I do that, I can see that the subject still is focused on me in the side mirror. He's looking right at me. And I just offset our car slightly to the left so I can make sure that he was seeing the lights that were on. I didn't want there to be any question about that. And he continued to drive.

Right away I started hitting the air horn on the car, which is a loud, audible horn. You could hear it for several blocks. And there was no response to that.

He was driving slow, and it made me think that at some point soon he's going to pull over. But it just kept going. He just kept continuing.

And then eastbound -- by about mid-block between

Grand Avenue and Sixth Avenue I switched from hitting the air horn to using the audible siren, because I wanted there to be no question that we were the police, that he was trying to be stopped and that he was continuing on. And I noticed during this time that he was still, again, watching, the same way as he had been before.

And this started to concern me the more and more we continued eastbound, because I know from doing this job awhile that people position themselves for many different reasons. One might be an escape route. Like maybe he's trying to find a way to jump out of his car, run on foot. Maybe he's trying to figure out where he is going to take off in the car, which is an issue. Maybe he's trying to hide the drugs or the gun, or maybe he is trying to swallow drugs. So there was a lot of things running through my head at this point.

But we continued east, sirens on. And then at Sixth Avenue, there is a northbound turn. And as the vehicle turns north, it signals. I remember specifically seeing the right turn signal come on and the vehicle slows from -- we were probably only going 15 miles an hour as we were going east. That entire street was very slow. And then as we got to Sixth Avenue, I would say the vehicle was less than five miles an hour, almost to a complete stop and it pulls over.

And at this point I'm kind of wondering; he is watching. Then all of a sudden the vehicle pulls out back into traffic and continues northbound.

At this point in my mind I knew -- I could see when he made this northbound turn his windows were down or at least his driver's side window was down. The back might have been down, too. I know he can hear the siren. He know he's watching me. I know he can see the lights, and he is not stopping.

Q What did you do -- at the time, if you had a thought, what was your thought about that pull to the curb and then pull away from the curb?

A My thought was that maybe he had a plan and then he saw something better. There was a reason that he was going to pick to stop there, then he didn't like it all of a sudden and pulled away. And I don't know if he -- Cody is behind us during this time. I don't know if he at that point realized maybe there is a second police car there; I need to refigure out what's going on. Maybe he noticed Jim's in the car. I don't know if he noticed Jim before. To me it was like, "I'm going to stop. No, I'm not going to."

So he pulled back out and kept going, and then I pulled our police car up, as we were driving down the street. Still he is not driving fast, but he pulls out,

speeds up. Maybe we're going 15 miles an hour again. I was able to very quickly pull our police car up into a position like right here. And this is -- this is Jim and I in the number one car here. We pull into -- sorry. It's probably more like this. That's the car.

We pull into positions like this to do what's called the Police Intervention Technique or PIT technique, which is how we stop pursuits. Basically, with our car we tap the back end or the left-rear panel or right-rear panel of the subject vehicle, and it causes the vehicle to do a slow spin and disables the vehicle at least momentarily.

So I'm pulling up into this position because I'm thinking the best place for me to do this is going to be whatever the next cross street was, and it happened to be Halsey, because this spinning motion right here, actually, it's quite -- this car is going to swing all the way around. And if there is a sidewalk or parked cars, it not going to work for me to do. I was planning at Halsey to actually hit that vehicle.

And I was concerned that we were going to be in a pursuit in the Lloyd District at 6:30 on a weekday evening. I knew there was tons of people out, and I knew we probably wouldn't pursue somebody just for what I had seen so far. That's probably something that we would

decide not to chase for. So I was going to try to end it before it got to traffic and it got to people and somebody could be hurt. So I was positioning myself to do the PIT technique.

Q All right. Now, that is a certain level of force. What, in your mind would justify at that point, using the PIT maneuver?

A Like I said, so right now in my mind this guy is eluding us. And we have the charge of Elude, because he's clearly looking at me and he's continuing. The lights and sirens are on. He has now driven for almost two or three blocks. And he's deliberately made a motion to stop and then not and gone away from it. And the way he's watching me, it's making me think he knows exactly what he's doing right now. There is nothing that's not planned about what's going on.

So I'm thinking if we're going to protect the citizens, I need to -- I need to initiate this PIT before this car gets to Weidler or Broadway where there is going to be a ton of traffic at 6:30 in the evening. If he takes off, starts blowing red lights, the potential for him to hurt somebody was pretty good.

Q I take it that along this route there was no apparent reason why he would have been unable to just immediately pull over upon your signal?

A Yeah, especially -- I specifically remember on whatever the street was that we turned east, there was nothing going on. I mean, this was just -- if it was Wasco or Clackamas, there was nothing on the south side of the street where he could have pulled to the right and pulled over. And there was literally nothing to the left side of the street. I think it was -- uhm, no, I'm not sure, but the street was empty to me. That's what made me think even more why is he not stopping. He has had plenty of space to stop, and he's clearly watching me and listening to the siren and evaluating and deciding not to.

Q Before you used the PIT maneuver, he stops --

A Yes.

Q -- right?

A Yes.

Q So how does that happen?

A Right before we get to Halsey, he just stops. I mean, it's -- it was a -- I don't remember exactly if it was a -- like a right pull or if he just slowed down and came to a stop. But in my mind, this was -- so far, all of this had been so abnormal that I thought he was likely doing what we call a sucker stop, and that basically means someone stop's just long enough for the officers to get out of the car and approach and then takes off again

and it gives them an advantage or a lead in a pursuit. That also does a lot of things for guys who are up to or may have illegal items on them, because if they can get that lead, they can pitch whatever the item is, then they may pull over two blocks later and just deal with the Elude charge or whatever -- or whatever the case may be there.

So I was pretty concerned that he was probably going to take off as soon as we got out of the car.

So when he stopped, I left our car in a position just like this, because I thought as soon as he saw a door open, he might take off and I might still be able to get that PIT in at Halsey. So I left our car in a position that would give us a little advantage to get a PIT off right away.

Q All right. Let me show you this photograph here. Well, let me go to this diagram. Does this photograph show the position of your car?

A That's our car.

Q This would be like a navy blue Crown Victoria?

A Yep.

Q Let me pass this around and then you can explain as we are passing this around what we are seeing.

A Okay. So this is the silver Corolla here, and the dark blue car is our police car lined up just left

and at like the left-rear quarter panel of the vehicle, so I could leave it -- leave the vehicle in a position that if he took off again as he saw us get out of the car, I might be able to PIT it before it got to Halsey.

Q All right. So you pull into that position. Are you aware at that moment of any other police officers also coming in their vehicles?

A I know Cody is going to be right behind us, because he made the turn with us eastbound.

Q But at the moment, it's just you and your partner?

A It's just Jim and I that I remember seeing.

Q So what happens?

A Well, as we start to get out of the car -- as we start -- do you guys have a bigger picture of that same scenario?

MR. BANFIELD: I do not.

A Okay as we start to get out of the car --

MR. BANFIELD: I have a diagram though.

A It might be helpful, because it's kind of hard to describe. I can say this while looking for a diagram. Positioning to me is -- oh, perfect. Positioning in the work that we do means a lot to us in terms of how somebody positions themself with us. I'm not sure right now he hadn't planned to stop here because he might know

somebody in this apartment complex or he is waiting to access a weapon or, like I said, get rid of drugs.

Just the week before we were downtown and somebody positioned themselves. When we got out to talk to the guys, this guy looked at me, stepped away from the group, looked directly at me, looked away and he stepped in front of a parked car in a parking lot. As he did, he bent down so I couldn't see him, lifted up his shirt and pulled out a small Tech-9 handgun, which is like a sub-machine almost. That's positioning.

He positioned himself in a place, looked at me, noticed I was there and he positioned himself in a place where I couldn't see what he pulled out from his waistband. He pulled a gun out, put it down and took off running. This is 12:30 Saturday night in Downtown Portland. He is running around, I'm chasing him. That's why positioning means something to us because people put themselves in places that give them an advantage.

I was concerned why all of a sudden he stopped here. And I know working with Jim for as long as we have and doing as many different missions that we have that he was thinking the same thing. Because as we got out of the car, all of a sudden now all I'm hearing is someone screaming at the top of their lungs. And it's -- the man in the car is yelling at the top of his lungs, "Fuck you.

Fuck the police," as loud as I have ever heard somebody yell. I'm confident there is people standing up here -- there is a bicycle around here. There is somebody up on a porch that I remember, and I know, I could see the tension as I -- I'm looking at this guy, all these people are focused. So he is being heard from a block -- not a block, about a half-block away he's yelling so loud.

Jim comes out of the car on the passenger's side of our car. And as he comes out, this guy is looking over his shoulder at Jim. And his look is -- he is sitting very low in the seat. That was another thing that actually when I was driving behind him caught my attention, he was so low in the seat that his head was probably about even with the low frame of the window.

So he was sitting about like this. He is sitting low in the car. And I see him just lean and then turn all the way back. So now he's completely focused on -- and looking back toward us. And specifically, he's looking back towards Jim. He is continuing to yell what he is yelling.

Jim pulls out his firearm, and keeps it at -- Jim pulls out his firearm and keeps it at a low level, what we call a "depressed ready". I never remember seeing him come any higher than depressed ready. If this is a firearm, he's keeping it here. It's not pointed,

but it's at the ground in front of him. I remember it being out in front of him.

As we're approaching, Jim walks this way. I come around the car from this angle, and then start walking in this way and the driver is screaming, just screaming, yelling.

Q What's he say?

A He is saying the same things that I remember is "Fuck you. Fuck the police, you guys are all mother fuckers," things like that. And I remember as soon as he notices Jim's gun is out, he turns his attention to Jim and the gun and starts saying, "Fuck you for coming at me with the gun." I remember him saying, "gun", then it's the same thing, "Fuck you. Mother fuckers, put that gun away" or something like that.

In hindsight, I think that what Jim did was probably the most beneficial thing to us throughout the course of this stop, because I think that he changed the course of this person's attitude for a minute. He drew him in, and he made him think that these guys are being serious about what they are doing. They are not just walking up and approaching the car like cops on a normal traffic stop. This guy's gun is out maybe I need to rethink what I do. You could see on his face he is focused and angry, but that at least gave him a moment of

questions. That gave him a weird moment.

Something I'll never forget. I think Jim probably changed the course of what he had in mind for a minute by having his gun out, because the guy was so focused on it and really I think it may have changed his line of thinking for a second or two, at least.

So we approached the car. He is screaming still. And I -- I think in six-and-a-half years of doing this, dealing with very angry people sometimes, this guy is the most agitated, most angry, aggressive person I have dealt with. And his look in his face was like sheer anger. And it was just rage as he is continuing to say, "Fuck you guys." And as I approached -- Jim and I always laugh because when we stop somebody and they come out and say, "Fuck you. Why did you stop me?" It's usually not screaming and yelling. It's "Fuck you. Why did you stop me? What the fuck did I do this time?" First thing I always say every time is, "Hey, how are you?" That throws people off. It changes their demeanor because they feel stupid for being so angry at somebody they don't even know yet. And as soon as I can say, "Hi, how are you?" it changes them and they say, well -- usually the answer is, "I was pretty good until you stopped me." Then we'll go into a talk of, "You don't have anything to worry about. This is just a simple traffic stop and we

can have a conversation."

The thought of using that line here didn't even cross my mind. I mean, this scenario was so different that I didn't even think about using the line I always use when somebody is mad.

Once I could see how enraged he was, I think -- at some point on my approach I drew my Taser and left it at my side. I think I left it at my side as we were walking up.

So we talked to him. I -- instead of saying anything else, the first words out of my mouth are, "Put your hands on top of your head and interlace your fingers together." And he immediately says, "Fuck you. You guys are all fucking" -- uses a bunch of derogatory language, and I can see now that this person is above and beyond nervous and angry. His left hand as he is sitting in the car is alongside him about stomach level, and it's shaking, trembling. I can't even do the movement it's shaking so fast. To me, I'm thinking this guy is so nervous about whatever it is he's got going on. This is a really bad scenario right now. He is shaking, his face, and yelling, there is just so much anger.

I tell him again -- I'm sure I lead in with something, because I usually do, like "Listen, this isn't time to play around. Put your hands on top of your head

and interlace your fingers together." I give him the same commands every single time, because there is no question then to somebody who is hearing something from a police officer what the command is if you repeat the same one. It's an easy one to follow: "Put your hands on top you are your head and interlace your fingers together." I repeated it again. He is continuing to say, "Fuck you."

I see his right hand drop towards his side, the side of his right leg, and he kind of leaves it there for a second. I think I brought my Taser up at this point. I told him again to put his hands on top of his head, interlace his fingers together. Then his right hand moves over to the gear shift. It was hovering over the gear shift. I don't know if he actually touched it. But it was sitting in a place right by the gear shift. I really thought at this point he was going to drop his car into drive and take off.

So I got on the radio and at some point I said that "We need some more cars here." And then I said that "I want the first police car in to block this car in." And my thinking was that he's getting nervous. He's trying to create -- he's trying to create a new plan or decide what he is going to do next. Right now looks to me like the way he keeps reaching toward his gear shift

that he is going to take off.

Q Was that your first radio broadcast over the net or did you initial -- did you call out the stop?

A Oh, sorry. Jim called out the stop.

Q Okay.

A He always calls out the stops. I just drive.

Q Then there was a call we all heard for the cover car to box this car in?

A Yeah, that's me.

Q Was that you?

A Yeah.

Q That was about maybe 20 seconds after the call on the stop, itself?

A Yea.

Q Is that right? Does that sound right?

A Yeah, this time period to me it seemed like forever. I'm sure it was fast. But everything in my stomach was telling me this was not going well. Like I said, the weekend before, we're running after a guy with what looks like a machine gun in his hands downtown. I felt a hundred times better chasing that guy downtown with that gun than I felt about this traffic stop at this moment. Like I said, we chase people all the time. We've had guys pull out sawed-off shotguns. We have people get out of cars with rifles down their pants.

None of that touched how bad I was thinking this was going to go. My gut was churning and I knew we needed more cops there to start taking away the things that were going to lead to people getting hurt. First thing to me was the car.

Q All right. So that was your voice we heard calling for a cover car to come and box him in?

A Yeah.

Q And what happens next?

A Uhm, I think that we say -- at some point I again say the same command I said before, and he says, "Fuck you. You are going to have to come in here and pull me out."

And I don't remember exactly when and where this is happening -- or at what time this happens, if it was before the box-in happens. I think it was, because I don't remember other officers being around us. But when he says this, I'm thinking this is -- once again, "This is not going to go well."

So the first -- I hear Don, Sergeant Livingston, and his partner, Pat Murphy, say they are in route to cover us. I hear Burley and Polas say they are in route also.

Burley comes in, and he blocks -- this is -- he pulls his car here, and they box in the vehicle. That's

great for us, because now we've taken the vehicle out of play, which is something that's an extreme danger. If we went to take this person out of the car, if there was still a possibility of this vehicle being mobile, when we try to pull him out of the car and he puts it into drive and takes off, then there is an officer that could be dragged down the street or the same scenario as before, where there is a pursuit.

Q When did Cody Berne arrive on the scene?

A You know, Cody was -- I don't remember specifically ever seeing Cody. I know he's there because he was right behind us in traffic as we turned east onto Wasco and Clackamas. But I don't remember ever seeing Cody up here. I know he is just because how our team works together and how we worked for the last two years, but I don't specifically remember seeing him during my initial contact at the car. I don't remember seeing Cody until these guys arrived and we start repositioning to take this man out of the car.

Q Do you remember as this contact continues Officer Chris Burley putting his hands on the arm of the driver of this Toyota?

A I do.

Q And can you describe where you were standing when that happened and what you saw?

A Sure.

Q And if you would, just go ahead and just tell us, you know, what you saw?

A Yeah. Okay. I'm standing at the farthest forward of this car, so I'm standing right about here on the car, the front of the driver's side window. And then Don, Sergeant Livingston, is standing just behind me and to my right. And Chris Burley is standing now basically even with that driver's side window.

JUROR: Excuse me, could you take that down and show us where the other --

A Sure, on this?

JUROR: Yes, please.

A So I'm standing about where the side-view mirror is, looking in. And then Don is standing just right behind me. Chris is standing right about the center of the door, maybe a little bit left. Then Cody is standing to the right of him, and then Jim is somewhere right of him. I know Jim's standing right in this area someplace.

BY MR. REES::

Q All right. Then if you could describe what you see with Officer Burley going hands-on?

A Sure. I saw the guy in the car, his hand was either just resting on the -- the frame of the window or it was -- he had moved it so it was close to it. And I

saw -- there was some communication that we were going to take him into custody. I don't remember exactly how that all worked out. But I saw Chris go to do a Sankajo hold on the left hand of the suspect, and Chris is a large human being. He is very strong. And I saw him put his hand on and then I saw the man in the driver's seat start to pull away from him and pull away towards the passenger's seat.

Q When that happens, is the driver's side door of the Toyota opened or closed?

A As far as I remember, it's closed. I don't remember it being open.

Q I take it the window on the driver's side door is open?

A Yes, it's down all the way.

Q Officer Burley is reaching through the open window?

A He doesn't have to reach through the window. The suspect's hand is right there already sitting in a place where it was the perfect time for Chris to actually grab on and maneuver for a Sankajo.

Q Have either you, yourself done this personally or you have seen it done where a subject can be then successfully removed out of the car?

A Yeah, we do this all the time.

Q Opening the door and pull them out?

A We do this all the time. Our team does it all the time together. Basically the Sankajo is done. We use the door frame of the open window for leverage and to control the hand and you have the other hand, the right hand put on the back of the suspect's head.

Q So you were expecting to see that happen?

A Yes.

Q Did it work? Did it happen? Did he come out of the car?

A No. It -- really to my surprise I thought when Chris got a hold of his hand that he was going to have complete control because of Chris' size and his leverage with the door and position. And all I -- I remember at this point it's kind of like flash photography for me to explain how this happened, but I remember seeing the suspect leaning towards the passenger's seat with an open right hand and his palm was facing up.

I remember Don Livingston yelled, "Taser, Taser, Taser", which is something we're taught to do in the Academy or in training, that you try and give a verbal command of Taser. He does. He deploys his Taser, and I seen that the Taser has some effect. There is -- the suspect is shaking, but he is continuing his movement to the right. And I hear Don say something about, "Continue

Taser" or something about Tasering again.

And I can tell that whatever Don had done was not completing -- that Taser was not working how I have always seen it work before, so I tased as well. When I tased, I could see that my -- the probes of the Taser from where this man was sitting in the car struck his upper -- into his upper left side and then lower side right about his waist. And I -- then I remember seeing Don's probes as well. So I know all four Taser probes are in him in this left side of his body, which is where we want to Taser somebody. This is -- I'm thinking good Tasering. But he just continues through it. He is shaking, but continuing to reach and go for that right passenger's seat.

Q All right. At the end of your five-second Taser cycle, what does he do? What do you see happening?

A I don't think -- I think there was enough separation between Don and I in our taserings that my Taser is still going and he is still convulsing as he is reaching. It looks to me like he is reaching for the glove compartment. I don't see that compartment ever open. I don't see him go below the seat, but I see all of a sudden he has a purple bag like a Crown Royal bag in his hand.

I kind of thought that's typically something we

see people carry drugs in. And then all of a sudden I saw the Crown Royal bag almost -- to me it felt like it floated away with nothing in it back to the floor. I remember thinking that was odd. I remember really, thinking, "Why the hell is he reaching for that side of the car when I saw him going under his own seat when we were going down Grand to put whatever he had there?" I'm thinking he forgot his gun or whatever he is trying to get to is under his seat not under -- not over there.

And then at that moment I just heard -- I saw his body twist and I heard two or three really loud bangs. It was so loud to me that I felt like someone took frying pans and hit me in both ears. And I knew it was gunfire. I didn't know where it was coming from or how it was coming from, because I didn't see a gun, but I twisted away.

And I'm sure other people have testified; we had lethal and less-lethal cover. Being the guy who is doing the Tasering, we're less lethal.

I turned and started to go towards the direction of Officer Polas' and Officer Burley's car to the right front here to get behind the engine block of this car and take a position of cover so I could evaluate what was going on.

Q So you don't have your nine-millimeter handgun

drawn?

A No, I had the Taser in my right hand, which is my gun hand. As I ran back here, I dropped it -- I remember dropping it and thinking, "I need to go to a gun and evaluate from behind cover what's going on."

And as I got there, dropped my Taser and was reaching for my gun, I -- I just remember like a still picture of Jim and Cody standing right -- in the positions basically where they were before, both of them -- sort of as I'm turning and running, I'm now hearing a volley of shots, multiple shots, and I can tell there is multiple shots being fired.

As I get here and turn, I can see there is probably -- I don't know -- maybe three or four more shots between -- I can't tell exactly who is shooting at this time, but both Jim and Cody have their guns up. I hear Jim or Cody, one of the two, say, "Wait" or "Halt." I don't remember the word they used, but it gave me that impression, wait or halt. I remember seeing Jim's hand, his right hand come up as if he was signaling what he was saying.

And at that point I thought whatever had happened at the car, they had dealt with the scenario and now they were re-evaluating what's going on. So I kind of re-evaluated, myself.

I looked over and saw Officer Burley down on the ground just outside of, directly straight across from this -- the driver's side door of that car.

Q When did you become aware Officer Chris Burley had been hit and was down on the ground?

A I don't know. That's a good question. I remember I was at his car. I saw Jim and Cody -- I remember Jim saying, "Halt" or whatever he said. And when I saw Chris, he was down on the ground. He was sitting on his -- on his behind with his legs straight out in front of him, and he was pushing himself with his forearms, like the underside of his forearms, like he was trying to move backwards away from this car.

And I was thinking -- I remember thinking, "Why isn't he popping up? He's a very athletic guy. He should be right back up." Then it clicked in my head. It looks like somebody who needs a wheelchair without their wheelchair, like his legs aren't working and they are dragging behind him.

And I don't know how I got to where Chris was at. I don't remember running towards him, but I remember all of a sudden being at Chris and yelling we had an officer down. And I'm not sure if by myself, I was able to lift him and drag him back to this area here, but somehow I got him -- I remember thinking this is easier

than I expected it to be. This guy has got to weigh well over 200 pounds, 225 pounds, Officer Burley. And I got him back to this car. I don't know if Don helped me or somebody else did. I just remember, "Let's get him off the ground and go." We moved him back to a place where -- my concern was I made this movement. Like I said, I don't know how I got there. I could see -- somehow I have a flash inside the car. I can see the suspect is still moving and he is reaching for the car -- the handle, door handle of the passenger's side door, and the door is actually coming open.

So my concern is that he is still alive and he has obviously shot Chris. He could shoot again. If he starts cranking off rounds, Chris is still in his line of fire. So we need to get Chris out of here and to a place where we have cover to start tending to his injuries.

So I don't know, like I said, I don't know how I got him back there. I remember thinking I need to do it. And I yelled, "Officer down" a couple times, and then we ended up back there.

Q Okay. Thank you. Any questions from the Grand Jury?

JUROR: Yes. Could you take that sketch down, please?

A Yes, sir.

JUROR: Now, that blue car up there is yours; am I correct?

A This?

JUROR: Up on the top?

A This right here.

JUROR: How long was it before that patrol car that's right on the side arrived?

A This car here?

JUROR: Yes.

A Sir, I have no idea, because as soon as I started evaluating Officer Burley's injuries, I pulled him up into this police car. I opened the backseat, and I was yelling at Sergeant Livingston. I was screaming at Sergeant Livingston -- but he was kind of occupied -- that "We need to get him to a hospital."

So I pulled Chris, with somebody else's help, into the back seat of this car, and then I backed this car out, did a U-turn and started driving to Emanuel Hospital. I just didn't think we could wait for an ambulance at that point.

JUROR: Do you recall where Officer Murphy was?

A I -- I never remember seeing Officer Murphy or Polas specifically. I thought that -- I know that somebody was on this side of the car, and I assumed just by how he moves and knowing people that this was Officer

Murphy over here. I never once remember seeing Officer Polas throughout this entire scenario which baffles me because he has been my best friend since we were three years old. I figured if there was one person I would know where he's at, it would be him. I don't have any memory of him at the scene at all.

JUROR: Did you ever fire your gun?

A No. As soon as I went back here to position myself to evaluate what was going on, I saw that Chris was down. And then when we ended up back here, I actually thought to myself we -- Jim and I had mentally prepared for a scenario like this many times. In the car we talked about it many times, and I remember the first thing I wanted to do was evaluate the injury. And I was really frustrated because I couldn't find Chris's injury. And he is telling me he had been shot in the groin area. I expected to see a whole bunch of blood and an entry hole for the shot, and I couldn't find it. And I was about ready to cut his pants open because that's how I pictured myself doing it, that I would use my knife and I would cut open his uniform to find an injury and then start a tourniquet or wrap it or do something and start medical on the way. But I couldn't find it and I didn't have -- I forgot my knife that day. And I remember I was stressed out.

It seemed like forever to me. I'm sure it was like two seconds. We don't have time for me to find the injury. And I couldn't find it, and I knew he was shot, so we just put him in the backseat so his legs were at the same level as his heart. I didn't think we should put his legs below it because I could see his legs weren't working below his heart. I didn't think we should put him in the front seat, just put him in the backseat. And he laid there. Officer Murphy jumped in the car with me, and we tried to get to Emanuel as fast as we could.

Q One more question, going to back up a little: When you said -- the Tasering, did you Taser him first or Sergeant Livingston?

A Sergeant Livingston tased him first. I think his Taser probably went through two to three seconds of the cycle as it was going. I could see it locked him up at first. His body was shaking like he was being tased, but he was able to complete his movement, which just baffled me.

As I could see his wasn't completely working, I fired my Taser as well. And he continued.

Q Sergeant -- if I'm correct, you said Sergeant Livingston --

A Yes.

Q -- was standing --

A He was standing to my right and just off -- behind me and just to my right.

Q He came around?

A He was shooting his -- his arm probably came up beside my right arm. Because if this is the person, he was probably like this (indicating).

MR. BANFIELD: Any other questions?

JUROR: Was that passenger's side or driver's side?

A Where we fired the Taser we were right here at the driver's side. So if this was the seat of the car, I was standing right here looking directly at his chest, which is where we wanted to be to fire a Taser, because you can hit that major stomach section, upper section of the body. So both Sergeant Livingston and I fired from a position where we're looking at the driver's seat.

JUROR: One more question, since you were one of the first cars on the scene.

A Sure.

Q Did you hear Mr. Otis say anything to anybody besides, you know, the yelling?

A No. He was just screaming at us the whole time. Like I said, I remember thinking I can't use my line I usually use to de-escalate, and I didn't even want to ask

him for his license, because I didn't want him to start reaching for things.

BY MR. REES:

Q Sir, do you mean, for example, did you hear the driver of the car yelling out to passerby's, other people in the area or anything like that?

A I don't specifically remember that. I just remember the word "fuck" was used an abnormal amount of times and yelling. I don't remember the words in between other than the one specific time when he said, "You are going to have to reach in here -- or come in here and grab me, take me out of here."

JUROR: Do you remember any vehicles in the surrounding area other than police cars?

A No, I don't. The only thing that I remember was this person on a bicycle. And that kept crossing my mind, because if there was a line of fire, if that person might be in it if for some reason there were shots fired this direction. We always have to consider our backdrop. I was concerned about that person standing right there watching.

Q Did you shoo him off?

A I really never -- after I saw him at first glance, my attention was on the driver the whole time.

JUROR: Thank you.

JUROR: Thinking about before this, when you were at the coffee shop, other than members of the HEAT Team, do you remember anyone else there that you recognized?

A Are you talking about police officers?

Q Yes, police officers.

A I believe Officer Dauchy was there for a little while, but that's kind of a common watering hole, so there are police coming in and out of that place quite a bit. It's right on the edge of a lot of precincts. I think Officer Dauchy sat and talked with us for a little while.

MR. REES: Anything else, folks?

JUROR: No, thank you very much.

MR. REES: Thank you very much.

We have one more witness, do you want to take a five-minute break? Okay.

JUROR: Take five minutes.

CODY BERNE,

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

EXAMINATION

BY MR. REES:

Q Officer, please be seated. And if you would for the record state your name and spell your name?

A My first name is Cody, C-O-D-Y. Last name is Berne, B-E-R-N-E.

Q And you are a Portland Police officer?

A I do work for the City of Portland as a police officer.

Q How long have you been a police officer?

A Five years.

Q And what's your educational background?

A I went to public schools here in Portland, graduated high school and went to college at Pomona College, small school in Los Angeles.

Q What did you study at Pomona College?

A Majored in politics and minored in economics.

Q And are you a member of the Hot Spot Enforcement Action Team?

A I do work for that unit, yes.

Q How long have you been doing that?

A For the duration of the team, about two years.

Q And on May 12th, 2010, were you working with a partner?

A I was not.

Q So you are in a one-man car; is that right?

A Yes.

Q We heard from other witnesses that the shift for the team began at 4:00 in the afternoon on May 12th and that after roll call there was kind of a drive around the Holladay Park area and then a coffee break at a Starbucks that was on MLK, kind of south of the Convention Center. Did you kind of participate in all those different actions or activities that night?

A I did, and that's all correct to my recollection.

Q Okay. Officer Foote has testified that after coffee, and upon driving northbound away from the Starbucks coffee shop, he observed a car and that you were also in the area and that there was some information exchanged between himself and his partner and you. Is that correct?

A Yes.

Q And can you tell us how that information was exchanged and what that consisted of?

A It was a conversation via Nextel, cellular phone

that every officer in the entire city carries.

Do you want me to go into more detail about the conversation?

Q What was the conversation?

A Just a conversation about a gray car -- I believe it was a Corolla -- that both I saw and Officer Foote and Officer DeFrain saw.

Q Do you remember specifically or generally what your fellow officers told you about that car, the driver?

A I related information to them about the driver.

Q What information did you relay?

A When I was driving out of the Starbucks lot and MLK and Hoyt, Grand and Hoyt, the gray car drove past me. I was perpendicular to that car when I was getting ready to leave northbound from the coffee shop. I saw one occupant in the car. I communicated that to Officer DeFrain, Officer Foote.

I saw that there was one occupant in this gray car. Gray car was traveling north and a single occupant, had scruffy facial hair and had a hood over his head, hooded sweatshirt that he was wearing.

Q Were you able to see the driver's facial expression at some point?

A I don't remember his facial expression at that point.

Q But later on as you are driving along, were you able to do that?

A I didn't -- I don't remember looking at his facial expression until the traffic stop.

Q And actually, let me -- does this map show the area that you were driving in and made contact with this motorist?

A It does.

Q All right. I'm going to ask you to step up here, if you would, please, and then using this map if you could describe, if you recall, your direction of travel during the time that you were seeing this silver Toyota?

A Okay. At some point I see the silver Toyota driving north on Grand. I am at the Starbucks coffee shop. It was at Hoyt. I'm not sure if Hoyt's on this map or this is Hoyt.

It was at that point that I saw that the driver had scruffy facial hair and had a hood over his head. The car continued north. I pulled north on Grand, same direction. I remember there not being a bunch of other traffic. The Corolla was in, I believe, the western-most lane on Grand. I think there is four lanes on Grand, that part of Grand. And the Corolla stopped at a traffic light. I'm not sure what street, whether it was Oregon,

Pacific or farther north. I was in a northbound lane directly adjacent to the Toyota. And I stopped my patrol car just slightly south of the front end of the Corolla. So I couldn't see the driver of the Corolla when I was stopped adjacent to him at the traffic light.

Q All right. What happens from there?

A At some point during this driving, Officer Defrain contacts me via the Nextel and we have a brief conversation about the Toyota.

The light turns green. The Toyota then begins to accelerate abnormally at an abnormally rapid speed from the light and makes a series of rapid lane changes from the western-most lane on Grand into the eastern-most lane. And in those lane changes, there was a series of violations that I saw, specifically failing to signal a hundred feet before making a lane change.

So I continued north. Officers Defrain and Foote were also continuing north behind the Toyota.

Q All right.

JUROR: You said that you -- I'm sorry, you said that you guys had a conversation regarding the Corolla. Do you remember what that was?

A I think Officer DeFrain contacted me on the Nextel. His conversation started with him asking, "Did you see that Toyota" or "Do you see that Toyota and do

you think it's a good traffic stop."

BY MR. REES

Q And what did you say about that?

A And I then told him about those same observations I saw about the Toyota and about the driver that I mentioned to you guys earlier. I also said when the Toyota ran past me I ran the license plate on the Toyota on the computer in my car. I believe the car was registered to a woman, whose last name was Otis, and she was born in 1959. I could tell from the driver that the driver was not the registered owner -- a man for one and also did not look 59. I relayed that information to Officer DeFrain in this area.

Q And you, yourself, did not initiate the stop on this Toyota, right?

A Correct.

Q Do you become aware Officers Foote and DeFrain in their car are going to initiate a traffic stop?

A Yes.

Q How do you become aware of that?

A Officer DeFrain, one, communicated to me on Nextel he and Officer Foote were going to do a traffic stop. I saw the red and blue lights on their patrol car turn on as they were behind the Toyota indicating the Toyota should stop.

Q Again, using the map if you want to illustrate this for us, what's your direction of travel once your fellow officers have announced to you they are going to begin a traffic stop and you are seeing the lights flashing and you are following their patrol car?

A Officer Foote turned on the red and blue lights on his patrol car while the Toyota was still northbound on Grand in the eastern-most lane. I don't know where in the blocks from the traffic light where the Toyota was stopped to where the traffic stop ultimately occurred up here on Sixth, about Clackamas, but it's somewhere in this area the Toyota turned east off of Grand. And all of this time Officers Foote and DeFrain had the red and blue lights on.

Then the Toyota continued to drive what I would call through the blocks east and then northbound until it finally settled at Sixth and Clackamas. I would estimate it traveled four, five blocks with Officer DeFrain, Officer Foote having their red and blue lights on and using their siren directly behind his Toyota before it finally came to a stop.

Q All right. Thank you. You can be seated.

What do you do once this car comes to a stop?

A I pull my patrol car behind the Toyota. My patrol car is facing north, as is the Toyota, on the east

side of Sixth, between Clackamas and Halsey.

Q Do you get out of your car?

A I do.

Q What do you see or hear happening?

A I see and hear Officers DeFrain and Foote speaking with the driver. I specifically remember Officer Foote having a conversation with the driver and the driver then shouting, screaming at Officer Foote. I also see that the driver is moving very aggressively in his seat. I can describe those motions in greater detail if you would like.

Q First let me ask you: You said you saw them having a conversation, a speaking-type conversation, a discussion or -- or not?

A It was Officer Foote making requests and the driver yelling and screaming.

Q If you remember, what was Officer Foote saying?

A "Show me your hands."

Q And what was the driver of the car saying, if you remember?

A I don't remember, just that he was not happy. He was yelling and screaming.

Q And you saw -- you say you saw the driver making certain motions or movements?

A Yes.

Q Can you demonstrate that for us?

A He was moving very I would call deliberately, aggressively within the front seat. The two motions in particular that are very clear in my mind was that he was posting in his front seat. When I say "posting," I would describe the way a person would ride a horse if they are trying to stay in rhythm, their horse they are moving their body up and down with in the rhythm of the horse. He has his feet flat against the floor and body pushed up against the backseat, like I'm doing here.

While he was doing that, I remember him moving very aggressively with his right hand and reaching in between the center console in his Toyota and the front seat. The movement was very deliberate and very aggressive, very rapid. He was doing this while he is shouting at Officer Foote.

Q As a police officer, based on your training and experience, did those movements and motions have any particular meaning to you?

A Yes. My concern was that he was trying to access a weapon or some sort of contraband that he was then trying to conceal. Either weapon or contraband was going through my mind.

Q So what do you do?

A I walk up to the passenger's side of the Toyota.

Both Officers DeFrain and Foote were on the driver's side. And I'm able to see the right side of the driver, who I will call Mr. Otis, if that's okay.

Q Yes.

A I see Mr. Otis in the front passenger's seat. I see these aggressive movements. And I see that Officer Defrain has his handgun, his duty firearm unholstered in what I would call a position of low-ready, which I can define if you guys need me to.

When I see Officer DeFrain's handgun at low-ready, I think both Officer DeFrain and I were thinking along the same lines. And Officer DeFrain shouted at me. At the same time I started to move away from that passenger's side. Officer DeFrain said, "Hey, Cody, get off the passenger side of that car. Come to our side."

I then walked to the driver side of the car and joined Foote and DeFrain.

Q What happens?

A At some point I remember Officer DeFrain's handgun was now holstered. I remember seeing it in his duty belt holster. Officer Foote was trying to give some simple instructions to the driver. Namely, at this point, "Put your hands on top of your head and interlace your fingers." I remember Officer Foote repeating that

instruction many times.

Q And did the driver of the car ever seem to respond to those commands?

A After enough requests, he finally put his hands on the steering wheel. He had both his left and right hands at the top of the steering wheel with his fingers wrapped around the steering wheel, but he would not fully comply with the commands and actually put his hands on top of his head and interlace his fingers. All the while he is screaming, shouting at Officer Foote, Officer DeFrain.

Q So what happens after that?

A This goes on for what seems like a couple minutes where Officer Foote in a extremely calm voice is asking Mr. Otis "Put your hands on top of your head, interlace your fingers" almost in the same tone I'm using here. Mr. Otis is shouting, screaming.

At some point in this exchange I remember Mr. Otis's hands were prominently on the top of the steering wheel. He made this deliberate motion with his head and neck, as he is looking out the window and then slowly looked around outside of the window. And I remember the motion just because how deliberate it was, almost like some sort of staged motion he was performing.

Then he made comment about his race and about

the number of police officers on the traffic stop because of his race. I don't remember specifically what the comment was.

Q And so continue with this interaction. What happens after that?

A Mr. Otis then made another comment. He started yelling at Officer Foote to open the door, as in open the driver's side door. He said that repeatedly. I'm not sure why he was making that comment.

Q All right. And just go ahead and tell us then what you see happen after that?

A At some point, I requested cover via the pack set radio that I carry on my uniform. I remember Officer Foote also requested additional cars. Someone may also have made that request via Nextel to other our partners in HEAT. I remember Officer Foote's Taser out during this exchange, out of the holster and in his hands.

I could sort of continue then with at happens next.

So that request for cover was followed through. Officer Murphy and Sergeant Livingston arrive. They were in a partner car along with Officers Burley and Polas in a second partner car. At this point, everyone from the HEAT Team is now at the scene of the traffic stop.

I can describe the car position, if you like, as

well.

Q At this point do people need that or not?

JUROR: No.

Q Why don't you just continue with your narrative. If there is a question about that, we can get back to that. I'll put up a line diagram behind you if it is needed.

A Officer Foote had continued this entire time to ask Mr. Otis -- tell Mr. Otis to put his hands on top of his head, interlace his fingers. Mr. Otis kept his hands on the steering wheel, continued to shout. Once everyone from the HEAT Team was there, we formulated a quick plan and decided we were just going to take Mr. Otis out of his car.

Officer Burley, I guess, led the way in that activity and was directly alongside Mr. Otis's driver's side door.

Do I need to describe the position of every officer? Would that be helpful?

JUROR: Yes.

A Okay. Officer Burley.

BY MR. REES:

Q Go ahead and also, if you like, there is a line diagram behind you.

A Okay. That would be much easier.

Q I just ask again that you stand to one side so we can see it.

A Yes. Officer Burley, if this is the Toyota, he is alongside the driver's side door.

I am bracketing officer Burley on the left side. Officer DeFrain is bracketing on the right side. We're both slightly west of Officer Burley. If this chair is Officer Burley, I'm north of Officer Burley Officer DeFrain is south of me. I'm closer towards the engine compartment. Officer DeFrain is towards the trunk of the Toyota.

I remember another officer being north of us. I don't know which Officer that was. I remember officers then also being south of us. I do remember Foote was north of us, and Officer Foote had his Taser.

Officer Burley then attempted to use a control hold to gain control of Mr. Otis's left arm. And the control hold, in my mind he attempted to use was the Sankajo, which is a pain compliance maneuver. The idea is to control Mr. Otis's left arm and use pain compliance to compel him to follow Officer Foote's instruction to put his hands on top of his head so we could safely get him out of the Toyota.

Continue in this vein?

Q Sure.

A As Office Burley reaches probably from his elbows to his hands into the Toyota through the window and takes control of Mr. Otis left arm or hand, attempts to, Mr. Otis lunges extremely aggressively and violently in his car toward the front passenger seat. As he is making this motion, he lunges toward the glove box. I remember he opened the glove box. When he opened the glove box, I fixated on a purple cloth bag in the glove box. It's a Crown Royal bag. I'm not too familiar with alcohol. I know Crown Royal is some sort of alcohol, and oftentimes folks that I interact with on the street like to hide their bad stuff in Crown Royal bags, most commonly narcotics.

Q We have heard a number of witnesses have mentioned these Crown Royal bags. So you are seeing these on the street as just kind of a handy way to hold objects. It sounds like there must be some sort of cachet associated with a Crown Royal bag amongst people on the street. Is that what you are saying?

A Absolutely. Nice looking bag, nice color purple. It has gold rope along the side of it. If you want to hide your bad stuff in something nice, maybe that's how you do it.

Q You have seen this before not holding a bottle of liquor?

A I don't think I have seen a Crown Royal bag with liquor, only methamphetamine, not liquor.

Q You see one of these bags in the car?

A Yes. I see Mr. Otis has essentially defeated Officer Burley's attempts to control him with the Sankajo. He has lunged very aggressively towards that glove box. I remember an officer may have been as well shouting, "He is reaching for something." I remember hearing the distinctive puff sounds the Taser cartridge makes when the probes are deployed. I remember seeing Taser wires north of me connected somewhere on Mr. Otis' midsection and those wires dangling towards the north and west from Mr. Otis's midsection towards the officer that deployed that Taser.

Just continue along this line?

Q Yes.

A Mr. Otis at this point had effectively -- Mr. Otis had effectively defeated Officer Burley's Sankajo maneuver. I believe Officer Burley's hands were still either on Mr. Otis's left hand or left arm, forearm.

Mr. Otis reached in the glove box and then began to rotate his torso and shoulders. He is rotating his torso or shoulders counter clockwise as he is leaning across the front seat. Essentially he is rotating his shoulders and back more and more toward the front

passenger door. I remember his right hand and arm then reaching very distinctively and pointing toward myself, Office DeFrain and Officer Burley alongside that front door.

As I am -- so you are able to communicate this in the transcript, Mr. Otis had his right arm fully extended to the elbow and his hand was in the same grip I'm showing you here almost a C grip between his thumb and index finger and that grip I associated with firing a semi-automatic pistol -- that grip, both with the hand and the way his arm and elbow were locked.

At that point his body is now facing myself, Officer DeFrain and Officer Burley alongside that driver door.

Q And do you see a handgun in his hand?

A No.

Q In your mind, based on what you are seeing, what do you think is happening?

A There is no other possibility in my mind but that Mr. Otis is pointing a handgun at us based on the way he has positioned his body, based on the way his hand and arm are ascending. I don't know why I didn't see the handgun in his hand. I remember fixating first on that Crown Royal bag and then on the way his hand was shaped with whatever it was holding.

Q I take it this is -- even though you are taking some time and detail to describe this, these events are occurring in almost the blink of an eye or just a matter of seconds?

A Yes. These events I just described just in the snap of a finger, as quick as a person could reach into a glove box.

Q Do you have your gun drawn at that point?

A I don't remember ever drawing my handgun, but my handgun was -- I did draw my handgun at some point, so I could go into that if you like.

Q We'll get to that in a minute.

A Okay.

Q In terms of your recollection now, you don't remember having your handgun out at that point; is that correct?

A I don't remember if it was out or not. I couldn't say.

Q Okay. Do you see any kind of a muzzle flash or did you hear a report from a gun at that point?

A I did hear two reports from a gun from the Toyota in rapid succession.

Q So when you hear the two gunshots in rapid succession, at that point now what are you thinking?

A I -- I knew that Mr. Otis was shooting at us.

Q And so do you recall how you reacted to that?

A At some point I drew my handgun, and I remember my handgun then being in a firing position and the firing position that we're trained to, I guess, go into, the Police Bureau, is elbows locked, body slightly bladed, feet about shoulder width apart. I remember focusing on the front site of my handgun, another component of handgun training in the Police Bureau. And then I remember pulling the trigger once, and then I can describe what's then going on around me as this is happening as well if you like.

Q Let me ask you first when you do that, when you pull the trigger, what's going through your head? Why are you doing that?

A My thought was that Mr. Otis was trying to kill me and trying to kill Officer DeFrain and Officer Burley. This was a gun that he pointed at us and had shot at us, so my thought was I could get killed here along with my friends.

Q All right. What are you aware of around you at that moment? Because you said you had some awareness of that, too?

A In my mind, at the same time that I hear these two very loud gunshots coming from the Toyota, I see Officer Burley moving extremely rapidly backwards and I

hear him screaming, "I've been shot." Out of the corner of my eye I could see just in the same time it took those two shots to be fired from that car, Officer Burley was already ten or fifteen feet it felt like south and west of the Toyota. So not only did I feel that Mr. Otis was attempting to kill us, but I knew that Officer Burley had been shot as I'm going through the motion of taking my handgun up to a firing position and actually pulling the trigger.

Q All right. While you are shooting, what's your target? What are you shooting at and what's your intention?

A My intention was to prevent or stop Mr. Otis from continuing to shoot at us, and I was aimed at -- the term the Police Bureau use is center mass, essentially from his belt line up to his shoulder line.

Q You can return to your seat if you want.

Could you tell whether that was having any effect on him?

A In my mind, it was having no effect. I was surprised it was having no effect.

Q Do you remember how many times you shot?

A No.

Q Do you remember stopping shooting?

A Yes.

Q And do you remember why you stopped?

A At some point during this exchange of gunfire I remember Mr. Otis moving his body away from the shooting position I described initially, and I remember Mr. Otis almost pause in a position where he was -- it was as if he was kneeling on the front passenger's seat and facing south in the Toyota towards the trunk of the Toyota. So it felt like he climbed entirely into the front passenger's seat and turned his body so it was facing south.

Q Let me ask you a personal question, because you -- you look perhaps like the political scientist that you studied to be in college and you have described this very calmly, but when this happened, when you saw him put out his hands and you heard two gunshots and you returned fire, were you scared?

A Absolutely. I thought I was going to get killed or one of my friends was going to get killed. The gentleman was shooting from about three feet.

Q Has anything else happened to you as a police officer as frightening as this?

A I would say no.

MR. REES: Are there any other questions from the Grand Jury?

JUROR: Did you notice anybody while Officer

Burley had Mr. Otis in -- what kind of maneuver you called it?

A I think it's Sankajo. Yeah.

JUROR: Sankajo?

A Yeah.

JUROR: Did you notice anyone else reaching in to grab or wrestle with Mr. Otis?

A I don't remember any other officer reaching into the car. I next remember the Taser -- the puff of the Taser cartridge being deployed and the wires of the Taser were hanging in front of Officer Burley and myself.

JUROR: If I'm correct, did you state that you were on the passenger's side of the car and came around?

A Initially, before when it was only Officer DeFrain and Officer Foote, I joined them in the traffic stop and walked to the front passenger's side. And then I walked to the driver's side before any other officers arrived.

JUROR: And you said you don't recall how many shots you fired at Mr. Otis; am I correct?

A After the fact, I did a reload. I can describe a reload in greater detail. So after the situation was under control, I looked at my magazine. I don't remember exactly how many rounds were missing, but I could estimate for the you, if you like. During the course of

events, I don't remember how many rounds were fired.

JUROR: And how many officers was firing at Mr. Otis, if you can recall?

A I remember hearing gunshots west of the Toyota and south of me, and I remember at the time I didn't know how many other officers were shooting. I knew Officer DeFrain was directly south of me. So in my mind Officer DeFrain was most likely shooting, but during the course of the actual exchange of gunfire I don't remember seeing Officer DeFrain shooting.

JUROR: Thank you.

A You are welcome.

JUROR: I got a question for you. I'm confused, because I heard you say -- I don't understand from the time he was moving to the right you said?

A Uh-hum.

JUROR: And then you saw his arm come up, but you don't remember the gun being in his hand but his elbow was locked?

A Yes. I remember from his motion -- correct me if I don't correctly answer your question or don't provide enough information.

JUROR: I was trying to get the sequence of events, how he got to the seat, to the other seat to where he fired to what happened to the purple bag.

That's all kind of a blur to me.

A Okay. In my mind, all these events happened in one -- in one -- how do I describe, one event, sort of single event. I think I focused on the purple bag because -- in my testimony to you guys, because I remember the purple bag featuring so prominently in my memory of this. I also remember his arm position, that locked elbow, that hand in the C grip, slightly canted, like I'm gesturing here. That also featured prominently in my mind.

If I said previously that he was in the front passenger seat, that's not correct. He leaned from the driver's seat initially across the front passenger's seat into the glove box and then he began to rotate his body in that counterclockwise motion. So he was still seated in that passenger's seat, but his -- I guess his torso was at an incline, at an angle as opposed to being in a more 90-degree position, if you are sitting in a driver's seat.

JUROR: Okay. So you saw the purple bag in the glove box?

A Uh-hum.

JUROR: And then did you see him take it out of the glove box?

A I saw him reach into that glove box. I don't

know if he reached into the purple bag or reached alongside the purple bag. Then the next motion to better clarify for you was that rotation counterclockwise. I remember fixating on that extension of the arm.

JUROR: Which seat is he in at that point still in the driver's seat?

A Throughout the exchange of gunfire, I think I would say the majority of his mass was in that driver's seat. I'm using the front passenger's side as a descriptor just because his torso was more angled across. But I think his butt was still sitting in that driver's seat.

JUROR: Okay. So then he kind of turned and leaned like that?

A Yes.

JUROR: So then where was his hand in relation to the top of the door or the open window? Was it sticking out the window?

A No. I think his hand and arm were still inside the car. I would say it was probably -- if you split the steering we'll in half so you have the left side of the steering wheel close to the driver's side door and right side close to the passenger's door, I would say his hand and arm were still east of that median line on the steering wheel, biased toward the passenger's side.

JUROR: Thank you.

JUROR: One more question: Were you present when the -- what you call the bag or the beanbags was shot?

A Yes.

JUROR: Do you recall who shot the beanbags?

A Yes, Officer Dauchy.

JUROR: Do you recall who initiate -- initiated the order, or did he initiate it on his own?

A Yes. There was an orchestrated plan that Sergeant Livingston formulated that involved a beanbag and that was part of the handcuffing and custody process.

JUROR: But do you remember who ordered for him to fire?

A Yes, Sergeant Livingston.

JUROR: Thank you. You are welcome.

MR. REES: All right folks.

(Proceedings concluded.)

STATE OF OREGON)
) ss.
County of Multnomah)

I, Estelle T. Keating, Official Court Reporter of the Circuit Court of the State of Oregon, Eleventh Judicial District, certify that I reported in stenotype the foregoing Grand Jury proceedings in the above-entitled case.

I further certify that my stenotype notes were reduced to transcript form by Computer-Aided Transcription under my direction.

And I further certify that transcript dates 5/21/10, 5/25/10 & 5/27/10, pages 1-114 & 369-696 contain a full, true, and accurate record of my stenotype notes.

Dated this 8th day of May, June, 2010 at Portland, Oregon.

Estelle T. Keating